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H.B. No. 1363

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of and punishment for the offense of
prostitution; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 169.001(a), Health and Safety Code, is
amended to read as follows:

(a) In this chapter, "first offender prostitution
prevention program" means a program that has the following
essential characteristics:

(1) the integration of services in the processing of
cases in the judicial system;

(2) the use of a nonadversarial approach involving
prosecutors and defense attorneys to promote public safety, to
reduce the demand for the commercial sex trade and trafficking of
persons by educating offenders, and to protect the due process
rights of program participants;

(3) early identification and prompt placement of
eligible participants in the program;

(4) access to information, counseling, and services
relating to commercial sexual exploitation, trafficking of
persons, sex addiction, sexually transmitted diseases, mental
health, and substance abuse;

(5) a coordinated strategy to govern program responses
to participant compliance;

(6) monitoring and evaluation of program goals and effectiveness;

(7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(8) development of partnerships with public agencies and community organizations.

SECTION 2. Section 169.003(a), Health and Safety Code, is amended to read as follows:

(a) A first offender prostitution prevention program established under this chapter must:

(1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide each participant with information, counseling, and services relating to commercial sexual exploitation, trafficking of persons, sex addiction, sexually transmitted diseases, mental health, and substance abuse; and

(4) provide each participant with classroom instruction related to the prevention of prostitution.

SECTION 3. Section 169A.001(a), Health and Safety Code, is amended to read as follows:

(a) In this chapter, "prostitution prevention program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

1 (2) the use of a nonadversarial approach involving
2 prosecutors and defense attorneys to promote public safety, to
3 reduce the demand for the commercial sex trade and trafficking of
4 persons by educating offenders, and to protect the due process
5 rights of program participants;

6 (3) early identification and prompt placement of
7 eligible participants in the program;

8 (4) access to information, counseling, and services
9 relating to commercial sexual exploitation, trafficking of
10 persons, sex addiction, sexually transmitted diseases, mental
11 health, and substance abuse;

12 (5) a coordinated strategy to govern program responses
13 to participant compliance;

14 (6) monitoring and evaluation of program goals and
15 effectiveness;

16 (7) continuing interdisciplinary education to promote
17 effective program planning, implementation, and operations; and

18 (8) development of partnerships with public agencies
19 and community organizations.

20 SECTION 4. Section 169A.003(a), Health and Safety Code, is
21 amended to read as follows:

22 (a) A prostitution prevention program established under
23 this chapter must:

24 (1) ensure that a person eligible for the program is
25 provided legal counsel before volunteering to proceed through the
26 program and while participating in the program;

27 (2) allow any participant to withdraw from the program

1 at any time before a trial on the merits has been initiated;

2 (3) provide each participant with information,
3 counseling, and services relating to commercial sexual
4 exploitation, trafficking of persons, sex addiction, sexually
5 transmitted diseases, mental health, and substance abuse; and

6 (4) provide each participant with instruction related
7 to the prevention of prostitution.

8 SECTION 5. Chapter 32, Code of Criminal Procedure, is
9 amended by adding Article 32.03 to read as follows:

10 Art. 32.03. DISMISSAL OF CERTAIN PROSTITUTION OFFENSES. At
11 any time before trial commences for an offense under Section 43.02,
12 Penal Code, a court may, on the request of the defendant and with
13 the consent of the attorney representing the state, defer
14 proceedings without entering an adjudication of guilt and permit
15 the defendant to participate in a prostitution prevention program
16 established under Chapter 169 or 169A, Health and Safety Code, if
17 the defendant is otherwise eligible to participate in the program
18 under the applicable chapter. If the defendant successfully
19 completes the prostitution prevention program, the court may
20 dismiss the proceedings against the defendant and discharge the
21 defendant.

22 SECTION 6. Section 43.02, Penal Code, is amended by
23 amending Subsections (a), (b), (c), and (d) and adding Subsections
24 (b-1) and (c-1) to read as follows:

25 (a) A person commits an offense if, in return for receipt of
26 a fee, the person knowingly:

27 (1) offers to engage, agrees to engage, or engages in

1 sexual conduct [~~for a fee~~]; or

2 (2) solicits another in a public place to engage with
3 the actor [~~person~~] in sexual conduct for hire.

4 (b) A person commits an offense if, based on the payment of a
5 fee by the actor or another person on behalf of the actor, the
6 person knowingly:

7 (1) offers to engage, agrees to engage, or engages in
8 sexual conduct; or

9 (2) solicits another in a public place to engage with
10 the actor in sexual conduct for hire.

11 (b-1) An offense is established under Subsection (a)
12 regardless of [~~(a)(1)~~] whether the actor is offered or actually
13 receives the [~~is to receive or pay a~~] fee. An offense is
14 established under Subsection (b) regardless of [~~(a)(2)~~] whether the
15 actor or another person on behalf of the actor offers or actually
16 pays the fee [~~solicits a person to hire the actor or offers to hire~~
17 ~~the person solicited~~].

18 (c) An offense under Subsection (a) [~~this section~~] is a
19 Class B misdemeanor, except that the offense is [~~+~~

20 [~~(1)~~] a Class A misdemeanor [~~if the actor has~~
21 ~~previously been convicted one or two times of an offense under this~~
22 ~~section,~~

23 [~~(2) a state jail felony~~] if the actor has previously
24 been convicted three or more times of an offense under Subsection
25 (a).

26 (c-1) An offense under Subsection (b) is a Class B
27 misdemeanor, except that the offense is:

1 (1) a Class A misdemeanor if the actor has previously
2 been convicted one or two times of an offense under Subsection (b);

3 (2) a state jail felony if the actor has previously
4 been convicted three or more times of an offense under Subsection
5 (b) [~~this section~~]; or

6 (3) a felony of the second degree if the person
7 solicited is younger than 18 years of age, regardless of whether the
8 actor knows the age of the person solicited at the time the actor
9 commits the offense.

10 (d) It is a defense to prosecution for an offense under
11 Subsection (a) [~~under this section~~] that the actor engaged in the
12 conduct that constitutes the offense because the actor was the
13 victim of conduct that constitutes an offense under Section 20A.02
14 or 43.05.

15 SECTION 7. Section 51.03(b), Family Code, is amended to
16 read as follows:

17 (b) Conduct indicating a need for supervision is:

18 (1) subject to Subsection (f), conduct, other than a
19 traffic offense, that violates:

20 (A) the penal laws of this state of the grade of
21 misdemeanor that are punishable by fine only; or

22 (B) the penal ordinances of any political
23 subdivision of this state;

24 (2) the absence of a child on 10 or more days or parts
25 of days within a six-month period in the same school year or on
26 three or more days or parts of days within a four-week period from
27 school;

1 (3) the voluntary absence of a child from the child's
2 home without the consent of the child's parent or guardian for a
3 substantial length of time or without intent to return;

4 (4) conduct prohibited by city ordinance or by state
5 law involving the inhalation of the fumes or vapors of paint and
6 other protective coatings or glue and other adhesives and the
7 volatile chemicals itemized in Section 485.001, Health and Safety
8 Code;

9 (5) an act that violates a school district's
10 previously communicated written standards of student conduct for
11 which the child has been expelled under Section 37.007(c),
12 Education Code;

13 (6) conduct that violates a reasonable and lawful
14 order of a court entered under Section 264.305;

15 (7) notwithstanding Subsection (a)(1), conduct
16 described by Section 43.02(a) or (b) [~~43.02(a)(1) or (2)~~], Penal
17 Code; or

18 (8) notwithstanding Subsection (a)(1), conduct that
19 violates Section 43.261, Penal Code.

20 SECTION 8. Section 261.001(1), Family Code, is amended to
21 read as follows:

22 (1) "Abuse" includes the following acts or omissions
23 by a person:

24 (A) mental or emotional injury to a child that
25 results in an observable and material impairment in the child's
26 growth, development, or psychological functioning;

27 (B) causing or permitting the child to be in a

1 situation in which the child sustains a mental or emotional injury
2 that results in an observable and material impairment in the
3 child's growth, development, or psychological functioning;

4 (C) physical injury that results in substantial
5 harm to the child, or the genuine threat of substantial harm from
6 physical injury to the child, including an injury that is at
7 variance with the history or explanation given and excluding an
8 accident or reasonable discipline by a parent, guardian, or
9 managing or possessory conservator that does not expose the child
10 to a substantial risk of harm;

11 (D) failure to make a reasonable effort to
12 prevent an action by another person that results in physical injury
13 that results in substantial harm to the child;

14 (E) sexual conduct harmful to a child's mental,
15 emotional, or physical welfare, including conduct that constitutes
16 the offense of continuous sexual abuse of young child or children
17 under Section 21.02, Penal Code, indecency with a child under
18 Section 21.11, Penal Code, sexual assault under Section 22.011,
19 Penal Code, or aggravated sexual assault under Section 22.021,
20 Penal Code;

21 (F) failure to make a reasonable effort to
22 prevent sexual conduct harmful to a child;

23 (G) compelling or encouraging the child to engage
24 in sexual conduct as defined by Section 43.01, Penal Code,
25 including compelling or encouraging the child in a manner ~~[conduct]~~
26 that constitutes an offense of trafficking of persons under Section
27 20A.02(a)(7) or (8), Penal Code, prostitution under Section

1 43.02(b) [~~43.02(a)(2)~~], Penal Code, or compelling prostitution
2 under Section 43.05(a)(2), Penal Code;

3 (H) causing, permitting, encouraging, engaging
4 in, or allowing the photographing, filming, or depicting of the
5 child if the person knew or should have known that the resulting
6 photograph, film, or depiction of the child is obscene as defined by
7 Section 43.21, Penal Code, or pornographic;

8 (I) the current use by a person of a controlled
9 substance as defined by Chapter 481, Health and Safety Code, in a
10 manner or to the extent that the use results in physical, mental, or
11 emotional injury to a child;

12 (J) causing, expressly permitting, or
13 encouraging a child to use a controlled substance as defined by
14 Chapter 481, Health and Safety Code;

15 (K) causing, permitting, encouraging, engaging
16 in, or allowing a sexual performance by a child as defined by
17 Section 43.25, Penal Code; or

18 (L) knowingly causing, permitting, encouraging,
19 engaging in, or allowing a child to be trafficked in a manner
20 punishable as an offense under Section 20A.02(a)(5), (6), (7), or
21 (8), Penal Code, or the failure to make a reasonable effort to
22 prevent a child from being trafficked in a manner punishable as an
23 offense under any of those sections.

24 SECTION 9. Section 169.002(a), Health and Safety Code, is
25 amended to read as follows:

26 (a) The commissioners court of a county or governing body of
27 a municipality may establish a first offender prostitution

1 prevention program for defendants charged with an offense under
2 Section 43.02(b) [~~43.02(a)(2)~~], Penal Code[, ~~in which the defendant~~
3 ~~offered or agreed to hire a person to engage in sexual conduct~~].

4 SECTION 10. Section 169A.002(a), Health and Safety Code, is
5 amended to read as follows:

6 (a) The commissioners court of a county or governing body of
7 a municipality may establish a prostitution prevention program for
8 defendants charged with an offense under Section 43.02(a)
9 [~~43.02(a)(1)~~], Penal Code[, ~~in which the defendant offered or~~
10 ~~agreed to engage in or engaged in sexual conduct for a fee~~].

11 SECTION 11. The change in law made by this Act applies only
12 to an offense committed on or after the effective date of this Act.
13 An offense committed before the effective date of this Act is
14 governed by the law in effect on the date the offense was committed,
15 and the former law is continued in effect for that purpose. For
16 purposes of this section, an offense was committed before the
17 effective date of this Act if any element of the offense occurred
18 before that date.

19 SECTION 12. This Act takes effect September 1, 2015.