

BILL ANALYSIS

C.S.H.B. 2319
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested observers note that currently a person who engages in providing sexually related services for compensation and the person who solicits those services are grouped together under the same charge of prostitution even though the conduct for each is different. The observers contend that grouping the two offenders together under the same offense has made it difficult to compile meaningful data on these crimes and to increase the penalty for one type of offender without impacting the penalty for the other type of offender. C.S.H.B. 2319 seeks to address this issue by creating separate offenses.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2319 amends the Penal Code to make the conduct constituting a Class B misdemeanor prostitution offense applicable if a person engages in the conduct in return for receipt of a fee. The bill establishes that such an offense is committed regardless of whether the actor is offered or actually receives the fee. The bill makes it a defense to prosecution for such an offense that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes the offense of compelling prostitution.

C.S.H.B. 2319 makes it a Class A misdemeanor to knowingly, based on the payment of a fee by the actor or another person on behalf of the actor, solicit another in a public place to engage with the actor in sexual conduct for hire or offer to engage, agree to engage, or engage in sexual conduct. The bill establishes that such an offense is committed regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee. The bill enhances the penalty for such an offense from a Class A misdemeanor to a state jail felony if the actor has previously been convicted of that offense one or two times and from a state jail felony to a third degree felony if the actor has previously been convicted of that offense three times or more. The bill makes the second degree felony penalty enhancement for soliciting a person younger than 18 years of age applicable to such an offense.

C.S.H.B. 2319 amends the Family Code to change the prostitution conduct that constitutes abuse, for purposes of an investigation of a report of child abuse, from conduct that constitutes an offense of trafficking of persons, prostitution, or compelling prostitution to compelling or

encouraging the child in a manner that constitutes such offenses.

C.S.H.B. 2319 amends the Health and Safety Code to make conforming changes.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2319 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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

(a) A person commits an offense if, in return for receipt of a fee by the actor or another, the person knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct [~~for a fee~~]; or

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

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

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

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

~~[An offense is established under Subsection (a)(1) whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) whether the actor solicits a person to hire the actor or offers to hire the person solicited].~~

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

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

(2) a state jail felony if the actor has

HOUSE COMMITTEE SUBSTITUTE

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

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

(1) offers to engage, agrees to engage, or engages in sexual conduct [~~for a fee~~]; or

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

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

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

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

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

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

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

(2) a state jail felony if the actor has

previously been convicted three or more times of an offense under Subsection (a).

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

(1) a state jail felony if the actor has previously been convicted one or two times of an offense under Subsection (b);

(2) a felony of the third degree if the actor has previously been convicted three or more times of an offense under Subsection (b) [this section]; or

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

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

SECTION 2. Section 51.03(b), Family Code, is amended.

SECTION 3. Section 261.001(1), Family Code, is amended to read as follows:

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

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

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

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

(D) failure to make a reasonable effort to

previously been convicted three or more times of an offense under Subsection (a).

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

(1) a state jail felony if the actor has previously been convicted one or two times of an offense under Subsection (b);

(2) a felony of the third degree if the actor has previously been convicted three or more times of an offense under Subsection (b) [this section]; or

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

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

SECTION 2. Same as introduced version.

SECTION 3. Section 261.001(1), Family Code, is amended to read as follows:

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

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

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

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

(D) failure to make a reasonable effort to

prevent an action by another person that results in physical injury that results in substantial harm to the child;

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

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

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including **conduct** that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section **43.02(a)** [~~43.02(a)(2)~~], Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

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

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

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

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

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

prevent an action by another person that results in physical injury that results in substantial harm to the child;

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

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

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including **compelling or encouraging the child in a manner** [~~conduct~~] that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section **43.02(b)** [~~43.02(a)(2)~~], Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

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

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

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

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

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

SECTION 4. Section 169.002(a), Health and Safety Code, is amended.

SECTION 4. Same as introduced version.

SECTION 5. Section 169A.002(a), Health and Safety Code, is amended.

SECTION 5. Same as introduced version.

SECTION 6. The changes in law made by this Act to Section 43.02, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6. Same as introduced version.

SECTION 7. This Act takes effect September 1, 2015.

SECTION 7. Same as introduced version.