

1-1 By: Johnson, et al. (Senate Sponsor - Whitmire) H.B. No. 1363
 1-2 (In the Senate - Received from the House May 7, 2015;
 1-3 May 7, 2015, read first time and referred to Committee on Criminal
 1-4 Justice; May 22, 2015, reported favorably by the following vote:
 1-5 Yeas 6, Nays 1; May 22, 2015, sent to printer.)

1-6 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-7 | | | | |
| 1-8 | X | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | | X | | |
| 1-12 | X | | | |
| 1-13 | X | | | |
| 1-14 | X | | | |

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to the prosecution of and punishment for the offense of
 1-18 prostitution; creating a criminal offense.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Section 169.001(a), Health and Safety Code, is
 1-21 amended to read as follows:

1-22 (a) In this chapter, "first offender prostitution
 1-23 prevention program" means a program that has the following
 1-24 essential characteristics:

1-25 (1) the integration of services in the processing of
 1-26 cases in the judicial system;

1-27 (2) the use of a nonadversarial approach involving
 1-28 prosecutors and defense attorneys to promote public safety, to
 1-29 reduce the demand for the commercial sex trade and trafficking of
 1-30 persons by educating offenders, and to protect the due process
 1-31 rights of program participants;

1-32 (3) early identification and prompt placement of
 1-33 eligible participants in the program;

1-34 (4) access to information, counseling, and services
 1-35 relating to commercial sexual exploitation, trafficking of
 1-36 persons, sex addiction, sexually transmitted diseases, mental
 1-37 health, and substance abuse;

1-38 (5) a coordinated strategy to govern program responses
 1-39 to participant compliance;

1-40 (6) monitoring and evaluation of program goals and
 1-41 effectiveness;

1-42 (7) continuing interdisciplinary education to promote
 1-43 effective program planning, implementation, and operations; and

1-44 (8) development of partnerships with public agencies
 1-45 and community organizations.

1-46 SECTION 2. Section 169.003(a), Health and Safety Code, is
 1-47 amended to read as follows:

1-48 (a) A first offender prostitution prevention program
 1-49 established under this chapter must:

1-50 (1) ensure that a person eligible for the program is
 1-51 provided legal counsel before volunteering to proceed through the
 1-52 program and while participating in the program;

1-53 (2) allow any participant to withdraw from the program
 1-54 at any time before a trial on the merits has been initiated;

1-55 (3) provide each participant with information,
 1-56 counseling, and services relating to commercial sexual
 1-57 exploitation, trafficking of persons, sex addiction, sexually
 1-58 transmitted diseases, mental health, and substance abuse; and

1-59 (4) provide each participant with classroom
 1-60 instruction related to the prevention of prostitution.

1-61 SECTION 3. Section 169A.001(a), Health and Safety Code, is

2-1 amended to read as follows:

2-2 (a) In this chapter, "prostitution prevention program"
 2-3 means a program that has the following essential characteristics:

2-4 (1) the integration of services in the processing of
 2-5 cases in the judicial system;

2-6 (2) the use of a nonadversarial approach involving
 2-7 prosecutors and defense attorneys to promote public safety, to
 2-8 reduce the demand for the commercial sex trade and trafficking of
 2-9 persons by educating offenders, and to protect the due process
 2-10 rights of program participants;

2-11 (3) early identification and prompt placement of
 2-12 eligible participants in the program;

2-13 (4) access to information, counseling, and services
 2-14 relating to commercial sexual exploitation, trafficking of
 2-15 persons, sex addiction, sexually transmitted diseases, mental
 2-16 health, and substance abuse;

2-17 (5) a coordinated strategy to govern program responses
 2-18 to participant compliance;

2-19 (6) monitoring and evaluation of program goals and
 2-20 effectiveness;

2-21 (7) continuing interdisciplinary education to promote
 2-22 effective program planning, implementation, and operations; and

2-23 (8) development of partnerships with public agencies
 2-24 and community organizations.

2-25 SECTION 4. Section 169A.003(a), Health and Safety Code, is
 2-26 amended to read as follows:

2-27 (a) A prostitution prevention program established under
 2-28 this chapter must:

2-29 (1) ensure that a person eligible for the program is
 2-30 provided legal counsel before volunteering to proceed through the
 2-31 program and while participating in the program;

2-32 (2) allow any participant to withdraw from the program
 2-33 at any time before a trial on the merits has been initiated;

2-34 (3) provide each participant with information,
 2-35 counseling, and services relating to commercial sexual
 2-36 exploitation, trafficking of persons, sex addiction, sexually
 2-37 transmitted diseases, mental health, and substance abuse; and

2-38 (4) provide each participant with instruction related
 2-39 to the prevention of prostitution.

2-40 SECTION 5. Chapter 32, Code of Criminal Procedure, is
 2-41 amended by adding Article 32.03 to read as follows:

2-42 Art. 32.03. DISMISSAL OF CERTAIN PROSTITUTION OFFENSES. At
 2-43 any time before trial commences for an offense under Section 43.02,
 2-44 Penal Code, a court may, on the request of the defendant and with
 2-45 the consent of the attorney representing the state, defer
 2-46 proceedings without entering an adjudication of guilt and permit
 2-47 the defendant to participate in a prostitution prevention program
 2-48 established under Chapter 169 or 169A, Health and Safety Code, if
 2-49 the defendant is otherwise eligible to participate in the program
 2-50 under the applicable chapter. If the defendant successfully
 2-51 completes the prostitution prevention program, the court may
 2-52 dismiss the proceedings against the defendant and discharge the
 2-53 defendant.

2-54 SECTION 6. Section 43.02, Penal Code, is amended by
 2-55 amending Subsections (a), (b), (c), and (d) and adding Subsections
 2-56 (b-1) and (c-1) to read as follows:

2-57 (a) A person commits an offense if, in return for receipt of
 2-58 a fee, the person knowingly:

2-59 (1) offers to engage, agrees to engage, or engages in
 2-60 sexual conduct [~~for a fee~~]; or

2-61 (2) solicits another in a public place to engage with
 2-62 the actor [~~person~~] in sexual conduct for hire.

2-63 (b) A person commits an offense if, based on the payment of a
 2-64 fee by the actor or another person on behalf of the actor, the
 2-65 person knowingly:

2-66 (1) offers to engage, agrees to engage, or engages in
 2-67 sexual conduct; or

2-68 (2) solicits another in a public place to engage with
 2-69 the actor in sexual conduct for hire.

3-1 (b-1) An offense is established under Subsection (a)
 3-2 regardless of ~~[(a)(1)]~~ whether the actor is offered or actually
 3-3 receives the ~~[is to receive or pay a]~~ fee. An offense is
 3-4 established under Subsection (b) regardless of ~~[(a)(2)]~~ whether the
 3-5 actor or another person on behalf of the actor offers or actually
 3-6 pays the fee ~~[solicits a person to hire the actor or offers to hire~~
 3-7 the person solicited].

3-8 (c) An offense under Subsection (a) ~~[this section]~~ is a
 3-9 Class B misdemeanor, except that the offense is ~~[+]~~
 3-10 ~~[(1)]~~ a Class A misdemeanor ~~[if the actor has~~
 3-11 ~~previously been convicted one or two times of an offense under this~~
 3-12 ~~section,~~
 3-13 ~~[(2) a state jail felony]~~ if the actor has previously
 3-14 been convicted three or more times of an offense under Subsection
 3-15 (a).

3-16 (c-1) An offense under Subsection (b) is a Class B
 3-17 misdemeanor, except that the offense is:

3-18 (1) a Class A misdemeanor if the actor has previously
 3-19 been convicted one or two times of an offense under Subsection (b);

3-20 (2) a state jail felony if the actor has previously
 3-21 been convicted three or more times of an offense under Subsection
 3-22 (b) ~~[this section]~~; or

3-23 (3) a felony of the second degree if the person
 3-24 solicited is younger than 18 years of age, regardless of whether the
 3-25 actor knows the age of the person solicited at the time the actor
 3-26 commits the offense.

3-27 (d) It is a defense to prosecution for an offense under
 3-28 Subsection (a) ~~[under this section]~~ that the actor engaged in the
 3-29 conduct that constitutes the offense because the actor was the
 3-30 victim of conduct that constitutes an offense under Section 20A.02
 3-31 or 43.05.

3-32 SECTION 7. Section 51.03(b), Family Code, is amended to
 3-33 read as follows:

3-34 (b) Conduct indicating a need for supervision is:

3-35 (1) subject to Subsection (f), conduct, other than a
 3-36 traffic offense, that violates:

3-37 (A) the penal laws of this state of the grade of
 3-38 misdemeanor that are punishable by fine only; or

3-39 (B) the penal ordinances of any political
 3-40 subdivision of this state;

3-41 (2) the absence of a child on 10 or more days or parts
 3-42 of days within a six-month period in the same school year or on
 3-43 three or more days or parts of days within a four-week period from
 3-44 school;

3-45 (3) the voluntary absence of a child from the child's
 3-46 home without the consent of the child's parent or guardian for a
 3-47 substantial length of time or without intent to return;

3-48 (4) conduct prohibited by city ordinance or by state
 3-49 law involving the inhalation of the fumes or vapors of paint and
 3-50 other protective coatings or glue and other adhesives and the
 3-51 volatile chemicals itemized in Section 485.001, Health and Safety
 3-52 Code;

3-53 (5) an act that violates a school district's
 3-54 previously communicated written standards of student conduct for
 3-55 which the child has been expelled under Section 37.007(c),
 3-56 Education Code;

3-57 (6) conduct that violates a reasonable and lawful
 3-58 order of a court entered under Section 264.305;

3-59 (7) notwithstanding Subsection (a)(1), conduct
 3-60 described by Section 43.02(a) or (b) ~~[43.02(a)(1) or (2)]~~, Penal
 3-61 Code; or

3-62 (8) notwithstanding Subsection (a)(1), conduct that
 3-63 violates Section 43.261, Penal Code.

3-64 SECTION 8. Section 261.001(1), Family Code, is amended to
 3-65 read as follows:

3-66 (1) "Abuse" includes the following acts or omissions
 3-67 by a person:

3-68 (A) mental or emotional injury to a child that
 3-69 results in an observable and material impairment in the child's

4-1 growth, development, or psychological functioning;

4-2 (B) causing or permitting the child to be in a
4-3 situation in which the child sustains a mental or emotional injury
4-4 that results in an observable and material impairment in the
4-5 child's growth, development, or psychological functioning;

4-6 (C) physical injury that results in substantial
4-7 harm to the child, or the genuine threat of substantial harm from
4-8 physical injury to the child, including an injury that is at
4-9 variance with the history or explanation given and excluding an
4-10 accident or reasonable discipline by a parent, guardian, or
4-11 managing or possessory conservator that does not expose the child
4-12 to a substantial risk of harm;

4-13 (D) failure to make a reasonable effort to
4-14 prevent an action by another person that results in physical injury
4-15 that results in substantial harm to the child;

4-16 (E) sexual conduct harmful to a child's mental,
4-17 emotional, or physical welfare, including conduct that constitutes
4-18 the offense of continuous sexual abuse of young child or children
4-19 under Section 21.02, Penal Code, indecency with a child under
4-20 Section 21.11, Penal Code, sexual assault under Section 22.011,
4-21 Penal Code, or aggravated sexual assault under Section 22.021,
4-22 Penal Code;

4-23 (F) failure to make a reasonable effort to
4-24 prevent sexual conduct harmful to a child;

4-25 (G) compelling or encouraging the child to engage
4-26 in sexual conduct as defined by Section 43.01, Penal Code,
4-27 including compelling or encouraging the child in a manner ~~[conduct]~~
4-28 that constitutes an offense of trafficking of persons under Section
4-29 20A.02(a)(7) or (8), Penal Code, prostitution under Section
4-30 43.02(b) ~~[43.02(a)(2)]~~, Penal Code, or compelling prostitution
4-31 under Section 43.05(a)(2), Penal Code;

4-32 (H) causing, permitting, encouraging, engaging
4-33 in, or allowing the photographing, filming, or depicting of the
4-34 child if the person knew or should have known that the resulting
4-35 photograph, film, or depiction of the child is obscene as defined by
4-36 Section 43.21, Penal Code, or pornographic;

4-37 (I) the current use by a person of a controlled
4-38 substance as defined by Chapter 481, Health and Safety Code, in a
4-39 manner or to the extent that the use results in physical, mental, or
4-40 emotional injury to a child;

4-41 (J) causing, expressly permitting, or
4-42 encouraging a child to use a controlled substance as defined by
4-43 Chapter 481, Health and Safety Code;

4-44 (K) causing, permitting, encouraging, engaging
4-45 in, or allowing a sexual performance by a child as defined by
4-46 Section 43.25, Penal Code; or

4-47 (L) knowingly causing, permitting, encouraging,
4-48 engaging in, or allowing a child to be trafficked in a manner
4-49 punishable as an offense under Section 20A.02(a)(5), (6), (7), or
4-50 (8), Penal Code, or the failure to make a reasonable effort to
4-51 prevent a child from being trafficked in a manner punishable as an
4-52 offense under any of those sections.

4-53 SECTION 9. Section 169.002(a), Health and Safety Code, is
4-54 amended to read as follows:

4-55 (a) The commissioners court of a county or governing body of
4-56 a municipality may establish a first offender prostitution
4-57 prevention program for defendants charged with an offense under
4-58 Section 43.02(b) ~~[43.02(a)(2)]~~, Penal Code ~~[, in which the defendant~~
4-59 ~~offered or agreed to hire a person to engage in sexual conduct]~~.

4-60 SECTION 10. Section 169A.002(a), Health and Safety Code, is
4-61 amended to read as follows:

4-62 (a) The commissioners court of a county or governing body of
4-63 a municipality may establish a prostitution prevention program for
4-64 defendants charged with an offense under Section 43.02(a)
4-65 ~~[43.02(a)(1)]~~, Penal Code ~~[, in which the defendant offered or~~
4-66 ~~agreed to engage in or engaged in sexual conduct for a fee]~~.

4-67 SECTION 11. The change in law made by this Act applies only
4-68 to an offense committed on or after the effective date of this Act.
4-69 An offense committed before the effective date of this Act is

5-1 governed by the law in effect on the date the offense was committed,
5-2 and the former law is continued in effect for that purpose. For
5-3 purposes of this section, an offense was committed before the
5-4 effective date of this Act if any element of the offense occurred
5-5 before that date.

5-6 SECTION 12. This Act takes effect September 1, 2015.

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