

BILL ANALYSIS

C.S.S.B. 825
By: Huffman
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that there are typically three distinct parties involved in the crime of prostitution—the pimp, the prostitute, and the purchaser—but the current statutory framework provides no distinction between the buyer and seller. The parties contend that the number of individuals arrested or charged with purchasing or attempting to purchase sex is a valuable measurement of the demand for commercial sex. Therefore, it is important to distinguish the roles of the buyers and sellers. C.S.S.B. 825 seeks to make this distinction.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change 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.S.B. 825 amends the Penal Code to make the conduct constituting a prostitution offense applicable if a person engages in the conduct in return for receipt of a fee or if a person engages in the conduct based on the payment of a fee by the actor or another person on behalf of the actor. The bill specifies that a prostitution offense is established regardless of whether the actor is offered or actually receives the fee or regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee, as applicable. The bill removes provisions relating to the establishment of the offense with respect to receiving or paying a fee or the hiring of a person. The bill retains the Class A misdemeanor and state jail felony penalty enhancements for a prostitution offense but specifies that penalty enhancements for prostitution conduct committed in return for receipt of a fee by the actor or another result from subsequent convictions of that specific conduct and that penalty enhancements for prostitution conduct committed based on the payment of a fee by the actor or another result from subsequent convictions of that specific conduct. The bill makes the second degree felony penalty enhancement for soliciting a person younger than 18 years of age applicable only to prostitution conduct committed based on the payment of a fee by the actor or another. The bill makes it a defense to prosecution for prostitution conduct committed in return for receipt of a fee that the actor engaged in the conduct because the actor was the victim of conduct that constitutes a compelling prostitution offense. The bill establishes that if conduct constituting a compelling prostitution offense also constitutes another Penal Code offense, the actor may be prosecuted for either offense or both offenses.

C.S.S.B. 825 amends the Family Code to change the prostitution conduct that constitutes abuse, for purposes of an investigation of a report of child abuse, from compelling or encouraging a

child through solicitation in a public place to engage in sexual conduct for hire to compelling or encouraging a child in a manner that constitutes prostitution conduct based on the payment of a fee by the actor or another.

C.S.S.B. 825 amends the Health and Safety Code to change the prostitution conduct for which the commissioners court of a county or governing body of a municipality may establish a first offender prostitution prevention program for defendants from conduct involving the solicitation of another in a public place to engage with the actor in sexual conduct for hire to any prostitution conduct committed based on the payment of a fee by the actor or another. The bill changes the prostitution conduct for which such a commissioners court or governing body may establish a prostitution prevention program for defendants from conduct involving offering to engage, agreeing to engage, or engaging in sexual conduct for a fee to any prostitution conduct committed in return for receipt of a fee.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 825 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 43.02, Penal Code, is amended.

SECTION 2. Section 43.05, Penal Code, is amended.

SECTION 3. Section 51.03(b), Family Code, is amended.

SECTION 4. 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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

SECTION 4. 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

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

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

SECTION 6. Section 169A.002(a), Health and Safety Code, is amended.

SECTION 7. 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 8. This Act takes effect September 1, 2015.

(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 5. Same as engrossed version.

SECTION 6. Same as engrossed version.

SECTION 7. 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 on the date 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 8. Same as engrossed version.