

SUBJECT: Higher penalty for repeat offense of employment harmful to children

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Gallego, Aliseda, Burkett, Carter, Y. Davis, Rodriguez, Zedler

0 nays

2 absent — Hartnett, Christian

WITNESSES: For — (*Registered, but did not testify:* Rene Lara, Texas AFL-CIO; Ann Lemis, Redeemed Ministries; Diana Martinez, TexProtects, The Texas Association for the Protection of Children; Jason Sabo, Children at Risk; Gary Tittle, for Dallas Police Department Chief of Police David Brown)

Against — None

BACKGROUND: Under Penal Code, sec. 43.251, a person who employs, authorizes, or induces a person under 18 years of age to work in a sexually oriented commercial activity, or any place of business that permits, requests, or requires a child to work nude or topless, commits the offense of employment harmful to children. An offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

“Sexually oriented commercial activity” is defined as a massage establishment, nude studio, modeling studio, love parlor, or other similar commercial enterprise the primary business of which is the offering of a service that is intended to provide sexual stimulation or sexual gratification to the customer.

DIGEST: HB 290 would make the repeat offense of employment harmful to children a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

SUPPORTERS
SAY:

By increasing the penalty for repeatedly employing a child in a sexually oriented commercial activity, HB 290 would encourage these employers to determine more diligently that they did not employ minors. Unscrupulous employers would be deterred from employing children, and other employers would be more stringent about age verification.

HB 290 would protect children by preventing exposure to sexually oriented employment. Children exposed to sexually explicit media content have negatively shaped sexual values, are prematurely sexualized, are encouraged to experiment with risky behavior, and are at a higher risk for victimization, exploitation, and sexually transmitted diseases. The negative effects of live, sexually explicit content are almost certainly more severe.

A repeat offender could be involved in human trafficking and should be stopped. In those cases, everything possible should be done to deter that person from exploiting another child, including increasing the penalty to a third-degree felony with many possible years of prison.

OPPONENTS
SAY:

Enhancing the penalty for this offense would not be an effective deterrent. The cost of incarcerating offenders would be an additional financial burden on the state and would divert resources from efforts that could do more to reduce recidivism and promote prevention.

OTHER
OPPONENTS
SAY:

Although HB 124 would send the right message by penalizing repeat offenders more harshly, sending a person to prison for up to 10 years for employing a 17-year-old girl could be too harsh a punishment. The penalty should not be bumped from a class A misdemeanor to a third-degree felony. The penalty should go to the next step up, the state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

Another option could be to provide this higher penalty only for those repeat offenders who employed children 14 and under, which would be consistent with other laws that enhance penalties for offenses with victims 14 and under.

NOTES:

During the 2009 regular session, an identical bill, HB 124 by Jackson passed the House, but died in the Senate Criminal Justice Committee.