

BILL ANALYSIS

Senate Research Center

H.B. 1363
By: Johnson et al. (Whitmire)
Criminal Justice
5/20/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, interested parties note that the penalty for a prostitution conviction can range from a Class B misdemeanor to a state jail felony depending on the number of previous convictions for the offense. The parties suggest that these penalties have not been effective in reducing prostitution recidivism and may be criminalizing individuals who have been coerced into engaging in prostitution. In addition, the parties note the need to include information regarding sexual exploitation and human trafficking in certain rehabilitation programs. H.B. 1363 seeks to reduce prostitution re-offenses and prevent the continuous trafficking of persons by diverting individuals charged with prostitution into existing rehabilitation programs.

H.B. 1363 amends current law relating to the prosecution of and punishment for the offense of prostitution and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 169.001(a), Health and Safety Code, to redefine "first offender prostitution prevention program" to include commercial sexual exploitation and trafficking of persons.

SECTION 2. Amends Section 169.003(a), Health and Safety Code, to require a first offender prostitution prevention program established under this chapter to 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.

SECTION 3. Amends Section 169A.001(a), Health and Safety Code, to define "prostitution prevention program."

SECTION 4. Amends Section 169A.003(a), Health and Safety Code, to require that a prostitution prevention program established under this chapter 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.

SECTION 5. Amends Chapter 32, Code of Criminal Procedure, by adding Article 32.03, as follows:

Art. 32.03. DISMISSAL OF CERTAIN PROSTITUTION OFFENSES. Authorizes a court, at any time before trial commences for an offense under Section 43.02, Penal Code, to, on the request of the defendant and with the consent of the attorney representing the state, defer proceedings without entering an adjudication of guilt and permit the defendant to participate in a prostitution prevention program established under Chapter 169 (First Offender Prostitution Prevention Program) or 169A (Prostitution Prevention Program), Health and Safety Code, if the defendant is otherwise eligible to participate in the program under the applicable chapter. Authorizes the court to dismiss

the proceedings against the defendant and discharge the defendant if the defendant successfully completes the prostitution prevention program.

SECTION 6. Amends Section 43.02, Penal Code, by amending Subsections (a), (b), (c), and (d) and adding Subsections (b-1) and (c-1), as follows:

(a) Provides that 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; or

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

(b) Provides that 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) Creates this subsection from existing text. Provides that an offense is established under Subsection (a) regardless of whether the actor is offered or actually receives the fee. Provides that an offense is established under Subsection (b) regardless of whether the actor or another person on behalf of the actor offers or actually pays the fee.

Deletes existing text providing that an offense is established under Subsection (a)(1) whether the actor is to receive or pay a fee and that 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) Provides that an offense under Subsection (a), rather than this section, is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted three or more times of an offense under Subsection (a).

Deletes existing text providing that an offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under this section or a state jail felony if the actor has previously been convicted three or more times of an offense under this section.

(c-1) Provides that an offense under Subsection (b) 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 (b);

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (b). Makes no further change to this subsection.

(d) Provides that it is a defense to prosecution for an offense under Subsection (a), rather than 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 (Trafficking of Persons) or 43.05 (Compelling Prostitution).

SECTION 7. Amends Section 51.03(b), Family Code, to provide that conduct indicating a need for supervision is, notwithstanding Subsection (a)(1), conduct described by Section 43.02(a) or (b) (relating to prostitution offenses), rather than Section 43.02(a)(1) or (2), Penal Code.

SECTION 8. Amends Section 261.001(1), Family Code, to redefine "abuse."

SECTION 9. Amends Section 169.002(a), Health and Safety Code, to authorize the commissioners court of a county or governing body of a municipality to establish a first offender prostitution prevention program for defendants charged with an offense under Section 43.02(b), Penal Code.

Deletes existing text authorizing the commissioners court of a county or governing body of a municipality to establish a first offender prostitution prevention program for defendants charged with an offense under Section 43.02(a)(2), Penal Code, in which the defendant offered or agreed to hire a person to engage in sexual conduct.

SECTION 10. Amends Section 169A.002(a), Health and Safety Code, to authorize the commissioners court of a county or governing body of a municipality to establish a prostitution prevention program for defendants charged with an offense under Section 43.02(a), Penal Code.

Deletes existing text authorizing the commissioners court of a county or governing body of a municipality to establish a prostitution prevention program for defendants charged with an offense under Section 43.02(a)(1), Penal Code, in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee.

SECTION 11. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2015.