

BILL ANALYSIS

C.S.H.B. 861
By: Dale
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The offense of online solicitation of a minor was created to combat the growing number of Internet and technology-related crimes committed or attempted against children and to allow law enforcement to stop an online predator before the predator has the opportunity to meet or injure a child. Law enforcement agencies face an ongoing battle to protect children from the grooming techniques of online predators which often involve the predator befriending a child online, developing the child's trust, and engaging in sexually explicit conversations. The end result in many cases is a meeting with the child to solicit sex or to assault the child. Interested parties note that a recent court decision ruled that part of the statute governing the offense is unconstitutional. C.S.H.B. 861 seeks to modify the statute.

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.H.B. 861 amends the Penal Code to change the requisite intent for an online solicitation of a minor offense committed by a person who is 17 years of age or older and who communicates in a sexually explicit manner with a minor or distributes sexually explicit material to a minor from the intent to arouse or gratify the sexual desire of any person to the intent to induce a minor to engage in conduct with the actor or another person that would constitute one of the following offenses: indecency with a child, sexual assault, aggravated sexual assault, sexual performance by a child, or possession or promotion of child pornography. The bill removes the defenses to prosecution for online solicitation of a minor involving that conduct and removes statutory provisions establishing that it is not a defense to prosecution for online solicitation of a minor that an actor who knowingly solicits a minor to meet another person with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person either did not intend for the meeting to occur or was engaged in a fantasy at the time of the commission of the offense.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 861 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 33.021(a)(1), Penal Code, is amended to read as follows:

(1) "Minor" means:

(A) an individual who ~~is~~ ~~[represents himself or herself to be]~~ younger than 17 years of age; or

(B) an individual whom the actor believes to be younger than 17 years of age.

SECTION 2. Section 33.021, Penal Code, is amended by amending Subsections (b), (d), and (e) to read as follows:

(b) A person who is 17 years of age or older commits an offense if, with the intent to commit an offense listed in Article 62.001(5)(A), (B), or (K), Code of Criminal Procedure

~~[arouse or gratify the sexual desire of any person]~~, the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

(1) communicates in a sexually explicit manner with a minor; or

(2) distributes sexually explicit material to a minor.

(d) It is not a defense to prosecution under Subsection (c) that[:

~~[(1)] the meeting did not occur[;~~

~~[(2)] the actor did not intend for the meeting to occur; or~~

~~[(3)] the actor was engaged in a fantasy at the time of commission of the offense].~~

(e) It is a defense to prosecution under this section that at the time conduct described by Subsection ~~[(b) or]~~ (c) was committed:

(1) the actor was married to the minor; or

(2) the actor was not more than three years older than the minor and the minor consented to the conduct.

SECTION 3. The change in law made by this Act applies only to an offense

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Sections 33.021(b), (d), and (e), Penal Code, are amended to read as follows:

(b) A person who is 17 years of age or older commits an offense if, with the intent to induce a minor to engage in conduct with the actor or another person that would constitute an offense under Section 21.11, 22.011, 22.021, 43.25, or 43.26

~~[arouse or gratify the sexual desire of any person]~~, the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

(1) communicates in a sexually explicit manner with a minor; or

(2) distributes sexually explicit material to a minor.

(d) It is not a defense to prosecution under Subsection (c) that[:

~~[(1)] the meeting did not occur[;~~

~~[(2)] the actor did not intend for the meeting to occur; or~~

~~[(3)] the actor was engaged in a fantasy at the time of commission of the offense].~~

(e) It is a defense to prosecution under this section that at the time conduct described by Subsection ~~[(b) or]~~ (c) was committed:

(1) the actor was married to the minor; or

(2) the actor was not more than three years older than the minor and the minor consented to the conduct.

SECTION 2. Same as introduced version.

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 4. This Act takes effect September 1, 2015.

SECTION 3. Same as introduced version.