

SUBJECT: Enhanced punishment for offense of prostitution with a child

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 9 ayes — Keel, Riddle, Denny, Escobar, Hodge, P. Moreno, Pena, Raymond, Reyna
0 nays

WITNESSES: For — Byron Thompson, Texas Association Against Sexual Assault
Against — None
On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Penal Code, sec. 43.02 prohibits prostitution. A person commits an offense if the person (1) knowingly offers to engage, agrees to engage, or engages in sexual conduct for a fee; or (2) solicits another in a public place to engage in sexual conduct for hire. Both parties commit a crime regardless of which party initiated the solicitation or agreement.

This offense is a class B misdemeanor, punishable by a maximum of 180 days in jail and/or a fine not to exceed \$2,000. If the actor previously has been convicted one or two times, the offense is a class A misdemeanor, punishable by up to a year in jail and/or a fine not to exceed \$4,000. If the actor previously has been convicted three or more times, the offense is a state-jail felony, punishable by 180 days to two years in jail and a maximum fine of \$10,000.

Under the Code of Criminal Procedure, art. 62, certain offenders are required to register as sex offenders.

DIGEST: HB 692 would amend the Penal Code, sec. 43.02, to make the offense of prostitution a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the person hired or solicited by the actor was younger than 17 years old. A person convicted of this offense would be required to register as a sex offender under Code of Criminal Procedure, ch. 62.

The bill would take effect on September 1, 2005, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 692 would help curb child prostitution in Texas by aggressively attacking the demand side of this crime — punishing more severely those who solicit sex from children with stiff penalties. Standing Against Global Exploitation, an advocacy group for sexually exploited people, reports that there currently are between 200,000 and 300,000 children in this country who are involved in prostitution. Harsh penalties would deter potential offenders from committing this offense.

By making this a strict liability offense, the bill would help reduce prostitution overall. If potential offenders know they could be charged with a third-degree felony even if they believed the prostitute was an adult, they would be much less likely to solicit prostitution in the first place. Moreover, this bill is consistent with existing law. In most cases, sex with a child is a strict liability offense.

If the child were convicted under this bill, it is unlikely that a prosecutor would seek a third-degree felony conviction. In most cases, minors are punished under juvenile laws.

According to the Legislative Budget Board, this bill would not have a substantial impact on state correctional resources.

**OPPONENTS
SAY:**

HB 692 is unnecessary because this conduct is already prohibited under Texas law. It currently is a second-degree felony, punishable by 2 to 20 years in prison and a maximum fine of \$10,000, for an individual to have sex with a child. In addition, it currently is a third-degree felony for an individual to request, command, or attempt to induce a minor into engaging in sexual activity.

The bill excessively would punish an individual who believed that he/she was having sex with an adult. It can be very easy to mistake a teenager for a mature adult. Those who had no intent or knowledge that they were having sex with a child should not be punished with up to 10 years in prison and required to register as a sex offender.

Increasing the penalty for this offense would increase demands upon an already overcrowded prison system. Texas correctional facilities already

are pressed to their limit, and penalty enhancements for crimes already sufficiently punished under current law will not improve matters.

OTHER
OPPONENTS
SAY:

HB 692 would be more effective if it applied only to an adult who sought sex with a child. The bill could punish a child engaging in prostitution with a third-degree felony. Children who become prostitutes usually are runaways or victims of severe poverty and broken homes. These children are best served by treatment rather than incarceration. This bill would create a harsh punishment for the victim and, by labeling the child a felon, create lifelong barriers to becoming a productive member of society. In addition, this bill unfairly would punish a child prostitute much more harshly than an adult prostitute for the same crime.