

SUBJECT: Defense to prosecution for prostitution if child is younger than 14

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Gallego, Aliseda, Burkett, Christian, Rodriguez, Zedler

0 nays

3 absent — Hartnett, Carter, Y. Davis

WITNESSES: For — (*Registered, but did not testify*: Lauren Dimitry, Texans Care for Children; Kristin Etter, Texas Criminal Defense Lawyers Association; Joshua Houston, Texas Impact; Maria Huemmer, Texas Catholic Conference, Roman Catholic Bishops of Texas; Diana Martinez, TexProtects, The Texas Association for the Protection of Children)

Against — None

BACKGROUND: The Penal Code defines prostitution as knowingly offering to engage, agreeing to engage, or engaging in sexual conduct for a fee, or soliciting another in a public place to engage in sexual conduct for hire. The penalty for prostitution is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), unless the person was convicted of the offense once or twice previously, in which case it is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), or at least three times, in which case it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

It is a defense to prosecution for prostitution if the accused was a victim of human trafficking.

DIGEST: HB 3473 would add a defense to prosecution for prostitution if the person engaging in the conduct was a child younger than 14 years old and was forced to commit the conduct by a person who was at least 18 years old. This exception would apply to any other proceeding under state law.

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

**SUPPORTERS
SAY:**

HB 3473 would align the statute on prostitution with a recent Texas Supreme Court ruling that a child under 14 is a victim, not a criminal, and should receive appropriate treatment and services, not the stigma of a criminal record. The case involved a 13-year-old girl who was arrested for prostitution and received 18 months probation in juvenile court for delinquent conduct. The court of appeals affirmed the adjudication, but the Texas Supreme Court reversed, finding that she could not “knowingly agree” to commit prostitution because children under 14 cannot legally consent to sex. The ruling recognized the Legislature’s overall intent to prevent the exploitation of children in light of their special vulnerability. HB 3473 also would recognize the importance of protecting young children.

The bill would not prevent a charge for prostitution from being filed, and the child still would have to prove that he or she was forced into prostitution to have a defense, so this change would not be a free pass for a young child to engage in prostitution without any consequences. The child could not return to his or her pimp, because the pimp would have been charged and convicted for illegal conduct. HB 3473 reflects our societal values that a child of 12 or 13 engaging in sexual activity deserves to be treated outside of the criminal justice system. If the conduct did not change, then the juvenile justice system could provide treatment and services for children who were at least 14 years old.

**OPPONENTS
SAY:**

HB 3473 could essentially legalize prostitution for children under 14, which would perpetuate the exploitation that the Legislature is trying to prevent. The Texas Supreme Court had good intentions but was misguided. The inability of a child to consent to sex should not be turned into a free pass to engage in sex for money. Under HB 3473, the 13-year-old girl in the Texas Supreme Court case would just return to her adult pimp and receive no treatment or services, because she would be under no obligation to engage in treatment or receive services.

HB 3473 could also result in a disturbing precedent. If a juvenile under 14 cannot legally consent to sex, then he or she might lack the necessary mental culpability required for aggravated sexual assault. Children certainly need to be treated differently, but the approach taken by HB 3473 would be a mistake. The bill could also encourage the very disturbing practice of adult pimps specifically choosing to exploit children under 14 because they could not be prosecuted.

OTHER
OPPONENTS
SAY:

Young children would be better served if the Legislature enacted another bill that addresses the same Texas Supreme Court opinion, HB 2015 by Thompson, which passed the House on the Local and Consent Calendar on April 14. HB 2015 would ensure that children engaging in prostitution would get needed treatment and services through the civil juvenile justice system, which is the only way that they would be obligated to receive services, and would seal the records to protect against any stigma. HB 2015 would provide a child engaging in prostitution with treatment and services; confinement would not be an option for this conduct level.

HB 3473 also should be clarified as to its addition of subsection (e), which says that the exception would apply to any other proceeding under state law, but is so broad that its applicability is confusing. In addition, the subsection refers to an exception, but the bill creates a defense to prosecution.