

BILL ANALYSIS

Senate Research Center

S.B. 344
By: Huffman et al.
Criminal Justice
5/29/2015
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In October 2013, the Texas Criminal Court of Appeals unanimously declared unconstitutional "online solicitation of a minor" in Section 33.021(b) of the Penal Code. The Court opined that the statute is "overbroad because it prohibits a wide array of constitutionally protected speech and is not narrowly drawn to achieve only the legitimate objective of protecting children from sexual abuse."

Since that time, there has existed no punishable offense for online solicitation of a minor because the ruling occurred during the legislative interim.

The current statute is overbroad. Though the statute was enacted to impose sanctions upon those who engage in Internet conversations with minors with an intent for physical contact to take place, the statute's sexually explicit communication provision contains no requirement that an actor ever possess the intent to meet the child.

S.B. 344 amends Section 33.0121(1)(A) of the Penal Code by changing the definition of a minor to an individual younger than 17 years of age.

S.B. 344 amends Section 33.021, Penal Code, by replacing the overbroad/unconstitutional language with the specific intent to commit existing Section 62.001(5) (Sex Offender Registration Offenses), Penal Code, language.

The intent of S.B. 344 is to punish a defendant intending to commit an offense under Article 62.001(5)(A), (B), or (K), Code of Criminal Procedure, as opposed to intending to arouse or gratify the sexual desire of any person.

S.B. 344 amends current law relating to the prosecution of the offense of online solicitation of a minor.

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 33.021(a)(1), Penal Code, by redefining "minor."

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

(b) Provides that 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) (a violation of Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency With A Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 25.02 (Prohibited Sexual Conduct), Penal Code), (B) (a violation of Section 43.05 (Compelling Prostitution), 43.25 (Sexual Performance by a Child), or 43.26 (Possession or Promotion of Child Pornography), Penal Code), or (K) (a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of Persons), Penal Code), Code of Criminal Procedure, rather than with the intent to 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 takes certain actions.

(d) Provides that it is not a defense to prosecution under Subsection (c) that the meeting did not occur. Deletes existing text providing that it is not a defense to prosecution under Subsection (c) that the actor did not intend for the meeting to occur or the actor was engaged in a fantasy at the time of the commission of the offense. Makes nonsubstantive changes.

(e) Provides that it is a defense to prosecution under this section that at the time conduct described by Subsection (c), rather than by Subsection (b) or (c), was committed, the actor fulfills certain criteria.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2015.