

BILL ANALYSIS

H.B. 7
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Judiciary & Civil Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

Almost a decade ago, Texas became one of the first states to pass human trafficking legislation. A few years later, the Texas Legislature required the office of the attorney general to compile a report on the laws and services available to victims of trafficking in Texas. According to that report, Texas is considered a major hub for human trafficking. It is estimated that there are more than 17,000 victims trafficked into the United States and that an estimated 20 percent of those can be found in Texas. Moreover, it is contended that victims of this crime tend to come from the most vulnerable populations, characterized by oppression, high rates of illiteracy, little social mobility, and few economic opportunities.

A human trafficking-related task force was formed in an effort to create a statewide partnership between law enforcement agencies, social service providers, non-governmental organizations, legal representatives, and state agencies who are fighting to deter this crime. The task force worked to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes and to propose legislative recommendations that better protect both adult and child victims.

H.B. 7 seeks to prevent and eliminate the occurrences of human trafficking crimes by encompassing several recommendations made in the task force's report and addressing various aspects of offenses relating to the trafficking of persons, including prosecution, punishment, criminal and civil consequences, and protection for victims of such offenses.

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

Article 1. Trafficking of Persons and Compelling Prostitution

H.B. 7 amends the Penal Code to expand the conditions that constitute the second degree felony offense of trafficking of persons to include knowingly trafficking another person and, through force, fraud, or coercion, causing the trafficked person to engage in conduct constituting an offense of prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution or knowingly receiving a benefit from participating in a venture that involves such trafficking or engaging in sexual conduct with a person trafficked in that manner.

H.B. 7 expands the conditions that constitute the first degree felony offense of trafficking of persons to include knowingly trafficking a child with the intent that the trafficked child engage in forced labor or services; knowingly receiving a benefit from participating in a venture that constitutes such trafficking, including by receiving labor or services the person knows are forced labor or services; knowingly trafficking a child and by any means causing the trafficked child to engage in, or become the victim of conduct constituting continuous sexual abuse of a young

child or children, indecency with a child, sexual assault, aggravated sexual assault, prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, sexual performance by a child, employment harmful to children, or possession or promotion of child pornography; and knowingly receiving a benefit from participating in a venture that involves such trafficking or engaging in sexual conduct with a child trafficked in that manner. The bill removes language specifying that conduct involving the trafficking of a child who is younger than 18 years of age at the time of the offense that also constitutes an offense of compelling prostitution or an offense of sexual performance by a child is conduct that constitutes the first degree felony trafficking of persons offense.

H.B. 7 prohibits a defendant from being convicted of an offense of continuous sexual abuse of a young child or children in the same criminal action as an offense for trafficking a child and causing the child to engage in or become the victim of conduct constituting continuous sexual abuse of a young child or children if the victim of the trafficking of persons offense is the same victim as a victim of the continuous sexual abuse offense unless the continuous sexual abuse offense is charged in the alternative; occurred outside the period in which the alleged trafficking of persons offense was committed; or is considered by the trier of fact to be a lesser included offense of the alleged trafficking of persons offense. The bill increases from a second degree felony to a first degree felony the penalty for an offense of compelling prostitution of a child younger than 18 years of age.

H.B. 7 redefines "forced labor or services" to mean labor or services, excluding labor or services that constitute sexual conduct, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion and removes from the term a reference to conduct constituting prostitution and a list of actions relating to causing or threatening to cause certain afflictions against another person. The bill defines "child" as a person younger than 18 years of age and provides for the meaning of "sexual conduct." The bill makes conforming and nonsubstantive changes.

Article 2. Changes Relating to Code of Criminal Procedure

H.B. 7 amends the Code of Criminal Procedure to include among the persons authorized to file an application for a protective order without regard to the relationship between the applicant and the alleged offender the following:

- a person who is the victim of an offense involving trafficking a person and causing the person to engage in conduct constituting a certain prostitution-related offense or benefiting from participation in such trafficking or engaging in sexual conduct with a person trafficked in that manner; an offense of trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in a such trafficking or engaging in sexual conduct with a child trafficked in that manner;
- a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of such a described offense; or
- a prosecuting attorney acting on behalf of a person who is the victim of such a described offense.

The bill increases from 17 to 18 years of age the maximum age of the victim of a certain sexual or assaultive offense on whose behalf the victim's parent or guardian is authorized to file an application for a protective order.

H.B. 7 establishes that there is no statute of limitation for the offense of trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner. The bill sets the statute of limitation at 10 years from the date of the commission of an offense involving trafficking of a person for purposes of forced

labor or services or benefiting from participation in such trafficking; trafficking a person and causing the person to engage in conduct constituting a certain prostitution-related offense or benefiting from participation in such trafficking or engaging in sexual conduct with a person trafficked in that manner; and compelling prostitution. The bill sets the statute of limitation at 10 years from the 18th birthday of the victim of the following offenses: trafficking a child for purposes of forced labor or services, benefiting from participation in such trafficking, and compelling prostitution of a child.

H.B. 7 specifies that venue for a trafficking of persons offense is in either the county in which the offense was committed or in any county through, into, or out of which the victim may have been taken. The bill makes a conviction supportable on the uncorroborated testimony of the victim of the offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred for the following offenses: trafficking a person and causing the person to engage in conduct constituting a certain prostitution-related offense; benefiting from participation in such trafficking or engaging in sexual conduct with a person trafficked in that manner; trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense; or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner.

H.B. 7 makes provisions of law relating to testimony of a child victim applicable to an offense of compelling prostitution of a child, an offense of trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense, and an offense of benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner when the court has determined that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about the offense.

H.B. 7 reenacts and amends Section 1, Article 38.072, Code of Criminal Procedure, as amended by Chapters 284 (S.B. 643) and 710 (H.B. 2846), Acts of the 81st Legislature, Regular Session, 2009, to make an exception to the hearsay rule for an offense committed against a child younger than 14 years of age applicable to a compelling prostitution of a child offense and an offense of trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner.

H.B. 7 makes provisions of law relating to the admittance of evidence of extraneous offenses or acts applicable to a compelling prostitution of a child offense and an offense of trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner, if committed against a person younger than 18 years of age. The bill specifies that those provisions of law apply to a sexual performance by a child offense if committed against a person younger than 18 years of age, rather than a child under 17 years of age. The bill makes provisions of law relating to judge-ordered community supervision inapplicable to a defendant adjudged guilty of a compelling prostitution offense or a trafficking of persons offense.

H.B. 7 redefines "reportable conviction or adjudication," for purposes of registration requirements under the sex offender registration program, to include the following offenses: trafficking a person and causing the person to engage in conduct constituting a certain prostitution-related offense; benefiting from participation in such trafficking or engaging in sexual conduct with a person trafficked in that manner; trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense; benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner; an attempt, conspiracy, or solicitation to commit one of those trafficking offenses; and a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an

offense containing elements that are substantially similar to the elements of one of those trafficking offenses, but not if the violation results in a deferred adjudication.

H.B. 7 includes a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense of trafficking a person and causing the person to engage in conduct constituting a certain prostitution-related offense, an offense involving benefiting from participation in such trafficking or engaging in sexual conduct with a person trafficked in that manner, trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense, or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner among the convictions or adjudications that require lifelong registration as a sex offender. The bill makes conforming and nonsubstantive changes.

Article 3. Changes Relating to Civil Practice and Remedies Code

H.B. 7 amends the Civil Practice and Remedies Code to establish a five-year limitations period during which a person may bring suit for personal injury that arises as a result of conduct violating an offense of compelling prostitution or an offense of trafficking of persons. The bill establishes that a person maintains a common nuisance if the person maintains a place to which persons habitually go for the purpose of trafficking of persons and knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity.

Article 4. Changes Relating to Family Code, Including Juvenile Justice Code

H.B. 7 amends the Family Code to make an exception to the hearsay rule for an offense committed against a child 12 years of age or younger or a person with a disability applicable to a compelling prostitution of a child offense and an offense of trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner.

H.B. 7 authorizes a court to order termination of the parent-child relationship if the court finds by clear and convincing evidence that a parent has been convicted or has been placed on community supervision for being criminally responsible for the death or serious injury of a child under the offense of compelling prostitution of a child, trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense, or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner or adjudicated for conduct that caused the death or serious injury of a child and would constitute one of those offenses.

H.B. 7 redefines "abuse," for purposes of provisions of law relating to the investigation of a report of child abuse or neglect, to include conduct that constitutes prostitution involving soliciting another person in a public place to engage in sexual conduct for hire; compelling prostitution of a child younger than 18 years of age; trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner; and knowingly causing, permitting, encouraging, engaging in, or allowing or failing to make a reasonable effort to prevent conduct that constitutes trafficking a child for purposes of forced labor or services or benefiting from participation in such trafficking or an offense of trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner.

H.B. 7 authorizes a court to make a finding that the parent has subjected the child to aggravated circumstances for purposes of accelerating a trial for a final order for a child under the care of the Department of Family and Protective Services if the parent has engaged in conduct against

the child that would constitute one of following offenses: compelling prostitution of a child, trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense, or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner.

Article 5. Changes Relating to Government Code

H.B. 7 amends the Government Code to make an inmate awaiting transfer to the institutional division of the Texas Department of Criminal Justice (TDCJ), or serving a sentence, for a trafficking of persons offense ineligible to be considered for release to intensive supervision parole for purposes of population management. The bill prohibits an inmate serving a sentence for or who has been previously convicted of a compelling prostitution offense or a trafficking of persons offense from being released to mandatory supervision. The bill makes a nonsubstantive change.

Article 6. Changes Relating to Penal Code

H.B. 7 amends the Penal Code, in a provision authorizing the sentences to run concurrently or consecutively for a person found guilty of more than one offense arising out of the same criminal episode, to include among the applicable offenses the offense of compelling prostitution or trafficking of persons, regardless of whether the accused is convicted of violations of the same offense more than once or is convicted of violations of both offenses, and an offense for which a plea agreement was reached in a case in which the accused was charged with more than one offense of compelling prostitution or trafficking of persons, regardless of whether the accused is charged with violations of the same offense more than once or is charged with violations of both offenses.

H.B. 7 includes trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner as an offense a previous conviction of which results in imprisonment in TDCJ for life for a defendant convicted of certain specified felony offenses and includes that trafficking offense as one of those specified offenses.

H.B. 7 includes trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense, benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner, prostitution, and compelling prostitution of a child among the offenses the commission of which is the intent of a person who requests, commands, or attempts to induce a minor or another supposed minor to engage in conduct constituting a certain offense that classifies the conduct as an offense of criminal solicitation of a minor. The bill redefines "act of sexual abuse," for purposes of the offense of continuous sexual abuse of a young child or children, to include any act that is a violation of an offense of compelling prostitution of a child or an offense of trafficking a child and causing the child to engage in or become the victim of conduct constituting a certain specified sexual offense or benefiting from participation in such trafficking or engaging in sexual conduct with a child trafficked in that manner.

H.B. 7 expands the conditions that constitute the offense of aggravated sexual assault to include acts or words that place a victim in fear that a person imminently will be trafficked and involved in certain specified sexual or prostitution-related conduct and acts or words occurring in the presence of a victim that threaten to cause any person to be trafficked and involved in that conduct when those conditions occur during the intentional or knowing commission of a sexual assault.

Article 7. Transition; Effective Date

H.B. 7 sets out transition provisions and the effective date.

EFFECTIVE DATE

September 1, 2011.

EXPLANATION OF AMENDMENTS**Committee Amendment No. 1**

Committee Amendment No. 1 amends the bill on page 12, line 16, by inserting "person with a disability" between "of age" and the colon.