

## **BILL ANALYSIS**

C.S.H.B. 1122  
By: Weber  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Several years ago, Texas became one of the first states in the country to pass legislation targeting the human trafficking industry and the Texas Legislature has subsequently updated, refined, and added to the language of the initial legislation. More recently enacted legislation created a statewide Human Trafficking Prevention Task Force within the attorney general's office, composed of members from several state agencies and commissions, law enforcement organizations, prosecutors, service providers, and nongovernmental organizations.

In a very short time, the task force has increased awareness of human trafficking issues, created training programs for law enforcement agencies, established coalitions consisting of service providers, law enforcement agencies, prosecutors and grassroots advocates throughout Texas, and actively deployed prevention efforts at major events, such as Super Bowl XLV. The task force recently issued a report to the legislature detailing its activities and legislative recommendations and concluded that the constantly evolving methods used to traffic victims and elude detection and apprehension by law enforcement require corresponding evolving legislation.

C.S.H.B. 1122 attempts to curtail and prevent future human trafficking instances and provide increased protection for certain victims of these crimes.

### **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. 1122 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 with the intent that the trafficked person engage in sexual services or knowingly benefiting from participating in a venture that involves such activity, including by receiving services the person knows are sexual services. The bill 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 or sexual services or benefiting from participating in a venture that involves such activity, including by receiving labor or services the person knows are forced labor or services or sexual services. 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.

C.S.H.B. 1122 redefines "forced labor or services" to mean labor or services, excluding sexual services or sexual services of a child, 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 and defines "child" as a person younger than 18 years of age. The bill defines "sexual services" and "sexual services of a child."

C.S.H.B. 1122 amends the Civil Practice and Remedies Code to make provisions of law making each liable defendant in a case jointly and severally liable for the damages recoverable by a claimant applicable to a defendant who, with the specific intent to do harm to others, acted in concert with another person to engage in an offense of compelling prostitution or an offense of trafficking of persons and in so doing proximately caused the damages legally recoverable by the claimant. The bill makes a defendant who is criminally responsible under Penal Code provisions for the conduct of another person who engages in the trafficking of persons or who intentionally or knowingly receives a benefit from participating in a venture that traffics another person liable to the person trafficked for damages arising from the trafficking of that person by the other person for whose conduct the defendant is criminally responsible. The bill makes a person who is criminally responsible under Penal Code provisions for the conduct of another person who engages in the trafficking of persons or who intentionally or knowingly receives a benefit from participating in a venture that traffics another person and who is found liable for any amount of damages arising from the trafficking jointly liable with any other defendant for the entire amount of damages arising from the trafficking.

C.S.H.B. 1122 amends the Code of Criminal Procedure to establish that there is no statute of limitation for the offense of compelling prostitution of a child and an offense involving trafficking of a child for purposes relating to child sexual services or benefiting from participating in such trafficking. 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 sexual services or benefiting from participating in such trafficking and compelling prostitution offense. The bill sets the statute of limitation at 10 years from the 18th birthday of the victim of an offense of compelling prostitution of a child and an offense involving trafficking of a child for purposes of child labor or services or benefiting from participating in such trafficking.

C.S.H.B. 1122 limits to the court before whom a case is pending the authorization to release on personal bond a defendant charged with a compelling prostitution of a child offense or an offense involving trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking and makes a nonsubstantive change. The bill authorizes a search warrant to be issued to search for and photograph a child who is alleged to be the victim of a compelling prostitution of a child offense or an offense involving trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking.

C.S.H.B. 1122 amends the Family Code to require a court or the guardian ad litem or attorney ad litem for a minor to report to specified entities a person's conduct if the court or the guardian ad litem or attorney ad litem reasonably believes, based on information obtained during a confidential court proceeding relating to parental notification of abortion, that the person has engaged in conduct constituting an offense involving trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking and makes a conforming change in provisions of law relating to the confidentiality of such a report. The bill 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, the offense of prostitution, or the offense involving trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking or has been adjudicated for conduct that caused the death or serious injury of a child and would constitute one of those offenses.

C.S.H.B. 1122 authorizes a court to make a finding that a 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 commits one of the following offenses against a child: prostitution, compelling prostitution of a child, or trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking.

C.S.H.B. 1122 amends the Government Code to add criminal actions involving a compelling prostitution of a child offense or an offense involving trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking to the list of criminal actions the hearings and trials of which trial courts of this state are required to give preference over other criminal actions. The bill makes provisions of law requiring the collection of DNA specimens of certain defendants applicable to a defendant who is indicted or waives indictment for a compelling prostitution of a child offense or an offense involving trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking.

C.S.H.B. 1122 amends the Tax Code to define "victims of trafficking shelter center" for purposes of provisions of law relating to the confidentiality of the address of certain shelter centers and sexual assault programs and to make information in appraisal records that identifies the address of such victims confidential and available only for the official use of certain governmental entities involved in taxation-related activities. The bill makes conforming and nonsubstantive changes.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1122 differs from the original by defining "sexual services" to mean conduct that constitutes an offense of prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution and that are obtained through the use of force, fraud, or coercion, whereas the original defines the term as conduct that is obtained through the use of force, fraud, or coercion and that constitutes any of those offenses.

C.S.H.B. 1122 differs from the original by defining "sexual services of a child" to mean conduct that constitutes an offense of 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 that constitutes possession or promotion of child pornography, regardless of whether the actor knows the age of the child at the time the actor commits the offense and regardless of whether the actor uses force, fraud, or coercion in the commission of the offense, whereas the original defines the term to mean conduct that constitutes any of those offenses regardless of whether the actor knows the age of the child at the time the actor commits the offense and regardless of whether the actor uses force, fraud, or coercion in the commission of the offense.

C.S.H.B. 1122 differs from the original by making it a second degree felony trafficking of persons offense to knowingly traffic another person with the intent or knowledge, rather than only intent as in the original, that the trafficked person engage in forced labor or services. The substitute contains a provision not included in the original setting the statute of limitation at 10 years from the 18th birthday of the victim of an offense of compelling prostitution of a child.

C.S.H.B. 1122 omits provisions included in the original making 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; making 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; and prohibiting 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.

C.S.H.B. 1122 omits a provision included in the original 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 involving compelling prostitution or trafficking of persons or 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.

C.S.H.B. 1122 omits provisions included in the original including trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking 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 including that trafficking offense as one of those specified offenses. The substitute omits a provision included in the original increasing the penalty for an offense of compelling prostitution of a child younger than 18 years of age from a second degree felony to a first degree felony. The substitute omits a provision included in the original redefining "act of sexual abuse" for purposes of the offense of continuous sexual abuse of a young child or children.

C.S.H.B. 1122 omits provisions included in the original expanding the conditions that constitute the offense of aggravated sexual assault to include certain trafficking-related conduct and the offense of criminal solicitation of a minor to include certain trafficking and prostitution-related conduct under certain circumstances.

C.S.H.B. 1122 omits provisions included in the original relating to venue for a trafficking of persons offense, redefining "reportable conviction or adjudication" for purposes of registration requirements under the sex offender registration program, and including a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense involving trafficking a person for purposes of sexual services or child sexual services or benefiting from participating in such trafficking among the convictions or adjudications that require lifelong registration as a sex offender.

C.S.H.B. 1122 omits provisions included in the original authorizing certain trafficking or compelled prostitution victims and authorized representatives of such victims to file an application for a protective order without regard to the relationship between the applicant and the alleged offender and increasing 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.

C.S.H.B. 1122 omits a provision included in the original making a conviction for an offense involving trafficking of a person for purposes of sexual services or child sexual services or benefiting from participating in such trafficking 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. The substitute omits a provision included in the original making provisions of law relating to testimony of a child victim applicable to an offense of compelling prostitution of a child and an offense involving trafficking of a child for purposes of child sexual services or benefiting from participating in such trafficking 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.

C.S.H.B. 1122 omits a provision included in the original making 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 involving trafficking of persons for purposes of sexual services or child sexual services or benefiting from participating in such trafficking. The substitute omits a provision included in the original making 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 involving trafficking of a person for purposes of sexual services or child sexual services or benefiting from participating in such trafficking, if committed against a child under 17 years of age. The substitute omits a provision included in the original making 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 involving trafficking of a child for purposes of child labor or services or child sexual services or benefiting from participating in such trafficking.

C.S.H.B. 1122 omits a provision included in the original redefining "abuse" for purposes of provisions of law relating to the investigation of a report of child abuse or neglect to include certain prostitution and trafficking-related conduct.

C.S.H.B. 1122 omits a provision included in the original establishing a five-year limitations period during which a person may bring suit for personal injury that arises as a result of conduct constituting an offense of compelling prostitution or an offense of trafficking of persons and establishing 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. The substitute differs from the original in nonsubstantive ways.