

BILL ANALYSIS

S.B. 24

By: Van de Putte

Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Human trafficking is the illegal trade of human beings and is a modern-day form of slavery. Human trafficking is a criminal enterprise frequently cited as the second-largest criminal industry in the world. In Texas, the Houston and Dallas Innocence Lost operations run by the Federal Bureau of Investigation, the United States Department of Justice, and the National Center for Missing and Exploited Children successfully rescued more than 109 children from traffickers in fiscal year 2010.

In 2009, the Texas Legislature created a statewide Human Trafficking Prevention Task Force (task force) housed in the Office of the Attorney General (OAG) to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes.

The 2011 *Texas Human Trafficking Prevention Task Force Report* was released by OAG and included legislative recommendations agreeable to all 47 task force members. The legislative recommendations will help prosecutors try human trafficking cases, provide protections for victims, and improve cooperation, collaboration, and communication between state agencies, law enforcement officers, legal professionals, health care and service providers, and other key players.

S.B. 24 seeks to enact legislative changes included in the task force report, such as creating separate definitions for sex trafficking and labor trafficking. The bill extends the civil and criminal statute of limitations for human trafficking crimes, adds human trafficking offenses and compelling prostitution to the list of "3g" offenses, and requires an offender who is convicted of sex trafficking to register in the Sex Offender Registry.

The bill seeks to provide protection mechanisms for child victims in the Texas Family Code. The bill allows a parent or guardian, acting on behalf of a minor who is a victim of human trafficking, to file for a protective order against the trafficker. The bill would also allow child victims in sex trafficking cases certain provisions similar to sexual assault cases under Texas law.

The bill increases the penalty for compelling prostitution of a child to a first degree felony and allows sentences for human trafficking offenses to be stacked at the discretion of a judge.

The bill also adds human trafficking offenses to the list of crimes eligible for an automatic life sentence for subsequent convictions and would make an inmate charged with human trafficking ineligible for mandatory supervision or population management diversion programs.

The bill contains various tools to combat traffickers by extending the venue provisions and adding human trafficking offenses to the list of common nuisances.

S.B. 24 amends current law relating to the prosecution, punishment, and certain criminal and civil consequences of offenses involving or related to the trafficking of persons and to certain protections for victims of those offenses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

ARTICLE 1. TRAFFICKING OF PERSONS AND COMPELLING PROSTITUTION

SECTION 1.01. Amends Section 20A.01, Penal Code, as follows:

Sec. 20A.01. DEFINITIONS. Defines "child," "sexual conduct," and "traffic" and redefines "forced labor or services" in this chapter.

SECTION 1.02. Amends Section 20A.02, Penal Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Provides that a person commits an offense if the person knowingly:

(1) traffics another person with the intent, rather than with the intent or knowledge, that the trafficked person engage, rather than will engage, in forced labor or services;

(2) receives a benefit, rather than benefits, from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;

(3) traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:

(A) Section 43.02 (Prostitution);

(B) Section 43.03 (Promotion of Prostitution);

(C) Section 43.04 (Aggravated Promotion of Prostitution); or

(D) Section 43.05 (Compelling Prostitution);

(4) receives a benefit from participating in a venture that involves an activity described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);

(5) traffics a child with the intent that the trafficked child engage in forced labor or services;

(6) receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services;

(7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

(A) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(B) Section 21.11 (Indecency with a Child);

(C) Section 22.011 (Sexual Assault);

(D) Section 22.021 (Aggravated Sexual Assault);

(E) Section 43.02 (Prostitution);

(F) Section 43.03 (Promotion of Prostitution);

(G) Section 43.04 (Aggravated Promotion of Prostitution);

(H) Section 43.05 (Compelling Prostitution);

(I) Section 43.25 (Sexual Performance by a Child);

(J) Section 43.251 (Employment Harmful to Children); or

(K) Section 43.26 (Possession or Promotion of Child Pornography); or

(8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

Makes nonsubstantive changes.

(b) Provides that, except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. Provides that an offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), rather than under Section 43.05 or 43.25 and the person who is trafficked is a child younger than 18 years of age at the time of the offense, regardless of whether the actor knows the age of the child at the time the actor commits the offense; or

(2) Makes no changes to this subdivision.

(d) Prohibits a defendant from being convicted of the offense under Section 21.02 in the same criminal action as the offense under Subsection (a)(7)(A) if the victim of an offense under Subsection (a)(7)(A) is the same victim as a victim of an offense under Section 21.02, unless the offense under Section 21.02:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a)(7)(A) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a)(7)(A).

SECTION 1.03. Amends Section 43.05(b), Penal Code, as follows:

(b) Provides that an offense under Subsection (a)(1) (relating to compelling prostitution) is a felony of the second degree. Provides that an offense under Subsection (a)(2) (relating to compelling a child younger than 18 to commit prostitution, regardless of whether the actor knows the age of the child at the time the actor commits the offense) is a felony of the first degree. Makes a nonsubstantive change.

ARTICLE 2. CHANGES RELATING TO CODE OF CRIMINAL PROCEDURE

SECTION 2.01. Amends the heading to Chapter 7A, Code of Criminal Procedure, to read as follows:

CHAPTER 7A. PROTECTIVE ORDER FOR CERTAIN VICTIMS OF TRAFFICKING OR SEXUAL ASSAULT

SECTION 2.02. Amends Article 7A.01(a), Code of Criminal Procedure, as follows:

(a) Authorizes the following persons to file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, or 22.021, Penal Code;

(2) a person who is the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or Section 43.05, Penal Code;

(3) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (1) or (2), rather than a parent or guardian of a person who is younger than 17 years of age who is a victim of such an offense; or

(4) a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).

SECTION 2.03. Amends Article 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. Authorizes felony indictments to be presented within these limits, and not afterward, except as provided in Article 12.03 (Aggravated Offenses, Attempt, Conspiracy, Solicitation, Organized Criminal Activity):

(1) no limitation:

(A)-(D) Makes no changes to these paragraphs.

(E) and (F) Makes nonsubstantive changes.

(G) trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code;

(2) ten years from the date of the commission of the offense:

(A)-(D) Makes no changes to these paragraphs.

(E) Makes a nonsubstantive change.

(F) Makes no changes to this paragraph.

(G) trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code; or

(H) compelling prostitution under Section 43.05(a)(1), Penal Code;

(3)-(5) Makes no changes to these subdivisions.

(6) ten years from the 18th birthday of the victim of the offense:

(A) trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;

(B) Creates this paragraph from existing text.

(C) compelling prostitution under Section 43.05(a)(2), Penal Code; or

(7) Makes no changes to this subdivision.

SECTION 2.04. Amends Article 13.12, Code of Criminal Procedure, as follows:

Art. 13.12. New heading: **TRAFFICKING OF PERSONS, FALSE IMPRISONMENT, AND KIDNAPPING**. Provides that venue for trafficking of persons, false imprisonment, and kidnapping is in:

- (1) the county in which the offense was committed; or
- (2) any county through, into, or out of which the person trafficked, falsely imprisoned, or kidnapped may have been taken.

Makes nonsubstantive changes.

SECTION 2.05. Amends Article 38.07(a), Code of Criminal Procedure, as follows:

(a) Provides that a conviction under Chapter 21 (Sexual Offenses), Section 20A.02(a)(3), (4), (7), or (8), Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual 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.

SECTION 2.06. Amends Section 1, Article 38.071, Code of Criminal Procedure, as follows:

Sec. 1. Provides that this article applies only to a hearing or proceeding in which the court determines that a child younger than 13 years of age would be unavailable to testify in the presence of the defendant about an offense defined by certain sections of the Penal Code, including Section 43.05(a)(2) (Compelling Prostitution) or Section 20A.02(a)(7) or (8) (Trafficking of Persons).

SECTION 2.07. Reenacts 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, and amends it as follows:

Sec. 1. Provides that this article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age or a person with a disability:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct);
- (3) Section 43.25 (Sexual Performance by a Child);
- (4) Section 43.05(a)(2) (Compelling Prostitution);
- (5) Section 20A.02(a)(7) or (8) (Trafficking of Persons); or
- (6) Section 15.01 (Criminal Attempt), if the offense attempted is described by Subdivision (1), (2), (3), (4), or (5) of this section.

SECTION 2.08. Amends Section 1, Article 38.37, Code of Criminal Procedure, as follows:

Sec. 1. Provides that this article applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

- (1) if committed against a child under 17 years of age:
 - (A) Chapter 21 (Sexual Offenses);
 - (B) Chapter 22 (Assaultive Offenses); or
 - (C) Section 25.02 (Prohibited Sexual Conduct); or
- (2) if committed against a person younger than 18 years of age:
 - (A) Section 43.25 (Sexual Performance by a Child);

(B) Section 20A.02(a)(7) or (8); or

(C) Section 43.05(a)(2) (Compelling Prostitution).

Makes nonsubstantive changes.

SECTION 2.09. Amends Section 3g(a), Article 42.12, Code of Criminal Procedure, to provide that the provisions of Section 3 of this article do not apply to certain defendants, including a defendant adjudged guilty of an offense under Section 43.05, Penal Code (Compelling prostitution) or Section 20A.02, Penal Code (Trafficking of persons).

SECTION 2.10. Amends Article 62.001(5), Code of Criminal Procedure, to redefine "reportable conviction or adjudication."

SECTION 2.11. Amends Article 62.101(a), Code of Criminal Procedure, to provide that, except as provided by Subsection (b) (relating to when the duty to register ends) and Subchapter I (Early Termination of Certain Persons' Obligation to Register), the duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for certain offenses, including an offense under Section 20A.02(a)(3), (4), (7), or (8), 25.02, 43.05(a)(2), or 43.26, Penal Code.

ARTICLE 3. CHANGES RELATING TO CIVIL PRACTICE AND REMEDIES CODE

SECTION 3.01. Amends Section 16.0045(a), Civil Practice and Remedies Code, to require that a person bring suit for personal injury not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates certain Penal Code sections, including Section 20A.02, Penal Code (Trafficking of Persons), or Section 43.05, Penal Code (Compelling Prostitution). Makes nonsubstantive changes.

SECTION 3.02. Amends Section 125.0015(a), Civil Practice and Remedies Code, to provide that a person who maintains a place to which persons habitually go for certain purposes, including trafficking of persons as described by Section 20A.02, Penal Code, and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance. Makes nonsubstantive changes.

ARTICLE 4. CHANGES RELATING TO FAMILY CODE, INCLUDING JUVENILE JUSTICE CODE

SECTION 4.01. Amends Section 54.031(a), Family Code, to provide that this section applies to a hearing under this title in which a child is alleged to be a delinquent child on the basis of a child 12 years of age or younger or a person with a disability being the alleged victim of a violation of any of certain provisions of the Penal Code, including Section 20A.02(a)(7) or (8) (Trafficking of Persons) or Section 43.05(a)(2) (Compelling Prostitution). Makes nonsubstantive changes.

SECTION 4.02. Amends Section 161.001, Family Code, to authorize the court to order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has, among other acts, been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3 (Juvenile Justice Code) for conduct that caused the death or serious injury of a child and that would constitute a violation of one of certain Penal Code sections, including Section 20A.02(a)(7) or (8) (relating to trafficking of persons); and Section 43.05(a)(2) (relating to compelling prostitution);

SECTION 4.03. Amends Section 261.001(1), Family Code, to provide that "abuse" includes certain acts or omissions by a person, including compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01 (Definitions), Penal Code, including conduct that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code,

prostitution under Section 43.02(a)(2), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code; or knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.

SECTION 4.04. Amends Section 262.2015(b), Family Code, as follows:

(b) Authorizes the court to find under Subsection (a) that a parent has subjected the child to aggravated circumstances if, among other certain acts, the parent has engaged in conduct against the child that would constitute an offense under certain provisions of the Penal Code, including Section 43.05(a)(2) (compelling prostitution) or Section 20A.02(a)(7) or (8) (trafficking of persons).

ARTICLE 5. CHANGES RELATING TO GOVERNMENT CODE

SECTION 5.01. Amends Section 499.027(b), Government Code, as follows:

(b) Provides that an inmate is not eligible under this subchapter to be considered for release to intensive supervision parole if:

(1) Makes no changes to this subdivision;

(2) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense listed certain sections of the Penal Code, including Section 22.04 (injury to a child, elderly individual, or disabled individual) or Section 20A.02 (trafficking of persons); or

(3) the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, punishable by a minimum term of imprisonment or a maximum fine that is greater than the minimum term of imprisonment or the maximum fine for a first degree felony.

Makes nonsubstantive changes.

SECTION 5.02. Amends Section 508.149(a), Government Code, to prohibit an inmate from being released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of certain offenses, including an offense under Section 43.05, Penal Code, or an offense under Section 20A.02, Penal Code. Makes nonsubstantive changes.

ARTICLE 6. CHANGES RELATING TO PENAL CODE

SECTION 6.01. Amends Section 3.03(b), Penal Code, as follows:

(b) Authorizes sentences to run concurrently or consecutively, if the accused is found guilty of more than one offense arising out of the same criminal episode, if each sentence is for a conviction of:

(1) and (2) Makes no changes to these subdivisions;

(3) and (4) Makes nonsubstantive changes; or

(5) an offense:

(A) under Section 20A.02 or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is

charged with violations of the same section more than once or is charged with violations of both sections.

SECTION 6.02. Amends Section 12.42(c)(2), Penal Code, to require a defendant, notwithstanding Subdivision (1) (relating to the terms of punishment if on the trial of a first-degree felony it is shown that the defendant has been once before convicted of a felony), to be punished by imprisonment in the Texas Department of Criminal Justice for life if the defendant is convicted of an offense under certain provisions of the Penal Code, including Section 20A.02(a)(7) or (8), or if the defendant has been previously convicted of an offense under certain provisions of the Penal Code, including Section 20A.02(a)(7) or (8), or under the laws of another state containing elements that are substantially similar to the elements of those offenses.

SECTION 6.03. Amends Section 15.031(b), Penal Code, as follows:

(b) Provides that a person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011, 22.021, 43.02, 43.05(a)(2), or 43.25 be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense under one of those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

SECTION 6.04. Amends Section 21.02(c), Penal Code, to provide that, for purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of a list of certain penal laws, including trafficking of persons under Section 20A.02(a)(7) or (8), and compelling prostitution under Section 43.25(a)(2). Makes nonsubstantive changes.

SECTION 6.05. Amends Section 22.021(a), Penal Code, as follows:

(a) Provides that a person commits an offense:

(1) Makes no changes to this subdivision;

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age; or

(C) the victim is an elderly individual or a disabled individual.

ARTICLE 7. TRANSITION; EFFECTIVE DATE

SECTION 7.01. Makes application of this Act prospective.

EFFECTIVE DATE

Effective date: September 1, 2011.