

BILL ANALYSIS

Senate Research Center
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S.B. 1436
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas first passed legislation that criminalized human trafficking in 2003, making it one of the first states to do so. Texas acknowledges the severity of human trafficking and the fact that human trafficking is frequently cited as the second largest criminal industry in the world.

S.B. 1436 creates the offense of "continuous trafficking of persons," which will apply to offenders who commit the offense of human trafficking two or more times during a period that is 30 days or more in duration. The offense of continuous trafficking of persons is a felony of the first degree.

This bill makes various changes to the Penal Code such as the release of a defendant on personal bond by the court before whom the case is pending and requiring a notice of bail reductions. This bill gives preference to hearings and trials of the continuous trafficking of persons offense in a court with juvenile jurisdiction. This bill also requires a person indicted to provide one or more specimens for the purpose of a DNA record.

S.B. 1436 requires a two-thirds vote of members of the Board of Pardons and Paroles to authorize the release on parole of an inmate convicted of continuous trafficking of persons.

This bill also adds continuous trafficking of persons to the list of crimes eligible for automatic life without parole sentencing for subsequent convictions and would make an inmate charged with human trafficking ineligible for mandatory community supervision, early release on parole, or intensive supervision programs.

As proposed, S.B. 1436 amends current law relating to creating the offense of continuous trafficking of persons and provides a penalty and other civil consequences.

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 Chapter 20A, Penal Code, by adding Section 20A.03, as follows:

Sec. 20A.03. CONTINUOUS TRAFFICKING OF PERSONS. (a) Provides that a person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02 (Trafficking of Persons).

(b) Provides that, if a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20A.02 or on which exact date the defendant engaged in that conduct. Requires the jury to agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged in conduct that constituted an offense under Section 20A.02.

(c) Prohibits a defendant, if the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20A.02, from being convicted of the offense under Section 20A.02 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20A.02 is charged in the alternative, occurred outside the period in which the offense alleged under Subsection (a) was committed, or is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) Prohibits a defendant from being charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20A.02 is alleged to have been committed against the same victim.

(e) Provides that an offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

SECTION 2. Amends Article 12.01, Code of Criminal Procedure, to add continuous trafficking of persons under Section 20A.03, Penal Code, to the list of felony indictments that may be presented with no limitation, except as provided in Article 12.03 (Aggravated Offenses, Attempt, Conspiracy, Solicitation, Organized Criminal Activity).

SECTION 3. Amends Article 17.03(b), Code of Criminal Procedure, to authorize only the court before whom the case is pending to release on personal bond a defendant who meets certain criteria, including being charged with an offense under certain sections of the Penal Code, including Section 20A.03.

SECTION 4. Amends Article 17.032(a), Code of Criminal Procedure, to redefine "violent offense" to include an offense of continuous trafficking of persons.

SECTION 5. Amends Article 17.091, Code of Criminal Procedure, to require a judge or magistrate, before the judge or magistrate reduces the amount of bail set for a defendant charged with an offense listed in Section 3g (relating to exceptions to prohibiting denying community supervision to a defendant based solely on certain criteria), Article 42.12 (Community Supervision), an offense described by Article 62.001(5) (relating to the definition of "reportable conviction or adjudication"), or an offense under Section 20A.03, Penal Code, to provide to the attorney representing the state, reasonable notice of the proposed bail reduction, and, on request of the attorney representing the state or the defendant or the defendant's counsel, an opportunity for a hearing concerning the proposed bail reduction.

SECTION 6. Amends Section 23.101(a), Government Code, to require the trial courts of this state to regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of certain matters, including criminal actions, with certain actions given preference over other criminal actions, including an offense under Section 20A.03, Penal Code.

SECTION 7. Amends Section 411.1471(a), Government Code, to provide that this section applies to a defendant who meets certain criteria, including a defendant who is indicted or waives indictment for a felony prohibited or punishable under any of certain Penal Code sections, including Section 20A.03.

SECTION 8. Amends Section 499.027(b), Government Code, to provide that an inmate is not eligible under this subchapter to be considered for release to intensive supervision parole under certain circumstances, including if the inmate is awaiting transfer to the institutional division or serving a sentence, for an offense listed in one of certain sections of the Penal Code, including Section 20A.03.

SECTION 9. Amends Section 508.046, Government Code, to require all members of the Board of Pardons and Paroles, to release on parole an inmate who was convicted of an offense under Section 20A.03, 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11(a)(1) (relating to engaging in sexual contact with a child or causing the child to engage in sexual contact), or 22.021 (Aggravated Sexual Assault), Penal Code, or who is required under Section

508.145(c) (relating to an inmate's ineligibility for release until a certain calendar time) to serve 35 calendar years before becoming eligible for release on parole, to vote on the release on parole of the inmate, and requires that at least two-thirds of the members vote in favor of the release on parole.

SECTION 10. Amends Section 508.145(d), Government Code, to provide that an inmate serving a sentence for an offense described by Section 3g(a)(1)(A) (relating to murder), (C) (relating to indecency with a child), (D) (relating to aggravated kidnapping), (E) (relating to aggravated sexual assault), (F) (relating to aggravated robbery), (G) (relating to Chapter 481, Health and Safety Code), (H) (relating to sexual assault), (I) (relating to injury to a child, elderly individual, or disabled individual), (J) (relating to sexual performance by a child), or (K) (relating to Section 15.03, Penal Code), Article 42.12, Code of Criminal Procedure, or for an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) (relating to a defendant when it shown a deadly weapon was shown or exhibited during the commission of a felony offense) of that article, or for an offense under Section 20A.03, Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

SECTION 11. 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 20A.03, Penal Code.

SECTION 12. Amends Section 508.151(a), Government Code, to authorize a parole panel, for the purpose of diverting inmates to halfway houses under Section 508.118 (Halfway Houses), after reviewing all available pertinent information, to designate a presumptive parole date for an inmate who has never been convicted of an offense listed under Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, or an offense under Section 20A.03 or 21.02, Penal Code; and has never had a conviction with a judgment that contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

SECTION 13. Amends Section 12.35(c), Penal Code, to require that an individual adjudged guilty of a state jail felony be punished for a third degree felony if it is shown on the trial of the offense that a deadly weapon as defined by Section 1.07 (Definitions) was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or the individual has previously been finally convicted of any felony under Section 20A.03 or 21.02 or listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, or for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

SECTION 14. Amends Section 12.42(c)(4), Penal Code, to require that a defendant, notwithstanding Subdivision (1) (relating to life imprisonment, or for any term of not more than 99 years or less than 15 years) or (2) (relating to life imprisonment under certain conditions), be punished by imprisonment in the Texas Department of Criminal Justice for life without parole if it is shown on the trial of an offense under Section 20A.03 or 21.02 that the defendant has previously been finally convicted of an offense under Section 20A.03 or 21.02, or an offense that was committed under the laws of another state and that contains elements that are substantially similar to the elements of an offense under Section 20A.03 or 21.02.

SECTION 15. Makes application of this Act prospective.

SECTION 16. Effective date: September 1, 2011.