

1-1 By: Van de Putte S.B. No. 1436
1-2 (In the Senate - Filed March 10, 2011; March 14, 2011, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 March 21, 2011, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; March 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to creating the offense of continuous trafficking of
1-9 persons; providing a penalty and other civil consequences.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 20A, Penal Code, is amended by adding
1-12 Section 20A.03 to read as follows:

1-13 Sec. 20A.03. CONTINUOUS TRAFFICKING OF PERSONS. (a) A
1-14 person commits an offense if, during a period that is 30 or more
1-15 days in duration, the person engages two or more times in conduct
1-16 that constitutes an offense under Section 20A.02.

1-17 (b) If a jury is the trier of fact, members of the jury are
1-18 not required to agree unanimously on which specific conduct engaged
1-19 in by the defendant constituted an offense under Section 20A.02 or
1-20 on which exact date the defendant engaged in that conduct. The jury
1-21 must agree unanimously that the defendant, during a period that is
1-22 30 or more days in duration, engaged in conduct that constituted an
1-23 offense under Section 20A.02.

1-24 (c) If the victim of an offense under Subsection (a) is the
1-25 same victim as a victim of an offense under Section 20A.02, a
1-26 defendant may not be convicted of the offense under Section 20A.02
1-27 in the same criminal action as the offense under Subsection (a),
1-28 unless the offense under Section 20A.02:

1-29 (1) is charged in the alternative;

1-30 (2) occurred outside the period in which the offense
1-31 alleged under Subsection (a) was committed; or

1-32 (3) is considered by the trier of fact to be a lesser
1-33 included offense of the offense alleged under Subsection (a).

1-34 (d) A defendant may not be charged with more than one count
1-35 under Subsection (a) if all of the conduct that constitutes an
1-36 offense under Section 20A.02 is alleged to have been committed
1-37 against the same victim.

1-38 (e) An offense under this section is a felony of the first
1-39 degree, punishable by imprisonment in the Texas Department of
1-40 Criminal Justice for life or for any term of not more than 99 years
1-41 or less than 25 years.

1-42 SECTION 2. Article 12.01, Code of Criminal Procedure, is
1-43 amended to read as follows:

1-44 Art. 12.01. FELONIES. Except as provided in Article 12.03,
1-45 felony indictments may be presented within these limits, and not
1-46 afterward:

1-47 (1) no limitation:

1-48 (A) murder and manslaughter;

1-49 (B) sexual assault under Section 22.011(a)(2),
1-50 Penal Code, or aggravated sexual assault under Section
1-51 22.021(a)(1)(B), Penal Code;

1-52 (C) sexual assault, if during the investigation
1-53 of the offense biological matter is collected and subjected to
1-54 forensic DNA testing and the testing results show that the matter
1-55 does not match the victim or any other person whose identity is
1-56 readily ascertained;

1-57 (D) continuous sexual abuse of young child or
1-58 children under Section 21.02, Penal Code;

1-59 (E) indecency with a child under Section 21.11,
1-60 Penal Code; [~~or~~]

1-61 (F) an offense involving leaving the scene of an
1-62 accident under Section 550.021, Transportation Code, if the
1-63 accident resulted in the death of a person; or

1-64 (G) continuous trafficking of persons under

2-1 Section 20A.03, Penal Code;
 2-2 (2) ten years from the date of the commission of the
 2-3 offense:
 2-4 (A) theft of any estate, real, personal or mixed,
 2-5 by an executor, administrator, guardian or trustee, with intent to
 2-6 defraud any creditor, heir, legatee, ward, distributee,
 2-7 beneficiary or settlor of a trust interested in such estate;
 2-8 (B) theft by a public servant of government
 2-9 property over which he exercises control in his official capacity;
 2-10 (C) forgery or the uttering, using or passing of
 2-11 forged instruments;
 2-12 (D) injury to an elderly or disabled individual
 2-13 punishable as a felony of the first degree under Section 22.04,
 2-14 Penal Code;
 2-15 (E) sexual assault, except as provided by
 2-16 Subdivision (1); or
 2-17 (F) arson;
 2-18 (3) seven years from the date of the commission of the
 2-19 offense:
 2-20 (A) misapplication of fiduciary property or
 2-21 property of a financial institution;
 2-22 (B) securing execution of document by deception;
 2-23 (C) a felony violation under Chapter 162, Tax
 2-24 Code;
 2-25 (D) false statement to obtain property or credit
 2-26 under Section 32.32, Penal Code;
 2-27 (E) money laundering;
 2-28 (F) credit card or debit card abuse under Section
 2-29 32.31, Penal Code; or
 2-30 (G) fraudulent use or possession of identifying
 2-31 information under Section 32.51, Penal Code;
 2-32 (4) five years from the date of the commission of the
 2-33 offense:
 2-34 (A) theft or robbery;
 2-35 (B) except as provided by Subdivision (5),
 2-36 kidnapping or burglary;
 2-37 (C) injury to an elderly or disabled individual
 2-38 that is not punishable as a felony of the first degree under Section
 2-39 22.04, Penal Code;
 2-40 (D) abandoning or endangering a child; or
 2-41 (E) insurance fraud;
 2-42 (5) if the investigation of the offense shows that the
 2-43 victim is younger than 17 years of age at the time the offense is
 2-44 committed, 20 years from the 18th birthday of the victim of one of
 2-45 the following offenses:
 2-46 (A) sexual performance by a child under Section
 2-47 43.25, Penal Code;
 2-48 (B) aggravated kidnapping under Section
 2-49 20.04(a)(4), Penal Code, if the defendant committed the offense
 2-50 with the intent to violate or abuse the victim sexually; or
 2-51 (C) burglary under Section 30.02, Penal Code, if
 2-52 the offense is punishable under Subsection (d) of that section and
 2-53 the defendant committed the offense with the intent to commit an
 2-54 offense described by Subdivision (1)(B) or (D) of this article or
 2-55 Paragraph (B) of this subdivision;
 2-56 (6) ten years from the 18th birthday of the victim of
 2-57 the offense: injury to a child under Section 22.04, Penal Code; or
 2-58 (7) three years from the date of the commission of the
 2-59 offense: all other felonies.
 2-60 SECTION 3. Subsection (b), Article 17.03, Code of Criminal
 2-61 Procedure, is amended to read as follows:
 2-62 (b) Only the court before whom the case is pending may
 2-63 release on personal bond a defendant who:
 2-64 (1) is charged with an offense under the following
 2-65 sections of the Penal Code:
 2-66 (A) Section 19.03 (Capital Murder);
 2-67 (B) Section 20.04 (Aggravated Kidnapping);
 2-68 (C) Section 22.021 (Aggravated Sexual Assault);
 2-69 (D) Section 22.03 (Deadly Assault on Law

3-1 Enforcement or Corrections Officer, Member or Employee of Board of
 3-2 Pardons and Paroles, or Court Participant);
 3-3 (E) Section 22.04 (Injury to a Child, Elderly
 3-4 Individual, or Disabled Individual);
 3-5 (F) Section 29.03 (Aggravated Robbery);
 3-6 (G) Section 30.02 (Burglary);
 3-7 (H) Section 71.02 (Engaging in Organized
 3-8 Criminal Activity); ~~or~~
 3-9 (I) Section 21.02 (Continuous Sexual Abuse of
 3-10 Young Child or Children); or
 3-11 (J) Section 20A.03 (Continuous Trafficking of
 3-12 Persons);

3-13 (2) is charged with a felony under Chapter 481, Health
 3-14 and Safety Code, or Section 485.033, Health and Safety Code,
 3-15 punishable by imprisonment for a minimum term or by a maximum fine
 3-16 that is more than a minimum term or maximum fine for a first degree
 3-17 felony; or

3-18 (3) does not submit to testing for the presence of a
 3-19 controlled substance in the defendant's body as requested by the
 3-20 court or magistrate under Subsection (c) of this article or submits
 3-21 to testing and the test shows evidence of the presence of a
 3-22 controlled substance in the defendant's body.

3-23 SECTION 4. Subsection (a), Article 17.032, Code of Criminal
 3-24 Procedure, is amended to read as follows:

3-25 (a) In this article, "violent offense" means an offense
 3-26 under the following sections of the Penal Code:

- 3-27 (1) Section 19.02 (murder);
- 3-28 (2) Section 19.03 (capital murder);
- 3-29 (3) Section 20.03 (kidnapping);
- 3-30 (4) Section 20.04 (aggravated kidnapping);
- 3-31 (5) Section 21.11 (indecent with a child);
- 3-32 (6) Section 22.01(a)(1) (assault);
- 3-33 (7) Section 22.011 (sexual assault);
- 3-34 (8) Section 22.02 (aggravated assault);
- 3-35 (9) Section 22.021 (aggravated sexual assault);
- 3-36 (10) Section 22.04 (injury to a child, elderly
 3-37 individual, or disabled individual);
- 3-38 (11) Section 29.03 (aggravated robbery); ~~or~~
- 3-39 (12) Section 21.02 (continuous sexual abuse of young
 3-40 child or children); or
- 3-41 (13) Section 20A.03 (continuous trafficking of
 3-42 persons).

3-43 SECTION 5. Article 17.091, Code of Criminal Procedure, is
 3-44 amended to read as follows:

3-45 Art. 17.091. NOTICE OF CERTAIN BAIL REDUCTIONS REQUIRED.
 3-46 Before a judge or magistrate reduces the amount of bail set for a
 3-47 defendant charged with an offense listed in Section 3g, Article
 3-48 42.12, ~~or~~ an offense described by Article 62.001(5), or an
 3-49 offense under Section 20A.03, Penal Code, the judge or magistrate
 3-50 shall provide:

- 3-51 (1) to the attorney representing the state, reasonable
 3-52 notice of the proposed bail reduction; and
- 3-53 (2) on request of the attorney representing the state
 3-54 or the defendant or the defendant's counsel, an opportunity for a
 3-55 hearing concerning the proposed bail reduction.

3-56 SECTION 6. Subsection (a), Section 23.101, Government Code,
 3-57 is amended to read as follows:

3-58 (a) The trial courts of this state shall regularly and
 3-59 frequently set hearings and trials of pending matters, giving
 3-60 preference to hearings and trials of the following:

- 3-61 (1) temporary injunctions;
- 3-62 (2) criminal actions, with the following actions given
 3-63 preference over other criminal actions:
 - 3-64 (A) criminal actions against defendants who are
 3-65 detained in jail pending trial;
 - 3-66 (B) criminal actions involving a charge that a
 3-67 person committed an act of family violence, as defined by Section
 3-68 71.004, Family Code;
 - 3-69 (C) an offense under:

4-1 (i) Section 21.02 or 21.11, Penal Code;
4-2 (ii) Chapter 22, Penal Code, if the victim
4-3 of the alleged offense is younger than 17 years of age;
4-4 (iii) Section 25.02, Penal Code, if the
4-5 victim of the alleged offense is younger than 17 years of age;
4-6 (iv) Section 25.06, Penal Code; [~~or~~]
4-7 (v) Section 43.25, Penal Code; or
4-8 (vi) Section 20A.03, Penal Code; and
4-9 (D) an offense described by Article 62.001(6)(C)
4-10 or (D), Code of Criminal Procedure;
4-11 (3) election contests and suits under the Election
4-12 Code;
4-13 (4) orders for the protection of the family under
4-14 Subtitle B, Title 4, Family Code;
4-15 (5) appeals of final rulings and decisions of the
4-16 division of workers' compensation of the Texas Department of
4-17 Insurance regarding workers' compensation claims and claims under
4-18 the Federal Employers' Liability Act and the Jones Act;
4-19 (6) appeals of final orders of the commissioner of the
4-20 General Land Office under Section 51.3021, Natural Resources Code;
4-21 (7) actions in which the claimant has been diagnosed
4-22 with malignant mesothelioma, other malignant asbestos-related
4-23 cancer, malignant silica-related cancer, or acute silicosis; and
4-24 (8) appeals brought under Section 42.01 or 42.015, Tax
4-25 Code, of orders of appraisal review boards of appraisal districts
4-26 established for counties with a population of less than 175,000.
4-27 SECTION 7. Subsection (a), Section 411.1471, Government
4-28 Code, is amended to read as follows:
4-29 (a) This section applies to a defendant who is:
4-30 (1) indicted or waives indictment for a felony
4-31 prohibited or punishable under any of the following Penal Code
4-32 sections:
4-33 (A) Section 20.04(a)(4);
4-34 (B) Section 21.11;
4-35 (C) Section 22.011;
4-36 (D) Section 22.021;
4-37 (E) Section 25.02;
4-38 (F) Section 30.02(d);
4-39 (G) Section 43.05;
4-40 (H) Section 43.25;
4-41 (I) Section 43.26; [~~or~~]
4-42 (J) Section 21.02; or
4-43 (K) Section 20A.03;
4-44 (2) arrested for a felony described by Subdivision (1)
4-45 after having been previously convicted of or placed on deferred
4-46 adjudication for an offense described by Subdivision (1) or an
4-47 offense punishable under Section 30.02(c)(2), Penal Code; or
4-48 (3) convicted of an offense under Section 21.07 or
4-49 21.08, Penal Code.
4-50 SECTION 8. Subsection (b), Section 499.027, Government
4-51 Code, is amended to read as follows:
4-52 (b) An inmate is not eligible under this subchapter to be
4-53 considered for release to intensive supervision parole if:
4-54 (1) the inmate is awaiting transfer to the
4-55 institutional division, or serving a sentence, for an offense for
4-56 which the judgment contains an affirmative finding under Section
4-57 3g(a)(2), Article 42.12, Code of Criminal Procedure;
4-58 (2) the inmate is awaiting transfer to the
4-59 institutional division, or serving a sentence, for an offense
4-60 listed in one of the following sections of the Penal Code:
4-61 (A) Section 19.02 (murder);
4-62 (B) Section 19.03 (capital murder);
4-63 (C) Section 19.04 (manslaughter);
4-64 (D) Section 20.03 (kidnapping);
4-65 (E) Section 20.04 (aggravated kidnapping);
4-66 (F) Section 21.11 (indecent with a child);
4-67 (G) Section 22.011 (sexual assault);
4-68 (H) Section 22.02 (aggravated assault);
4-69 (I) Section 22.021 (aggravated sexual assault);

5-1 (J) Section 22.04 (injury to a child or an
5-2 elderly individual);
5-3 (K) Section 25.02 (prohibited sexual conduct);
5-4 (L) Section 25.08 (sale or purchase of a child);
5-5 (M) Section 28.02 (arson);
5-6 (N) Section 29.02 (robbery);
5-7 (O) Section 29.03 (aggravated robbery);
5-8 (P) Section 30.02 (burglary), if the offense is
5-9 punished as a first-degree felony under that section;
5-10 (Q) Section 43.04 (aggravated promotion of
5-11 prostitution);
5-12 (R) Section 43.05 (compelling prostitution);
5-13 (S) Section 43.24 (sale, distribution, or
5-14 display of harmful material to minor);
5-15 (T) Section 43.25 (sexual performance by a
5-16 child);
5-17 (U) Section 46.10 (deadly weapon in penal
5-18 institution);
5-19 (V) Section 15.01 (criminal attempt), if the
5-20 offense attempted is listed in this subsection;
5-21 (W) Section 15.02 (criminal conspiracy), if the
5-22 offense that is the subject of the conspiracy is listed in this
5-23 subsection;
5-24 (X) Section 15.03 (criminal solicitation), if
5-25 the offense solicited is listed in this subsection; ~~[or]~~
5-26 (Y) Section 21.02 (continuous sexual abuse of
5-27 young child or children); or
5-28 (Z) Section 20A.03 (continuous trafficking of
5-29 persons); or
5-30 (3) the inmate is awaiting transfer to the
5-31 institutional division, or serving a sentence, for an offense under
5-32 Chapter 481, Health and Safety Code, punishable by a minimum term of
5-33 imprisonment or a maximum fine that is greater than the minimum term
5-34 of imprisonment or the maximum fine for a first degree felony.
5-35 SECTION 9. Section 508.046, Government Code, is amended to
5-36 read as follows:
5-37 Sec. 508.046. EXTRAORDINARY VOTE REQUIRED. To release on
5-38 parole an inmate who was convicted of an offense under Section
5-39 20A.03, 21.02, 21.11(a)(1), or 22.021, Penal Code, or who is
5-40 required under Section 508.145(c) to serve 35 calendar years before
5-41 becoming eligible for release on parole, all members of the board
5-42 must vote on the release on parole of the inmate, and at least
5-43 two-thirds of the members must vote in favor of the release on
5-44 parole. A member of the board may not vote on the release unless the
5-45 member first receives a copy of a written report from the department
5-46 on the probability that the inmate would commit an offense after
5-47 being released on parole.
5-48 SECTION 10. Subsection (d), Section 508.145, Government
5-49 Code, is amended to read as follows:
5-50 (d) An inmate serving a sentence for an offense described by
5-51 Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or (K),
5-52 Article 42.12, Code of Criminal Procedure, or for an offense for
5-53 which the judgment contains an affirmative finding under Section
5-54 3g(a)(2) of that article, or for an offense under Section 20A.03,
5-55 Penal Code, is not eligible for release on parole until the inmate's
5-56 actual calendar time served, without consideration of good conduct
5-57 time, equals one-half of the sentence or 30 calendar years,
5-58 whichever is less, but in no event is the inmate eligible for
5-59 release on parole in less than two calendar years.
5-60 SECTION 11. Subsection (a), Section 508.149, Government
5-61 Code, is amended to read as follows:
5-62 (a) An inmate may not be released to mandatory supervision
5-63 if the inmate is serving a sentence for or has been previously
5-64 convicted of:
5-65 (1) an offense for which the judgment contains an
5-66 affirmative finding under Section 3g(a)(2), Article 42.12, Code of
5-67 Criminal Procedure;
5-68 (2) a first degree felony or a second degree felony
5-69 under Section 19.02, Penal Code;

- 6-1 (3) a capital felony under Section 19.03, Penal Code;
- 6-2 (4) a first degree felony or a second degree felony
- 6-3 under Section 20.04, Penal Code;
- 6-4 (5) an offense under Section 21.11, Penal Code;
- 6-5 (6) a felony under Section 22.011, Penal Code;
- 6-6 (7) a first degree felony or a second degree felony
- 6-7 under Section 22.02, Penal Code;
- 6-8 (8) a first degree felony under Section 22.021, Penal
- 6-9 Code;
- 6-10 (9) a first degree felony under Section 22.04, Penal
- 6-11 Code;
- 6-12 (10) a first degree felony under Section 28.02, Penal
- 6-13 Code;
- 6-14 (11) a second degree felony under Section 29.02, Penal
- 6-15 Code;
- 6-16 (12) a first degree felony under Section 29.03, Penal
- 6-17 Code;
- 6-18 (13) a first degree felony under Section 30.02, Penal
- 6-19 Code;
- 6-20 (14) a felony for which the punishment is increased
- 6-21 under Section 481.134 or Section 481.140, Health and Safety Code;
- 6-22 (15) an offense under Section 43.25, Penal Code;
- 6-23 (16) an offense under Section 21.02, Penal Code; [~~or~~]
- 6-24 (17) a first degree felony under Section 15.03, Penal
- 6-25 Code; or
- 6-26 (18) an offense under Section 20A.03, Penal Code.

6-27 SECTION 12. Subsection (a), Section 508.151, Government

6-28 Code, is amended to read as follows:

6-29 (a) For the purpose of diverting inmates to halfway houses

6-30 under Section 508.118, a parole panel, after reviewing all

6-31 available pertinent information, may designate a presumptive

6-32 parole date for an inmate who:

6-33 (1) has never been convicted of an offense listed

6-34 under Section 3g(a)(1), Article 42.12, Code of Criminal Procedure,

6-35 or an offense under Section 20A.03 or 21.02, Penal Code; and

6-36 (2) has never had a conviction with a judgment that

6-37 contains an affirmative finding under Section 3g(a)(2), Article

6-38 42.12, Code of Criminal Procedure.

6-39 SECTION 13. Subsection (c), Section 12.35, Penal Code, is

6-40 amended to read as follows:

6-41 (c) An individual adjudged guilty of a state jail felony

6-42 shall be punished for a third degree felony if it is shown on the

6-43 trial of the offense that:

6-44 (1) a deadly weapon as defined by Section 1.07 was used

6-45 or exhibited during the commission of the offense or during

6-46 immediate flight following the commission of the offense, and that

6-47 the individual used or exhibited the deadly weapon or was a party to

6-48 the offense and knew that a deadly weapon would be used or

6-49 exhibited; or

6-50 (2) the individual has previously been finally

6-51 convicted of any felony:

6-52 (A) under Section 20A.03 or 21.02 or listed in

6-53 Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

6-54 (B) for which the judgment contains an

6-55 affirmative finding under Section 3g(a)(2), Article 42.12, Code of

6-56 Criminal Procedure.

6-57 SECTION 14. Subdivision (4), Subsection (c), Section 12.42,

6-58 Penal Code, is amended to read as follows:

6-59 (4) Notwithstanding Subdivision (1) or (2), a

6-60 defendant shall be punished by imprisonment in the Texas Department

6-61 of Criminal Justice for life without parole if it is shown on the

6-62 trial of an offense under Section 20A.03 or 21.02 that the defendant

6-63 has previously been finally convicted of:

6-64 (A) an offense under Section 20A.03 or 21.02; or

6-65 (B) an offense that was committed under the laws

6-66 of another state and that contains elements that are substantially

6-67 similar to the elements of an offense under Section 20A.03 or 21.02.

6-68 SECTION 15. The change in law made by this Act applies only

6-69 to an offense committed on or after the effective date of this Act.

7-1 An offense committed before the effective date of this Act is
7-2 governed by the law in effect on the date the offense was committed,
7-3 and the former law is continued in effect for that purpose. For
7-4 purposes of this section, an offense was committed before the
7-5 effective date of this Act if any element of the offense occurred
7-6 before that date.

7-7 SECTION 16. This Act takes effect September 1, 2011.

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