

BILL ANALYSIS

C.S.H.B. 8
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 81st Legislature created the Human Trafficking Prevention Task Force in an effort to create a statewide partnership among law enforcement agencies, social service providers, nongovernmental organizations, legal representatives, and state agencies that fight against human trafficking. 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. C.S.H.B. 8 seeks to aid the prevention and elimination of the crime of human trafficking by enacting recommendations made by the task force in its recent report to the legislature.

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. 8 reenacts and amends Article 7A.01(a), Code of Criminal Procedure, as amended by Chapters 1 (S.B. 24) and 135 (S.B. 250), Acts of the 82nd Legislature, Regular Session, 2011, to include a victim of any trafficking of persons offense, rather than only certain trafficking of persons offenses, 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 bill clarifies that a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of any trafficking of persons offense is also authorized to file such application.

C.S.H.B. 8 amends the Code of Criminal Procedure to authorize a court to enter a temporary ex parte order for the protection of a protective order applicant or any other member of the applicant's family or household if the court finds from the information contained in the application that there is a clear and present danger of sexual abuse or trafficking.

C.S.H.B. 8 reenacts and amends Article 7A.03, Code of Criminal Procedure, as amended by Chapters 135 (S.B. 250) and 238 (H.B. 649), Acts of the 82nd Legislature, Regular Session, 2011, to expand the offenses for which a court is required to find whether there are reasonable grounds to believe that a protective order applicant is the victim to include sexual abuse and trafficking and to require the court to include such findings in the issued protective order.

C.S.H.B. 8 amends the Code of Criminal Procedure to clarify that a parent or guardian acting on behalf of a victim of any trafficking of persons offense or a compelling prostitution offense who is younger than 18 years of age is authorized to file at any time an application with the court to rescind a protective order.

C.S.H.B. 8 reenacts and amends Article 12.01, Code of Criminal Procedure, as amended by Chapters 1 (S.B. 24), 122 (H.B. 3000), 222 (H.B. 253), and 620 (S.B. 688), Acts of the 82nd Legislature, Regular Session, 2011, to change the statute of limitation for compelling prostitution

from 10 years from the victim's 18th birthday to no limitation.

C.S.H.B. 8 amends the Code of Criminal Procedure to make a defendant convicted of compelling prostitution or trafficking of persons ineligible for jury recommended community supervision. The bill includes a victim of "trafficking of persons," defined for purposes of crime victims' rights as any offense that results in a person engaging in forced labor or services and that may be prosecuted under specified laws, among the persons eligible to receive a onetime-only assistance payment in a specified amount for certain relocation and housing expenses and among the persons for which the attorney general is required to establish an address confidentiality program. The bill includes a conviction of or an adjudication for or based on certain prostitution and compelling prostitution offenses in the definition of "reportable conviction or adjudication," for purposes of the sex offender registration program.

C.S.H.B. 8 amends the Government Code to make an inmate serving a sentence for compelling prostitution or trafficking of persons ineligible 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 less than two calendar years.

C.S.H.B. 8 amends the Penal Code to increase from younger than 14 years of age to younger than 18 years of age the age at which a person being solicited in a prostitution offense results in a penalty enhancement to a felony of the second degree and to specify that this enhancement occurs regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense. The bill enhances from a Class A misdemeanor to a felony of the second degree the penalty for promotion of prostitution if the actor solicits a person younger than 18 years of age to engage in prostitution with another or receives money or other property pursuant to an agreement to participate in the proceeds of prostitution services rendered by a person younger than 18 years of age. The bill enhances from a felony of the third degree to a felony of the first degree the penalty for aggravated promotion of prostitution if the prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age. The bill increases to a felony of the second degree the penalty enhancements for all obscenity offenses resulting from the showing at trial that the obscene material that is the subject of the offense visually depicts certain obscene activities engaged in by a child younger than 18 years of age or in an image depicting a child.

C.S.H.B. 8 reenacts and amends Section 71.02(a), Penal Code, as amended by Chapters 68 (S.B. 934) and 223 (H.B. 260), Acts of the 82nd Legislature, Regular Session, 2011, to expand the conduct that constitutes the offense of engaging in organized criminal activity to include the commission or conspiracy to commit continuous sexual abuse of a young child or children or solicitation of a minor, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang.

C.S.H.B. 8 makes technical corrections and repeals Chapter 7B, Code of Criminal Procedure, relating to protective orders for victims of trafficking of persons.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 8 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Chapter 7A, Code of Criminal Procedure, is amended.

SECTION 1. Same as introduced version.

SECTION 2. Article 7A.01(a), Code of Criminal Procedure, as amended by Chapters 1 (S.B. 24) and 135 (S.B. 250), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended.

SECTION 2. Same as introduced version.

SECTION 3. Article 7A.02, Code of Criminal Procedure, is amended.

SECTION 3. Same as introduced version.

SECTION 4. Article 7A.03, Code of Criminal Procedure, as amended by Chapters 135 (S.B. 250) and 238 (H.B. 649), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended.

SECTION 4. Same as introduced version.

SECTION 5. Article 7A.07(b), Code of Criminal Procedure, is amended.

SECTION 5. Same as introduced version.

SECTION 6. Article 12.01, Code of Criminal Procedure, as amended by Chapters 1 (S.B. 24), 122 (H.B. 3000), 222 (H.B. 253), and 620 (S.B. 688), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended.

SECTION 6. Same as introduced version.

SECTION 7. Section 4(d), Article 42.12, Code of Criminal Procedure, is amended.

SECTION 7. Same as introduced version.

SECTION 8. Article 56.32(a), Code of Criminal Procedure, is amended.

SECTION 8. Same as introduced version.

SECTION 9. Article 56.42(d), Code of Criminal Procedure, is amended.

SECTION 9. Same as introduced version.

SECTION 10. Article 56.81, Code of Criminal Procedure, is amended.

SECTION 10. Same as introduced version.

SECTION 11. Article 56.82(a), Code of Criminal Procedure, is amended.

SECTION 11. Same as introduced version.

SECTION 12. Articles 56.83(a), (b), and

SECTION 12. Same as introduced version.

(e), Code of Criminal Procedure, are amended.

SECTION 13. Article 62.001(5), Code of Criminal Procedure, is amended to read as follows:

(5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or
(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), or (K);

SECTION 13. Article 62.001(5), Code of Criminal Procedure, is amended to read as follows:

(5) "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i) the judgment in the case contains an affirmative finding under Article 42.015; or
(ii) the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), or (K);

(H) 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 an offense listed under Paragraph (A), (B), (C), (D), (E), (G), (J), or (K), but not if the violation results in a deferred adjudication;

(I) the second 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 the offense of indecent exposure, but not if the second violation results in a deferred adjudication;

(J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code; [ø€]

(K) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code;

(L) a violation of Section 43.02(a)(2) (Prostitution), Penal Code, if the offense was punishable under Section 43.02(c)(3) or (4) of that code; or

(M) a violation of Section 43.05(a)(2) (Compelling prostitution), Penal Code.

SECTION 14. Section 508.145(d)(1), Government Code, is amended.

No equivalent provision.

SECTION 15. Section 43.02(c), Penal Code, is amended.

SECTION 16. Section 43.03(b), Penal Code, is amended.

SECTION 17. Section 43.04(b), Penal Code, is amended

(H) 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 an offense listed under Paragraph (A), (B), (C), (D), (E), (G), (J), or (K), but not if the violation results in a deferred adjudication;

(I) the second 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 the offense of indecent exposure, but not if the second violation results in a deferred adjudication;

(J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code; [ø€]

(K) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code;

(L) a violation of Section 43.02(a)(2) (Prostitution), Penal Code, if the offense was punishable under Section 43.02(c)(3) of that code; or

(M) a violation of Section 43.05(a)(2) (Compelling prostitution), Penal Code.

SECTION 14. Same as introduced version.

SECTION 15. The heading to Section 38.112, Penal Code, is amended to read as follows:

Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS OF SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Same as introduced version.

SECTION 18. Section 43.251(c), Penal Code, as amended by Chapters 515 (H.B. 2014) and 938 (H.B. 290), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended.

SECTION 19. Section 43.23(h), Penal Code, is amended.

SECTION 20. Section 71.02(a), Penal Code, as amended by Chapters 68 (S.B. 934) and 223 (H.B. 260), Acts of the 82nd Legislature, Regular Session, 2011, is reenacted and amended.

SECTION 21. Chapter 7B, Code of Criminal Procedure, is repealed.

SECTION 22. (a) The changes in law made by this Act in amending Chapter 7A, Code of Criminal Procedure, and repealing Chapter 7B, Code of Criminal Procedure, apply only to a protective order issued on or after the effective date of this Act. A protective order issued before the effective date of this Act is governed by the law in effect on the date the order is issued, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 23. This Act takes effect September 1, 2013.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.

SECTION 21. Same as introduced version.

SECTION 22. Same as introduced version.

SECTION 23. Same as introduced version.

SECTION 24. Same as introduced version.