

By: Thompson of Harris

H.B. No. 8

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the prosecution and punishment of offenses related to
3 trafficking of persons and to certain protections for victims of
4 trafficking of persons.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Chapter 7A, Code of Criminal
7 Procedure, is amended to read as follows:

8 CHAPTER 7A. PROTECTIVE ORDER FOR [~~CERTAIN~~] VICTIMS OF [~~TRAFFICKING~~
9 ~~OR~~] SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING

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

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

17 (1) a person who is the victim of an offense under
18 Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code;

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

22 (3) a parent or guardian acting on behalf of a person
23 younger than 17 [~~18~~] years of age who is the victim of an offense
24 listed in Subdivision (1);

1 (4) a parent or guardian acting on behalf of a person
2 younger than 18 years of age who is the victim of an offense listed
3 in Subdivision [~~or~~] (2); or

4 (5) [~~(4)~~] a prosecuting attorney acting on behalf of a
5 person described by Subdivision (1) or (2).

6 SECTION 3. Article 7A.02, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 7A.02. TEMPORARY EX PARTE ORDER. If the court finds
9 from the information contained in an application for a protective
10 order that there is a clear and present danger of sexual assault or
11 abuse, stalking, trafficking, or other harm to the applicant, the
12 court, without further notice to the alleged offender and without a
13 hearing, may enter a temporary ex parte order for the protection of
14 the applicant or any other member of the applicant's family or
15 household.

16 SECTION 4. Article 7A.03, Code of Criminal Procedure, as
17 amended by Chapters 135 (S.B. 250) and 238 (H.B. 649), Acts of the
18 82nd Legislature, Regular Session, 2011, is reenacted and amended
19 to read as follows:

20 Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE
21 ORDER. (a) At the close of a hearing on an application for a
22 protective order under this chapter, the court shall find whether
23 there are reasonable grounds to believe that the applicant is the
24 victim of sexual assault or abuse, [~~or~~] stalking, or trafficking.

25 (b) If the court makes a finding described by Subsection (a)
26 [~~(a)(1) or (2)~~], the court shall issue a protective order that
27 includes a statement of the required findings.

1 SECTION 5. Article 7A.07(b), Code of Criminal Procedure, is
2 amended to read as follows:

3 (b) The following persons may file at any time an
4 application with the court to rescind the protective order:

5 (1) a victim of an offense listed in Article
6 7A.01(a)(1) [A-victim] who is 17 years of age or older or a parent or
7 guardian acting on behalf of a victim who is younger than 17 years
8 of age; or

9 (2) a victim of an offense listed in Article
10 7A.01(a)(2) or a parent or guardian acting on behalf of a victim who
11 is younger than 18 years of age [~~may file at any time an application~~
12 ~~with the court to rescind the protective order~~].

13 SECTION 6. Article 12.01, Code of Criminal Procedure, as
14 amended by Chapters 1 (S.B. 24), 122 (H.B. 3000), 222 (H.B. 253),
15 and 620 (S.B. 688), Acts of the 82nd Legislature, Regular Session,
16 2011, is reenacted and amended to read as follows:

17 Art. 12.01. FELONIES. Except as provided in Article 12.03,
18 felony indictments may be presented within these limits, and not
19 afterward:

20 (1) no limitation:

21 (A) murder and manslaughter;

22 (B) sexual assault under Section 22.011(a)(2),
23 Penal Code, or aggravated sexual assault under Section
24 22.021(a)(1)(B), Penal Code;

25 (C) sexual assault, if during the investigation
26 of the offense biological matter is collected and subjected to
27 forensic DNA testing and the testing results show that the matter

1 does not match the victim or any other person whose identity is
2 readily ascertained;

3 (D) continuous sexual abuse of young child or
4 children under Section 21.02, Penal Code;

5 (E) indecency with a child under Section 21.11,
6 Penal Code;

7 (F) an offense involving leaving the scene of an
8 accident under Section 550.021, Transportation Code, if the
9 accident resulted in the death of a person; ~~or~~

10 (G) trafficking of persons under Section
11 20A.02(a)(7) or (8), Penal Code;

12 (H) ~~[(G)]~~ continuous trafficking of persons
13 under Section 20A.03, Penal Code; or

14 (I) compelling prostitution under Section
15 43.05(a)(2), Penal Code;

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

18 (A) theft of any estate, real, personal or mixed,
19 by an executor, administrator, guardian or trustee, with intent to
20 defraud any creditor, heir, legatee, ward, distributee,
21 beneficiary or settlor of a trust interested in such estate;

22 (B) theft by a public servant of government
23 property over which he exercises control in his official capacity;

24 (C) forgery or the uttering, using or passing of
25 forged instruments;

26 (D) injury to an elderly or disabled individual
27 punishable as a felony of the first degree under Section 22.04,

1 Penal Code;

2 (E) sexual assault, except as provided by

3 Subdivision (1);

4 (F) arson;

5 (G) trafficking of persons under Section

6 20A.02(a)(1), (2), (3), or (4), Penal Code; or

7 (H) compelling prostitution under Section

8 43.05(a)(1), Penal Code;

9 (3) seven years from the date of the commission of the

10 offense:

11 (A) misapplication of fiduciary property or

12 property of a financial institution;

13 (B) securing execution of document by deception;

14 (C) a felony violation under Chapter 162, Tax

15 Code;

16 (D) false statement to obtain property or credit

17 under Section 32.32, Penal Code;

18 (E) money laundering;

19 (F) credit card or debit card abuse under Section

20 32.31, Penal Code;

21 (G) fraudulent use or possession of identifying

22 information under Section 32.51, Penal Code; [~~or~~]

23 (H) Medicaid fraud under Section 35A.02, Penal

24 Code; or

25 (I) [~~(H)~~] bigamy under Section 25.01, Penal

26 Code, except as provided by Subdivision (6);

27 (4) five years from the date of the commission of the

1 offense:

2 (A) theft or robbery;

3 (B) except as provided by Subdivision (5),
4 kidnapping or burglary;

5 (C) injury to an elderly or disabled individual
6 that is not punishable as a felony of the first degree under Section
7 22.04, Penal Code;

8 (D) abandoning or endangering a child; or

9 (E) insurance fraud;

10 (5) if the investigation of the offense shows that the
11 victim is younger than 17 years of age at the time the offense is
12 committed, 20 years from the 18th birthday of the victim of one of
13 the following offenses:

14 (A) sexual performance by a child under Section
15 43.25, Penal Code;

16 (B) aggravated kidnapping under Section
17 20.04(a)(4), Penal Code, if the defendant committed the offense
18 with the intent to violate or abuse the victim sexually; or

19 (C) burglary under Section 30.02, Penal Code, if
20 the offense is punishable under Subsection (d) of that section and
21 the defendant committed the offense with the intent to commit an
22 offense described by Subdivision (1)(B) or (D) of this article or
23 Paragraph (B) of this subdivision;

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

26 (A) trafficking of persons under Section
27 20A.02(a)(5) or (6), Penal Code;

1 (B) injury to a child under Section 22.04, Penal
2 Code; or

3 (C) [~~compelling prostitution under Section~~
4 ~~43.05(a)(2), Penal Code; or~~

5 [~~(B)~~] bigamy under Section 25.01, Penal Code, if
6 the investigation of the offense shows that the person, other than
7 the legal spouse of the defendant, whom the defendant marries or
8 purports to marry or with whom the defendant lives under the
9 appearance of being married is younger than 18 years of age at the
10 time the offense is committed; or

11 (7) three years from the date of the commission of the
12 offense: all other felonies.

13 SECTION 7. Section 4(d), Article 42.12, Code of Criminal
14 Procedure, is amended to read as follows:

15 (d) A defendant is not eligible for community supervision
16 under this section if the defendant:

17 (1) is sentenced to a term of imprisonment that
18 exceeds 10 years;

19 (2) is convicted of a state jail felony for which
20 suspension of the imposition of the sentence occurs automatically
21 under Section 15(a);

22 (3) does not file a sworn motion under Subsection (e)
23 of this section or for whom the jury does not enter in the verdict a
24 finding that the information contained in the motion is true;

25 (4) is convicted of an offense for which punishment is
26 increased under Section 481.134(c), (d), (e), or (f), Health and
27 Safety Code, if it is shown that the defendant has been previously

1 convicted of an offense for which punishment was increased under
2 any one of those subsections;

3 (5) is convicted of an offense listed in Section
4 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger
5 than 14 years of age at the time the offense was committed;

6 (6) is convicted of an offense listed in Section
7 3g(a)(1)(D), if the victim of the offense was younger than 14 years
8 of age at the time the offense was committed and the actor committed
9 the offense with the intent to violate or abuse the victim sexually;

10 (7) is convicted of an offense listed in Section
11 3g(a)(1)(J), (L), or (M); or

12 (8) is adjudged guilty of an offense under Section
13 19.02, Penal Code.

14 SECTION 8. Article 56.32(a), Code of Criminal Procedure, is
15 amended by adding Subdivision (14) to read as follows:

16 (14) "Trafficking of persons" means any offense that
17 results in a person engaging in forced labor or services and that
18 may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04,
19 43.05, 43.25, 43.251, or 43.26, Penal Code.

20 SECTION 9. Article 56.42(d), Code of Criminal Procedure, is
21 amended to read as follows:

22 (d) A victim who is a victim of family violence, a victim of
23 trafficking of persons, or a victim of sexual assault who is
24 assaulted in the victim's place of residence may receive a
25 onetime-only assistance payment in an amount not to exceed:

26 (1) \$2,000 to be used for relocation expenses,
27 including expenses for rental deposit, utility connections,

1 expenses relating to the moving of belongings, motor vehicle
2 mileage expenses, and for out-of-state moves, transportation,
3 lodging, and meals; and

4 (2) \$1,800 to be used for housing rental expenses.

5 SECTION 10. Article 56.81, Code of Criminal Procedure, is
6 amended by adding Subdivision (7) to read as follows:

7 (7) "Trafficking of persons" means any offense that
8 results in a person engaging in forced labor or services and that
9 may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04,
10 43.05, 43.25, 43.251, or 43.26, Penal Code.

11 SECTION 11. Article 56.82(a), Code of Criminal Procedure,
12 is amended to read as follows:

13 (a) The attorney general shall establish an address
14 confidentiality program, as provided by this subchapter, to assist
15 a victim of family violence, trafficking of persons, or an offense
16 under Section 22.011, 22.021, 25.02, or 42.072, Penal Code, in
17 maintaining a confidential address.

18 SECTION 12. Articles 56.83(a), (b), and (e), Code of
19 Criminal Procedure, are amended to read as follows:

20 (a) To be eligible to participate in the program, an
21 applicant must:

22 (1) meet with a victim's assistance counselor from a
23 state or local agency or other entity, whether for-profit or
24 nonprofit that is identified by the attorney general as an entity
25 that provides counseling and shelter services to victims of family
26 violence, trafficking of persons, or an offense under Section
27 22.011, 22.021, 25.02, or 42.072, Penal Code;

1 (2) file an application for participation with the
2 attorney general or a state or local agency or other entity
3 identified by the attorney general under Subdivision (1);

4 (3) designate the attorney general as agent to receive
5 service of process and mail on behalf of the applicant; and

6 (4) live at a residential address, or relocate to a
7 residential address, that is unknown to the person who committed or
8 is alleged to have committed the family violence, trafficking of
9 persons, or an offense under Section 22.011, 22.021, 25.02, or
10 42.072, Penal Code.

11 (b) An application under Subsection (a)(2) must contain:

12 (1) a signed, sworn statement by the applicant stating
13 that the applicant fears for the safety of the applicant, the
14 applicant's child, or another person in the applicant's household
15 because of a threat of immediate or future harm caused by the person
16 who committed or is alleged to have committed the family violence,
17 the trafficking of persons, or an offense under Section 22.011,
18 22.021, 25.02, or 42.072, Penal Code;

19 (2) the applicant's true residential address and, if
20 applicable, the applicant's business and school addresses; and

21 (3) a statement by the applicant of whether there is an
22 existing court order or a pending court case for child support or
23 child custody or visitation that involves the applicant and, if so,
24 the name and address of:

25 (A) the legal counsel of record; and

26 (B) each parent involved in the court order or
27 pending case.

1 (e) The attorney general by rule may establish additional
2 eligibility requirements for participation in the program that are
3 consistent with the purpose of the program as stated in Article
4 56.82(a). The attorney general may establish procedures for
5 requiring an applicant, in appropriate circumstances, to submit
6 with the application under Subsection (a)(2) independent
7 documentary evidence of family violence, trafficking of persons, or
8 an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal
9 Code, in the form of:

10 (1) an active or recently issued protective order;

11 (2) an incident report or other record maintained by a
12 law enforcement agency or official;

13 (3) a statement of a physician or other health care
14 provider regarding the applicant's medical condition as a result of
15 the family violence, trafficking of persons, or offense; or

16 (4) a statement of a mental health professional, a
17 member of the clergy, an attorney or other legal advocate, a trained
18 staff member of a family violence center, or another professional
19 who has assisted the applicant in addressing the effects of the
20 family violence, trafficking of persons, or offense.

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

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

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

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

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

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

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

20 (i) the judgment in the case contains an
21 affirmative finding under Article 42.015; or

22 (ii) the order in the hearing or the papers
23 in the case contain an affirmative finding that the victim or
24 intended victim was younger than 17 years of age;

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

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

4 (H) a violation of the laws of another state,
5 federal law, the laws of a foreign country, or the Uniform Code of
6 Military Justice for or based on the violation of an offense
7 containing elements that are substantially similar to the elements
8 of an offense listed under Paragraph (A), (B), (C), (D), (E), (G),
9 (J), or (K), but not if the violation results in a deferred
10 adjudication;

11 (I) the second violation of the laws of another
12 state, federal law, the laws of a foreign country, or the Uniform
13 Code of Military Justice for or based on the violation of an offense
14 containing elements that are substantially similar to the elements
15 of the offense of indecent exposure, but not if the second violation
16 results in a deferred adjudication;

17 (J) a violation of Section 33.021 (Online
18 solicitation of a minor), Penal Code; ~~[or]~~

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

21 (L) a violation of Section
22 43.02(a)(2) (Prostitution), Penal Code, if the offense was
23 punishable under Section 43.02(c)(3) or (4) of that code; or

24 (M) a violation of Section
25 43.05(a)(2) (Compelling prostitution), Penal Code.

26 SECTION 14. Section 508.145(d)(1), Government Code, is
27 amended to read as follows:

1 (1) An inmate serving a sentence for an offense
2 described by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H),
3 (I), (J), [~~or~~] (K), (L), or (M), Article 42.12, Code of Criminal
4 Procedure, [~~or for~~] an offense for which the judgment contains an
5 affirmative finding under Section 3g(a)(2) of that article, or
6 [~~for~~] an offense under Section 20A.03, Penal Code, is not eligible
7 for release on parole until the inmate's actual calendar time
8 served, without consideration of good conduct time, equals one-half
9 of the sentence or 30 calendar years, whichever is less, but in no
10 event is the inmate eligible for release on parole in less than two
11 calendar years.

12 SECTION 15. Section 43.02(c), Penal Code, is amended to
13 read as follows:

14 (c) An offense under this section is a Class B misdemeanor,
15 except that the offense is:

16 (1) a Class A misdemeanor if the actor has previously
17 been convicted one or two times of an offense under this section;

18 (2) a state jail felony if the actor has previously
19 been convicted three or more times of an offense under this section;

20 or

21 (3) [~~a felony of the third degree if the person~~
22 ~~solicited is 14 years of age or older and younger than 18 years of~~
23 ~~age, or~~

24 [~~(4)~~] a felony of the second degree if the person
25 solicited is younger than 18 [~~14~~] years of age, regardless of
26 whether the actor knows the age of the person solicited at the time
27 the actor commits the offense.

1 SECTION 16. Section 43.03(b), Penal Code, is amended to
2 read as follows:

3 (b) An offense under this section is a Class A misdemeanor,
4 except that the offense is a felony of the second degree if the
5 actor:

6 (1) solicits a person younger than 18 years of age to
7 engage in prostitution with another; or

8 (2) receives money or other property pursuant to an
9 agreement to participate in the proceeds of prostitution services
10 rendered by a person younger than 18 years of age.

11 SECTION 17. Section 43.04(b), Penal Code, is amended to
12 read as follows:

13 (b) An offense under this section is a felony of the third
14 degree, except that the offense is a felony of the first degree if
15 the prostitution enterprise uses as a prostitute one or more
16 persons younger than 18 years of age.

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

21 (c) An offense under this section is a felony of the second
22 degree, except that the offense is a felony of the first degree if
23 the child is younger than 14 years of age at the time the offense is
24 committed.

25 [~~(1) a state jail felony if it is shown on the trial of~~
26 ~~the offense that the defendant has been previously convicted one~~
27 ~~time of an offense under this section; and~~

1 ~~[(2) a felony of the third degree if it is shown on the~~
2 ~~trial of the offense that the defendant has been previously~~
3 ~~convicted two or more times of an offense under this section.]~~

4 SECTION 19. Section 43.23(h), Penal Code, is amended to
5 read as follows:

6 (h) The punishment for an offense under Subsection (a) or
7 ~~[is increased to the punishment for a felony of the third degree and~~
8 ~~the punishment for an offense under Subsection]~~ (c) is increased to
9 the punishment for a ~~[state jail]~~ felony of the second degree if it
10 is shown on the trial of the offense that obscene material that is
11 the subject of the offense visually depicts activities described by
12 Section 43.21(a)(1)(B) engaged in by:

13 (1) a child younger than 18 years of age at the time
14 the image of the child was made;

15 (2) an image that to a reasonable person would be
16 virtually indistinguishable from the image of a child younger than
17 18 years of age; or

18 (3) an image created, adapted, or modified to be the
19 image of an identifiable child.

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

24 (a) A person commits an offense if, with the intent to
25 establish, maintain, or participate in a combination or in the
26 profits of a combination or as a member of a criminal street gang,
27 the person commits or conspires to commit one or more of the

1 following:

2 (1) murder, capital murder, arson, aggravated
3 robbery, robbery, burglary, theft, aggravated kidnapping,
4 kidnapping, aggravated assault, aggravated sexual assault, sexual
5 assault, continuous sexual abuse of young child or children,
6 solicitation of a minor, forgery, deadly conduct, assault
7 punishable as a Class A misdemeanor, burglary of a motor vehicle, or
8 unauthorized use of a motor vehicle;

9 (2) any gambling offense punishable as a Class A
10 misdemeanor;

11 (3) promotion of prostitution, aggravated promotion
12 of prostitution, or compelling prostitution;

13 (4) unlawful manufacture, transportation, repair, or
14 sale of firearms or prohibited weapons;

15 (5) unlawful manufacture, delivery, dispensation, or
16 distribution of a controlled substance or dangerous drug, or
17 unlawful possession of a controlled substance or dangerous drug
18 through forgery, fraud, misrepresentation, or deception;

19 (5-a) causing the unlawful delivery, dispensation, or
20 distribution of a controlled substance or dangerous drug in
21 violation of Subtitle B, Title 3, Occupations Code;

22 (6) any unlawful wholesale promotion or possession of
23 any obscene material or obscene device with the intent to wholesale
24 promote the same;

25 (7) any offense under Subchapter B, Chapter 43,
26 depicting or involving conduct by or directed toward a child
27 younger than 18 years of age;

- 1 (8) any felony offense under Chapter 32;
- 2 (9) any offense under Chapter 36;
- 3 (10) any offense under Chapter 34, 35, or 35A;
- 4 (11) any offense under Section 37.11(a);
- 5 (12) any offense under Chapter 20A;
- 6 (13) any offense under Section 37.10;
- 7 (14) any offense under Section 38.06, 38.07, 38.09, or
- 8 38.11;
- 9 (15) any offense under Section 42.10;
- 10 (16) any offense under Section 46.06(a)(1) or 46.14;
- 11 [~~or~~]
- 12 (17) any offense under Section 20.05; or
- 13 (18) [~~(17)~~] any offense classified as a felony under
- 14 the Tax Code.

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

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

24 (b) The changes in law made by this Act apply only to an
25 offense committed on or after the effective date of this Act. An
26 offense committed before the effective date of this Act is governed
27 by the law in effect on the date the offense was committed, and the

1 former law is continued in effect for that purpose. For purposes of
2 this subsection, an offense was committed before the effective date
3 of this Act if any element of the offense occurred before that date.

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