

1-1 By: Thompson of Harris, et al. H.B. No. 8
 1-2 (Senate Sponsor - Van de Putte)
 1-3 (In the Senate - Received from the House April 18, 2013;
 1-4 April 24, 2013, read first time and referred to Committee on
 1-5 Criminal Justice; May 17, 2013, reported adversely, with favorable
 1-6 Committee Substitute by the following vote: Yeas 7, Nays 0;
 1-7 May 17, 2013, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 COMMITTEE SUBSTITUTE FOR H.B. No. 8 By: Schwertner

1-18 A BILL TO BE ENTITLED
 1-19 AN ACT

1-20 relating to the prosecution and punishment of offenses related to
 1-21 trafficking of persons and to certain protections for victims of
 1-22 trafficking of persons.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The heading to Chapter 7A, Code of Criminal
 1-25 Procedure, is amended to read as follows:

1-26 CHAPTER 7A. PROTECTIVE ORDER FOR [~~CERTAIN~~] VICTIMS OF [~~TRAFFICKING~~
 1-27 ~~OR~~] SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING

1-28 SECTION 2. Article 7A.01(a), Code of Criminal Procedure, as
 1-29 amended by Chapters 1 (S.B. 24) and 135 (S.B. 250), Acts of the 82nd
 1-30 Legislature, Regular Session, 2011, is reenacted and amended to
 1-31 read as follows:

1-32 (a) The following persons may file an application for a
 1-33 protective order under this chapter without regard to the
 1-34 relationship between the applicant and the alleged offender:

1-35 (1) a person who is the victim of an offense under
 1-36 Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code;

1-37 (2) a person who is the victim of an offense under
 1-38 Section 20A.02 [~~20A.02(a)(3), (4), (7), or (8)] or [~~Section~~] 43.05,
 1-39 Penal Code;~~

1-40 (3) a parent or guardian acting on behalf of a person
 1-41 younger than 17 [~~18~~] years of age who is the victim of an offense
 1-42 listed in Subdivision (1);

1-43 (4) a parent or guardian acting on behalf of a person
 1-44 younger than 18 years of age who is the victim of an offense listed
 1-45 in Subdivision [~~or~~] (2); or

1-46 (5) [~~(4)~~] a prosecuting attorney acting on behalf of a
 1-47 person described by Subdivision (1) or (2).

1-48 SECTION 3. Article 7A.02, Code of Criminal Procedure, is
 1-49 amended to read as follows:

1-50 Art. 7A.02. TEMPORARY EX PARTE ORDER. If the court finds
 1-51 from the information contained in an application for a protective
 1-52 order that there is a clear and present danger of sexual assault or
 1-53 abuse, stalking, trafficking, or other harm to the applicant, the
 1-54 court, without further notice to the alleged offender and without a
 1-55 hearing, may enter a temporary ex parte order for the protection of
 1-56 the applicant or any other member of the applicant's family or
 1-57 household.

1-58 SECTION 4. Article 7A.03, Code of Criminal Procedure, as
 1-59 amended by Chapters 135 (S.B. 250) and 238 (H.B. 649), Acts of the
 1-60 82nd Legislature, Regular Session, 2011, is reenacted and amended

2-1 to read as follows:

2-2 Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE
 2-3 ORDER. (a) At the close of a hearing on an application for a
 2-4 protective order under this chapter, the court shall find whether
 2-5 there are reasonable grounds to believe that the applicant is the
 2-6 victim of sexual assault or abuse, [~~+~~or] stalking, or trafficking.

2-7 (b) If the court makes a finding described by Subsection (a)
 2-8 [~~(a)(1) or (2)~~], the court shall issue a protective order that
 2-9 includes a statement of the required findings.

2-10 SECTION 5. Article 7A.07(b), Code of Criminal Procedure, is
 2-11 amended to read as follows:

2-12 (b) The following persons may file at any time an
 2-13 application with the court to rescind the protective order:

2-14 (1) a victim of an offense listed in Article
 2-15 7A.01(a)(1) [A victim] who is 17 years of age or older or a parent or
 2-16 guardian acting on behalf of a victim who is younger than 17 years
 2-17 of age; or

2-18 (2) a victim of an offense listed in Article
 2-19 7A.01(a)(2) or a parent or guardian acting on behalf of a victim who
 2-20 is younger than 18 years of age [may file at any time an application
 2-21 with the court to rescind the protective order].

2-22 SECTION 6. Section 4(d), Article 42.12, Code of Criminal
 2-23 Procedure, is amended to read as follows:

2-24 (d) A defendant is not eligible for community supervision
 2-25 under this section if the defendant:

2-26 (1) is sentenced to a term of imprisonment that
 2-27 exceeds 10 years;

2-28 (2) is convicted of a state jail felony for which
 2-29 suspension of the imposition of the sentence occurs automatically
 2-30 under Section 15(a);

2-31 (3) does not file a sworn motion under Subsection (e)
 2-32 of this section or for whom the jury does not enter in the verdict a
 2-33 finding that the information contained in the motion is true;

2-34 (4) is convicted of an offense for which punishment is
 2-35 increased under Section 481.134(c), (d), (e), or (f), Health and
 2-36 Safety Code, if it is shown that the defendant has been previously
 2-37 convicted of an offense for which punishment was increased under
 2-38 any one of those subsections;

2-39 (5) is convicted of an offense listed in Section
 2-40 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger
 2-41 than 14 years of age at the time the offense was committed;

2-42 (6) is convicted of an offense listed in Section
 2-43 3g(a)(1)(D), if the victim of the offense was younger than 14 years
 2-44 of age at the time the offense was committed and the actor committed
 2-45 the offense with the intent to violate or abuse the victim sexually;

2-46 (7) is convicted of an offense listed in Section
 2-47 3g(a)(1)(J), (L), or (M); or

2-48 (8) is adjudged guilty of an offense under Section
 2-49 19.02, Penal Code.

2-50 SECTION 7. Chapter 48, Code of Criminal Procedure, is
 2-51 amended by adding Article 48.06 to read as follows:

2-52 Art. 48.06. EDUCATIONAL MATERIALS CONCERNING PARDONS FOR
 2-53 CERTAIN VICTIMS OF TRAFFICKING OF PERSONS. (a) The Board of
 2-54 Pardons and Paroles shall develop educational materials
 2-55 specifically for persons convicted of or placed on deferred
 2-56 adjudication community supervision for an offense the person
 2-57 committed solely as a victim of trafficking of persons under
 2-58 Section 20A.02, Penal Code. The board shall include in the
 2-59 educational materials a detailed description of the process by
 2-60 which the person may submit a request to the board for a written
 2-61 signed recommendation advising the governor to grant the person a
 2-62 pardon.

2-63 (b) The Board of Pardons and Paroles shall post educational
 2-64 materials described by Subsection (a) on the board's Internet
 2-65 website.

2-66 SECTION 8. Article 56.32(a), Code of Criminal Procedure, is
 2-67 amended by adding Subdivision (14) to read as follows:

2-68 (14) "Trafficking of persons" means any offense that
 2-69 results in a person engaging in forced labor or services and that

3-1 may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04,
3-2 43.05, 43.25, 43.251, or 43.26, Penal Code.

3-3 SECTION 9. Article 56.42(d), Code of Criminal Procedure, is
3-4 amended to read as follows:

3-5 (d) A victim who is a victim of family violence, a victim of
3-6 trafficking of persons, or a victim of sexual assault who is
3-7 assaulted in the victim's place of residence may receive a
3-8 onetime-only assistance payment in an amount not to exceed:

3-9 (1) \$2,000 to be used for relocation expenses,
3-10 including expenses for rental deposit, utility connections,
3-11 expenses relating to the moving of belongings, motor vehicle
3-12 mileage expenses, and for out-of-state moves, transportation,
3-13 lodging, and meals; and

3-14 (2) \$1,800 to be used for housing rental expenses.

3-15 SECTION 10. Article 56.81, Code of Criminal Procedure, is
3-16 amended by adding Subdivision (7) to read as follows:

3-17 (7) "Trafficking of persons" means any offense that
3-18 may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.04,
3-19 43.05, 43.25, 43.251, or 43.26, Penal Code, and that results in a
3-20 person:

3-21 (A) engaging in forced labor or services; or

3-22 (B) otherwise becoming a victim of the offense.

3-23 SECTION 11. Article 56.82(a), Code of Criminal Procedure,
3-24 is amended to read as follows:

3-25 (a) The attorney general shall establish an address
3-26 confidentiality program, as provided by this subchapter, to assist
3-27 a victim of family violence, trafficking of persons, or an offense
3-28 under Section 22.011, 22.021, 25.02, or 42.072, Penal Code, in
3-29 maintaining a confidential address.

3-30 SECTION 12. Articles 56.83(a), (b), and (e), Code of
3-31 Criminal Procedure, are amended to read as follows:

3-32 (a) To be eligible to participate in the program, an
3-33 applicant must:

3-34 (1) meet with a victim's assistance counselor from a
3-35 state or local agency or other entity, whether for-profit or
3-36 nonprofit that is identified by the attorney general as an entity
3-37 that provides counseling and shelter services to victims of family
3-38 violence, trafficking of persons, or an offense under Section
3-39 22.011, 22.021, 25.02, or 42.072, Penal Code;

3-40 (2) file an application for participation with the
3-41 attorney general or a state or local agency or other entity
3-42 identified by the attorney general under Subdivision (1);

3-43 (3) designate the attorney general as agent to receive
3-44 service of process and mail on behalf of the applicant; and

3-45 (4) live at a residential address, or relocate to a
3-46 residential address, that is unknown to the person who committed or
3-47 is alleged to have committed the family violence, trafficking of
3-48 persons, or an offense under Section 22.011, 22.021, 25.02, or
3-49 42.072, Penal Code.

3-50 (b) An application under Subsection (a)(2) must contain:

3-51 (1) a signed, sworn statement by the applicant stating
3-52 that the applicant fears for the safety of the applicant, the
3-53 applicant's child, or another person in the applicant's household
3-54 because of a threat of immediate or future harm caused by the person
3-55 who committed or is alleged to have committed the family violence,
3-56 the trafficking of persons, or an offense under Section 22.011,
3-57 22.021, 25.02, or 42.072, Penal Code;

3-58 (2) the applicant's true residential address and, if
3-59 applicable, the applicant's business and school addresses; and

3-60 (3) a statement by the applicant of whether there is an
3-61 existing court order or a pending court case for child support or
3-62 child custody or visitation that involves the applicant and, if so,
3-63 the name and address of:

3-64 (A) the legal counsel of record; and

3-65 (B) each parent involved in the court order or
3-66 pending case.

3-67 (e) The attorney general by rule may establish additional
3-68 eligibility requirements for participation in the program that are
3-69 consistent with the purpose of the program as stated in Article

4-1 56.82(a). The attorney general may establish procedures for
 4-2 requiring an applicant, in appropriate circumstances, to submit
 4-3 with the application under Subsection (a)(2) independent
 4-4 documentary evidence of family violence, trafficking of persons, or
 4-5 an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal
 4-6 Code, in the form of:

4-7 (1) an active or recently issued protective order;

4-8 (2) an incident report or other record maintained by a
 4-9 law enforcement agency or official;

4-10 (3) a statement of a physician or other health care
 4-11 provider regarding the applicant's medical condition as a result of
 4-12 the family violence, trafficking of persons, or offense; or

4-13 (4) a statement of a mental health professional, a
 4-14 member of the clergy, an attorney or other legal advocate, a trained
 4-15 staff member of a family violence center, or another professional
 4-16 who has assisted the applicant in addressing the effects of the
 4-17 family violence, trafficking of persons, or offense.

4-18 SECTION 13. Section 508.145(d)(1), Government Code, is
 4-19 amended to read as follows:

4-20 (1) An inmate serving a sentence for an offense
 4-21 described by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H),
 4-22 (I), (J), ~~or~~ (K), (L), or (M), Article 42.12, Code of Criminal
 4-23 Procedure, ~~or for~~ an offense for which the judgment contains an
 4-24 affirmative finding under Section 3g(a)(2) of that article, or
 4-25 ~~for~~ an offense under Section 20A.03, Penal Code, is not eligible
 4-26 for release on parole until the inmate's actual calendar time
 4-27 served, without consideration of good conduct time, equals one-half
 4-28 of the sentence or 30 calendar years, whichever is less, but in no
 4-29 event is the inmate eligible for release on parole in less than two
 4-30 calendar years.

4-31 SECTION 14. The heading to Section 38.112, Penal Code, is
 4-32 amended to read as follows:

4-33 Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS
 4-34 OF SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING.

4-35 SECTION 15. Section 43.02, Penal Code, is amended by
 4-36 amending Subsections (a), (b), and (c) and adding Subsection (e) to
 4-37 read as follows:

4-38 (a) A person commits an offense if the person ~~he~~
 4-39 knowingly:

4-40 (1) offers to engage, agrees to engage, or engages in
 4-41 sexual conduct for a fee; or

4-42 (2) solicits another in a public place to engage with
 4-43 the person ~~him~~ in sexual conduct for hire.

4-44 (b) An offense is established under Subsection (a)(1)
 4-45 whether the actor is to receive or pay a fee. An offense is
 4-46 established under Subsection (a)(2) whether the actor solicits a
 4-47 person to hire the actor ~~him~~ or offers to hire the person
 4-48 solicited.

4-49 (c) An offense under this section is a Class B misdemeanor,
 4-50 except that the offense is:

4-51 (1) a Class A misdemeanor if the actor has previously
 4-52 been convicted one or two times of an offense under this section;

4-53 (2) a state jail felony if the actor has previously
 4-54 been convicted three or more times of an offense under this section;
 4-55 or

4-56 (3) ~~[a felony of the third degree if the person~~
 4-57 ~~solicited is 14 years of age or older and younger than 18 years of~~
 4-58 ~~age, or~~

4-59 ~~[(4)]~~ a felony of the second degree if the person
 4-60 solicited is younger than 18 ~~14~~ years of age, regardless of
 4-61 whether the actor knows the age of the person solicited at the time
 4-62 the actor commits the offense.

4-63 (e) A conviction may be used for purposes of enhancement
 4-64 under this section or enhancement under Subchapter D, Chapter 12,
 4-65 but not under both this section and Subchapter D, Chapter 12. For
 4-66 purposes of enhancement of penalties under this section or
 4-67 Subchapter D, Chapter 12, a defendant is previously convicted of an
 4-68 offense under this section if the defendant was adjudged guilty of
 4-69 the offense or entered a plea of guilty or nolo contendere in return

5-1 for a grant of deferred adjudication, regardless of whether the
 5-2 sentence for the offense was ever imposed or whether the sentence
 5-3 was probated and the defendant was subsequently discharged from
 5-4 community supervision.

5-5 SECTION 16. Section 43.03(b), Penal Code, is amended to
 5-6 read as follows:

5-7 (b) An offense under this section is a Class A misdemeanor,
 5-8 except that the offense is:

5-9 (1) a state jail felony if the actor has been
 5-10 previously convicted of an offense under this section; or

5-11 (2) a felony of the second degree if the actor engages
 5-12 in conduct described by Subsection (a)(1) or (2) involving a person
 5-13 younger than 18 years of age engaging in prostitution, regardless
 5-14 of whether the actor knows the age of the person at the time the
 5-15 actor commits the offense.

5-16 SECTION 17. Section 43.04(b), Penal Code, is amended to
 5-17 read as follows:

5-18 (b) An offense under this section is a felony of the third
 5-19 degree, except that the offense is a felony of the first degree if
 5-20 the prostitution enterprise uses as a prostitute one or more
 5-21 persons younger than 18 years of age, regardless of whether the
 5-22 actor knows the age of the person at the time the actor commits the
 5-23 offense.

5-24 SECTION 18. Section 43.251(c), Penal Code, as amended by
 5-25 Chapters 515 (H.B. 2014) and 938 (H.B. 290), Acts of the 82nd
 5-26 Legislature, Regular Session, 2011, is reenacted and amended to
 5-27 read as follows:

5-28 (c) An offense under this section is a felony of the second
 5-29 degree, except that the offense is a felony of the first degree if
 5-30 the child is younger than 14 years of age at the time the offense is
 5-31 committed.

5-32 ~~[(1) a state jail felony if it is shown on the trial of~~
 5-33 ~~the offense that the defendant has been previously convicted one~~
 5-34 ~~time of an offense under this section; and~~

5-35 ~~[(2) a felony of the third degree if it is shown on the~~
 5-36 ~~trial of the offense that the defendant has been previously~~
 5-37 ~~convicted two or more times of an offense under this section.]~~

5-38 SECTION 19. Section 43.23(h), Penal Code, is amended to
 5-39 read as follows:

5-40 (h) The punishment for an offense under Subsection (a) or
 5-41 ~~[is increased to the punishment for a felony of the third degree and~~
 5-42 ~~the punishment for an offense under Subsection] (c) is increased to~~
 5-43 the punishment for a [state jail] felony of the second degree if it
 5-44 is shown on the trial of the offense that obscene material that is
 5-45 the subject of the offense visually depicts activities described by
 5-46 Section 43.21(a)(1)(B) engaged in by:

5-47 (1) a child younger than 18 years of age at the time
 5-48 the image of the child was made;

5-49 (2) an image that to a reasonable person would be
 5-50 virtually indistinguishable from the image of a child younger than
 5-51 18 years of age; or

5-52 (3) an image created, adapted, or modified to be the
 5-53 image of an identifiable child.

5-54 SECTION 20. Section 71.02(a), Penal Code, as amended by
 5-55 Chapters 68 (S.B. 934) and 223 (H.B. 260), Acts of the 82nd
 5-56 Legislature, Regular Session, 2011, is reenacted and amended to
 5-57 read as follows:

5-58 (a) A person commits an offense if, with the intent to
 5-59 establish, maintain, or participate in a combination or in the
 5-60 profits of a combination or as a member of a criminal street gang,
 5-61 the person commits or conspires to commit one or more of the
 5-62 following:

5-63 (1) murder, capital murder, arson, aggravated
 5-64 robbery, robbery, burglary, theft, aggravated kidnapping,
 5-65 kidnapping, aggravated assault, aggravated sexual assault, sexual
 5-66 assault, continuous sexual abuse of young child or children,
 5-67 solicitation of a minor, forgery, deadly conduct, assault
 5-68 punishable as a Class A misdemeanor, burglary of a motor vehicle, or
 5-69 unauthorized use of a motor vehicle;

- 6-1 (2) any gambling offense punishable as a Class A
- 6-2 misdemeanor;
- 6-3 (3) promotion of prostitution, aggravated promotion
- 6-4 of prostitution, or compelling prostitution;
- 6-5 (4) unlawful manufacture, transportation, repair, or
- 6-6 sale of firearms or prohibited weapons;
- 6-7 (5) unlawful manufacture, delivery, dispensation, or
- 6-8 distribution of a controlled substance or dangerous drug, or
- 6-9 unlawful possession of a controlled substance or dangerous drug
- 6-10 through forgery, fraud, misrepresentation, or deception;
- 6-11 (5-a) causing the unlawful delivery, dispensation, or
- 6-12 distribution of a controlled substance or dangerous drug in
- 6-13 violation of Subtitle B, Title 3, Occupations Code;
- 6-14 (6) any unlawful wholesale promotion or possession of
- 6-15 any obscene material or obscene device with the intent to wholesale
- 6-16 promote the same;
- 6-17 (7) any offense under Subchapter B, Chapter 43,
- 6-18 depicting or involving conduct by or directed toward a child
- 6-19 younger than 18 years of age;
- 6-20 (8) any felony offense under Chapter 32;
- 6-21 (9) any offense under Chapter 36;
- 6-22 (10) any offense under Chapter 34, 35, or 35A;
- 6-23 (11) any offense under Section 37.11(a);
- 6-24 (12) any offense under Chapter 20A;
- 6-25 (13) any offense under Section 37.10;
- 6-26 (14) any offense under Section 38.06, 38.07, 38.09, or
- 6-27 38.11;
- 6-28 (15) any offense under Section 42.10;
- 6-29 (16) any offense under Section 46.06(a)(1) or 46.14;
- 6-30 [~~or~~]
- 6-31 (17) any offense under Section 20.05; or
- 6-32 (18) [~~(17)~~] any offense classified as a felony under
- 6-33 the Tax Code.

6-34 SECTION 21. Chapter 7B, Code of Criminal Procedure, is

6-35 repealed.
6-36 SECTION 22. (a) The changes in law made by this Act in
6-37 amending Chapter 7A, Code of Criminal Procedure, and repealing
6-38 Chapter 7B, Code of Criminal Procedure, apply only to a protective
6-39 order issued on or after the effective date of this Act. A
6-40 protective order issued before the effective date of this Act is
6-41 governed by the law in effect on the date the order is issued, and
6-42 the former law is continued in effect for that purpose.

6-43 (b) The changes in law made by this Act apply only to an
6-44 offense committed on or after the effective date of this Act. An
6-45 offense committed before the effective date of this Act is governed
6-46 by the law in effect on the date the offense was committed, and the
6-47 former law is continued in effect for that purpose. For purposes of
6-48 this subsection, an offense was committed before the effective date
6-49 of this Act if any element of the offense occurred before that date.

6-50 SECTION 23. The Board of Pardons and Paroles not later than
6-51 October 1, 2013, shall post on its Internet website the educational
6-52 materials described by Article 48.06(a), Code of Criminal
6-53 Procedure, as added by this Act.

6-54 SECTION 24. This Act takes effect September 1, 2013.

6-55 * * * * *