

BILL ANALYSIS

Senate Research Center

H.B. 1808
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised that some actors who have solicited a prostitute who is a minor have been able to use the defense that they were not aware of the prostitute's age at the time of the solicitation. H.B. 1808 seeks to prevent this line of defense by establishing that an actor who engages in the conduct constituting certain trafficking and sexual offenses commits the applicable offense regardless of whether the actor knows the age of the victim at the time of the offense.

H.B. 1808 addresses the definition of consent in relation to offenses of sexual assault and aggravated sexual assault. H.B. 1808 defines consent for purposes of both offenses and establishes that a certain state of mind of the actor is not a defense to prosecution.

H.B. 1808 amends the sexual assault statute to include assaults accomplished by coercion or threat of harm to the victim. Current law reflects antiquated stereotypes of a "stranger in the bushes" by requiring proof that a sexual assault defendant used or threatened to use physical force or violence. Sexual assault is always a violent act, whether accomplished by physical force or threats of other serious harm. Interested parties note that current law requires the inclusion of coercion and threat of harm in the statutory definition of "without consent" at Section 22.011, Penal Code.

H.B. 1808 also amends Chapter 21, Penal Code, by creating the offense of sexual coercion. A violation occurs when a person intentionally coerces a victim to engage in sexual conduct or to produce intimate visual material, or provide a valuable benefit, by means of threatening to commit an act of violence or a sexual offense such as human trafficking, sexual abuse of a child, or other sexually related offenses if the victim does not comply. Violators of this law would be subject to a state jail felony. If a person has been previously convicted of a sexual offense, then they are subject to a third degree felony.

H.B. 1808 amends current law relating to the prosecution and punishment of certain trafficking and sexual offenses and creates a criminal offense.

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 Section 20A.02(b), Penal Code, to change a reference to the time the actor commits the offense to the time of the offense.

SECTION 2. Amends Section 21.02(b), Penal Code, to provide that a person commits an offense if, at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense, rather than the victim is a child younger than 14 years of age.

SECTION 3. Amends Section 21.11(a), Penal Code, to provide that a person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex and regardless of whether the person knows the age of the child at the time of the offense, the person engages in a certain act with a certain intent.

SECTION 4. (a) Provides that this section takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes becomes law.

(b) Amends Section 21.16(g), Penal Code, as added by Chapter 852 (S.B. 1135), Acts of the 84th Legislature, Regular Session, 2015, to provide that an offense under this section (Voyeurism) is a state jail felony, rather than Class A misdemeanor.

(c) Amends Chapter 21, Penal Code, by adding Section 21.18, as follows:

Sec. 21.18. SEXUAL COERCION. (a) Defines "intimate visual material" and "sexual conduct."

(b) Provides that a person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit a certain offense to obtain, in return for not committing the threatened offense or in connection with the threatened offense, any of the following benefits:

(1) intimate visual material;

(2) an act involving sexual conduct causing arousal or gratification; or

(3) a monetary benefit or other benefit of value.

(c) Provides that a person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit a certain offense to obtain, in return for not committing the threatened offense or in connection with the threatened offense, either intimate visual material or an act involving sexual conduct causing arousal or gratification.

(d) Provides that this section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.

(e) Provides that an offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

SECTION 5. (a) Provides that this section takes effect only if the Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Amends Section 21.16(g), Penal Code, as added by Chapter 852 (S.B. 1135), Acts of the 84th Legislature, Regular Session, 2015, to provide that an offense under this section is a state jail felony, rather than a Class A misdemeanor.

(c) Amends Chapter 21, Penal Code, by adding Section 21.18, as follows:

Sec. 21.18. SEXUAL COERCION. (a) Defines "intimate visual material" and "sexual conduct."

(b) Provides that a person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit a certain offense to obtain, in return for not committing the threatened offense or in connection with the threatened offense, any of the following benefits:

(1) intimate visual material;

(2) an act involving sexual conduct causing arousal or gratification; or

(3) a monetary benefit or other benefit of value.

(c) Provides that a person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit a certain offense to obtain, in return for not committing the threatened offense or in connection with the threatened offense, either intimate visual material or an act involving sexual conduct causing arousal or gratification.

(d) Provides that this section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.

(e) Provides that an offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

SECTION 6. Amends Section 22.011(a), Penal Code, as follows:

(a) Provides that a person commits an offense if the person commits certain acts or, regardless of whether the person knows the age of the child at the time of the offense, the person intentionally or knowingly commits certain acts. Makes nonsubstantive changes.

SECTION 7. Amends Section 22.011, Penal Code, by amending Subsection (b) and adding Subsection (e-1), as follows:

(b) Provides that a sexual assault under Subsection (a)(1) (relating to the intentional or knowing commission of a sexual assault) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious, physically unable to resist, incapable of appraising the nature of the act, or unaware that the sexual assault is occurring;

(4) makes no changes to this subdivision;

(5) through (8) redesignates existing text under Subdivisions (7) and (9) through (11) as Subdivisions (5) through (8); or

(9) the actor knows that the other person has withdrawn consent to the act and the actor persists in the act after consent is withdrawn.

Makes nonsubstantive changes. Deletes existing text providing that a sexual assault under Subsection (a)(1) is without the consent of the other person if the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring, the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge, and the actor is a public servant who coerces the other person to submit or participate.

(e-1) Provides that it is not a defense to prosecution under this section that the actor mistakenly believed that the other person consented to the conduct if a reasonable person should have known or understood that the other person did not consent to the conduct.

SECTION 8. Amends Section 22.021(a), as follows:

(a) Provides that a person commits an offense, among other means:

(1) if the person, regardless of whether the person knows the age of the child at the time of the offense, intentionally or knowingly causes certain actions; and

(2) if:

(A) the person with the intent of facilitating the commission of the offense, administers or provides to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act, rather than administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine with the intent of facilitating the commission of the offense; or

(B) the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense; or

(C) makes no changes to this paragraph.

SECTION 9. Amends Section 22.021, Penal Code, by adding Subsection (d-1), to provide that it is not a defense to prosecution under this section (Aggravated Sexual Assault) that the actor mistakenly believed that the other person consented to the conduct if a reasonable person should have known or understood that the other person did not consent to the conduct.

SECTION 10. Amends Section 43.02, Penal Code, as amended by Chapters 332 (H.B. 10) and 1273 (S.B. 825), Acts of the 84th Legislature, Regular Session, 2015, by reenacting Subsection (c) and reenacting and amending Subsection (c-1), to change a reference to the time the actor commits the offense to the time of the offense.

SECTION 11. Amends Section 43.03(b), Penal Code, to change a reference to the time the actor commits the offense to the time of the offense.

SECTION 12. Amends Section 43.04(b), Penal Code, to change a reference to the time the actor commits the offense to the time of the offense.

SECTION 13. Amends Section 43.05(a), Penal Code, to change a reference to the time the actor commits the offense to the time of the offense.

SECTION 14. Amends Section 43.25, Penal Code, by amending Subsections (c) and (e) and adding Subsection (h), as follows:

(c) Provides that an offense under Subsection (b) (relating to the commission of an offense by the sexual performance on a child if a person, knowing the character and content, employs, authorizes, or induces a child to engage in certain conduct) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is

younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

(e) Provides that an offense under Subsection (d) (relating to the commission of an offense by the sexual performance on a child if a person, knowing the character and content of the material, produces, directs, or promotes a certain performance) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

(h) Provides that conduct under this section constitutes an offense regardless of whether the actor knows the age of the victim at the time of the offense.

SECTION 15. Amends Section 43.251, Penal Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that an offense under this section (Employment Harmful to Children) is a felony of the second degree, except that the offense is a felony of the first degree if the victim, rather than child, is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

(d) Provides that conduct under this section constitutes an offense regardless of whether the actor knows the age of the victim at the time of the offense.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Effective date: September 1, 2017.