

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 1808  
By: Meyer et al. (Garcia)  
Criminal Justice  
5/18/2017  
Committee Report (Substituted)

### **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. (Original Author's / Sponsor's Statement of Intent)

C.S.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 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 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 Sections 22.011(a) and (b), 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.

(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) through (11) makes no changes to these subdivisions.

SECTION 7. 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 knowing 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. Makes application of this Act prospective.

SECTION 15. Effective date: September 1, 2017.