

BILL ANALYSIS

C.S.H.B. 15
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Reports indicate that recent legislative efforts to combat human trafficking in Texas have proved useful in helping to curtail these acts. However, it has been suggested that more progress could be made to help fully protect those who are susceptible to exploitation, such as enhancing penalties for traffickers, improving victim protections, providing remedies for commercial property tenants, and expanding certain occupational licensing and regulatory functions. C.S.H.B. 15 seeks to eliminate human trafficking by providing increased penalties for offenders, creating certain criminal offenses, and imposing stronger protections for victims.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Licensing and Regulation in SECTION 6.03 of this bill and to the Texas Commission of Licensing and Regulation in SECTIONS 6.06, 6.11, and 6.13 of this bill.

ANALYSIS

Online Promotion of Prostitution; Penalties for Prostitution

C.S.H.B. 15 amends the Penal Code to create the third degree felony offense of online promotion of prostitution for a person who owns, manages, or operates an interactive computer service, as defined by the bill, with the intent to promote the prostitution of another person or facilitate another person to engage in prostitution. The bill enhances the penalty for the offense to a second degree felony if the actor:

- has been previously convicted of the offense or an aggravated online promotion of prostitution offense; or
- engages in such conduct involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of the offense.

C.S.H.B. 15 creates the second degree felony offense of aggravated online promotion of prostitution for a person who owns, manages, or operates an interactive computer service with the intent to promote the prostitution of five or more persons or facilitate five or more persons to engage in prostitution. The bill enhances the penalty for the offense to a first degree felony if the actor:

- has been previously convicted of the offense; or

- engages in such conduct involving two or more persons younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the persons at the time of the offense.

C.S.H.B. 15 expands the conduct that constitutes an offense of trafficking of persons to include knowingly trafficking another person and, through force, fraud, or coercion, causing the trafficked person to engage in conduct constituting the offense of online promotion of prostitution or aggravated online promotion of prostitution and knowingly trafficking a child and by any means causing the trafficked child to engage in, or become the victim of, conduct constituting those offenses.

C.S.H.B. 15 increases the penalty for prostitution, with respect to a person who knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another, from a Class B misdemeanor to a Class A misdemeanor. The bill accordingly removes the provision that enhanced the former Class B misdemeanor to a Class A misdemeanor based on the number of previous convictions. The bill changes, for that prostitution offense, the state jail felony enhancement that is based on the number of previous convictions as follows:

- to remove the specification that such enhancement occurs if the actor has previously been convicted three or more times of the offense; and
- to specify that such enhancement occurs instead if the actor has previously been convicted of such an offense, regardless of the number of convictions.

C.S.H.B. 15 amends the Code of Criminal Procedure to include aggravated online promotion of prostitution among the offenses for which a judge of competent jurisdiction may issue an interception order if a prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of the offense.

C.S.H.B. 15 includes online promotion of prostitution and aggravated online promotion of prostitution among the offenses considered to constitute an offense of trafficking of persons for purposes of the Crime Victims' Compensation Act and for purposes of the address confidentiality program for victims of family violence, sexual assault or abuse, stalking, or trafficking of persons.

C.S.H.B. 15 requires a judge, on an applicable defendant's conviction of certain prostitution offenses and except as specified by the bill, to suspend imposition of the sentence and place the applicable defendant on community supervision. The bill makes these provisions applicable to the following defendants:

- a defendant convicted of a Class B misdemeanor prostitution offense in which the person knowingly offers or agrees to receive a fee from another to engage in sexual conduct; and
- a defendant convicted of a state jail felony prostitution offense in which the person has previously been convicted three or more times of knowingly offering or agreeing to receive a fee from another to engage in sexual conduct and that is punished by confinement in a state jail for any term of not more than two years or less than 180 days.

C.S.H.B. 15, with respect to those applicable convictions and the community supervision:

- requires the judge to require as a condition of such community supervision that the applicable defendant participate in a commercially sexually exploited persons court program, if such a program has been established for the county or municipality where the defendant resides;
- makes inapplicable, with respect to such participation, the statutory requirement that the attorney representing the state consent to the defendant's participation in such a program;
- makes inapplicable, with respect to such participation, the statutory requirement that the court allow a defendant to choose whether to participate in the program or otherwise

proceed through the criminal justice system;

- requires the judge, in any case in which the jury assesses punishment, to follow the recommendations of the jury in suspending the imposition of a sentence or ordering a sentence to be executed and, if the jury does not recommend community supervision, to order the sentence to be executed in whole; and
- authorizes the judge to suspend in whole or in part the imposition of any fine imposed on conviction and authorizes a judge who requires participation in a program to suspend in whole or in part the imposition of the program fee required of participants.

C.S.H.B. 15 amends the Government Code to include the offense of online promotion of prostitution, the offense of aggravated promotion of prostitution, and the offense of aggravated online promotion of prostitution as offenses for which the bureau of identification and records within the administrative division of the Department of Public Safety (DPS) must collect certain information useful in studying crime and the administration of justice.

C.S.H.B. 15 makes an inmate ineligible for consideration for release to intensive supervision parole, with respect to Texas Department of Criminal Justice (TDCJ) population management, if the inmate is awaiting transfer to the institutional division of TDCJ for or is serving a sentence for the offense of aggravated online promotion of prostitution.

C.S.H.B. 15 amends the Health and Safety Code to include the offense of online promotion of prostitution and the offense of aggravated online promotion of prostitution among the offenses the previous conviction of which makes a defendant ineligible to participate in a first offender prostitution prevention program established by a county or municipality.

C.S.H.B. 15 amends the Civil Practice and Remedies Code to make a defendant liable to a victim of compelled prostitution for damages arising from the compelled prostitution if the defendant intentionally or knowingly engages in online promotion of prostitution or aggravated online promotion of prostitution that results in compelling prostitution with respect to the victim.

Trafficking of Persons and Continuous Trafficking of Persons

C.S.H.B. 15 amends the Penal Code to include the offense of continuous trafficking of persons among the offenses for which the imposition of a sentence for a conviction arising out of the same criminal episode may run concurrently or consecutively.

C.S.H.B. 15 repeals a Government Code provision that provides for the expiration of the Human Trafficking Prevention Task Force on September 1, 2019.

Orders of Nondisclosure for Certain Victims of Trafficking of Persons or Compelled Prostitution

C.S.H.B. 15 amends the Government Code to revise provisions regarding the procedures whereby certain victims of trafficking or compelled prostitution placed on community supervision for certain marihuana offenses, certain theft offenses, prostitution, or Class A misdemeanor promotion of prostitution, with respect to whom the conviction is subsequently set aside, may petition an applicable court for an order of nondisclosure of criminal history record information on the grounds that the person committed the offense solely as a victim of an offense of trafficking of persons. The bill removes from the applicability of the revised provisions a person placed on community supervision for the Class A misdemeanor promotion of prostitution and makes the provisions applicable instead to a person petitioning on those grounds who:

- is convicted of or placed on deferred adjudication community supervision for those marihuana offenses, for those theft offenses, or for prostitution; and
- provided assistance, on a law enforcement agency's or prosecuting attorney's request, in

the investigation or prosecution of a trafficking of persons offense, continuous trafficking of persons offense, compelling prostitution offense, or a federal offense containing substantially similar elements or did not provide assistance due to the person's age or a physical or mental disability resulting from being a victim of those offenses.

C.S.H.B. 15, in revising the grounds on which a petition for such a nondisclosure order must be based:

- removes the specification that the only basis is that the person committed the offense solely as a victim of an offense of trafficking of persons; and
- specifies that the basis instead is that the person committed the offense solely as a victim of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution.

C.S.H.B. 15, in revising the petition requirements for such a nondisclosure order, requires a petition to the applicable court, instead of only asserting that the person seeking the order has not previously received such an order:

- to be in writing; and
- to allege specific facts that, if proved, would establish that the petitioner committed the applicable offense solely as a victim of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution.

C.S.H.B. 15, in revising the authorization for a person to petition the applicable court for such a nondisclosure order only after the person's conviction is set aside, authorizes the person instead to petition the court only on or after the first anniversary of the date the person either:

- completed the sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed; or
- received a dismissal and discharge, if the person was placed on deferred adjudication community supervision.

C.S.H.B. 15 requires the clerk of the court, on the filing of a petition for such a nondisclosure order, to promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state and requires any response to the petition by the attorney to be filed not later than the 20th business day after the date of service.

C.S.H.B. 15 authorizes a person who has been convicted of or placed on deferred adjudication community supervision for more than one applicable offense that the person committed solely as a victim of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution to request consolidation of the person's petitions for an order of nondisclosure in a district court in the county of the person's most recent conviction or placement on deferred adjudication community supervision. The bill, with respect to such consolidation:

- requires the court, on receipt of such a request for consolidation of petitions, to consolidate the petitions and exercise jurisdiction over the petitions, regardless of the county in which the applicable offenses occurred;
- requires the court to promptly serve a copy of the consolidated petitions on the appropriate office of each attorney representing the state;
- requires any response to the consolidated petition by the attorney to be filed not later than the 20th business day after the date of service; and
- authorizes an attorney representing the state from a county other than the county in which the consolidating court resides, if such a consolidation occurs with respect to petitions relating to offenses committed in more than one county, to appear telephonically or through a video conference call at any hearing considered necessary by the court.

C.S.H.B. 15 requires the Office of Court Administration of the Texas Judicial System, in consultation with the office of the attorney general, to develop and make available, not later than December 1, 2019, an online form for use by a person in filing a petition for an order of nondisclosure of criminal history record information applicable to certain victims of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution. The bill requires a commercially sexually exploited persons court program to provide each program participant with information related to such an order of nondisclosure.

C.S.H.B. 15 amends the Code of Criminal Procedure to entitle a victim of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution to the right to be informed that the victim may petition for an order of nondisclosure of criminal history record information if the victim:

- has been convicted of or placed on deferred adjudication community supervision for certain marihuana offenses, certain theft offenses, or prostitution; and
- committed that offense solely as a victim of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution.

Admissibility of Evidence

C.S.H.B. 15 amends the Code of Criminal Procedure to revise the applicability of statutory provisions governing the admissibility of evidence of extraneous offenses or acts in a proceeding in the prosecution of a defendant for certain Penal Code offenses by making those statutory provisions applicable to all of the following offenses, regardless of the age of the victim:

- trafficking of persons;
- sexual offenses;
- sexual assault;
- aggravated sexual assault;
- prohibited sexual conduct; and
- compelling prostitution.

The bill makes additional revisions with regard to certain other offenses to which these admissibility provisions apply.

C.S.H.B. 15 makes inadmissible, with certain exceptions, in the prosecution of certain Penal Code offenses as specified by the bill, or an attempt to commit such a specified offense, reputation or opinion evidence of a victim's past sexual behavior or evidence regarding specific instances of the victim's past sexual behavior. The bill requires the defendant, before referring to evidence that the court has determined to be inadmissible, to request and obtain the court's permission outside of the jury's presence.

C.S.H.B. 15 sets out a provision describing the evidence of a specific instance of a victim's past sexual behavior that is admissible under certain specified conditions. The bill, with respect to such evidence, requires:

- the defendant, before such described evidence is introduced, to notify the court outside of the jury's presence;
- the court to conduct an in camera hearing to determine whether the evidence is admissible;
- the court reporter to record the hearing; and
- the court to preserve that record under seal as part of the record in the case.

C.S.H.B. 15 expressly disapproves Rule 412, Texas Rules of Evidence, under the terms of the Government Code provisions authorizing such disapproval by the legislature.

Regulation of Massage Establishments, Massage Schools, and Massage Therapists

C.S.H.B. 15 amends the Occupations Code to remove the provision authorizing the reinstatement of eligibility of a person for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor after the fifth anniversary of the date of the person's conviction of a violation of statutory provisions relating to massage therapy.

C.S.H.B. 15 replaces the requirement for the Texas Department of Licensing and Regulation (TDLR) to conduct a criminal background check on an applicant for a license relating to massage therapy with provisions establishing a criminal history record information requirement for both license issuance and renewal, applicable to an application for the issuance or renewal of a license submitted on or after January 1, 2020. Those provisions:

- require TDLR to require an applicant for such a license to submit a complete and legible set of fingerprints, on a form prescribed by TDLR, to TDLR or to DPS for the purpose of obtaining criminal history record information from DPS and the FBI;
- prohibit TDLR from issuing a license to a person who does not comply with that requirement;
- require TDLR to conduct a criminal history record information check of each license applicant using certain information provided by the individual and available to TDLR by DPS, the FBI, and any other criminal justice agency;
- authorize TDLR to enter into an agreement with DPS to administer such a criminal history record information check and to authorize DPS to collect from each applicant the costs incurred by DPS in conducting the check; and
- require an applicant renewing such a license to submit, as required by TDLR rule, a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as required by the bill.

C.S.H.B. 15, effective January 1, 2020:

- requires TDLR to require a student enrolled in a massage school in Texas on or after January 1, 2020, to hold a permit stating the name of the student and school and requires the permit to be displayed in a reasonable manner at the school;
- requires TDLR to issue a student permit to an applicant who submits an application to TDLR for a student permit accompanied by any required fee; and
- requires an applicant for the permit to submit an enrollment application to TDLR in a form and manner prescribed by TDLR and to satisfy other requirements specified by TDLR.

C.S.H.B. 15 repeals the provision exempting a student who provides massage therapy as part of an internship program or without compensation from massage therapy licensing requirements.

C.S.H.B. 15, effective January 1, 2020:

- requires a massage school to maintain a monthly progress report regarding each student attending the school that certifies the daily attendance record of each student and the number of credit hours earned by each student during the previous month; and
- requires the school, on a student's completion of a prescribed course of instruction, to notify TDLR that the student has completed the required number of hours and is eligible

to take the appropriate examination.

C.S.H.B. 15 requires each massage establishment and massage school to display in the form and manner prescribed by the Texas Commission of Licensing and Regulation (TCLR) a sign concerning services and assistance available to victims of human trafficking that includes a toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking. The bill requires TCLR by rule to establish requirements regarding the posting of the signs. The bill requires each such establishment and school to comply with the signage requirement not later than January 1, 2020.

C.S.H.B. 15 replaces the requirement for TCLR or the executive director of TDLR to suspend, revoke, or refuse to renew the license of a person or reprimand the person on certain grounds for license denial or disciplinary action with an authorization for TCLR or the executive director to do so and includes among those grounds an attempt to obtain a license by fraud, misrepresentation, or concealment of material facts.

C.S.H.B. 15 replaces the requirement that TCLR or the executive director of TDLR revoke the license of a person licensed as a massage school or massage establishment if TCLR or the executive director determines that certain offenses involving prostitution or another sexual offense occurred on the premises of the school or establishment with an authorization for TCLR or the executive director to do so.

C.S.H.B. 15 increases from a Class B misdemeanor to a state jail felony the penalty for an offense in which an owner or operator of a massage establishment violates certain requirements relating to massage therapy, increases to a third degree felony the penalty enhancement for such an offense in which the actor has previously been convicted of the offense one or two times, and increases to a second degree felony the penalty enhancement for such an offense in which the actor has previously been convicted of the offense three or more times.

C.S.H.B. 15 amends the Penal Code to expand the conduct constituting the offense for engaging in organized criminal activity to include committing or conspiring to commit a massage therapy violation 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. 15 requires TCLR to adopt rules with respect to the bill's provisions regarding massage school student permits and eligibility for such permits not later than November 1, 2019. The bill requires TCLR to adopt rules necessary to implement the bill's provisions relating to massage therapy not later than January 1, 2020.

Unlawful Activities on Certain Property

C.S.H.B. 15 amends the Property Code to establish that a tenant's right of possession terminates and the landlord has a right to recover possession of the leased premises if the tenant is using the premises or allowing the premises to be used for the purposes of operating, maintaining, or advertising a massage establishment that is not in compliance with Occupations Code provisions governing massage therapy or an applicable local ordinance relating to the licensing or regulation of a massage establishment.

C.S.H.B. 15 establishes that a landlord of a multiunit commercial property is in breach of lease with a tenant if:

- the tenant reasonably believes that another tenant in the same multiunit commercial property is engaging in unlawful activity consisting of certain prostitution or trafficking of persons offenses or the operation, maintenance, or advertisement of a massage establishment that is not in compliance with Occupations Code provisions governing massage therapy or an applicable local ordinance;

- the complaining tenant gives the landlord written notice of the offending tenant's engagement in such unlawful activity; and
- the landlord does not file a forcible detainer suit against the offending tenant before the 30th day after the date the notice is given.

C.S.H.B. 15 authorizes a complaining tenant, if the landlord is in such a breach of the tenant's lease, to terminate the tenant's rights and obligations under the lease, vacate the leased premises, and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the premises before the end of the lease term.

Repealed Provisions

C.S.H.B. 15 repeals the following provisions:

- Section 402.035(h), Government Code, as amended by Chapter 762 (S.B. 2039), Acts of the 85th Legislature, Regular Session, 2017, and repealed by Chapter 685 (H.B. 29), Acts of the 85th Legislature, Regular Session, 2017
- Section 20A.02(a-1), Penal Code
- Section 455.158, Occupations Code

EFFECTIVE DATE

Except as otherwise provided, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 15 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision repealing a Government Code provision that sets the expiration of the Human Trafficking Prevention Task Force on September 1, 2019.

The substitute includes a provision increasing the penalty for violations of certain statutory provisions relating to massage therapy.

The substitute includes a provision expanding the conduct constituting the offense for engaging in organized criminal activity to include committing or conspiring to commit a massage therapy violation.