

## **BILL ANALYSIS**

C.S.H.B. 1357  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There are concerns that state law does not adequately address failures to report sexual offenses committed against a child and that, as a result, children who are the victims of these offenses can be subject to further abuse. C.S.H.B. 1357 seeks to address these concerns by expanding the conduct that constitutes a failure to report certain sexual offenses committed against a child and by increasing penalties for such conduct.

### **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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1357 amends the Penal Code to replace the Class A misdemeanor offense of failure to stop or report aggravated sexual assault of a child, which involves observing the commission or attempted commission of continuous sexual abuse or aggravated sexual assault of a child younger than 14 years of age and failing to assist the child or report the commission of the offense, with the state jail felony offense of failure to report certain sexual offenses committed against a child. The bill makes it an offense for a person 18 years of age or older who knows that another person has committed any of the following offenses involving certain conduct and fails to immediately report the commission of the offense to a law enforcement agency or to the Department of Family and Protective Services (DFPS):

- trafficking of persons;
- continuous trafficking of persons;
- continuous sexual abuse of a young child or children;
- indecency with a child;
- sexual assault of a child;
- aggravated sexual assault of a child;
- compelling prostitution; or
- sexual performance by a child.

C.S.H.B. 1357 enhances the penalty for failure to report certain sexual offenses committed

against a child to a third degree felony if it is shown at the trial of the offense that the actor also engaged in conduct intended to hinder the investigation or prosecution of the sexual offense against a child and sets out specified examples of that conduct. The bill enhances the penalty to a second degree felony if the actor engaged in that conduct, the person who committed the sexual offense against a child commits a subsequent sexual offense against a child, and the actor's failure to report the sexual offense against a child enabled or facilitated the person's commission of the subsequent offense. The bill establishes that an actor is presumed to have known that another person has committed a sexual offense against a child if the child tells the actor that the other person has engaged in conduct that constitutes an applicable offense or if the actor engaged in conduct intended to hinder the investigation or prosecution of the offense.

C.S.H.B. 1357 establishes as a defense to prosecution for failure to report certain sexual offenses committed against a child that the actor complied with a duty to report the sexual offense against a child to a law enforcement agency or to DFPS as required by other law. The bill establishes as an affirmative defense to prosecution for such failure to report that the actor promptly reported the sexual offense against a child to an applicable professional required to report the abuse or neglect of a child or to a family violence center. The bill exempts from the application of the offense of failure to report certain sexual offenses committed against a child an actor who was a victim of any offense committed by the person who the actor knows has committed the sexual offense against a child. If the conduct that constitutes an offense of failure to report certain sexual offense committed against a child under the bill's provisions also constitutes an offense under another law, the actor may be prosecuted under the bill's provisions, the other law, or both the bill's provisions and the other law.

#### **EFFECTIVE DATE**

September 1, 2019.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1357 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 the following offenses among the offenses involving sexual conduct committed against a child for which failure to report constitutes an offense under the bill's provisions:

- trafficking of persons;
- continuous trafficking of persons;
- compelling prostitution; and
- sexual performance by a child.

The substitute, with regard to the conduct that constitutes the offense of failure to report certain sexual offenses committed against a child:

- specifies that the age of an actor whose conduct constitutes the offense is 18 years of age or older;
- does not include a person's having reason to believe that another person has committed a sexual offense against a child among the conduct that constitutes the offense; and
- does not include, for purposes of the enhancement of the offense to a felony of the third degree, that the actor engaged in conduct intended to hinder the investigation or prosecution of the sexual offense against a child by providing misleading information.

The substitute includes provisions:

- establishing the circumstances under which an actor is presumed to have known that another person committed a sexual offense against a child;
- establishing an affirmative defense to prosecution for the offense; and
- exempting from the application of the offense an actor who was a victim of any offense committed by the person who the actor knows has committed the sexual offense against a child.