

## **BILL ANALYSIS**

C.S.S.B. 20  
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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 improving victim protections. C.S.S.B. 20 seeks to eliminate human trafficking by 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 attorney general in SECTION 2.03 of this bill.

### **ANALYSIS**

#### **Online Promotion of Prostitution; Community Supervision for Certain Prostitution Offenses**

C.S.S.B. 20 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 or information content provider, as those terms are defined by the bill, or operates as an information content provider, 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.S.B. 20 creates the second degree felony offense of aggravated online promotion of prostitution for a person who owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, 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.S.B. 20 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.S.B. 20 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 the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of the offense.

C.S.S.B. 20 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.S.B. 20 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.S.B. 20, 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.S.B. 20 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.S.B. 20 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.S.B. 20 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.S.B. 20 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.S.B. 20 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.S.B. 20 amends the Government Code to authorize the attorney general to enter into a contract with a public, private, or independent institution of higher education for the institution's assistance in the collection and analysis of information received for purposes of the human trafficking prevention task force and authorizes the attorney general to adopt rules to administer the submission and collection of that information. The bill repeals a provision that provides for the task force's expiration on September 1, 2019.

### **Orders of Nondisclosure for Certain Victims of Trafficking of Persons or Compelling Prostitution**

C.S.S.B. 20 amends the Government Code to revise provisions regarding the procedures whereby certain victims of trafficking or compelling 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.

C.S.S.B. 20, 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.S.B. 20, in revising the petition requirements for such a nondisclosure order, requires a petition to the applicable court to be in writing and to do the following:

- 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; and
- assert that, if the person has previously submitted a petition for such an order of nondisclosure, the person has not committed an offense to which such an order is applicable on or after the date on which the person's first petition was submitted.

C.S.S.B. 20, 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 applicable 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.S.B. 20 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.S.B. 20 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 file a petition for such an order of nondisclosure with respect to each offense, and to request consolidation of those petitions, in a district court in the county where the person was most recently convicted or placed 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 clerk of the court, for each offense that is the subject of a consolidation petition and that occurred in a county other than the county in which the court consolidating the petitions is located and in addition to the clerk's duties to promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state, to promptly serve a copy of the consolidated petition and any supporting document related to the applicable offense on the appropriate office of each attorney representing the state on behalf of the other county;
- authorizes each attorney representing the state who receives a copy of the consolidated petition to file a response to the petition 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; and
- requires a district court that consolidates such petitions to allow an attorney representing the state who receives a petition involving an offense that was committed outside the county in which the court is located to appear at any hearing regarding the consolidated petition by telephone or video conference call.

C.S.S.B. 20 revises the provision requiring the applicable court to issue an order of nondisclosure after making certain determinations by clarifying that such a court is the court

having jurisdiction over the petition and by including among those required determinations a determination by the court that, if applicable, the person did not commit another applicable offense on or after the date on which the person's first petition for an order of nondisclosure was submitted. The bill authorizes the court to consider any order of nondisclosure previously granted to a person in determining whether the person committed an applicable offense solely as a victim of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution.

C.S.S.B. 20 requires a commercially sexually exploited persons court program to provide each program participant with information related to the right to petition for such an order of nondisclosure.

C.S.S.B. 20 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 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.

### **Repealed Provisions**

C.S.S.B. 20 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

### **EFFECTIVE DATE**

September 1, 2019.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 20 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute does not include provisions increasing from a Class B misdemeanor to a Class A misdemeanor 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. The substitute does not include provisions removing and revising certain penalty enhancements for that offense based on the number of previous convictions.

The substitute includes provisions authorizing the attorney general to:

- contract with institutions of higher education for the institution's assistance in the collection and analysis of information received for purposes of the human trafficking prevention task force; and
- adopt rules to administer the submission and collection of that information.

The substitute revises the conduct of the bill's offenses of online promotion of prostitution and

aggravated online promotion of prostitution by including in the conduct owning, managing, or operating an information content provider or operating as such a provider with the requisite intent. The substitute includes definitions for "information content provider" and "access software provider."

The substitute does not include a provision making the eligibility of certain victims of trafficking or compelling prostitution convicted of or placed on deferred adjudication community supervision for certain offenses to 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 trafficking of persons or compelling prostitution contingent on the person having provided assistance, if requested by the applicable law enforcement agency or prosecuting attorney, in the investigation or prosecution of certain trafficking or compelling prostitution offenses unless the person did not provide such assistance due to the person's age or a physical or mental disability resulting from being a victim of the trafficking or compelling prostitution offense.

The substitute does not include provisions relating to the admissibility of evidence in the prosecution of certain Penal Code offenses or provisions relating to the regulation of massage establishments, massage schools, and massage therapists.

The substitute revises the effective date provision as a conforming change.