By:  Huffman, et al. S.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to the prevention of, prosecution of, penalties for, and other consequences of prostitution, trafficking of persons, and related criminal offenses and to orders of nondisclosure for persons who committed certain of those offenses; regulating occupations to prevent and respond to those criminal offenses, including requiring a student occupational permit for those purposes; authorizing fees; increasing criminal penalties; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TRAFFICKING OF PERSONS AND CONTINUOUS TRAFFICKING OF PERSONS

SECTION 1.01.  Section 20A.01, Penal Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a)  "Coercion" as defined by Section 1.07 includes destroying, concealing, confiscating, or withholding from a person, or threatening to destroy, conceal, confiscate, or withhold from a person, the person's actual or purported:

(A)  government records; or

(B)  identifying information or documents.

SECTION 1.02.  Section 3.03(b), Penal Code, is amended to read as follows:

(b)  If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1)  an offense:

(A)  under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B)  for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(2)  an offense:

(A)  under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B)  for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;

(3)  an offense:

(A)  under Section 21.15 or 43.26, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B)  for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(4)  an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure;

(5)  an offense:

(A)  under Section 20A.02, 20A.03, or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section [~~both sections~~]; or

(B)  for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section [~~both sections~~]; or

(6)  an offense:

(A)  under Section 22.04(a)(1) or (2) or Section 22.04(a-1)(1) or (2) that is punishable as a felony of the first degree, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B)  for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) and punishable as described by that paragraph, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section.

SECTION 1.03.  The following provisions are repealed:

(1)  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; and

(2)  Section 20A.02(a-1), Penal Code.

SECTION 1.04.  The change in law made by this article applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

ARTICLE 2. PENALTIES FOR PROSTITUTION

SECTION 2.01.  Subchapter K, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.515 to read as follows:

Art. 42A.515.  COMMUNITY SUPERVISION FOR CERTAIN PROSTITUTION OFFENSES. (a)  Except as provided by Subsection (e), on a defendant's conviction of a Class B misdemeanor under Section 43.02(a), Penal Code, the judge shall suspend imposition of the sentence and place the defendant on community supervision.

(b)  Except as provided by Subsection (e), on a defendant's conviction of a state jail felony under Section 43.02(c)(2), Penal Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision. This subsection does not apply to a defendant who has previously been convicted of any other state jail felony under Section 43.02(c)(2), Penal Code, that is punished under Section 12.35, Penal Code.

(c)  A judge who places a defendant on community supervision under Subsection (a) or (b) shall require as a condition of community supervision that the defendant participate in a commercially sexually exploited persons court program established under Chapter 126, Government Code, if a program has been established for the county or municipality where the defendant resides. Sections 126.002(b) and (c), Government Code, do not apply with respect to a defendant required to participate in the court program under this subsection.

(d)  A judge who requires a defendant to participate in a commercially sexually exploited persons court program under Subsection (c) may suspend in whole or in part the imposition of the program fee described by Section 126.006, Government Code.

(e)  In any case in which the jury assesses punishment, the judge must follow the recommendations of the jury in suspending the imposition of a sentence or ordering a sentence to be executed.  If a jury assessing punishment does not recommend community supervision, the judge must order the sentence to be executed in whole.

(f)  The judge may suspend in whole or in part the imposition of any fine imposed on conviction.

SECTION 2.02.  Article 42A.551(d), Code of Criminal Procedure, is amended to read as follows:

(d)  On conviction of a state jail felony punished under Section 12.35(a), Penal Code, other than a state jail felony listed in Subsection (a) or to which Article 42A.515 applies, subject to Subsection (e), the judge may:

(1)  suspend the imposition of the sentence and place the defendant on community supervision; or

(2)  order the sentence to be executed:

(A)  in whole; or

(B)  in part, with a period of community supervision to begin immediately on release of the defendant from confinement.

SECTION 2.03.  Article 62.001(5), Code of Criminal Procedure, is amended to read as follows:

(5)  "Reportable conviction or adjudication" means a conviction or adjudication, including an adjudication of delinquent conduct or a deferred adjudication, that, regardless of the pendency of an appeal, is a conviction for or an adjudication for or based on:

(A)  a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.09 (Bestiality), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;

(B)  a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

(B-1)  a violation of Section 43.02 (Prostitution), Penal Code, if the offense is punishable under Subsection (c-1)(2) [~~(c-1)(3)~~] of that section;

(C)  a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

(D)  a violation of Section 30.02 (Burglary), Penal Code, if the offense or conduct is punishable under Subsection (d) of that section and the actor committed the offense or engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

(E)  a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

(i)  the judgment in the case contains an affirmative finding under Article 42.015; or

(ii)  the order in the hearing or the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;

(F)  the second violation of Section 21.08 (Indecent exposure), Penal Code, but not if the second violation results in a deferred adjudication;

(G)  an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), (K), or (L);

(H)  a violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (B-1), (C), (D), (E), (G), (J), (K), or (L), but not if the violation results in a deferred adjudication;

(I)  the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication;

(J)  a violation of Section 33.021 (Online solicitation of a minor), Penal Code;

(K)  a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code; or

(L)  a violation of Section 20A.03 (Continuous trafficking of persons), Penal Code, if the offense is based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code.

SECTION 2.04.  Section 402.035(d), Government Code, is amended to read as follows:

(d)  The task force shall:

(1)  collaborate, as needed to fulfill the duties of the task force, with:

(A)  United States attorneys' offices for all of the federal districts of Texas; and

(B)  special agents or customs and border protection officers and border patrol agents of:

(i)  the Federal Bureau of Investigation;

(ii)  the United States Drug Enforcement Administration;

(iii)  the Bureau of Alcohol, Tobacco, Firearms and Explosives;

(iv)  United States Immigration and Customs Enforcement; or

(v)  the United States Department of Homeland Security;

(2)  collect, organize, and periodically publish statistical data on the nature and extent of human trafficking in this state, including data described by Subdivisions (4)(A), (B), (C), (D), and (E);

(3)  solicit cooperation and assistance from state and local governmental agencies, political subdivisions of the state, nongovernmental organizations, and other persons, as appropriate, for the purpose of collecting and organizing statistical data under Subdivision (2);

(4)  ensure that each state or local governmental agency and political subdivision of the state and each state or local law enforcement agency, district attorney, or county attorney that assists in the prevention of human trafficking collects statistical data related to human trafficking, including, as appropriate:

(A)  the number of investigations concerning, arrests and prosecutions for, and convictions of:

(i)  the offense of trafficking of persons;

(ii)  the offense of forgery or an offense under Chapter 43, Penal Code, if the offense was committed as part of a criminal episode involving the trafficking of persons; and

(iii)  an offense punishable under Section 43.02(c-1)(2) [~~43.02(c-1)(3)~~], Penal Code, regardless of whether the offense was committed as part of a criminal episode involving the trafficking of persons;

(B)  demographic information on persons who are convicted of offenses described by Paragraph (A) and persons who are the victims of those offenses;

(C)  geographic routes by which human trafficking victims are trafficked, including routes by which victims are trafficked across this state's international border, and geographic patterns in human trafficking, including the country or state of origin and the country or state of destination;

(D)  means of transportation and methods used by persons who engage in trafficking to transport their victims; and

(E)  social and economic factors that create a demand for the labor or services that victims of human trafficking are forced to provide;

(5)  work with the Texas Commission on Law Enforcement to develop and conduct training for law enforcement personnel, victim service providers, and medical service providers to identify victims of human trafficking;

(6)  work with the Texas Education Agency, the Department of Family and Protective Services, and the Health and Human Services Commission to:

(A)  develop a list of key indicators that a person is a victim of human trafficking;

(B)  develop a standardized curriculum for training doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(C)  train doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and personnel from the Department of Family and Protective Services and the Health and Human Services Commission to identify and assist victims of human trafficking;

(D)  develop and conduct training for personnel from the Department of Family and Protective Services and the Health and Human Services Commission on methods for identifying children in foster care who may be at risk of becoming victims of human trafficking; and

(E)  develop a process for referring identified human trafficking victims and individuals at risk of becoming victims to appropriate entities for services;

(7)  on the request of a judge of a county court, county court at law, or district court or a county attorney, district attorney, or criminal district attorney, assist and train the judge or the judge's staff or the attorney or the attorney's staff in the recognition and prevention of human trafficking;

(8)  examine training protocols related to human trafficking issues, as developed and implemented by federal, state, and local law enforcement agencies;

(9)  collaborate with state and local governmental agencies, political subdivisions of the state, and nongovernmental organizations to implement a media awareness campaign in communities affected by human trafficking;

(10)  develop recommendations on how to strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, curb markets and other economic avenues that facilitate human trafficking and investigate and prosecute human trafficking offenders;

(11)  examine the extent to which human trafficking is associated with the operation of sexually oriented businesses, as defined by Section 243.002, Local Government Code, and the workplace or public health concerns that are created by the association of human trafficking and the operation of sexually oriented businesses;

(12)  develop recommendations for addressing the demand for forced labor or services or sexual conduct involving victims of human trafficking, including recommendations for increased penalties for individuals who engage or attempt to engage in prostitution with victims younger than 18 years of age; and

(13)  identify and report to the governor and legislature on laws, licensure requirements, or other regulations that can be passed at the state and local level to curb trafficking using the Internet and in sexually oriented businesses.

SECTION 2.05.  Section 43.02(c-1), Penal Code, is amended to read as follows:

(c-1)  An offense under Subsection (b) is a Class A [~~B~~] misdemeanor, except that the offense is:

(1)  [~~a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (b);~~

[~~(2)~~]  a state jail felony if the actor has previously been convicted [~~three or more times~~] of an offense under Subsection (b); or

(2) [~~(3)~~]  a felony of the second degree if the person with whom the actor agrees to engage in sexual conduct is:

(A)  younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense;

(B)  represented to the actor as being younger than 18 years of age; or

(C)  believed by the actor to be younger than 18 years of age.

SECTION 2.06.  The change in law made by this article applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

ARTICLE 3. ONLINE PROMOTION OF PROSTITUTION

SECTION 3.01.  Section 43.01, Penal Code, is amended by adding Subdivisions (1-b) and (1-c) to read as follows:

(1-b)  "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access to a computer server by multiple users, including a service or system that provides access to the Internet or a system operated or service offered by a library or educational institution.

(1-c)  "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

SECTION 3.02.  Subchapter A, Chapter 43, Penal Code, is amended by adding Sections 43.031 and 43.041 to read as follows:

Sec. 43.031.  ONLINE PROMOTION OF PROSTITUTION. (a)  A person commits an offense if the person owns, manages, or operates an interactive computer service with the intent to promote the prostitution of another person or facilitate another person to engage in prostitution.

(b)  An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor:

(1)  has been previously convicted of an offense under this section or Section 43.041; or

(2)  engages in conduct described by Subsection (a) 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.

Sec. 43.041.  AGGRAVATED ONLINE PROMOTION OF PROSTITUTION. (a)  A person commits an offense if the person 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.

(b)  An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the actor:

(1)  has been previously convicted of an offense under this section; or

(2)  engages in conduct described by Subsection (a) 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.

SECTION 3.03.  Section 98A.001, Civil Practice and Remedies Code, is amended by adding Subdivisions (1-a) and (4-a) to read as follows:

(1-a)  "Aggravated online promotion of prostitution" means conduct that constitutes an offense under Section 43.041, Penal Code.

(4-a)  "Online promotion of prostitution" means conduct that constitutes an offense under Section 43.031, Penal Code.

SECTION 3.04.  Section 98A.002(a), Civil Practice and Remedies Code, is amended to read as follows:

(a)  A defendant is liable to a victim of compelled prostitution, as provided by this chapter, for damages arising from the compelled prostitution if the defendant:

(1)  engages in compelling prostitution with respect to the victim;

(2)  knowingly or intentionally engages in promotion of prostitution, online promotion of prostitution, aggravated promotion of prostitution, or aggravated online promotion of prostitution that results in compelling prostitution with respect to the victim; or

(3)  purchases an advertisement that the defendant knows or reasonably should know constitutes promotion of prostitution or aggravated promotion of prostitution, and the publication of the advertisement results in compelling prostitution with respect to the victim.

SECTION 3.05.  Article 18A.101, Code of Criminal Procedure, is amended to read as follows:

Art. 18A.101.  OFFENSES FOR WHICH INTERCEPTION ORDER MAY BE ISSUED. A judge of competent jurisdiction may issue an interception order only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of:

(1)  a felony under any of the following provisions of the Health and Safety Code:

(A)  Chapter 481, other than felony possession of marihuana;

(B)  Chapter 483; or

(C)  Section 485.032;

(2)  an offense under any of the following provisions of the Penal Code:

(A)  Section 19.02;

(B)  Section 19.03;

(C)  Section 20.03;

(D)  Section 20.04;

(E)  Chapter 20A;

(F)  Chapter 34, if the criminal activity giving rise to the proceeds involves the commission of an offense under Title 5, Penal Code, or an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense under Title 5;

(G)  Section 38.11;

(H)  Section 43.04;

(I)  Section 43.041;

(J)  Section 43.05; or

(K) [~~(J)~~]  Section 43.26; or

(3)  an attempt, conspiracy, or solicitation to commit an offense listed in Subdivision (1) or (2).

SECTION 3.06.  Article 56.32(a)(14), Code of Criminal Procedure, is amended to read as follows:

(14)  "Trafficking of persons" means any offense that results in a person engaging in forced labor or services, including sexual conduct, and that may be prosecuted under Section 20A.02, 20A.03, 43.03, 43.031, 43.04, 43.041, 43.05, 43.25, 43.251, or 43.26, Penal Code.

SECTION 3.07.  Article 56.81(7), Code of Criminal Procedure, is amended to read as follows:

(7)  "Trafficking of persons" means any conduct that constitutes an offense under Section 20A.02, 20A.03, 43.03, 43.031, 43.04, 43.041, 43.05, 43.25, 43.251, or 43.26, Penal Code, and that results in a person:

(A)  engaging in forced labor or services; or

(B)  otherwise becoming a victim of the offense.

SECTION 3.08.  Section 411.042(b), Government Code, is amended to read as follows:

(b)  The bureau of identification and records shall:

(1)  procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons arrested for or charged with a criminal offense or convicted of a criminal offense, regardless of whether the conviction is probated;

(2)  collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of:

(A)  offenses in which family violence was involved;

(B)  offenses under Sections 22.011 and 22.021, Penal Code; and

(C)  offenses under Sections 20A.02, 43.02(a), 43.02(b), 43.03, 43.031, 43.04, 43.041, and 43.05, Penal Code;

(3)  make ballistic tests of bullets and firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state;

(4)  cooperate with identification and crime records bureaus in other states and the United States Department of Justice;

(5)  maintain a list of all previous background checks for applicants for any position regulated under Chapter 1702, Occupations Code, who have undergone a criminal history background check under Section 411.119, if the check indicates a Class B misdemeanor or equivalent offense or a greater offense;

(6)  collect information concerning the number and nature of protective orders and magistrate's orders of emergency protection and all other pertinent information about all persons subject to active orders, including pertinent information about persons subject to conditions of bond imposed for the protection of the victim in any family violence, sexual assault or abuse, stalking, or trafficking case. Information in the law enforcement information system relating to an active order shall include:

(A)  the name, sex, race, date of birth, personal descriptors, address, and county of residence of the person to whom the order is directed;

(B)  any known identifying number of the person to whom the order is directed, including the person's social security number or driver's license number;

(C)  the name and county of residence of the person protected by the order;

(D)  the residence address and place of employment or business of the person protected by the order, unless that information is excluded from the order under Article 17.292(e), Code of Criminal Procedure;

(E)  the child-care facility or school where a child protected by the order normally resides or which the child normally attends, unless that information is excluded from the order under Article 17.292(e), Code of Criminal Procedure;

(F)  the relationship or former relationship between the person who is protected by the order and the person to whom the order is directed;

(G)  the conditions of bond imposed on the person to whom the order is directed, if any, for the protection of a victim in any family violence, sexual assault or abuse, stalking, or trafficking case;

(H)  any minimum distance the person subject to the order is required to maintain from the protected places or persons; and

(I)  the date the order expires;

(7)  grant access to criminal history record information in the manner authorized under Subchapter F;

(8)  collect and disseminate information regarding offenders with mental impairments in compliance with Chapter 614, Health and Safety Code; and

(9)  record data and maintain a state database for a computerized criminal history record system and computerized juvenile justice information system that serves:

(A)  as the record creation point for criminal history record information and juvenile justice information maintained by the state; and

(B)  as the control terminal for the entry of records, in accordance with federal law and regulations, federal executive orders, and federal policy, into the federal database maintained by the Federal Bureau of Investigation.

SECTION 3.09.  Section 499.027(b), Government Code, is amended to read as follows:

(b)  An inmate is not eligible under this subchapter to be considered for release to intensive supervision parole if:

(1)  the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense for which the judgment contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure;

(2)  the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense listed in one of the following sections of the Penal Code:

(A)  Section 19.02 (murder);

(B)  Section 19.03 (capital murder);

(C)  Section 19.04 (manslaughter);

(D)  Section 20.03 (kidnapping);

(E)  Section 20.04 (aggravated kidnapping);

(F)  Section 21.11 (indecency with a child);

(G)  Section 22.011 (sexual assault);

(H)  Section 22.02 (aggravated assault);

(I)  Section 22.021 (aggravated sexual assault);

(J)  Section 22.04 (injury to a child, elderly individual, or disabled individual);

(K)  Section 25.02 (prohibited sexual conduct);

(L)  Section 25.08 (sale or purchase of a child);

(M)  Section 28.02 (arson);

(N)  Section 29.02 (robbery);

(O)  Section 29.03 (aggravated robbery);

(P)  Section 30.02 (burglary), if the offense is punished as a first-degree felony under that section;

(Q)  Section 43.04 (aggravated promotion of prostitution);

(R)  Section 43.05 (compelling prostitution);

(S)  Section 43.24 (sale, distribution, or display of harmful material to minor);

(T)  Section 43.25 (sexual performance by a child);

(U)  Section 46.10 (deadly weapon in penal institution);

(V)  Section 15.01 (criminal attempt), if the offense attempted is listed in this subsection;

(W)  Section 15.02 (criminal conspiracy), if the offense that is the subject of the conspiracy is listed in this subsection;

(X)  Section 15.03 (criminal solicitation), if the offense solicited is listed in this subsection;

(Y)  Section 21.02 (continuous sexual abuse of young child or children);

(Z)  Section 20A.02 (trafficking of persons); [~~or~~]

(AA)  Section 20A.03 (continuous trafficking of persons); or

(BB)  Section 43.041 (aggravated online promotion of prostitution); or

(3)  the inmate is awaiting transfer to the institutional division, or serving a sentence, for an offense under Chapter 481, Health and Safety Code, punishable by a minimum term of imprisonment or a maximum fine that is greater than the minimum term of imprisonment or the maximum fine for a first degree felony.

SECTION 3.10.  Section 169.002(b), Health and Safety Code, is amended to read as follows:

(b)  A defendant is eligible to participate in a first offender prostitution prevention program established under this chapter only if:

(1)  the attorney representing the state consents to the defendant's participation in the program; and

(2)  the court in which the criminal case is pending finds that the defendant has not been previously convicted of:

(A)  an offense under Section 20A.02, 43.02, 43.03, 43.031, 43.04, 43.041, or 43.05, Penal Code;

(B)  an offense listed in Article 42A.054(a), Code of Criminal Procedure; or

(C)  an offense punishable as a felony under Chapter 481.

SECTION 3.11.  Section 20A.02(a), Penal Code, is amended to read as follows:

(a)  A person commits an offense if the person knowingly:

(1)  traffics another person with the intent that the trafficked person engage in forced labor or services;

(2)  receives a benefit from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;

(3)  traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:

(A)  Section 43.02 (Prostitution);

(B)  Section 43.03 (Promotion of Prostitution);

(B-1)  Section 43.031 (Online Promotion of Prostitution);

(C)  Section 43.04 (Aggravated Promotion of Prostitution);

(C-1)  Section 43.041 (Aggravated Online Promotion of Prostitution); or

(D)  Section 43.05 (Compelling Prostitution);

(4)  receives a benefit from participating in a venture that involves an activity described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);

(5)  traffics a child with the intent that the trafficked child engage in forced labor or services;

(6)  receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services;

(7)  traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:

(A)  Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(B)  Section 21.11 (Indecency with a Child);

(C)  Section 22.011 (Sexual Assault);

(D)  Section 22.021 (Aggravated Sexual Assault);

(E)  Section 43.02 (Prostitution);

(F)  Section 43.03 (Promotion of Prostitution);

(F-1)  Section 43.031 (Online Promotion of Prostitution);

(G)  Section 43.04 (Aggravated Promotion of Prostitution);

(G-1)  Section 43.041 (Aggravated Online Promotion of Prostitution);

(H)  Section 43.05 (Compelling Prostitution);

(I)  Section 43.25 (Sexual Performance by a Child);

(J)  Section 43.251 (Employment Harmful to Children); or

(K)  Section 43.26 (Possession or Promotion of Child Pornography); or

(8)  receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).

ARTICLE 4. ADMISSIBILITY OF EVIDENCE

SECTION 4.01.  Section 1, Article 38.37, Code of Criminal Procedure, is amended to read as follows:

Sec. 1.  (a)  Subsection (b) applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

(1)  Chapter 20A (Trafficking of Persons);

(2)  [~~if committed against a child under 17 years of age:~~

[~~(A)~~]  Chapter 21 (Sexual Offenses);

(3)  Section 22.01 (Assault), if committed against a person younger than 18 years of age;

(4)  Section 22.011 (Sexual Assault);

(5)  Section 22.02 (Aggravated Assault), if committed against a person younger than 18 years of age;

(6)  Section 22.021 (Aggravated Sexual Assault);

(7)  Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), if committed against a person younger than 18 years of age;

(8)  Section 22.041 (Abandoning or Endangering a Child);

(9)  Section 22.05 (Deadly Conduct), if committed against a person younger than 18 years of age;

(10)  Section 22.07 (Terroristic Threat), if committed under Subsection (a)(2) of that section against a person younger than 18 years of age;

(11) [~~(B)  Chapter 22 (Assaultive Offenses); or~~

[~~(C)~~]  Section 25.02 (Prohibited Sexual Conduct); [~~or~~]

(12) [~~(2)  if committed against a person younger than 18 years of age:~~

[~~(A)  Section 43.25 (Sexual Performance by a Child);~~

[~~(B)  Section 20A.02(a)(7) or (8); or~~

[~~(C)~~]  Section 43.05(a)(2) (Compelling Prostitution); or

(13)  Section 43.25 (Sexual Performance by a Child).

(b)  Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the [~~child who is the~~] victim of the alleged offense shall be admitted for its bearing on relevant matters, including:

(1)  the state of mind of the defendant and the victim [~~child~~]; and

(2)  the previous and subsequent relationship between the defendant and the victim [~~child~~].

SECTION 4.02.  Section 2(a), Article 38.37, Code of Criminal Procedure, is amended to read as follows:

(a)  Subsection (b) applies only to the trial of a defendant for:

(1)  an offense under any of the following provisions of the Penal Code:

(A)  Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Sex or Labor Trafficking of a Child);

(B)  Section 20A.03, if based partly or wholly on conduct that constitutes an offense under Article 20A.02(a)(5), (6), (7), or (8) (Continuous Trafficking of Persons);

(C)  Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(D) [~~(C)~~]  Section 21.11 (Indecency With a Child);

(E) [~~(D)~~]  Section 22.011(a)(2) (Sexual Assault of a Child);

(F) [~~(E)~~]  Sections 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child);

(G) [~~(F)~~]  Section 33.021 (Online Solicitation of a Minor);

(H) [~~(G)~~]  Section 43.25 (Sexual Performance by a Child); or

(I) [~~(H)~~]  Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or

(2)  an attempt or conspiracy to commit an offense described by Subdivision (1).

SECTION 4.03.  Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.51 to read as follows:

Art. 38.51.  EVIDENCE OF VICTIM'S PAST SEXUAL BEHAVIOR. (a)  This article applies to the prosecution of an offense, or an attempt to commit an offense, under the following provisions of the Penal Code:

(1)  Section 20A.02(a)(3), (4), (7), or (8) (Sex Trafficking of Persons);

(2)  Section 20A.03 (Continuous Trafficking of Persons), if based partly or wholly on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8);

(3)  Chapter 21 (Sexual Offenses);

(4)  Section 22.011 (Sexual Assault);

(5)  Section 22.021 (Aggravated Sexual Assault);

(6)  Section 25.02 (Prohibited Sexual Conduct);

(7)  Section 43.05 (Compelling Prostitution);

(8)  Section 43.24 (Sale, Distribution, or Display of Harmful Material to Minor);

(9)  Section 43.25 (Sexual Performance by a Child);

(10)  Section 43.251 (Employment Harmful to Children);

(11)  Section 43.26 (Possession or Promotion of Child Pornography); or

(12)  Section 43.262 (Possession or Promotion of Lewd Visual Material Depicting Child).

(b)  Except as provided by Subsection (c), in the prosecution of an offense described by Subsection (a), reputation or opinion evidence of a victim's past sexual behavior or evidence regarding specific instances of a victim's past sexual behavior is not admissible.

(c)  Evidence of a specific instance of a victim's past sexual behavior is admissible if:

(1)  the evidence:

(A)  is necessary to rebut or explain scientific or medical evidence offered by the attorney representing the state;

(B)  concerns past sexual behavior with the defendant and is offered by the defendant to prove consent;

(C)  relates to the victim's motive or bias;

(D)  is admissible under Rule 609, Texas Rules of Evidence; or

(E)  is constitutionally required to be admitted; and

(2)  the probative value of the evidence outweighs the danger of unfair prejudice.

(d)  Before evidence described by Subsection (c) may be introduced, the defendant must notify the court outside of the jury's presence. The court shall conduct an in camera hearing to determine whether the evidence is admissible. The court reporter shall record the hearing, and the court shall preserve that record under seal as part of the record in the case.

(e)  Before referring to evidence that the court has determined to be inadmissible, the defendant must, outside of the jury's presence, request and obtain the court's permission.

SECTION 4.04.  Under the terms of Section 22.109(b), Government Code, Rule 412, Texas Rules of Evidence, is disapproved.

SECTION 4.05.  The changes in law and rules made by this article apply to the admissibility of evidence in a criminal proceeding that commences on or after the effective date of this Act. The admissibility of evidence in a criminal proceeding that commences before the effective date of this Act is governed by the law and rules in effect on the date the proceeding commenced, and the former law and rules are continued in effect for that purpose.

ARTICLE 5. ORDERS OF NONDISCLOSURE FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS OR COMPELLING PROSTITUTION

SECTION 5.01.  Section 411.0728, Government Code, is amended to read as follows:

Sec. 411.0728.  PROCEDURE FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS OR COMPELLING PROSTITUTION. (a)  This section applies only to a person:

(1)  who is convicted of or placed on deferred adjudication community supervision [~~under Chapter 42A, Code of Criminal Procedure, after conviction~~] for an offense under:

(A)  Section 481.120, Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(B)  Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(C)  Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(1) or (2); or

(D)  Section 43.02, Penal Code; [~~or~~

[~~(E)  Section 43.03(a)(2), Penal Code, if the offense is punishable as a Class A misdemeanor;~~] and

(2)  who, if requested by the applicable law enforcement agency or prosecuting attorney to provide assistance in the investigation or prosecution of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, or a federal offense containing elements that are substantially similar to the elements of an offense under any of those sections:

(A)  provided assistance in the investigation or prosecution of the offense; or

(B)  did not provide assistance in the investigation or prosecution of the offense due to the person's age or a physical or mental disability resulting from being a victim of an offense described by this subdivision [~~with respect to whom the conviction is subsequently set aside by the court under Article 42A.701, Code of Criminal Procedure~~].

(b)  Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who satisfies the requirements of Section 411.074(b) [~~411.074~~] may petition the court that convicted the person or placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section on the grounds that the person committed the offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code [~~trafficking of persons~~].

(b-1)  A petition under Subsection (b) must:

(1)  be in writing;

(2)  allege specific facts that, if proved, would establish that the petitioner committed the offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code; and

(3)  assert that if the person has previously submitted a petition for [~~seeking~~] an order of nondisclosure under this section, the person has not committed an offense described by Subsection (a)(1) on or after the date on which the person's first petition [~~previously received an order of nondisclosure~~] under this section was submitted.

(b-2)  On the filing of the petition under Subsection (b), the clerk of the court shall promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state. Any response to the petition by the attorney representing the state must be filed not later than the 20th business day after the date of service under this subsection.

(b-3)  A person convicted of or placed on deferred adjudication community supervision for more than one offense described by Subsection (a)(1) that the person committed solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, may file a petition for an order of nondisclosure of criminal history record information under this section with respect to each offense, and may 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 as described by this subsection. On receipt of a request for consolidation, the court shall consolidate the petitions and exercise jurisdiction over the petitions, regardless of the county in which the offenses described by Subsection (a)(1) occurred. For each offense that is the subject of a consolidated petition and that occurred in a county other than the county in which the court consolidating the petitions is located, the clerk of the court, in addition to the clerk's duties under Subsection (b-2), shall promptly serve a copy of the consolidated petition and any supporting document related to the applicable offense on the appropriate office of the attorney representing the state on behalf of the other county. Each attorney representing the state who receives a copy of a consolidated petition under this subsection may file a response to the petition in accordance with Subsection (b-2).

(b-4)  A district court that consolidates petitions under Subsection (b-3) shall 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)  After notice to the state and[~~,~~] an opportunity for a hearing, [~~a determination by the court that the person has not previously received an order of nondisclosure under this section, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that issuance of the order is in the best interest of justice,~~] the court having jurisdiction over the petition shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense if the court determines that:

(1)  the person committed the offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code;

(2)  if applicable, the person did not commit another offense described by Subsection (a)(1) on or after the date on which the person's first petition for an order of nondisclosure under this section was submitted; and

(3)  issuance of the order is in the best interest of justice [~~for which the defendant was placed on community supervision as described by Subsection (a)~~].

(c-1)  In determining whether a person committed an offense described by Subsection (a)(1) solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, the court may consider any order of nondisclosure previously granted to the person under this section.

(d)  A person may petition the applicable court [~~that placed the person on community supervision~~] for an order of nondisclosure of criminal history record information under this section only on or after the first anniversary of the date the person:

(1)  completed the sentence, including any term of confinement imposed and payment of all fines, costs, and restitution imposed; or

(2)  received a dismissal and discharge under Article 42A.111, Code of Criminal Procedure, if the person was placed on deferred adjudication community supervision [~~person's conviction is set aside as described by Subsection (a)~~].

SECTION 5.02.  Article 56.021, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e)  A victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code, is entitled to be informed that the victim may petition for an order of nondisclosure of criminal history record information under Section 411.0728, Government Code, if the victim:

(1)  has been convicted of or placed on deferred adjudication community supervision for an offense described by Subsection (a)(1) of that section; and

(2)  committed that offense solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code.

SECTION 5.03.  Section 126.004, Government Code, is amended by adding Subsection (d) to read as follows:

(d)  A program established under this chapter shall provide each program participant with information related to the right to petition for an order of nondisclosure of criminal history record information under Section 411.0728.

ARTICLE 6. REGULATION OF MASSAGE ESTABLISHMENTS, MASSAGE SCHOOLS, AND MASSAGE THERAPISTS

SECTION 6.01.  Section 455.152, Occupations Code, is amended to read as follows:

Sec. 455.152.  INELIGIBILITY FOR LICENSE. [~~(a)~~]  A person is not eligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor if the person is an individual and has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for an offense under Chapter 20A, Penal Code, or Subchapter A, Chapter 43, Penal Code, or another sexual offense.

[~~(b)  A person convicted of a violation of this chapter is ineligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor until the fifth anniversary of the date of the conviction.~~]

SECTION 6.02.  Section 455.1525, Occupations Code, is amended to read as follows:

Sec. 455.1525.  CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE [~~BACKGROUND CHECKS~~]. (a)  The department shall require an applicant for a license to submit a complete and legible set of fingerprints, on a form prescribed by the department, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation [~~On receipt of an application for a license under this chapter, the department shall conduct a criminal background check on the applicant~~].

(b)  The department may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c)  The department shall conduct a criminal history record information check of each applicant for a license using information:

(1)  provided by the individual under this section; and

(2)  made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d)  The department may:

(1)  enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2)  authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

SECTION 6.03.  Subchapter D, Chapter 455, Occupations Code, is amended by adding Section 455.1605 to read as follows:

Sec. 455.1605.  CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. As required by department rule, an applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 455.1525.

SECTION 6.04.  Subchapter D, Chapter 455, Occupations Code, is amended by adding Section 455.161 to read as follows:

Sec. 455.161.  STUDENT PERMIT; ELIGIBILITY. (a)  The department shall require a student enrolled in a massage school in this state to hold a permit stating the student's name and the name of the school. The permit must be displayed in a reasonable manner at the school.

(b)  The department shall issue a student permit to an applicant who submits an application to the department for a student permit accompanied by any required fee.

(c)  An applicant for a student permit described by this section shall:

(1)  submit an enrollment application to the department in a form and manner prescribed by the department; and

(2)  satisfy other requirements specified by the department.

SECTION 6.05.  Subchapter E, Chapter 455, Occupations Code, is amended by adding Section 455.207 to read as follows:

Sec. 455.207.  POSTING OF CERTAIN NOTICES REQUIRED. (a)  Each massage establishment and massage school shall display in the form and manner prescribed by the commission a sign concerning services and assistance available to victims of human trafficking.

(b)  The sign required by this section must include a toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

(c)  The commission by rule shall establish requirements regarding the posting of signs under this section.

SECTION 6.06.  Sections 455.251(a) and (c), Occupations Code, are amended to read as follows:

(a)  The commission or executive director may refuse to issue a license to a person and may [~~shall~~] suspend, revoke, or refuse to renew the license of a person or may [~~shall~~] reprimand a person licensed under this chapter if the person:

(1)  obtains or attempts to obtain a license by fraud, misrepresentation, or concealment of material facts;

(2)  sells, barters, or offers to sell or barter a license;

(3)  violates a rule adopted by the commission under this chapter;

(4)  engages in unprofessional conduct as defined by commission rule that endangers or is likely to endanger the health, welfare, or safety of the public;

(5)  violates an order or ordinance adopted by a political subdivision under Chapter 243, Local Government Code; or

(6)  violates this chapter.

(c)  The commission or executive director:

(1)  shall revoke the license of a person licensed as a massage school or massage establishment if the commission or executive director determines that[~~:~~

[~~(1)~~]  the school or establishment is a sexually oriented business; and [~~or~~]

(2)  may revoke the license of a person licensed as a massage school or massage establishment if the commission or executive director determines that an offense involving prostitution or another sexual offense that resulted in a conviction for the offense, a plea of nolo contendere or guilty to the offense, or a grant of deferred adjudication for the offense occurred on the premises of the school or establishment.

SECTION 6.07.  Section 455.158, Occupations Code, is repealed.

SECTION 6.08.  Not later than January 1, 2020, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement the changes in law made by this article to Chapter 455, Occupations Code.

SECTION 6.09.  Section 455.1525, Occupations Code, as amended by this article, and Section 455.1605, Occupations Code, as added by this article, apply only to an application for the issuance or renewal of a license submitted on or after January 1, 2020. An application submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 6.10.  (a)  In this section, "massage school" has the meaning assigned by Section 455.001, Occupations Code.

(b)  Section 455.161, Occupations Code, as added by this article, applies to a student who is enrolled in a massage school on or after January 1, 2020.

(c)  The Texas Commission of Licensing and Regulation shall adopt rules under Section 455.161, Occupations Code, as added by this article, not later than November 1, 2019.

SECTION 6.11.  A massage establishment, as defined by Section 455.001, Occupations Code, shall comply with Section 455.207, Occupations Code, as added by this article, not later than January 1, 2020.

SECTION 6.12.  The change in law made by this article to Section 455.251, Occupations Code, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

SECTION 6.13.  (a)  Except as provided by Subsection (b) of this section, this article takes effect September 1, 2019.

(b)  Section 455.161, Occupations Code, as added by this article, takes effect January 1, 2020.

ARTICLE 7. EFFECTIVE DATE

SECTION 7.01.  Except as otherwise provided by this Act, this Act takes effect September 1, 2019.