By:  Huffman S.B. No. 1802

(In the Senate - Filed March 7, 2019; March 18, 2019, read first time and referred to Committee on State Affairs; April 9, 2019, reported favorably by the following vote: Yeas 9, Nays 0; April 9, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Huffman         X

Hughes          X

Birdwell        X

Creighton       X

Fallon          X

Hall            X

Lucio           X

Nelson          X

Zaffirini       X

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of and punishment for certain trafficking and prostitution offenses and certain other consequences of those offenses; increasing criminal penalties.

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

SECTION 1.  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 43.04 (Aggravated promotion of prostitution), 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)(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.  Section 20A.02(a-1), Penal Code, is amended to read as follows:

(a-1)  For purposes of Subsection (a)(3), "coercion" as defined by Section 1.07 includes:

(1)  destroying, concealing, confiscating, or withholding from a [~~the~~] trafficked person, or threatening to destroy, conceal, confiscate, or withhold from a [~~the~~] trafficked person, the [~~trafficked~~] person's actual or purported:

(A) [~~(1)~~]  government records; or

(B) [~~(2)~~]  identifying information or documents;

(2)  causing a trafficked person, without the person's consent, to become intoxicated, as defined by Section 49.01, to a degree that impairs the person's ability to appraise the nature of the prohibited conduct or to resist engaging in that conduct; or

(3)  withholding alcohol or a controlled substance to a degree that impairs the ability of a trafficked person with a chemical dependency, as defined by Section 462.001, Health and Safety Code, to appraise the nature of the prohibited conduct or to resist engaging in that conduct.

SECTION 3.  Section 43.03(b), Penal Code, is amended to read as follows:

(b)  An offense under this section is a felony of the third degree [~~state jail felony~~], except that the offense is:

(1)  a felony of the second [~~third~~] degree if the actor has been previously convicted of an offense under this section; or

(2)  a felony of the first [~~second~~] degree if the actor engages in conduct described by Subsection (a)(1) or (2) 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.

SECTION 4.  Section 43.04(b), Penal Code, is amended to read as follows:

(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 prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense~~].

SECTION 5.  Section 43.05, Penal Code, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

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

(1)  causes another by force, threat, coercion, or fraud to commit prostitution; or

(2)  causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense.

(b)  An offense under this section [~~Subsection (a)(1) is a felony of the second degree. An offense under Subsection (a)(2)~~] is a felony of the first degree.

(d)  For purposes of this section, "coercion" as defined by Section 1.07 includes:

(1)  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;

(2)  causing a person, without the person's consent, to become intoxicated, as defined by Section 49.01, to a degree that impairs the person's ability to appraise the nature of the person's conduct that constitutes prostitution or to resist engaging in that conduct; or

(3)  withholding alcohol or a controlled substance to a degree that impairs the ability of a person with a chemical dependency, as defined by Section 462.001, Health and Safety Code, to appraise the nature of the person's conduct that constitutes prostitution or to resist engaging in that conduct.

SECTION 6.  (a)  The change in law made by this Act to Article 62.001(5), Code of Criminal Procedure, applies only to a person who is required to register under Chapter 62, Code of Criminal Procedure, on the basis of a conviction or adjudication for or based on an offense committed on or after the effective date of this Act. A person who is required to register under Chapter 62, Code of Criminal Procedure, solely on the basis of a conviction or adjudication for or based on 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.

(b)  The changes in law made by this Act to Sections 20A.02, 43.03, 43.04, and 43.05, Penal Code, apply 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.

(c)  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.

SECTION 7.  This Act takes effect September 1, 2019.

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