87R9363 EAS/JES-D

By:  Hughes S.B. No. 1718

A BILL TO BE ENTITLED

AN ACT

relating to provisions to enable the prevention and prosecution of trafficking of persons and certain sexual offenses committed against children and to the commission of civil racketeering related to the trafficking of persons.

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

SECTION 1.  Section 140A.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 140A.002.  CIVIL RACKETEERING. A person or enterprise commits racketeering if, for financial gain, the person or enterprise commits an offense under Chapter 20A, Penal Code (trafficking of persons)[~~, and the offense or an element of the offense:~~

[~~(1)  occurs in more than one county in this state; or~~

[~~(2)  is facilitated by the use of United States mail, e-mail, telephone, facsimile, or a wireless communication from one county in this state to another~~].

SECTION 2.  Article 12.01, Code of Criminal Procedure, is amended to read as follows:

Art. 12.01.  FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1)  no limitation:

(A)  murder and manslaughter;

(B)  sexual assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code;

(C)  sexual assault, if:

(i)  during the investigation of the offense biological matter is collected and the matter:

(a)  has not yet been subjected to forensic DNA testing; or

(b)  has been subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(ii)  probable cause exists to believe that the defendant has committed the same or a similar sex offense against five or more victims;

(D)  continuous sexual abuse of young child or children under Section 21.02, Penal Code;

(E)  indecency with a child under Section 21.11, Penal Code;

(F)  an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(G)  trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code;

(H)  continuous trafficking of persons under Section 20A.03, Penal Code; or

(I)  compelling prostitution under Section 43.05(a)(2), Penal Code;

(2)  ten years from the date of the commission of the offense:

(A)  theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B)  theft by a public servant of government property over which the public servant exercises control in the public servant's official capacity;

(C)  forgery or the uttering, using or passing of forged instruments;

(D)  injury to an elderly or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code;

(E)  sexual assault, except as provided by Subdivision (1) or (8) [~~(7)~~];

(F)  arson;

(G)  trafficking of persons under Section 20A.02(a)(1), (2), (3), or (4), Penal Code; or

(H)  compelling prostitution under Section 43.05(a)(1), Penal Code;

(3)  seven years from the date of the commission of the offense:

(A)  misapplication of fiduciary property or property of a financial institution;

(B)  securing execution of document by deception;

(C)  a felony violation under Chapter 162, Tax Code;

(D)  false statement to obtain property or credit under Section 32.32, Penal Code;

(E)  money laundering;

(F)  credit card or debit card abuse under Section 32.31, Penal Code;

(G)  fraudulent use or possession of identifying information under Section 32.51, Penal Code;

(H)  exploitation of a child, elderly individual, or disabled individual under Section 32.53, Penal Code;

(I)  health care fraud under Section 35A.02, Penal Code; or

(J)  bigamy under Section 25.01, Penal Code, except as provided by Subdivision (7) [~~(6)~~];

(4)  five years from the date of the commission of the offense:

(A)  theft or robbery;

(B)  except as provided by Subdivision (5), kidnapping or burglary;

(C)  injury to an elderly or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code;

(D)  abandoning or endangering a child; or

(E)  insurance fraud;

(5)  if the investigation of the offense shows that the victim is younger than 17 years of age at the time the offense is committed, 20 years from the 18th birthday of the victim of one of the following offenses:

(A)  [~~sexual performance by a child under Section 43.25, Penal Code;~~

[~~(B)~~]  aggravated kidnapping under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(B) [~~(C)~~]  burglary under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with the intent to commit an offense described by Subdivision (1)(B) or (D) of this article or Paragraph (A) [~~(B)~~] of this subdivision;

(6)  20 years from the 18th birthday of the victim of one of the following offenses:

(A)  trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code; or

(B)  sexual performance by a child under Section 43.25, Penal Code;

(7)  ten years from the 18th birthday of the victim of the offense:

(A)  [~~trafficking of persons under Section 20A.02(a)(5) or (6), Penal Code;~~

[~~(B)~~]  injury to a child under Section 22.04, Penal Code; or

(B) [~~(C)~~]  bigamy under Section 25.01, Penal Code, if the investigation of the offense shows that the person, other than the legal spouse of the defendant, whom the defendant marries or purports to marry or with whom the defendant lives under the appearance of being married is younger than 18 years of age at the time the offense is committed;

(8) [~~(7)~~]  two years from the date the offense was discovered: sexual assault punishable as a state jail felony under Section 22.011(f)(2), Penal Code; or

(9) [~~(8)~~]  three years from the date of the commission of the offense: all other felonies.

SECTION 3.  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)(1) [~~20A.02(b)(1)~~] ([~~Sex~~] Trafficking of a Child);

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

(C)  Section 21.11 (Indecency With a Child);

(D)  Section 22.011(a)(2) (Sexual Assault of a Child);

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

(F)  Section 33.021 (Online Solicitation of a Minor);

(G)  Section 43.25 (Sexual Performance by a Child); or

(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.  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:

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

(i)  government records; or

(ii)  identifying information or documents;

(B)  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 or resist engaging in any conduct, including performing or providing labor or services; or

(C)  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 or resist engaging in any conduct, including performing or providing labor or services.

SECTION 5.  Section 20A.02, Penal Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

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

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

(2)  knowingly 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)  knowingly 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)  either:

(A)  in the course of engaging in conduct that constitutes an offense under Section 43.02(b), engages in sexual conduct with a person trafficked in the manner described by Subdivision (3), regardless of whether the actor knows that the person has been trafficked in the manner described by that subdivision; or

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

(6)  knowingly 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)  knowingly 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)  either:

(A)  in the course of engaging in conduct that constitutes an offense under Section 43.02(b), engages in sexual conduct with a child trafficked in the manner described by Subdivision (7), regardless of whether the actor knows that the child has been trafficked in the manner described by that subdivision; or

(B)  knowingly 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)~~].

(b)  Except as otherwise provided by Subsection (b-1) [~~this subsection~~], an offense under this section is a felony of the second degree and an offense under Subsection (a)(4)(A) is a state jail felony.

(b-1)  An offense under this section is a felony of the first degree if:

(1)  the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense;

(2)  the commission of the offense results in the death of the person who is trafficked; or

(3)  the commission of the offense results in the death of an unborn child of the person who is trafficked.

SECTION 6.  STUDY REGARDING REGULATION OF UNMANNED TELLER MACHINES FOR PREVENTION OF HUMAN TRAFFICKING. (a) In this section:

(1)  "Department" means the Texas Department of Banking.

(2)  "Unmanned teller machine" has the meaning assigned by Section 59.301, Finance Code.

(b)  The department shall conduct a study to assess the efficacy and feasibility of regulating unmanned teller machines for the purpose of preventing human trafficking.

(c)  In conducting the study, the department shall consider:

(1)  regulation of unmanned teller machines implemented in other states;

(2)  the resources necessary to effectively regulate unmanned teller machines; and

(3)  the efficacy, for the purpose of preventing human trafficking, of regulating unmanned teller machines in specific locations, including in:

(A)  sexually oriented businesses, as that term is defined by Section 243.002, Local Government Code;

(B)  massage parlors, as that term is defined by Section 234.101, Local Government Code; and

(C)  establishments, including bars, open to the public that primarily sell and serve alcoholic beverages for on-premises consumption.

(d)  Not later than December 1, 2022, the department shall submit a report to each member of the legislature that includes the results of the study conducted under Subsection (b) of this section and any recommendations of the department related to the study and statutory changes necessary to regulate unmanned teller machines for the purpose of preventing human trafficking.

(e)  This section expires September 1, 2023.

SECTION 7.  Section 20A.02(a-1), Penal Code, is repealed.

SECTION 8.  The change in law made by this Act to Section 140A.002, Civil Practice and Remedies Code, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 9.  Article 12.01, Code of Criminal Procedure, as amended by this Act, does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act. The prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 10.  The changes in law made by this Act to Article 38.37, Code of Criminal Procedure, and Sections 20A.01 and 20A.02, 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. 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 11.  This Act takes effect September 1, 2021.