

## **BILL ANALYSIS**

H.B. 3451  
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Homeland Security & Public Safety  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

State law requires the Texas Human Trafficking Prevention Task Force to develop legislative recommendations that will strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, curb economic markets that facilitate human trafficking, and investigate and prosecute human trafficking offenders. While the State of Texas has made significant strides in combatting human trafficking, in part thanks to the work of the task force, there is still much work to do. H.B. 3451 seeks to enact various legislative recommendations from the task force for the purpose of better protecting victims and increasing the prosecution and punishment of human traffickers.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 3451 sets out provisions relating to human trafficking, including the prosecution and punishment of compelling and solicitation of prostitution and other sexual or assaultive offenses.

#### **Human Trafficking Prevention Coordinating Council**

H.B. 3451 amends the Government Code to expand the composition of the Human Trafficking Prevention Coordinating Council to include one representative from the Texas Education Agency (TEA) and one representative from the Texas Department of Transportation (TxDOT), each appointed by the chief administrative officer of the respective agency. The bill does the following with respect to the council:

- removes the requirement for the council to jointly agree with the Human Trafficking Prevention Task Force when determining whether a representative from a state agency not otherwise represented on the council is a necessary member of the council; and
- removes the requirement for the inventory in the council's strategic plan of human trafficking prevention programs and services in Texas to include such programs and services that are administered by political subdivisions other than state agencies and requires the plan to include in that inventory programs and services administered by a private college or university that receives state funds.

## **Human Trafficking Prevention Task Force**

H.B. 3451 revises the composition of the Human Trafficking Prevention Task Force as follows:

- includes among the members a representative from TxDOT, who is appointed by TxDOT's chief administrative officer, and representatives of regional human trafficking task forces or coalitions appointed by the attorney general; and
- reduces to one the number of representatives appointed by the attorney general from each of the following entities:
  - a sheriff's department;
  - a local law enforcement agency affected by human trafficking; and
  - a nongovernmental entity making comprehensive efforts to combat human trafficking.

The bill requires the attorney general to annually evaluate the input and participation of members appointed by the attorney general and, if necessary, appoint new members who will collaborate and contribute to the task force.

H.B. 3451 revise the task force's duties as follows:

- removes the requirement for the task force to 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;
- requires the task force to examine the extent to which human trafficking is associated with the operation of massage establishments permitting any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment and the workplace or public health concerns that are created by the association of human trafficking and the operation of these massage establishments; and
- requires the task force to 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 in massage establishments.

H.B. 3451 includes TEA and TxDOT among the state agencies required to designate an individual who may coordinate the agency's resources to strengthen state and local efforts to prevent human trafficking, protect and assist human trafficking victims, and investigate and prosecute human trafficking offenders.

## **Criminal Offenses Related to Human Trafficking and Prostitution**

### Trafficking of Persons

H.B. 3451 amends the Penal Code to do the following with respect to trafficking of persons offenses:

- make provisions relating specifically to the trafficking of a child applicable also to the trafficking of a disabled individual, including with respect to criminal and civil statute of limitations;
- set the statute of limitations for the following offenses at ten years from the date the offense was discovered:
  - trafficking of a disabled individual with the intent that the trafficked individual engage in forced labor or services; and
  - receiving a benefit from participating in a venture that involves such trafficking, including by receiving labor or services the person knows are forced labor or services; and
- enhance the penalty for trafficking of persons from a second degree felony to a first degree felony if the commission of the offense results in serious bodily injury to the trafficked person or if the actor used or exhibited a deadly weapon during the commission of the offense or intentionally, knowingly, or recklessly impeded the normal

breathing or circulation of the blood of the trafficked person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

### Solicitation of Prostitution

H.B. 3451 replaces the provision enhancing the penalty for solicitation of prostitution from a state jail felony to a second degree felony if the person with whom the actors agrees to engage in sexual conduct is younger than 18, is represented to the actor as being younger than 18, or is believed to be younger than 18 with a provision enhancing the penalty to a second degree felony if the person to whom the actor offers or agrees to pay the fee for the purpose of engaging in sexual conduct is younger than 18, is represented to the actor as being younger than 18, or is believed to be younger than 18.

H.B. 3451 increases the penalty for solicitation of prostitution to the next higher category of offense if it is shown on the trial of the offense that the actor committed the offense in a location that was on the premises of or within 1,000 feet of the premises of a school or on premises or within 1,000 feet of premises where an official school function was taking place or an event sponsored or sanctioned by the University Interscholastic League was taking place.

### Compelling Prostitution

H.B. 3451 expands the conduct constituting the offense of compelling prostitution to include a person knowingly causing by any means a disabled individual to commit prostitution, regardless of whether the actor knows the individual is disabled at the time of the offense. The bill establishes a 30-year civil statute of limitations for this conduct but provides that there is no criminal statute of limitations for this conduct. The bill further establishes that the duty of a person required to register as a sex offender on the basis of committing this conduct ends only when the person dies.

### Applicability

The changes made with respect to the offenses of trafficking of persons, solicitation of prostitution, and compelling prostitution apply only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

### **Admissibility of Certain Hearsay Statements and Evidence of Extraneous Offenses or Acts**

H.B. 3451 revises the applicability of provisions establishing the admissibility of hearsay statements of certain abuse victims in the prosecution of certain felony offenses as follows:

- increases the age of the child who was the victim of one of the applicable offenses whose hearsay statements may be admitted from younger than 14 years of age to younger than 18 years of age; and
- includes the following among the list of applicable offenses:
  - compelling prostitution involving knowingly causing by any means a disabled individual to commit prostitution, regardless of whether the actor knows the individual is disabled at the time of the offense;
  - trafficking of persons involving the trafficking of a child or disabled individual with the intent that the trafficked child or disabled individual engage in forced labor or services or receiving a benefit from participating in a venture that involves such trafficking, including by receiving labor or services the person knows are forced labor or services;
  - continuous trafficking of persons, if based partly or wholly on any of the following conduct:
    - trafficking a child or disabled individual with the intent that the trafficked child or disabled individual engage in forced labor or services or

receiving a benefit from participating in a venture that involves such trafficking, including by receiving labor or services the person knows are forced labor or services;

- trafficking a child or disabled individual and by any means causing the trafficked child or disabled individual to engage in, or become the victim of, conduct that constitutes:
  - continuous sexual abuse of young child or disabled individual;
  - indecency with a child;
  - sexual assault or aggravated sexual assault;
  - prostitution or solicitation of prostitution;
  - promotion of prostitution or aggravated promotion of prostitution;
  - online promotion of prostitution or aggravated online promotion of prostitution;
  - compelling prostitution;
  - sexual performance by a child;
  - employment harmful to children; or
  - possession or promotion of child pornography; or
- receiving a benefit from participating in a venture that involves trafficking a child or disabled individual and by any means causing the trafficked child or disabled individual to engage in, or become the victim of, conduct that constitutes any of those offenses or engaging in sexual conduct with a child or disabled individual trafficked in that manner; or
- criminal attempt, if the offense attempted is such continuous trafficking of persons, based partly or wholly on any of that conduct.

H.B. 3451 revises the applicability of the provision making evidence of other crimes, wrongs, or acts committed by a defendant against a child who is the victim of one of certain applicable offenses admissible for its bearing on relevant matters, including the state of mind of the defendant and child and the previous and subsequent relationship between the defendant and the child, by including the following among the offenses that trigger the applicability of that provision if committed against a person younger than 18 years of age:

- trafficking of persons involving the trafficking of a child or disabled individual with the intent that the trafficked child or disabled individual engage in forced labor or services or receiving a benefit from participating in a venture that involves such trafficking, including by receiving labor or services the person knows are forced labor or services; and
- continuous trafficking of persons, if based partly or wholly on any of the following conduct:
  - trafficking a child or disabled individual with the intent that the trafficked child or disabled individual engage in forced labor or services or receiving a benefit from participating in a venture that involves such trafficking, including by receiving labor or services the person knows are forced labor or services;
  - trafficking a child or disabled individual and by any means causing the trafficked child or disabled individual to engage in, or become the victim of, conduct that constitutes:
    - continuous sexual abuse of young child or disabled individual;
    - indecency with a child;
    - sexual assault or aggravated sexual assault;
    - prostitution or solicitation of prostitution;
    - promotion of prostitution or aggravated promotion of prostitution;
    - online promotion of prostitution or aggravated online promotion of prostitution;
    - compelling prostitution;
    - sexual performance by a child;
    - employment harmful to children; or

- possession or promotion of child pornography; or
- receiving a benefit from participating in a venture that involves trafficking a child or disabled individual and by any means causing the trafficked child to engage in, or become the victim of, conduct that constitutes any of those offenses or engaging in sexual conduct with a child or disabled individual trafficked in that manner.

These provisions apply only to the admissibility of evidence in a criminal proceeding that commences on or after the bill's effective date.

### **Required Reporting Concerning Investigations of Human Trafficking Offenses**

H.B. 3451 revises the requirement for the Department of Public Safety (DPS), as well as a municipal police department, sheriff's department, constable's office, county attorney's office, district attorney's office, and criminal district attorney's office, as applicable, in a county with a population of more than 50,000, if investigating the commission of an alleged trafficking offense or public indecency offense, which may involve human trafficking, to report certain information to the attorney general. In doing so, the bill removes a county attorney's office, district attorney's office, and criminal district attorney's office from the agencies subject to the reporting requirement and revises the information required to be reported as follows:

- replaces the requirement for the report to contain a brief description of the alleged prohibited conduct with the offense code designated by DPS;
- requires the report to include, for each victim of the offense, the victim's county of origin, if the victim is not a U.S. citizen or legal permanent resident;
- requires the report to include, for each person suspected of committing the offense, the person's full name, date of birth, and country of origin, if the person is not a U.S. citizen or legal permanent resident;
- clarifies that the requirement for the report to include the age of each person suspected of committing the offense applies with respect to age at the time of the offense and only if that information is available;
- removes the requirement for the report to contain the time of day of the alleged offense and requires that the location information provided include the city and county of the alleged offense; and
- removes the requirement for the report to include information about the type of human trafficking involved.

The bill requires an entity subject to the reporting requirement that does not have any reportable investigations during a period specified by the attorney general to submit to the attorney general a notice stating there are no cases to report, in the manner and form prescribed by the attorney general.

H.B. 3451 removes the requirement for a state's attorney who prosecutes the alleged commission of a trafficking offense or a public indecency offense, which may involve human trafficking, to submit certain information to the attorney general.

H.B. 3451 expands the scope of the authorization for the attorney general to enter into a contract with a university that provides for the university's assistance in the collection and analysis of information received from the reports submitted regarding human trafficking cases by authorizing the attorney general to also contract with other organizations for such assistance. The bill requires the attorney general to ensure that all sensitive information is properly protected. The bill exempts a suspect's full name and date of birth, as well as the case number associated with the person and the offense, from disclosure under state public information law.

H.B. 3451 requires the attorney general to update forms and procedures as necessary to implement these provisions as soon as practicable after the bill's effective date.

## **Driver's Licenses and Personal Identification Certificates Issued to Certain Sex Offenders**

H.B. 3451 amends the Code of Criminal Procedure and Transportation Code to revise the requirement for the driver's license or personal identification certificate record maintained by DPS for a person subject to sex offender registration requirements to include an indication that the person is subject to registration as a sex offender on the basis of a conviction of human trafficking, if applicable. This change applies only to a driver's license or personal identification certificate issued or renewed on or after the bill's effective date.

## **Child Grooming and Possession of Child Pornography**

### Child Grooming

H.B. 3451 amends the Penal Code to create the third degree felony offense of child grooming for a person who, with the intent that a public indecency offense or an offense involving sexual activity be committed, the occurrence of which would subject the actor to criminal liability for a trafficking or sexual or assaultive offense, knowingly persuades, induces, entices, or coerces, or attempts to persuade, induce, entice, or coerce, a child younger than 18 years of age to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would do the following:

- constitute a public decency offense or an offense involving sexual activity the occurrence of which would subject the actor to criminal liability for a trafficking offense or a sexual or assaultive offense; or
- make the child a party to the commission of such an offense.

If conduct constituting a child grooming offense also constitutes an offense under another Penal Code provision, the actor may be prosecuted for either but not both offenses.

H.B. 3451 enhances the penalty for child grooming to a second degree felony if the actor has previously been convicted of any of the following offenses:

- continuous sexual abuse of a young child or disabled individual;
- indecency with a child;
- sexual assault or aggravated sexual assault against a child under 18 years of age; or
- trafficking of persons involving:
  - the trafficking of a child or disabled individual and by any means causing the child or disabled individual to engage in, or become the victim of, any of the following offenses:
    - continuous sexual abuse of young child or disabled individual;
    - indecency with a child;
    - sexual assault or aggravated sexual assault;
    - prostitution, solicitation of prostitution, or compelling prostitution;
    - promotion of prostitution or aggravated promotion of prostitution;
    - online promotion of prostitution or aggravated online promotion of prostitution;
    - sexual performance by a child;
    - employment harmful to children; or
    - possession or promotion of child pornography; or
  - receiving a benefit from participating in a venture that involves such an activity or engaging in sexual conduct with the trafficked child or disabled individual in such a manner.

H.B. 3451 establishes as an affirmative defense to prosecution for child grooming that the actor is under the age of 18 and, as follows:

- the actor engaged in the conduct with respect to another child under the age of 18 who is not more than three years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense or who was the actor's spouse at the time of the offense; and

- the conduct occurred only between the actor and the other child.

### Possession or Promotion of Child Pornography

H.B. 3451 enhances the penalty for the possession of child pornography as follows:

- from a third degree felony to a second degree felony if the actor possesses visual material that contains 10 or more visual depictions of a child engaging in sexual conduct but fewer than 50 such depictions;
- from a third degree felony to a first degree felony if the person possesses visual material that contains 50 or more visual depictions of a child engaging in sexual conduct or a videotape or film that visually depicts conduct constituting an offense of sexual assault against a child; and
- from a third degree felony to a first degree felony with a 15-year mandatory minimum term of confinement if it is shown on the trial of the offense that the person engaged in conduct that constituted the promotion of child pornography during the same criminal episode.

The bill makes the enhancement on the basis of engaging in conduct constituting the promotion of child pornography unavailable if the person is also prosecuted for that conduct. The bill repeals the provision establishing that a person who possesses visual material that contains six or more identical visual depictions of a child engaging in sexual conduct is presumed to possess the material with the intent to promote the material. The bill removes the provision making the affirmative defense to prosecution for the offense of sexual performance by a child that the child was the defendant's spouse at the time of the offense applicable to possession or promotion of child pornography.

These provisions apply only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

### **Repealed Law**

H.B. 3451 repeals Section 43.26(f), Penal Code.

### **EFFECTIVE DATE**

September 1, 2023.