

BILL ANALYSIS

H.B. 1778
By: Thompson
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law requires the Texas Human Trafficking Prevention Task Force, housed under the Office of the Attorney General, to develop legislative recommendations that 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. The bill author has informed the committee that while Texas has made great strides in combatting human trafficking, there is still much work to do. H.B. 1778 seeks to address this issue by codifying unanimous legislative recommendations from the task force.

CRIMINAL JUSTICE IMPACT

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

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1.04 of this bill and to the Texas Commission of Licensing and Regulation in SECTION 1.05 of this bill.

ANALYSIS

H.B. 1778 amends the Code of Criminal Procedure, Government Code, Health and Safety Code, Penal Code, and Occupations Code to revise provisions relating to human trafficking, prostitution, and child pornography and to the prosecution of sexual or assaultive offenses and of a failure to stop or report those offenses.

Article 1: Human Trafficking

H.B. 1778 includes a representative from the Office of Court Administration of the Texas Judicial System (OCA) appointed by the chief administrative officer of OCA among the members of the human trafficking prevention coordinating council and requires OCA to appoint the representative as soon as practicable after September 1, 2025. The bill includes a body piercing studio among the entities whose operator is required to post at the entity the human trafficking sign prescribed by the attorney general or similar sign or notice as prescribed by other state law. The bill, for purposes of that sign posting requirement, defines "body piercing studio" by reference as a facility in which body piercing is performed and specifies that a facility or school whose licensed operator is considered a "cosmetology facility" is a facility or school where cosmetology is practiced.

Human Trafficking Training

H.B. 1778 requires each employee of a tattoo studio or body piercing studio to complete a training course approved by the executive commissioner of the Health and Human Services Commission on identifying and assisting victims of human trafficking within the time prescribed by rules adopted by the executive commissioner, but does not require the employee to complete such a course before January 1, 2026. The bill requires the following actions as soon as practicable after September 1, 2025:

- the executive commissioner to approve human trafficking prevention training courses, including at least one course that is available without charge, and to adopt rules necessary to implement the bill's training provisions;
- the Department of State Health Services to post the list of those approved courses on its website; and
- the Texas Commission of Licensing and Regulation (TCLR) to adopt rules requiring the holder of a license issued under provisions relating to barbering and cosmetology to complete continuing education on identifying and assisting victims of human trafficking.

Trafficking of Persons Offenses

H.B. 1778 clarifies that the conduct constituting trafficking of persons involving a trafficked child or disabled individual is an offense regardless of whether the person knows the age of the child or whether the person knows the victim is disabled. The bill also clarifies that a showing at trial that the actor committed a trafficking of persons offense on the premises of or within 1,000 feet of the premises of a shelter or facility operating as a residential treatment center that serves runaway youth, foster children, people who are homeless, or persons subjected to human trafficking, domestic violence, or sexual assault results in the penalty being enhanced to a first degree felony punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 25 years, rather than an enhancement to a general first degree felony occurring if the actor recruited, enticed, or obtained the trafficked person from such a shelter or facility. These provisions apply only to an offense committed on or after September 1, 2025. An offense committed before that date 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 these purposes, an offense was committed before September 1, 2025, if any element of the offense occurred before that date.

Article 2: Prostitution

H.B. 1778 revises the provision enhancing the penalty for solicitation of prostitution from a state jail felony 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, represented to the actor as being younger than, or is believed to be younger than 18 years of age by making that enhancement applicable instead if the person with respect to whom the actor offers or agrees to engage in sexual conduct meets those same conditions. This change applies only to an offense committed on or after September 1, 2025. An offense committed before that date 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 these purposes, an offense was committed before September 1, 2025, if any element of the offense occurred before that date.

H.B. 1778 creates the first degree felony offense of continuous promotion of prostitution for a person who, during a period that is 30 or more days in duration, engages two or more times in conduct that constitutes a promotion of prostitution offense. The bill establishes that members of the jury, if a jury is the trier of fact, are not required to agree unanimously on which specific conduct engaged in by the defendant constituted a promotion of prostitution offense or on which exact date the defendant engaged in that conduct. The bill requires the jury to agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged two or more times in conduct that constituted a promotion of prostitution offense. The bill prohibits a

defendant, if the victim of a continuous promotion of prostitution offense is the same victim as a victim of a promotion of prostitution offense, from being convicted of the promotion of prostitution offense in the same criminal action as the continuous promotion of prostitution offense, unless the promotion of prostitution offense meets any of the following criteria:

- is charged in the alternative;
- occurred outside the period in which the alleged continuous promotion of prostitution offense was committed; or
- is considered by the trier of fact to be a lesser included offense of the alleged continuous promotion of prostitution offense.

The bill prohibits a defendant from being charged with more than one count of continuous promotion of prostitution if all of the conduct that constitutes a promotion of prostitution offense is alleged to have been committed against the same victim.

H.B. 1778 includes a continuous promotion of prostitution offense among the offenses to which the following provisions apply:

- provisions imposing additional bail bond requirements on defendants charged with certain trafficking or prostitution related offenses;
- provisions requiring a magistrate to impose certain bond conditions regarding prohibited communication and going to or near certain prohibited locations on a defendant charged with certain trafficking or prostitution-related offenses involving adult victims;
- provisions making a defendant who committed an aggravated promotion of prostitution or compelling prostitution offense eligible for judge-ordered community supervision if the judge makes a finding that the defendant committed the offense solely as a victim of certain trafficking or prostitution related offenses;
- provisions defining "trafficking of persons" for purposes of the Crime Victims' Compensation Act and the address confidentiality program for certain crime victims;
- provisions making a defendant ineligible to participate in a first offender solicitation of prostitution prevention program for a previous conviction of certain offenses;
- provisions authorizing a political subdivision to adopt a more restrictive local regulation for massage establishments than for other health care establishments if the regulation relates to the location, ownership, hours of operation, or operation of a massage establishment where three or more arrests have occurred or citations in lieu of arrest have been issued for certain offenses committed at the massage establishment or where certain offenses were committed that resulted in a conviction; and
- provisions requiring TCLR or the executive director of the Texas Department of Licensing and Regulation to revoke the license of a person licensed as a massage therapist or massage therapy instructor if the person is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for certain trafficking or prostitution related offenses.

H.B. 1778 reenacts and amends Section 455.152, Occupations Code, as amended by Chapters 13 (S.B. 483) and 440 (H.B. 2016), Acts of the 88th Legislature, Regular Session, 2023, to conform to all of the changes made by Chapter 13 (S.B. 483) and to the changes made by Chapter 440 (H.B. 2016) that included sexual assault and aggravated sexual assault among the sexual offenses that make a person ineligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor if the person has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for such an offense. The bill also includes a continuous promotion of prostitution offense among the offenses that trigger that ineligibility.

Article 3: Child Pornography

H.B. 1778 reenacts Section 43.26(d), Penal Code, as amended by Chapters 93 (S.B. 1527) and 1041 (S.B. 129), Acts of the 88th Legislature, Regular Session, 2023, to conform to certain changes made by both and thus clarifies the following penalties for the offense of possession of child pornography:

- a third degree felony if the person possesses visual material that contains fewer than 10 applicable visual depictions of a child;
- a second degree felony if the person possesses visual material that contains 10 or more but fewer than 50 such depictions;
- a first degree felony if the person possesses visual material that contains 50 or more such depictions or possesses visual material of conduct constituting child sexual assault; or
- a first degree felony punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that, at the time of the offense, the person was an employee of a certain type of facility or receiving state funds for the care of the child depicted by the visual material.

H.B. 1778 increases from a second degree felony to a first degree felony the penalty for promotion of child pornography and establishes that such an offense has a minimum term of confinement of 15 years if the person promotes or possesses with intent to promote visual material that contains 50 or more visual pornographic depictions of a child or visual material of conduct constituting an offense of child sexual assault. The bill changes the circumstances under which the penalty for promotion of child pornography is enhanced to a first degree felony for a certain previous conviction and the associated punishment term from such an enhancement if it is shown on the trial of the offense that the person has been previously convicted of that offense to such an enhancement with a minimum 15-year confinement term if it is shown on that trial that the person has been previously convicted of an offense of possession or promotion of child pornography. The bill repeals provisions that enhance the penalty for possession of child pornography to a first degree felony when it is shown at trial that the person engaged in conduct that constituted a promotion of child pornography offense during the same criminal episode or, under that same circumstance at trial, increase the minimum term of confinement for the second degree felony possession offense to 15 years.

H.B. 1778 establishes that its provisions relating to child pornography apply only to an offense committed on or after September 1, 2025. An offense committed before that date 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 these purposes, an offense was committed before September 1, 2025, if any element of the offense was committed before that date.

H.B. 1778 repeals the following provisions of the Penal Code:

- Section 43.26(d-1), as added by Chapter 93 (S.B. 1527), Acts of the 88th Legislature, Regular Session, 2023; and
- Section 43.26(d-2).

Article 4: Prosecution of Sexual or Assaultive Offenses or Prosecution of Failure to Stop or Report Those Offenses

H.B. 1778 establishes that there is no statute of limitations for the felony offenses of failure to stop or report a sexual or assaultive offense against a child, as revised by the bill, and continuous promotion of prostitution. This change does not apply to the prosecution of an offense of failure to stop or report an aggravated sexual assault of a child if the prosecution of that offense becomes barred by limitation before September 1, 2025. The prosecution of that offense remains barred as if the bill's provisions had not taken effect.

H.B. 1778 reenacts Section 2(a), Article 38.072, Code of Criminal Procedure, as amended by Chapters 284 (S.B. 643) and 710 (H.B. 2846), Acts of the 81st Legislature, Regular Session, 2009, to conform to all changes made by Chapter 710 (H.B. 2846), and to the changes made by Chapter 284 (S.B. 643) that included a statement made by a person with a disability in the applicability of provisions governing hearsay statements of certain abuse victims. The bill further revises the applicability of those provisions with respect to an applicable statement offered during the punishment phase of the proceeding that describes an act other than the

alleged offense that is allegedly committed by the defendant against a child, other than the victim of the offense, by doing the following:

- raising the age of such a child from younger than 14 years of age to younger than 18 years of age; and
- including a person with a disability who is the victim of the offense and a person with a disability other than the victim of the offense as possible targets of that other act.

The bill requires a trial court to admit more than one hearsay statement of applicable abuse victims at a proceeding if each statement describes different conduct by the defendant and meets the applicable statutory requirements as amended by the bill. The bill revises the meaning of "person with a disability" for purposes of provisions relating to such hearsay statements by replacing its meaning as a person 13 years of age or older who because of age or physical or mental disease, disability, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self with a reference to the meaning of "disabled individual" as defined by Penal Code provisions establishing the offense of injury to a child, elderly individual, or disabled individual.

H.B. 1778 revises the applicability of statutory provisions relating to the admissibility of evidence of extraneous offenses or acts committed by the defendant against the victim of certain alleged offenses by removing the conditions that the offense is committed against a child under 17 years of age or a person younger than 18 years of age, as applicable. The bill's provisions relating to hearsay statements and evidence of extraneous offenses or acts apply to a criminal proceeding that commences on or after September 1, 2025. A criminal proceeding that commences before that date is governed by the law in effect on the date the proceeding commenced, and the former law is continued in effect for that purpose.

H.B. 1778 revises provisions establishing the offense of failure to stop or report an aggravated sexual assault of a child as follows:

- removes the exception from applicability of the offense for a person who has a legal or statutory duty to act or who has assumed care, custody, or control of a child;
- removes the specification that the offense that the actor observes the commission or attempted commission of is a continuous sexual abuse of a young child or disabled individual offense or is an aggravated sexual assault offense committed against a victim younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense;
- increases the penalty for the offense from a Class A misdemeanor to a third degree felony;
- establishes that if conduct that constitutes the offense also constitutes an offense under any other law, the actor may be prosecuted under these offense provisions, the other law, or both; and
- changes the name of the offense to failure to stop or report a sexual or assaultive offense against a child.

These changes apply only to an offense committed on or after September 1, 2025. An offense committed before that date 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 these purposes, an offense was committed before September 1, 2025, if any element of the offense occurred before that date.

EFFECTIVE DATE

September 1, 2025.