

BILL ANALYSIS

C.S.H.B. 491
By: Frullo
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that individuals convicted of certain continuous trafficking of persons offenses should be required to register as sex offenders for life to bring the requirements for these offenders in line with requirements for similar or even less grievous offenders who are subject to sex offender registration. C.S.H.B. 491 seeks to address this issue by including certain continuous trafficking of persons offenders among the required registrants of the sex offender registration program.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change 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

C.S.H.B. 491 amends the Code of Criminal Procedure to include among the required registrants for the sex offender registration program a person who has 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, is an adjudication for, or is based on conduct constituting an offense for the continuous trafficking of persons if the offense is based partly or wholly on conduct that constitutes a trafficking of persons offense under certain specified provisions regarding prostitution activities or child trafficking activities; an attempt, conspiracy, or solicitation to engage in such conduct; and 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 such conduct, but not if the violation results in deferred adjudication. The bill includes a continuous trafficking of persons offense based partly or wholly on such conduct among the offenses for which conviction or adjudication, other than an adjudication of delinquent conduct, releases the person from the duty to register for the program when the person dies.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 491 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences

between the introduced and committee substitute versions of the bill.

INTRODUCED

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), 21.11 (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)(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;

HOUSE COMMITTEE SUBSTITUTE

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), 21.11 (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)(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), or (K);

(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), or (K), 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; ~~or~~

(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 on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code.

SECTION 2. Article 62.101(a), Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b) and Subchapter I, the duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for:

(1) a sexually violent offense;

(2) an offense under Section 20A.02(a)(3), (4), (7), or (8), 25.02, 43.05(a)(2), or 43.26, Penal Code;

(3) an offense under Section 20A.03, Penal Code, if based on conduct that constitutes an offense under Section 20A.02(a)(3), (4), (7), or (8) of that code;

(4) an offense under Section 21.11(a)(2), Penal Code, if before or after the person is convicted or adjudicated for the offense

(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), ~~or~~ (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), ~~or~~ (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; ~~or~~

(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. Article 62.101(a), Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (b) and Subchapter I, the duty to register for a person ends when the person dies if the person has a reportable conviction or adjudication, other than an adjudication of delinquent conduct, for:

(1) a sexually violent offense;

(2) an offense under Section 20A.02(a)(3), (4), (7), or (8), 25.02, 43.05(a)(2), or 43.26, Penal Code;

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

(4) an offense under Section 21.11(a)(2), Penal Code, if before or after the person is convicted or adjudicated for the offense

under Section 21.11(a)(2), Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter;

(5) [~~(4)~~] an offense under Section 20.02, 20.03, or 20.04, Penal Code, if:

(A) the judgment in the case contains an affirmative finding under Article 42.015 or, for a deferred adjudication, the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age; and

(B) before or after the person is convicted or adjudicated for the offense under Section 20.02, 20.03, or 20.04, Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter; or

(6) [~~(5)~~] an offense under Section 43.23, Penal Code, that is punishable under Subsection (h) of that section.

SECTION 3. Articles 62.001 and 62.101, Code of Criminal Procedure, as amended by this Act, 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 4. This Act takes effect September 1, 2017.

under Section 21.11(a)(2), Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter;

(5) [~~(4)~~] an offense under Section 20.02, 20.03, or 20.04, Penal Code, if:

(A) the judgment in the case contains an affirmative finding under Article 42.015 or, for a deferred adjudication, the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age; and

(B) before or after the person is convicted or adjudicated for the offense under Section 20.02, 20.03, or 20.04, Penal Code, the person receives or has received another reportable conviction or adjudication, other than an adjudication of delinquent conduct, for an offense or conduct that requires registration under this chapter; or

(6) [~~(5)~~] an offense under Section 43.23, Penal Code, that is punishable under Subsection (h) of that section.

SECTION 3. Same as introduced version.

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