

BILL ANALYSIS

H.B. 1540
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Human Trafficking Prevention Task Force is required 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 Texas has made significant strides in combating human trafficking, there remain additional opportunities to address and help eradicate these crimes. H.B. 1540 seeks to protect victims and increase the investigatory tools available against traffickers by codifying unanimous legislative recommendations from the Texas Human Trafficking Prevention 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 18 of this bill.

ANALYSIS

H.B. 1540 amends the Alcoholic Beverage Code to include an offense involving drink solicitation as mandatory grounds for the denial of certain alcoholic beverage permits and licenses in the following circumstances:

- denial by the Texas Alcoholic Beverage Commission (TABC) of an application for a permit or license for any location of an applicant who submitted a prior application that expired or was voluntarily surrendered before the hearing on the application was held on a protest involving allegations of certain acts or offenses before the third anniversary of the date the prior application expired or was voluntarily surrendered; and
- denial by TABC for a one-year period of an application for certain permits and licenses for a premises where a license or permit has been canceled during the preceding 12 months as a result of certain acts or offenses.

H.B. 1540 amends the Civil Practice and Remedies Code to remove the requirement for a law enforcement agency to provide to each person maintaining the applicable property written notice of an arrest for certain common nuisances relating to prostitution and illicit massage services that occur at property that is leased to a person operating a massage establishment. The bill establishes the following:

- a law enforcement agency instead may provide the notice if the agency has reason to believe the common nuisances have occurred on the property; and

- proof in the form of a person's arrest or the testimony of a law enforcement agent that the prostitution activity is committed at a licensed massage establishment after the notice is not only prima facie evidence that the defendant knowingly tolerated the activity, but also that the defendant did not make a reasonable attempt to abate the activity.

A notice is considered to be provided to the defendant on the date the defendant actually received the notice if that date is earlier than seven days after the postmark date of the notice. The bill designates current statutory language relating to attorney's fees and costs in an action brought under provisions relating to common and public nuisances as a new section to account for its application to the entirety of Chapter 125, Civil Practice and Remedies Code.

H.B. 1540 revises the conduct constituting civil racketeering related to trafficking of persons by removing the condition that the offense or an element of the offense occurs in more than one county in Texas or is facilitated by the use of U.S. mail, email, telephone, facsimile, or a wireless communication from one county in Texas to another. The bill clarifies the remedies available to a court in a proceeding to prevent, restrain, and remedy civil racketeering related to trafficking of persons are not exclusive when issuing an appropriate order following a final determination of liability. The bill expands from the conduct of an agent to the conduct of a person for which an enterprise may not be held liable for civil racketeering related to trafficking of persons without a finding of fact by the preponderance of the evidence that a director or high managerial agent performed, authorized, requested, commanded, participated in, ratified, or recklessly tolerated the unlawful conduct.

H.B. 1540 amends the Code of Criminal Procedure to include a general residential operation operating as a residential treatment center among the locations designated as child safety zones for a defendant granted community supervision for certain offenses against a child. The bill defines "general residential operation" as a child-care facility that provides care for seven or more children for 24 hours a day.

H.B. 1540 amends the Health and Safety Code to designate as a drug-free zone a general residential operation operating as a residential treatment center. The bill subjects certain offenses under the Texas Controlled Substances Act that are committed by any unauthorized person 18 years of age or older in, on, or within 1,000 feet of such a general residential operation to the applicable penalty enhancements for offenses committed within drug-free zones.

H.B. 1540 amends the Human Resources Code to do the following with respect to the minimum standards applicable to licensed child-care facilities and to registered family homes:

- require the standards to ensure that a child's health, safety, and welfare are adequately protected on the grounds of the facility or home; and
- authorize the executive commissioner of the Health and Human Services Commission, in promulgating the minimum standards, to recognize and treat differently the grounds appurtenant to the facilities, homes, agencies, residential operations, and school-related programs to which those standards apply.

H.B. 1540 requires the executive commissioner to consider the following additional matters in adopting minimum standards that apply to general residential operations that provide comprehensive services to persons who are victims of human trafficking:

- the precautions required of the victims;
- the role of the general residential operations in protecting the victims; and
- the vulnerability of the victims on the grounds of a general residential operation operating as a residential treatment center.

H.B. 1540 requires each general residential operation operating as a residential treatment center to post "No Trespassing" notices in certain locations on the operation's grounds, as prescribed by the bill, and provides for the content, language, and size of the notices. The bill provides the following with respect to such notices:

- the executive commissioner by rule must determine and prescribe the requirements regarding the placement, installation, design, size, wording, and maintenance procedures for the notices;
- HHSC must provide to each operation without charge the number of notices required to comply with the notice requirements and the executive commissioner's rules; and
- it is a Class C misdemeanor offense for a person who operates such a general residential operation to fail to display the provided notices before the end of the 30th business day after the date the operation receives the notices.

H.B. 1540 amends the Penal Code to apply the current definition of "coercion" to instances of conduct that constitute labor trafficking for both adults and children. The bill clarifies that coercion includes causing a trafficked person to become intoxicated without the person's consent or withholding alcohol or a controlled substance to a degree that impairs the person's ability to appraise the nature of or resist engaging in any conduct, including a trafficked person with a chemical dependency. The bill enhances the penalty for human trafficking from a second degree felony to a first degree felony if the actor recruited, enticed, or obtained the victim from a shelter or facility operating as a residential treatment center that serves certain groups.

H.B. 1540 expands the conduct constituting the Class A misdemeanor offense of criminal trespass to include entering or remaining on or in property of a general residential operation operating as a residential treatment center without effective consent after receiving notice that the entry was forbidden and failing to depart. The bill designates such an operation as a gang-free zone and subjects certain offenses committed in, on, or within 1,000 feet of the operation by an actor 17 years of age or older to the applicable penalty enhancement for offenses committed within gang-free zones.

H.B. 1540 repeals the following provisions:

- Section 125.0017, Civil Practice and Remedies Code, as added by Chapter 1135 (H.B. 240), Acts of the 85th Legislature, Regular Session, 2017;
- Section 125.003(d), Civil Practice and Remedies Code;
- Section 125.004(a-3), Civil Practice and Remedies Code, as added by Chapter 1135 (H.B. 240), Acts of the 85th Legislature, Regular Session, 2017;
- Section 125.068, Civil Practice and Remedies Code; and
- Section 20A.02(a-1), Penal Code.

EFFECTIVE DATE

September 1, 2021.