

SUBJECT: Judicial findings regarding victims of human trafficking or other abuse

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway,
Pierson, Talton

0 nays

1 absent — Moreno

WITNESSES: For — Rebecca Bernhardt, ACLU of Texas; Stephen Reeves, Christian Life Commission; Ana Yanez-Correa, Texas Criminal Justice Coalition; Bill Bernstein; Tim Gallagher; (*Registered, but did not testify:* Krista Del Gallo, Texas Council on Family Violence; Luis Figueron, Mexican American Legal Defense and Educational Fund)

Against — None

BACKGROUND: The federal Victims of Trafficking and Violence Protection Act of 2000 created new nonimmigrant visas for non-citizen victims of crime to provide them with certain governmental assistance and protections from abusers. These visas are designed to provide immigration status to non-citizens who are victims of severe forms of human trafficking and are assisting or are willing to assist authorities investigating criminal activity.

22 U.S.C., 7102(8) defines severe forms of human trafficking as either:

- sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act is younger than age 18; or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

8 U.S.C., sec. 1101(a)(15)(U)(iii) refers to criminal activity that involves one or more of the following or any similar activity in violation of federal, state, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual

exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder, felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

DIGEST:

CSHB 1121 would add Code of Criminal Procedure, art. 42.0191 to direct a judge, on a motion from a prosecutor, to make an affirmative finding of fact and enter that finding in the case record if the judge determined that a victim in the trial:

- was or had been a victim of a severe form of human trafficking under 22 U.S.C. sec. 7102(8); or
- had suffered substantial physical or mental abuse as a result of having been a victim of criminal activity under 8 U.S.C. sec. 1101(a)(15)(U)(iii).

The bill would amend Code of Criminal Procedure, art. 42.12, sec. 5 to require a judge, on a motion from a prosecutor, to make the same affirmative finding of fact as above in a case in which a judge placed a defendant on community supervision.

CSHB 1121 would amend Family Code, sec. 54.04 to require a judge, on a motion from a prosecutor, to make the same affirmative finding of fact as above in a case in which a judge ordered disposition for delinquent conduct based on a violation of an offense.

These case records would include specific information identifying the victim or the victim's location, as available, and would be confidential, unless written consent for the release of the finding was obtained from the victim, or the victim's parent or guardian.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007, and would apply to a conviction, grant of deferred adjudication, or disposition of delinquent conduct made on or after that date.

**SUPPORTERS
SAY:**

CSHB 1121 would help fight human trafficking, a repugnant crime that is the modern equivalent of slavery. While Texas and the federal government

are enacting laws and implementing programs to combat this social scourge, resources have been underutilized because of inconsistencies between federal and state approaches. In addition, trafficking crimes are difficult to prosecute because victims are hesitant to testify because they fear retaliation and deportation.

CSHB 1121 would help prosecutors secure convictions by giving them a negotiating tool to encourage victims to supply valuable information. Prosecutors could offer victims the judicial finding in return for cooperation in prosecuting the defendant. Victims then could use these findings as the basis of a claim that federal officials would weigh when deciding whether to grant a protective visa. Victims who successfully traded their cooperation with prosecutors into an opportunity to stay in the country legally would have earned the right through their assistance to the government in its efforts to fight crime.

The bill would provide safeguards to prevent judges from issuing these findings whenever they pleased. Judges could make these findings only if the prosecutor in the case made a motion to do so. This would provide a valuable check and help to ensure that the findings were made only when appropriate. In addition, CSHB 1121 would protect victims by keeping the finding confidential unless written consent for the release of the finding were given by the victim or the victim's parent or guardian.

**OPPONENTS
SAY:**

Federal law preempts state law, and immigration is a federal issue that should be left to the federal government. CSHB 1121 improperly would involve Texas judges in the immigration process by directing them to make findings that an undocumented immigrant was a victim of severe human trafficking.

In addition, such findings could hurt victims by encouraging retaliation — if not by the human trafficker himself, then by the organization to which he belongs. Confidentiality would not be enough, as any mention of the victim, especially the victim's location, anywhere in the record or in the courtroom could endanger victims.

NOTES:

The author plans to introduce a floor amendment that would change the record of the finding so that it would include specific information identifying the victim but not include information identifying the victim's location.