

- SUBJECT:** Penalties for human trafficking for forced labor or sexual services
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Gallego, Aliseda, Burkett, Carter, Christian, Rodriguez, Zedler
0 nays
2 absent — Hartnett, Y. Davis
- WITNESSES:** For — Cliff Herberg, for Susan D. Reed Bexar County District Attorney’s Office; (*Registered, but did not testify:* Pat Carlson, Texas Eagle Forum; Lon Craft, Texas Municipal Police Association; Darrell Davila, Tarrant County District Attorney; Jean Thomas Dwyer, Daughters of Charity National Advocacy and Social Justice Committee; Pete Elizalde and Jimmy Rodriguez, San Antonio Police Officers Association; Ashley Harris, Texans Care for Children; Joshua Houston, Texas Impact; Rene Lara, Texas AFL-CIO; Ann Lemis, Redeemed Ministries; Diana Martinez, TexProtects, The Texas Association for the Protection of Children; Anne Olson, Christian Life Commission; Kevin Petroff, Harris County District Attorney’s Office; Jason Sabo, Children at Risk; Barbara Waldon, Refuge of Light)

Against — (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association)
- BACKGROUND:** Under Penal Code, sec. 20A.02, a person commits a human trafficking offense if the person knowingly:
- traffics another person with the intent or knowledge that the trafficked person will engage in forced labor or services; or
 - benefits from participating in a venture that involves forced labor or services, including by receiving labor or services the person knows are forced labor or services.
- DIGEST:** CSHB 1122 would make several changes to the Penal Code, Code of Criminal Procedure, and other codes related to human trafficking offenses.

Definitions. The bill would define “forced labor or services” as labor or services performed or provided for another person and obtained through an actor’s use of force, fraud, or coercion. Prostitution would be removed from the definition of “forced labor or services,” and new definitions for “sexual services” and “sexual services of a child” would be created. “Sexual services” would be defined as conduct that constitutes an offense under the sections of the Penal Code dealing with prostitution, promotion of prostitution, aggravated promotion of prostitution, or, if services were obtained through an actor’s use of force, fraud, or coercion, with compelling prostitution. “Sexual services of a child” would be defined as conduct under the sections of the Penal Code dealing with continuous sexual abuse of young children, indecency with a child, aggravated sexual assault, prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, sexual performance by a child, employment harmful to children, or possession or promotion of child pornography.

The bill would add definitions for when a trafficker committed offenses involving sexual services, forced labor or services of a child, and sexual services of a child.

Level of offense. Trafficking a child who engaged in forced labor or sexual services, or benefiting from either practice, would be a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

Civil damages. A person who was criminally responsible for the conduct of another person who engaged in trafficking would be liable for civil damages to the person trafficked. A civil defendant would be jointly and severally liable for damages if the defendant compelled prostitution or trafficked persons, provided that the defendant had the specific intent to harm others and acted in concert with another person. A person also would be jointly and severally liable for damages if the person was criminally responsible for the conduct of another person who engaged in trafficking.

Statute of limitations. There would be no time limit for presenting a felony indictment for compelling prostitution of a child or trafficking a child for sexual services. A felony indictment could be presented 10 years from the date of the offense for trafficking a person for labor or sexual services or for compelling prostitution. A felony indictment could be

presented 10 years from the 18th birthday of the victim for compelling prostitution of a child or trafficking a child for labor.

Release on personal bond. Only the court before whom the case was pending could release on personal bond a defendant who compelled prostitution of a child or trafficked a child for sexual services.

Search warrant. The bill would allow a search warrant to be issued to search for and photograph a child who was alleged to be the victim of compelling prostitution or trafficking for sexual services.

Reporting trafficking. A court or guardian ad litem or attorney ad litem for a minor would be required to report the trafficking of a child for sexual services if the court or person reasonably believed the offense had occurred.

Confidential information. The address of a shelter center for victims of trafficking contained in tax appraisal records would be confidential and available only for the official use of the appraisal district, the state, the comptroller, and taxing units and political subdivisions of the state.

Information obtained by the Department of Family and Protective Services would be confidential except to the extent necessary to prove trafficking of a child for sexual services.

Parent-child relationship. A court could order termination of the parent-child relationship if the court found by clear and convincing evidence that the parent had been criminally responsible for the death or serious injury of a child under the Penal Code sections dealing with compelling prostitution of a child, prostitution, or trafficking a child for sexual services.

A court could find that a parent had subjected a child to aggravated circumstances if the parent engaged in conduct against the child that would violate sections of the Penal Code dealing with prostitution, compelling prostitution of a child, or trafficking a child for sexual services. A finding that a parent had subjected a child to aggravated circumstances could allow a court to waive the requirement to make reasonable efforts to return the child to a parent.

Preference for hearings and trials. Trial courts would have to give preference to hearings and trials of compelling prostitution of a child and trafficking a child for sexual services.

DNA sample. A defendant indicted for compelling prostitution of a child or trafficking a child for sexual services would be required to provide to a law enforcement agency a specimen to create a DNA record.

Effective date. The bill would take effect on September 1, 2011 and would apply only to an offense committed on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 1122 would help fight human trafficking, a repugnant crime that is the modern equivalent of slavery. Texas is widely considered a major destination and transit state for human trafficking, with close to 25 percent of human trafficking victims in the nation. Texas first passed human trafficking laws in 2003, and updates to current law are necessary to effectively prosecute these crimes.

CSHB 1122 would eliminate the statute of limitations for sex trafficking of a child. Sex trafficking changes a child's life forever, and a measure of justice should always be available for these victims. Other offenses without a statute of limitations, such as continuous sexual abuse of young children, are similar. Eliminating the statute of limitations also would be appropriate because minors often have to become old enough to take care of themselves and distance themselves from the experience of being a victim before feeling safe enough to come forward.

The bill would provide for better control of bonding so that dangerous persons could not be released before trial if this was not appropriate. The bill also would ensure that the addresses of shelters for trafficking victims remained confidential to prevent retaliation against victims. The addresses of shelters for victims of family violence and sexual assault already are confidential under current law.

**OPPONENTS
SAY:**

Eliminating the statute of limitations for compelling prostitution of a child or trafficking a child for sexual services could render defendants unable to defend themselves adequately and infringe upon their right to due process. Over time, witnesses' memories fade, and evidence becomes more difficult to obtain. Also, the lack of a statute of limitations could give false hope to victims that prosecutors might take up old cases based on evidence that is too weak to obtain a conviction.

Increasing the penalty for child labor trafficking to a first degree felony would be too harsh and disproportionate. This would make the penalty the same as the one for murder.