

- SUBJECT:** Amending trafficking, prostitution laws for offenders, victims, witnesses
- COMMITTEE:** Homeland Security & Public Safety — favorable, without amendment
- VOTE:** 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray
- 0 nays
- WITNESSES:** For: — Jason Sabo, Children at Risk; (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Melinda Smith, Combined Law Enforcement Associations of Texas; Bill Elkin, Houston Police Retired Officers Association; Tiana Sanford, Montgomery County District Attorney's Office; Andrea Sparks, National Center for Missing & Exploited Children, Texas Regional Office; Dennis Mark, Redeemed Ministries; Brian Eppes, Tarrant County District Attorney's Office; Rene Lara, Texas AFL-CIO; Joshua Houston, Texas Impact; Jennifer Allmon, The Texas Catholic Conference of Bishops; Lon Craft, Texas Municipal Police Association)
- Against: — (*Registered, but did not testify*: Kristin Etter, Texas Criminal Defense Lawyers Association)
- On: — Kirsta Melton, Office of the Attorney General; (*Registered, but did not testify*: Ron Swenson, Texas Alcoholic Beverage Commission; William Diggs and Skylor Hearn, Texas Department of Public Safety; Shannon Edmonds, Texas District and County Attorneys Association)
- BACKGROUND:** The Texas Legislature created the Texas Human Trafficking Prevention Task Force in 2009 through the enactment of HB 4009 by Weber, et al. The task force is designed to collaborate with the state and federal government in efforts to prevent human trafficking, increase data collection, provide public education and victim services, and provide training for various state actors. It reports every two years to the Legislature on recommendations to help the state fight human trafficking and assist victims. The task force released its latest report in April 2014.

DIGEST: HB 10 would make various changes to Penal Code, Code of Criminal Procedure, Education Code, and Government Code statutes dealing with prostitution, the trafficking of persons, and other crimes, including:

- eliminating the statute of limitations for compelling prostitution of children;
- granting immunity for compelled evidence and testimony;
- amending the offenses of continuous trafficking and prostitution;
- adding prostitution-related offenses to the sex offender registry;
- creating the Child Sex Trafficking Prevention Unit;
- amending the composition and duties of the Human Trafficking Prevention Task Force and requiring inter-agency assistance;
- changing provisions that affect whether trafficking victims can receive payment under the Crime Victims' Compensation Act;
- requiring inclusion of child trafficking in Texas Education Agency reporting; and
- adding human trafficking to the list of required judicial training and instruction.

HB 10 would take effect on September 1, 2015, and would apply only to a criminal proceeding that commenced on or after that date.

Statute of limitations for compelling prostitution of children. HB 10 would eliminate the statute of limitations for compelling prostitution of children younger than 18. Indictments for the offense could be brought any time, rather than within the current limit of 10 years from the victim's 18th birthday.

Witness immunity. The bill would allow evidence or testimony to be compelled from a trafficking offender. It would exempt those compelled to provide evidence or testimony from being prosecuted for any offense related to the compelled material and would prevent the evidence and testimony from being used against the party in any adjudicatory proceeding before a court or government agency except during prosecution for aggravated perjury.

The bill would allow a conviction for human trafficking based on uncorroborated testimony.

Offenses of continuous trafficking and prostitution. HB 10 would specify that a person commits the current offense of continuous trafficking if the person traffics one or more victims during a period of 30 or more days.

Prostitution offenses that constitute a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) would include those in which the solicited person was represented to the actor as being younger than 18 years old or was believed by the actor to be younger than 18.

Sex offender registration. HB 10 would require sex offender registration for a conviction or adjudication of second-degree felony prostitution for solicitation of someone under 18 years old. It also would require sex offender registration for similar offenses that violated the laws of other states, federal laws, foreign laws, or under the Uniform Code of Military Justice, except if the violation resulted in a deferred adjudication.

Child sex trafficking prevention unit. HB 10 would require the governor to establish a Child Sex Trafficking Prevention Unit within the governor's Criminal Justice Division and appoint a director.

The unit would be required to:

- assist certain agencies in leveraging and coordinating state resources toward child sex trafficking prevention;
- facilitate collaborative efforts among those agencies to prevent child sex trafficking, to recover victims of child sex trafficking, and to place victims in suitable short-term and long-term housing;
- collect and analyze research and information related to child sex trafficking and distribute it to agencies and nonprofit organizations;
- refer child sex trafficking victims to rehabilitative programs and other available resources;

- provide support for child sex trafficking prosecutions; and
- develop recommendations for improving state efforts to prevent child trafficking and submit them to the Legislature as part of the biennial report required of the governor's Criminal Justice Division.

Human trafficking prevention task force. HB 10 would extend the task force's expiration date from September 1, 2015, to September 1, 2017, and would change its composition and duties by:

- adding one representative each from the Texas Education Agency, the Texas Parks and Wildlife Department, and the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families; and
- requiring the task force to include in its recommendations ways to strengthen state and local efforts to investigate trafficking offenders.

Intra-agency assistance. The bill would require certain state agencies to designate someone to coordinate the agency's resources to strengthen state and local efforts to prevent trafficking, protect and assist victims, and investigate and prosecute trafficking offenders.

Victim compensation. HB 10 would exempt from automatic denial applications to the state's victims compensation fund from a claimant or victim who knowingly and willingly participated in trafficking. The exemption would apply if the claimant was a victim of child trafficking relating to certain offenses or if the victim was trafficked as a result of force, fraud, or coercion. The bill also would remove the discretion of the attorney general to deny or reduce an otherwise payable award under the act for these victims.

HB 10 would include sexual conduct as a type of forced labor or services in the definition of "trafficking of persons" under the Crime Victims' Compensation Act.

School reporting. As part of current reporting on child abuse and neglect, the Texas Education Agency would be required to develop policy for reports on child trafficking. Each school district and open-enrollment charter school employee would be required to report child abuse or neglect relating to child trafficking to law enforcement or the Department of Family and Protective Services, as required by Family Code, ch. 261.

Judicial training. Human trafficking would be added to the lists of offenses for which the Texas Supreme Court is required to provide judicial training and instruction and for which the Texas Court of Criminal Appeals is required to assure training is provided. Both courts would be required to adopt training rules by December 1, 2015. Any judicial officer of the Court of Criminal Appeals required to receive additional training as a result of the bill would be required to complete it by December 1, 2017.

SUPPORTERS
SAY:

HB 10 would strengthen the state's efforts to combat human trafficking and prostitution, especially the sex trafficking of children. According to a report on human trafficking issued in 2014 by the Department of Public Safety, sex trafficking is the fastest-growing business of organized crime and the third-largest criminal enterprise in the world. Texas was the second-largest source of tips to a national human trafficking hotline in 2013, according to the report.

In response to this threat, the state since 2011 has enacted numerous laws to combat these crimes, as recommended by the Human Trafficking Prevention Task Force. These laws protect victims, punish traffickers, and address the supply of human trafficking. By incorporating the task force's 10 most recent recommendations, HB 10 would continue these efforts and focus on addressing the demand for human trafficking, especially the trafficking and prostitution of children.

Statute of limitations for compelling prostitution of children. HB 10 would eliminate the statute of limitations for compelling prostitution of children, which would bring it in line with the statute of limitations on

child sex trafficking. Texas has already eliminated the statute of limitations for sex trafficking of a minor, and compelling prostitution of a minor is a very similar offense.

Eliminating the statute of limitations for compelling the prostitution of children would allow child victims more time to come forward. These sex trafficking crimes change children's lives forever, and a measure of justice always should be available for them. Children often do not feel safe enough to come forward until they have grown old enough to take care of themselves and gain some distance from the experience of being a victim.

Witness immunity. Under current law, a conviction for prostitution may be based on compelled testimony of accomplices, and the testimony does not need to be corroborated. HB 10 would make those same strategies available to prosecutors in human trafficking cases. In large-scale investigations, current law makes cases of human trafficking more difficult to prosecute than cases of compelling prostitution, a situation that HB 10 would remedy.

Granting immunity to witnesses would encourage victims to testify against their traffickers and prevent further harm by ensuring that victims' participation in trafficking was not criminalized. In many prostitution and trafficking cases, the only witnesses are victims or accomplices involved in the criminal activity, and these cases would never be tried without using one party's testimony against another.

Granting immunity to accomplices would be a small price for obtaining testimony that could be used against a larger human trafficking ring and its major actors. Prosecutors would use the evidence only if it was necessary for their case. It is unlikely an entire case would be based only on testimony from one person with no further evidence.

Offenses of continuous trafficking and prostitution. HB 10 would clarify that the offense of continuous trafficking of persons applies both to continued trafficking of the same person and to more than one victim during a period of 30 days or more. This is necessary because current law

is vague on whether the trafficking of a single victim over such a period constitutes continuous trafficking.

HB 10 would eliminate the requirement that the person being solicited actually be younger than 18 years old in order for the offense of soliciting prostitution to carry a second-degree felony. This would allow law enforcement to charge offenders apprehended by undercover officers conducting reverse stings against individuals who seek to purchase sex from minors. Such activities protect future victims by targeting predators who clearly intend to solicit sex from minors and who take steps to implement their plans. These revisions to the prostitution statute in HB 10 would mirror similar provisions for the offense of online solicitation of a minor. Debate about possible revisions to the statute for online solicitation of a minor relate to regulation of speech, while changes proposed in HB 10 to solicitation for prostitution of a minor relate to the act of solicitation.

Sex offender registration. It would be appropriate to require sex offender registration for those convicted of soliciting sex from children. The registry is designed to help protect the public by making offender information available online. Persons committing these crimes could be a danger to other children, and the public should have access to information about them. HB 10 would place these offenders in the state's sex offender registry with similar offenders already required to register, such as those convicted of compelling prostitution and sexual performance by a child.

Child sex trafficking prevention unit. While current efforts by the task force focus on training and education, HB 10 would create a separate unit that more comprehensively would address the continuum of trafficking, including prevention, interdiction, victim placement, rehabilitation, and prosecution. Because human trafficking is an issue that crosses many disciplines and state agency jurisdictions, HB 10 would provide for a coordinated response from a state office that could oversee all the state agencies involved.

Human trafficking prevention task force. Broadening agency

participation on the task force would increase valuable input needed to provide services to victims of trafficking.

Adding intra-agency oversight to the task force would increase collaboration between agencies on responses to human trafficking and providing services for victims.

Victim compensation. By amending the Crime Victims' Compensation Act, HB 10 would allow some trafficking victims to receive compensation who otherwise would be ineligible due to their participation in criminal activity. Current law precludes victims from receiving compensation if they knowingly and willingly participated in criminal conduct, which is a factor in the majority of human trafficking cases. HB 10 would create exemptions for such victims to ensure that their knowing participation in criminal conduct was not the sole reason for denial of their application to receive compensation.

Judicial training. HB 10 would add only minimal training and instruction on child trafficking to an existing list of required training. The affected courts are already required to provide judicial training related to family violence, sexual assault, child abuse and neglect, and issues concerning sex offender characteristics.

OPPONENTS
SAY:

Statute of limitations for compelling prostitution of children. Eliminating the statute of limitations for compelling prostitution of a child could unreasonably impair the ability of the accused to defend themselves. Over time, witnesses' memories fade and evidence becomes more difficult to obtain. 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.

Witness immunity. HB 10 would create an exception to the general principle requiring corroboration of accomplice witness testimony. The general principle is meant to safeguard against wrongly convicting an individual based on inherently unreliable testimony. A change in this practice could create immunity that could lead to fabrication of evidence

and could free some accomplice traffickers from prosecution. If the intent of the provision is to prosecute criminals of human trafficking, the bill should not create an avenue for accomplices involved in trafficking to receive immunity that would prevent their prosecution.

HB 10 would not create additional protection for victims because it is current law that testimony of a victim does not need to be corroborated. The grant of immunity under HB 10 could undermine the physical safety of witnesses because traffickers would have more incentive to harm those who may testify in order to receive a grant of immunity.

Prosecutors already have discretion to offer immunity to witnesses when necessary to prosecute higher-ups in a trafficking ring. The immunity that would be granted under HB 10 would be too broad because it also would grant immunity to individuals not involved in sex crimes at all, such as trafficking for labor. HB 10 would create a mandatory provision that could be counterproductive in these cases and expose defendants to unfair criminal trials based on uncorroborated and unreliable witness testimony.

Offenses of continuous trafficking and prostitution. Allowing law enforcement to charge offenders with soliciting a child prostitute if the offender solicited a person that represented that person's age as being younger than 18 would not protect underage victims. Increasing penalties from a class B misdemeanor to a second-degree felony would impose too harsh a penalty for solicitation of a person who is not actually a minor.

The current statute criminalizing online solicitation of a minor may be revised in response to a recent court challenge, and it would be counterproductive to align solicitation for prostitution of a minor with this offense before the law is settled.

NOTES:

According to the Legislative Budget Board fiscal note, HB 10 would cost approximately \$1.5 million in general revenue for fiscal 2016-17 due to costs associated with the Child Sex Trafficking Prevention Unit and its 11 staff members.