

- SUBJECT:** Revising offense of failure to report certain sex offenses against a child
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King, Moody, Murr, Pacheco
- 0 nays
- WITNESSES:** For — (*Registered, but did not testify:* Tiana Sanford, Montgomery County District Attorney's Office; Linda Phan, Texas Council on Family Violence; Elizabeth Doyel)
- Against — None
- On — Demetrie Mitchell, Department of Family and Protective Services
- BACKGROUND:** Penal Code sec. 38.17 makes the failure to stop or report aggravated sexual assault of a child a crime. The offense is committed by a person who:
- observes the commission or attempted commission of certain offenses relating to sexual assault of a child under circumstances in which a reasonable person would believe that a sexual or assaultive offense was being committed or was about to be committed against the child;
  - fails to assist the child or immediately report the commission of the offense to a peace officer or law enforcement agency; and
  - could assist the child or immediately report the commission of the offense without being placed in danger of serious bodily injury or death.
- Offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000).
- Some have noted that the current crime for failing to stop or report sex

offenses against children could better protect children by including more offenses and by including circumstances in which someone was made aware of or discovered an offense.

**DIGEST:**

CSHB 1357 would modify the offense of failure to stop or report aggravated sexual assault of a child.

**Offense.** The offense would no longer be based on observing acts under certain circumstances and failing to assist the child or to report the acts, but instead would be based on an individual 18 years or older knowing that another had committed certain sex offenses against a child and failing to report the offense. The bill would apply to knowledge about the commission of human trafficking involving children, continuous human trafficking involving children, continuous sexual abuse of a child, indecency with a child, sexual assault of a child, aggravated sexual assault of a child, compelling prostitution, and sexual performance by a child.

The bill would expand the list of entities to which the offense could be reported to include the Department of Family and Protective Services.

**Penalties.** CSHB 1357 would revise the penalties for the offense. Instead of all offenses being class A misdemeanors, offenses generally would be state-jail felonies (180 days to two years in a state jail and an optional fine of up to \$10,000), with higher penalties under certain circumstances.

Offenses would be third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000) if they involved hindering the investigation or prosecution by means specified in the bill, and they would be second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000) if the offense involved hindering an investigation or prosecution and a subsequent offense committed against the child was enabled or facilitated by the failure to report the offense.

**Defenses, exception.** The bill would establish a defense to prosecution and an affirmative defense to prosecution based on certain circumstances related to reporting the offense. It would be an exception to the application

of the bill if an individual was a victim of any offense committed by the person committing the sexual offense against the child.

**Other provisions.** Conduct constituting an offense under the bill that also constituted an offense under another law could be prosecuted under this section, the other law, or both.

The bill would take effect September 1, 2019, and would apply to offenses committed on or after date.