

BILL ANALYSIS

Senate Research Center

H.B. 8
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Criminal Justice
5/13/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 81st Legislature created the Human Trafficking Prevention Task Force in an effort to create a statewide partnership among law enforcement agencies, social service providers, nongovernmental organizations, legal representatives, and state agencies that fight against human trafficking. The task force worked to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes and to propose legislative recommendations that better protect both adult and child victims. H.B. 8 seeks to aid the prevention and elimination of the crime of human trafficking by enacting recommendations made by the task force in its recent report to the legislature.

H.B. 8 resolves conflicting human trafficking protective order statutes and conflicting penalties for employment harmful to children. The bill also extends the criminal statute of limitations for offenses involving compelling prostitution of a minor.

The bill includes sex trafficking of a minor and compelling prostitution of a minor in the list of offenses ineligible for community supervision and includes human trafficking in the list of crimes in which victims may be eligible to receive reimbursements for relocation expenses under the Crime Victims' Compensation Act and participate in the Address Confidentiality Program.

H.B. 8 adds human trafficking and compelling prostitution to the list of offenses in which someone convicted must serve either half or 30 years of their sentence, whichever is less, actual calendar time before becoming eligible for parole. The bill increases the penalty for the offenses of promotion of prostitution, aggravated promotion of prostitution, and soliciting a minor.

H.B. 8 amends current law relating to the prosecution and punishment of offenses related to trafficking of persons and to certain protections for victims of trafficking of persons.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the attorney general in SECTION 12 (Article 56.83, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 7A, Code of Criminal Procedure, to read as follows:

CHAPTER 7A. PROTECTIVE ORDER FOR VICTIMS OF SEXUAL ASSAULT OR
ABUSE, STALKING, OR TRAFFICKING

SECTION 2. Reenacts Article 7A.01(a), Code of Criminal Procedure, as amended by Chapters 1 (S.B. 24) and 135 (S.B. 250), Acts of the 82nd Legislature, Regular Session, 2011, and amends it as follows:

(a) Authorizes the following persons to file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency with a Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 42.072 (Stalking), Penal Code;

(2) a person who is the victim of an offense under Section 20A.02 (Trafficking of Persons) or 43.05 (Compelling Prostitution), Penal Code, rather than 20A.02(a)(3) (relating to trafficking a person and engage in illegal conduct), (4) (relating to receiving a benefit from trafficking a person), (7) (relating to a person trafficking a child and causing the trafficked child to engage in, or become the victim of, conduct prohibited by certain provisions), or (8) (relating to receiving a benefit from trafficking a child) or Section 43.05, Penal Code;

(3) a parent or guardian acting on behalf of a person younger than 17 years of age, rather than 18 years of age, who is the victim of an offense listed in Subdivision (1);

(4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2); or

(5) a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).

Makes nonsubstantive changes.

SECTION 3. Amends Article 7A.02, Code of Criminal Procedure, to authorize the court, if the court finds from the information contained in an application for a protective order that there is a clear and present danger of sexual assault or abuse, stalking, trafficking, or other harm to the applicant, without further notice to the alleged offender and without a hearing, to enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

SECTION 4. Reenacts Article 7A.03, Code of Criminal Procedure, as amended by Chapters 135 (S.B. 250) and 238 (H.B. 649), Acts of the 82nd Legislature, Regular Session, 2011, and amends it as follows:

Art. 7A.03. **REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER.** (a) Requires the court, at the close of a hearing on an application for a protective order under this chapter, to find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, stalking, or trafficking.

(b) Requires the court, if the court makes a finding described by Subsection (a), rather than Subsection (a)(1) or (2), to issue a protective order that includes a statement of the required findings. Makes nonsubstantive changes.

SECTION 5. Amends Article 7A.07(b), Code of Criminal Procedure, to authorize a victim of an offense listed in Article 7A.01(a)(1), rather than a victim, who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age or a victim of an offense listed in Article 7A.01(a)(2) or a parent or guardian acting on behalf of a victim who is younger than 18 years of age to file at any time an application with the court to rescind the protective order. Makes nonsubstantive changes.

SECTION 6. Reenacts Article 12.01, Code of Criminal Procedure, as amended by Chapters 1 (S.B. 24), 122 (H.B. 3000), 222 (H.B. 253), and 620 (S.B. 688), Acts of the 82nd Legislature, Regular Session, 2011, and amends it as follows:

Art. 12.01. **FELONIES.** Authorizes felony indictments, except as provided in Article 12.03, to be presented within these limits, and not afterward, with no limitation for certain offense, including no limitation for compelling prostitution under Section 43.05(a)(2) (relating to providing that a person commits an offense if the person causes

by any means a child younger than 18 years to commit prostitution), Penal Code. Deletes existing text authorizing felony indictments to be presented ten years from the 18th birthday of the victim of compelling prostitution under Section 43.05(a)(2), Penal Code. Makes nonsubstantive changes.

SECTION 7. Amends Section 4(d), Article 42.12, Code of Criminal Procedure, to provide that a defendant is not eligible for community supervision under this section if the defendant has committed certain offenses including that the defendant is convicted of an offense listed in Section 3g(a)(1)(J) (relating to Section 43.25, Penal Code (Sexual Performance by a Child)), (L) (relating to Section 43.05, Penal Code (Compelling prostitution)), or (M) (relating to Section 20A.02 Penal Code (Trafficking of persons)).

SECTION 8. Amends Article 56.32(a), Code of Criminal Procedure, by adding Subdivision (14), to define "trafficking of persons."

SECTION 9. Amends Article 56.42(d), Code of Criminal Procedure, to authorize a victim who is a victim of family violence, a victim of trafficking of persons, or a victim of sexual assault who is assaulted in the victim's place of residence to receive a onetime-only assistance payment in an amount not to exceed certain amounts.

SECTION 10. Amends Article 56.81, Code of Criminal Procedure, by adding Subdivision (7), to define "trafficking of persons."

SECTION 11. Amends Article 56.82(a), Code of Criminal Procedure, to require the attorney general to establish an address confidentiality program, as provided by this subchapter, to assist a victim of family violence, trafficking of persons, or an offense under Section 22.011, 22.021, 25.02 (Prohibited Sexual Conduct), or 42.072, Penal Code, in maintaining a confidential address.

SECTION 12. Amends Articles 56.83(a), (b), and (e), Code of Criminal Procedure, as follows:

(a) Requires an applicant, to be eligible to participate in the program, to:

(1) meet with a victim's assistance counselor from a state or local agency or other entity, whether for-profit or nonprofit that is identified by the attorney general as an entity that provides counseling and shelter services to victims of family violence, trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code;

(2)-(3) Makes no change to these subdivisions; and

(4) live at a residential address, or relocate to a residential address, that is unknown to the person who committed or is alleged to have committed the family violence, trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code.

(b) Requires that an application signed under Subsection(a)(2) (relating to requiring an applicant, to be eligible to participate in the program, file an application for participation with the attorney general or other entity identified by the attorney general) to contain certain information, including a signed, sworn statement by the applicant stating that the applicant fears for the safety of the applicant, the applicant's child, or another person in the applicant's household because of a threat of immediate or future harm caused by the person who committed or is alleged to have committed the family violence, the trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code.

(e) Authorizes the attorney general to establish procedures for requiring an applicant, in appropriate circumstances, to submit with the application under Subsection (a)(2) independent documentary evidence of family violence, trafficking of persons, or an offense under Section 22.011, 22.021, 25.02, or 42.072, Penal Code, certain forms, including in the form of a statement of a physician or other health care provider regarding

the applicant's medical condition as a result of the family violence, trafficking of persons, or offense or a statement of a mental health professional, a member of the clergy, an attorney or other legal advocate, a trained staff member of a family violence center, or another professional who has assisted the applicant in addressing the effects of the family violence, trafficking of persons, or offense.

SECTION 13. Amends Article 62.001(5), Code of Criminal Procedure, to redefine "reportable conviction or adjudication."

SECTION 14. Amends Section 508.145(d)(1), Government Code, to provide that an inmate serving a sentence for an offense described by Section 3g(a)(1)(A) (relating to Section 19.02, Penal Code (Murder)), (C) (relating to Section 21.11(a)(1), Penal Code (Indecency with a Child)), (D) (relating to Section 20.04, Penal Code (Aggravated Kidnapping)), (E) (relating to Section 22.021, Penal Code (Aggravated Sexual Assault)), (F) (relating to Section 29.03, Penal Code (Aggravated Robbery)), (G) (relating to Chapter 481, Health and Safety Code, for increase of punishment), (H) (relating to Section 22.011, Penal Code (Sexual Assault)), (I) (relating to Section 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual)), (J), (K) (relating to Section 15.03, Penal Code, if offense is punishable as a felony of the first degree), (L), or (M), Article 42.12, Code of Criminal Procedure, an offense for which the judgment contains an affirmative finding under Section 3g(a)(2) (relating to a defendant's use of a deadly weapon) of that article, or an offense under Section 20A.03 (Continuous Trafficking of Persons), Penal Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

SECTION 15. Amends the heading to Section 38.112, Penal Code, to read as follows:

Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS OF SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING.

SECTION 16. Amends Section 43.02(c), Penal Code, as follows:

(c) Provides that an offense under this section is a Class B misdemeanor, except that the offense is a felony of the second degree if the person solicited is younger than 18, rather than 14, years of age, regardless of whether the actor knows the age of the person solicited at the time the actor commits the offense. Deletes existing text providing that an offense under this section is a class B misdemeanor, except that the offense is a felony of the third degree if the person solicited is 14 years of age or older and younger than 18 years of age. Makes a nonsubstantive change.

SECTION 17. Amends Section 43.03(b), Penal Code, to provide that an offense under this section is a Class A misdemeanor, except that the offense is a felony of the second degree if the actor solicits a person younger than 18 years of age to engage in prostitution with another or receives money or other property pursuant to an agreement to participate in the proceeds of prostitution services rendered by a person younger than 18 years of age.

SECTION 18. Amends Section 43.04(b), Penal Code, to provide that an offense under this section is a felony of the third degree, except that the offense is a felony of the first degree if the prostitution enterprise uses as a prostitute one or more persons younger than 18 years of age.

SECTION 19. Reenacts Section 43.251(c), Penal Code, as amended by Chapter 515 (H.B. 2014) and 938 (H.B. 290), Acts of the 82nd Legislature, Regular Session, 2011, and amends it to delete existing text stating an offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the child is younger than 14 years of age at the time the offense is committed, a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted one time of an offense under this section, and a felony of the third degree if it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section. Makes nonsubstantive changes.

SECTION 20. Amends Section 43.23(h), Penal Code as follows:

(h) Provides that the punishment for an offense under Subsection (a) (relating to a person committing an offense if knowing its content or character, the person wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device) or (c) (relating to a person commits an offense if, knowing its content and character, he promotes or possesses with intent to promote any obscene material, or produces, possesses with intent to promote any obscene material or obscene device or produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity) is increased to the punishment for a felony of the second degree if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) (relating to the depiction or description of sexual acts) engaged in by certain individuals or images, rather than providing that the punishment for an offense under Subsection (a) is increased to the punishment for a felony of the third degree and the punishment for an offense under Subsection (c) is increased to the punishment for a state jail felony if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by certain individuals or images.

SECTION 21. Amends Sections 43.26(a) and (h), Penal Code, as follows:

(a) Provides that a person commits an offense if the person knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, including a child who engages in sexual conduct as a victim of an offense under Section 20A.02(a)(5) (relating to a person committing an offense if they traffic a child with the intent that the trafficked child engage in forced labor or services), (6) (relating to a person committing an offense if they receive a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services), (7), or (8).

(h) Provides that it is a defense to prosecution under Subsection (a) or (e) (relating to a person commits an offense if they promote or possess illicit material containing a child) that the actor is a law enforcement officer or a school administrator who:

(1) possessed or accessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261 (Electronic Transmission of Certain Visual Material Depicting Minor);

(2) allowed other law enforcement or school administrative personnel to possess or access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) Makes no change to this subdivision.

SECTION 22. Reenacts Section 71.02(a), Penal Code, as amended by Chapters 68 (S.B. 934) and 223 (H.B. 260), Acts of the 82nd Legislature, Regular Session, 2011, and amends it to provide that a person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of certain offenses, including to commit murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or children, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle or any offense classified as a felony under the Tax Code. Makes nonsubstantive changes.

SECTION 23. Repealer: Chapter 7B (Protective Order for Victim of Trafficking of Persons), Code of Criminal Procedure.

SECTION 24. (a) Provides that the changes in law made by this Act in amending Chapter 7A, Code of Criminal Procedure, and repealing Chapter 7B, Code of Criminal Procedure, apply only to a protective order issued on or after the effective date of this Act. Provides that a protective order issued before the effective date of this Act is governed by the law in effect on the date the order is issued, and the former law is continued in effect for that purpose.

(b) Makes application of this Act prospective.

SECTION 25. Makes application of Section 43.26 (Possession or Promotion of Child Pornography), Penal Code, prospective.

SECTION 26. Effective date: September 1, 2013.