

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 8
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Criminal Justice
5/16/2013
Committee Report (Substituted)

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. C.S.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.

C.S.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. 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 7. Amends Chapter 48, Code of Criminal Procedure, by adding Article 48.06, as follows:

Art. 48.06. **EDUCATIONAL MATERIALS CONCERNING PARDONS FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS.** (a) Requires the Board of Pardons and Paroles (BPP) to develop educational materials specifically for persons convicted of or placed on deferred adjudication community supervision for an offense the person committed solely as a victim of trafficking of person under Section 20A.02, Penal Code. Requires BPP to include in the educational materials a detailed description of the process by which the person is authorized to submit a request to BPP for a written signed recommendation advising the governor to grant the person a pardon.

(b) Requires BPP to post educational materials described by Subsection (a) on BPP's Internet website.

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) 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 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 14. 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 15. Amends Section 43.02, Penal Code, by amending Subsections (a), (b), and (c) and adding Subsection (e), as follows:

(a) Provides that a person commits an offense if the person knowingly:

(1) Makes no change to this subsection; or

(2) solicits another in a public place to engage with the person in sexual conduct for hire.

Makes nonsubstantive changes.

(b) Provides that an offense is established under Subsection (a)(2) whether the actor solicits a person to hire the actor or offers to hire the person solicited. Makes nonsubstantive changes.

(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.

(e) Authorizes a conviction to be used for purposes of enhancement under this section or enhancement under Subsection D (Exceptional Sentences), Chapter 12, but not under both this section and Subchapter D, Chapter 12. Provides that, for purposes of enhancement of penalties under this section or Subchapter D, Chapter 12, a defendant is previously convicted of an offense under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

SECTION 16. 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 state jail felony if the actor has been previously convicted of an offense under this section or a felony of the second degree if the actor engages in conduct described by Subsection (a)(1) (relating to providing that a person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the person knowingly receives money to an agreement to participate in the proceeds of prostitution) or (2) (relating to relating to providing that a person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the person knowingly solicits another to engage in sexual conduct

with another person for compensation) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time the actor commits the offense.

SECTION 17. 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, regardless of whether the actor knows the age of the person at the time the actor commits the offense.

SECTION 18. 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.

SECTION 19. 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 20. 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.

SECTION 21. Repealer: Chapter 7B (Protective Order for Victim of Trafficking of Persons), Code of Criminal Procedure.

SECTION 22. (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 23. Requires BPP not later than October 1, 2013, to post on its Internet website the educational materials described by Article 48.06(a), Code of Criminal Procedure, as added by this Act.

SECTION 24. Effective date: September 1, 2013.