

SUBJECT: Increased penalties for prostitution, other offenses; human trafficking

COMMITTEE: Judiciary and Civil Jurisprudence — committee substituted recommended

VOTE: 8 ayes — Lewis, Farrar, Farney, Gooden, Hernandez Luna, K. King,
Raymond, S. Thompson

0 nays

1 absent — Hunter

WITNESSES: For — Jason Sabo, Children at Risk; (*Registered, but did not testify*:
Jennifer Allmon, The Texas Catholic Conference, Roman Catholic
Bishops of Texas; Steve Bresnen, Texas Family Law Foundation; David
Duncan, Texas Baptist Christian Life Commission; Brian Eppes, Tarrant
County District Attorney's Office; Joshua Houston, Texas Impact; Rene
Lara, Texas AFL-CIO; Diana Martinez, TexProtects, The Texas
Association for the Protection of Children; Glen Maxey, Texas
Democratic Party; Norma Mullican and Barbara Waldon, Refuge of Light;
Steven Tays, Bexar County Criminal District Attorney's Office; Ware
Wendell, Texas Watch; Justin Wood, Harris County District Attorney's
Office)

Against — None

On — Geoff Barr, Office of the Texas Attorney General; (*Registered, but
did not testify*: Shannon Edmonds, Texas District and County Attorneys
Association)

BACKGROUND: Penal Code, sec. 43.02 makes prostitution a crime. It is a crime to
knowingly offer to engage in or to engage in sex for a fee or to solicit
another in a public place to engage in sex for hire. It is a third-degree
felony (two to 10 years in prison and an optional fine of up to \$10,000) if
the person solicited was 14 to 17 years old and a second-degree felony
(life in prison or a sentence of five to 99 years and an optional fine of up to
\$10,000) if the persons solicited was younger than 14.

Penal Code, sec. 43.03 makes the promotion of prostitution a class A
misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). It

is an offense to knowingly receive money or property under an agreement to share in the proceeds of another's prostitution or to solicit someone to engage in sexual conduct with another person for payment.

Penal Code, sec. 43.04 makes the aggravated promotion of prostitution a third-degree felony. It is an offense to knowingly own, invest in, finance, control, supervise, or manage a prostitution enterprise using two or more prostitutes.

DIGEST:

CSHB 8 would make several changes to Penal Code, Code of Criminal Procedure, and Government Code statutes dealing with prostitution, the trafficking of persons, and other crimes, including:

- increasing the penalties for certain offenses related to prostitution involving children;
- eliminating the statute of limitations for compelling prostitution of children;
- prohibiting jury-recommended probation and restricting parole consideration for certain offenses;
- adding some prostitution-related offenses to the sex offender registry;
- merging provisions dealing with protective orders for victims of human trafficking and certain other victims; and
- allowing victims of trafficking to receive relocation expenses from the crime victims compensation fund and to participate in a state address confidentiality program.

The bill would take effect September 1, 2013, and would apply only to offenses committed and protective orders issued on or after that date.

Punishments for prostitution, other offenses. CSHB 8 would increase the penalties for several offenses related to prostitution and trafficking.

Prostitution. CSHB 8 would expand the current second-degree felony punishment (two to 20 years in prison and an optional fine of up to \$10,000) for soliciting children younger than 14 years old to cover soliciting children younger than 18 years old. The second-degree punishment would apply regardless of whether the defendant knew the age of the person being solicited. The current third-degree felony punishment for soliciting a person age 14 to 17 years old would be eliminated.

Promotion of prostitution. The punishment for promotion of prostitution would be increased for some offenses.

Instead of all offenses being class A misdemeanors, it would be a second-degree felony to:

- solicit a child younger than 18 years old to engage in prostitution with another person; or
- receive money or property under an agreement to take part in the proceeds of prostitution by a person younger than 18.

The punishment for the aggravated promotion of prostitution would be increased from a third-degree felony to a first-degree felony if the prostitution ring used one or more people under 18 years old as a prostitute.

Employment harmful to children. The bill would eliminate one of two sets of Penal Code provisions adopted by the 82nd Legislature that established different penalties for employment harmful to children. It would eliminate provisions making the offense a state jail or third-degree felony for repeat offenders and retain provisions making the offense a second-degree felony or, if the child were younger than 14, a first-degree felony.

Obscenity. CSHB 8 would increase the punishment for offenses related to obscene material involving children younger than 18. The punishment for persons acting as wholesale promoters of obscene materials or devices would be increased from a third-degree to a second-degree felony. Offenses for promoting or possessing with intent to promote obscene materials or devices or for involvement in an obscene performance would be increased from a state jail felony to a second-degree felony.

Engaging in criminal activity. The bill would add the offense of continuous sexual abuse of a young child and solicitation of a minor to the list of crimes that when committed under certain circumstances can constitute the offense of engaging in organized criminal activity.

Statute of limitation for compelling prostitution of children. CSHB 8 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 18th birthday of the victim.

Jury probation, parole eligibility for compelling prostitution and trafficking. The bill would add compelling prostitution and trafficking of persons to the list of offenses that are ineligible for jury-recommended probation.

The bill also would add these offenses to the list of crimes for which offenders are not eligible for release on parole until their actual calendar time served, without consideration of good conduct time, equals half of their sentences or 30 years, whichever is less, with a minimum of two years.

Sex offender registration. CSHB 8 would require sex offender registration for persons convicted of second-degree felony prostitution for soliciting sex from someone who was younger than 18 years old.

Protective orders. CSHB 8 would merge the current Code of Criminal Procedure (CCP), ch. 7B provisions dealing with protective orders for victims of human trafficking with CCP, ch. 7A, which deals with protective orders for certain victims of trafficking, sexual assault, and stalking. The bill would repeal CCP ch. 7B.

Crime victims compensation fund, address confidentiality program. CSHB 8 would allow victims of specified crimes relating to trafficking to be among those who could receive one-time only assistance payments from the state's crime victims compensation fund for relocation and housing assistance. They also could participate in an address confidentiality program run by the attorney general that allows some crime victims to use a substitute post office box address in place of their true address and that requires the attorney general to forward mail to the victims. These provisions would apply to victims of trafficking and continuous trafficking, promotion and aggravated promotion of prostitution, compelling prostitution, sexual performance by a child, employment harmful to children, and possession or promotion of child pornography.

**SUPPORTERS
SAY:**

CSHB 8 is necessary to continue the state's efforts to combat the horrific crime of human trafficking, especially the sex trafficking of children. Texas has been identified as a hub for international human trafficking, and in response, the state has enacted numerous laws to combat these crimes. These have included laws to punish traffickers, protect victims, and establish the state's Human Trafficking Prevention Task Force. CSHB 8

would continue these efforts by focusing on crimes related to the sex trafficking and exploitation of children.

Punishment for prostitution, other offenses. The serious impact of these crimes on individual children warrants increased penalties and justifies the use of any state resources to deal with them. CSHB 8 would not result in a significant impact on state resources, according to the bill's criminal justice impact statement.

Prostitution. Texas law should protect all children equally from the crime of prostitution. CSHB 8 would do so by making soliciting prostitution of all children under 18 years old a second-degree felony, instead of imposing different penalties for those under 14 years old and those 14 to 17 years old. The bill would put this crime on par with sex trafficking of a child and compelling prostitution of a child by imposing the punishment regardless of whether the defendant knew the age of the person solicited. All of these offenses should be treated similarly because they exploit children who are the most vulnerable to these horrible crimes.

Promotion of prostitution. CSHB 8 would increase penalties for the promotion and aggravated promotion of prostitution of children because of the devastating effect these crimes have on children. Current penalties can result in a mere slap on the wrist to offenders. Increasing these penalties to second-degree and third-degree felonies would better reflect the role of this crime in human trafficking and would help protect children by deterring the crimes and keeping predators off the streets longer.

While some other offenses that carry stiff penalties, such as compelling prostitution and human trafficking, could cover some situations involving promoting prostitution, they may not cover all of them. For example, compelling prostitution requires force, threat, or fraud, elements that may not be present or could be difficult to prove in a particular case involving promoting the prostitution of a child. It would be more effective to ensure that promoting and soliciting children to take part in prostitution was itself punished as a serious offense.

CSHB 8 would impose stiffer penalties for prostitution promotion involving children by using the same upper age limit, 18 years old, that is used in current law for other similar offenses. For example, the penalties for prostitution and human trafficking are enhanced if a child under 18 years old is involved in the offense.

Employment harmful to children. In 2011, two bills were enacted with differing penalties for the crime of employing or inducing children to work in sexually oriented businesses. CSHB 8 would resolve the conflict between the differing penalties by adopting the higher penalty to best deter and punish these offenses that exploit children.

Obscenity. CSHB 8 would align penalties for promoting and for possessing with the intent to promote obscene materials or devices with the second-degree felony punishments imposed for promotion of child pornography. These offenses are similar and should carry the same penalty.

Engaging in criminal activity. Because most human trafficking crimes are by definition organized crime, CSHB 8 would add continuous sexual abuse of a young child and solicitation of a minor to the organized crime laws. This would give prosecutors another tool to combat these offenses.

Statute of limitation for compelling prostitution of children.

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. Eliminating the statute of limitations would be appropriate because children 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.

Texas has eliminated the statute of limitations for several other serious crimes when it is appropriate, including sex trafficking offenses involving children.

Jury probation and parole eligibility for compelling prostitution and trafficking. CSHB 8 would place compelling prostitution and human trafficking in the same category as other serious offenses for which juries cannot recommend community supervision. It is not appropriate for these offenders to be released on probation. These offenses already are included in the list of serious offenses that cannot receive judge-ordered community supervision.

The bill also would allow the Board of Pardons and Parole to consider parole from prison for persons convicted of these crimes only after they

had served an appropriate portion of their sentence. Given the nature of these crimes, it would be proper for offenders to serve at least half their sentences or 30 years, without consideration of good conduct time, instead of the default that allows parole consideration when time-served plus good conduct time equals one-quarter of a sentence. CSHB 8 would place these offenses among numerous other crimes that have been deemed worthy of requiring at least one-half of a sentence to be served, including sexual performance by a child.

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.

CSHB 8 would place these offenders in the state's sex offender registry with other, similar offenders already required to register, such as those convicted of compelling prostitution and sexual performance by a child. Any problems with the sex offender registry should be dealt with independently of this bill and should not stand in the way of including these serious offenses in the registry.

Protective orders. In 2011, two laws were enacted dealing with protective orders for human trafficking victims, resulting in duplicate provisions. One law added sex trafficking offenses to CCP, ch. 7A provisions dealing with protective orders for victims of sexual assault. Another bill created a new section, CCP, ch. 7B, dealing with protective orders for human trafficking victims. CSHB 8 would address the problem of duplicate provisions by merging the two sections, resulting in CCP, ch. 7A covering protective orders for victims of sexual assault or abuse, stalking, and human trafficking, with ch. 7B being repealed.

Crime victims compensation fund, address confidentiality program. CSHB 8 would aid child victims of trafficking and prostitution by allowing them to receive payments from the crime victims compensation fund for relocation expenses. This would give these trafficking victims the same help as victims of family violence and of sexual assault in the home.

CSHB 8 would recognize that trafficking victims could have the same need for a confidential address as victims of family violence, sexual

offenses, and stalking. To meet this need, CSHB 8 would add these victims to list of those who may participate in the address confidentiality program run by the attorney general. Under the program, the attorney general designates a substitute post office box address for the victims' use, acts as the victims' agent in receiving service of process and mail, and forwards mail to the victim. These actions can help protect victims from further harm from those who trafficked and abused them.

OPPONENTS
SAY:

Punishments for various trafficking and prostitution offenses. Current law properly punishes the offenses in CSHB 8. Enhancing offenses — especially from a misdemeanor to a felony — would be an unnecessary leap in punishments for broad categories of offenses that are adequately handled under current law. For example, CSHB 8 would make promotion of prostitution and aggravated promotion first- and second-degree felonies if the prostitute were younger than 18. This would include 17-year-olds who are not considered children in the criminal justice arena for most other purposes.

Other offenses, some with serious punishments, can be used, if appropriate, in trafficking and prostitution cases involving children. For example, compelling prostitution and human trafficking of a child, regardless of whether someone knows the age of the child, are first-degree felonies. The current structure allows punishments to vary for different crimes and allows state resources to be allocated accordingly.

Statute of limitation for compelling prostitution of children.

Eliminating the statute of limitations for compelling prostitution of a child could render defendants unable 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.

Jury probation and parole eligibility for compelling prostitution and trafficking.

Restricting jury probation for compelling prostitution and trafficking would reduce the options for juries in handling these cases. In addition, requiring a longer minimum time served before parole eligibility could keep some offenders in prison longer than appropriate. Current law that would allow offenders to be considered for parole earlier than under CSHB 8 does not mean that offenders are released on their review date, only that the Board of Pardons and Paroles considers the case.

Sex offender registration. Adding new offenses to the sex offender registry could compound the problem of an overly broad database that includes too many offenders who are not threats to the community and should not be grouped with sexual predators.

NOTES:

The committee substitute added to the filed bill a change in the title of Penal Code sec. 38.112, which makes it an offense to violate protective orders issued under Code of Criminal Procedure Chapter 7A. The addition by the committee substitute would make the title of Penal Code sec. 38.112 reflect the change that CSHB 8 would make to the title of Chapter 7A.

HB 32 by Menendez, on today's calendar, also would increase penalties for the promotion of prostitution and the aggravated promotion of prostitution of children and would require persons convicted of certain prostitution, promotion of prostitution, and aggravated promotion of prostitution offenses to register with the state's sex offender registry.

The companion bill, SB 532 by Van de Putte, has been referred to the Senate Criminal Justice Committee.