

SUBJECT: Revising criminal and civil statutes dealing with human trafficking

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson,
Murr, Vasut

0 nays

WITNESSES: For — Jamey Caruthers, Children at Risk; Jennifer Tharp, Comal County
Criminal District Attorney; (*Registered, but did not testify*: Eric
Carcerano, Chambers County DA; TJ Patterson, City of Fort Worth;
Jessica Anderson, Houston Police Department; Dallas Reed, Texas
Municipal Police Association)

Against — None

On — Cara Pierce, Office of the Attorney General; (*Registered, but did
not testify*: Bentley Nettles and Robert Saenz, TABC; Floyd Goodwin and
Matt Hicks, Texas Department of Public Safety; Thomas Parkinson)

DIGEST: HB 1540 would expand first-degree felony human trafficking to include
certain actions relating to obtaining victims from shelters or certain
residential facilities and would make numerous other changes relating to
human trafficking. The bill also would require the denial of some
alcoholic beverage licenses and permits if drink solicitation occurred and
amend provisions governing common nuisance suits relating to
prostitution and illegal massage operations and provisions on civil
racketeering relating to human trafficking.

The bill would revise what must be considered when adopting certain
minimum standards for general residential operations that provide
comprehensive residential and nonresidential services to persons who are
victims of human trafficking. It would make several other changes relating
to general residential operations operating as a residential treatment
center, including expanding criminal trespass statutes to include such

facilities.

Penalty for certain human trafficking offenses. The bill would expand the circumstances under which human trafficking could be a first-degree felony to include if the actor recruited, enticed, or obtained the victim of the offense from a shelter or facility operating as a residential treatment center that served runaway youth, foster children, the homeless, or persons subjected to human trafficking, domestic violence, or sexual assault.

Drink solicitation. HB 1540 would add drink solicitation to the list of current acts or offenses, including human trafficking, that can trigger an automatic denial of certain alcoholic beverage permits or licenses if specified circumstances occurred and the application was made within a specified time period. The Alcoholic Beverage Code defines drink solicitation as solicitation of any person to buy drinks for consumption by the retailer or any of the retailer's employees.

Common nuisance. The bill would amend several sections of Civil Practices and Remedies Code relating to suits to abate common nuisances as related to certain activities involving prostitution and illegal massage operations.

The bill would remove a current requirement that law enforcement agencies give each person maintaining property leased to someone operating a massage establishment a written notice by certified mail of certain arrests for activities related to prostitution and illegal massage services that could be considered a common nuisance. Instead of notification of an arrest, law enforcement agencies would be authorized to notify those maintaining the property if the agencies had reason to believe activities related to prostitution or illegal massage operations had occurred.

Proof in the form of an arrest or testimony from a law enforcement agent of activities relating to prostitution at a massage establishment taking place after the revised notice provisions would serve as prima facie evidence that a defendant did not make a reasonable attempt to abate

activities relating to prostitution.

The bill would expand when it could be considered that a defendant had been provided with this notice to the earlier of the date the defendant actually received the notice or seven days after the date the notice was postmarked.

The bill would move current language relating to what courts must consider when determining attorneys fees and costs in actions brought under common and public nuisance laws and place it in a new section at the beginning of the Civil Practices and Remedies Code ch. 125 on suits to abate common nuisances.

Civil racketeering. The bill would remove requirements that for certain actions related to human trafficking crimes to be considered civil racketeering the actions must have occurred in more than one county or have been facilitated by the U.S. mail, email, telephone, facsimile, or a wireless communication from one Texas county to another.

HB 1540 would amend provisions on orders that courts can issue in civil racketeering cases related to human trafficking to prevent, restrain, and remedy the racketeering. The bill would allow courts to issue all eight types of orders after determining liability, instead of that authority being limited to one type of orders.

The bill would expand who could be held liable for civil racketeering related to human trafficking if there were certain findings. In these situations, enterprises would be able to be held liable based on the conduct of a person, rather than an agent.

Standards for facilities. The bill would add to requirements for the minimum standards for licensed child care facilities and registered family homes. The standards promulgated by the HHSC executive commissioner for these facilities would have to include minimum standards to ensure that a child's health, safety, and welfare were adequately protected on the grounds of a child-care facility or registered family home. When

promulgating the minimum standards, the executive commissioner could recognize and treat differently the grounds appurtenant to facilities and programs.

The bill would add to the items that the executive commissioner must consider when adopting minimum standards for general residential operations that provide comprehensive residential and nonresidential services to persons who are victims of human trafficking. The executive commissioner would have to consider the precautions required of victims of human trafficking, the role of the general residential operations in protecting victims, and the vulnerability of victims on the grounds of a center.

Criminal trespass, safety zones. HB 1540 would amend the Penal Code sec. 30.05 offense for criminal trespass to specifically include entering or remaining on the property of a general residential operation operating as a residential treatment center. Such offenses would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill would require general residential operations operating as residential treatment centers to post "No Trespassing" notices on their grounds at locations specified in the bill. The bill specifies what would have to be included on the notices, including a description of the Penal Code offense of criminal trespass. HHSC would be required to provide the notices to the centers, and the executive commissioner would have to determine requirements on the placement of the signs.

Persons operating the centers would commit a class C misdemeanor (maximum fine of \$500) if they had been provided signs by the commission and they did not display the signs as required within 30 days of receipt.

The bill would incorporate "general residential operations operating as a residential treatment center" into provisions dealing with child safety zones, drug-free zones, and gang-free zones.

The centers would be added to the list of places in the Code of Criminal Procedure that can constitute a child safety zone and that persons placed on probation for certain crimes, including certain human trafficking offenses, must be ordered to avoid.

The bill would add the area around residential treatment centers to the list of places in the Health and Safety Code that are considered drug-free zones under certain circumstances and for which certain drug crimes can carry increased criminal penalties. Penalties would be increased, as established under current law, for certain drug crimes committed by any unauthorized person 18 years of age or older in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

The bill also would include references to general residential operations operating as a residential treatment center to Penal Code provisions dealing with gang-free zones, making certain offenses committed in, on, or within 1,000 feet of the centers subject to the increased penalties that can be applied for offense in the zones.

Coercion. The bill would move the definition of "coercion" found in Penal Code provisions dealing with human trafficking and relating to several prostitution offenses and would apply that definition to the labor trafficking and human trafficking of adults and children.

The bill would take effect September 1, 2021, and would apply to criminal offenses committed on or after that date and to civil causes of action that accrue on or after that date. Provisions relating to applications for alcoholic beverage permits or licenses would apply to applications filed on or after or pending on that date.

SUPPORTERS
SAY:

HB 1540 would implement several recommendations of the Texas Human Trafficking Prevention Task Force, which has been working since 2009 to fight human trafficking and to coordinate state resources in that fight. Texas has made strides in attacking this form of modern-day slavery and in supporting its victims, and the bill would continue this progress by

strengthening law enforcement investigatory and prosecutorial tools for addressing human trafficking and related crimes and by better protecting victims.

Penalty for certain human trafficking offenses. HB 1540 would recognize the seriousness of human trafficking involving recruiting children from places where vulnerable and traumatized children are living by making such actions a first-degree felony. It would be in line with other human trafficking circumstances that carry the same punishment.

Drink solicitations. HB 1540 would expand the tools that can be used to combat establishments that allow human trafficking by including drink solicitation as something that would make an establishment ineligible for an alcoholic beverage license or permit under certain circumstances. Drink solicitation can be used as a gateway to prostitution, and human trafficking and establishments where it occurs should not be allowed to hold alcoholic beverage permits and licenses. The bill would treat these situations similarly to the way permits and licenses are handled in establishments where offenses involving drugs, prostitution, or trafficking occur.

Common nuisance. HB 1540's revisions to provisions covering common nuisances relating to prostitution and illegal massage operations would give law enforcement authorities additional tools to go after these situations, which can involve human trafficking. Revised notice requirements would let law enforcement officers act even in situations in which arrests have not been made, possibly because an investigation is continuing or other circumstances.

Civil racketeering. HB 1540 would allow law enforcement authorities to pursue all labor and sex trafficking cases by removing a requirement that they take place in more than one county. These cases often occur within one county, and authorities should be able to pursue them.

The bill also would clarify that all remedies are available for courts issuing orders in civil racketeering cases related to trafficking. Without the

change, some might have interpreted the statute to mean that courts could use only one remedy from the current list.

Expanding when enterprises could be liable in civil racketeering and trafficking cases to include persons, rather than agents, would give law enforcement authorities a better tool to combat these cases. For example, a person running a sex trafficking ring in a bar may not qualify as an agent under current law but a manager might have full knowledge of the trafficking. The bill would allow authorities to pursue such cases if current requirements, including one about burden of proof and other actions were met.

Standards for facilities. The bill would help protect and provide for child victims of trafficking by requiring that minimum standards for facilities where they might be living consider and help meet their needs.

Criminal trespassing, safety zones. The bill would better protect children by specifically including in the trespassing offense being on the property of a general residential operation operating as a residential treatment center. Traffickers are targeting these centers to lure and recruit children, and HB 1540 would give law enforcement another tool to combat this through the trespassing statute and by expanding child safety, drug-free, and gang-free zones.

Coercion. The bill would ensure that a uniform definition of coercion was used in all cases involving adult sex and labor trafficking and child labor trafficking by moving the definition to cover all these circumstances.

CRITICS
SAY:

No concerns identified.