

SUBJECT: Revising statutes dealing with human trafficking, prostitution

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: *After recommitted:*

6 ayes — Collier, Zedler, K. Bell, J. González, Hunter, P. King

0 nays

3 absent — Moody, Murr, Pacheco

SENATE VOTE: On final passage, March 27 — 31-0

WITNESSES: *On House companion bill, HB 15:*

For — (*Registered, but did not testify:* Melissa Shannon, Bexar County Commissioners Court; Pete Gallego, Bexar County Criminal District Attorney's Office; Jason Sabo, Children at Risk; Chris Jones, CLEAT; Ann Hettinger, Concerned Women for America; Matthew Williamson, Dallas Police Department; Priscilla Camacho, Dallas Regional Chamber; Traci Berry, Goodwill Central Texas; Ender Reed, Harris County Commissioners Court; Will Francis, National Association of Social Workers-Texas Chapter; Jimmy Rodriguez, San Antonio Police Officers Association; Lori Henning, Texas Association of Goodwills; Michael Barba, Texas Catholic Conference of Bishops; Lonzo Kerr, Texas NAACP; Kyle Ward, Texas PTA; Jason Vaughn, Texas Young Republicans; Carl F. Hunter II; Robert Norris; Arthur Simon)

Against — David Gonzalez and Allen Place, Texas Criminal Defense Lawyers Association; (*Registered but did not testify:* John Chancellor and Roy Hunter, Texas Police Chiefs Association)

On — Allison Franklin, Texas Criminal Justice Coalition; Kirsta Melton, Office of the Attorney General; (*Registered, but did not testify:* Brian Francis and Colleen Tran, Texas Department of Licensing and Regulation; Manuel Espinosa, Texas Department of Public Safety)

DIGEST: CSSB 20 would create new offenses related to the promotion of prostitution, revise penalties for some prostitution offenses, revise procedures concerning orders of nondisclosure for certain victims of human trafficking, and allow the attorney general to contract to collect information on human trafficking.

Criminal offenses. The bill would make several changes to laws governing offenses related to human trafficking and prostitution, including creating two new offenses and revising certain punishments.

Online promotion of prostitution. CSSB 20 would create two new criminal offenses for the online promotion of prostitution. A person would commit the offense of online promotion of prostitution if the person owned, managed, or operated an interactive computer service or information content provider, or operated as an information content provider, with the intent to promote the prostitution of another person or to facilitate another person engaging in prostitution.

The offense of aggravated online promotion of prostitution would be committed under the same circumstances if the intent was to promote the prostitution of five or more persons or to facilitate five or more persons engaging in prostitution.

First offenses of online promotion of prostitution would be third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000). The penalty would be increased to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) for second offenses or if the actor had been previously convicted of aggravated online promotion of prostitution. It also would be a second-degree felony if the online promotion of prostitution involved someone younger than 18 years old engaging in prostitution, regardless of whether the actor knew the age of the person at the time of the offense.

First offenses of aggravated online promotion of prostitution would be second-degree felonies. Repeat offenses would be first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up

to \$10,000). An offense also would be a first-degree felony if it involved two or more persons younger than 18 years old engaging in prostitution, regardless of whether the actor knew the age of the persons at the time of the offense.

These new offenses would be included among the offenses that could be a component of the offense of human trafficking. They also would be included in current provisions that make defendants civilly liable to victims of certain prostitution crimes for related damages.

CSSB 20 would include the new offenses with other prostitution offenses in statutes dealing with crime victims' rights, the collection of statistics by the Department of Public Safety, eligibility for first offender prostitution prevention programs, and the interception of communications with a court order.

The bill also would prohibit the release of those convicted of aggravated online promotion of prostitution on intensive supervision parole, a type of release available to TDCJ to manage its population under certain extraordinary circumstances.

Mandatory probation for prostitution, sellers. CSSB 20 would require judges to place on probation individuals convicted of certain offenses of prostitution for selling sex. For these defendants, judges would have to require the defendant to participate in a commercially sexually exploited persons court program if there were such a program where the defendant lived. Current requirements that prosecutors agree and that participants consent to participation in such programs would no longer apply, and judges could suspend program fees collected from participants. If a jury assessed punishment in a case, the judge would have to follow the recommendations of the jury rather than the requirements of the bill.

Criminal penalties. The bill would make continuous human trafficking a stackable offense so that if a defendant were found guilty of more than one offense from the same criminal episode, the sentences could run concurrently or consecutively.

The bill also would make the current definition of coercion that applies to sex trafficking of adults applicable to all human trafficking offenses.

Orders of nondisclosure. CSSB 20 would revise statutes governing orders of nondisclosure for certain victims of human trafficking. The bill would expand provisions that currently apply only to defendants who were placed on community supervision (probation) and instead apply them to all defendants who were convicted or placed on deferred adjudication and would revise other requirements for an order of nondisclosure to be granted.

The bill would establish the conditions that had to be met for a court to issue an order of nondisclosure for victims of human trafficking, including that the order be in the best interest of justice. The bill would allow multiple requests for nondisclosure to be consolidated and filed in one court, and petitions would have to be filed at least one year after the victim completed a sentence or had the charges dismissed.

Collection of information. CSSB 20 would allow the attorney general to contract with an institution of higher education for assistance in collecting and analyzing information received by the states Human Trafficking Prevention Task Force.

The bill generally would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSSB 20 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.

CSSB 20 reflects the consensus of almost 60 agencies and organizations that helped develop and evaluate the task force recommendations. The bill would strengthen prosecutions of human trafficking and related crimes and better protect victims and address their need for services and legal

protections.

Criminal offenses. CSSB 20 would improve the prosecution of offenses that contribute to human trafficking by creating new offenses aimed at those who used the internet to promote prostitution. These new offenses would be targeted at traffickers and would give law enforcement the tools to go after websites that profit from advertising those involved in prostitution and trafficked individuals. The creation of these offenses also would help implement federal law.

Sellers of prostitution often are victims of crimes, and the bill would acknowledge this by requiring that they receive probation for certain offenses. The bill also would mandate that these victims be connected to existing social services, giving them multiple opportunities to benefit from support systems that could help change their lives, rather than simply incarcerating them. Special court programs would be the best portal to these services and could address victims' individual needs.

Orders of nondisclosure. CSSB 20 would broaden and simplify the process by which victims of trafficking could obtain orders of nondisclosure. Allowing victims to keep their criminal records closed would help them put their lives back together without the collateral consequences that can accompany a criminal record. The bill has safeguards to ensure its provisions would be used in appropriate cases as well as provisions to ensure judicial economy by allowing requests relating to multiple records to be consolidated into one.

OPPONENTS
SAY:

While CSSB 20 includes many provisions that would help the state in the fight against human trafficking, some provisions could reduce judicial discretion or impose inappropriate requirements in some cases on victims of prostitution and human trafficking.

Criminal offenses. Requiring certain prostitution offenders to receive probation would reduce judicial discretion in these cases. Courts already may impose probation when it is appropriate, and in other cases it may not be appropriate or defendants may want to choose jail time over probation.

CSSB 20 should not impose standard consequences for all trafficking victims placed on probation for prostitution. Victims have individual needs, and the bill should allow individualized services to be developed for them, rather than require all of these victims to attend a special court program.

OTHER
OPPONENTS
SAY:

CSSB 20 should include more of an emphasis for pre-arrest diversion of victims of human trafficking. Victims may have multiple encounters with the criminal justice system, some of which would be more appropriately handled by diversion to reduce overcriminalization.

NOTES:

CSSB 20 was reported favorably without amendment from the House Committee on Civil Jurisprudence on April 23, placed on the Major State Calendar on May 13, recommitted to committee, and reported favorably as substituted on May 17.