

SUBJECT: Prosecution, punishment, and prevention of human-trafficking offenses

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Hunter, Hughes, Hartnett, Jackson, Leibowitz, Lewis, Madden, Martinez, Woolley

0 nays

2 absent — Alonzo, Branch

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

WITNESSES: (*On House companion bill, HB 639:*)

For — Rebecca Bernhardt, ACLU of Texas, Chris Burchell, Texas Anti-Human Trafficking in Persons Coalitions San Antonio, Dallas, Houston, Waco, Austin, El Paso, McCallen; Steven Goff, Houston Rescue and Restore; Jennifer Solak, Children at Risk; (*Registered, but did not testify:* Katrina Daniels, Bexar County District Attorney's Office; Jennifer Allmon, Texas Catholic Conference, Roman-Catholic Bishops of Texas; Kim Kotrla, Waco Human Trafficking Coalition; Katherlene Levels, Texas Criminal Justice Coalition; Steve Lyons, Houston Police Department; Dennis Marks, Redeemed Ministries; Justin Marlin, Texans Care for Children; Maria Martinez, Immigration and Reform Coalition of Texas; James McLaughlin, Texas Police Chiefs Association; Becky Moeller, Texas AFL-CIO; Christopher Parrish; Kevin Petroff, Harris County District Attorney's Office; Shanthi Ramanathan, Concerned Women for America; Jason Sabo, United Ways of Texas; Aaron Setliff, Texas Council on Family Violence; Emily Shelton, Texas Impact; Charley Wilkinson, Combined Law Enforcement Association of Texas)

Against — None

On — Timothy Braaten, Texas Commission on Law Enforcement Standards and Education; Billy Fulton, DPS

**BACKGROUND:** Penal Code, ch. 20A defines the offense of trafficking in persons as:

- knowingly trafficking another person with the intent or knowledge that the trafficked person will engage in forced labor or services; or
- intentionally or knowingly benefitting from participation in a venture involving trafficking of persons, including receiving labor or services the individual knows are forced.

The penalty for trafficking in persons is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000), unless the trafficking involves a minor who was forced into prostitution as defined by Penal Code, sec. 43.02, or the offense resulted in the death of the person who was trafficked, in which case the penalty is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

**DIGEST:** SB 89 would:

- create the Human Trafficking Task Force;
- create the Trafficking of Persons Investigation and Prosecution Account;
- create a study of alternatives to juvenile justice systems for children who engaged in acts of prostitution;
- education and training programs on trafficking of persons;
- amend the criminal offense of human trafficking to remove a defense of ignorance that a victim of trafficking was a child;
- allow the status as a victim of human trafficking as a defense to a charge of prostitution; and
- increase the applicable age of the child victim of forced prostitution from 17 to 18 and remove ignorance that the victim was under 18 as a defense.

**Human Trafficking Task Force.** SB 89 would amend Government Code, ch. 402, to add sec. 402.035 which would create the Human Trafficking Task Force. The attorney general would establish the task force to develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes. The presiding officer of the task force would be the attorney general or a designee. The attorney general also would provide the necessary staff and facilities to assist the task force in performing its duties. The task force would be composed of representatives of the:

- governor;
- attorney general;
- Health and Human Services Commission;
- Department of Family and Protective Services;
- Department of Public Safety;
- Texas Workforce Commission;
- Texas Department of Criminal Justice;
- Texas Youth Commission;
- Texas Juvenile Probation Commission; and
- Texas Alcoholic Beverage Commission.

The attorney general also would appoint to the board:

- a public defender;
- a representative of a hotel and motel association;
- a representative of a district and county attorneys association;
- a representative of a state police association;
- a representative of sheriff's departments;
- representatives of local law enforcement agencies affected by human trafficking; and
- representatives of nongovernmental entities making comprehensive efforts to combat human trafficking.

The task force would work to collaborate with U.S. attorneys for the districts of Texas and other federal agents. The task force would collect and publish statistical data on the nature and extent of human trafficking in Texas. It would cooperate with local governments, organizations, and individuals to collect and publish this data.

The task force also would ensure that each state or local governmental agency and political subdivision of Texas that assisted in the prevention of human trafficking collected statistical data including:

- the number of investigations concerning arrests, prosecutions and convictions for, and demographic information about human trafficking, forgery, or prostitution if committed as part of human trafficking;
- geographic routes and patterns in human trafficking, including the country or state of origin and the country or state of destination;

- means of transportation and methods used by persons who engage in trafficking to transport their victims; and
- social and economic factors that create a demand for the labor or services that victims of human trafficking are forced to provide.

The task force would work with the Commission on Law Enforcement Officer Standards and Education to develop and conduct training for law enforcement personnel, victim service providers, and medical service providers to identify victims of human trafficking. The task force also would examine training protocols related to human trafficking issues, as developed and implemented by federal, state, and local law enforcement agencies.

On the request of a judge or district or county attorney, the task force would assist and train the official or staff in the recognition and prevention of human trafficking.

The task force would collaborate with governmental organizations to create a media awareness campaign in communities affected by human trafficking.

Not later than the December 1 of each even-numbered year, the task force would submit a report regarding its activities, findings, and recommendations, including any proposed legislation, to the governor, the lieutenant governor, and the Legislature.

The attorney general would establish the task force not later than December 1, 2009. The provisions outlining the task force would expire September 1, 2013.

**Trafficking of Persons Investigation and Prosecution Account.** SB 89 would create a the Trafficking of Persons Investigation and Prosecution Account in the General Revenue Fund. The account would be composed of legislative appropriations and other funds required by law to be deposited into the account. The Legislature would be allowed to appropriate money from the account only to the criminal justice division of the Governor's Office. The division would be allowed to use the funds to distribute grants to:

- counties that applied for the grants and that had dedicated personnel to identify, prevent, investigate, or prosecute prostitution-related offenses;

- nongovernmental organizations that applied for grants to provide comprehensive services in Texas to prevent prostitution or to address the needs of its victims.

The total amount of grants that would be distributed to counties and nongovernmental organizations would not exceed \$10 million per year.

**Study of alternatives to the juvenile justice system for victims of human trafficking.** SB 89 would amend Human Resources Code, ch. 141, to add sec. 141.056, which would require the director of the Texas Juvenile Probation Commission to establish a committee that would evaluate alternatives to the juvenile justice system for children who were accused of engaging in acts of prostitution. Such alternatives could include governmental programs, faith-based programs, and programs offered by nonprofits. The director would determine the size of the committee. It would be composed of members of:

- the Texas Juvenile Probation Commission;
- the Texas Youth Commission;
- other relevant state agencies as determined by the director;
- members of the Legislature;
- members of nongovernmental organizations that provide programs and services to combat and prevent trafficking of persons in Texas;
- and
- other juvenile justice experts.

Not later than January 1, 2011, the committee would prepare and deliver to each member of the Legislature a report that included the results of the study and recommendations for alternatives to the juvenile justice system for children who were accused of engaging in acts of prostitution.

The director of the Texas Juvenile Commission would establish the committee not later than October 1, 2009.

**Education and training programs for law enforcement.** SB 89 would amend Occupations Code, ch. 1701, to add sec. 1701.258, which would require the Commission on Law Enforcement Officer Standards and Education to enact a rule requiring an officer first licensed by the commission on or after January 1, 2011, to complete a one-time basic education and training program on human trafficking. The program would

have to consist of at least four hours of training and include a review of the substance of laws against prostitution and human trafficking.

The commission would make available to each officer a voluntary advanced education, instruction, and training program on the trafficking of persons and compelling prostitution. Not later than January 1, 2011, the commission would begin offering the basic and advance programs regarding prostitution and human trafficking.

SB 89 would amend Occupations Code, sec. 1701.402, to require an officer to complete the basic education and training program on the trafficking of person in order to complete an intermediate or advanced proficiency certificate after January 1, 2011.

The commission would adopt the rules necessary to implement SB 89 not later than December 1, 2010.

**Offense of trafficking in human persons.** SB 89 would amend Penal Code, sec. 20A.02, to make promotion of prostitution or sexual performance by a child a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) regardless of whether the actor knew the age of the child at the time the actor committed the offense.

**Prostitution-related offenses.** SB 89 would amend Penal Code, sec. 43.05, to make compelling prostitution applicable to situations involving a child younger than 18, regardless of whether the actor knew the age of the child at the time the actor committed the offense.

SB 89 would amend Penal Code, sec. 43.02 to create a defense to prosecution to a charge of prostitution if the actor engaged in the conduct constituting prostitution because the actor was the victim of human trafficking.

**Other provisions.** SB 89 would not make an appropriation and would only take effect if a specific appropriation for the implementation of the Act was provided in a general appropriations act of the 81st Legislature.

The bill would take effect on September 1, 2009.

NOTES:

The companion bill, HB 639 by Thompson, was reported favorably, as substituted, by the Judiciary and Civil Jurisprudence Committee on March 30 and sent to the Local and Consent Calendars Committee, which transferred it to the Calendars Committee on April 24, where no further action was taken.