

SUBJECT: Making it a crime to hinder prosecution of certain sexual assault offenses

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Collier, K. Bell, Cook, Hinojosa, A. Johnson, Murr, Vasut

0 nays

2 absent — Cason, Crockett

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify:* DeAndre Hutchison, Afro American Police Officers League; Jason Sabo, Children at Risk; Frederick Frazier, Dallas Police Association/FOP716 State FOP Director; James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Jessica Anderson, Houston Police Department; Ray Hunt, HPOU; Tom Maddox, Sheriffs Association of Texas; Mitch Landry, Texas Municipal Police Association; John Chancellor, Texas Police Chiefs Association; Bruce Owdley)

Against — Allen Place, Texas Criminal Defense Lawyers Association

On — Johnny Sutton, Texas Catholic Conference of Bishops

BACKGROUND: Under Penal Code sec. 38.17, a person commits an offense if the person fails to stop or report the commission or attempted commission of an offense of aggravated sexual assault of a child or continuous sexual abuse of a young child. An offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Family Code sec. 261.101(a) requires a person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect to make a report immediately to any local or state law enforcement agency, the Department of Family Protective Services, or the state agency that operates, licenses, certifies, or registers

the facility in which the alleged abuse or neglect occurred.

Sec. 261.101(b) requires a professional who has cause to believe that a child has been or may be abused or neglected or that a child is a victim of the offense of indecency with a child to make a report within 48 hours. Professionals include teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

Under sec. 261.109, it is an offense for a person who is required to make a report under sec. 261.101(a) to knowingly fail to make a report of child abuse or neglect. An offense is a class A misdemeanor, except it is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) if the child was a person with an intellectual disability who resided in certain facilities and the actor knew that the child had suffered serious bodily injury as a result of the abuse or neglect.

A professional commits an offense under sec. 261.109 if the professional is required to make a report under sec. 261.101(b) and knowingly fails to make a report. An offense is a class A misdemeanor, except that it is a state-jail felony if the actor intended to conceal the abuse or neglect.

Interested parties note that children vulnerable to sexual abuse often lack the power to seek justice, and authority figures can downplay or even facilitate the abuse. Concerns have been raised that state law does not adequately address failures to report sexual offenses committed against a child and that, as a result, children who are the victims can be subject to further abuse.

DIGEST:

CSSB 568 would replace the current offense of failing to stop or report aggravated sexual assault of a child under Penal Code sec. 38.17 with the offense of hindering the investigation or prosecution of certain sexual offenses committed against a child.

"Sexual offense against a child" would mean conduct that constituted an

offense under Penal Code provisions relating to:

- trafficking or continuous trafficking of persons;
- continuous sexual abuse of a young child or children;
- indecency with a child;
- sexual assault or aggravated sexual assault of a child;
- compelling prostitution; or
- sexual performance by a child.

Under the new offense established by the bill, a person 17 years of age or older would commit an offense if the person:

- committed an offense under Family Code sec. 261.109 for failing to report child abuse or neglect by failing to report a sexual offense against a child; and
- engaged in conduct intended to hinder the investigation or prosecution of the offense.

Actions that would constitute conduct intended to hinder the investigation or prosecution would include:

- altering, destroying, or concealing any record, document, or thing to impair its verity, legibility, or availability as evidence in the investigation or prosecution;
- interfering with the willingness of a witness to report that offense to, or cooperate in the investigation or prosecution of the offense with, a law enforcement agency or the Department of Family and Protective Services or otherwise preventing the report by or cooperation of the witness;
- harboring or concealing the person who committed the offense;
- providing or aiding in providing the person who committed the offense with a means to avoid investigation or arrest, including by assisting the person in relocating to another area; or
- providing false information regarding the offense to a law enforcement agency or to the Department of Family and Protective

Services.

An offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000), except it would be a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the person who committed the sexual offense against a child committed a subsequent sexual offense against a child and the actor's failure to report enabled or facilitated the commission of the subsequent offense.

The following information could not be released to the public and would not be public information under state law:

- the name of the child who was the victim of the sexual offense;
- the name of the actor, until the actor was charged with an offense under the bill; and
- the name of the person whom the actor believed to have committed the sexual offense until that person was charged with the offense.

The bill would take effect September 1, 2021, and would apply only to an offense committed on or after that date.