

Human Trafficking – 81st Legislative Session

Human trafficking is an issue that continues to affect Texas. It involves compelling individuals, through force, fraud or coercion, to perform labor or sexual acts. In short, it is modern-day slavery. There is both an international and a domestic side to the problem. International trafficking impacts foreign nationals within our borders and domestic trafficking primarily affects American children who run away from home. It is estimated that between 14,500 and 17,000 international victims are trafficked into the U.S. each year. Nationally, it is estimated that 450,000 children run away each year, and that approximately 1 out of every 3 of those children will be lured into sex trafficking within 48 hours of leaving home. Moreover, the average age of entry for those domestic victims is between 12 and 14 years old. Sobering statistics such as these require a stronger response from the state.

In 2003, Texas became the first state to pass anti-trafficking legislation and since then the state has continued to expand that body of laws. In the last legislative session, CHILDREN AT RISK, along with the offices of Senator Leticia Van de Putte, Representative Senfronia Thompson, and Representative Rafael Anchia drafted bills that address necessary changes to end human trafficking in Texas. Other advocates combating this issue include Concerned Women for America, Catholic Charities, the Houston Rescue and Restore Coalition, and the American Civil Liberties Union. Between the 80th and the 81st legislative sessions, the Office of the Attorney General issued a report on the state of human trafficking in Texas. The findings of that study educated legislators on the impact of this crime on Texas, as well as on the opportunities that exist for improvement. Charged with this new information, the legislature undertook sweeping change.

The greatest change came in the form of an omnibus bill, HB 4009. This bill, which CHILDREN AT RISK helped to draft, mandated training for law enforcement officers. The training of law enforcement officers is a key element to combating human trafficking. Very often the victims themselves do not know that the treatment they are receiving is against the law and they rarely identify themselves as a “victim” to the officer. Officers are often on the front lines of the problem and if they are able to identify the victims, the victims’ chances for a rescue drastically improve. HB 4009 also created a statewide human trafficking task force in the Office of the Attorney General. This task force will develop policies and procedures to assist in the prevention and prosecution of human trafficking crimes. Another function of the task force will be to provide one point of contact for the state. Doing so will allow Texas to become more organized on the state level, which not only will assist in prosecutorial and rescue efforts, but will also improve data collection. Finally, a centralized point of contact will also create a more unified front for Texas when dealing with federal partners.

The passage of HB 4009 also ushered in a new understanding of the domestic human trafficking problem that exists. The bill established an assistance program for victims of domestic human trafficking. Part of the program requires the creation of a database that includes the services that are available to domestic human trafficking victims. The bill also contained an outreach initiative to ensure that victims, judges, prosecutors, and law enforcement personnel are aware of the availability of services through the program. In addition, the bill created a grant program which will award funding to public and nonprofit organizations that provide direct assistance,

such as housing, medical care and therapy, as well as indirect services, such as outreach, to domestic victims. However, because the grant program did not receive funding this year, the Health and Human Services Commission is charged to identify funding streams for the program. The Commission must report those findings to the 82nd Legislature by December 1, 2010. The bill also requires the Texas Juvenile Probation Commission to conduct a study on alternatives to incarceration for children who engage in acts of prostitution. Hopefully, by reviewing other successful “safehouse” models around the country, Texas can learn to avoid criminalizing these victims, and instead, place them in restorative facilities.

HB 4009 also created change to the statutory structure of Texas’ existing legislation. Previously, the compelling prostitution statute defined a minor as “under 17” years old, but the human trafficking statute included as a minor anyone “under 18”. Because compelling prostitution is the same as human trafficking from the sexual exploitation standpoint, the Legislature changed the age of minors in the compelling prostitution statute to be those “under 18”. In addition, the knowledge requirement was removed from the human trafficking and compelling prostitution statutes, in the case of minors. Based on this change, the prosecution no longer has to prove that the trafficker knew her victim was a minor. The higher penalty for trafficking a minor will attach regardless of what the trafficker knew. Finally, HB 4009 created a defense to a charge of prostitution for victims of human trafficking. For that reason, if a victim is charged with prostitution she can raise the defense that she was a victim of human trafficking to escape liability for the offense.

Another important piece of legislation to come out of the 81st legislative session was HB 533, which provided human trafficking victims with an avenue to sue their traffickers for monetary damages in civil court. The legislature also passed HB 1372 which included human trafficking victims as a “victim” under Article 56.01(3) in the Texas Code of Criminal Procedure. This change will allow human trafficking victims to be eligible for the benefits and protections of the Victims' Bill of Rights and the Crime Victims' Compensation Act.

Finally, the 81st Texas Legislature passed three pieces of legislation that attacked sexually oriented businesses. HB 3094 grants Harris County the authority to regulate, and potentially shut down, massage parlors that engage in “illegitimate” practices in the unincorporated area of the county. The bill was enacted to reach massage parlors that were moving beyond Houston’s limits to escape the city’s ordinances regulating massage parlors. The bill defines an “illegitimate massage parlor” as one that allows: a nude or partially nude person to perform the massage; any individual to engage in sexual conduct in the establishment; or any individual to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual. Another bill was passed to require sexually oriented businesses to maintain certain photographic identification records. According to the bill, a sexually oriented business may not employ an individual younger than 18 years of age. These businesses must also keep records of valid proof of identification for all their employees or independent contractors and maintain the records for at least two years after the employee has stopped working at the establishment. Finally, HB 960 was passed to expand the ability of municipalities and counties to review the criminal background of applicants for sexually oriented business licenses. The Federal Bureau of Investigation currently will not allow municipalities and counties access to the National Crime Information Center (NCIC) criminal history record information without explicit

state authorization. This bill grants municipalities and counties explicit authorization to access the Texas Department of Public Safety's criminal history record information, which includes NCIC information. With access to this national database, Texas can now cross reference applicants' records in other states before making the decision to grant them a sexually oriented business license.