



82nd Texas Legislature: HUMAN TRAFFICKING

CHILDREN AT RISK improves the quality of life for Texas' children through strategic research, public policy analysis, education, collaboration, and advocacy.

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I. Introduction

Human trafficking is modern day slavery. As a global epidemic, it is the fastest growing criminal industry in the world, second only to drug dealing and tied with arms dealing. An estimated 27 million people are enslaved worldwide today in labor or sexual servitude. It is both an international and domestic problem; between 14,500 and 17,500 individuals are trafficked into the U.S. each year, and within our borders, thousands of U.S. citizens and legal permanent residents fall victim. In fact, as many as 1.7 million child runaway or throwaway episodes occur in the U.S. each year, and statistics show that 1 in 3 of these children will be approached by a trafficker within 48 hours of leaving home; the average age of entry into child trafficking being between 12 and 14 years of age.

In 2003, Texas was the second state in the U.S. to pass anti-trafficking legislation. Greater awareness and increased support by the Legislature has resulted in several key pieces of anti-trafficking legislation to be passed in subsequent legislative sessions. In 2009, an omnibus bill, HB 4009 (Weber), passed, which strengthened the human trafficking and prostitution statutes, mandated law enforcement training, established the statewide Human Trafficking Prevention Task Force in the Office of the Attorney General, and required the Texas Juvenile Probation Commission to establish a committee to evaluate the alternatives to the juvenile justice system for children who engage in acts of prostitution. In collaboration with legislators and key stakeholders, and as a member of both the Human Trafficking Prevention Task Force and the Juvenile Probation Commission committee, CHILDREN AT RISK focused on efforts to increase penalties against traffickers and Johns, decriminalize minors engaged in prostitution, and to advocate for shelter and victim services. Many of the policy recommendations from the Task Force and the Juvenile Probation Commission committee were encompassed in bills passed in the 82nd Texas Legislative Session.

II. 82nd Texas Legislative Session

Growing awareness about human trafficking and support from the Legislature helped anti-trafficking bills to move quickly during the 82nd Legislative Session, resulting in the passage of several key bills. Due to the state budget shortfall, policy recommendations heading into the session focused on initiatives which did not have substantial fiscal impacts, including the enhancement of criminal penalties against traffickers and purchasers of commercial sex.

a. Senate Bill 24 (Van de Putte)

The first anti-trafficking bill passed during the session was omnibus bill SB 24 (Van de Putte). Child trafficking was in the spotlight this session, and SB 24 was a major victory on behalf of child victims. In particular, SB 24 strengthened the trafficking of persons statute, Texas Penal Code Chapter 20A, through the enumeration of specific offenses which constitute child trafficking, including sexual assault, prostitution, sexual performance by a child, and possession of child pornography. In addition, the requirement for a prosecutor to prove a trafficker's use of force, fraud or coercion in cases involving minor victims was removed, thus easing the prosecutorial burden to bring traffickers to justice and bringing Texas in line with federal law.

Some of the most severe crimes are included in a list under the Texas Code of Criminal Procedure, known as the "3g" offenses. These are the crimes that the Legislature has deemed to warrant certain limitations on probation, bail, and parole. SB 24 adds the offense of trafficking of

persons to this list. Along with this heightened treatment in the severity of the trafficking in persons offense, defendants who have any prior felony conviction are automatically sentenced to life imprisonment upon a child trafficking conviction. Also, prior to SB 24, the penalties under section 43.05 of the Penal Code for compelling prostitution were the same regardless of whether the victim was a child or an adult. SB 24 changed the penalty from a second degree felony to a first degree felony when a child under the age of 18 is involved.

Human trafficking cases may often take several years from beginning to completion because of the extensive investigation involved. Unless specifically listed otherwise, all criminal indictments must be brought within three years from the date of the commission of the offense, which may not always be sufficient time to charge the defendant. SB 24 eliminates the statute of limitations to bring a felony indictment against a defendant in cases involving a child trafficking victim, and it extends the statute of limitations to ten years in cases involving adult victims. SB 24 also extends the statute of limitations to bring a civil cause of action for personal injury to five years, previously two years, thus providing victims with additional time to recover financial damages from their traffickers.

In an effort to reduce demand for commercial sex, SB 24 also enhanced criminal penalties against the purchasers, or Johns. Prior to SB 24, the highest penalty a John could face is a state jail felony, and no penalty distinctions were made when a child victim is involved. SB 24 increases the penalty to a first degree felony if a child is solicited for sexual services, regardless of whether the purchaser knew the age of the child at the time of the offense.

Many human trafficking cases are never reported, and victims often go left unidentified. The Texas Family Code requires teachers, day-care providers, doctors, nurses, and juvenile correction officers to report child abuse or neglect to law enforcement within 48 hours of suspecting the abuse. Certain acts are listed in the Family Code under the definition of “abuse” which explicitly requires reporting and investigation. SB 24 adds trafficking, prostitution, and compelling prostitution to this list of definitions, thus requiring the reporting to law enforcement of all potential child trafficking victims that these professionals may encounter.

b. House Bill 2014 (Thompson)

Another significant bill which passed this session is HB 2014 (Thompson). Like SB 24, HB 2014 implements a wide range of anti-trafficking policy solutions. Despite the fiscally restrictive session, HB 2014 was able to provide funds for victim rehabilitation through mandatory restitution for child victims of trafficking. Upon consideration of the financial circumstances of the defendant, the court must order the defendant to pay an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment for victims under the age of 18. This is a significant first step in ensuring that victims receive the necessary rehabilitative services to reestablish their lives. However, much work is still left to be done to create additional funding for victims’ services, especially for the creation of a safe house for domestic minor sex trafficking victims.

The Texas Alcoholic and Beverage Commission (TABC) plays an instrumental role in the anti-trafficking movement. HB 2014 requires TABC to refuse to issue a permit or license for a period of one to three years for establishments which have had their permits canceled or voluntarily

surrendered due to acts of prostitution or trafficking of persons occurring on the premises. Thus, these establishments will be significantly impacted by the loss of revenue from the sale of alcoholic beverages. Furthermore, as TABC agents monitor establishments for permit violations, they are also able to look out for signs of prostitution or trafficking occurring in these establishments. However, without TABC licensure, establishments have begun to operate as “BYOB” establishments. One bill which could have remedied this problem, HB 175 (Jackson), did not pass. HB 175 would have created the “On Premises Consumption Only License,” which would require BYOB establishments to also have a TABC license, thus extending TABC’s jurisdiction to monitor them for signs of human trafficking and prostitution.

Recognizing the importance of strengthening the protections for child victims, HB 2014 enhances penalties against persons who offer a child for sale through trafficking, prostitution, or compelling prostitution. Enhanced penalties are also imposed upon Johns through HB 2014, with penalties for solicitation of a child age 14 and older but younger than 18 increased to a third degree felony, and penalties for solicitation of a child younger than 14 increased to a felony of the second degree (both previously Class B misdemeanors).

It is difficult to determine concise numbers for human trafficking incidences and victims, as a statewide data collection system does not currently exist to monitor all reported cases. Changes to the Government Code were made by HB 2014 to help address the gathering of trafficking data by requiring district and county courts to provide a monthly report on the number of cases filed for trafficking offenses to the Office of Court Administration of the Texas Judicial System. In addition, the Department of Public Safety is now required to develop a case reporting mechanism to enable the creation of a statistical breakdown of cases involving human trafficking and compelling prostitution.

c. House Bill 3000 (Thompson)

Prior to the 82nd Legislative Session, consequences for traffickers for multiple offenses were not explicitly listed in the trafficking statute. HB 3000 (Thompson) established the “Continuous Trafficking of Persons” offense for persons who engage in trafficking two or more times during a period of 30 days or greater. This offense is a felony of the first degree, punishable by life imprisonment or a minimum of 25 years. Defendants face additional restrictions upon conviction for this offense, such as limitations on eligibility for bond, parole, and mandatory supervision, and also mandatory life without parole upon conviction for a second Continuous Trafficking of Persons offense.

d. House Bill 289 and House Bill 290 (Jackson)

Many child trafficking victims are exploited through illegal employment in sexually oriented businesses. HB 289 and HB 290 (both by Jackson) address this problem. HB 289 adds employment of a minor at a sexually oriented business, trafficking of persons, and sexual conduct or performance by a child to the list of activities which constitute a common nuisance. HB 290 increases the penalties associated with employment harmful for persons who have been previously convicted of the same offense.

e. House Bill 2015 (Thompson)

Prostitution is a significant avenue for the commercial sexual exploitation of child trafficking victims. These children are required to provide sexual services for a fee and to forward all of their earnings to their pimps/traffickers. In June 2010 the Texas State Supreme Court held that children under the age of 14 are victims of sexual exploitation and should not be charged with the offense of prostitution. However, while law enforcement recognizes the importance of treating these children as victims, they are left without an alternative to the juvenile justice system for placement options upon removal from the streets. A safe house for domestic minor sex trafficking victims does not exist in Texas; in fact, there are less than 100 beds for this population of victim nationwide. In an effort to address this problem, HB 2015 (Thompson) added prostitution to the list of conduct in the Family Code indicating a need for supervision. This would allow a child to be taken into custody and grants the juvenile court jurisdiction over children who are picked up by law enforcement for prostitution. HB 2015 also requires the sealing of records for these children.

III. Conclusion

The 82nd Texas Legislative Session resulted in significant gains in the fight against human trafficking. Enhanced penalties against traffickers and Johns and greater protection for child victims are substantial victories for the anti-trafficking movement. Each legislative session brings Texas closer to ending this horrific crime. As Texas continues to build upon the successes of past legislative sessions, in addition to continuing the enhancement criminal penalties, the focus must turn to the treatment of all child victims of sexual exploitation as victims and the establishment of safe houses for these victims to receive much needed rehabilitative services.