

**SPEAKING OUT AND DRIVING CHANGE FOR CHILDREN**

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*at Risk*

**83<sup>rd</sup> TEXAS LEGISLATURE**

**REPORT ON HUMAN TRAFFICKING LEGISLATION**

**August 2013**

## Introduction

During the past several legislative sessions, Texas has made great strides in human trafficking legislation, raising awareness of the problem, increasing penalties for offenders, and providing solutions for victim relief. CHILDREN AT RISK has helped to push Texas to the forefront of these efforts, by tirelessly advocating for the passage of important anti-trafficking laws.

The 81<sup>st</sup> and 82<sup>nd</sup> Legislative Sessions were largely successful due to educating legislators on the impact of human trafficking and the need to improve state laws to combat it. An interim report on the state of human trafficking in Texas prior to the 81<sup>st</sup> Session led the way for comprehensive legislation such as **HB 4009 (Weber)**, which created the statewide Attorney General’s task force on human trafficking, mandated training for law enforcement officers, and made significant changes to the state’s compelling prostitution statute. HB 4009 also created the means for a victim of human trafficking charged with prostitution to raise a defense that she was a victim of trafficking to escape liability for the offense. As a result of the changes made by HB 4009, more victims are being identified and rescued, prosecutions of traffickers have become more streamlined, and minors charged with prostitution are being recognized as victims.

The 82<sup>nd</sup> Legislative Session continued this success, with the passage of several bills that increased penalties for traffickers, pimps, and “johns,” who purchase sex. **SB 24 (Van de Putte)** expanded the list of offenses in the trafficking of persons statute, and removed the requirement that traffickers use “force, fraud, or coercion,” in the trafficking of a minor, in line with federal law. Similarly, **HB 3000 (Thompson)**, established the “Continuous Trafficking of Persons” offense, with increased penalties for frequent offenders. Protection and assistance to victims was also a priority, with SB 24 adding trafficking, prostitution, and compelling prostitution of a child to the list of acts required to be reported to law enforcement by child care and medical professionals, and **HB 2014 (Thompson)** mandating restitution for child trafficking victims to pay for rehabilitative services such as medical, psychiatric, and psychological care.

During the 83<sup>rd</sup> Legislative Session, CHILDREN AT RISK worked diligently with legislators and key stakeholders on tougher consequences for traffickers, improved victim identification, and measures to better protect victims, including minimum standards for shelters, protective orders, and diversion programs for minors charged with prostitution. Many recommended changes came from the Attorney General’s Human Trafficking Prevention Task Force, extended for another two years under **HB 1272 (Thompson)**. A joint interim committee was also created under **HCR 57 (Hunter)**, to report findings and recommendations on human trafficking in Texas to the 84<sup>th</sup> Legislature.

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## Criminal Prosecution

Efforts were made to ensure that trafficking and prostitution of children are punished as serious offenses. **HB 8 (Thompson)** adds compelling prostitution and trafficking of persons to the list of crimes ineligible for community supervision, as well as to the list of crimes in which offenders are not eligible for release on parole until they have served the lesser of half, or 30 years of their sentence.

HB 8 also increases the penalty for soliciting a child under the age of 18 to a second degree felony, punishable by two to twenty years in prison and a fine of up to \$10,000, regardless of whether the offender knew the age of the victim. Prior to the 83<sup>rd</sup> Session, it was a second degree felony for soliciting a child under 14 years of age, but only a third degree felony for soliciting a minor aged 14-17.

Penalties for both promotion of prostitution and aggravated promotion of prostitution involving a child younger than 18 years old were also increased to a second degree felony and first degree felony, respectively. Furthermore, employing a child in a sexually oriented business is now punishable as a second degree felony and increased to a first degree felony if the child is under 14 years of age. Measures such as these were enacted to deter traffickers from exploiting children.

Wholesale promotion, or promoting or possessing with intent to promote obscene materials involving children younger than 18 are punishable as a second degree felony (the punishment for wholesale promoters of obscene materials was previously a third degree felony, while promoting or possessing with intent to promote was previously a state jail felony). Additionally, knowingly or intentionally *accessing* child pornography, not just *possessing* it has become a crime.

**HB 1483 (Lozano)** did not pass this session, but would have created a new criminal offense, “Commercial Sexual Exploitation of a Child,” for purchasers or publishers of advertisements soliciting commercial sex that visually depict a child younger than 18.

Several pieces of legislation give prosecutors additional tools to convict traffickers. HB 8 adds continuous sexual abuse of a young child and solicitation of a minor to the list of crimes that may constitute organized criminal activity, which comes with high penalties. **HB 2268 (Fruillo)** simplifies the process of obtaining electronic evidence, often stored in other states. The bill allows Texas judges and law enforcement agents to issue and execute warrants for certain electronic information helpful in investigating criminal activity occurring online. A significant number of trafficking cases involve advertisements placed on internet sites promoting prostitution and soliciting commercial sex, so access to this evidence in a timely manner would streamline investigations.

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**SB 12 (Huffman)** allows prosecutors to use evidence of prior offenses involving a child victim against offenders in trials for trafficking, solicitation, possession or promotion of child pornography, and other sexual offenses against a child. Although this has been a long-standing practice under federal evidentiary rules, prior to the 83<sup>rd</sup> Session, prosecutors in Texas were prevented from introducing this evidence.

Another helpful measure came in the form of **HB 1120 (Riddle)** adding trafficking to the list of crimes monitored by the Texas Crime Stoppers Council and encouraging individuals to report criminal activity by offering financial rewards for reports that lead to the apprehension of traffickers.

Finally, **HB 23 (Fischer)** sought to require sex offenders to disclose their sex offender status on social networking profiles; however several concerns about the bill prevented its passage. First, the bill did not distinguish between offenders who committed crimes using the Internet and those who committed other types of sexual offenses. Additionally, opponents criticized the bill for penalizing prior offenders who had already completed court ordered punishment. The bill's focus was prevention, so criticism may change with offenders' increasing reliance on the Internet and online sources to perpetuate sex crimes.

## Civil Liability

Several bills also provide civil remedies for trafficking crimes, to serve as both a punishment and a deterrent. **SB 94 (Van de Putte)** allows victims of sex trafficking to recover actual damages, including mental anguish, court costs, and attorney's fees from the person who compelled them into prostitution, or the publisher of an advertisement, when the publisher has reasonable knowledge that the ad is promoting prostitution. In tracking these ads, this bill targets the Internet, which is a primary means of advertisement for many traffickers. In this manner, trafficking victims can recover monetarily, even without criminal prosecution of their traffickers or those that contributed to their victimization.

**HB 3241 (Thompson)** authorizes the Office of the Attorney General to bring lawsuits against individuals or entities for racketeering related to human trafficking, where the individual trafficker or trafficking enterprise has had a financial gain. The bill allows the Office of the Attorney General to seek civil penalties, costs, attorney's fees, and injunctive relief, with awarded assets distributed between the state's victims' compensation fund and local law enforcement authorities who assisted in the case.

## Victim Identification and Prevention

The 83<sup>rd</sup> Session also gave much attention to prevention, with the passage of four bills focused on victim identification and reporting of missing children, specifically those at risk of trafficking. **HB 1272 (Thompson)** tasks the Attorney General's Prevention Task Force to work with the Texas Education Agency (TEA), the Department of Family and Protective Services (DFPS), and the Health and Human

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Services Commission (HHSC) to create a standardized curriculum to train doctors, nurses, emergency medical services personnel, teachers, school counselors, school administrators, and others to identify and assist victims of human trafficking. In addition, methods to identify children at risk of becoming victims of human trafficking, and an appropriate referral process are to be developed, ultimately increasing our ability to prevent human trafficking crimes.

Child trafficking victims are often referred to the juvenile justice system, and many times, are processed through the system without ever being identified as a victim. Therefore, in addition to establishing training protocols for teachers, child welfare employees, and medical personnel, it is also important to train juvenile probation department staff. **HB 3407 (Riddle)** unfortunately did not pass this session. The bill would have required the Texas Juvenile Justice Department to evaluate and develop best practices and screening procedures for early identification of juveniles who are victims of sex trafficking.

**SB 742 (Carona)** expands the Department of Public Safety (DPS) data collection clearinghouse to include information on attempted child abductions. Within eight hours of receiving a report of an attempted abduction, local law enforcement must provide this information to the clearinghouse, and include specific information about children who had been reported missing four or more times in the two years prior. Runaway children are frequently targeted by traffickers because of their emotional vulnerability and need for food and shelter, so a unified reporting system is crucial to both identify high-risk youth and reduce the number of human trafficking victims.

Also under SB 742, law enforcement officers are required to take at least four hours of training regarding missing and exploited children. DPS may also award grants to nonprofit organizations to assist with reporting to the clearinghouse as well as providing programming on child safety, internet safety, and the prevention of child sexual exploitation.

Similarly, **HB 1206 (Parker)** requires a local law enforcement agency, upon receiving a report of a child missing for 48 hours, to immediately make efforts to locate the child and determine the well-being of the child. Furthermore, the bill authorizes law enforcement to take possession of the child and notify the Department of Family and Protective Services (DFPS) if there is reason to believe the child is a victim of abuse or neglect.

Finally, **HB 2539 (Turner)** requires computer technicians to report child pornography found on personal computers during the course of their work, including the name and address of the person who owns the computer. Computer technicians could face a Class B misdemeanor for intentionally failing to report these images to appropriate authorities.

## Victim Protection and Services

There was much attention given to victim protection during the 83<sup>rd</sup> Session, with a variety of bills addressing protective orders for trafficking victims, diversionary programming, and confidentiality and minimum standards for shelters.

HB 8 combined two laws enacted during the 82<sup>nd</sup> Legislative Session concerning protective orders for trafficking victims. One law added sex trafficking to the statute on protective orders for victims of sexual assault, the other created a new section specifically dealing with protective orders for human trafficking victims. HB 8 merges the two, creating one comprehensive law allowing protective orders for victims of sexual assault or abuse, stalking, and human trafficking. HB 8 also extends the ability of parents and legal guardians acting on behalf of a trafficking victim under 18 years of age to apply for a protective order.

Similarly, **SB 357 (Hinojosa)** adds victims of trafficking and sexual abuse to the types of victims for which the court can make findings that an applicant is a victim of sexual assault or abuse, stalking, or trafficking, if there are reasonable grounds to believe so. This is significant, as other adjudications for trafficking related activity can rely on these findings. SB 357 also expands the venues in which victims of sexual assault, stalking, and trafficking can apply for protective orders, to any county in which an element of the offense occurred, a big win for victims that are often displaced from one county to another in the course of being trafficked.

Finally, **SB 893 (Carona)** affords sexual assault victims the same protections as family violence victims, by allowing protective orders to prohibit an alleged offender from communicating in *any way* with a victim. Prior to the 83<sup>rd</sup> Session, protective orders for sexual assault victims only prohibited communication of a *threatening or harassing* nature. In addition, under SB 893, violating the bond conditions of a protective order in a sexual assault case is now a Class A misdemeanor (previously, there was no offense for violating these bond conditions).

Along with protective orders, HB 8 extends the address confidentiality program run by the Office of the Attorney General for victims of family violence, sexual offenses, and stalking, to victims of trafficking, allowing individuals to apply for the program if he or she fears for their safety or for the safety of a family member, because their alleged trafficker has threatened harm. In this manner, HB 8 recognizes that trafficking victims often have the same safety concerns as victims of family violence, sexual offenses, and stalking, and a means for keeping addresses confidential can prevent traffickers from harming them. HB 8 also allows trafficking victims to receive a one-time assistance payment of up to \$2,000 for relocation expenses and up to \$1,800 for housing expenses from the state's crime victims' compensation fund, to ensure the victim's safety.

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The 83<sup>rd</sup> Session was also successful in enacting measures to protect victims from criminal prosecution. HB 8 requests that the Board of Pardons and Paroles develop educational materials to inform trafficking victims how to request a pardon for offenses committed while the individual was a victim of trafficking. **SB 92 (Van de Putte)** seeks to further address this problem by creating diversion programs for juveniles apprehended by law enforcement for prostitution. Such programs would provide treatment and services, rather than punishment, to minor trafficking victims. For example, a minor in a diversion program may defer adjudication until his or her eighteenth birthday, during which time completion of diversion program requirements would avoid criminal penalty. SB 92 also provides a mechanism by which courts with juvenile justice jurisdiction and courts with child abuse cases can share jurisdiction in cases where the jurisdictions overlap.

Additionally, **SB 484 (Whitmire)** seeks to divert prostitution offenders by establishing a prostitution prevention program, allowing access to counseling and services regarding sexually transmitted diseases, substance abuse, and mental health. The Legislature reports that housing an offender costs the state as much as \$18,583.00 yearly, but a well-run prevention program can cost taxpayers as little as \$4,300.00 a year. This high cost, combined with high recidivism for this population, indicate that prevention programming with access to counseling and rehabilitative services is needed.

One of the most pressing needs in providing services to human trafficking victims is clear regulations on rehabilitative housing, addressed in **HB 2725 (Thompson)**. This bill exempts from public information any data relating to the home address, telephone number, and other identifying information of employees, volunteers, donors, board members, and clients of a shelter for trafficking victims. Additionally, the location and physical layout of a shelter, as well as services provided to trafficking victims are now exempt from reporting, to ensure the safety and security of victims while they are receiving care.

HB 2725 also directs the Executive Commissioner of the Health and Human Services Commission (HHSC) to establish minimum standards for facilities that provide services to victims of trafficking. These minimum standards will consider the special circumstances and needs of victims of trafficking, as well as the role of the residential or nonresidential program in assisting and supporting these victims.

Considering the costs associated with providing services to victims of trafficking, the HHSC currently awards grants to nonprofit organizations that assist domestic victims of human trafficking. **HB 432 (Riddle)** allows this grant program to be included among the charitable organizations eligible to participate in the state employee charitable campaign. With this designation, a state employee may authorize a deduction from their paycheck as a contribution to the HHSC grant program, providing a means for additional funding to go to services for victims of trafficking.

## Conclusion

Texas continues to lead the nation in enacting strong anti-trafficking legislation. Great progress was made this session in yet again strengthening penalties for traffickers and johns, and in improving victim identification and services. However, much work remains to be done to ensure that victims of this crime are identified and properly cared for. CHILDREN AT RISK urges stakeholders to push for funding for victim services, including funding for diversionary programming and rehabilitative services and facilities for child victims. Additionally, it is imperative that medical professionals, educators, and DFPS workers receive quality training in the identification of human trafficking victims, so that victims are given the opportunity to access rehabilitative services. Finally, while the passage of anti-trafficking legislation is a significant victory, we must ensure that the legislation is being implemented, that law enforcement is aware of the new tools at its disposal to combat trafficking, and that victims are receiving the intervention and services now available to them.

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