

SPECIAL VICTIMS

PREVENTING, PROTECTING, PUNISHING



BICENTENNIAL BLUEPRINT

FRAMING OUR FUTURE

Abbott
GOVERNOR



POL. AD. TEXANS FOR GREG ABBOTT

Summary of Recommendations

1. Sexual Assault and Other Criminal Sexual Misconduct

- **Recommendation: Allow for the reporting of sexual assault claims against legislators, state elected officials, agency directors and boards, and Capitol Complex employees to the Texas Rangers.**

Public officials have an obligation to take allegations against them with extreme seriousness. Doing so means providing a responsible and just process by which claims can be reviewed. No administrative arm of government has the relevant training and expertise to investigate sexual assault claims.

Allegations of sexual offenses should be reported to law enforcement for investigation. The Texas Rangers currently handle the investigation of offenses against public administration by state elected officials. Texas should similarly allow allegations of sexual assault and other sexual offenses by legislators, statewide elected executive and judicial officials, agency officials and capitol complex employees to be reported to the Public Integrity Unit of the Texas Rangers for criminal investigation under Texas Government Code 411.0253.

2. Sex and Human Trafficking

Recommendation: Enhance criminal penalties for the promoting or compelling prostitution by requiring jail time, requiring sex offender registration, and establishing that the involuntary consumption of intoxicants may be a form of duress.

The penalties in Texas for promoting prostitution are too light to provide adequate protections for the human trafficking victims who are forced into a situation in which sexual favors are traded for money without the victim's consent. A KHOU-TV investigative report of records from June 2014-December 2016 concluded that "two-thirds of those criminals charged with sex-trafficking crimes got probation instead of jail or prison time" in Harris County.

Several proposals would strongly discourage those in the illicit sex trade from taking advantage of innocents, and to bring justice those who do. The proposals are:

1. Adding promotion of prostitution and aggravated promotion of prostitution to the list of crimes (at Code of Criminal Procedure Article 42A.054(a)) for which community supervision in the form of deferred adjudication or probation is not available, and jail time is required.
2. Changing the law to ensure that those who are convicted of promotion or aggravated promotion of prostitution are required to register as sex offenders, thus deterring these crimes.
3. The current statute for compelling prostitution provides that an offense is committed when the victim is caused to commit prostitution "by force, threat, or fraud." This may be too narrow to capture other methods of compelling prostitution, such as involuntary drug addiction; the definition should be clearly expanded to include these methods.

- **Recommendation: Allow individuals convicted of prostitution to clear their records if the underlying crime was something they were forced to engage in.**

Gaps in current Texas law can allow the victims of sex trafficking to be penalized and even incarcerated for offenses that they were compelled to commit. Texas should establish a process for persons convicted of engaging in the offense of prostitution, who did so only as victims of either trafficking of persons or compelling prostitution, to petition courts to have their conviction set aside and their arrest and other criminal history records expunged. The “setting aside” of convictions is a form of judicial clemency in which a court may, at its discretion, cancel or revoke a verdict and dismiss the underlying charge against the defendant. This relief would be available in instances where a person has been convicted or placed on deferred adjudication for an offense of Trafficking of Persons, Continuous Trafficking of Persons, or Compelling Prostitution; and the alleged victim alleges specific facts that, if proved, would establish that she or he engaged in prostitution solely as a victim of one of the above offenses for which the alleged perpetrator has been actually convicted or placed on deferred adjudication. The Legislature should pass legislation to create a process by which these victims are given a second chance.

- **Recommendation: Increase the penalty for kidnapping a child from a third-degree felony to a first-degree felony to match the seriousness of the crime.**

Under Texas law, kidnapping is generally prosecuted as a third-degree felony. However, under certain circumstances – such as holding a victim for ransom – the offense may be elevated to a first-degree felony. Kidnapping a child is not currently one of the circumstances under which the offense becomes a first-degree felony. Texas law should be amended to reflect the seriousness of the offense of kidnapping a minor by designating kidnappings where the victim is a minor child under the age of 18 as aggravated kidnappings, thereby raising the penalty from a third-degree felony to (except in cases of voluntary victim release) a first-degree felony.

- **Recommendation: Increase the penalty for sexual performance by a child from a second-degree felony to a first-degree felony; and increase the penalty for possession or promotion of child pornography from a third-degree felony to a second-degree felony, or a first-degree felony for repeat offenses.**

Penalties for child pornography offenses should more appropriately reflect the heinous nature of these crimes and vary based on the age of the minor depicted in the visual material. Revising the punishment framework for possession or promotion of child pornography, as well as the even more deplorable offense of employing, authorizing, or inducing a child to engaging in sexual conduct or a sexual performance, would help prevent further exploitation of children and provide another means of criminal action against traffickers. Texas must protect those who are most vulnerable to crimes like sex trafficking by:

1. Enhancing the offense for sexual performance by a child from a second-degree felony under current law, to a first-degree felony for all instances where the child is under 18 rather than only in instances where the child is under 14.
2. Enhancing possession or promotion of child pornography from a base offense level of third-degree felony under current law to a second-degree felony. Current law provides for an enhancement to a second-degree felony for this offense for a first time repeat offender (second time offender), and to a first-degree felony for second and subsequent repeat offenses. This should be changed to provide for a first-degree felony for a first time and subsequent repeat offender.

- **Recommendation: Establish a criminal offense for sex offenders being in the same passenger car as a minor who is not a family member.**

It is apparent that the risk of allowing minors into vehicles with certain Registered Sex Offenders (RSOs) and suspicious persons must be mitigated to prevent sex trafficking and sex offenses. In order to curtail sex trafficking risks among minors, a law should be established to prohibit certain RSOs from being in a vehicle with a minor who is not a family member. This approach would limit sex offender interactions with minors and deter them from entering into a situation where the victimization of a minor may occur. The law should prohibit a sex offender from being in the same “passenger car” as a minor, with “passenger car” being defined by Texas Transportation Code 541.201(12) as “a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator”; the law should also cover large privately owned and operated vans as well as motorcycles.

- **Recommendation: Raise the minimum age to be employed at a sexually oriented business from 18 to 21.**

Despite sex traffickers beginning to move a majority of their business relations online, sexual exploitation continues at brick-and-mortar sexually oriented businesses including gentlemen’s clubs and cabarets. With the continual risk of sex trafficking at these business establishments comes the need to strengthen laws that protect those who are vulnerable to this form of exploitation. Raising the age at which an individual can be employed at a sexually oriented business would lower the risk and availability of potential victims for trafficking because the prevalence of young people at these locations would be drastically reduced. Because a large number of sex trafficking victims are under the age of 21, banning them from employment at an establishment that already poses a high risk of trafficking would in turn reduce their exposure to this exploitation overall.

- **Recommendation: Prohibit minors from entering the premises of sexually oriented businesses and add allowing a minor on the premises of a sexually oriented business to the list of common nuisances under Sec. 125.0015 of the Civil Practice and Remedies Code.**

To further protect young victims from exploitation by sexually oriented businesses, it is important that minors not be allowed to set foot on the grounds of sexually oriented businesses such as strip clubs and adult video stores. Existing Texas law leaves to counties and municipalities the responsibility to provide for regulations regarding sexually oriented businesses as the municipality or county considers necessary to promote the public health, safety, or welfare. In most counties, a person under 18 may not enter premises of a sexually oriented business. Texas law should also be amended to explicitly prohibit any person under 18 from setting foot on the premises of a sexually oriented business. Furthermore, any sexually oriented business that allows minors (persons under 18) to set foot on their premises should be recognized as a "common nuisance" under Texas Civil Practices and Remedies Code Chapter 125. Relief available under such an action is broad and may include fines, jail time, seizure of the property, and/or injunctive relief ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance and may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.

- **Recommendation: Provide the Department of Public Safety with \$22 million in funding to create regional Criminal Investigation Division (CID) Human Trafficking squads, and enhance the Interdiction for the Protection of Children program to train additional Texas law enforcement officers to combat human trafficking.**

To efficiently dedicate resources to this effort, the Legislature should provide the Department of Public Safety (DPS) funding for the creation of regional human trafficking squads in each of the six regional Criminal Investigation Division (CID) offices. These squads would conduct human trafficking investigations throughout the state. Additionally, training law enforcement to recognize and combat human trafficking is a valuable tool in preventing and stopping this crime. The Interdiction for the Protection of Children (IPC) program is an integrated approach to identify children at risk during law enforcement encounters focusing on law enforcement officer training, revision of reporting and intelligence-gathering methods, and officer expertise. Since 2009, DPS has opened more than 100 criminal investigations into child trafficking, sexual abuse, and related offenses, and rescued more than 250 children as a result of this training. To expand the reach of IPC in human trafficking prevention and provide more training to Texas law enforcement, the legislature should appropriate funding to the Education, Training, and Research Division of DPS to hire additional personnel to administer this program.

- **Recommendation: Require all state employees to view sex and human trafficking prevention material as provided by the Office of the Attorney General.**

In January 2018, Texas Attorney General Ken Paxton introduced a comprehensive training video developed to educate and mobilize all Texans in the fight against human trafficking. The video, titled "Be the One," educates Texans on how to prevent, recognize, and report human trafficking. To reach more Texans, state agency directors should adopt a policy to require sex and human trafficking training for all state employees utilizing the free public awareness materials provided by Office of the Attorney General.

3. Sexual Assault Evidence Testing

- **Recommendation: Fund crime lab testing of sexual assault evidence with an additional \$14 million for the 2020-21 biennium to eliminate the backlog of sexual assault evidence kits.**

One of the most critical rights afforded to the victims of reported sexual assault is the right to a forensic medical examination within 96 hours from the time of the crime. It is estimated there are currently 15,000 untested sexual assault kits backlogged in Texas. Creating a comprehensive tracking system managed by DPS in 2017 was a major step toward determining the true scope of untested sexual assault kits. Fully implementing the tracking system and providing \$14 million in funding in the next biennium to test backlogged sexual assault kits would represent major progress. It is also vital that a stable funding source is guaranteed to prevent future backlogs. The Criminal Justice Division of the Office of the Governor will lead this effort with a \$1 million grant to DPS to allow for the testing of sexual assault kits by the University of North Texas Forensic Services Unit.

4. GPS Monitoring for Offenders Posing an Immediate Danger

- **Recommendation: Expand GPS monitoring to include high-risk domestic violence abusers, as well as human traffickers and repeat sex offenders, who pose a severe threat to their victims, as determined by a judge at a hearing to set bail. This program should be supported by grants from the Criminal Justice Division of the Office of the Governor.**

Strong containment methods are measures designed to ensure victim safety by keeping dangerous actors away from their targets. Victims of domestic violence may face the greatest threat of homicide when leaving or engaging in legal separation from their batterer. In counties with strong pretrial services programs, magistrates should be encouraged to require GPS monitoring as a condition for release for high-risk perpetrators of family or domestic violence. Although the ultimate decision whether to impose GPS monitoring should be left to the discretion of individual magistrates on a case by case basis, GPS monitoring should be imposed in cases where a protective order has been issued disallowing offenders from contacting the victim or entering the victim's physical proximity. A grant program should be established in the Criminal Justice Division (CJD) of the Office of the Governor to reimburse counties via grant for all or part of the costs in employing GPS monitoring for cases involving high-risk domestic violence offenders, sex offenders, and those connected to human trafficking.

5. Predatory Educator-Student Relationships

- **Recommendation: Create a “do-not-hire” registry of educators and other adults barred from school employment due to predatory teacher-student relationships, or other unlawful acts with a minor or student, and create additional protocols to prevent the abuse of students by school employees.**

When school districts fail to discipline educators exhibiting predatory behavior or to disclose such behavior to the Texas Education Agency (TEA), it allows these individuals to continue hurting children at other school districts. Texas should create a “do-not-hire” registry for school employees who have been convicted of or placed on deferred adjudication for improper relationships with students. A person listed on the registry would be prohibited from employment as a teacher, librarian, educational aide, administrator, counselor, school nurse/medical aide or any other position with direct, unsupervised contact with students. This recommendation would require that the registry be housed within the State Board for Educator Certification (SBEC). Private schools, charter schools, and districts of innovation would be required to check the registry before making any final hiring decisions. Additionally, the Legislature should adopt the following proposals to protect Texas students:

1. Authorize SBEC to temporarily suspend the teaching certificate for a certificated individual if the individual is criminally charged with a sexual or violent offense which, if substantiated, would indicate that the individual presents a continuing threat to the safety and welfare of students, educators, or school personnel.
2. Create a secure online portal for school superintendents, principals, and charter school directors to report incidences of improper teacher-student relationships.
3. Improve training for education professionals on the prevention, reporting, and mediation methods of school violence and misconduct.

Table of Contents

1. Sexual Assault and Other Criminal Sexual Misconduct.....	7
Recommendation: Provide for the reporting of sexual assault claims against legislators, state elected executive and judicial officials, agency directors and boards, and Capitol Complex employees to the Texas Rangers. The increased personnel expenses will cost the state an estimated \$1.9 million in the 2020-21 biennium.....	9
2. Sex and Human Trafficking.....	10
Recommendation: Enhance criminal penalties for the promoting or compelling prostitution by requiring jail time, requiring sex offender registration, and to clarify that the involuntary consumption of intoxicants may be a form of duress.....	12
Recommendation: Allow individuals convicted of prostitution to clear their records if the underlying crime was something they were forced to engage in.....	14
Recommendation: Increase the penalty for kidnapping a child from a third-degree felony to a first-degree felony to match the seriousness of the crime.....	15
Recommendation: Increase the penalty for sexual performance by a child from a second-degree felony to a first-degree felony; and increase the penalty for possession or promotion of child pornography from a third-degree felony to a second-degree felony, or a first-degree felony for repeat offense.....	16
Recommendation: Establish a criminal offense for sex offenders being in the same passenger car as a minor who is not a family member.....	18
Recommendation: Raise the minimum age to be employed at a sexually oriented business from 18 to 21.....	19
Recommendation: Prohibit minors from entering the premises of sexually oriented businesses, and add allowing a minor on the premise of a sexually oriented business to the list of common nuisances under Sec. 125.0015 of the Civil Practice and Remedies Code.....	21
Recommendation: Provide the Department of Public Safety with \$22 million in funding to create Regional Criminal Investigation Division Human Trafficking squads and enhance the Interdiction for the Protection of Children program to train additional Texas law enforcement officers to combat human trafficking.....	22
Recommendation: Require all state employees to view sex and human trafficking prevention material as provided by the Office of the Attorney General.....	23
3. Sexual Assault Evidence Testing.....	25
Recommendation: Fund und crime lab testing of sexual assault evidence with an additional \$14 million for the 2020-21 biennium to eliminate the the backlog of sexual assault evidence kits.....	25
4. Domestic Violence.....	27
Recommendation: Expand GPS monitoring to include high-risk domestic violence abusers, as well as human traffickers and repeat sex offenders, who pose a severe threat to their victims, as determined by a judge at a hearing to set bail; supported by grants from the Criminal Justice Division of the Office of the Governor.....	27
5. Predatory Educator-Student Relationships.....	30
Recommendation: Create a “do-not-hire” registry of educators and other adults barred from school employment due to predatory teacher-student relationships, or other unlawful acts with a minor or student, and create additional protocols to prevent the abuse of students by school employees.....	30

Recommendations

1. Sexual Assault and Other Criminal Sexual Misconduct

Recent nationwide attention to the serious issues of sexual assault and sexual harassment prompted an investigation of sexual misconduct in the Texas Capitol. The *Texas Tribune* reported that “more than two dozen current and former lawmakers and legislative aides” alleged instances of sexual harassment at the Capitol, including instances perpetrated by legislators.¹ While specific allegations have not been confirmed, Governor Abbott made a statement calling on both the House and the Senate to review their policies on handling claims of sexual harassment.²

Senate policy is for reports to be made to the Secretary of the Senate’s office or an individual office supervisor.³ The Senate currently has a training program in place for staffers employed directly by the Senate, but there is no requirement to participate for individual member offices.⁴ Lt. Governor Patrick has asked Senator Lois Kolkhorst, the Chair of the Senate Administration Committee, to review the policy: only one complaint, not involving a lawmaker, has been filed in the 22 years that the policy has been in effect.⁵ These efforts gained renewed urgency when the *Daily Beast* reported sexual harassment allegations by multiple current or former legislative staffers against two sitting Texas state senators.⁶

The dearth of public accusations could be the result of current policy, or it could be the result of appropriate conduct. For instance, State House policy directs that reports be made to the chair of the House Administration Committee or manager of the House Personnel Department.⁷ The House does not have a training program in place, but House Speaker Joe Straus (R- San Antonio) recently ordered a program to be implemented.⁸ Similarly to the Senate, the program will not require a House member to participate, but participation will become a matter of public record.⁹

Contrast the Texas Legislature to Congress, in which the U.S. House and Senate both passed resolutions in November making sexual harassment training mandatory for all members and their staff.¹⁰

¹ “At the Texas Capitol, victims of sexual harassment must fend for themselves,” Alexa Ura, Morgan Smith, Jolie McCullough, and Edgar Walters, *Texas Tribune*, November 13, 2017. Online at: <https://www.texastribune.org/2017/11/13/texas-capitol-victims-sexual-harassment-must-fend-themselves/>

² “Abbott calls for improved sexual harassment guidelines at the Capitol,” Jonathan Silver, *Austin American-Statesman*, November 15, 2017. Online at: <http://www.statesman.com/news/abbott-calls-for-improved-sexual-harassment-guidelines-the-capitol/TkMezrgkBrylWGpluD8sLO/>

³ “Texas Senate starts process of reviewing, revising 22-year-old sexual harassment policy,” Jackie Wang, *Dallas Morning News*, December 14, 2017. Online at: <https://www.dallasnews.com/news/politics/2017/12/14/texas-senate-starts-process-reviewing-revising-22-year-old-sexual-harassment-policy>

⁴ Ura et al., *infra*.

⁵ *Ibid*.

⁶ “You Want to F*ck With Me Tonight?: Horror Stories from the Texas Capitol,” Olivia Messer, *Daily Beast*, December 6, 2017. Online at: <https://www.thedailybeast.com/you-want-to-fck-with-me-tonight-horror-stories-from-the-texas-capitol>

⁷ Ura et al., *infra*.

⁸ “New Policy Defines Bad Conduct, Requires Training for Staff Members,” Alejandra Matos, *Houston Chronicle*, December 2, 2017. Online at: <https://www.pressreader.com/usa/houston-chronicle/20171202/281496456609421>

⁹ *Ibid*.

¹⁰ “House approves mandatory sexual harassment training, some pushing broader reforms,” Deborah Barfield Berry, *USA Today*, November 29, 2017. Online at: <https://www.usatoday.com/story/news/politics/2017/11/29/house-set-vote-mandatory-sexual-harassment-training-some-pushbut-doesnt-yet-address-complaint-proces/905289001/>

State agencies in Texas — including those in the executive branch, state appellate courts, and judicial agencies with statewide jurisdiction, and institutions of higher education — are required to provide anti-discrimination training, which must include employment discrimination involving sexual harassment, for all employees.¹¹ Such training must be offered within thirty days of an employee being hired, and supplemental training thereafter every two years.¹²

Members of Congress have also been accused of sexual misconduct. In 2017 Rep. John Conyers Jr. (D-Michigan) was forced to resign after multiple female aides accused him of inappropriate contact.¹³ The scrutiny intensified when news reports disclosed a \$27,000 settlement Conyers reached with a former employee.¹⁴ Not long after Conyers' resignation, U.S. Rep. Blake Farenthold (R-Texas) announced he would not seek re-election amid accusations from former employees alleging that the congressman was verbally abusive and sexually demeaning.¹⁵ In December of 2017, *POLITICO* reported that Farenthold had used a taxpayer-funded congressional account to settle a sexual harassment claim brought by his former communications director.¹⁶

For state employees, employment discrimination based on sex – including sexual harassment – is an unlawful employment practice under Texas Labor Code Chapter 21 and Title VII of the federal Civil Rights Act.¹⁷ An aggrieved person under the relevant Texas law may file a claim with the Texas Workforce Commission (TWC),¹⁸ which may then investigate the claim¹⁹ and, if appropriate, grant injunctive relief.²⁰ Alternately, the TWC may file a civil legal action for judicial enforcement²¹ and/or notify the complainant notice of his or own right to file a civil action;²² a court in such an action can grant a wide variety of remedies, including injunctions and other equitable reliefs (which may include hiring or reinstating an employee or ordering back pay),²³ compensatory and punitive damages,²⁴ and attorney's fees and costs.²⁵ These restrictions and remedies apply even to the staff of elected officials of the state and of local political subdivisions.²⁶ Finally, an aggrieved employee may also seek federal relief through the Equal Employment Opportunity Commission.²⁷

¹¹ Texas Labor Code 21.010.

¹² *Ibid.*

¹³ "Rep. John Conyers Jr. resigns over sexual harassment allegations after a half-century in Congress," Elise Viebeck and David Weigel, Washington Post, December 5, 2017. Online at: https://www.washingtonpost.com/powerpost/conyers-wont-seek-reelection-following-harassment-allegations-report-says/2017/12/05/17057ea0-d9bb-11e7-a841-2066faf731ef_story.html?utm_term=.3dd239231d81

¹⁴ *Ibid.*

¹⁵ "U.S. Rep Farenthold of Texas to retire amid sexual harassment scandal," Abby Livingston, Texas Tribune, December 14, 2017." Online at: <https://www.texastribune.org/2017/12/14/farenthold-leave-office/>

¹⁶ "Lawmaker behind secret \$84K sexual harassment settlement unmasked," Rachael Bade, Politico, December 1, 2017. Online at: <https://www.politico.com/story/2017/12/01/blake-farenthold-taxpayer-funds-sexual-harassment-274458>

¹⁷ "Sex Discrimination," Texas Workforce Commission. Online at: <http://www.twc.state.tx.us/jobseekers/sex-discrimination>

¹⁸ Texas Labor Code Sec. 21.201.

¹⁹ Labor Code 21.204.

²⁰ Labor Code 21.210.

²¹ Labor Code 21.251.

²² Labor Code 21.252.

²³ Labor Code 21.258.

²⁴ Labor Code 21.2585.

²⁵ Labor Code 21.259.

²⁶ Labor Code 21.126.

²⁷ "Sex-Based Discrimination," U.S. Equal Employment Opportunity Commission. Online at: <https://www.eeoc.gov/laws/types/sex.cfm>

Recommendation: Provide for the reporting of sexual assault claims against legislators, state elected executive and judicial officials, agency directors and boards, and Capitol Complex employees to the Texas Rangers. The increased personnel expenses will cost the state an estimated \$1.9 million in the 2020-21 biennium.

Public officials have an obligation to take allegations against them seriously. Doing so means providing a responsible and just process. Under current law, the state government does not have an adequate method for investigating sexual harassment claims made against state public officials and public employees. No administrative arm of government has the relevant training and expertise to investigate sexual assault claims.

Allegations of sexual offenses should be reported to law enforcement for investigation. The Texas Rangers currently investigate offenses against public administration by state elected officials. Texas should similarly allow allegations of sexual assault and other sexual offenses by legislators, statewide elected executive and judicial officials, agency officials and capitol complex employees to be reported to the Public Integrity Unit of the Texas Rangers for criminal investigation under Texas Government Code 411.0253. The Texas Ranger Division of DPS, consisting of 162 commissioned Rangers and 60 support personnel, has lead criminal investigative responsibility for major incident crime investigations, unsolved crime/serial crime investigations, public corruption and public integrity investigations, officer-involved shooting investigations, and border security operations.²⁸ As noted above, elected officials have recently been accused of sexually offensive allegations, and this would create a mechanism to have such allegations fairly and thoroughly investigated.

One of the virtues of creating this avenue is that investigatory records held by the Texas Rangers are protected by the Texas Public Information Act, which under Texas Government Code 552.108 generally protects from disclosure records “held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime.” This would help ensure that frivolous criminal claims and complaints reported merely to embarrass an official in the press or damage their election prospects will not be fruitful.

To handle the anticipated increased workload for the Public Integrity Unit and ensure a manageable workload that allows all cases to be thoroughly investigated, five new Texas Rangers should be hired, at an anticipated cost of \$240,000 per Ranger in the initial year and \$140,000 per Ranger in the second and subsequent years.²⁹ In the 2020-21 fiscal biennium, this will cost the state an estimated \$1.9 million.

Under current law, state government does not have an adequate method for investigating sexual assault claims made against state public officials and public employees. By allowing these cases to be reported to the Texas Rangers, the state ensures that claims are investigated by a law enforcement body that is equipped to hold public servants accountable.

Depending on the outcome of the investigation, the Texas Rangers can report the results to the appropriate prosecuting authority, the Texas Workforce Commission, or to the appropriate legislative body for further action.

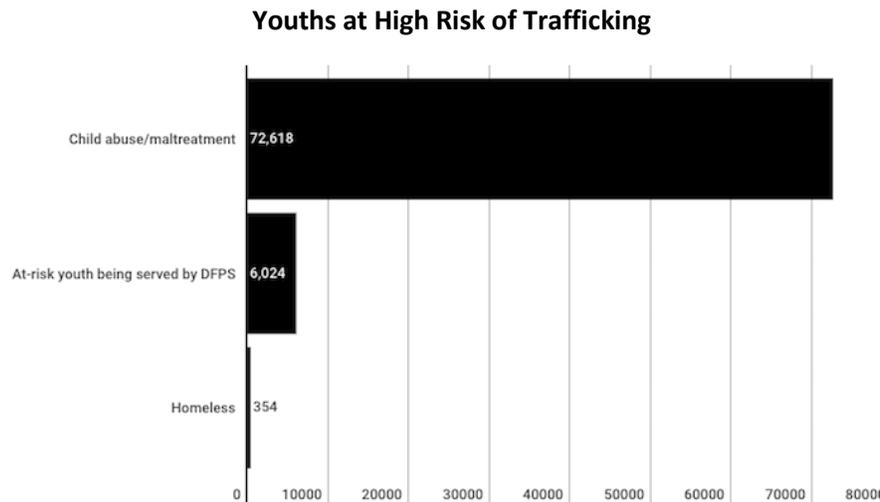
²⁸ “Texas Department of Public Safety: Texas Rangers.” Online at: <https://www.dps.texas.gov/TexasRangers/>

²⁹ As projected by the Department of Public Safety.

2. Sex and Human Trafficking

A study by the Institute on Domestic Violence & Sexual Assault at the University of Texas at Austin estimates that there are more than 300,000 victims of human trafficking in Texas, including approximately 79,000 minors and youth victims of sex trafficking, and nearly 234,000 adult victims of labor trafficking as of late 2016.³⁰ The National Human Trafficking Hotline reported that in just the first six months of 2017 there were 1,142 calls to the hotline from Texas with 433 trafficking cases reported.³¹ In those six months, Texas accounted for over 8 percent of all calls and nearly 10 percent of cases reported to the hotline nationwide. In 2017, it was reported that Houston was the top city for calls to the National Human Trafficking Hotline.³² The Criminal Justice Division of the Office of the Governor awarded Harris County with four grants totaling \$4.4 million to provide better victim services and criminal prosecution in cases of violent crimes and sex trafficking.³³

Estimates vary for the number of trafficking victims in Texas or the United States, and the available data is not comprehensive.³⁴ These data limitations are due to several challenges, such as the underreporting of trafficking to law enforcement, definitional differences or variations among agencies, and the use of varying criminal charges for crimes that are not trafficking per se, but initially involve trafficking. However, House Bill 2455 (84R) by Representative Cindy Burkett directed all agencies conducting investigations of this nature “to promote uniformity in the collection and reporting of information relating to family violence, sexual assault, stalking, and human trafficking.”³⁵



Source: The Institute on Domestic Violence & Sexual Assault

³⁰ Human Trafficking By the Numbers. Institute on Domestic Violence & Sexual Assault. Online at:

<http://sites.utexas.edu/idvsa/files/2017/02/Human-Trafficking-by-the-Numbers-2016.pdf>

³¹ National Human Trafficking Hotline Texas Statistics <https://humantraffickinghotline.org/state/texas>

³² “State provides \$4.4 million to crack down on sex trafficking and violent crime in Harris County,” Jasmine Davis, Houston Chronicle, November 13, 2017. Online at: <http://www.chron.com/news/houston-texas/houston/amp/State-provides-4-4-million-to-crackdown-on-sex-12354626.php>

³³ *Ibid.*

³⁴ 2017 Texas Public Safety Threat Overview. Online at:

http://www.dps.texas.gov/director_staff/media_and_communications/2017/threatOverview20170115.pdf

³⁵ H.B. 2455 (84R) Bill Texas <http://www.capitol.state.tx.us/tlodocs/84R/billtext/pdf/HB02455F.pdf#navpanes=0>

More than 17,000 people are trafficked across the U.S. border each year.³⁶ A 2015 report published by the United States Conference of Catholic Bishops Migration and Refugee Services reveals that the overwhelming majority of the children entered the Unaccompanied Refugee Minor program as victims of human trafficking.³⁷ According to the Department of Public Safety's Gang Threat Assessment, transnational gangs are heavily involved in the trafficking of children and adults:

Gangs across Texas continue to engage in human trafficking, including commercial sex trafficking and compelling prostitution of both adult and minor victims. The potential for high, sustainable profits and a perceived low risk of detection appeals to many gang members and their associates, who often operate independently of the gang itself. Gang members recruit and groom victims with false promises of love, affection, employment, and family lifestyle, but continuously compel their victims through physical force, fraud and coercion.³⁸

The Texas Human Trafficking Prevention Task Force was established in 2009 and is coordinated through the Office of the Attorney General (OAG).³⁹ It is a collaborative effort between state agencies, local law enforcement entities, district attorneys, and non-governmental organizations to address human trafficking from multiple perspectives. The OAG serves as the presiding officer of the Task Force and supervises its administration. There are approximately 50-member agencies on the Task Force. The Task Force is required to collect data from certain agencies, provide training to certain professionals, and provide legislative recommendations to strengthen Texas' response to human trafficking. Since 2010, the Task Force has made seventy recommendations to the legislature to address human trafficking. Those recommendations have included ways to prevent trafficking, protect victims, and prosecute offenders. Of these seventy recommendations, sixty-five have become law.

Several other pieces of legislation have recently been passed by the Texas Legislature to combat human and sex trafficking, many of them codifying recommendations of the Task Force. Some of these include:

- House Bill 188 (Senfronia Thompson, 84R), directing the Task Force to develop recommendations that address the demand side of human trafficking, including forced labor and sex trafficking of minors.
- House Bill 10 (Senfronia Thompson, 84R) requiring the Task Force to identify and report to the Governor and Legislature on laws, licensure requirements, or other regulations that can be passed at the state and local levels to curb trafficking using the internet and in sexually oriented businesses. HB 10 also amended current law relating to certain criminal and civil consequences of trafficking of persons, compelling prostitution, and certain other related criminal offenses, to the prevention, prosecution, and punishment of those offenses, and to compensation paid to victims of those offenses.
- House Bill 29 (Senfronia Thompson, 85R), enacting twelve recommendations of the Task Force as outlined by the Task Force's 2016 Report to the Legislature, including improving Texas'

³⁶ Human trafficking legislation in Texas – 2017. See: <https://txcatholic.org/wp-content/uploads/2017/03/Human-Trafficking-1.pdf>

³⁷ Child Victims of Sex Trafficking. U.S. Conference of Catholic Bishops, 2015. Online at: <http://www.usccb.org/about/anti-trafficking-program/upload/URM-Child-Trafficking-Study-2015-Final.pdf>

³⁸ DPS Gang Threat Assessment Report, July 2017; online at: http://www.dps.texas.gov/director_staff/media_and_communications/2017/TxGangThreatAssessment201707.pdf

³⁹ The Texas Human Trafficking Prevention Task Force Report 2016. Online at: https://www.texasattorneygeneral.gov/files/agency/20162911_htr_fin.pdf

response to human trafficking, enhancing penalties for traffickers, providing prosecutors with additional tools for prosecution, improving victim protections, and addressing training needs.

- House Bill 2552 (Senfronia Thompson, 85R), building upon current nuisance and abatement law to help local governments shut down illicit massage parlors. The bill also provides a means for collecting data on prostitution arrests and outcomes, closes a loophole in the promotion of prostitution statute, and provides a means for property owners to evict businesses that are engaging in human trafficking.

Texas must build on the successes of the last two legislative sessions to continue preventing these heinous crimes and protect victims, especially our youth. The following recommendations enhance penalties and create offenses for crimes associated with trafficking, increase training and awareness to protect vulnerable Texans, and ensure justice for victims of sex and human trafficking.

Recommendation: Enhance criminal penalties for the promoting or compelling prostitution by requiring jail time, requiring sex offender registration, and to clarify that the involuntary consumption of intoxicants may be a form of duress.

The penalties in Texas for promoting prostitution are too light to provide adequate protections for the human trafficking victims who are forced into a situation in which sexual favors are traded for money without the victim's consent. Several proposals are in order to strongly discourage those in the illicit sex trade from taking advantage of innocents and to bring justice those who do. Many Texans may be surprised to discover the breadth and commonality of sex and human trafficking in Texas cities – in fact, the Texas-based advocacy group Children at Risk asserts there are more brothels in Houston than Starbucks coffee shops, with over 400 storefront sex businesses operating in the city at any given time.⁴⁰

As a result, young girls are in danger of brutal sexual exploitation, and penalties for offenders can be light. For example, in December 2017, a runaway teen from New York was rescued in Dallas from a man who convinced her to move to Texas and forced her into prostitution.⁴¹ Similarly, in May of 2016, a man lured a 14-year-old Houston girl into his car by smoking an unidentified substance with her, then threatened to kill her with a firearm if she did not agree to have sex with men.⁴² A San Antonio woman was found guilty of forcing a 14-year-old runaway into prostitution after advertising her for sale on *Backpage*.⁴³ *Backpage* is an online classified advertising site that has become known as a platform for prostitution. As a representative of The National Center for Missing & Exploited Children testified before Congress, “[o]nline classified ad sites such as Backpage.com provide traffickers with a quick, easy, user-friendly platform and allows them to remain anonymous, test out new markets, attempt to evade public or law enforcement detection, and easily locate customers to consummate their sale of children for sex.”⁴⁴ These offenses are all too common, demonstrating the need for a more powerful criminal justice

⁴⁰ "Houston: City has 'more brothels than Starbucks'," Heather Leighton, January 22, 2018. Online at:

<http://www.chron.com/news/houston-texas/houston/article/Houston-City-has-more-brothels-than-Starbucks-12514737.php>

⁴¹ "Texas man forced New York teen into prostitution in Dallas, police say," Tasha Tsiaperas, Dallas News, December 28, 2017. Online at: <https://www.dallasnews.com/news/crime/2017/12/28/texas-man-forced-new-york-teen-prostitution-dallas-police-say>

⁴² "Police arrest man accused of kidnapping teen from Dallas, forcing her into prostitution," William Axford, Houston Chronicle, August 24, 2017. Online at: <http://www.chron.com/news/houston-texas/texas/article/arrest-prostitution-Dallas-Houston-gang-teenager-11956676.php>

⁴³ "Woman found guilty of compelling prostitution charges," Paul Venema, KSAT 12, October 19, 2016. Online at: <https://www.ksat.com/news/woman-found-guilty-of-compelling-prostitution-charges>

⁴⁴ Testimony of Yiota G. Souras, Senior Vice President and General Counsel The National Center for Missing & Exploited Children, United States Senate Permanent Subcommittee on Investigations Committee on Homeland Security and

response to those trapping women and girls into sexual slavery.

Shockingly, some of these offenders may never see jail time. For example, in November 2017, Bruce Wayne Wallis pled guilty to charges indicating that he operated a string of brothels, recruited women to engage in prostitution, had sex with the women himself, and kept a percentage of their earnings.⁴⁵ However, his only penalties were 5 years of deferred adjudication, a \$2,000 fine, and a requirement to perform 150 hours of community service.⁴⁶ Such criminal activity should require a jail sentence, both for the sake of public safety and to provide adequate punishment.

A KHOU-TV investigative report of records from June 2014-December 2016 concluded that “two-thirds of those criminals charged with sex-trafficking crimes got probation instead of jail or prison time” in Harris County.⁴⁷

Community supervision is the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period in the form of deferred adjudication or probation.⁴⁸ Community supervision may be assigned by the justice system for many criminal offenses as an alternative to jail time, but is not available for some of the most reprehensible crimes, such as Compelling Prostitution (Penal Code 43.05), which involves either causing a minor to commit prostitution or causes any person by force, threat, or fraud to commit prostitution.

However, there are other serious offenses which enable prostitution and sex trafficking for which – as noted above – community supervision remains available under current law. These include Promotion of Prostitution (Penal Code 43.03), which refers to receiving money or other property pursuant to an agreement to participate in the proceeds of prostitution, or soliciting another to engage in sexual conduct with another person for compensation; as well as Aggravated Promotion of Prostitution (Penal Code 43.04), which is defined as knowingly owning, investing in, financing, controlling, supervising, or managing a prostitution enterprise that uses two or more prostitutes. Both of these offenses should be added to the list of crimes (at Code of Criminal Procedure Article 42A.054(a)) for which community supervision is not available, and jail time is required.

Similarly, while Compelling Prostitution is a crime that requires a person to register as a sex offender (under Code of Criminal Procedure Article 62.001(5)), those convicted of Promotion or Aggravated Promotion of Prostitution are not required to register. The law should be changed to ensure that those who manage brothels and other prostitution enterprises are required to register as sex offenders, thus deterring these crimes.

Governmental Affairs, February 15, 2011. Online at: <http://www.missingkids.com/ourwork/legalresources/11-19-2015>.
<http://www.missingkids.com/ourwork/legalresources/11-19-2015>.

⁴⁵ “No prison time. Outrage. And a reason to hope,” Rebecca Pfeiffer, Houston Chronicle, November 28, 2017. Online at:

<http://www.houstonchronicle.com/local/gray-matters/article/No-prison-time-Outrage-And-a-reason-to-hope-12381711.php>

⁴⁶ “Ex-United pilot who ran Houston brothels gets probation and \$2000 fine,” Brian Rogers, Houston Chronicle, November 15, 2017. Online at: <http://www.houstonchronicle.com/news/houston-texas/article/Former-United-pilot-admits-to-running-Houston-12360600.php>

⁴⁷ “Harris County Has A Dark History of Letting Sex Traffickers Off Easy,” by Jeremy Rogalski, KHOU 11, October 24, 2017. Online at: <http://www.khou.com/mobile/article/news/investigations/selling-girls/harris-county-has-a-dark-history-of-letting-sex-traffickers-off-easy/483977138>

⁴⁸ Texas Code of Criminal Procedure Art. 42A.001

Finally, the offense of Compelling Prostitution may not take into account all of the coercive measures that promoters of sex trafficking use in their criminal operations. For example, federal authorities have noted that trafficking victims “are sometimes forced or coerced into sexual servitude based on their fear of losing a steady supply of drugs and the prospect of experiencing withdrawal symptoms.”⁴⁹ In November of 2017, federal officials indicted 22 gang members in Houston for luring undocumented immigrants with the promise of employment, then addicting them to drugs and forcing them into prostitution.⁵⁰ The current statute (Penal Code 43.05) provides that an offense is committed when the victim is caused to commit prostitution “by force, threat, or fraud.” This may be too narrow to capture other methods of compelling prostitution, such as involuntary drug addiction; the definition should be clearly expanded to include these methods.

By making the proposed enhancements in the criminal penalties for promoting or compelling prostitution, Texas will ensure that the perpetrators of these heinous crimes are punished appropriately.

Recommendation: Allow individuals convicted of prostitution to clear their records if the underlying crime was something they were forced to engage in.

Current Texas law can allow the victims of sex trafficking to be penalized and even incarcerated for offenses which they were compelled to commit. For example, Houston police are reported to have charged a pregnant, 16-year-old sex-trafficking victim referred to as “Lena” with prostitution and locked her in jail because, as one Harris County prosecutor explained, “[i]f I dismiss her case, she’s just walking on the street that night.”⁵¹ In another instance, a sex-trafficking victim known as “Yvette” in her early twenties was charged in Bexar County with three felonies related to trafficking a minor because she helped “train” another sex-trafficking victim, this one only 16 years old.⁵² Kirsta Melton, who heads the Office of the Attorney General’s Human Trafficking Unit, noted that such cases are heartbreaking and a “great example of the cyclical nature of trafficking and how devastating it is, and how if you do not intervene it will indeed continue, and just continue to breed itself both victims and defendants...”⁵³

Attempts to relieve the situation of these victims through the legislative process have not been successful. During the 85th Legislative Session (2017), House Bill 269 (Senfronia Thompson, 85R) and Senate Bill 1165 (Garcia, 85) would have established a process for persons convicted of engaging in the offense of prostitution,⁵⁴ who did so only as victims themselves of either trafficking of persons⁵⁵ or compelling prostitution,⁵⁶ to petition courts to have their conviction set aside and their arrest and other criminal history records expunged. The “setting aside” of convictions is a form of judicial clemency in

⁴⁹ “Experts highlight link between addiction and human trafficking,” Kimberly Houghton, New Hampshire Union Leader, November 4, 2016. Online at: <http://www.unionleader.com/Experts-highlight-link-between-addiction-and-human-trafficking>

⁵⁰ “22 Houston gangsters lured immigrants to US, forced them into prostitution, indictment says,” Fox News, November 9, 2017. Online at: <http://www.foxnews.com/us/2017/11/09/22-houston-gangsters-lured-immigrants-to-us-forced-them-into-prostitution-indictment-says.html>

⁵¹ “Texas couldn’t help this sex-trafficked teen, so authorities sent her to jail,” Nina Satija, Morgan Smith, and Edgar Walters, Texas Tribune, February 15, 2017. Online at: <https://www.texastribune.org/2017/02/15/texas-sex-trafficked-teens-often-end-jail/>

⁵² “She was a sex-trafficking victim, but Texas law labeled her a pimp,” Morgan Smith, Edgar Walters, and Nina Satija, Texas Tribune, February 16, 2017. Online at: <https://www.texastribune.org/2017/02/16/she-was-sex-trafficking-victim-texas-law-labeled-her-pimp/>

⁵³ *Ibid.*

⁵⁴ Texas Penal Code Sec. 43.02.

⁵⁵ Texas Penal Code Chapter 20A.

⁵⁶ Texas Penal Code Sec. 43.05.

which a court may, at its discretion, cancel or revoke a verdict and dismiss the underlying charge against the defendant.⁵⁷ While HB 269 passed the House on a vote of 142-0, both bills died in the Senate Criminal Justice Committee, which did not grant either bill a hearing. The 86th Legislature should revisit this legislation to allow for a process for these victims to be given a second chance, and not be treated as criminals equivalent to those who hurt them.

The relief suggested by this recommendation should be made available *only* in instances where a person has been convicted or placed on deferred adjudication for an offense of Trafficking of Persons,⁵⁸ Continuous Trafficking of Persons,⁵⁹ or Compelling Prostitution;⁶⁰ and the alleged victim alleges specific facts that, if proved, would establish that she or he engaged in prostitution solely as a victim of one of the above offenses for which the alleged perpetrator has been actually convicted or placed on deferred adjudication.

Recommendation: Increase the penalty for kidnapping a child from a third-degree felony to a first-degree felony to match the seriousness of the crime.

Kidnapping may be one of the most psychologically damaging crimes of all - it often takes victims years to recover while some never recover completely. In 2016, the last year for which complete information is available, there were 88 total convictions of aggravated kidnapping and 65 convictions of kidnapping in Texas.⁶¹ As one survey of the post-traumatic effects of kidnapping has noted, "Clearly, something breaks the mind and the will of anyone so stripped of autonomy. The challenge becomes understanding precisely what kind of psychological damage is done to victims in cases like this... [V]ictims surrender to powerlessness, something that is accelerated if the kidnapper shows a willingness to inflict pain, but also to withhold it."⁶²

Under Texas law (Penal Code Section 20.03), kidnapping is generally prosecuted as a third-degree felony. However, under certain circumstances – such as holding a victim for ransom – the offense (aggravated kidnapping) may be elevated to a first-degree felony. Kidnapping a child, however, is not currently one of the circumstances under which the offense becomes a first-degree felony. Texas law should be amended to reflect the seriousness of the offense of kidnapping a minor, by raising it to a first-degree felony which comes with a penalty of imprisonment for life or for any term between 5 and 99 years as well as a fine not to exceed \$10,000.⁶³

Just because a child may be rescued from kidnapping does not mean that their trauma is over. For example, the American Psychological Association (APA) warns that these former victims may "have difficulty managing intense reactions and may need help adjusting to their old life following release... [they also] often develop an unconscious bond to their captors and experience grief if their captors are harmed. They may also feel guilty for developing a bond."⁶⁴ Indeed, kidnapping "[v]ictims typically take many years to heal from the psychological wounds inflicted upon them, and some never completely

⁵⁷ See, e.g., Texas Code of Criminal Procedure Article 42A.701(f).

⁵⁸ Penal Code Sec. 20A.02.

⁵⁹ Penal Code Sec. 20A.03.

⁶⁰ Penal Code Sec. 43.05.

⁶¹ DPS conviction rates for handgun license holders, 2016. Online at:

<https://www.dps.texas.gov/RSD/LTC/Reports/ConvictionRatesReport2016.pdf>

⁶² "The Mind of the Kidnap Victim: How They Endure and Recover," Jeffrey Kluger, Time Magazine Science, May 8, 2013. Online at: <http://science.time.com/2013/05/08/abduction-psych/>

⁶³ Texas Penal Code Section 12.32

⁶⁴ "Adjusting to life after being held hostage or kidnapped," American Psychological Association, July 2013. Online at: <http://www.apa.org/helpcenter/hostage-kidnap.aspx>

recover... People who have survived kidnapping often go on to battle issues of trust for the rest of their lives, as being deprived of freedom and being held against their will can erode trust in humanity as a whole.”⁶⁵ The kidnapping of a child is a much more serious crime than a normal kidnapping as it may cause lifelong trauma, and it should be penalized and deterred accordingly.

Note that custody battles involving a parent taking a child in violation of a custody agreement would generally be prosecuted as non-kidnapping offenses; especially Penal Code Sec. 25.03 (interference with child custody) and Penal Code Sec. 25.031 (agreement to abduct from custody). These offenses are generally state jail felonies. To ensure that custody disputes are not improperly elevated, an exception from the offenses of kidnapping and aggravated kidnapping applies under current law⁶⁶ where the kidnapper is a relative of the child and the actor's sole intent was to assume lawful control of the victim. Taking of a child in violation of a custody agreement can only be prosecuted as a kidnapping where the exception does not apply.

Of kidnapped children, it is estimated that 49 percent were kidnapped by a relative of the victim, 27 percent by an unrelated acquaintance, and 24 percent by a person who was a stranger to the child.⁶⁷ Due to existing law about family kidnappings related to custodial disputes, this recommendation will not apply to family members taking a child over whom they have no rights to control or physical possession; instead, the recommendation will apply specifically to non-family kidnapers.

Recommendation: Increase the penalty for sexual performance by a child from a second-degree felony to a first-degree felony; and increase the penalty for possession or promotion of child pornography from a third-degree felony to a second-degree felony, or a first-degree felony for repeat offenses.

In a report by the Office of Juvenile Justice and Delinquency Prevention (a division of the U.S. Department of Justice), it was cited that in many cases of sexual exploitation and child sex trafficking, victims are exploited through more than one form of abuse.⁶⁸ For example, predators may take pornographic images of children, sell those images to other child sex abusers, or use the pictures to advertise the victim for sexual services.

Penalties for child pornography offenses should better reflect the heinous nature of these crimes and vary based on the age of the minor depicted in the visual material. Revising the punishment framework for possession or promotion of child pornography, as well as the even more deplorable offense of employing, authorizing, or inducing a child to engage in sexual conduct or a sexual performance, would help prevent further exploitation of children and provide another means of criminal action against traffickers. Texas must protect those who are most vulnerable to crimes like sex trafficking.

The offense of "Sexual Performance by a Child"⁶⁹ - which is perpetrated when a person "employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or a sexual

⁶⁵ "The Psychological impact of Kidnapping," Francis A. Akwash, Scholarly Journal of Science Research and Essay, March 10, 2016. Online at: <http://scholarly-journals.com/sjsre/publications/2016/March/pdf/Akwash.pdf>

⁶⁶ Sec. 20.03 (b)(2)-(3)

⁶⁷ "Child Abduction Facts," Karin A. Bilich, Parents.com, available online at: <https://www.parents.com/kids/safety/stranger-safety/child-abduction-facts/>

⁶⁸ "Commercial Sexual Exploitation of Children/Sex Trafficking," Office of Juvenile Justice and Delinquency Prevent, August 2014. Online at: <https://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>

⁶⁹ Texas Penal Code Section 43.25.

performance" or a parent or guardian "consents to the participation by the child in a sexual performance" - should be raised from a second-degree felony under current law, to a first-degree felony. Current law provides for a first-degree felony enhancement when the child in question is under the age of 14 at the time of the offense - this recommendation would erase this distinction and treat all instance of "Sexual Performance by a Child" where the child is under 18 as a first-degree felony.

Senator Lois Kolkhorst proposed Senate Bill 1322 during the 85th Legislative Session to increase the penalty for the offenses of possessing or accessing child pornography if the child depicted was younger than 14 years of age. While a strong approach, a viewer or possessor of pornography or other persons charged with child-pornography-related offenses who were not involved in *producing* the material may not always be aware of the age of the child depicted. As a result, Texas should consider simply enhancing the penalties for *all* those who commit promotion of child pornography-related offenses, regardless of the age of the child. Under 18 U.S. Code § 2256, child pornography generally consists of a visual depiction of a minor under 18 years of age engaging in sexually explicit conduct.⁷⁰

The offense of "Possession or Promotion of Child Pornography"⁷¹ - which is committed when a perpetrator "knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct" - should be enhanced from a base offense level of third-degree felony, under current law, to a second-degree felony. Current law provides for an enhancement to a second-degree felony for this offense for a first-time repeat offender (second-time offender), and to a first-degree felony for second and subsequent repeat offenses. This should be changed to provide for a first-degree felony for a first time and subsequent repeat offender. A second-degree felony is punishable by imprisonment from 2 to 20 years and a fine up to \$10,000,⁷² while a first-degree felony comes with a penalty of imprisonment for life or for any term between 5 and 99 years as well as a fine not to exceed \$10,000.⁷³

Please note that this recommendation is not intended to affect conduct between young persons who are engaged in a dating relationship. Such conduct is instead addressed by the offense of "Electronic Transmission of Certain Visual Material Depicting Minor," which then-Attorney General Abbott noted in 2011, was enacted so that prosecutors "could pursue less draconian charges against minors."⁶⁵ Under this existing law, it is typically only a Class C Misdemeanor for a minor to share visual material of another minor engaging in sexual conduct, and⁷⁴ an affirmative defense to prosecution is provided where the material person sharing was married to the other actor, or where the two had less than a two-year age difference and were in a "dating relationship" at the time of the offense.⁷⁵ (Note that this is distinct from the so-called "Romeo and Juliet" law, which provides that a person above the Texas age of consent – 17 years – may engage in sexual acts with a minor if they are married or are separated by an age difference of less than *three* years, e.g. a romance between an 18-year-old high school senior and his 16-year-old girlfriend).⁷⁶ These scenarios would be affected by the changes in this recommendations.

⁷⁰ 18 U.S.C. 2256

⁷¹ Texas Penal Code Section 43.26.

⁷² Texas Penal Code Section 12.33

⁷³ Texas Penal Code Section 12.32

⁷⁴ Texas Penal Code 43.261(b)

⁷⁵ Texas Penal Code 43.261(e); incorporating by reference the definition of "dating relationship" at: Texas Family Code Sec. 71.0021

⁷⁶ Texas Penal Code 22.011(c)(1) and 22.011(e)(2).

Recommendation: Establish a criminal offense for sex offenders being in the same passenger car as a minor who is not a family member.

Sex trafficking perpetrators often offer transportation, shelter, escape from family woes, or love and affection as a ruse to manipulate their victims into sex trafficking.⁷⁷ In fact, one out of three youth experiencing homelessness in the United States will be approached by a sex trafficker within 48 hours of running away from home.⁷⁸ Vehicle transportation – especially in Texas – is one of the most common strategies for transporting victims since it is a quick, streamlined, and inconspicuous method of travel.⁷⁹ This covert strategy of travel, combined with the common ruse of offering free car rides or a place to stay, make vehicle transportation a major cause of concern in the prevention of sex trafficking. In addition, several instances have occurred where registered sex offenders (RSOs) have been re-arrested on charges of sex trafficking.⁸⁰ It is apparent that the risk of allowing minors into vehicles with certain RSOs and suspicious persons must be mitigated to prevent sex trafficking and sex offenses.

During the 85th legislative session, Senator Lois Kolkhorst introduced Senate Bill 811, which would have prohibited certain RSOs from being in a vehicle with a minor who is not a family member.⁸¹ This stipulation should be enacted to curtail sex trafficking risks among minors. Doing so will target RSOs who may have engaged in sex trafficking behavior in the past (including but not limited to convictions of sexual abuse, promotion of prostitution, or possession or distribution of child pornography). This approach would limit sex offender interactions with minors and deter them from entering a situation where the victimization of a minor may occur. The legislation should prohibit a sex offender from being in the same “passenger car” as a minor, with “passenger car” being defined by Texas Transportation Code 541.201(12) as “a motor vehicle, other than a motorcycle, used to transport persons and designed to accommodate 10 or fewer passengers, including the operator;” the legislation should be sure to cover large privately owned and operated vans as well as motorcycles but should not include commercial buses or shuttles, as prohibiting sex offenders from using such vehicles might constitute an unreasonable restriction on their liberty.

This proposal may also allow law enforcement to rescue victims who have already been placed in a trafficking and/or abusive situation. Indeed, seemingly typical traffic stops have led to arrests of sex trafficking perpetrators, most of who had their victims inside the car at the time of the arrest.⁸² After the passage of the law, if an RSO were to be pulled over for a traffic stop, and a minor was in the vehicle, the police officer conducting the traffic stop would then be required to investigate whether or not the minor in the vehicle is, in fact, a family member. Were a sex offender were to be pulled over in a traffic stop, a law enforcement officer checking the offender's information would discover the offender's status, and would be alerted to ascertain if any young passengers are actually the offender's family

⁷⁷ “Promises of shelter, food, clothing and jobs set trap for human trafficking,” Ralph Schaefer, Tulsa Business & Legal News, February 18, 2013. Online at: http://www.tulsaworld.com/business/tulsabusiness/legal/promises-of-shelter-food-clothing-and-jobs-set-trap-for/article_07cfe599-6205-5018-9673-d4091244150c.html

⁷⁸ “Grapevine teen was sold for sex in 20 states,” Domingo Ramirez Jr, Fort Worth Star Telegram, November 17, 2017. Online at: <http://www.star-telegram.com/news/local/community/fort-worth/article185280363.html>

⁷⁹ “Sex trafficking is a growing problem,” Darla Guillen, Houston Chronicle, January 5, 2015. Online at: <http://www.chron.com/neighborhood/fortbend/crime-courts/article/A-look-at-sex-trafficking-in-Greater-Houston-5995146.php>

⁸⁰ “Registered Sex Offenders Ordered Into Custody on Allegations of Domestic Sex Trafficking,” US Attorney’s Office Southern District of Texas, July 27, 2017. Online at: <https://www.justice.gov/usao-sdtx/pr/registered-sex-offenders-ordered-custody-allegations-domestic-sex-trafficking>

⁸¹ Senate Bill 811 (85R). Online at: <http://www.legis.state.tx.us/tlodocs/85R/billtext/html/SB008111.htm>

⁸² “Driver pulled over, found with alleged human trafficking victim in car: Police,” NBC New York, January 19, 2014. Online at: <https://www.nbcnewyork.com/news/local/Driver-Traffic-Stop-Teen-Girl-Car-Human-Trafficking-246246431.html>

members - and not unrelated minors, as prohibited by the new law. This would give law enforcement officers a powerful tool to solve sex trafficking cases, arrest perpetrators, rescue victims of heinous crimes, and make it more difficult for human traffickers to conduct their operations.

Transporting a minor is a major component of the child sex trafficking industry. By criminalizing being in the same passenger car as a minor, Texas will ensure that there are proper punishments in place for RSOs who jeopardize the safety of our children.

Recommendation: Raise the minimum age to be employed at a sexually oriented business from 18 to 21.

Despite sex traffickers beginning to move a majority of their business relations online,⁸³ sexual exploitation continues at brick-and-mortar sexually oriented businesses including gentlemen’s clubs and cabarets.⁸⁴ Texas statute defines sexually oriented businesses as follows:

[A] sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.⁸⁵

In a 2013 report to the Legislature on the relationships between sexually-oriented businesses and human trafficking, the Office of the Attorney General noted that “given the very nature of their enterprise, many SOBs foster and facilitate an environment that is inherently ripe for human trafficking – particularly forced prostitution and international sex trafficking.”⁸⁶ The report noted that “links between sexually oriented businesses and human trafficking have been documented in published reports by the National Institute for Justice (NIJ), nonpeer-reviewed journals, and professional publications.”

An FBI law enforcement bulletin in 2011 noted that “strip clubs, massage parlors, and cheap motels, are havens for prostitutes forced into sex trafficking. Many massage parlors and strip clubs that engage in sex trafficking will have cramped living quarters where the victims are forced to stay.”⁸⁷ In 2013 in Houston, three men were convicted as part of a massive conspiracy to traffic women as young as 16 and compel them into prostitution, including by beatings, threatening with a firearm, and in at least one case “branding” a young woman with a tattoo to mark her as the perpetrators’ property; the “defendants operated commercialized sex businesses often disguised as modeling studios, health spas, massage

⁸³ “Sex traffickers prove harder to catch as they move online,” Jazmine Ulloa, Austin American-Statesman, March 14, 2012. Online at: <http://www.statesman.com/news/local/sex-traffickers-prove-harder-catch-they-move-online/XmpDt0j6aGYKeZMCzu4aDM/>

⁸⁴ “Tour shows the dark side of Houston as major center for human sex trafficking,” Ken Hoffman, Houston Culture Map, August 14, 2017. Online at: <http://houston.culturemap.com/news/city-life/08-14-17-tour-shows-the-dark-side-of-houston-as-major-center-for-human-sex-trafficking/#slide=0>

⁸⁵ Local Government Code 243.002.

⁸⁶ “Report to the Texas Legislature Sexually Oriented Businesses and Human Trafficking: Associations, Challenges, and Approaches,” Office of the Attorney General, March 2013. Online at: https://www.texasattorneygeneral.gov/files/cj/20131912_htr_fin_3.pdf

⁸⁷ “FBI Law Enforcement Bulletin: Human Sex Trafficking.” Amanda Walker-Rodriguez and Rodney Hill, Federal Bureau of Investigation, March 2011. Online at: https://web.archive.org/web/20130317020320/https://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking

parlors and bikini bars in Houston... [and] also utilized sexually oriented publications and websites to advertise their illicit business.”⁸⁸

With the continual risk and propensity of sex trafficking at these business establishments comes the need to strengthen laws that protect those who are vulnerable to this form of exploitation. During the 85th Legislative Session, Senator Larry Taylor introduced Senate Bill 1866, with an identical companion offered in the House by Representative Rick Miller as House Bill 2846, both of which would have raised the legal age at which someone could be employed by a sexually-oriented business from 18 to 21 years of age.

Raising the age of which an individual can be employed at a sexually oriented business would lower the risk and availability of potential victims for trafficking. This restriction would be placed on all employees of a sexually oriented business, whether or not they are engaged in sexually oriented activities, from cleaning staff to valets. Because a large number of sex trafficking victims are under the age of 21,⁸⁹ banning them from employment at an establishment that already poses a high risk of trafficking would, in turn, reduce their exposure to this exploitation overall.

A connection has consistently been made between illegal sex trafficking and legal sexually-oriented businesses, both in Texas and throughout the country. Various reports have been brought to light of sex trafficking victims, many under the age of 21, being forced to perform at strip clubs.⁹⁰ This connection has made within our own state of Texas – especially in Houston, which is considered to be a hub of human trafficking.⁹¹ Strip clubs in Houston, specifically, have been called out for complying with sex trafficking – hiding behind building infrastructure, private rooms, and the employment of young women.⁹² By limiting the risk of sex trafficking in these businesses, Texans will be on a stronger path to counteract such heinous crimes.

Those who participate in sexually oriented businesses underage, like those who drink alcohol underage, should be penalized with a fine-only Class C Misdemeanor, and also required to attend 40 hours of training on the risks of sex trafficking. Those who own such businesses and unlawfully employ underage persons should be subject to Civil Practices and Remedies Code Chapter 125, which grants a number of community remedies including civil suits that may result in injunctive relief or fines payable to the community; as well as penalized with a Class A Misdemeanor, which may be punished by a fine up to \$4,000, confinement in jail up to 1 year, or both.⁹³

⁸⁸ “Three Sentenced in Massive Domestic Sex Trafficking Case,” Department of Justice, U.S. Attorney’s Office, Southern District of Texas, January 7, 2013. Online at: <https://www.justice.gov/usao-sdtx/pr/three-sentenced-massive-domestic-sex-trafficking-case>

⁸⁹ Child sex trafficking statistics, July 2017. Compiled by Ark of Hope for Children. Online at: <https://arkofhopeforchildren.org/child-trafficking/child-trafficking-statistics>

⁹⁰ “Human-trafficking victim forced to dance at Pa. strip club, cops say,” John Luciew, Penn Live, July 21, 2015. Online at: http://www.pennlive.com/midstate/index.ssf/2015/07/human-trafficking_victim_force.html

“Man admits forcing girls into sexual slavery and forced labor at strip clubs on Indian reservations,” Breitbart Texas, January 16, 2018. Online at: <http://www.breitbart.com/texas/2018/01/16/man-admits-forcing-girls-sexual-slavery-forced-labor-strip-clubs-indian-reservations/>

“Strip club operators win, young women lose: Opinion,” Tim Morris, NOLA.com, May 12, 2017. Online at: http://www.nola.com/opinions/index.ssf/2017/05/strip_club_operators_win_anoth.html

⁹¹ “Study: 313,000 Texans are now human-trafficking victims,” Emily Foxhall, Houston Chronicle, January 24, 2017. Online at: <http://www.houstonchronicle.com/news/houston-texas/houston/article/Study-313-000-Texans-are-now-human-trafficking-10881391.php>

⁹² *Ibid*

⁹³ Texas Penal Code Section 12.21

By prohibiting individuals under the age of 21 from working in a sexually oriented business, Texas will ensure that fewer young people are exposed to work environments that could be linked to sex trafficking.

Recommendation: Prohibit minors from entering the premises of sexually oriented businesses and add allowing a minor on the premise of a sexually oriented business to the list of common nuisances under Sec. 125.0015 of the Civil Practice and Remedies Code.

To further protect young victims from exploitation by proprietors and patrons of sexually oriented businesses, it is important that minors not be allowed to set foot on the grounds of sexually oriented businesses such as strip clubs and adult video stores. Senate Bill 1866, referenced in the above recommendation, would have prohibited persons younger than 21 from working at such establishments, as well as treating it as a public nuisance where a person under 21 is employed in this manner. Current law defines a sexually oriented business that employs minors as a common nuisance.⁹⁴ The law should be amended to prohibit the employment of persons under the age of 21, and no-one under the age of 18 should ever be allowed on the premises.

Existing Texas law leaves to counties and municipalities the responsibility to provide for regulations regarding sexually oriented businesses as the municipality or county considers necessary to promote the public health, safety, or welfare.⁹⁵ In most counties, a person under 18 may not enter premises of a sexually oriented business.⁹⁶ However, Texas law (Business and Commerce, Ch. 102) should be amended to explicitly prohibit any person under 18 from setting foot on the premises of a sexually oriented business.

Furthermore, any sexually oriented business that allows minors (persons under 18) to set foot on their premises should be recognized as a "common nuisance" under Texas Civil Practices and Remedies Code Chapter 125. Under common nuisance law, law enforcement agencies may close any piece of property involved in illegal activities; the law is particularly flexible in that it allows suits for legal action to be initiated by any "individual, by the attorney general, or by a district, county, or city attorney."⁹⁷ Relief available under such an action is broad and may include fines, jail time, seizure of the property, and/or injunctive relief ordering the defendant to abate the nuisance and enjoining the defendant from maintaining or participating in the nuisance and may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.⁹⁸

The illegal activity covered by current nuisance abatement law includes prostitution, obscenity, sexual crimes, unlicensed massage services, and other questionable activity that may be connected to some sexually oriented businesses.⁹⁹ The state should expand this remedy to discourage allowing a minor on the premises of a sexually oriented business.

⁹⁴ Texas Civil Practices and Remedies Code Chapter 125.0015(a)(19)

⁹⁵ Local Government Code 243.003

⁹⁶ See, e.g., Harris County regulations at [https://www.harriscountysoc.org/documents/Permits/Sexually%20Oriented%20Business\(SOB\).pdf](https://www.harriscountysoc.org/documents/Permits/Sexually%20Oriented%20Business(SOB).pdf); Bexar County at: https://library.municode.com/TX/san_antonio/codes/unified_development_code?nodeId=ARTVIIVERINOUS_DIV1NOUS_S35-708SEORBU

⁹⁷ Texas Civil Practices and Remedies Code Section 125.003(a).

⁹⁸ Texas Civil Practices and Remedies Code 125.003(e).

⁹⁹ See, e.g., "Nuisance and Abatement: Fifteenth Edition," Office of the Attorney General, Criminal Prosecutions Division, 2015. Online at: https://www.texasattorneygeneral.gov/files/cj/nuisance_abatement.pdf

Recommendation: Provide the Department of Public Safety with \$22 million in funding to create Regional Criminal Investigation Division Human Trafficking squads and enhance the Interdiction for the Protection of Children program to train additional Texas law enforcement officers to combat human trafficking.

The Criminal Investigations Division (CID) is the investigative arm of the Department of Public Safety (DPS) with offices in Garland, Houston, McAllen, El Paso, Lubbock, San Antonio, and the Austin headquarters.¹⁰⁰ The department's anti-gang and drug enforcement programs are housed in CID as well as other special investigative programs. As Texas sees an increase in human trafficking cases,¹⁰¹ the need for an investigative team dedicated to combatting human trafficking and increasing awareness persists. Indeed, the National Center for Missing and Exploited Children is currently tracking 398 children in Texas;¹⁰² 171 children were identified as missing in 2017.¹⁰³

In order to efficiently dedicate resources to this effort, the Legislature should provide DPS funding for the creation of regional human trafficking squads in each of the six regional CID offices. These squads would conduct human trafficking investigations throughout the state.

Additionally, training for law enforcement on how to recognize and combat human trafficking is a valuable tool in preventing and stopping this horrific crime. The Interdiction for Child Protection (IPC) is a training course that was created by DPS to address the lack of training and experience DPS troopers had in working with child victimization cases.¹⁰⁴ DPS wanted to train troopers on how to observe suspicious behaviors associated with missing children and child abduction offenses.¹⁰⁵

Part of the issue was a lack of ability for troopers to record suspicious activities involving children in the DPS database.¹⁰⁶ There was no means to collect, analyze, and statistically report such data, therefore, DPS could not accurately identify the trends of child victimization. Troopers also lacked training in recognizing abduction indicators and, thus, could not take effective action. With the realization that the DPS database needed an update and troopers were in need of training on child victimization, DPS' Education, Training, and Research Division (ETR) and Texas Missing Persons Clearinghouse (TMPC) in conjunction created IPC in conjunction with the Federal Bureau of Investigation's Behavioral Analysis Unit.

The IPC program is an integrated approach to identify children at risk during law enforcement encounters focusing on law enforcement officer training, revision of reporting and intelligence-gathering methods, and officer expertise. After a successful pilot course, IPC was included in the mandatory training courses for all troopers, investigators, and Texas Rangers. Since 2009, DPS has opened more than 100 criminal investigations into child trafficking, sexual abuse, and related offenses; and rescued

¹⁰⁰ DPS Regional Offices See: <https://www.dps.texas.gov/CriminalInvestigations/regionalContact.htm>

¹⁰¹ "Texas sees spike in human trafficking cases," Sarah Holden, KBTX, February 1, 2017. Online at: <http://www.kbtx.com/content/news/Data-shows-significant-jump-in-human-trafficking-cases-in-Texas-412351843.html>

¹⁰² Missing & Exploited Kids Database – Texas. See:

<https://api.missingkids.org/missingkids/servlet/PubCaseSearchServlet?act=usMapSearch&missState=TX>

¹⁰³ "Have you seen them? These are the missing children in Texas right now in 2017," Heather Leighton, Houston Chronicle, December 28, 2017. Online at: <http://www.chron.com/news/houston-texas/houston/article/Missing-children-in-Texas-so-far-in-2017-11276506.php>

¹⁰⁴ "Interdiction for the Protection of Children," Michael Yoder and Wayne Koka, FBI Law Enforcement of Bulletin, February 10, 2015. Online at: <https://leb.fbi.gov/articles/featured-articles/interdiction-for-the-protection-of-children>

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

more than 250 children as a result of this training.¹⁰⁷ DPS has also provided IPC training to more than 6,500 other law enforcement and child protective service professionals in Texas and the U.S.

The IPC program has been revered by the FBI as "an example of what can be accomplished when diverse agencies and dedicated people work together for the common benefit. IPC is making a difference in the lives of children everywhere."¹⁰⁸ In order to expand the reach of IPC in human trafficking prevention and provide more training to Texas law enforcement, the legislature should appropriate funding to the ETR Division of DPS to hire additional personnel to administer this program. This would include a human trafficking subject matter expert to coordinate the human trafficking IPC training development, as well as additional personnel to provide human trafficking education and training instruction to local law enforcement.

Cost of DPS Programs

CID Human Trafficking Squads (First Year)	\$13,130,662
CID Human Trafficking Squads Second Year)	\$7,689,264
CID Human Trafficking Squads (Biennial)	\$20,819,926
Public Awareness	\$265,000
IPC Program (Biennial)	\$1,032,147
Total	\$22,117,073

Source: Department of Public Safety

By providing DPS with the requested funding, Texas will ensure Texas law enforcement officers and the Criminal Investigative Division are adequately supported to combat human trafficking in Texas.

Recommendation: Require all state employees to view sex and human trafficking prevention material as provided by the Office of the Attorney General.

Launched in January 2016, the Human Trafficking and Transnational Organized Crime (HTTOC) section of the Office of the Attorney General (OAG) has provided human trafficking awareness training to more than 15,000 people across the state of Texas.¹⁰⁹ In January 2018, Attorney General Ken Paxton introduced a new comprehensive training video developed by the HTTOC section to educate and mobilize all Texans in the fight against human trafficking.¹¹⁰ The video, titled "Be the One," seeks to educate Texans on how to prevent, recognize, and report human trafficking. This training is geared towards creating public awareness of how citizens can take part in combating this problem.

¹⁰⁷ "DPS Helps Rescue More Than 70 Endangered Children in 2016," DPS, February 15, 2017. Online at: http://www.dps.texas.gov/director_staff/media_and_communications/pr/2017/0215b

¹⁰⁸ *Ibid.*

¹⁰⁹ "AG Paxton Announces New Agency Human Trafficking Unit," OAG, January 14, 2016. Online at: <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-announces-new-agency-human-trafficking-unit>

¹¹⁰ "AG Paxton Unveils New Training Video to Mobilize Texans in the Fight Against Human Trafficking," OAG, January 18, 2018. Online at: <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-unveils-new-training-video-to-mobilize-texans-in-the-fight-against>

OAG has provided the training video to all Texas state agencies, and the video is mandatory viewing for OAG employees. The Texas Department of Family and Protective Services has announced plans to require viewing of the video by all front-line caseworkers.¹¹¹ This video walks viewers through cases of trafficking prosecuted in Texas, identifies how traffickers obtain and maintain victims, and informs viewers on the red flags and reporting protocol.¹¹² In order to reach the over 300,000 state employees in Texas, state agency directors should adopt a policy to require sex and human trafficking training for all state employees utilizing the free training materials provided by OAG, including the "Be the One" video. Requiring state employees to view the OAG video will help make these employees – as citizens – cognizant of the problem and the role they can play in stopping trafficking. Just as all state employees are required to take Equal Employment Opportunity training,¹¹³ providing training on sex and human trafficking to all state employees will teach government workers to spot dangerous situations, and will spread awareness of this crucial issue.

¹¹¹ *Ibid.*

¹¹² Texas Attorney General Human Trafficking Site. See: <https://www.texasattorneygeneral.gov/human-trafficking>

¹¹³ Texas Labor Code Sec. 21.010.

3. Sexual Assault Evidence Testing

Recommendation: Fund crime lab testing of sexual assault evidence with an additional \$14 million for the 2020-21 biennium to eliminate the backlog of sexual assault evidence kits.

Note: The following policy proposal is updated from Governor Abbott's 2014 Blueprint for Texas.¹¹⁴

One of the most critical rights afforded to the victims of reported sexual assault is the right to a forensic medical examination within 96 hours of the crime occurrence.¹¹⁵ Sexual assault evidence collection kits provide investigators with a critical tool for identifying and prosecuting sexual assault offenders. DNA evidence also plays a valuable role in preventing future assaults and sparing potential victims by bringing criminals to justice before they can assault again.¹¹⁶ Even when a victim hasn't decided whether to report the assault to law enforcement, receiving a forensic medical exam greatly improves the odds of police being able to access and test critical evidence.¹¹⁷

It is estimated that there are 15,000 sexual assault kits untested in Texas. To clear this backlog, the Legislature should appropriate \$14 million in funding for the next biennium. Testing a sexual assault kit in Austin costs \$900 on average.¹¹⁸ It would cost the state approximately \$13.5 million to test the estimated 15,000 kits backlogged in Texas. Currently, law enforcement agencies utilize a variety of state and federal grants to pay for testing. When these grants are no longer available, kits go untested and backlogs are created. To address the continued backlog issue, a stable funding source must be guaranteed.

Despite the estimates cited above, the full extent of the untested sexual assault kit backlog in Texas is unknown despite repeated efforts by the Legislature to attempt to maintain comprehensive data. In 2011, Texas became the second state to enact a law¹¹⁹ requiring law enforcement agencies to send all newly collected kits to a crime lab for testing within 30 days. The law directed the lab to test the kits as soon as is feasible. The law also required law enforcement agencies to count the untested sexual assault kits in their storage facilities and to have them analyzed by September 2014.

In 2013, Texas legislature amended the state's crime victims' bill of rights to grant survivors of sexual assault the right to access information about the location and status of their sexual assault kits.¹²⁰ That year, legislators also appropriated \$11,000,000 in funding to test backlogged kits.¹²¹ In 2015, millions

¹¹⁴ See "Greg Abbott's Securing Texans" online at: <https://www.gregabbott.com/wp-content/uploads/2014/02/GregAbbottsSecuringTexansPlan.pdf>

¹¹⁵ Tex. Code of Crim. Proc. Arts. 56.06 & 56.065

¹¹⁶ "CBS News Investigates Rape-Kit Backlog," RAINN. <https://www.rainn.org/news-room/news/rape-kit-backlog>

¹¹⁷ "Preserving and Collecting Forensic Evidence," RAINN. <http://www.rainn.org/get-information/aftermath-of-sexual-assault/preserving-and-collecting-forensic-evidence>

¹¹⁸ "The Cost of Clearing the Rape Kit Backlog," Chase Hoffberger, Austin Chronicle, September 16, 2016. Online at: <https://www.austinchronicle.com/news/2016-09-16/the-cost-of-clearing-the-rape-kit-backlog/>

¹¹⁹ Senate Bill 1636 Bill Text: <http://www.capitol.state.tx.us/tlodocs/82R/billtext/pdf/SB01636F.pdf#navpanes=0>

¹²⁰ Tex. Code of Crim. Proc. Art. 56.02

¹²¹ "Finally, Thousands of Old Rape-Evidence Kits Are to Be Tested," Julián Aguilar, New York Times, August 3, 2013. Online at: http://www.nytimes.com/2013/08/04/us/finally-thousands-of-old-rape-evidence-kits-are-to-be-tested.html?_r=0

more were awarded to Texas crime labs to review thousands of remaining kits, including nearly \$2 million to the Austin Police Department and almost \$1.6 million to Dallas County.¹²²

The University of North Texas Forensic Services Unit has filled an important role in providing DNA testing to law enforcement agencies.¹²³ For example, the Forensic Services Unit has contracted with the Austin Police Department to assist in testing backlogged sexual assault kits after the APD crime lab encountered contamination issues.¹²⁴ The Criminal Justice Division of the Office of the Governor will kick-start this effort by providing DPS with a grant of \$1 million to help fund testing by the Forensic Services Unit at UNT.

In the 2017 Legislative Session, House Bill 281 (Howard, 85R) required DPS to develop and implement a statewide electronic tracking system for evidence collected in cases involving sexual assault or other sex offenses, including evidence from sexual assault kits. This system must be fully implemented by September 1, 2019. This is an important milestone, as previously the state did not have comprehensive information as to the number and location of sexual assault kits statewide. Because of this knowledge gap, the state has repeatedly attempted to “clear the backlog” of untested sexual assault kits, only to have the goalposts moved as additional sexual assault kits came to light for retesting. The tracking system should be implemented and managed in such a way as to clearly distinguish between sexual assault kits that have never been tested, and those that have already been tested but require review for other reasons - such as the post-conviction review of a sexual assault case.

With the enactment of the HB 281 sexual assault kit tracking system law, Texas became the first state in the country to enact all six pillars of comprehensive sexual assault kit reform championed by the national advocacy group End The Backlog,¹²⁵ including laws requiring an audit, testing of backlogged kits, testing of newly collected kits, tracking of kits, victims' right to notice provisions, and funding for sexual assault kit reform. The funding of sexual assault kit reviews has remained generous, as legislators appropriated \$4.2 million in the 2017 budget¹²⁶ to test backlogged kits. At the same time, the Legislature adopted a new method for additional funding with House Bill 1729 (Neave, 85R), which attempts to “crowdfund” the funding of sexual assault kit testing by asking all driver’s license applicants whether they would like to donate \$1 toward sexual assault kit testing.¹²⁷

Providing an additional \$14 million in funding in the next biennium to test backlogged sexual assault kits would represent major progress. This will not be an unfunded mandate as no local political subdivision will be required to cover any uncompensated costs. Additionally, it is vital that a stable funding source is guaranteed to prevent future backlogs.

¹²² “End the Backlog - Texas,” End the Backlog. Online at: <http://www.endthebacklog.org/texas>

¹²³ “UNT DNA Program Funding Loss ‘Incredibly Crippling,’ say investigators,” Seth Augenstein, Forensic Magazine, May 19, 2017. Online at: <https://www.forensicmag.com/news/2017/05/unt-dna-program-funding-loss-incredibly-crippling-say-investigators>

¹²⁴ “Who’s Testing APD’s Backlog of Evidence,” Sarah Marloff, Austin Chronicle, February 24, 2017. Online at: <https://www.austinchronicle.com/news/2017-02-24/whos-testing-apds-backlog-of-evidence/>

¹²⁵ “How We Determine and Track State Reforms,” End the Backlog. Online at: <http://endthebacklog.org/ending-backlog-government-responses-state/how-we-determine-and-track-state-reforms>

¹²⁶ General Appropriations Act for 2018-19, Article V, Section 57

¹²⁷ “New law lets Texas drivers help tackle the state’s rape kit testing backlog,” Jim Malewitz, Texas Tribune, September 18, 2017. Online at: <https://www.texastribune.org/2017/09/18/how-texas-drivers-can-help-texas-tackle-its-rape-kit-testing-backlog>

4. GPS Monitoring for Offenders Posing an Immediate Danger

Recommendation: Expand GPS monitoring to include high-risk domestic violence abusers, as well as human traffickers and repeat sex offenders, who pose a severe threat to their victims, as determined by a judge at a hearing to set bail; supported by grants from the Criminal Justice Division of the Office of the Governor.

*Note: The following policy proposal is updated from Governor Abbott's 2014 Blueprint for Texas.*¹²⁸

Domestic violence remains a serious problem in Texas. Figures from the state Department of Public Safety show that more than 214,000 people were injured or died in 2016 at the hands of a husband, wife, boyfriend, girlfriend or another person close to them.¹²⁹

Strong containment methods are measures designed to ensure victim safety by keeping dangerous actors away from their targets. Victims of domestic violence may face the greatest threat of homicide when leaving or engaging in legal separation from their batterer. The most dangerous time is within the first year of leaving, and the risk is critically high during the first three months.¹³⁰ In the days preceding a court hearing, strong containment methods, such as Global Positioning System (GPS) monitoring, can keep victims safe while the defendant is free on bond following an arrest for a domestic violence related offense. Data from the Jeanne Geiger Crisis Center's High-Risk Team shows that, in the areas served by the Team, virtually no offenders monitored by GPS, approximately 5 percent of high-risk cases, have re-assaulted their victims.¹³¹

In 2009, a Connecticut woman, Tiana Notice, was stabbed to death by her boyfriend James Carter. Carter had repeatedly violated the protective order Notice has against him. Carter emailed Tiana and told her not to tell the police. Instead, Tiana went to the police for protection and was told Carter would be arrested. Instead, police called Carter and told him that, if they discovered he was the one who had sent the email, he would be arrested. Having been made aware of Tiana's disobedience, Carter went to Tiana's apartment with a knife and killed her. In the aftermath of Tiana's murder, Connecticut passed legislation that has been called "the most targeted attack on these crimes in 24 years." Among other things, the new law set up a pilot GPS monitoring program for offenders in high-risk domestic violence cases.¹³² In the first four years of the law's operations, 168 high-risk domestic violence offenders in Connecticut were subjected to GPS monitoring, and not a single one killed or injured another person after becoming subject to the monitoring.¹³³

"Pretrial services" is the term used to describe the process which involves assessing arrestees, making recommendations regarding release in light of such assessment, and supervising individuals released on

¹²⁸ See "Greg Abbott's Securing Texans" online at: <https://www.gregabbott.com/wp-content/uploads/2014/02/GregAbbottsSecuringTexansPlan.pdf>

¹²⁹ "Texas sees increase in domestic violence reports," Austin American-Statesman, November 13, 2017. Online at: <http://www.statesman.com/news/state--regional/texas-sees-increase-domestic-violence-reports/MrooaeoEWuoUSbxziV68NI/>

¹³⁰ "Intimate Partner Homicide: Review and Implications of Research and Policy," J. Campbell, p. 254

¹³¹ "The High Risk Team Model and GPS Offender Monitoring: Stopping DV in its Tracks," Dian L. Rosenfeld, Domestic Violence Report Vol. 17, No. 3, February/March 2012.

¹³² Domestic Violence Report Vol. 17, No. 3, February/March 2012. Online at: http://jeannegeigercrisiscenter.org/jimg/resources/reportpdf/jgcc_DomesticViolenceReportw_JGCCarticles.pdf

¹³³ "GPS ankle bracelets reduce domestic violence injuries in Connecticut," Grace Merritt, September 4, 2013. Online at: <https://ctmirror.org/2013/09/04/gps-ankle-bracelets-reduce-domestic-violence-injuries-connecticut/>

bond.¹³⁴ Pretrial services play an important role in the state's criminal justice system: pretrial services protect defendant's right against excessive bail, reduce overcrowding in jails, and save taxpayer dollars by providing arrestees an opportunity for release. Pretrial services makes recommendations to magistrates relating to bond release and conditions. Magistrates take these recommendations into account when setting bail. The Code of Criminal of Procedure authorizes the imposition of reasonable conditions on released defendants to ensure community safety and the safety of the alleged victim.¹³⁵ These conditions may include no-contact with alleged victims, restrictions on communications and travel, GPS monitoring, home confinement or curfew, drug testing, counseling, motor vehicle interlock devices, and electronic monitoring.¹³⁶

Texas passed legislation in 2007 to allow for GPS monitoring of sexually violent predators,¹³⁷ whereby when an individual under active monitoring violates a condition of his release, a report is sent in real time to TDCJ.¹³⁸ Some counties, such as Bexar County, use GPS technology and electronic monitoring to monitor defendants who are out awaiting trial.¹³⁹ If a Bexar County court orders GPS monitoring as a condition of release on bond, the defendant will be placed under intensive supervision and the defendant's movements will be monitored at all times. With electronic monitoring, monitors are alerted whenever an offender enters an "exclusion zone," geographic areas that are usually set up around a victim's home or workplace. Both the GPS and electronic monitoring programs at Bexar County Pretrial Services are defendant paid programs. Defendants subject to GPS monitoring are required to pay \$300 each month, which covers the cost of the GPS equipment and monitoring (\$5 per day) and the salaries of the case managers. The monthly fee for electronic monitoring is \$270.¹⁴⁰ Approximately half of all defendants who are ordered to submit to GPS monitoring fail to make their monthly payments. However, as GPS monitoring is less expensive than what it cost to jail a defendant awaiting trial, the county courts typically cover the monitoring costs for those defendants that don't pay.

In counties with strong pretrial services programs, magistrates should be encouraged to require GPS monitoring as a condition for release for high-risk perpetrators of family or domestic violence. Although the ultimate decision as to imposing GPS monitoring should be left up to the discretion of individual magistrates on a case by case basis, GPS monitoring should be imposed in cases where a protective order is issued protecting victims by disallowing offenders from contacting them or entering their physical proximity.

In the 85th Regular Legislative Session, legislation that would have accomplished this goal for domestic violence offenders was offered as House Bill 3655 (Herrero). The bill would have required the Criminal Justice Division (CJD) of the Office of the Governor to reimburse counties via grant for all or part of the costs in employing GPS monitoring in cases involving domestic violence. Similar legislation should be

¹³⁴ "Overview of Pretrial Services & Bail in Texas," Travis Leete, Texas Criminal Justice Coalition. Online at: <https://www.texascjc.org/system/files/publications/Overview%20of%20Pretrial%20Services%20Bail%20in%20TX%20%28Mar%202012%29.pdf>

¹³⁵ Tex. Code of Crim. Proc. Art. 17.40

¹³⁶ Tex. Code of Crim. Proc. Art. 17.292, 17.41, 17.46, 17.49, 17.03(c).

¹³⁷ Office of Violent Sex Offender Management 80th Legislative Summary. Online at:

<http://www.ovsom.texas.gov/docs/80LegislativeSession.pdf>

¹³⁸ "Resources for Local Criminal Justice Grant Planning: Capital Area Council of Governments Region," Office of the Governor, Criminal Justice Commission, March 2016. Online at:

http://www.capcog.org/documents/criminal_justice/CAPCOG_CJAC_Binder_PY2017_-_FINAL.pdf

¹³⁹ Bexar County Pretrial Services. <http://gov.bexar.org/pretrial/>

¹⁴⁰ GPS & Electronic Monitoring, Bexar County Pretrial Services. http://gov.bexar.org/pretrial/gps_elm.html

passed by the 86th Legislature, providing for GPS monitoring for high-risk domestic violence offenders, sex offenders, and those connected to human trafficking.

As the use of GPS monitoring has been proven an effective preventative measure, encouraging the use of GPS monitoring for high-risk domestic abuse, human traffickers, and repeat sex offenders will help protect victims from continued abuse. Funding a grant program in the Criminal Justice Division of the Office of the Governor will allow counties to take advantage of this effective pre-trial service.

5. Predatory Educator-Student Relationships

Recommendation: Create a “do-not-hire” registry of educators and other adults barred from school employment due to predatory teacher-student relationships, or other unlawful acts with a minor or student, and create additional protocols to prevent the abuse of students by school employees.

When school districts fail to discipline educators exhibiting predatory behavior or to disclose such behavior to the Texas Education Agency (TEA), it allows these individuals to continue hurting children at other school districts. As Governor Abbott rightly noted in his 2017 State of the State Address: “Some of those teachers are not prosecuted and worse . . . some are shuffled off to other schools to continue teaching in other areas, threatening other kids.”¹⁴¹ In Fiscal Year 2016, the TEA launched investigations into 222 teachers based on allegations of improper relationships with students, an 80 percent increase since 2008.¹⁴² TEA’s seven-investigator team as of 2016 had 1,110 open cases.¹⁴³ That same year there were 49 convictions for improper relationship between educator and student in Texas.¹⁴⁴

In response, the 85th Legislature passed Senate Bill 7 (Bettencourt), which addresses the problem of improper teacher-student relationships on multiple levels – including via teacher education, increasing channels of communication between investigative entities, requiring the adoption of school electronic communication policies, and closing a loophole under former law that provided that the offense of “Improper Relationship Between Educator and Student” only applies where the educator and student are from the same school district. Note that an improper relationship between an educator and a student is typically a second-degree felony under Penal Code 21.12, and will usually also constitute the separate offense of indecency with a child, also a second-degree felony, under Penal Code 21.11, so long as the educator and the student are more than three years apart in age.

The Texas Legislature should act further by creating a “do-not-hire” registry for school employees who have been convicted or placed on deferred adjudication for improper relationships with students. A person listed on the registry would be prohibited from employment as a teacher, librarian, educational aide, administrator, counselor, school nurse/medical aide or any other position with direct, unsupervised contact with students. Included in this registry should also be bus drivers, coaches, trainers, medical health professionals, and other adult campus employees who interact with students, whether they are full-time employed professionals or independent contractors. This recommendation would require that the registry be housed within the State Board for Educator Certification (SBEC). Private schools, charter schools, and districts of innovation would be required to check the registry before making any final hiring decisions.

Senate Bill 653 (Van Taylor, 85R) would have further addressed the problem of predatory teacher-student relationships. While SB 653 did not pass, many of its provisions would have created additional protections for students that should be pursued by the Legislature in the 86th Session. These proposals include:

¹⁴¹ “Governor Abbott Delivers State Of The State Address,” Office of the Governor, January 31, 2017. Online at: <http://gov.texas.gov/news/press-release/23119>

¹⁴² “Cases of improper teacher-student relationships hit 8-year high,” Julie Chang, Austin American-Statesman, September 21, 2016. Online at: <http://www.mystatesman.com/news/state--regional-govt--politics/cases-improper-teacher-student-relationships-hit-year-high/UE0uA8f83tzJGHNrp5GkwO/>

¹⁴³ *Ibid.*

¹⁴⁴ DPS conviction rates for handgun license holders, 2016. Online at: <https://www.dps.texas.gov/RSD/LTC/Reports/ConvictionRatesReport2016.pdf>

- Authorizing SBEC to temporarily suspend the teaching certificate for a certificated individual if SBEC where the individual is criminally charged¹⁴⁵ with a sexual offense. Educators would receive paid leave while on suspension but would be required to pay it back if convicted. This builds on a provision of Senate Bill 7 giving SBEC the right to revoke a certificate based on the conviction or placement on deferred adjudication of an educator for a sexual offense.
- Creating a secure online portal for school superintendents, principals, and charter school directors to report incidences of improper teacher-student relationships. The Education Code already obligates these professionals to report incidences of misconduct to SBEC. This recommendation creates an easier pathway for timely, convenient reporting.
- Improving training for education professionals on the prevention, reporting, and mediation methods of school violence and misconduct. Included in this training should be bus drivers, coaches, trainers, medical health professionals, and other adult campus employees. This training would encompass violence of all kinds including child abuse, neglect, and any unlawful interactions between students and teachers. Training should be required for both full-time employed professionals and to independent contractors.

¹⁴⁵ By "indictment, information, complaint, or other charging instrument or a related document," as described at Texas Code of Criminal Procedure Article 21.