

# **Senate Committee on State Affairs**

Interim Report

December 2020



January 11, 2021

The Honorable Dan Patrick  
Lieutenant Governor of the State of Texas  
Capitol Building, Room 2E.13  
Austin, Texas 78701

Dear Lieutenant Governor Patrick:

You charged the Senate Committee on State Affairs with reviewing several issues within the Committee's jurisdiction. We submit this report in response to those charges.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bryan Hughes".

Bryan Hughes, Chair

A handwritten signature in cursive script that reads "Brian Birdwell".

Brian Birdwell

A handwritten signature in cursive script that reads "Brandon Creighton".

Brandon Creighton

A handwritten signature in cursive script that reads "Bob Hall".

Bob Hall

A handwritten signature in cursive script that reads "Joan Huffman".

Joan Huffman

A handwritten signature in cursive script that reads "Eddie Lucio, Jr.".

Eddie Lucio, Jr.

*Jane Nelson*

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Jane Nelson

*Judith Zaffirini*

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Judith Zaffirini

Vice Chair, Mass Violence Prevention  
and Community Safety  
Vice Chair, Natural Resources and  
Economic Development  
Texas Judicial Council  
Chair, Eagle Ford Shale  
Legislative Caucus



**Judith Zaffirini**  
State Senator, District 21  
President Pro Tempore, 1997

**Committees**  
Administration  
Business and Commerce  
Education  
Higher Education  
State Affairs

January 11, 2021

The Honorable  
Bryan Hughes, Chair  
Senate Committee on State Affairs  
209 West 14th Street, Ste. 380  
Austin, Texas 78701

Dear Chair Hughes:

Thank you for your leadership as Chair of the Senate Committee on State Affairs. I appreciate the opportunity to serve with you and to share my perspective regarding our committee's Interim Report to the 87<sup>th</sup> Legislature. The report contains many proposals that I support, especially regarding the charge related to combating human trafficking. The thoughtful and thorough suggestions in response to that charge should help the Legislature continue our bipartisan efforts to end the scourge of human trafficking in Texas. What's more, I am delighted that the report embraces the need to address the root causes of abortion, such as lack of affordable housing and child care options. My prayer is that legislators will heed this suggestion during our difficult budget negotiations. This letter, however, is to record my concerns regarding recommendations in the report that would limit local control.

The proposition that the Legislature should consider legislation to ban so-called "taxpayer-funded lobbying" is troublesome. As the report notes, a bill that would have achieved this end last session died after it was opposed by a bipartisan coalition of legislators, including me, in both chambers. The bill purports to prevent local government officials from using taxpayers' money to advocate against their interests. In reality, however, banning hiring of professional advocates would muzzle local viewpoints, as many localities, especially rural ones, lack the time and expertise to be involved in the legislative process. Equally important, local elected officials are best positioned to know and understand their constituents' unique interests. They should be able to have those local viewpoints adequately represented at the Capitol. If local representatives are spending tax dollars to advocate against their communities' interests, the appropriate remedy is to vote them out of office.

Letter to Chair Bryan Hughes

January 11, 2021

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For similar reasons, I am concerned about the recommendation regarding local prosecutorial discretion. I support what the report describes as "policies that provide second chances and facilitate reintegration for offenders," but I disagree when it states that "they cannot be directed locally." Local elected officials are, again, better positioned than the state Legislature to understand the public safety needs of their constituents. We should not limit their ability to try innovative new strategies to improve the criminal justice system. The voters should have the final say regarding whether these policies are effective via democratic elections.

Thank you for your dedication to the many important issues we examined during the 86<sup>th</sup> Interim. I look forward to continuing to work with you and other members of the committee during our next legislative session.

May God bless you.

Very truly yours,

A handwritten signature in cursive script that reads "Judith Zaffirini".

Judith Zaffirini

Z/ah

EDDIE LUCIO, JR.  
SENATE DISTRICT 27



**SENATE OF TEXAS**  
STATE CAPITOL 3S.5  
AUSTIN, TX 78711

January 11, 2021

The Honorable Bryan Hughes  
Chairman, Senate Committee on State Affairs  
PO Box 12068  
Austin, TX 78701

Chairman Hughes:

Thank you for your hard work over this interim to study the charges assigned to the Senate Committee on State Affairs. This committee report is testimony to your dedication to safely continuing the important work of this committee. I gladly sign on to the findings of the Committee; however, I wish to express my disagreement with the report's recommendation on curbing the ability of county and local governments to effectively advocate for their citizens' interests at the Legislature.

In our federalist system, voters choose their leaders at multiple levels of government, including federal, state, county, and local officials. Through this democratic process, citizens place their trust in their chosen leaders to take actions on behalf of their communities that will, on the whole, benefit those who live there. While no election leads to a result that pleases everyone, the concept of representative government is built on the assumption that our representatives act on our behalf.

Part of this duty is informing the Legislature about the probable effects that pending bills may have on the localities they represent. As Chairman of the Committee on Intergovernmental Relations, I have seen my share of state-level legislation that has repercussions for local units of government, and have appreciated the insight that representatives of those governments have provided on their import. Disposing of such expertise, as this committee report recommends, would gravely inhibit both local officials' ability to advocate for their constituents and this Legislature's ability to make informed decisions.

I appreciate the opportunity to share this concern, and I eagerly anticipate continuing to work with you and the Committee on issues of great consequence for Texas.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio, Jr.".

Eddie Lucio, Jr.  
State Senator

ELJ/cwl



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## INTERIM CHARGES

The Senate Committee on State Affairs was charged with ten interim charges by the Lieutenant Governor. However, due to the unprecedented impact of COVID-19, the Committee was only able to hold interim hearings on the following charges:

1. **Human Trafficking:** Examine opportunities and make recommendations to reduce the profitability of and demand for human trafficking in Texas. Determine ways to increase public awareness on the proliferation of human trafficking, as well as resources for victims and survivors. Review the interaction between local, state, and federal agencies in responding to and prosecuting human trafficking and sex trafficking offenses in Texas' five most populous counties. Make recommendations to ensure law enforcement agencies and prosecutors have the tools necessary to promptly and thoroughly respond to these crimes.
2. **Taxpayer Lobbying:** Study how governmental entities use public funds for political lobbying purposes. Examine what types of governmental entities use public funds for lobbying purposes. Make recommendations to protect taxpayers from paying for lobbyists who may not represent the taxpayers' interests.
3. **Protecting the Unborn:** Study and recommend ways Texas can further protect the lives of the unborn, including fetal heartbeat legislation and any other law or regulation that protects life.
4. **Second Amendment:** Examine Second Amendment legislation passed since the 84th Legislative Session including open carry, campus carry, and lowering the license to carry fee. Determine the impact these laws have made on furthering and protecting Second Amendment rights. Make recommendations that may further protect and enhance Texans' Second Amendment right to bear arms.
5. **Personal Property Protections:** Examine prosecution rates for thefts involving property valued under \$1,000. Make recommendations to ensure law enforcement agencies and prosecutors have the tools necessary to thoroughly protect Texans' personal property from theft.



## **SENATE COMMITTEE ON STATE AFFAIRS INTERIM HEARINGS**

February 26, 2020, *Senate Chamber*

The Committee took invited and public testimony on Charge Nos. 1, 4, and 5.

December 8, 2020, *EI.016*

The Committee took invited testimony on Charge Nos. 2 and 3.

# INTERIM CHARGE DISCUSSIONS AND RECOMMENDATIONS

## CHARGE NO. 1

**Human Trafficking:** *Examine opportunities and make recommendations to reduce the profitability of and demand for human trafficking in Texas. Determine ways to increase public awareness on the proliferation of human trafficking, as well as resources for victims and survivors. Review the interaction between local, state, and federal agencies in responding to and prosecuting human trafficking and sex trafficking offenses in Texas' five most populous counties. Make recommendations to ensure law enforcement agencies and prosecutors have the tools necessary to promptly and thoroughly respond to these crimes.*

### **Background**

Described as “modern slavery,” human trafficking is among the most pressing problems facing our state today. The global pandemic has only intensified the need to address this problem. Human trafficking occurs across the world and takes on many different forms. A trafficker may be a member of a formal, organized criminal syndicate, the owner of an illicit massage business, an Internet predator who “grooms” teenagers, or even a parent, boyfriend, or girlfriend. Victims<sup>1</sup> too are diverse. A victim may be male or female, adult or minor, U.S. or foreign-born, wealthy or poor. A trafficker may use threats of violence, blackmail, or any number of other coercive tactics to manipulate a victim into performing slave labor or commercial sex acts.

Though often confused with smuggling,<sup>2</sup> human trafficking is a distinct crime that does not require the movement of a person. It is instead defined by the exploitive actions of the trafficker. Sex trafficking means either using force, fraud, or coercion to cause an adult to perform a commercial sex act or causing a minor to perform a commercial sex act.<sup>3</sup> Labor trafficking, on the other hand, means using force, fraud, or coercion to exploit a person for labor in conditions akin to slavery.<sup>4</sup> The term “human trafficking” refers to both sex trafficking and labor trafficking.<sup>5</sup> Few people want to believe that human trafficking could occur in a developed country, but the International Labor Organization estimates that there are hundreds of thousands of human trafficking victims in the

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<sup>1</sup> While many advocates disfavor use of the term “victim” to describe a person who has experienced human trafficking and instead suggest using the term “survivor,” this report uses the term “victim” for consistency of terminology with the committee’s charge and with much of the literature on human trafficking. *See also* Kyleigh Feehs & Alyssa Currier, *2019 Federal Human Trafficking Report*, HUM. TRAFFICKING INST., 17 (2020), [https://www.traffickinginstitute.org/wp-content/uploads/2020/05/2019-Federal-Human-Trafficking-Report\\_Low-Res.pdf](https://www.traffickinginstitute.org/wp-content/uploads/2020/05/2019-Federal-Human-Trafficking-Report_Low-Res.pdf) (explaining that “victim” is a “legal term of art” that describes a person a perpetrator harms through unlawful conduct and that use of the term “in no way seeks to diminish the strength and resilience of countless human trafficking victims”).

<sup>2</sup> Smuggling involves transporting a person across international borders—an individual consents to be smuggled, but human trafficking does not necessarily involve the movement of a person; the trafficked individual, even if he or she initially consented, is forced, defrauded, or coerced into performing exploitive labor services or commercial sex acts. A person may be smuggled then trafficked, coerced into participating because of his or her lack of legal status in the new location. *Fact Sheet: Human Trafficking*, OFF. ON TRAFFICKING PERSONS (Nov. 21, 2017), <https://www.acf.hhs.gov/otip/resource/fshumantrafficking>.

<sup>3</sup> TEX. PENAL CODE § 20A.02.

<sup>4</sup> *Id.*

<sup>5</sup> 22 U.S.C. § 7102; TEX. PENAL CODE § 20A.02.

United States, and that in 2019 alone, Texas had the second highest number of human trafficking cases reported in any state.<sup>6</sup> Victims hide in plain sight and, because of the coercive and exploitive nature of human trafficking, they rarely seek help or even identify as a victim.<sup>7</sup> The trauma that victims experience, however, can be deep and long-lasting.

The business of human trafficking is shocking. Human trafficking is estimated to be a \$150 billion global industry annually, and human trafficking has superseded weapons sales as the second largest illicit industry in the world.<sup>8</sup> Gangs and organized criminal networks have embraced this crime because of how lucrative it can be. While drugs or weapons may be sold only once, a human being may be exploited for labor or sex many times over in a day.<sup>9</sup>

Despite these challenges, Texas has been a leader in the effort to combat human trafficking.<sup>10</sup> In the past few legislative sessions, the Legislature has increased criminal penalties for traffickers.<sup>11</sup> The State has provided new prevention training opportunities to law enforcement officers,<sup>12</sup> health care practitioners,<sup>13</sup> and public school employees,<sup>14</sup> and increased resources and protections for survivors, including through treatment programs,<sup>15</sup> nondisclosure orders,<sup>16</sup> and new civil remedies.<sup>17</sup> In 2018, the Attorney General Human Trafficking division helped permanently shut down Backpage.com, the largest online sex trafficking marketplace in the world.<sup>18</sup> Earlier this

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<sup>6</sup> *The Victims*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/victims> (last visited Oct. 28, 2020); *Hotline Statistics*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/states> (last visited Oct. 28, 2020).

<sup>7</sup> *Myths, Facts, and Statistics*, POLARIS PROJECT, <https://polarisproject.org/myths-facts-and-statistics/> (last visited Oct. 28, 2020). “Some [people in trafficking situations] lack the basic necessities to physically get out—such as transportation or a safe place to live. Some are afraid for their safety. Some have been so effectively manipulated that they do not identify at that point as being under the control of another person.” *Id.*

<sup>8</sup> *Profits and Poverty: The Economics of Forced Labour*, INT'L LAB. OFF., 13 (2014), <https://www.ilo.org/global/topics/forced-labour/publications/profits-of-forced-labour-2014/lang--en/index.htm>; *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Captain Cliff Manning, Texas Department of Public Safety Criminal Investigations Division).

<sup>9</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Chairman Kevin J. Lilly, Texas Alcoholic Beverage Commission); see also Michelle Lillie, *When Drug Trafficking Becomes Human Trafficking*, HUM. TRAFFICKING SEARCH (2014), <https://humantraffickingsearch.org/when-drug-trafficking-becomes-human-trafficking/>.

<sup>10</sup> “Texas is the earliest adopter of anti-human trafficking legislation and has among the most comprehensive laws of any other state in the country. Texas has also had more arrests related to human trafficking than any other state . . . .” Vanessa Bouché, *Are our anti-human trafficking efforts working?*, TEX. TRIB. (Apr. 7, 2016), <https://www.tribtalk.org/2016/04/07/are-our-anti-human-trafficking-efforts-working/>.

<sup>11</sup> *E.g.*, Tex. S.B. 20, 86th Leg., R.S., (2019); Tex. H.B. 29, 85th Leg., R.S. (2017); Tex. H.B. 10, 84th Leg., R.S. (2015).

<sup>12</sup> Tex. H.B. 292, 86th Leg., R.S., (2019) (adding TEX. OCC. CODE § 1701.253(p)).

<sup>13</sup> Tex. H.B. 2059, 86th Leg., R.S. (2019) (adding TEX. OCC. CODE §§ 116.002, 156.060, 301.308).

<sup>14</sup> Tex. H.B. 403, 86th Leg., R.S., (2019) (amending TEX. EDUC. CODE §§ 11.59, 21.054); Tex. H.B. 111, 86th Leg., R.S., (2019) (amending TEX. EDUC. CODE § 38.0041).

<sup>15</sup> Tex. S.B. 20, 86th Leg., R.S., (2019) (adding TEX. HEALTH & SAFETY CODE Chapter 50).

<sup>16</sup> Tex. S.B. 20, 86th Leg., R.S., (2019) (amending TEX. GOV'T CODE § 411.0728).

<sup>17</sup> Tex. H.B. 2552, 85th Leg., R.S., (2017) (amending TEX. BUS. & COM. CODE § 17.46(b)); Tex. S.B. 1196, 85th Leg., R.S., (2017) (amending TEX. CIV. PRAC. & REM. CODE § 125.0015); Tex. H.B. 533, 81st Leg., R.S., (2009) (adding TEX. CIV. PRAC. & REM. CODE Chapter 98).

<sup>18</sup> *Investigation by AG Paxton's Office Helps Shut Down Backpage.com*, TEX. ATT'Y GEN. (Apr. 9, 2018), <https://www.texasattorneygeneral.gov/news/releases/investigation-ag-paxtons-office-helps-shut-down-backpagecom-0>.

year, Governor Abbott announced a new clemency application specifically for survivors of human trafficking and domestic violence that will give them a chance at a new life.<sup>19</sup> While Texas has accomplished a great deal in the war against human trafficking, the problem is certainly complex and the state should continue to make ending human trafficking a top priority.

## **How traffickers find and exploit their victims:**

### **1. The Illicit Massage Business Model**

An illicit massage business (IMB) purports to be a legitimate, licensed massage business but derives at least some of its clients and revenue from providing commercial sex acts.<sup>20</sup> Both sex trafficking and labor trafficking occur in IMBs.<sup>21</sup> Overwhelmingly, trafficking victims in IMBs are adult women, who have recently arrived from China or South Korea, carry debts or are under extreme financial pressure, and speak little or no English.<sup>22</sup> Traffickers lure foreign women into the promise of job opportunities in the United States and offer to loan the money needed for travel and a visa, which can be anywhere from \$5,000 to \$40,000.<sup>23</sup> Once in the United States, these women are taken to IMBs or housing controlled by the trafficker and forced to work off their debt, either through performing commercial sex acts, working in exploitive labor conditions, or both.<sup>24</sup> Women are expected to be “on call” for clients while the IMB is open, as much as 15 to 24 hours a day.<sup>25</sup> While usually not physically restrained, these trafficking victims do not feel free to leave due to their limited English-speaking abilities, lack of legal status, lack of knowledge of their surroundings, fear of law enforcement, and their dependence on their trafficker for food and shelter.<sup>26</sup>

### **2. The Grooming Model**

People unfamiliar with the topic of human trafficking think of this crime as something from a Hollywood storyline: a young boy or girl is walking home alone, forced into a van and kidnapped, then transferred across state lines where he or she is chained in a brothel and forced to sell sex.<sup>27</sup> While that type of trafficking can occur,<sup>28</sup> most human trafficking begins with a “less Hollywood,”

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<sup>19</sup> *Governor Abbott Establishes Customized Clemency Application For Survivors Of Human Trafficking And Domestic Abuse*, OFF. TEX. GOVERNOR (Feb. 20, 2020), <https://gov.texas.gov/news/post/governor-abbott-establishes-customized-clemency-application-for-survivors-of-human-trafficking-and-domestic-abuse>.

<sup>20</sup> Vanessa Bouché & Sean M Crotty, *Estimating Demand for Illicit Massage Businesses in Houston, Texas*, J. HUM. TRAFFICKING, 2017, at 3.

<sup>21</sup> *Human Trafficking in Illicit Massage Businesses*, POLARIS, 10 (2018), <https://polarisproject.org/wp-content/uploads/2019/09/Human-Trafficking-in-Illicit-Massage-Businesses.pdf>.

<sup>22</sup> *Hidden in Plain Sight: How Corporate Secrecy Facilitates Human Trafficking in Illicit Massage Parlors*, POLARIS, 1 (Apr. 1, 2018), <https://polarisproject.org/wp-content/uploads/2018/04/How-Corporate-Secrecy-Facilitates-Human-Trafficking-in-Illicit-Massage-Parlors.pdf>.

<sup>23</sup> *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 17.

<sup>24</sup> *Id.* at 11, 25-27. Exploitive labor conditions in IMBs include working long hours, seven days a week, for little or no pay, and with no legally required employee benefits or protections. *Id.* at 11.

<sup>25</sup> *Id.* at 25.

<sup>26</sup> *Id.* at 25-29.

<sup>27</sup> *What We Know About How Child Sex Trafficking Happens*, POLARIS (Aug. 28, 2020), <https://polarisproject.org/blog/2020/08/what-we-know-about-how-child-sex-trafficking-happens/>.

<sup>28</sup> “A study analyzing press releases and online media reports from over a nine year period found that fewer than 10 percent of cases involved kidnapping.” *Id.*

more subtle approach called grooming.<sup>29</sup> A trafficker begins by targeting a person who is already vulnerable. This may be a child living in poverty or on the streets, a person with obvious low self-confidence or emotional neediness, or a person who has already experienced abuse or addiction.<sup>30</sup> The trafficker may reach out to the victim through social media, in a public place, or as a friend of a friend.<sup>31</sup> The trafficker befriends the victim, develops a relationship, sometimes romantic, and over time, becomes a person the victim trusts.<sup>32</sup> The trafficker collects information about the victim and fills a need in the victim's life to make the victim feel obligated to the trafficker. This may include buying gifts, being a friend, beginning a romantic relationship, or buying drugs or alcohol for the victim.<sup>33</sup> Eventually, the trafficker begins to demand repayment for providing services to the victim<sup>34</sup> and uses blackmail, emotional coercion, or violence or threats of violence against the victim or the victim's family to force the victim to sell sex to other people. While some victims do not have stable housing and depend on their trafficker for a place to live, other victims may continue to live at home with their parents and attend school, sneaking out at night to meet their trafficker.<sup>35</sup> By this time, the victim may be emotionally or financially dependent on the trafficker and may feel shame, guilt, or self-blame for selling sex.<sup>36</sup> The trafficker uses this dependence and these feelings of shame to continue to manipulate and exploit the victim, causing many victims to not even realize that they are being trafficked and to stay in the relationship instead of leaving or seeking help.

### 3. The Labor Trafficking Model

While research suggests that labor trafficking is more prevalent in the United States than sex trafficking, prosecutions tend to focus on child sex trafficking cases.<sup>37</sup> Of the federal criminal human trafficking cases filed in 2019, only 6.2% of charges alleged labor trafficking, whereas 50.3% of charges alleged child sex trafficking.<sup>38</sup> One reason labor trafficking prosecutions are lower is that law enforcement agencies have difficulty defining labor trafficking and separating it from other forms of labor exploitation and workplace violations.<sup>39</sup> In a study of labor trafficking in the United States, the National Institute of Justice found that the majority of labor trafficking victims entered the United States on a temporary visa.<sup>40</sup> Traffickers recruit workers mainly through

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*; Mariah Long, *Basic Stages of Grooming for Sexual Exploitation*, END SLAVERY NOW (Sept. 22, 2014), <https://www.endslaverynow.org/blog/articles/basic-stages-of-grooming-for-sexual-exploitation>.

<sup>31</sup> *What We Know About How Child Sex Trafficking Happens*, *supra* note 26.

<sup>32</sup> *Id.*

<sup>33</sup> Long, *supra* note 29.

<sup>34</sup> Long, *supra* note 29.

<sup>35</sup> *What We Know About How Child Sex Trafficking Happens*, *supra* note 26.

<sup>36</sup> *Id.*

<sup>37</sup> Compare Noël Busch-Armendariz et al., *Human Trafficking by the Numbers: The Initial Benchmark of Prevalence and Economic Impact for Texas*, INST. ON DOMESTIC VIOLENCE & SEXUAL ASSAULT, UNIV. OF TEX. AT AUSTIN, 13 (Dec. 2016) (estimating there are 234,000 victims of labor trafficking in Texas and 79,000 minor victims of sex trafficking), with Feehs & Currier, *supra* note 1, at 38 (reporting that more than half of new federal human trafficking prosecutions involved only child victims of sex trafficking).

<sup>38</sup> Feehs & Currier, *supra* note 1, at 38.

<sup>39</sup> *How Does Labor Trafficking Occur in U.S. Communities and What Becomes of the Victims?*, NAT'L INST. JUSTICE (Aug. 31, 2016), <https://nij.ojp.gov/topics/articles/how-does-labor-trafficking-occur-us-communities-and-what-becomes-victims>; Feehs & Currier, *supra* note 1, at 31.

<sup>40</sup> *How Does Labor Trafficking Occur in U.S. Communities and What Becomes of the Victims?*, *supra* note 39; Feehs & Currier, *supra* note 1, at 31.

fraudulent job offers, then threaten workers with arrest as a means of keeping them in forced labor. Traffickers also exploit their workers through extortion, sexual abuse, threats of violence, document fraud, and threats to withhold documents.<sup>41</sup> When victims speak little or no English, traffickers use that communication barrier to keep victims isolated and prevent them from seeking help, and victims with temporary or expired visas fear deportation and avoid reporting exploitation to law enforcement.<sup>42</sup>

## Discussion

### A. Profitability of and Demand for Human Trafficking

As with any commercial market, three components make up the commercial sex market: supply, providers, and demand.<sup>43</sup> Traffickers, or the providers, offer the supply, their victims, to meet the demand of willing buyers. Like the market for any other product, demand is the driving force.<sup>44</sup> While each component is subject to criminal penalties,<sup>45</sup> the risk of penalty alone has not been sufficient to end sex trafficking in this state, and as the public's understanding of this crime has evolved, so too has the desire to shift prosecutions away from victims to those who are truly responsible -- the providers and buyers. An estimated 30% of victims in human trafficking cases are arrested for prostitution, compared with just 6% of buyers,<sup>46</sup> yet one study reports that spending time in jail would deter nearly 80% of buyers.<sup>47</sup> As one comprehensive overview of the commercial sex market states:

The only methods empirically demonstrated to substantially reduce the size of commercial sex markets are those featuring a focus on (or including as a component) combating demand. There is a lack of evidence showing that attacking pimps and traffickers or rescuing survivors affects the markets substantially. Sanctioning “providers” of commercial sex is not only unjust and inhumane, but ineffective in curtailing illicit commercial sex markets, and successfully prosecuting “distributors” (pimps and traffickers) is difficult and costly, and convictions are rare.<sup>48</sup>

Advocates propose, therefore, that the state apply basic economic principles to disrupt the commercial sex market: reduce demand for commercial sex.

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<sup>41</sup> Feehs & Currier, *supra* note 1, at 31-33.

<sup>42</sup> *Id.* at 22.

<sup>43</sup> See Michael Shively et al., *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts, Final Report*, NAT'L INST. JUSTICE, 5 (Apr. 30, 2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>.

<sup>44</sup> *Id.*

<sup>45</sup> TEX. PENAL CODE Chapter 20A; TEX. PENAL CODE §§ 43.02, 43.03, 43.031, 43.04, 43.041, 43.05.

<sup>46</sup> Amy Farrell et al., *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases*, NAT'L INST. JUSTICE, 55 (Apr. 2012), <https://www.urban.org/sites/default/files/publication/25526/412593-Identifying-Challenges-to-Improve-the-Investigation-and-Prosecution-of-State-and-Local-Human-Trafficking-Cases.PDF>; *Who Buys Sex? Understanding and Disrupting Illicit Market Demand*, DEMAND ABOLITION, 27 (Mar. 2019), <https://www.demandabolition.org/wp-content/uploads/2019/07/Demand-Buyer-Report-July-2019.pdf>.

<sup>47</sup> *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 66.

<sup>48</sup> Shively, *supra* note 43, at 79 (internal citations omitted).

## 1. Illicit Massage Businesses

To reduce demand and disrupt the commercial sex market, an obvious place to begin is with IMBs. IMBs are the “contemporary manifestation of a historic brothel”<sup>49</sup> and are the most common venue for sex trafficking nationwide and in Texas.<sup>50</sup> IMBs are lucrative, generating an estimated \$2.5 billion throughout the United States annually,<sup>51</sup> and are in high demand, with one study estimating that IMBs attract nearly 3,000 customers per day in the city of Houston alone.<sup>52</sup> These illicit businesses are located in neighborhoods and strip malls next to regular businesses, and they give buyers an easy cover with the ability to claim they only wanted a massage.<sup>53</sup> Most IMBs occupy leased commercial space to allow the owners to easily relocate if they come under pressure from law enforcement.<sup>54</sup> Children at Risk’s mapping of suspected IMBs found that many are located in affluent areas.<sup>55</sup>

Not only does an IMB violate state and federal human trafficking laws, but owners of IMBs are often also involved in other organized criminal activities like money laundering, visa and immigration fraud, smuggling, and tax evasion.<sup>56</sup> The average IMB is part of a criminal network that connects to at least one other IMB and a non-massage venue, such as a nail salon, beauty shop, or dry cleaner.<sup>57</sup> These businesses may be shell companies protecting the trafficker’s identity and laundering money.<sup>58</sup> Because IMBs receive cash payments for illegal services, many IMBs have ATMs on premises that owners use to launder cash.<sup>59</sup> Owners often send huge sums of laundered money overseas, where the criminal syndicates that find foreign trafficking victims operate.<sup>60</sup> IMBs evade taxes as well. In Houston alone, IMBs represent nearly nine million dollars a year in lost sales tax revenue.<sup>61</sup> Compared to other models of human trafficking, the IMB model presents a much easier business model for law enforcement to target because IMBs operate and advertise, at least on the surface, as legitimate businesses with physical locations and licenses.

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<sup>49</sup> Robert Sanborn et al., *Law Enforcement Manual - IMB Toolkit*, CHILD. RISK, 5 (2019), <https://catriskprod.wpengine.com/wp-content/uploads/2019/03/IMB-Toolkit-Law-Enforcement-Manual.pdf>.

<sup>50</sup> *Hotline Statistics*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/states> (last visited Oct. 28, 2020); *Texas*, NAT’L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/state/texas> (last visited Oct. 28, 2020).

<sup>51</sup> *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 5 (corroborating research by Bouché & Crotty, *supra* note 19, that found the illicit massage industry in Houston generated \$107 million per year, which can be extrapolated to a national figure of \$2.8 billion annually).

<sup>52</sup> Bouché & Crotty, *supra* note 19, at 2.

<sup>53</sup> Sanborn et al., *supra* note 49, at 5; *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 12.

<sup>54</sup> Sanborn et al., *supra* note 49, at 5; *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 70.

<sup>55</sup> Sanborn et al., *supra* note 49, at 5.

<sup>56</sup> Bouché & Crotty, *supra* note 19, at 3.

<sup>57</sup> *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 34.

<sup>58</sup> *Id.*

<sup>59</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (written testimony of James Caruthers, Children at Risk).

<sup>60</sup> See Amy O’Neill Richard, *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime*, CTR. FOR STUDY INTELLIGENCE, 19-20 (Nov. 1999), <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf>.

<sup>61</sup> Bouché & Crotty, *supra* note 19, at 16.

## 2. Buyers

It is necessary that efforts to reduce demand for human trafficking focus on the people creating the demand: buyers of commercial sex. While most men<sup>62</sup> have never purchased sex, a small percentage of high frequency buyers make up the majority of the demand.<sup>63</sup> There is no common demographic profile of a sex buyer; “[h]e could be any age or race, earn at any income level, or be in any type of relationship.”<sup>64</sup> Buyers help each other find IMBs and other places to buy sex through “review board” websites on which website users share locations of IMBs and reviews of the purchased sex acts.<sup>65</sup> Recent federal legislation now holds Internet service providers accountable for facilitating human trafficking through a website,<sup>66</sup> but in practice, investigating these websites rarely leads to prosecutions of buyers or traffickers. Even if all law enforcement agencies had the time and resources to follow up on these tips, a single police search likely would not yield enough evidence to successfully prosecute the traffickers or frequent buyers, and the user reviews amount to third-party hearsay for which police cannot arrest buyers.<sup>67</sup> Research indicates that a perceived risk of arrest has a diminishing effect on sex buying,<sup>68</sup> and so shifting law enforcement focus from arresting human trafficking victims for selling prostitution to arresting those who buy prostitution will likely help reduce human trafficking in this state.

## 3. Current State Efforts to Reduce Profitability and Demand

The Texas Department of Licensing and Regulation’s (TDLR) Anti-Trafficking Unit is one state effort to reduce the demand for and profitability of human trafficking. TDLR has made identifying and shutting down IMBs a top priority for the agency that licenses legitimate massage businesses. TDLR’s Anti-Trafficking Unit is a highly trained investigative unit that conducts unannounced inspections of any business that advertises massage services, even unlicensed massage businesses.<sup>69</sup> The agency also conducts a national fingerprint-based criminal history check of all massage therapists, massage establishment owners, and massage school owners, combs the Internet for businesses advertising illicit massage services, and coordinates with local, state, and federal law enforcement agencies.<sup>70</sup>

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<sup>62</sup> “[A]ll available evidence points to [sex buying] being almost entirely conducted by males. We do not dispute evidence that, in rare instances, women have been known to buy sex. Yet we recognize that the demand side of the commercial sex trade is defined almost entirely by the actions of men.” *Who Buys Sex? Understanding and Disrupting Illicit Market Demand*, *supra* note 46, at 6 (internal citations omitted).

<sup>63</sup> *Id.* at 9, 16.

<sup>64</sup> *Id.* at 19.

<sup>65</sup> *See, e.g.*, Bouché & Crotty, *supra* note 19, at 8.

<sup>66</sup> Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018).

<sup>67</sup> Fernando Ramirez, *Map shows suspected human trafficking fronts operating near Houston schools*, HOUS. CHRON. (Apr. 11, 2018), <https://www.chron.com/news/houston-texas/houston/article/Map-shows-massage-parlors-texas-houston-school-12826409.php> (discussing Children at Risk’s study to identify IMBs near public schools using a review board website). “[S]ome of the reviews on [these websites] are very graphic, but ultimately third-party hearsay, making it impossible for police to make an arrest.” *Id.* (quoting James Caruthers, an attorney with Children at Risk).

<sup>68</sup> *Who Buys Sex? Understanding and Disrupting Illicit Market Demand*, *supra* note 46, at 27, 30.

<sup>69</sup> *TDLR Human Trafficking Response at a Glance*, TEX. DEP’T LICENSING & REG. (Oct. 2019), <https://www.tdlr.texas.gov/media/pdf/Human%20Trafficking%20Response%20at%20a%20Glance.pdf>.

<sup>70</sup> *Id.*; *see also* TEX. OCC. CODE § 455.1525.



Even though IMBs are the most common venue for human trafficking, human trafficking also regularly occurs in establishments that the Texas Alcoholic Beverage Commission (TABC) regulates, like bars, clubs, and hotels. The TABC Special Investigations Unit works to identify criminal activity in TABC businesses and partners with other law enforcement agencies to share intelligence and make arrests, cutting off key funding for traffickers and businesses that enable trafficking by revoking their alcohol permits and shutting down the businesses.<sup>71</sup> TABC agents may enter the premises of a business with a TABC-issued license or permit at any time for inspection,<sup>72</sup> however, BYOB establishments operate outside of TABC’s jurisdiction and thus represent prime opportunities for human trafficking. In San Antonio, for instance, TABC investigated a nightclub in which a suspected human trafficker forced a minor to work as an exotic dancer.<sup>73</sup> TABC arrested the trafficker and revoked the nightclub’s liquor license, but the nightclub reopened as a BYOB nightclub, removing TABC’s authority to enter the premises unannounced.<sup>74</sup>

## **B. Public Awareness and Resources for Victims**

Human traffickers know and exploit their victims’ weaknesses, trapping victims into a never-ending cycle of dependence and exploitation.<sup>75</sup> Victims’ dependence on their traffickers is so deep-rooted that most victims don’t even recognize themselves as victims, which prevents victims from seeking help and even causes some victims to choose to return to their trafficker after being rescued.<sup>76</sup> When victims cannot or will not seek help, their only chances of leaving their trafficker depend on law enforcement or someone close to the victim who can identify the situation and offer help.<sup>77</sup> Public awareness and victim services, therefore, are critical in preventing the exploitation from ever beginning, identifying a victim who is being exploited, and helping victims to break the cycle of dependence and exploitation and begin to recover.

### **1. Public Awareness**

State law increases public awareness of human trafficking primarily in two ways: public postings and required trainings. Establishments that trafficking victims may frequent, like sexually oriented businesses, transportation hubs, and massage businesses, are required to post signs with the national human trafficking hotline number.<sup>78</sup> State law requires some individuals who, through

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<sup>71</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (written testimony of Chairman Kevin J. Lilly, Texas Alcoholic Beverage Commission).

<sup>72</sup> TEX. ALCO. BEV. CODE § 101.104.

<sup>73</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (written testimony of Chairman Kevin J. Lilly, Texas Alcoholic Beverage Commission).

<sup>74</sup> *Id.*

<sup>75</sup> See *Human Trafficking in Illicit Massage Businesses*, *supra* note 20 at 25-26.

<sup>76</sup> See *id.* See also Farrell et al., *supra* note 46, at 81-83. “[M]any human trafficking victims will not recognize their own victimization. As a result, these victims do not reach out to receive help directly from the police or from other nongovernmental organizations in the community who might be able to notify the police of their victimization.” *Id.* at 83.

<sup>77</sup> Farrell et al., *supra* note 46, at 78.

<sup>78</sup> TEX. BUS. & COM. CODE § 102.101; TEX. GOV’T CODE § 402.0351; TEX. OCC. CODE § 455.207. Among six categories of state investment in ending human trafficking, one study found the “most important provisions to increase human trafficking arrests are requiring the National Human Trafficking Hotline number to be posted in public places.” Vanessa Bouché, Amy Farrell, & Dana Wittmer, *Identifying Effective Counter-Trafficking Programs and Practices in the U.S.: Legislative, Legal, and Public Opinion Strategies that Work*, NAT’L CRIM. JUST. REFERENCE SERV., 17 (Jan. 2016), <https://www.ncjrs.gov/pdffiles1/nij/grants/249670.pdf>.

their occupation, may interact with trafficking victims or potential victims to undergo training.<sup>79</sup> Required trainings provide information about types of human trafficking, recognizing warning signs, identifying victims, and responding appropriately to assess the needs of victims.<sup>80</sup> Texas schools are now required to provide age-appropriate, research-based education designed to prevent child sexual abuse and trafficking.<sup>81</sup> State agencies are also working to increase public awareness; for instance, the Governor’s Child Sex Trafficking Team (CSTT) sponsored the "Can You See Me?" billboard campaign and the Office of the Attorney General provided training to Uber drivers.<sup>82</sup>

## 2. Resources for Victims

Because trafficking victims rarely seek help, screening tools that identify potential victims are critical to finding victims and their traffickers. The CSTT has worked to promote the widespread use of the Commercial Sexual Exploitation – Identification Tool (CSE-IT) within the Texas Department of Family and Protective Services (DFPS), the Texas Juvenile Justice Department (TJJD), county probation offices, and other child-serving agencies.<sup>83</sup> The CSE-IT is an evidence-based screening tool that a teacher, doctor, child welfare worker, or other professional can administer.<sup>84</sup> Based on answers to survey questions, the CSE-IT ranks a child from “no concern” to “possible concern” to “clear concern” for commercial sexual exploitation.<sup>85</sup> Identifying a child as “clear concern” can trigger access to services available for exploited minors and alert law enforcement that trafficking may be occurring. Other organizations like Allies Against Slavery are also developing tools for easy screening and identification; their cloud-based screening platform not only allows professionals to screen for human trafficking in children and adults, the platform can provide data and insights across organizations as more people use the platform.<sup>86</sup>

Many state agencies provide resources for human trafficking victims. Once a law enforcement officer identifies a minor victim, the officer may dispatch a commercially sexually exploited youth (CSEY) advocate to provide crisis intervention, ongoing case management, and a supportive, long-term relationship for the victim.<sup>87</sup> Early research indicates the CSEY advocate model is highly beneficial to the victim, and the CSTT is partnering with nonprofit organizations to implement this

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<sup>79</sup> *Supra* notes 11-13.

<sup>80</sup> *See, e.g., SOAR to Health and Wellness*, TRAIN LEARNING NETWORK, <https://www.train.org/main/course/1087568/> (last visited Oct. 30, 2020).

<sup>81</sup> 19 Tex. Admin. Code § 61.1051 (2019) (Tex. Educ. Agency, Reporting Child Abuse or Neglect, Including Trafficking of a Child).

<sup>82</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (written testimony of Andrea Sparks, Director, Governor’s Child Sex Trafficking Team); Bryce Newberry, *Attorney General’s Office Teams up with Uber to Stop Human Trafficking*, KVUE NEWS (Jan. 9, 2020), <https://www.kvue.com/article/news/local/texas-attorney-generals-office-uber-human-trafficking/269-42dc42eb-0027-4393-a1db-05251407ea78>.

<sup>83</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (written testimony of Andrea Sparks, Director, Governor’s Child Sex Trafficking Team).

<sup>84</sup> Melinda Clemmons, *Screening Tool Helps Identify Sexually Exploited Minors*, IMPRINT (Jun. 12, 2015), <https://imprintnews.org/news-2/screening-tool-helps-identify-sexually-exploited-minors/10409>.

<sup>85</sup> *Id.*

<sup>86</sup> *Using Data to Free People from Human Trafficking*, ALLIES AGAINST SLAVERY (Oct. 26, 2020), <https://alliesagainstsavery.org/using-data-to-free-people-from-human-trafficking/>.

<sup>87</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony and written testimony of Andrea Sparks, Director, Governor’s Child Sex Trafficking Team).

model throughout the state for victims up to the age of 22.<sup>88</sup> Child sex trafficking victims may also be referred to a multi-disciplinary team through a children’s advocacy center to facilitate care coordination and provide services such as case management, a forensic interview, medical assessment, trauma-focused therapy, and referrals for residential or community-based services.<sup>89</sup> For instance, in coordination with the CSTT, Bexar County has implemented a “care and coordination” model to identify child victims; using the CSE-IT tool, community members, such as hospital staff, juvenile probation officers, workers at the rape crisis center, or several other nonprofit organizations, can identify possible child victims and then refer the case to the Child Advocacy Center for services.<sup>90</sup> To manage and share data gathered during this process, the San Antonio police department partnered with Signify and developed a secure, HIPAA-compliant database.<sup>91</sup> For youth who are in the conservatorship of DFPS or who are trafficked by a family member or guardian, the Human Trafficking and Child Exploitation division collaborates with children’s advocacy centers to provide victim services.<sup>92</sup> DFPS provides the highest foster care funding rate (Intense Plus level of care) for children who have been trafficked or suffered other severe trauma,<sup>93</sup> but advocates claim that children in this category are pushed to a lower level of care too soon and that there are not enough Intense Plus providers. The Health and Human Services Commission (HHSC), in collaboration with a health-related institution of higher education, is establishing an inpatient and outpatient child sex trafficking treatment program.<sup>94</sup>

In addition to the resources that state agencies provide, many nonprofit organizations deliver a wide array of services to victims in Texas. From prevention to crisis intervention to long-term housing and recovery resources, nonprofit organizations across the State and thousands of volunteers work together to combat human trafficking and help victims. The Texas Alliance of Boys & Girls Clubs created programs that provide human trafficking prevention and awareness to youth in at-risk environments by teaching about physical health and wellness, self-esteem, healthy relationships, and Internet safety.<sup>95</sup> Texas Appleseed works to reduce and prevent youth homelessness because young people experiencing homelessness are at much greater risk for trafficking.<sup>96</sup> Children at Risk and Love People Not Pixels both actively work to reduce demand for sex trafficking. Children at Risk, among many other efforts to reduce human trafficking, also coordinates the Cities Empowered Against Sexual Exploitation (CEASE) network and has mapped suspected IMBs and their proximity to public schools to help make the public aware of this

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<sup>88</sup> *Id.*

<sup>89</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (written testimony of Justin Wood, Children’s Advocacy Centers of Texas).

<sup>90</sup> Interview with Lt. Bill Grayson, Special Victims Unit Dir., San Antonio Police Dep’t (June 26, 2020).

<sup>91</sup> *Id.*

<sup>92</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Blanca Denise Lance, Director, Human Trafficking and Child Exploitation division, Texas Department of Family and Protective Services).

<sup>93</sup> *Service Levels for Foster Care*, TEX. DEP’T FAM. & PROTECTIVE SERVS.,

[https://www.dfps.state.tx.us/Child\\_Protection/Foster\\_Care/Service\\_Levels.asp](https://www.dfps.state.tx.us/Child_Protection/Foster_Care/Service_Levels.asp) (last visited Oct. 30, 2020).

<sup>94</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Dee Budgewater, Health and Human Services Commission, discussing implementation of TEX. HEALTH & SAFETY CODE Chapter 50, as added by Tex. S.B. 20, 86th Leg., R.S., (2019)).

<sup>95</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Mitzi Faniola, Executive Director, Texas Alliance of Boys & Girls Clubs).

<sup>96</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Gabriella McDonald, Texas Appleseed).

problem.<sup>97</sup> Love People Not Pixels fights human trafficking by conducting community trainings and raising awareness of the connection between human trafficking and the pornography industry.<sup>98</sup> Among the many resources the Texas Association Against Sexual Assault (TAASA) provides, the organization builds regional human trafficking coalitions throughout the state—made up of service providers, first responders, and crisis centers—and serves as the main point of contact for training and providing technical assistance to CSEY advocates.<sup>99</sup> TAASA also coordinates a group of adult former victims of human trafficking who share their experiences to make policy recommendations and develop protocols to help keep other trafficking victims safe.<sup>100</sup> Human Coalition Action, a pro-life organization, helps expose the relationship between the abortion industry and human trafficking; one study found that a shocking 55.2% of human trafficking victims who reported becoming pregnant received an abortion.<sup>101</sup> The Texas Alliance of Child and Family Services is a collaborative of community organizations that provide services to children involved in or at risk of being involved in the child welfare system, which may make them at risk for human trafficking; the alliance works to prevent abuse and neglect, heal trauma, and improve long-term outcomes for all children.<sup>102</sup> Earlier this year, the alliance conducted a statewide assessment of current services for child sex trafficking survivors to identify opportunities for expanding service capacities and barriers to capacity-building statewide.<sup>103</sup> Texas CASA, the statewide association of court-appointed special advocate programs, provides regional trainings, in partnership with the National Center for Missing and Exploited Children (NCMEC), to its volunteers who work directly with children who are at high risk for trafficking; Texas CASA plans to build on these relationships and develop survivor advocacy programs.<sup>104</sup>

The Covid-19 pandemic has made the need for victim services even more critical. The pandemic’s economic toll creates hardships for people who may already be vulnerable to labor or sex trafficking.<sup>105</sup> Serious labor violations have already been noted in other countries, but even in the United States, some victims who have been able to find support in shelters are at risk of returning to their traffickers because the shelters are closing from lack of funding.<sup>106</sup> As unemployment increases and many people are struggling to pay rent, some landlords are offering “room shares” in exchange for sex on websites like Craigslist.<sup>107</sup> Even children, who have been spending increased time online because of school closures, are more vulnerable to online predators who may

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<sup>97</sup> *Human Trafficking*, CHILD. RISK, <https://childrenatrisk.org/human-trafficking/> (last visited Oct. 30, 2020).

<sup>98</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Joe Madison, Executive Director, Love People Not Pixels).

<sup>99</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Laramie Gorbett, TAASA).

<sup>100</sup> *Id.*

<sup>101</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Chelsea Youman, Human Coalition Action).

<sup>102</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Megan Ransom, Texas Alliance of Child and Family Services).

<sup>103</sup> *Id.*

<sup>104</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Andrew Homer, Texas CASA).

<sup>105</sup> Christina Bain & Louise Shelley, *The Evolution of Human Trafficking During the COVID-19 Pandemic*, COUNCIL ON FOREIGN REL. (Aug. 13, 2020), <https://www.cfr.org/blog/evolution-human-trafficking-during-covid-19-pandemic>.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

be grooming them for trafficking.<sup>108</sup> As important as victim services have always been to helping victims recover and rebuild their lives, these services are even more important today as economic challenges are exacerbating the problem of human trafficking. Victim service organizations are facing additional challenges from lack of funding, staffing shortages, and social distancing regulations,<sup>109</sup> but helping to sustain these organizations must be a priority. Some organizations, however, are taking advantage of the increasing online presence and partnering with private sector entities to create long-term employment solutions for victims in tech-based jobs,<sup>110</sup> and this kind of creative, sustainable partnership is exactly the type of problem-solving needed right now.

### **C. Law Enforcement Interaction**

Identifying and prosecuting human trafficking cases is difficult. Traffickers exploit their victims' fear of law enforcement and move their victims frequently to avoid detection. Unlike a drug trafficking case, for instance, in which the evidence can be collected and catalogued, in most human trafficking cases the best and only evidence is the victim.<sup>111</sup> Victims are often reluctant to testify against their traffickers, leaving prosecutors to rely on circumstantial evidence that may not be enough to secure a conviction.<sup>112</sup> Additionally, in-depth organized crime investigations necessary to take down criminal networks are costly and time-consuming and require allocation of resources away from other areas of crime.<sup>113</sup> Despite these challenges, local, state, and federal law enforcement agencies are doing all they can to find, arrest, and prosecute human traffickers and buyers.

#### **1. Updates from Law Enforcement**

Each law enforcement agency reporting to the committee noted that their collaborative efforts with other law enforcement agencies and nonprofit organizations are strong. None of the agencies reported any difficulties in sharing information between agencies or cooperating with local, state, and federal agencies. In Bexar County, the different law enforcement agencies that combat human trafficking “have worked together for a long time, and the support between the different agencies is strong.”<sup>114</sup> The Tarrant County Sheriff’s Department has a “strong working collaborative effort in Tarrant County with [their] federal, state, and local law enforcement partners.”<sup>115</sup> All agents in the human trafficking unit of the Fort Worth Police Department have received training from Homeland Security Investigations and the unit functions as part of a team that handles cases crossing jurisdictional lines.<sup>116</sup> The Houston Police Department also reported strong collaborative relationships with other law enforcement agencies, working with federal law enforcement, the

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<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Farrell et al., *supra* note 46, at 107.

<sup>112</sup> *Id.*

<sup>113</sup> *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 67. “One organized crime investigation in a Midwest partner state took nearly 9 months of investigation, more than \$250,000 in department resources and overtime pay, nearly full time dedicated attention of an entire unit of detectives over the course of several months, and around 100 officers detailed on the day of the operation, as 6 distinct IMBs and multiple other crime scenes were involved.” *Id.*

<sup>114</sup> Interview with Lt. Bill Grayson, *supra* note 89.

<sup>115</sup> Interview with Lt. Kevin Turner, Tarrant Cnty. Sheriff’s Office Intelligence Unit (July 9, 2020).

<sup>116</sup> Interview with Felicia Grantham, Human Trafficking Coordinator, Fort Worth Police Dep’t (July 2, 2020).

local district attorney, and the United States Attorney's Office (USAO) to investigate and prosecute cases.<sup>117</sup> The Austin Police Department works hand in hand with the Attorney General's Human Trafficking and Transnational/Organized Crime Section, which helps provide manpower and technology for investigations; they have a good working relationship together.<sup>118</sup> The Dallas Police Department reported working closely with FBI agents, who provides some of the equipment and technology necessary to conduct investigations.<sup>119</sup>

Law enforcement agencies take both a proactive and reactive approach to human trafficking cases. Agents conduct undercover operations to find cases and also fully investigate tips received from sources like Polaris, Crime Stoppers, another agency, or the department's own tip line.<sup>120</sup> Still, investigating and prosecuting human trafficking cases is not without difficulties. Officers noted the continued cooperation of and communication with victims,<sup>121</sup> the amount of time required to investigate these cases,<sup>122</sup> the time needed for forensic analysis of data,<sup>123</sup> the need for victim outcry,<sup>124</sup> lack of a statewide database for both offenders and victims,<sup>125</sup> and a victim's criminal record, which can affect credibility in front of a jury when the victim does testify,<sup>126</sup> as barriers to investigations and prosecutions.

Research indicates that state investment in collaborative resources like task forces significantly impacts not only arrests but also prosecutions for human trafficking.<sup>127</sup> Task forces impact prosecutions by studying and producing reports on human trafficking, developing training programs for law enforcement and others, and identifying or developing protocols for assisting victims.<sup>128</sup> Statewide efforts in Texas like the Human Trafficking Prevention Task Force and the Human Trafficking Prevention Coordinating Council facilitate collaboration through the sharing of ideas, strategies, and best practices. The Human Trafficking Prevention Task Force within the Office of the Attorney General was created in 2009 with members that include state agencies, local law enforcement agencies, district attorneys, and nonprofit organizations.<sup>129</sup> The task force works collaboratively to collect data, provide training, and create legislative recommendations to combat trafficking in the state.<sup>130</sup> The task force conducts trainings for law enforcement, educators, and health care workers, among others, to identify and assist victims of human trafficking, and the task force meets quarterly to share ideas and effective strategies.<sup>131</sup> In addition to specific reports

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<sup>117</sup> Interview with Lt. Angela Merritt, Human Trafficking Unit, Vice Div., Hous. Police Dep't (June 29, 2020).

<sup>118</sup> Interview with Sgt. Mike Spear, Human Trafficking Unit, Austin Police Dep't (Nov. 11, 2020).

<sup>119</sup> Interview with Det. Jeffrey Grandy, Child Exploitation Div., Dallas Police Dep't (Nov. 19, 2020).

<sup>120</sup> Interview with Felicia Grantham, *supra* note 119; Interview with Lt. Kevin Turner, *supra* note 118.

<sup>121</sup> Interview with Lt. Bill Grayson, *supra* note 89; interview with Lt. Kevin Turner, *supra* note 118; interview with Sgt. Mike Spear, *supra* note 121.

<sup>122</sup> Interview with Lt. Bill Grayson, *supra* note 89.

<sup>123</sup> *Id.*

<sup>124</sup> Interview with Felicia Grantham, *supra* note 119.

<sup>125</sup> Interview with Sgt. Mike Spear, *supra* note 121.

<sup>126</sup> Interview with Lt. Kevin Turner, *supra* note 118.

<sup>127</sup> Bouché, Farrell, & Wittmer, *supra* note 78, at 17. That report also finds that strong state investment in victim assistance, training for law enforcement and other first responders, and hotline posting positively impact arrests and prosecutions for human trafficking as well. *Id.*

<sup>128</sup> *Id.* at 4.

<sup>129</sup> TEX. GOV'T CODE § 402.035.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

required by law,<sup>132</sup> in December of each even-numbered year the task force publishes a report regarding the task force's activities, findings, and recommendations.<sup>133</sup> Many state laws that combat human trafficking are the result of task force recommendations. Last session, the legislature created the Human Trafficking Prevention Coordinating Council, also within the Office of the Attorney General, to survey existing state anti-trafficking efforts, eliminate redundancies, and to develop a strategic five-year plan for preventing human trafficking in Texas.<sup>134</sup>

All of the law enforcement agencies reporting to the committee participate in collaborative task forces dedicated to stopping human trafficking. The South Texas Officers and Prosecutors (STOP) Task Force, for instance, includes the Bexar County district attorney's office and various law enforcement agencies, like school police, the San Antonio police department, TABC, and the FBI, and the task force partners with Homeland Security, the United States Attorney's Office, and the local rape crisis center.<sup>135</sup> Another, non-law enforcement task force operates in Bexar County, chaired by the juvenile probation office, and that task force includes nonprofit organizations.<sup>136</sup> Both task forces conduct awareness discussions in the community with organizations like the restaurant association, hotel and motel associations, emergency room staff, and the transportation industry.<sup>137</sup> The Fort Worth Police Department created the Tarrant County 5-Stones Task Force that is a coalition of law enforcement agencies and nonprofit organizations.<sup>138</sup> The police department is also a member of the North Texas Anti-Trafficking Team task force and partners with Homeland Security Investigations and FBI agents to collaborate on cases.<sup>139</sup> The Houston Police Department's Human Trafficking Unit works closely with federal task forces as well as city and county legal departments, the district attorney's office, and other local law enforcement agencies.<sup>140</sup> The Austin Police Department also participates in working groups, led by the USAO, with federal and state agencies.<sup>141</sup>

Law enforcement agencies continue to have difficulty identifying labor trafficking. The San Antonio police department, for instance, while dedicating a significant amount of time to investigating sex trafficking, has only been able to investigate a handful of labor trafficking cases and has had to dismiss some for failing to meet the elements of the offense.<sup>142</sup> The Fort Worth Police Department noted they just receive more tips about sex trafficking than labor trafficking, but they still investigate each tip thoroughly and have one open labor trafficking case.<sup>143</sup> The Tarrant County Sheriff's Department also noted the difficulty in detecting and identifying labor trafficking cases in urban areas but said they focus on labor trafficking within illicit massage

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<sup>132</sup> See, e.g., TEX. GOV'T CODE § 402.035(d)(11) (renumbered from TEX. GOV'T CODE § 402.035(d)(10), requiring report on the extent to which human trafficking is associated with the operation of sexually oriented businesses). The report is available at

<https://humantraffickinghotline.org/sites/default/files/TX%20Sexually%20Oriented%20Businesses.pdf>.

<sup>133</sup> TEX. GOV'T CODE § 402.035(g).

<sup>134</sup> TEX. GOV'T CODE § 402.034.

<sup>135</sup> Interview with Lt. Bill Grayson, *supra* note 89.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Interview with Felicia Grantham, *supra* note 119.

<sup>139</sup> *Id.*

<sup>140</sup> Interview with Lt. Angela Merritt, *supra* note 120.

<sup>141</sup> Interview with Sgt. Mike Spear, *supra* note 121.

<sup>142</sup> Interview with Lt. Bill Grayson, *supra* note 89.

<sup>143</sup> Interview with Felicia Grantham, *supra* note 119.

businesses.<sup>144</sup> The Austin Police Department too said they simply do not receive tips or victim outcry relating to labor trafficking, but they investigate the tips they do receive, which usually turn out to be wage violations rather than trafficking.<sup>145</sup> The Dallas Police Department explained that they receive more victim outcry for sex trafficking than labor trafficking, and, for children at least, a prosecutor is still required to prove force, fraud, or coercion in a case against a labor trafficker, making that crime harder to prove than child sex trafficking.<sup>146</sup>

## 2. Reducing Need for Victim Testimony

Some law enforcement agencies are shifting focus from relying on victim testimony for trafficking convictions to instead building cases against traffickers so that a victim never has to go to court to testify.<sup>147</sup> Few victims ever reach a point where they feel comfortable testifying against their trafficker, and even if they do, reliving those experiences and being subjected to cross-examination at trial can be traumatizing.<sup>148</sup> Focusing on other evidence to convict a trafficker such as the victim's cell phone, for example, with messages that show how the victim was coerced, the forms of assault against her, and the number of assaults can be a method to increase trafficker convictions.<sup>149</sup> As many advocates have pointed out, law enforcement partnerships with victim services organizations that can immediately provide support when police recover a victim, instead of the officers arresting the victim, goes a long way in not only helping the victim heal but in helping her trust law enforcement officers and cooperate in their investigation.<sup>150</sup>

As discussed above, reducing demand for human trafficking will reduce incidents of human trafficking because, as in any market, supply rises to meet demand. Reducing incidents of human trafficking by reducing demand will ease the strain on law enforcement and allow officials to conduct more focused, targeted investigations of buyers and traffickers. Victims' services, above and beyond the help provided to victims themselves, can also aid law enforcement and prosecutors. By giving victims shelter away from their traffickers, encouraging victims to trust their CSEY advocates and police officers instead of their traffickers, and helping victims to recover and recognize the harmful situation from which they have been removed, victims can begin to heal and may be willing to testify against their traffickers and help prosecutors secure a conviction.

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<sup>144</sup> Interview with Lt. Kevin Turner, *supra* note 118.

<sup>145</sup> Interview with Sgt. Mike Spear, *supra* note 121.

<sup>146</sup> Interview with Det. Jeffrey Grandy, *supra* note 122.

<sup>147</sup> Joseph M. Scaramucci, *Reducing the Need for Victim Testimony in Human Trafficking Cases*, NAT'L INST. JUSTICE (June 25, 2020), <https://nij.ojp.gov/topics/articles/reducing-need-victim-testimony-human-trafficking-cases> (describing efforts by McLennan County Sheriff's Office to build human trafficking cases without victim testimony).

<sup>148</sup> *See id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*



## **Recommendations**

### **A. Demand and Profitability**

#### **1. Stop IMBs and other venues that allow human trafficking**

To reduce demand for and profitability of human trafficking, the state should take action to make venues for human trafficking more difficult to operate. Because many IMBs are owned by shell companies to hide the true identity of the owners, the state should further evaluate requiring massage business to register official operators and primary owners with valid phone numbers and addresses so that law enforcement agents can easily identify corporate owners.<sup>151</sup> The state should further consider requiring ATM registration with similar ownership and location data as other types of business registrations and penalize the owner if the owner changes the location of the ATM without updating the registration.<sup>152</sup> Law enforcement can use these ATM records to help develop cases against traffickers and uncover other illicit activity like money laundering.<sup>153</sup> Finally, in regard to venues besides IMBs that promote or allow human trafficking, the state should evaluate a program that requires certain sexually oriented BYOB establishments to register with TABC so that TABC's specialized agents can more effectively investigate human trafficking, and the state should impose a lifetime ban on alcoholic beverage licensing for individuals who have been convicted of trafficking.<sup>154</sup>

#### **2. Focus Law Enforcement Efforts on Buyers, Not Victims**

To reduce demand for human trafficking, the state must focus on educating and adequately punishing buyers. Evidence-based john schools that require buyers to reconsider their beliefs about buying sex have been shown to “substantially reduce reoffending.”<sup>155</sup> State or local governments should encourage or require the completion of a proven, effective john school for buyers convicted of purchasing sex.<sup>156</sup> Although great strides have been made in this area, the state should continue to train law enforcement and prosecutors to focus their investigations on buyers instead of victims.<sup>157</sup>

### **B. Increase Public Awareness and Victim Services**

#### **1. Require trainings in fields likely to come into contact with victims**

The state has already increased public awareness on human trafficking exponentially with required trainings in the occupations most likely to come into contact with victims. However, awareness can be spread even further because ending human trafficking will require the cooperation of many.

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<sup>151</sup> *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 64.

<sup>152</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (written testimony of James Caruthers, Children at Risk).

<sup>153</sup> *Id.*

<sup>154</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Chairman Kevin J. Lilly, Texas Alcoholic Beverage Commission).

<sup>155</sup> Shively et al., *supra* note 43, at 73; *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Dr. Vanessa Bouché, Texas Christian University).

<sup>156</sup> Shively et al., *supra* note 43, at 82-83. *See also Who Buys Sex? Understanding and Disrupting Illicit Market Demand*, *supra* note 46, at 33.

<sup>157</sup> *See supra* text accompanying notes 43-48.

The state should continue to partner with prosecutors, law enforcement agents, and nonprofit organizations to provide trainings among other industries likely to come into contact with victims, such as hotels, convenience stores, and oil and gas industries. Local and statewide task forces should invite members of the media to participate in task force operations to learn more about the issue.

## 2. Increase Victim Services

Victims of human trafficking suffer complex, life-altering trauma and deserve comprehensive resources that will allow them to leave their trafficker, start the healing process from their trauma, and begin a new life. Numerous state agencies and nonprofit organizations are already working toward these goals, but more can be done to help victims.

The state should continue to work with nonprofit organizations to provide more emergency shelters for victims removed from a trafficking situation, drop-in centers for youth experiencing homelessness, and long-term housing and financial support for victims on their way to recovery.<sup>158</sup> Providing stable housing is a key method to remove victims from their traffickers, giving them a safe place to stay and reducing the likelihood that they will return to their traffickers. Law enforcement also recommends emergency shelters and long-term housing for victims because providing stable housing enables law enforcement to develop relationships with the victims and gather evidence to build a case against the trafficker.<sup>159</sup> The Lighthouse data aggregation tool developed by Allies Against Slavery can help determine the best locations for these shelters and housing.

The state should also develop a database, similar to an electronic medical record database, to save information relating to a victim's previous interactions with victim-serving agencies like Child Protective Services and DFPS, so that law enforcement, when they identify a victim, can easily find which agencies have already worked with the victim.<sup>160</sup> Because of the remarkable success already shown through the CSEY advocate model, the state should provide resources to train, support, and retain more CSEY advocates, in order to expand the model to victims up to the age of 25.<sup>161</sup> Where feasible, the state should help agencies with funding for start-up costs and trainings relevant to working with CSEY to increase the number of organizations with capacity to service CSEY.<sup>162</sup>

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<sup>158</sup> See, e.g., *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Laramie Gorbett, TAASA; Gabrielle McDonald, Texas Appleseed; Megan Ransom, TACFS).

<sup>159</sup> Interview with Sgt. Mike Spear, *supra* note 121.

<sup>160</sup> *Id.*

<sup>161</sup> *Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (written testimony of Laramie Gorbett, TAASA; testimony of Andrea Sparks, CSTT).

<sup>162</sup> *Serving Commercially Sexually-Exploited Youth in Texas*, TEX. ALLIANCE CHILD & FAM. SERVS., 30-31 (May 2020), [https://www.tacfs.org/docs/CSEY\\_Statewide\\_Assessment\\_May\\_2020.pdf](https://www.tacfs.org/docs/CSEY_Statewide_Assessment_May_2020.pdf).

## C. Law Enforcement Interaction

### 1. Increasing cooperation

The Department of Public Safety (DPS) recently created a standard operating procedure (SOP) for human trafficking investigations that includes operational protocols and standard collection, analysis, and storage of evidence.<sup>163</sup> The SOP emphasizes a victim-centered approach to investigations and provides guidance for agents consistent with state and federal laws and established best practices.<sup>164</sup> The SOP is and should be a model for investigating and responding to human trafficking throughout the state and is especially useful when multiple teams are coordinating on a case. Law enforcement agencies should adopt and follow the SOP, but allow regional response teams to customize services for victims as needed.<sup>165</sup>

### 2. Increasing Tools to Investigate and Respond to Human Trafficking

Law enforcement agents and prosecutors are already performing incredible work to identify, investigate, and prosecute human trafficking cases, and the state should continue to support these efforts. Many law enforcement agencies have reported that they are shifting the way they investigate these cases to rely less on victim testimony to convict traffickers. Agents are focusing more on proactive, evidence-based organized crime investigations, shorter-term demand stings, and code enforcement operations for IMBs.<sup>166</sup> The state should continue to encourage and support law enforcement agencies in this shift in developing admissible evidence so that agents may arrest traffickers without victim outcry.

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<sup>163</sup> *Strategic Plan: Charting an End to Human Trafficking in Texas*, TEX. HUM. TRAFFICKING PREVENTION COORDINATING COUNCIL, 25 (May 2020), <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/human-trafficking/TXHTPCC-StrategicPlan2020.pdf>.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *See, e.g., Human Trafficking Charge: Hearing Before the S. Comm. on State Affairs*, 2020 Leg., 86th Interim (Feb. 26, 2020) (testimony of Captain Cliff Manning, Texas Department of Public Safety Criminal Investigations Division); *Human Trafficking in Illicit Massage Businesses*, *supra* note 20, at 66.

## **CHARGE NO. 2**

**Taxpayer Lobbying:** *Study how governmental entities use public funds for political lobbying purposes. Examine what types of governmental entities use public funds for lobbying purposes. Make recommendations to protect taxpayers from paying for lobbyists who may not represent the taxpayers' interests.*

### **Background**

Taxpayer-funded lobbying occurs when political subdivisions such as counties, cities, school districts, special districts, and others either use money collected from taxpayers to directly contract with registered lobbyists or to pay dues to an organization that contracts with lobbyists. In Texas, taxpayer-funded lobbying accounts for millions of taxpayer dollars spent on lobbying activities each biennium.

According to the Texas Ethics Commission, in 2015 political subdivisions spent around \$16 million on lobbyist compensation. In 2017, they spent an estimated \$41 million.<sup>167</sup> The City of Austin is a prime example of a city allocating large sums to pay for lobbying, spending \$540,000 on contract lobbyists' salaries alone from October 1, 2019 to September 30, 2020.<sup>168</sup>

A WPA Intelligence poll taken in December 2018 showed that 91 percent of Texans opposed using tax dollars to pay for lobbyists, with 80 percent strongly opposing it.<sup>169</sup> Taxpayers should not be forced to pay for a lobbyist, who holds no accountability to the taxpayers, to advocate for political activities or initiatives that may be contrary to the interests of the taxpayer.

### **Discussion**

There is a general lack of transparency for the taxpayer regarding the purpose of the advocacy their money is funding and the concern that while local and elected officials are held directly accountable to the taxpayer, these lobbyists are not. There is also a concern that lobbyists are advocating against the interests of the taxpayer, even though the taxpayer pays the advocate. Finally, while the 86th Legislature provided taxpayers with more thorough disclosures of these activities, there is certainly still room to increase protection of taxpayers' interests.

### **Current Statutes:**

A state agency may not use appropriated money to employ a lobbyist. They also may not pay membership dues to an organization that pays part or all of the salary of a lobbyist. Tex. Gov. Code § 556.005.

A political subdivision or private entity that receives state funds may not use those funds to pay lobbying expenditures. Tex. Gov. Code § 556.0055.

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<sup>167</sup> *Taxpayer-Funded Lobbying*, Texas Public Policy Foundation (Sept. 24, 2020), <https://www.texaspolicy.com/legetaxpayerlobby/>.

<sup>168</sup> Contracts between City of Austin and Focused Advocacy, LLC, Clayton Pope, Cliff Johnson, Nora Del Bosque, Ross Peavey, and David White gained from legislative inquiry by Rep. Mayes Middleton's office (Dec. 20, 2019).

<sup>169</sup> Kevin Roberts, Ph.D., 91% of Texans Oppose Taxpayer Funded Lobbying (May 16, 2019), <https://www.texaspolicy.com/91-of-texans-oppose-taxpayer-funded-lobbying/>.

Public funds available to a political subdivision (municipality, county, or special district) generally may not be used to compensate or reimburse expenses over \$50 for the purposes of communicating directly with a member of the legislative branch to influence legislation, unless the person resides in the district of the member or files a written statement with the commission. Tex. Gov. Code § 305.026.

Political subdivisions are required to post on their websites information such as the amount of the lobbying contract and specific legislation advocated for, on, or against by the lobbyist or, alternatively, the lobbying contract itself. Tex. Gov. Code § 2254.030.

#### **A. Lack of Transparency and Accountability; Duplication of Effort**

Taxpayer-funded lobbying is problematic because there is no transparency for the individual taxpayer regarding government spending. Until the 86th Legislature, when a political subdivision contracted with a lobbyist, even if the amount of the contract was disclosed, the specific issues for which the lobbyist agreed to work were not.<sup>170</sup> Since new issues develop and evolve during the course of a legislative session, the political subdivision's contract with the lobbyist cannot specifically define issues for which the lobbyist agrees to work. While the amount of the contract may be set, the scope of the contract cannot. Therefore, the individual taxpayer has no way of determining with specificity how a political subdivision is spending his or her tax dollars.

The lack of transparency in taxpayer-funded lobbying leads to another problem: lack of accountability. In a democracy, an elected official must be held accountable to the voters they represent. If an elected official sways too far from voter interests, is unresponsive to voters, or does anything else the voters dislike, the voters may elect to remove that official from office. In comparison, if the lobbyist spends the taxpayers' money irresponsibly or simply doesn't accomplish the tasks for which the lobbyist was hired, the taxpayers have no method of terminating the lobbyists' contract or removing the lobbyist from his or her position.

Finally, taxpayer-funded lobbying is a wasteful duplication of efforts by elected officials. Political subdivisions are hiring lobbyists to do what they should be doing: representing constituents' interests. The core function of elected officials in a democracy is to represent their constituents' interests. Voters have a say in who represents them and how much an elected official is paid to do that job. Elected officials, in turn, are their constituents' voice in all government affairs. In the case of taxpayer-funded lobbying, local elected officials hire an outside lobbyist, whose activities are not currently transparent and who have no accountability to voters. Rather than outsourcing this critical governmental function, elected officials should be representing constituents' interests themselves.

#### **A. Representing Taxpayer Interests**

One common argument against taxpayer-funded lobbying is that political subdivisions hire lobbyists to work against taxpayer interests. Lobbyists, however, claim that they are hired to represent taxpayer interests on behalf of political subdivisions. Taxpayers elect local officials who then hire lobbyists. Theoretically, all taxpayers, elected officials, and contracted lobbyists should be in agreement. However, when a political subdivision's interests are contrary to a taxpayer's

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<sup>170</sup> See SB 65, discussed further below.

interests, most often on the issue of taxes, the lobbyist is under contract with the political subdivision and not the taxpayer, and will represent the political subdivision's interests. Taxpayer-funded lobbyists do not only lobby for higher taxes though. They may be hired to lobby for a variety of issues, such as maintaining local control and opposing unfunded mandates.<sup>171</sup> Even if taxpayer-funded lobbyists and individual taxpayers are in agreement on many issues, taking taxpayer money to fund lobbyists who can drown out the voice of an individual taxpayers when they disagree on an issue is simply unjust. The playing field between citizens and the professional political class needs to be leveled.

### **B. Simple Disclosure is Not Enough**

Lobbyists claim that, rather than banning taxpayer-funded lobbying altogether, they can simply disclose their contracts with political subdivisions. However, for the reasons explained above relating to transparency, simple disclosure is not enough to effectively allow taxpayers to determine how their money is being spent. SB 65, which was passed by the 86th Legislature, requires political subdivisions to disclose information relating to lobbying contracts. Section 2254.030, Government Code, now requires political subdivisions to post on their websites information such as the amount of the lobbying contract and either the specific legislation for, on, or against which the lobbyist advocated or the lobbying contract itself. While the changes made by SB 65 are a step in the right direction, disclosure of lobbying contract information is not enough to solve the problems caused by taxpayer-funded lobbying. Disclosure increases transparency but not accountability, wastefully duplicative efforts, or the drowning out of individual taxpayer voices.

### **C. 86th Legislature Efforts**

During the 86th Legislature, several bills were introduced that sought to create an outright ban on the use of taxpayer funds to pay for lobbyists. Others sought to increase transparency and accountability for taxpayer-funded lobbying. SB 29 was the principal reform measure that aimed to prohibit the use of public funds by certain political subdivisions for lobbying activities and required disclosure of amounts spent by these political subdivisions on lobbying activities. While SB 29 was unable to pass both chambers, SB 65 became effective September 1, 2019 and provides for the disclosure of lobbying contracts on the political subdivision's website.

After the 86th Regular Session, Representative Mayes Middleton issued a legislative inquiry to every city, county, and school district across the state in order to get a snap shot of what lobbyists were being paid. This request, pursuant to SB 65, asked for these entities to disclose and itemize the following related to their lobbying activities: contract details such as the extension date, effective date, and length of the contract; costs of the contracts associated with lobby services; a list of all legislation advocated on, for, or against by all parties or subcontractors the firm hired for lobbying services -- including the positions taken on each piece of legislation; a copy of the contract used to hire a firm or individual for lobbying services; and disclosure of interested parties for any contracts for services that would require a person to register as a lobbyist. The goal of these

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<sup>171</sup> "A big function [of taxpayer-funded lobbying] is trying to fend off 'unfunded mandates.' In 2001, for example, the Legislature passed an indigent defense bill requiring counties to provide an attorney for anyone who had been arrested but could not afford one. That's costing Johnson County \$1 million every year out of their \$75 million budget." See <https://www.dallasnews.com/news/politics/2020/02/26/community-censorship-or-taxpayer-funded-lobbying-local-control-looms-large-in-texas-house-gop-primaries/>.

requests was to monitor compliance with SB 65 and to provide information for any additional legislation for the upcoming legislative session.

The requests show an overall lack of transparency. Of over 1,184 cities that were asked for information, only around 225 responded to the request.<sup>172</sup> Around 1,196 school districts were asked, but only around 200 responded. Finally, out of 234 counties, only 105 counties responded to the request. The numbers relating to responses alone show that while the legislature has taken significant steps to increase transparency, it is simply not working.

#### **D. Interim Hearing**

On December 8, 2020 the Senate Committee on State Affairs held an interim hearing covering the charge of taxpayer-funded lobbying provided by the Lieutenant Governor. Invited testimony for limiting or banning taxpayer funded lobbying included James Quintero from the Texas Public Policy Foundation (TPPF) and Collin County Judge Chris Hill.<sup>173</sup> According to the data provided by TPPF, over fiscal years 2020 and 2021, the City of Houston is the largest spender, projected to spend \$1.3 million. The City of Austin is projected at spending \$1.28 million on outside lobbyists.<sup>174</sup> The City of Grand Prairie is projected to spend \$210,000 over fiscal years 2020 and 2021.<sup>175</sup>

Collin County Judge Chris Hill explained that while "lobbying as a practice is essential to an open and transparent government," the inherent flaw with taxpayer-funded lobbying is the fact that there will certainly be instances where, through taxpayer funded lobbying, taxpayers will be "financially supporting the advancement of positions the taxpayers personally oppose."<sup>176</sup> Judge Hill expressed that "taxpayers should not be required to fund the services of lobbyists, and this is why we must prohibit taxpayer-lobbying in Texas."<sup>177</sup>

On the other side of the issue, the panelists who testified against limiting government entities' ability to hire lobbyists paid with taxpayer dollars were the President of the Professional Advocacy Association of Texas Tom Forbes and the Mayor of the City of Grand Prairie, Ron Jensen. Tom Forbes reiterated his organization's support for public transparency, saying "we believe that requiring people to register with the Texas Ethics Commission when they represent a local government is a far better way to inform the public than banning the ability for the local government to hire representation."<sup>178</sup>

Mayor Jensen explained that while they do fund lobbyists through taxpayer dollars, the lobbyists that they employ serve the City of Grand Prairie and its constituents by advocating "not only on issues during the 140-day legislative session, but also to navigate through the state agencies tasked

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<sup>172</sup> Responses included acknowledgement of the request but with no relevant information, acknowledgment of the request but with further questions, and responses including contracts of lobbyists and other relevant information.

<sup>173</sup> James Quintero, Invited Testimony before the Senate Committee on State Affairs: Taxpayer-Funded Lobbying, The Texas Public Policy Foundation (Dec. 8, 2020) (written testimony, on file with committee).

<sup>174</sup> *Id.* at 2.

<sup>175</sup> *Id.* at 2.

<sup>176</sup> The Honorable Chris Hill, Collin County Judge, Testimony before the Texas Senate Committee on State Affairs (Dec. 8, 2020) (written testimony, on file with committee).

<sup>177</sup> *Id.*

<sup>178</sup> Tom Forbes, President of the Professional Advocacy Association of Texas, Testimony of Tom Forbes before the Senate Committee on State Affairs (Dec. 8, 2020) (written testimony, on file with committee).

with executing the law.<sup>179</sup> Just as the City hires an architect or engineer for a specific project, these consultants are the specialists the City relies on for crucial pieces of legislation, regulation, and other intergovernmental needs."<sup>180</sup>

## **Recommendations**

There is a direct conflict of interest when the government makes a business of promoting views that do not represent the majority of taxpayers. Taxpayer-funded lobbying pits tax spender against taxpayer. The money being used to pay for lobbyists or for membership in organizations that lobby the legislature diverts significant funds away from community services and needs. Placing restrictions on the use of taxpayer dollars for lobbying activities is nothing new and many states already have placed outright bans on taxpayer-funded lobbying.<sup>181</sup>

The Legislature should once again consider legislation similar to SB 29 from the 86th Legislature to at least limit taxpayer-funded lobbying, thereby preventing the waste and misuse of taxpayer dollars. The Legislature should also focus on additional reporting requirements and more specific disclosure of amounts being spent on lobbyist contracts.

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<sup>179</sup> The Honorable Ron Jensen, The City of Grand Prairie Mayor, written testimony submitted to the Texas Senate Committee on State Affairs (Dec. 8, 2020) (written testimony, on file with committee).

<sup>180</sup> *Id.*

<sup>181</sup> Limiting Public Funds for Lobbying, National Conference of State Legislatures (Aug. 27, 2020), <http://www.ncsl.org/research/ethics/50-state-chart-limits-on-public-funds-to-lobby.aspx>.



## **CHARGE NO. 3**

**Protecting the Unborn:** *Study and recommend ways Texas can further protect the lives of the unborn, including fetal heartbeat legislation and any other law or regulation that protects life.*

### **Background**

Out of all 50 states, Texas ranks as the most protective of unborn life.<sup>182</sup> Recognizing the dignity and humanity of unborn children, Texas consistently promotes life-affirming legislative action each session, and is at the forefront of legislative initiatives that defend unborn life. A Texas law presented the most recent and major substantive Supreme Court opinion on abortion regulations,<sup>183</sup> and it well may be another Texas law that allows the Supreme Court to reconsider the Court's precedents regarding unborn life.<sup>184</sup>

Texas is a leader in promoting life by simultaneously limiting access to abortion to the fullest extent under current constitutional interpretation and providing prenatal, perinatal, and infant care to low-income women and children who might not otherwise be able to access that care. Before a physician performs an abortion, state law requires a physician to give detailed informed consent to a pregnant woman, including information about child care, WIC programs, and any associated health risks.<sup>185</sup> In addition, the pregnant woman has the opportunity to see and hear sonogram images of the unborn child and then is given the opportunity to reflect on her decision during the required 24-hour waiting period after the sonogram.<sup>186</sup> No person may perform an abortion after the 20th week of gestation, which is approximately the halfway point of the pregnancy.<sup>187</sup>

The state also promotes life by supporting maternal and infant health through access to health care. Texas Medicaid provides health care services for low-income pregnant women during their pregnancy and up to two months after the child's birth, and CHIP covers the same types of services for women who earn too much to qualify for Medicaid, but not enough to purchase private health insurance.<sup>188</sup> These programs enable women to access services like prenatal doctor visits, prenatal vitamins, hospital delivery, and checkups for the child after leaving the hospital.<sup>189</sup> A woman who might otherwise choose abortion due to financial costs of prenatal and postpartum care need not face that decision, as she can access critical health care services for her benefit and the benefit of her unborn child at little or no cost. In addition to health care services, the state promotes nutrition

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<sup>182</sup> See *Defending Life: Texas*, AMERICANS UNITED FOR LIFE, <https://aul.org/wp-content/uploads/2020/01/Texas.pdf> (last visited Nov. 16, 2020).

<sup>183</sup> See *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (evaluating Tex. H.B. 2 and access to abortion).

<sup>184</sup> See *Whole Woman's Health v. Paxton*, No. 17-51060, 2020 U.S. App. LEXIS 34404 (5th Cir. Oct. 30, 2020) (vacating previous panel opinion and granting rehearing en banc of challenge to Tex. S.B. 8, which prohibited dilation and evacuation abortion).

<sup>185</sup> TEX. HEALTH & SAFETY CODE § 171.012.

<sup>186</sup> *Id.*

<sup>187</sup> TEX. HEALTH & SAFETY CODE § 171.044.

<sup>188</sup> See *Medicaid & CHIP*, TEX. HEALTH & HUM. SERVICES, <https://hhs.texas.gov/services/health/medicaid-chip> (last visited Nov. 16, 2020).

<sup>189</sup> *Medicaid for Pregnant Women & CHIP Perinatal*, TEX. HEALTH & HUM. SERVICES, <https://hhs.texas.gov/services/health/medicaid-chip/programs-services/women/medicaid-pregnant-women-chip-perinatal> (last visited Nov. 16, 2020).

of infants and children as well as pregnant, postpartum, and breastfeeding women through the WIC program.<sup>190</sup> Studies show that access to prenatal health care leads to better health outcomes for both the child and mother, as well as reduces maternal mortality.<sup>191</sup>

## Discussion

### A. Current Constitutional Standards

Through a 1976 challenge to a Texas law prohibiting abortion, the Supreme Court held that a woman's right to abortion was constitutionally protected under the doctrine of substantive due process, and the Court established a trimester framework, delineating the stages of a state's interest in protecting the unborn child's life.<sup>192</sup> The Court's opinion in *Roe v. Wade* has since been criticized by both left and right ideologies,<sup>193</sup> but the Supreme Court has not yet overturned this precedent and, in *Planned Parenthood v. Casey*, it reaffirmed the central holding of *Roe*.<sup>194</sup> *Casey*, however, rejected *Roe*'s "rigid trimester framework" and instead held that a state may impose regulations aimed at "preserving and protecting the health of the pregnant woman [and] in protecting the potentiality of human life" so long as those regulations do not place an undue burden, or, a "substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus."<sup>195</sup> The Supreme Court has since evaluated subsequent abortion access cases under this standard.

### B. Fetal Heartbeat Bills

In 2013, North Dakota became the first state to enact what is known as a fetal heartbeat bill.<sup>196</sup> The bill prohibited a person from performing an abortion once a fetal heartbeat could be detected, which is usually six weeks after gestation.<sup>197</sup> After the bill was enacted, the state's only abortion clinic sued to prevent its enforcement, and, based on the Supreme Court precedents under *Roe* and *Casey*, a federal district court determined the bill unconstitutional and therefore unenforceable.<sup>198</sup> The Eighth Circuit Court of Appeals agreed,<sup>199</sup> and the Supreme Court declined to hear the case,

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<sup>190</sup> WIC General Information, TEX. HEALTH & HUM. SERVICES, <https://hhs.texas.gov/doing-business-hhs/provider-portals/wic-providers/wic-general-information> (last visited Nov. 16, 2020).

<sup>191</sup> E.g., *What is prenatal care and why is it important?*, NAT'L INST. HEALTH (January 31, 2017), <https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/prenatal-care#:~:text=Having%20a%20healthy%20pregnancy%20is,to%20a%20health%20care%20provider.>

<sup>192</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>193</sup> E.g., Robert Barnes, *The forgotten history of Justice Ginsburg's criticism of Roe v. Wade*, WASH. POST (March 2, 2016), [https://www.washingtonpost.com/politics/courts\\_law/the-forgotten-history-of-justice-ginsburgs-criticism-of-roe-v-wade/2016/03/01/9ba0ea2e-dfe8-11e5-9c36-e1902f6b6571\\_story.html](https://www.washingtonpost.com/politics/courts_law/the-forgotten-history-of-justice-ginsburgs-criticism-of-roe-v-wade/2016/03/01/9ba0ea2e-dfe8-11e5-9c36-e1902f6b6571_story.html). Justice Ginsburg asserted that *Roe*'s "wholesale repudiation of state abortion restrictions went too far, too fast." *Id.*

<sup>194</sup> *Planned Parenthood v. Casey*, 505 U.S. 833, 845-46 (1992). "After considering the fundamental constitutional questions resolved by *Roe*, principles of institutional integrity, and the rule of *stare decisis*, we are led to conclude this: the essential holding of *Roe v. Wade* should be retained and once again reaffirmed." *Id.*

<sup>195</sup> *Id.* at 873, 875-76.

<sup>196</sup> H.B. 1456, 63d Leg. Assemb., Reg. Sess. (N.D. 2013).

<sup>197</sup> *Id.*; Jane Chertoff, *How Early Can You Hear Baby's Heartbeat on Ultrasound and by Ear?*, HEALTHLINE (Sept. 26, 2018), <https://www.healthline.com/health/pregnancy/when-can-you-hear-babys-heartbeat>.

<sup>198</sup> *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 771 (8th Cir. 2015).

<sup>199</sup> *Id.* at 776. "Although controlling Supreme Court precedent dictates the outcome in this case, good reasons exist for the Court to reevaluate its jurisprudence." *Id.* at 773.

leaving in place the ruling that the bill was unconstitutional.<sup>200</sup> Nine other states passed similar heartbeat bills in 2019,<sup>201</sup> but, to date, each bill has been challenged on constitutional grounds and have all met the same fate and have been enjoined by a federal district court. To date, no bill prohibiting abortion after a fetal heartbeat is detectable is in force in the United States. Even in those cases that have reached a circuit court of appeals, the Supreme Court has refused to hear the case.<sup>202</sup>

Even a federal court that is generally friendly to pro-life causes, like the 5th Circuit that encompasses Texas, is bound by Supreme Court precedent and, for the time being, would be required to uphold an injunction of a fetal heartbeat law.<sup>203</sup> For example, after being constitutionally required to uphold an injunction of Mississippi's 15-week abortion ban, the Fifth Circuit was also compelled to affirm a preliminary injunction of Mississippi's 6-week abortion ban.<sup>204</sup> The appeals court suggested that a law "prohibiting certain methods of abortion" or a law "prohibit[ing] abortions sought for certain reasons" may result in a different outcome.<sup>205</sup>

### C. Fetal Nondiscrimination Bills

Legislators in other states have begun to pass laws prohibiting abortions for certain discriminatory reasons. For example in 2016, Indiana passed a law prohibiting abortions for discriminatory reasons.<sup>206</sup> After the Seventh Circuit upheld a permanent injunction of the law,<sup>207</sup> the Supreme Court denied the petition for certiorari, following the "ordinary practice of denying petitions insofar as they raise legal issues that have not been considered by additional Courts of Appeals."<sup>208</sup> Thus, the Court may have been signaling other appeals courts to consider the issue. Similar to the Fifth Circuit's suggestion of regulating methods and reasons for abortion, Justice Thomas in his concurrence suggested that "modest restrictions to the types and circumstances" of abortion may be more likely to succeed on appeal.<sup>209</sup> As protections against discrimination on the basis of race, color, religion, sex, national origin, and disability already exist in other contexts, extending these protections to the unborn makes sense.<sup>210</sup>

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<sup>200</sup> *Stenehjem v. MKB Mgmt. Corp.*, 136 S. Ct. 981 (2016).

<sup>201</sup> Ohio, Utah, Missouri, Kentucky, Arkansas, Louisiana, Mississippi, Alabama, and Georgia all passed bills banning abortion earlier than 20 weeks in 2019 only Georgia, Kentucky, Louisiana, Mississippi, and Ohio passed fetal heartbeat bills. K.K. Rebecca Lai, *Abortion Bans: 9 States Have Passed Bills to Limit the Procedure This Year*, N.Y. TIMES (May 29, 2019), <https://www.nytimes.com/interactive/2019/us/abortion-laws-states.html>.

<sup>202</sup> *E.g.*, *Stenehjem*, 136 S. Ct. at 981.

<sup>203</sup> *Jackson Women's Health Org. v. Dobbs (Dobbs II)*, 951 F.3d 246 (5th Cir. 2020).

<sup>204</sup> *Id.* at 248 ("Indeed, after we held that the 15-week ban is unconstitutional, Mississippi conceded that the fetal heartbeat law must also be.").

<sup>205</sup> *Id.* (citing *Preterm-Cleveland v. Himes*, 944 F.3d 630 (6th Cir. 2019), granting rehearing en banc to address constitutionality of an Ohio law that criminalizes abortion if the provider knows the woman is seeking an abortion because there are indications the child might have Down Syndrome).

<sup>206</sup> H.B. 1337, 119th Gen. Assemb., 2d Reg. Sess. (Ind. 2016) (prohibiting performance of an abortion because of the race, gender, or health of the fetus).

<sup>207</sup> *Planned Parenthood of Ind. & Ky., Inc. v. Comm'r of the Ind. State Dep't of Health*, 888 F.3d 300 (7th Circuit 2018).

<sup>208</sup> *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780 (2019).

<sup>209</sup> *See id.* at 1782-93 (Thomas, J., concurring).

<sup>210</sup> *E.g.*, Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964); Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (1990).

## D. Supreme Court Update

On October 26 of this year, the United States Senate confirmed Amy Coney Barrett to the Supreme Court.<sup>211</sup> With Barrett's confirmation, some legal experts claim this will be the "most conservative Supreme Court since before World War II."<sup>212</sup> A new conservative majority on the Court will affect not only the Court's rulings but also the types of cases the Court will hear.<sup>213</sup> Justice Barrett and her conservative colleagues "share a more uniform judicial philosophy"<sup>214</sup> than earlier compositions of the Court, championing legal originalism, or the "view that the Constitution should be interpreted in accordance with its original meaning."<sup>215</sup> As several justices on the Court today have expressed the view that the Constitution's original meaning guarantees no right to abortion,<sup>216</sup> the Court is now in a prime position to overturn *Roe v. Wade*, and now is the time to enact policies protecting unborn life.

## E. Interim Hearing

On December 8, 2020, the Senate Committee on State Affairs held an interim hearing covering the charge of protecting the unborn provided by the Lieutenant Governor. The charge also instructed the Committee to study and recommend ways that to protect unborn life, such as through fetal heartbeat legislation and any other method that protects life. Invited testimony included Texas Right to Life, Human Coalition Action, and Texas Alliance for Life.

The first invited witness to testify before the Committee was John Seago with Texas Right to Life. John provided Texas Right to Life's suggested legislative recommendation of a plan to end elective abortion in Texas through filing a "Preborn Nondiscrimination Act (PreNDA)" to abolish discriminatory abortions and the remaining late-term abortions, a heartbeat bill to abolish election abortions after the preborn child's heartbeat is detectable, and outright abolition of any remaining elective abortions in Texas.<sup>217</sup> John also focused on their remaining priorities for the 87th Texas Legislature, such as repealing the "10-Day Rule" in the Texas Advance Directives Act, enacting

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<sup>211</sup> Sahil Kapur, Julie Tsirkin, and Rebecca Shabad, *Senate confirms Amy Coney Barrett, heralding new conservative era for Supreme Court*, NBC NEWS (Oct. 26, 2020), <http://nbcnews.com/politics/congress/amy-coney-barrett-set-be-confirmed-supreme-court-monday-n1244748>.

<sup>212</sup> *Id.*

<sup>213</sup> Prudence Flowers, *What would Amy Coney Barrett, Trump's pick for the Supreme Court, mean for abortion rights in the US?*, CONVERSATION (Sept. 26, 2020), <https://theconversation.com/what-would-amy-coney-barrett-trumps-pick-for-the-supreme-court-mean-for-abortion-rights-in-the-us-146931>.

<sup>214</sup> *Id.*

<sup>215</sup> Aaron Blake, *Neil Gorsuch, Antonin Scalia and originalism, explained*, WASH. POST (Feb. 1, 2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/02/01/neil-gorsuch-antonin-scalia-and-originalism-explained/> (internal citation omitted).

<sup>216</sup> For example, Justice Thomas wrote in his dissenting opinion in *June Medical Services*:

[T]oday's decision is wrong for a far simpler reason: The Constitution does not constrain the States' ability to regulate or even prohibit abortion. This Court created the right to abortion based on an amorphous, unwritten right to privacy, which it grounded in the "legal fiction" of substantive due process. As the origins of this jurisprudence readily demonstrate, the putative right to abortion is a creation that should be undone.

*June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2149 (2020) (Thomas, J., dissenting) (internal citation omitted).

<sup>217</sup> John Seago, Texas Right to Life, *The Texas Abolition Strategy: End Elective Abortion in Texas* (Dec. 8, 2020) (written testimony, on file with committee).

conscience protections for healthcare professionals, and protecting the Alternatives to Abortion program.<sup>218</sup>

Chelsey Youman with Human Coalition Action spoke on the need for Texas to increase its efforts to alleviate the demand for abortion, while at the same time supporting gestational limits, physician or hospital requirements, public funding regulations, etc.<sup>219</sup> Chelsey predicted that even if *Roe* and *Casey* are overturned tomorrow, "the underlying societal reasons women seek abortion would still exist."<sup>220</sup> According to the Human Coalition and the clients they serve, the primary reasons that women cite for seeking an abortion are lack of support, employment, affordable housing, and childcare.<sup>221</sup> Further data shows that of the women they serve, 75% stated that if their circumstances were different, they would actually prefer to keep their child.<sup>222</sup> In addition, the women also stated that they were unaware that any public or private assistance for their circumstances exists.<sup>223</sup>

The final witness to testify was Joe Pojman with Texas Alliance for Life. Joe recommended that the state adopt their "Human Life Protection Act." The "Human Life Protection Act" would be a "complete ban on abortion, beginning at fertilization, that would go into effect when and to the extent the Supreme Court reverses or modifies *Roe* and *Casey*."<sup>224</sup>

## Recommendations

Across the State of Texas, approximately 55,000 preborn children are aborted every year.<sup>225</sup> Texas does not need to wait for the *Roe* or *Casey* framework to be overturned to save thousands of children across Texas. To reduce this number, the Committee first recommends that the state continue to further address the underlying reasons women seek abortions. By addressing issues such as lack of support, employment, affordable housing, and childcare options, Texas can decrease abortion rates by 30%.<sup>226</sup> Texas and private organizations already provide a robust system of support, but there is certainly more work to be done. Increasing awareness and accessibility of the already provided safety nets and community resources should be a priority for these agencies and organizations.

The Committee also recommends the need for legislation to lower the number of elective abortions in Texas, such as through a fetal heartbeat bill. In addition, the Committee recommends considering a fetal nondiscrimination bill to prevent abortions based on specific traits of the baby.

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<sup>218</sup> *Id.*

<sup>219</sup> Chelsey Youman, Human Coalition Action, written testimony submitted to the Texas Senate Committee on State Affairs (Dec. 8, 2020) (written testimony, on file with committee).

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> Joe Pojman, Texas Alliance for Life, written testimony submitted to the Texas Senate Committee on State Affairs (Dec. 8, 2020) (written testimony, on file with committee).

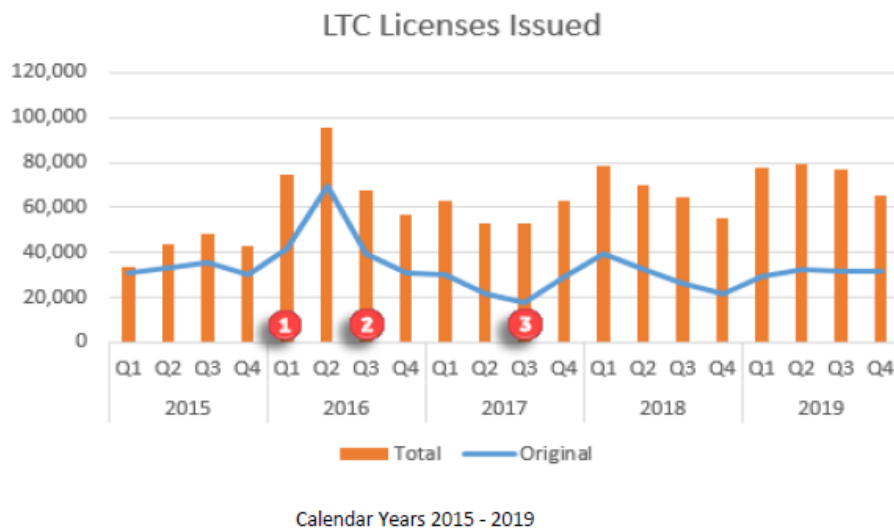
<sup>225</sup> Chelsey Youman, Human Coalition Action, written testimony submitted to the Texas Senate Committee on State Affairs (Dec. 8, 2020) (written testimony, on file with committee).

<sup>226</sup> *Id.*

## **CHARGE NO. 4**

**Second Amendment:** *Examine Second Amendment legislation passed since the 84th Legislative Session including open carry, campus carry, and lowering the license to carry fee. Determine the impact these laws have made on furthering and protecting Second Amendment rights. Make recommendations that may further protect and enhance Texans' Second Amendment right to bear arms.*

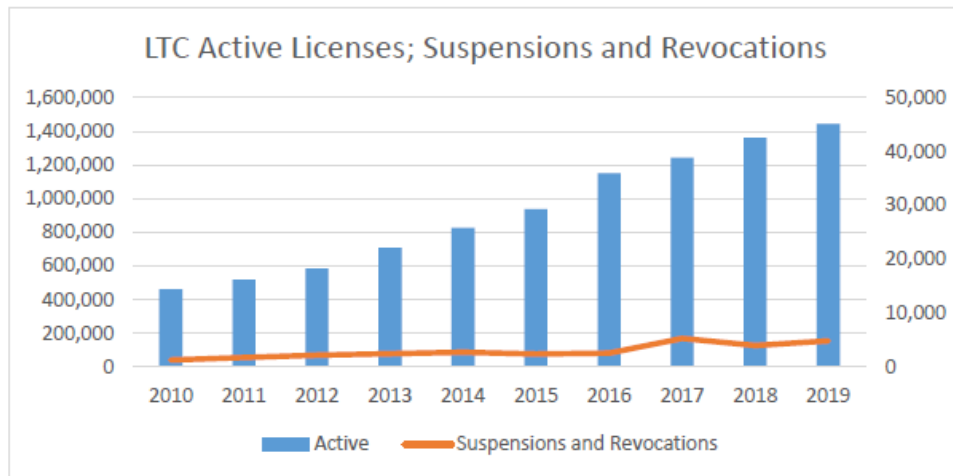
Texas allowed for concealed carry in 1995. Since then, the state has consistently expanded the rights of gun owners to carry firearms. These changes include the passage of open carry, campus carry on college campuses, and lowering barriers to entry for obtaining a license to carry. The chart below shows that these changes have resulted in more Texans taking advantage of the opportunity to carry a firearm, with significant increases in persons becoming licensed to carry after open carry became effective in 2016 and again after fees were reduced in 2017.



### Legislative Events

<u>Number</u>	<u>Date</u>	<u>Description</u>
1	1/1/2016	Open
2	8/1/2016	Campus Carry
3	9/1/2017	Fee Reduction and Online Course Providers

Importantly, this increase in the number of people who are able to carry a firearm, and likely in the number of people who do carry, has not led to a greater number of events that require the suspension or revocation of those licenses. The rate of suspension or revocation has remained steady over the last decade. There has also been no indication in the data that increased ability to carry has led to any increase in violent crime that was cautioned during the debate of these policies by individuals opposing expansion.



#### Percentage of Suspensions and Revocations

<u>Year</u>	<u>Percent</u>
2010	0.29%
2011	0.35%
2012	0.38%
2013	0.36%
2014	0.33%
2015	0.26%
2016	0.23%
2017	0.43%
2018	0.29%
2019	0.34%

When asked whether there was any evidence that the expansion of gun rights had led to increased incidences of road rage or other dangerous conduct, Mike Lesko, Chief of DPS Law Enforcement Support Division, said that there was no data or correlation to indicate an uptick in violent incidents. Texas has been able to safely and responsibly expand the ability for gun owners to carry firearms and provide for the defense of self and of others.

## **CHARGE NO. 5**

**Personal Property Protections:** *Examine prosecution rates for thefts involving property valued under \$1,000. Make recommendations to ensure law enforcement agencies and prosecutors have the tools necessary to thoroughly protect Texans' personal property from theft.*

### **Background**

Protecting the property interests of citizens is among the most fundamental responsibilities of government. As Texas grows, prospers, and becomes a favored destination for relocating businesses, the task of securing these rights has only become more difficult. Over the last decade, leaders in several cities have announced various strategies to limit enforcement of theft crimes. While prosecutors and law enforcement have some latitude at the local level to impose community standards and prioritize resources, it is a statewide priority to ensure that people and businesses in every part of the state can count on law enforcement to protect their personal property from theft.

One component of this movement away from arrests and prosecutions for theft is the implementation by certain cities of a program known as cite and release. Prior to 2007, police officers were required under state law to arrest anyone who had committed a Class B or Class A misdemeanor. That year, the Legislature passed House Bill 2391, which allowed police officers to issue a citation in lieu of arrest for certain misdemeanors, including Class B thefts.<sup>227</sup> The citation contains written notice of the time and place the person must appear before the magistrate, along with other information.<sup>228</sup> Since the passage of HB 2391, the program has been adopted at varying degrees by several cities, including Austin, San Marcos, San Antonio, and Houston.

A more traditional principle that has led to lower enforcement of thefts under \$750 is an emerging preference for broad prosecutorial policies that decline to prosecute certain crimes, including thefts under certain circumstances. Government has long recognized a modicum of autonomy for local officials to impose community standards and make decisions that reflect the will of their local constituents. This, at times, has been reflected in selective prosecution of crimes based on a case-by-case analysis. More recently, however, these policies have been announced as broadly adopted classes of crimes that will effectively be overlooked. Most notably, the Dallas County District Attorney announced last year that he would not be prosecuting thefts of certain items that totaled less than \$750.<sup>229</sup>

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<sup>227</sup> Tex. H.B. 2391, 80th Leg., R.S., (2019) (adding ART. 1406. CODE OF CRIMINAL PROCEDURE).

<sup>228</sup> *Id.*

<sup>229</sup> Catherine Marfin, "Texas prosecutors want to keep low-level criminals out of overcrowded jails. Top Republicans and police aren't happy," *Texas Tribune* (May 21, 2019), available at <https://www.texastribune.org/2019/05/21/dallas-district-attorney-john-cruezot-not-prosecuting-minor-crimes>



Taken together, these policies implement widespread policy changes that negatively affect millions of people. Consideration of changes that would apply so widely has traditionally been reserved for the legislature.

## **Discussion**

### **A. Prosecutorial Discretion**

Prosecutorial discretion has always been an important part of the American justice system. After a law enforcement officer presents a case to the District or County Attorney's office, that prosecutor must then decide whether to accept the case and charge the defendant, or decline to prosecute. Traditionally, these decisions are made based on the individual facts of each case and the resources available to the office. Internal policies might factor in, but those policies have generally been adopted and applied internally. This process allows the local official to implement his or her own community standards in deciding what is just and practicable.

Even when written as broad policies rather than applied on a case by case basis, historically the role of discretion for a district attorney has been focused on resource allocation. Unfortunately, not all law enforcement agencies have the resources they need to fully pursue each case or crime. This means that some elected officials adopt policies that prioritize resources in the way that will lead to the most effective and efficient use of those resources. This, however, is not the dynamic at play in decisions not to prosecute thefts. There is a fundamental distinction between a policy in which certain crimes are prioritized over others due to resource constraints and a policy where the office refuses to prosecute because of a different view on the efficacy or legitimacy of the law itself. In the latter case, the local official essentially creates new state law and policy for a particular city, which is beyond the powers provided to local governments under the Constitution and the law. A local official may prioritize, but he may not override the will of the people of that state.

Where a district attorney announces to the community that offenders will not be prosecuted for certain crimes, they are effectively writing those crimes out of state law in that locale. Upon taking his or her oath, each district attorney swears to "preserve, protect, and defend the Constitution and the laws of the United States and of this State[.]"<sup>230</sup> Publicly renouncing that oath in part for all cases in a certain category can have severe consequences. Broadly implemented policies like that fall strictly within the purview of the legislature.

When a District Attorney fails to serve the needs of the community, the first line of defense is and always has been the ballot box. As local elected officials, district attorneys are accountable to the members of their communities in the same way that legislators are accountable to their constituents. As a more immediate remedy against malfeasance, state law provides a list of situations in which a district or county attorney may be removed. These grounds for removal

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<sup>230</sup> Section 1, Article XVI, Texas Constitution.

include incompetency, official misconduct, or drunkenness on or off duty.<sup>231</sup> Prosecutors, however, have absolute immunity for actions taken in the course of carrying out their responsibilities as a prosecutor.

Prosecutorial discretion remains a bedrock principle of local law enforcement and governance. However, this discretion serves a limited purpose, and cannot continue to become further disconnected from state policy and simultaneously satisfy the constitutional principles those exercising that discretion have vowed to uphold.

## **B. Cite and Release**

Cite and release programs, in practice, have presented a separate set of complications. Under the program authorized by statute and adopted in certain locales, people who commit a Class B theft are not arrested, but are instead given a citation and promise to return to court. According to testimony, in some cities or counties as many as 40% of those who promise to appear do not actually come to court.<sup>232</sup> Even so, a more systemic and insidious consequence of the policy has been the undermined confidence in theft data available to the state to make informed, data-based decisions of certain criminal policy.

Chapter 66 of the Texas Code of Criminal Procedure requires all offenses Class B and above to be reported to the Texas Department of Public Safety (DPS) for the collection and comparison of statistics on these crimes.<sup>233</sup> Cite and release undermines the consistency of this process in two significant ways. The first is that many of these offenses are never reported at all, creating potentially major gaps in statewide data on theft. The second is that subsequent theft charges result in enhanced punishments, but when cases are either not reported to law enforcement at all or are not completed due to a failure of the defendant to report for court, subsequent thefts by the same individual will likely not be enhanced.

In a jurisdiction that uses cite and release for thefts, the individual accused of theft is written a citation and is required to promise to appear for his or her court date. The individual is not arrested, so he is not taken to the jail to be "booked in," a process which requires finger prints and is the launching point for criminal data collection. After that initial contact, unless the defendant is subsequently remanded to law enforcement to be printed and booked after disposition, which is not the case for most of these offenses, the report required under Chapter 66 never goes to DPS.

The results of these changing policies are evident in the data provided to the Committee. From 2015 to 2019, the number of individuals arrested for Class B misdemeanor thefts has fallen by

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<sup>231</sup> LOC. GOV'T CODE § 87.013

<sup>232</sup> Jennifer Hackney-Szimanski, Combined Law Enforcement Associations of Texas, Testimony before the Texas Senate Committee on State Affairs (Feb. 26, 2020).

<sup>233</sup> See Art. 66.252, Code of Crim. Proc.

45.84%.<sup>234</sup> The conviction rates for these crimes has fallen on an annual basis as well. The annual rate of decline for the number of convictions as a share of the number of arrests made is:

**Percent Change in Convictions as Share of Arrests for Misdemeanor Thefts**

2015	50.97%
2016	48.10%
2017	46.93%
2018	42.42%
2019	26.27% <sup>235</sup>

Because of policies like cite and release and non-prosecution announcements made in large cities and counties, it is impossible to know whether these declines are predominantly a result of fewer people stealing property or fewer of the people who steal property being held accountable for their actions. It is safe to assume that it is some combination of both, but the uncertainty created by a lack of uniformity in prosecutions complicates the matter. Ultimately, local policies are affecting the reliability and consistency of data that policymakers rely on to make statewide policy decisions.

The second deleterious effect of challenges associated with cite and release policies is the subversion of theft penalty enhancements the Legislature has put in place to deter theft. An offender who has previously been convicted of theft and is convicted again will face increased punishment for the subsequent thefts. Since theft is a crime of moral turpitude and can quickly evolve from a one-off shoplifting into a pattern of crime, the Legislature has decided to punish subsequent crimes more severely, even if the amount in controversy has not increased. When an individual's case is not resolved because he or she did not return after receiving a citation and being released, subsequent thefts cannot be punished as provided for by law. This is an additional example of local decisions undermining statewide policies.

**C. Impact of Policies**

The refusal to enforce or prosecute theft also has significant consequences for offenders, businesses, and society. People who steal often make decisions as any rational person would, and change their behavior based on external factors. After California raised the threshold for felony theft from \$450 to \$950, one district attorney recounted a story of a shoplifter taking a calculator into the store to steal just the right amount.<sup>236</sup> Policy decisions affect real people, and people need

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<sup>234</sup> Percentages derived from data provided by the Department of Public Safety to the Committee, "Theft\_Total Arrests-Convictions by county-Year," included in Appendix.

<sup>235</sup> *Id.*

<sup>236</sup> Bill Turner, "Welcome to California: Still a Shoplifter's Paradise?" (September 26, 2018; originally published in 2016) *Loss Prevention Magazine*, available at <https://losspreventionmedia.com/welcome-to-california-a-shoplifters-paradise/>

to be able to rely on property protection and enforcement regardless of the community in which they live.

#### **D. Retail**

Initially, it is tempting to envision that these crimes are against major companies that are immune to the economic consequences of shoplifting and small thefts. However, this is simply not the case, and the same policies affect small businesses too. In the case of the Dallas policy not to prosecute thefts of personal items, this policy would frequently apply to thefts taking place in grocery stores. Grocery margins are tight, with the average margin in 2017 at approximately 2.2%.<sup>237</sup> In 2018, the average loss per reported shoplifting incident in Texas was \$338.<sup>238</sup> While those averages are likely skewed toward thefts of electronics and other higher value single items, the Dallas policy applied up to \$750, and the numbers are illustrative of a larger point. Given these averages, an average shoplifting incident in a store with that profit margin would erase the profit from over \$15,000 in gross sales.

Testimony provided to the committee by Tony Bickley on behalf of Lowe's and the Texas Retailer's Association indicated that Lowe's had over 18,000 thefts under \$1,000 last year alone, which accounted for over 90% of all thefts. This had approximately a \$4.2 million total impact. Loss from thefts lead to higher prices for other consumers. Bickley also testified that cite and release policies lead police to make shoplifting calls lower priorities, which leaves more of the responsibility for enforcement on the retailer, who is not equipped for that responsibility. At least one loss reduction officer was shot attempting to stop a theft last year. Senator Hall recounted a story from a small business owner in which a man familiar to the proprietor came in and took handbags at will because the owner felt that reporting the offense was useless. Businesses are not law enforcement and are not equipped to act as such.

#### **E. Increased Crime**

As a result, it is impossible to know how many prior thefts an individual has committed before they were first caught, and it is impossible to aggregate data on personal factors that lead to theft. However, there are a few intuitive conclusions that are anecdotally supported by testimony to the Committee and by common sense. When an individual steals and is not caught, he or she often steals again. When an individual steals and is caught, society has agreed from time immemorial to punish the offender, albeit by a broad range of methods and degrees. Proponents of criminal justice reform insist that this has not changed, and that those who are caught stealing are still subject to punishment. However, what conclusion ought one assume a person might reach when he can steal

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<sup>237</sup> Barbara Bean-Mellinger, "What Is the Profit Margin for a Supermarket?" (November 14, 2018) *Houston Chronicle*, available at <https://smallbusiness.chron.com/profit-margin-supermarket-22467.html>

<sup>238</sup> Mia McCord, Texas Conservative Coalition Research Institute, written testimony submitted to the Texas Senate Committee on State Affairs (Feb 26, 2020) (written testimony, on file with committee, providing data sourced from the Texas Uniform Crime Reports system).

hundreds of dollars worth of merchandise, receive only a ticket, and choose not to appear before a judge? This lesson may be more harmful than not having caught the person at all.

Another troubling aspect of this issue that the Committee heard testimony on is the relationship of organized crime or gang-related crime to these smaller thefts. Per incident, these thefts only amount to hundreds of dollars in damage. However, changes to prosecution practices have led more sophisticated offenders to systematically carry out small thefts which, taken together, can have a greater impact. Witnesses in the hearing referred to organized retail crime groups that use the money from strings of small thefts to buy drugs or guns, thereby exacerbating seemingly unrelated criminal problems.

What's more, under policies like those in Dallas that exempt certain economically disadvantaged offenders from prosecution, these organized groups have an incentive to target vulnerable people who would likely be immune from prosecution carry out the crimes on the organized group's behalf.

### **Conclusion**

State and local policies on crime and punishment have evolved rapidly over the last two decades and continue to change. There is broad support for policies that provide second chances and facilitate reintegration for offenders. These policies cannot be dictated locally though, and they cannot come at the cost of the public's trust in basic governmental functions and institutions.

The Committee should continue to evaluate the balance between desired outcomes for small-time criminals and the public at large, and the way this balance is affected by policies at both the state and local level. This evaluation should include an assessment of whether Class B theft should remain on the list of offenses eligible for cite and release. The state may also need to provide more clarity on the extent to which local prosecutorial discretion may be used to enact broad policies that effectively disregard or refuse to enforce state law in certain locales.

## **APPENDIX**

Written testimony from the Committee's interim hearings is available upon request.

COUNTY	2015		2016		2017		2018		2019	
	Arrests	Conv.	Arrests	Conv.	Arrests	Conv.	Arrests	Conv.	Arrests	Conv.
ANDERSON	150	54	104	31	75	35	86	54	48	21
ANDREWS	39	9	19	1	28	3	20	6	14	2
ANGELINA	228	123	130	76	180	119	130	78	130	69
ARANSAS	133	42	67	22	51	13	34	3	79	11
ARCHER	3	2	1	1	2	1	4	1	4	3
ARMSTRONG	1	0	0	0	0	0	0	0	0	0
ATASCOSA	107	30	64	21	39	15	62	13	53	9
AUSTIN	41	29	12	3	10	6	12	7	14	7
BAILEY	10	5	2	2	5	2	12	1	1	0
BANDERA	22	8	9	3	4	2	13	7	7	2
BASTROP	137	33	125	40	81	28	69	16	80	9
BAYLOR	3	1	1	0	0	0	2	1	0	0
BEE	105	18	53	9	33	1	45	2	42	0
BELL	799	461	453	262	456	272	570	316	456	185
BEXAR	4,601	2,395	2,866	1,465	2,350	1,221	2,171	1,013	1,604	422
BLANCO	3	0	8	2	6	0	2	0	0	0
BORDEN	0	0	2	0	0	0	0	0	2	0
BOSQUE	19	14	12	9	6	4	11	5	15	3
BOWIE	378	225	251	159	226	141	234	130	303	128
BRAZORIA	773	430	647	263	465	268	440	250	548	219
BRAZOS	546	368	328	237	273	169	278	159	212	60
BREWSTER	4	0	6	2	6	0	4	0	1	0
BRISCOE	0	0	0	0	0	0	0	0	1	0
BROOKS	11	2	18	2	27	6	24	9	20	1
BROWN	97	36	52	10	33	11	53	9	44	8
BURLESON	12	7	8	3	6	4	20	9	8	4
BURNET	127	29	114	35	91	25	90	17	59	4
CALDWELL	128	91	109	77	73	38	65	36	44	6
CALHOUN	45	14	46	16	28	6	25	14	16	8
CALLAHAN	24	10	15	3	14	8	17	8	8	1
CAMERON	814	272	580	194	490	156	530	178	498	106
CAMP	28	20	35	18	24	14	14	7	7	4
CARSON	5	0	0	0	1	0	1	0	0	0
CASS	47	23	32	15	36	16	34	14	28	9
CASTRO	8	5	16	6	10	6	7	0	0	0
CHAMBERS	99	67	75	49	47	31	41	27	36	14
CHEROKEE	61	29	62	22	63	21	54	14	36	5
CHILDRESS	16	9	7	3	7	3	11	4	13	2
CLAY	4	1	6	0	6	1	4	1	1	0
COCHRAN	0	0	2	2	2	0	3	2	0	0
COKE	1	0	7	0	1	0	0	0	2	0
COLEMAN	3	3	1	1	2	0	5	2	3	0
COLLIN	1,263	675	925	482	1,089	497	1,015	476	1,046	296
COLLINGSWORTH	2	0	0	0	0	0	1	0	0	0
COLORADO	19	14	16	9	12	6	12	6	7	2
COMAL	196	108	187	114	158	86	122	52	97	22
COMANCHE	22	14	9	8	12	9	9	8	10	6
CONCHO	7	6	2	2	3	3	0	0	0	0
COOKE	71	48	78	49	42	25	33	9	42	14
CORYELL	172	58	150	58	85	35	129	49	84	33
COTTLE	1	0	0	0	1	1	0	0	0	0
CRANE	5	2	3	1	2	0	1	0	2	1
CROCKETT	6	2	6	0	4	2	2	0	4	0

CROSBY	4	3	4	2	4	1	1	0	1	0
CULBERSON	1	0	0	0	5	2	0	0	5	0
DALLAM	5	0	4	0	5	0	4	0	3	0
DALLAS	4,520	2,095	3,316	1,773	2,747	1,242	2,361	816	2,571	505
DAWSON	20	14	15	9	4	3	5	2	4	1
DEAF SMITH	55	35	37	22	38	31	23	18	21	14
DELTA	10	4	10	3	6	2	3	1	9	0
DENTON	728	451	524	337	563	319	572	256	584	91
DEWITT	39	22	31	16	14	4	28	13	19	4
DICKENS	0	0	0	0	2	0	0	0	1	0
DIMITT	28	5	18	9	19	12	11	3	10	0
DONLEY	4	1	0	0	3	2	3	0	2	0
DUVAL	10	7	10	2	11	1	8	4	6	0
EASTLAND	39	25	23	18	15	10	11	7	22	12
ECTOR	479	230	249	119	211	109	172	80	214	83
EDWARDS	0	0	1	1	0	0	1	1	0	0
EL PASO	1,392	650	708	345	753	340	742	293	649	155
ELLIS	231	155	161	116	213	152	180	112	164	46
ERATH	81	58	58	46	59	36	41	24	35	19
FALLS	14	8	6	0	14	6	6	2	7	1
FANNIN	38	29	14	6	26	11	32	19	32	8
FAYETTE	31	23	16	11	17	13	24	17	11	6
FISHER	2	0	0	0	3	2	1	0	0	0
FLOYD	3	0	4	2	3	1	3	0	2	0
FOARD	0	0	0	0	2	0	0	0	1	0
FORT BEND	799	392	576	277	502	230	578	170	604	70
FRANKLIN	13	6	9	4	9	2	16	7	8	1
FREESTONE	20	6	15	4	5	0	7	0	5	0
FRIO	11	6	14	4	3	0	16	5	15	1
GAINES	20	5	18	7	17	1	9	0	16	1
GALVESTON	521	264	499	250	448	228	427	170	405	115
GARZA	9	5	2	0	2	0	3	0	1	0
GILLESPIE	32	9	28	18	11	7	14	8	12	4
GLASSCOCK	0	0	0	0	0	0	0	0	1	0
GOLIAD	5	4	2	0	7	4	2	0	3	1
GONZALES	46	30	44	26	18	10	25	14	15	7
GRAY	77	25	40	9	32	14	60	10	25	3
GRAYSON	318	237	235	174	154	107	115	81	117	63
GREGG	378	210	346	198	284	171	239	147	240	126
GRIMES	34	12	26	5	20	4	11	0	12	0
GUADALUPE	184	117	126	67	108	50	105	55	93	36
HALE	70	37	52	24	69	34	43	19	19	9
HALL	0	0	0	0	1	0	0	0	1	1
HAMILTON	10	3	18	4	7	1	5	1	10	1
HANSFORD	2	0	1	0	1	1	1	0	2	1
HARDEMAN	8	2	3	2	3	2	3	2	2	1
HARDIN	149	96	79	48	69	46	59	42	49	19
HARRIS	7,140	4,653	5,126	2,562	4,364	2,042	4,316	1,603	4,693	915
HARRISON	93	32	98	37	74	28	77	33	62	32
HARTLEY	0	0	2	1	3	2	1	0	1	1
HASKELL	13	10	4	1	9	7	7	4	4	3
HAYS	514	248	383	184	277	116	272	93	321	32
HEMPHILL	9	4	3	3	6	3	3	1	4	2
HENDERSON	247	113	158	60	73	29	102	49	61	18
HIDALGO	1,969	851	1,441	637	1,207	526	1,264	531	1,224	346
HILL	70	56	60	39	59	50	63	53	59	31



HOCKLEY	50	21	64	17	47	8	36	11	33	6
HOOD	97	83	75	61	75	49	131	95	66	32
HOPKINS	113	37	65	22	56	21	29	13	33	11
HOUSTON	49	17	25	9	41	23	22	9	14	2
HOWARD	166	88	158	67	98	41	75	31	85	15
HUDSPETH	2	0	3	1	1	1	1	0	1	0
HUNT	154	93	76	49	78	41	70	38	86	30
HUTCHINSON	36	12	23	11	16	6	23	12	27	9
IRION	1	1	0	0	3	0	0	0	2	0
JACK	14	4	10	2	3	1	2	0	1	0
JACKSON	26	18	34	28	13	8	15	12	9	4
JASPER	94	49	78	30	75	32	53	10	48	7
JEFF DAVIS	0	0	1	0	0	0	0	0	0	0
JEFFERSON	900	477	451	248	323	182	326	84	338	48
JIM HOGG	4	0	1	0	3	1	12	1	5	0
JIM WELLS	99	20	72	12	56	12	46	5	41	3
JOHNSON	258	152	197	118	158	97	142	84	158	58
JONES	14	8	12	4	4	2	6	2	9	5
KARNES	23	11	13	8	15	4	8	2	3	0
KAUFMAN	178	78	178	74	182	74	189	87	193	51
KENDALL	54	34	32	13	21	11	28	13	27	8
KENEDY	0	0	1	0	0	0	1	0	0	0
KENT	0	0	0	0	0	0	0	0	0	0
KERR	116	94	71	57	73	59	67	43	67	29
KIMBLE	4	0	0	0	6	3	1	0	1	0
KING	0	0	0	0	0	0	0	0	0	0
KINNEY	1	0	3	2	1	0	2	0	0	0
KLEBERG	105	46	92	41	75	39	58	23	40	9
KNOX	3	2	5	2	3	3	4	1	0	0
LA SALLE	3	2	7	2	2	0	4	0	4	0
LAMAR	148	98	93	55	102	64	64	42	68	36
LAMB	14	9	0	0	4	1	8	5	10	7
LAMPASAS	20	6	9	5	13	8	9	6	11	3
LAVACA	23	5	39	15	10	5	19	11	10	2
LEE	16	9	18	11	16	10	6	0	10	4
LEON	16	4	15	0	7	1	14	4	6	1
LIBERTY	192	113	124	61	77	44	66	35	73	28
LIMESTONE	81	36	64	25	55	25	38	18	25	11
LIPSCOMB	0	0	0	0	0	0	0	0	3	0
LIVE OAK	10	2	6	2	8	1	1	0	7	1
LLANO	26	7	28	13	24	6	18	1	8	1
LOVING	0	0	0	0	0	0	0	0	0	0
LUBBOCK	902	419	721	313	617	248	521	187	524	127
LYNN	5	3	2	1	3	2	0	0	2	1
MADISON	33	13	20	9	19	11	16	5	7	2
MARION	12	2	11	2	11	4	7	2	14	3
MARTIN	3	1	3	3	4	0	5	2	3	0
MASON	0	0	3	3	5	2	0	0	3	2
MATAGORDA	121	52	106	47	65	28	62	23	65	36
MAVERICK	150	37	99	11	52	5	55	1	65	1
MCCULLOCH	10	4	21	10	11	6	10	4	9	2
MCLENNAN	764	413	673	340	604	335	478	207	441	97
MCMULLEN	1	1	1	0	1	0	0	0	1	0
MEDINA	73	40	46	18	45	7	27	6	13	1
MENARD	6	5	1	0	1	1	2	0	0	0
MIDLAND	373	214	310	182	234	132	165	70	204	50

MILAM	27	4	25	10	25	7	37	10	19	2
MILLS	12	7	3	2	1	1	0	0	4	0
MITCHELL	16	2	5	0	4	1	3	0	7	3
MONTAGUE	33	19	17	10	33	10	15	5	20	4
MONTGOMERY	766	458	610	318	516	294	616	369	647	333
MOORE	53	31	16	10	45	24	42	24	23	2
MORRIS	21	8	25	3	9	3	7	1	17	7
MOTLEY	2	0	3	0	1	0	1	0	0	0
NACOGDOCHES	224	146	110	78	99	52	150	107	110	57
NAVARRO	136	82	69	44	57	38	70	40	99	47
NEWTON	2	1	10	1	8	2	6	2	3	0
NOLAN	59	39	32	16	18	6	16	7	24	13
NUECES	1,105	355	745	153	389	64	498	59	536	43
OCHILTREE	12	2	6	2	5	3	3	0	3	2
OLDHAM	1	0	1	0	3	0	0	0	0	0
ORANGE	115	70	64	31	63	36	51	26	51	16
PALO PINTO	92	42	47	23	49	22	48	26	36	19
PANOLA	75	34	65	36	50	27	20	13	11	2
PARKER	157	91	110	67	95	57	108	61	95	31
PARMER	11	7	9	5	2	2	0	0	6	2
PECOS	32	18	36	17	21	10	15	3	26	6
POLK	118	35	72	25	59	20	51	23	80	12
POTTER	814	375	584	287	436	178	375	148	230	59
PRESIDIO	2	0	3	0	2	0	2	0	3	0
RAINS	22	13	10	9	7	6	12	5	3	2
RANDALL	83	56	51	37	66	30	64	38	55	20
REAGAN	1	0	1	0	2	1	3	1	0	0
REAL	14	7	3	3	5	4	3	2	5	3
RED RIVER	8	3	11	5	17	6	12	2	15	3
REEVES	14	4	14	4	14	5	12	2	8	0
REFUGIO	11	5	12	5	4	0	1	0	5	0
ROBERTS	0	0	0	0	0	0	2	0	0	0
ROBERTSON	23	13	20	8	24	9	13	5	11	2
ROCKWALL	132	87	173	111	200	121	135	77	112	53
RUNNELS	11	5	22	4	18	6	12	8	9	2
RUSK	52	25	29	17	35	19	21	14	37	8
SABINE	8	5	50	8	10	3	9	4	3	0
SAN AUGUSTINE	25	4	8	4	14	2	7	1	8	0
SAN JACINTO	14	4	11	3	4	2	4	1	10	0
SAN PATRICIO	199	87	148	67	113	58	73	40	75	18
SAN SABA	5	1	6	4	6	2	3	0	2	0
SCHLEICHER	1	0	5	2	1	0	1	0	2	0
SCURRY	46	17	40	16	35	16	22	15	26	10
SHACKELFORD	5	2	4	2	5	1	2	1	0	0
SHELBY	96	48	71	36	53	25	62	18	54	15
SHERMAN	0	0	1	0	1	1	1	0	0	0
SMITH	564	432	499	367	471	313	429	326	394	242
SOMERVELL	4	1	3	2	5	4	2	1	8	1
STARR	51	8	48	11	54	6	26	2	24	0
STEPHENS	42	24	28	16	12	2	8	3	10	4
STERLING	0	0	2	0	0	0	1	0	0	0
STONEWALL	0	0	0	0	4	4	0	0	0	0
SUTTON	0	0	0	0	1	0	1	0	1	0
SWISHER	6	2	1	1	3	0	4	2	4	1
TARRANT	4,497	2,258	2,964	1,559	2,552	1,251	2,546	1,331	2,522	877
TAYLOR	642	378	484	256	335	186	339	172	347	129

TERRELL	1	0	1	0	0	0	1	0	2	0
TERRY	28	16	37	27	16	11	19	9	3	1
THROCKMORTON	1	0	0	0	0	0	0	0	0	0
TITUS	109	49	61	21	59	28	49	26	39	19
TOM GREEN	337	221	217	132	170	107	138	81	120	44
TRAVIS	2,640	818	1,916	539	1,401	334	1,222	280	1,031	162
TRINITY	9	0	6	2	17	3	9	0	5	0
TYLER	11	2	12	3	19	8	13	7	18	1
UPSHUR	52	25	34	11	22	9	32	15	27	7
UPTON	2	1	0	0	2	1	1	0	2	0
UVALDE	54	19	22	7	38	5	26	7	18	2
VAL VERDE	145	71	98	38	72	31	39	15	27	3
VAN ZANDT	57	21	57	13	61	23	37	12	33	9
VICTORIA	353	255	195	132	157	92	131	71	154	36
WALKER	93	42	78	39	113	62	62	32	53	15
WALLER	29	3	23	4	27	6	23	2	26	0
WARD	19	10	15	10	13	5	7	0	9	1
WASHINGTON	71	48	53	26	55	35	41	30	40	20
WEBB	1,135	260	890	172	352	47	300	17	371	3
WHARTON	103	42	71	24	57	25	54	18	64	21
WHEELER	12	6	13	2	7	1	15	1	3	0
WICHITA	454	268	278	154	246	119	223	118	186	32
WILBARGER	34	22	7	4	10	5	14	10	11	5
WILLACY	25	14	5	2	7	2	10	3	7	0
WILLIAMSON	679	291	515	201	436	163	355	128	318	62
WILSON	101	41	49	19	42	16	39	9	18	4
WINKLER	13	2	5	2	6	3	2	2	7	3
WISE	90	58	70	34	47	27	40	24	96	32
WOOD	52	37	50	16	28	18	47	24	24	9
YOAKUM	2	0	3	1	7	1	1	0	2	0
YOUNG	32	25	23	10	25	16	16	11	18	12
ZAPATA	33	20	25	14	24	8	20	5	24	7
ZAVALA	12	2	11	0	6	1	8	0	12	0
<b>TOTAL</b>	<b>54,703</b>	<b>27,884</b>	<b>38,724</b>	<b>18,627</b>	<b>32,263</b>	<b>15,140</b>	<b>30,496</b>	<b>12,936</b>	<b>29,627</b>	<b>7,784</b>