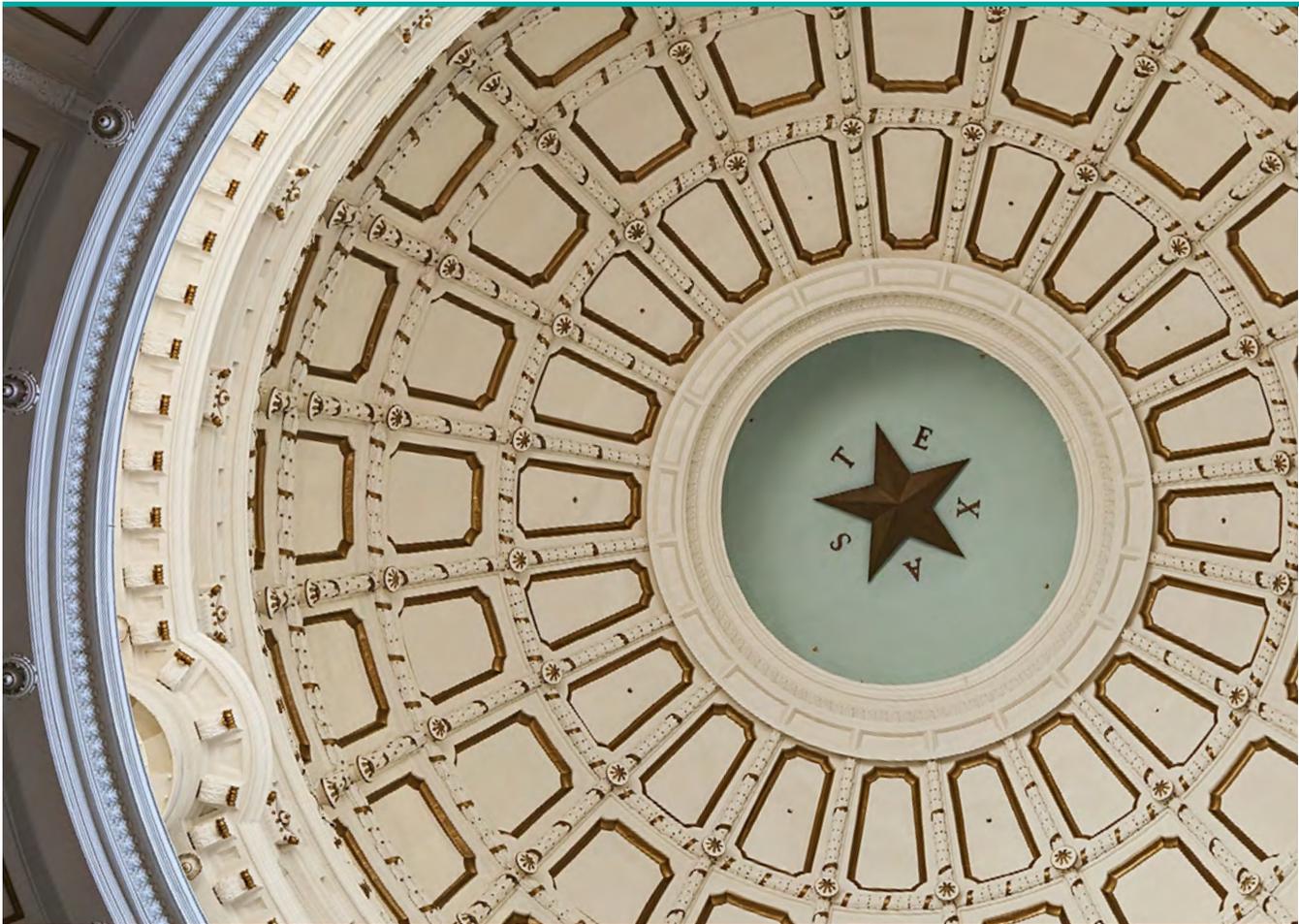




87TH TEXAS

LEGISLATIVE SESSION UPDATE

Sexual Assault Reform: Updates From the Texas Capitol



Introduction

We are pleased to offer you an update on the 87th legislative session and extend our deep gratitude to all of you for your efforts to make it a success. Our Survivor Advisory Board and TAASA members did an extraordinary amount of advocacy to make Texas a better, safer place for survivors of sexual assault.

Between COVID-19 and the winter storm impacting our state, this was an unusual session. This year was particularly challenging for advocacy organizations, and the very abbreviated time that the Legislature was in session felt like an ever-changing set of barriers to engagement. We did our best to be flexible with the times and developed some new methods for keeping our membership up-to-date and engaged on our issues. Even from a distance, all of you made your voices heard loud and clear inside the Capitol building and we could not be more thankful.

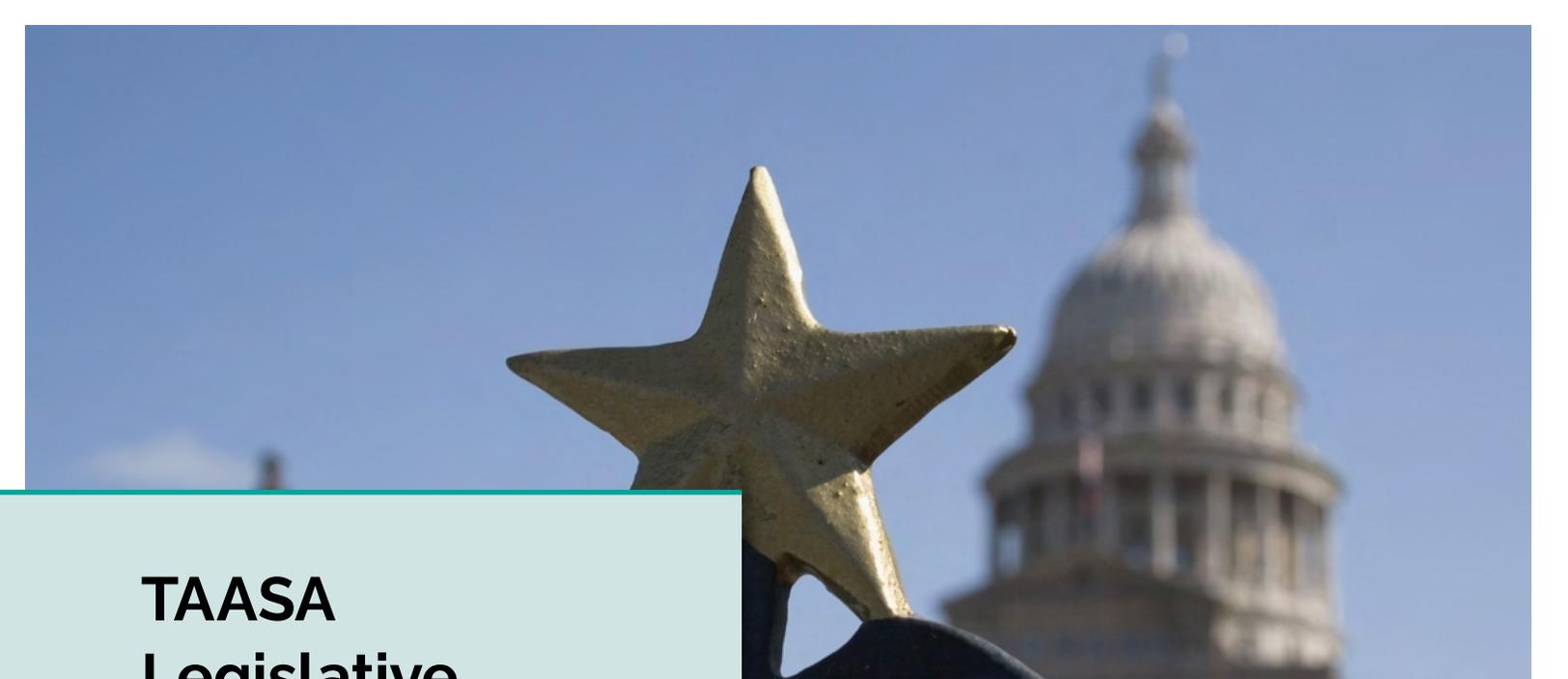
Due in large part to your advocacy, we are excited to say that this was one of our most successful sessions to date! Our team initially set out with high hopes and low expectations, bringing 6 priorities to the Legislature in addition to requesting an increase in funding for rape crisis centers. Five of those priorities are now law and we are happy to report that rape crisis centers will see an increase in their budgets for the next fiscal year.

We are so thankful for the incredible leadership of our legislative champions for their hard work during a session that passed some truly transformative laws for survivors.

TAASA Policy Team

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TAASA Legislative Priorities

Our members asked us to champion a package of bills that focused on increased access to survivor well-being and health across the state. Together, we believe that these new laws will truly transform the landscape of Texas, improving the way that survivors are treated when they choose to report their assaults, increasing access to life-saving medical care, and mandating communities to create a collaborative response to survivors when an outcry occurs.

Rape Crisis Center Funding

During our annual survey of centers in the summer of 2020, we found that the previous increase in funding had allowed centers to hire additional therapists and cut down on waitlists for counseling, particularly for Spanish-language counseling. However, waitlists continued to be a persistent problem, particularly as COVID-related stressors and accessibility changes pushed survivors to crisis centers. Many of our centers across the state saw an uptick in requests for counseling services during this time. As part of our legislative agenda, we successfully advocated for **4.7M in increased funding** so that survivors can access counseling services when they need them, not months later.

Non-Funding Priorities

HB 1172 (Rep Howard)

HB 1172 strengthens and expands sexual assault survivor rights while they are engaging with law enforcement, to protect their dignity within the criminal justice process. This bill prevents a peace officer or state attorney from requesting or requiring that an individual reporting a sexual assault take a polygraph test. It removes the ability of law enforcement to decline an exam to a survivor within 120 hours of their assault, and it ensures that adult survivors are offered sexual assault advocates to be present with them during an investigative police interview.

SB 295 (Sen Perry)

As it currently stands, there is no legal privilege between sexual assault program advocates and survivors - meaning that any communications between the two are subject to disclosure in court in some cases. This bill creates an advocate-survivor privilege that preserves the confidentiality of communications between survivors and employees and volunteers of sexual assault programs. Confidential information that is subject to this privilege includes both oral and written communications made in the course of advising, counseling, or assisting, and the survivor can choose whether or not to allow the disclosure of that information in civil, criminal, administrative and legislative proceedings, with few exceptions. The privilege applies to any record created by, given to, or maintained by the advocate as long as the record relates to services provided to the survivor.

SB 312 (Sen Huffman)

SB312 aims to address the inherent power difference that impacts consent between law enforcement officers and detainees. While improper sexual activity with an individual in custody is already considered criminal activity due to the inability of the detainee to provide effective consent, this bill increases the penalty for such actions. Formerly a state jail felony, improper sexual activity with a detainee is now a second degree felony, punishable by up to 20 years in prison and up to a \$10,000 fine. By increasing the penalty in cases where a person is

in law enforcement's custody, this law is now in parity with the penalty group of the sexual assault statute which prohibits sexual conduct in other cases where there is a power difference between offender and survivor.

SB 476 (Sen Nelson)

Sexual Assault Response Teams, or SARTs, have been an incredibly effective way for communities to combat adult sexual assault. This bill requires the creation of SARTs across the entire state of Texas. These response teams will be composed of responding organizations and agencies in the county, will meet regularly, and will develop a written protocol for responding to adult survivors in the county. This bill allows two or more neighboring counties, of 250,000 or less, to join together and form a multicounty response team.

TAASA 86th Session Priority:

HB 39 (Neave/Zaffirini):

During the 86th legislative session, the only bill on our agenda that did not become law was a bill to clean up protective order law to better protect survivors. We are pleased that this bill successfully passed this session. HB 39 accomplishes the following objectives:

- 1) clarifies the enforceability of Agreed Protective Orders that do not include statutory language and clarifies that only Respondents be required to do or refrain from doing something in such an Order;
- 2) clarifies that a Default Order can be issued with only service and notice of the application and hearing to the Respondent, and it is not required for the return of service to be on file with the clerk for 10 days, as in other civil default orders;
- 3) allows any adult, not just a parent or guardian, to file for a protective order for a child or adult ward;
- 4) prevents parents who are alleged perpetrators of violence from filing to rescind a protective order involving a child victim;
- 5) requires prosecutors, with victim consent, to file for a sexual assault protective order in cases when probation or deferred adjudication is ordered.

SASTF Legislative Recommendations

During the 86th Legislative Session, the Legislature passed into law HB 1590 (Howard) which created the Sexual Assault Survivors' Task Force, housed in the governor's office. TAASA is a steering committee member of the Task Force, along with the Children's Advocacy Centers of Texas.

After a whole year of diligent work, the Task Force produced over 150 recommendations to benefit survivors, including 11 policy recommendations to the Legislature. We are pleased to report that all 11 of those recommendations are now law.

There was some overlap between Task Force recommendations and TAASA's own legislative priorities, namely the prohibition on law enforcement declination of forensic exams and an expansion of health access.

HB 2462 (Neave/Paxton)

HB 2462 amends the Code of Criminal Procedure in an effort to make reporting more survivor-oriented. It extends the recommended time frame for getting a sexual assault forensic medical exam from 96 to 120 hours, and requires a forensic medical exam when a minor reports a sexual assault. It also removes a clause that allows law enforcement agencies to deny a request for a forensic medical exam in the first 120 hours of the assault. It further allows sexual assault examiners to directly request reimbursement from the Office of the Attorney General for the cost of the forensic portion of the examination.

HB 2462 also makes amendments to the Government Code to address identified delays in the collection, testing and tracking of sexual assault exam kits. It requires medical facilities to enter kit identifier information into Track-Kit within 48 hours of the exam, and clarifies that kits from deceased victims should be tracked. It further requires law enforcement agencies to update DPS about kits in their possession that are not sent to a lab within the statutory deadline, and requires DPS to submit information to the Legislature and Governor about any unsubmitted and unanalyzed kits, to be titled "Statewide Electronic Tracking System Report." This report is to be posted on the DPS website each year.

HB 2706 (Howard/Nelson)

This bill specifically addresses accessibility of forensic exams by broadening the definition of SAFE-ready facilities to include community-based clinics. The bill begins with an immunity clause that prohibits using evidence collected from a forensic medical examination to investigate or prosecute victims for misdemeanor crimes alleged to have been committed by them. It also allows the health care provider, sexual assault examiner, or sexual assault nurse examiner to be directly reimbursed for the cost of the forensic examination, emergency medical care and the evidence collection kit. This bill also clarifies that community-based clinics that are not affiliated with a hospital are SAFE programs that meet the legal definition of a SAFE-ready facility, allowing them access to grant funding, inclusion on the Health and Safety Code website, and appropriate reimbursement for the medical care they provide. Minimum requirements for SAFE-ready facilities are added to the Health and Safety Code, as well as a mandate that the commission update their online list of SAFE-ready facilities on a quarterly basis.



Summaries of Significant Legislation Impacting Survivors of Sexual Assault

★ Crime Victims' Rights

HB 721 (Wilson/Schwertner)

To increase crime victim safety, HB 721 requires that the Texas Department of Criminal Justice, prior to the release of an inmate in county jail who is eligible for immediate release on mandatory supervision, notify the victim, victim's guardian, or close relative that the inmate is eligible for release. The notification must advise that a victim or close relative is permitted to send a written statement to the parole board, and that the parole board may interview a victim or close relative when considering release.

SB 957 (Zaffirini/Krause)

SB957 specifically relates to payment from the crime victim's compensation program. Currently, only victims of violence who "substantially cooperate" with law enforcement are able to receive funds. This bill softens that stipulation by stating that a victim who refuses to speak to the police at a crime scene or at the hospital cannot be deemed uncooperative unless they continue to disengage.

★ Criminal Justice Systems

HB 1005 (Leman/Huffman)

This bill relates to bond requirements for individuals charged with human trafficking offenses and other offenses against children. The magistrate must require that the defendant is prohibited from communicating directly or indirectly with the victim, and from going to or near the victim's residence, place of employment, school, day-care facility, etc. These places must also be specifically described in the bond condition along with the minimum distances. It raises the age of a child for bail setting in sexual offenses, assaultive offenses, public indecency, and trafficking offenses to all persons under 18.

HB 1706 (Neave/Huffman)

Texas has several specialty courts, with the primary purpose of serving the unique needs of their population. This bill amends the Government Code to allow for the creation of specialty courts for adult sexual assault cases. Victims seen by this court have to voluntarily agree to participate in the program. In addition, judges of this court must have experience hearing sexual assault cases, and prosecuting attorneys must have experience prosecuting sexual assault cases. These courts must also create and publish procedures to ensure maximum participation of eligible victims in the county that it services.

SB 906 (Perry/Murr)

Makes several small amendments to the Code of Criminal Procedure and the Health and Safety Code regarding the registration of sex offenders and clarifies procedures for the assessment of persons that the state believes to be sexually violent.

HB 3157 (Reynolds/Miles)

This bill seeks to address the issue of improper sexual activity with someone in custody or under supervision. Similar to HB 312, the issue at hand is the ability of someone in custody or under supervision to give consent to an official or employee of a correctional facility. Violating the civil rights of a person in custody is increased from a Class A misdemeanor to a third degree felony, improper sexual activity with a person in custody or under supervision is increased from a state jail felony to a second degree felony, and improper sexual activity with a juvenile offender in custody or an individual in custody of a juvenile facility is increased from a second degree felony to a first degree felony.

SB 1164 (Campbell/Collier)

Similar to other consent related bills filed this session, SB 1164 addresses the lack of consent between individuals and private coaches, tutors, and caregivers. Lack of consent in this bill is defined as any of the aforementioned actors using their power or influence to exploit the other person's dependency on the actor.

 **Protective Orders**

HB 1372 (Guerra/Zaffirini)

This bill primarily serves to make it easier for victims of family violence and their children to separate their phone numbers from the primary number on the account, making it part of a protective order process. Typically, telephone service accounts can only be managed by the primary account holder, making it difficult for survivors of family violence to regain control over their lives if the abuser is the account holder. It also ensures that the petitioner can gain all billing responsibilities and rights to the number.

HB 3607 (Leach/Johnson, Jarvis)

While largely this bill serves to make conforming updates and corrections to enacted codes, a few of these amendments do impact sexual assault survivors. It adds indecent assault to the protective order statute, and provides that an attorney representing the state must file an application for a protective order for a victim of sexual assault, abuse, indecent assault, stalking, or trafficking who is a minor. Also under the protective order statute is an addition which states that a court must issue a lifelong protective order for the victim if the offender is convicted of continuous sexual abuse of a minor, indecency with a child, sexual assault, aggravated sexual assault, stalking, human trafficking, continuous trafficking, compelling prostitution, and is also required to register for life as a sex offender.

 **Sexual Harassment**

HB 21 (Neave/Zaffirini)

This bill will make it easier for individuals to file complaints of sexual harassment in the workplace with the Texas Workforce Commission. HB 21 extends the 180 day timeline (beginning at the date of the alleged misconduct) to 300 days.

SB 45 (Zaffirini/Zwiener)

Another workplace sexual harassment bill, SB 45 seeks to fix the issue in previous law regarding the protections only given to those who work for employers with 15 or more employees. This bill establishes that sexual harassment by any employer is unlawful, ensuring that Texans working in small businesses are also protected from workplace harassment.

SB 282 (Alvarado/Meyer)

SB 282 prohibits the use of appropriated funds or public money to settle sexual harassment claims against an elected or appointed member of the executive, legislative, or judicial branch of state government. This ensures that taxpayers are not indirectly paying for their elected officials' lawsuits, and makes a point that sexual harassment and inappropriate behavior from elected officials will not be tolerated.

SB 530 (Huffman/Cole)

In an effort to bring the Texas Penal Code up to date, SB 530 addresses the prosecution and punishment of online harassment. It specifies that harassment that causes distress, abuse, or torment to another person, delivered either directly or indirectly, is a criminal offense. This does not apply to communication in connection with a matter of public concern, so as to prevent an impact on political speech.

★ Family Law & Family Violence

HB 918 (Leman/Hughes)

This bill permits Texans who are over 18 but under 21 and subject to an active protective order or magistrate's order for emergency protection to get a license to carry a handgun, provided that they meet all other licensing requirements.

HB 2301 (Parker/Paxton)

Allows survivors who are participating in address confidentiality program to seek name changes without having to provide their address on the application.

HB 766 (Harless/Kolkhorst)

This bill requires that conditions imposed on a defendant's bond in violent offenses, including cases of family violence, sexual assault, and human trafficking, be entered into the Texas Crime Information Center within a day of the issue date. This includes the name and address of any person that the condition of bond is intended to protect. This ensures that law enforcement and crime victims are aware of the bond conditions when the defendant is released. It also requires that any victims or protected persons be notified by the sheriff of the county when an applicable defendant has been released.

HB 2924 (Dutton/Hughes)

HB 2924 removes language that allows courts to terminate a parent's parental rights solely because they were previously and involuntarily terminated for their conduct with another child.

HB 2926 (Parker/Buckingham)

Creates a process for reinstatement of parental rights at least 2 years after a termination order is signed, if the child has not yet been adopted. The petition to reinstate parental rights can be filed by: (1) the parent whose rights were involuntarily terminated, (2) the Department of Family and Protective Services, (3) the attorney ad litem for the child, or (4) a community-based care contractor.

SB 798 (Nelson/Neave)

One significant barrier to independence for those who experienced family or dating violence is access to identifying documents. This bill seeks to ensure that those affected by this are able to obtain their birth certificate and state-issued ID at no cost. This also pertains to children and youth in the foster system and children and youth who are homeless.

★ Human Trafficking

HB 390 (Thompson/Huffman)

Each employee who is directly employed by a commercial lodging establishment is required to complete an annual human trafficking awareness and prevention training course, and the operator of the establishment is to maintain documentation of completion of such trainings. The signage must include a statement of protection for employees who make a good faith report of suspected human trafficking, information on recognizing and reporting human trafficking, and phone numbers for reporting.

HB 1540 (Thompson/Huffman)

Incorporates policy recommendations from the Texas Human Trafficking Prevention Task Force, and commonly referred to as the "Task Force Bill." This omnibus bill :

1. enhances the penalty for human trafficking to a first degree felony when the offender recruits, entices or obtains the victim from a trafficking residential treatment center;
2. requires the denial of an application to the Alcoholic Beverage Commission for a permit or license if allegations of drink solicitation occurred at that business within a certain period of time;
3. removes barriers to hold property owners of leased property civilly accountable for their failure to abate prostitution occurring on the property;
4. expands liability for civil racketeering related to trafficking;
5. enhances standards for licensed child care facilities and registered family homes promulgated by HHSC;
6. expands criminal liability for criminal trespass to include wrongful entry of or failure to leave residential treatment centers, and imposes legal duty on centers to post "No Trespassing" notices on their grounds; and
7. expands the definition of coercion to apply to labor trafficking.

HB 2633 (Johnson/Huffman)

Establishes a grant program to provide and support dedicated housing and treatment facilities for human trafficking victims, administered by the Health and Human Services Commission, and funded by fees for specialty license plates, voluntary contributions through vehicle registration or driver's license applications, and interest, dividends and other income. Requires HHSC to conduct a study to determine needs

and best practices for housing of trafficking survivors, and submit a written report to the Legislature by December 1, 2022.

HB 3521 (Hunter/Huffman)

This bill more clearly defines instances of coercion as it applies to human trafficking. The first aspect of this definition includes destroying/concealing/withholding, or threatening to destroy/conceal/withhold government records or identifying information from a human trafficking victim. The second and third parts of the definition both pertain to alcohol/other controlled substances. Coercion is also defined as forcing a trafficked individual to become intoxicated without their consent so that they are unable to recognize or refuse to perform labor or services. The final part of the definition states that withholding alcohol or controlled substances from a trafficked individual with a chemical dependency on them to a degree that they are unable to recognize or refuse to perform labor or services.

SB 195 (Zaffirini/Thompson)

While already a criminal act, drink solicitation was not automatic grounds for refusal of an alcoholic beverage license. If a business is found soliciting in this manner within the last 3 years, it will be an automatic denial of an alcoholic beverage license or permit. In addition, if a license or permit has been cancelled during the preceding year for certain acts, including drink solicitation, future applications for licenses/permits will be denied by the Texas Alcoholic Beverage Commission for a year.

SB 315 (Huffman/Hunter)

This bill tightens down on the age restrictions of individuals working at or going to sexually oriented businesses. SB 315 explicitly states that any person younger than 18 cannot be on the premises of a sexually oriented business under any circumstance, and an individual under 21 cannot be employed or contracted by a sexually oriented business. This can result in the loss of the businesses license if it is the third such offense.

SB 576 (Hinojosa/Lozano)

Revises the definition of smuggling of persons to include assisting, guiding, or directing 2 or more individuals to enter or remain on agricultural land without the effective consent of the owner. It also raises such an offense to a second degree felony if the offense was committed with the intent to be paid or if anyone involved knowingly possessed a firearm.

SB 1831 (Taylor/Thompson)

In this bill, schools are considered “no trafficking zones,” including the campus and school events within 1,000 feet of school grounds. It increases penalties for offenses occurring here, including offenders contacting, arranging meetings, or picking up students from the zone, to a first degree felony. The punishment for online solicitation of a minor is also increased if it is shown that the actor committed the offense during regular school hours and had reasonable knowledge that the minor was in school at the time of the offense. It enhances the penalty for solicitation of prostitution within the no trafficking zone. It increases signage requirements for certain businesses, creates a civil penalty for a lack of signage, and incorporates learning about trafficking into driver’s ed curriculum.

Child Welfare

HB 246

This bill attempts to more clearly define an improper teacher-student relationship. It defines sexual contact as a specific set of acts intended to arouse or sexually gratify any person. This bill also stipulates that a school or individual operating a school cannot release the name of an accused employee to the public unless an employee has been indicted for the offense.

HB 375 (Smith/Zaffirini)

Extends existing criminal penalties for continuous sexual abuse of a young child to the crime of continuous sexual abuse of a disabled individual.

HB 567: (Frank/Hughes)

This bill amends processes related to the Child Protective Services System. It redefines neglect as an act or failure to act that results in harm to the child or creates an immediate danger, and excludes from the definition allowing a child to engage in independent activities that are appropriate and typical given the child’s maturity, physical condition, developmental abilities, or culture. It also requires courts, at the end of each permanency hearing, to order the Department of Family and Protective Services return the child to their parent or parents unless there is a continuing danger to the physical health or safety of the child.

★ Higher Education

SB 1371 (Huffman/Murphy)

The past several years have highlighted significant issues related to sexual assault and higher education. In 2019, SB212 was passed, requiring reporting incidents of sexual harassment, sexual assault, dating violence, and stalking in certain higher education institutions. However it created a conflict in reporting requirements. SB1371 serves to clean this up, specifying that reports of the listed incidents include all information concerning the incident that is known to the individual making the report. Additionally, the bill specifically requires that a campus peace officer, when receiving a report from a victim who wishes to use a pseudonym form, report only the type of incident and not include any directly or indirectly identifying information about the victim.

★ Additional Legislation

HB 1434 (Oliverson/Zaffirini)

HB 1434 ensures informed consent in medical settings, specifically regarding pelvic exams. There have been cases where medical students specifically were instructed to perform pelvic exams on unconscious individuals for educational purposes. This bill provides that patients or their legal guardian must give their informed consent for these exams. It also gives stipulations on the examination itself: a pelvic examination has to be within the standard scope of what is already scheduled to be performed on the patient, consented to by the patient or patient's guardian, necessary for the diagnosis or treatment, or necessary for collecting evidence. It provides consequences for health care providers who fail to get consent, including both administrative disciplinary action and potentially losing their license for either performing or delegating another to perform a pelvic examination on an unconscious or anesthetized patient.

SB 623 (Blanco/Minjarez)

Establishes a state sexual offense prevention and response program with a designated state sexual offense response coordinator to accept reports of sexual assault and indecent assault within the Texas Military, and to provide victim advocacy services. The coordinator is under an independent chain of command and accepts reports for sexual offenses made by a member of the Texas military against another member. Survivors who report may file a restricted (confidential) or unrestricted report. Restricted reports allow for medical treatment, and emergency care and counseling, but no investigation. Unrestricted reports trigger a mandatory referral to the Texas Rangers and an option to involve local law enforcement for investigation. In addition to accepting reports, the coordinator is responsible for notifying victims about crime victim's compensation eligibility, and may file for a Protective Order for victims. The bill also mandates legislative oversight, and the collection of aggregated statistical data showing the number and types of offenses investigated and the status of investigations, prosecutions, and administrative actions taken against service members.