

BILL ANALYSIS

Senate Research Center
82R15871 GCB-D

H.B. 1994
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the National Opinion Research Center's 2008 report entitled *Finding Victims of Human Trafficking*, traffickers in one mid-size United States county can generate in excess of \$12 million annually from sex trafficking in any given city. Estimates from the United States Department of Justice Report, *The Commercial Sexual Exploitation of Children in the United States, Canada, and Mexico*, indicate that 244,000 American children and youth are at risk of child sexual exploitation, including commercial sexual exploitation, each year.

Despite the illegality of commercial sexual exploitation of adults and children, the demand for it continues to feed the need to maintain an increasing supply. In an effort to reduce demand for commercial sex and human trafficking, programs have arisen across the country to educate those arrested for solicitation about the negative consequences of prostitution. There are also at least 20 programs operating outside the United States. A 2008 report by Abt Associates Inc., discovered that in locations where such programs exist, recidivism drops dramatically. The report attributes this drop to the belief that most view prostitution as a victimless crime, and find participants amenable to change when learning otherwise.

H.B. 1994 allows for the creation of First Offender Prostitution Prevention Programs; sets guidelines for the program; and establishes a fee structure paid by the participants. The fees will help cover the costs of the program; provide funding for additional local training on domestic violence, prostitution, and the trafficking of persons; and provide funding for the grant assistance program for domestic victims of trafficking.

H.B. 1994 amends current law relating to the creation of a first offender prostitution prevention program.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 169, as follows:

CHAPTER 169.001. FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM

Sec. 169.001. FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) Defines, in this chapter, "first offender prostitution prevention program."

(b) Requires the court, if a defendant successfully completes a first offender prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time period has elapsed,

and whether issuance of the order is in the best interest of justice, to enter an order of nondisclosure under Section 411.081 (Application of Subchapter), Government Code, as if the defendant had received a discharge and dismissal under Section 5(c) (relating to the conditions under which the proceedings may be dismissed after the expiration of a community supervision period), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense which the defendant entered the program if the defendant:

- (1) has not previously been convicted of a felony offense; and
- (2) is not convicted of any other felony offense before the second anniversary of the defendant's successful completion of the program.

Sec. 169.002. **AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY.** (a) Authorizes the commissioners court of a county or governing body of a municipality to establish a first offender prostitution prevention program for defendants charged with an offense under Section 43.02(a)(2) (providing that a person commits an offense if he knowingly solicits another in a public place to engage with him in sexual conduct for hire), Penal Code, in which the defendant offered or agreed to hire a person to engage in sexual conduct.

(b) Provides that a defendant is eligible to participate in a first offender prostitution prevention program established under this chapter only if:

(1) the attorney representing the state consents to the defendant's participation in the program; and

(2) the court in which the criminal case is pending finds that the defendant has not been previously convicted of:

(A) an offense under Section 20A.02 (Trafficking of Persons), 43.02 (Prostitution), 43.03 (Promotion of Prostitution), 43.04 (Aggravated Promotion of Prostitution), or 43.05 (Compelling Prostitution), Penal Code;

(B) an offense listed in Section 3g(a)(1) (providing that the provisions of Section 3 of Article 42.12 do not apply to a defendant adjudged guilty of an offense under certain sections), Article 42.12, Code of Criminal Procedure; or

(C) an offense punishable as a felony under Chapter 481 (Texas Controlled Substances Act).

(c) Provides that for purposes of Subsection (b), a defendant has been previously convicted of an offense listed in that subsection if:

(1) the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; or

(2) the defendant was convicted under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in Subsection (b).

(d) Provides that a defendant is not eligible to participate in the first offender prostitution prevention program if the defendant offered or agreed to hire a person to engage in sexual conduct and the person was younger than 18 years of age at the time of the offense.

(e) Requires the court in which the criminal case is pending to allow an eligible defendant to choose whether to participate in the first offender prostitution prevention program or otherwise proceed through the criminal justice system.

(f) Requires the court in which the defendant's criminal case is pending, if a defendant who chooses to participate in the first offender prostitution prevention program fails to attend any portion of the program, to issue a warrant for the defendant's arrest and proceed on the criminal case as if the defendant had chosen not to participate in the program.

Sec. 169.003. PROGRAM POWERS AND DUTIES. (a) Requires that a first offender prostitution prevention program established under this chapter:

(1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide each participant with information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and

(4) provide each participant with classroom instruction related to the prevention of prostitution.

(b) Authorizes a program established under this chapter, to provide each program participant with information, counseling, and services described by Subsection (a)(3), to employ a person or solicit a volunteer who is:

(1) a health care professional;

(2) a psychologist;

(3) a licensed counselor;

(4) a former prostitute;

(5) a family member of a person arrested for soliciting prostitution;

(6) a member of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons;
or

(7) an employee of a nongovernmental organization specializing in advocacy or laws related to sex trafficking or human trafficking or in providing services to victims of those offenses.

(c) Requires that a program established under this chapter establish and publish local procedures to promote maximum participation of eligible defendants in programs established in the county or municipality in which the defendants reside.

Sec. 169.004. OVERSIGHT. (a) Authorizes the lieutenant governor and the speaker of the house of representatives to assign to appropriate legislative committees duties relating to the oversight of first offender prostitution prevention program established under this chapter.

(b) Authorizes a legislative committee or the governor to request the state auditor to perform a management, operations, or financial or accounting audit of a first offender prostitution prevention program established under this chapter.

(c) Requires a first offender prostitution prevention program established under this chapter to notify the criminal justice division of the governor's office before or on implementation of the program, and provide information regarding the performance of the program to the division on request.

Sec. 169.005. FEES. (a) Authorizes a first offender prostitution prevention program established under this chapter to collect from a participant in the program a nonrefundable program fee in a reasonable amount not to exceed \$1,000, from which the following must be paid:

(1) a counseling and services fee in an amount necessary to cover the costs of the counseling and services provided by the program;

(2) a victim services fee in an amount equal to 10 percent of the amount paid under Subdivision (1), to be deposited to the credit of the general revenue fund to be appropriated only to cover costs associated with the grant program described by Section 531.383 (Grant Program), Government Code; and

(3) a law enforcement training fee, in an amount equal to five percent of the total amount paid under Subdivision (1), to be deposited to the credit of the treasury of the county or municipality that established the program to cover costs associated with the provision of training to law enforcement personnel on domestic violence, prostitution, and the trafficking of persons.

(b) Authorizes fees collected under this section to be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the first offender prostitution prevention program. Requires that the fees be based on the participant's ability to pay.

Sec. 169.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT. (a) Authorizes the judge or magistrate administering the program, to encourage participation in a first offender prostitution prevention program established under this chapter, to suspend any requirement that, as a condition of community supervision, a participant in the program work a specified number of hours at a community service project.

(b) Authorizes a judge or magistrate, on a participant's successful completion of a first offender prostitution prevention program to excuse the participant from any condition of community supervision previously suspended under Subsection (a).

SECTION 2. Amends Subchapter B, Chapter 103, Government Code, by adding Section 103.0291, as follows:

Sec. 103.0291. ADDITIONAL MISCELLANEOUS FEES AND COSTS: HEALTH AND SAFETY CODE. Requires that a nonrefundable program fee for a first offender prostitution prevention program established under Section 169.002, Health and Safety Code, be collected under Section 169.005, Health and Safety Code, in a reasonable amount not to exceed \$1,000 which includes:

(1) a counseling and services fee in an amount necessary to cover the costs of counseling and services provided by the program;

(2) a victim services fee in an amount equal to 10 percent of the total fee; and

(3) a law enforcement training fee in an amount equal to five percent of the total fee.

SECTION 3. Effective date: upon passage or September 1, 2011.