

BILL ANALYSIS

C.S.H.B. 1994
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to a recent report relating to victims of human trafficking, traffickers in one average-sized U.S. county can generate profits in excess of \$10 million annually from sex trafficking in any given city. Estimates from another federal agency report relating to the commercial sexual exploitation of children in North American countries indicate that over 200,000 American children and youth are at risk of sexual exploitation, including commercial sexual exploitation, each year.

In an effort to reduce commercial sexual exploitation of children and adults, programs are being implemented across the country to educate those arrested for certain prostitution and solicitation-related offenses about the negative consequences of prostitution. It has been reported that recidivism drops dramatically in locations where such programs exist, partly because some program participants view prostitution as a victimless crime and become amenable to change when learning otherwise.

C.S.H.B. 1994 addresses this issue by authorizing the creation of first offender prostitution prevention programs at the local level for eligible first-time prostitution and trafficking offenders.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1994 amends the Health and Safety Code to authorize the commissioners court of a county or governing body of a municipality to establish a first offender prostitution prevention program for defendants charged with a prostitution offense in which the defendant offered or agreed to hire a person to engage in sexual conduct. The bill defines "first offender prostitution prevention program" as a program with certain essential characteristics and sets out the powers and duties of a first offender prostitution prevention program.

C.S.H.B. 1994 makes a defendant eligible to participate in a first offender prostitution prevention program only if the attorney representing the state consents to the defendant's participation in the program and the court in which the criminal case is pending finds that the defendant has not been previously convicted of an offense of trafficking of persons, prostitution, promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution; an offense a guilty judgment for which renders a person ineligible for judge-ordered community supervision; or an offense punishable as a felony under the Texas Controlled Substances Act. The bill specifies that for eligibility purposes, a defendant is considered to have been previously convicted of such an offense if 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 if 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 described in the bill's eligibility provisions.

C.S.H.B. 1994 makes a defendant ineligible to participate in the 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. The bill requires the court in which the criminal case is pending to allow an eligible defendant to choose whether to participate in the program or otherwise proceed through the criminal justice system and 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 if a defendant who chooses to participate in the program fails to attend any portion of the program.

C.S.H.B. 1994 requires a court, if a defendant successfully completes a first offender prostitution prevention program, to enter an order of nondisclosure of criminal history record information as if the defendant had received a discharge and dismissal under provisions of law relating to community supervision with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program if the defendant has not been previously convicted of a felony offense and is not convicted of any other felony offense before the second anniversary of the defendant's successful completion of the program. The bill requires the court to enter such an order of nondisclosure after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition for an order of nondisclosure, including whether the required time period has elapsed, and whether issuance of the order is in the best interest of justice. The bill requires the court to enter such an order of nondisclosure 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.

C.S.H.B. 1994 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 programs and authorizes a legislative committee or the governor to request the state auditor to perform a management, operations, or financial or accounting audit of a program. The bill requires a program 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.

C.S.H.B. 1994 authorizes a program 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: a counseling and services fee in an amount necessary to cover the costs of the counseling and services provided by the program; a victim services fee in an amount equal to 10 percent of the counseling and services fee, to be deposited to the credit of the general revenue fund to be appropriated only to cover costs associated with the grant program in provisions of law related to the assistance program for domestic victims of trafficking; and a law enforcement training fee, in an amount equal to five percent of the counseling and services fee, 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.

C.S.H.B. 1994 authorizes fees collected from program participants 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 program and requires the fees to be based on the participant's ability to pay.

C.S.H.B. 1994 authorizes the judge or magistrate administering the program, for purposes of encouraging participation in the program, 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. The bill authorizes a judge or magistrate to excuse a participant in the program from any previously suspended condition of community supervision on the participant's successful completion of the program.

C.S.H.B. 1994 amends the Government Code to make conforming changes relating to the program fees established under the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1994 differs from the original, in the provision relating to program powers and duties that authorizes a first offender prostitution prevention program to employ or solicit as volunteers certain persons, by including a licensed social worker among those persons, whereas the original does not include a social worker among those persons.