

By: Weber, et al.

H.B. No. 1994

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a first offender prostitution prevention program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 169 to read as follows:

CHAPTER 169. FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM

Sec. 169.001. FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "first offender prostitution prevention program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse;

(5) a coordinated strategy to govern program responses

1 to participant compliance;

2 (6) monitoring and evaluation of program goals and
3 effectiveness;

4 (7) continuing interdisciplinary education to promote
5 effective program planning, implementation, and operations; and

6 (8) development of partnerships with public agencies
7 and community organizations.

8 (b) If a defendant successfully completes a first offender
9 prostitution prevention program, regardless of whether the
10 defendant was convicted of the offense for which the defendant
11 entered the program or whether the court deferred further
12 proceedings without entering an adjudication of guilt, after notice
13 to the state and a hearing on whether the defendant is otherwise
14 entitled to the petition, including whether the required time
15 period has elapsed, and whether issuance of the order is in the best
16 interest of justice, the court shall enter an order of
17 nondisclosure under Section 411.081, Government Code, as if the
18 defendant had received a discharge and dismissal under Section
19 5(c), Article 42.12, Code of Criminal Procedure, with respect to
20 all records and files related to the defendant's arrest for the
21 offense for which the defendant entered the program if the
22 defendant:

23 (1) has not been previously convicted of a felony
24 offense; and

25 (2) is not convicted of any other felony offense
26 before the second anniversary of the defendant's successful
27 completion of the program.

1 Sec. 169.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY.

2 (a) The commissioners court of a county or governing body of a
3 municipality may establish a first offender prostitution
4 prevention program for defendants charged with an offense under
5 Section 43.02(a)(2), Penal Code, in which the defendant offered or
6 agreed to hire a person to engage in sexual conduct.

7 (b) A defendant is eligible to participate in a first
8 offender prostitution prevention program established under this
9 chapter only if:

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

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

14 (A) an offense under Section 20A.02, 43.02,
15 43.03, 43.04, or 43.05, Penal Code;

16 (B) an offense listed in Section 3g(a)(1),
17 Article 42.12, Code of Criminal Procedure; or

18 (C) an offense punishable as a felony under
19 Chapter 481.

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

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

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

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

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

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

19 Sec. 169.003. PROGRAM POWERS AND DUTIES. (a) A first
20 offender prostitution prevention program established under this
21 chapter must:

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

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

27 (3) provide each participant with information,

1 counseling, and services relating to sex addiction, sexually
2 transmitted diseases, mental health, and substance abuse; and

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

5 (b) To provide each program participant with information,
6 counseling, and services described by Subsection (a)(3), a program
7 established under this chapter may employ a person or solicit a
8 volunteer who is:

9 (1) a health care professional;

10 (2) a psychologist;

11 (3) a licensed social worker or counselor;

12 (4) a former prostitute;

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

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

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

22 (c) A program established under this chapter shall
23 establish and publish local procedures to promote maximum
24 participation of eligible defendants in programs established in the
25 county or municipality in which the defendants reside.

26 Sec. 169.004. OVERSIGHT. (a) The lieutenant governor and
27 the speaker of the house of representatives may assign to

1 appropriate legislative committees duties relating to the
2 oversight of first offender prostitution prevention programs
3 established under this chapter.

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

8 (c) A first offender prostitution prevention program
9 established under this chapter shall:

10 (1) notify the criminal justice division of the
11 governor's office before or on implementation of the program; and

12 (2) provide information regarding the performance of
13 the program to the division on request.

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

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

22 (2) a victim services fee in an amount equal to 10
23 percent of the amount paid under Subdivision (1), to be deposited to
24 the credit of the general revenue fund to be appropriated only to
25 cover costs associated with the grant program described by Section
26 531.383, Government Code; and

27 (3) a law enforcement training fee, in an amount equal

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

6 (b) Fees collected under this section may be paid on a
7 periodic basis or on a deferred payment schedule at the discretion
8 of the judge, magistrate, or program director administering the
9 first offender prostitution prevention program. The fees must
10 be based on the participant's ability to pay.

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

18 (b) On a participant's successful completion of a first
19 offender prostitution prevention program, a judge or magistrate may
20 excuse the participant from any condition of community supervision
21 previously suspended under Subsection (a).

22 SECTION 2. Subchapter B, Chapter 103, Government Code, is
23 amended by adding Section 103.0291 to read as follows:

24 Sec. 103.0291. ADDITIONAL MISCELLANEOUS FEES AND COSTS:
25 HEALTH AND SAFETY CODE. A nonrefundable program fee for a first
26 offender prostitution prevention program established under Section
27 169.002, Health and Safety Code, shall be collected under Section

1 169.005, Health and Safety Code, in a reasonable amount not to
2 exceed \$1,000, which includes:

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

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

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

10 SECTION 3. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2011.