

1-1 By: Weber, et al. (Senate Sponsor - Van de Putte) H.B. No. 1994  
1-2 (In the Senate - Received from the House May 13, 2011;  
1-3 May 13, 2011, read first time and referred to Committee on Criminal  
1-4 Justice; May 21, 2011, reported favorably by the following vote:  
1-5 Yeas 6, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the creation of a first offender prostitution  
1-9 prevention program.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subtitle H, Title 2, Health and Safety Code, is  
1-12 amended by adding Chapter 169 to read as follows:

1-13 CHAPTER 169. FIRST OFFENDER PROSTITUTION PREVENTION PROGRAM

1-14 Sec. 169.001. FIRST OFFENDER PROSTITUTION PREVENTION  
1-15 PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter,  
1-16 "first offender prostitution prevention program" means a program  
1-17 that has the following essential characteristics:

1-18 (1) the integration of services in the processing of  
1-19 cases in the judicial system;

1-20 (2) the use of a nonadversarial approach involving  
1-21 prosecutors and defense attorneys to promote public safety, to  
1-22 reduce the demand for the commercial sex trade and trafficking of  
1-23 persons by educating offenders, and to protect the due process  
1-24 rights of program participants;

1-25 (3) early identification and prompt placement of  
1-26 eligible participants in the program;

1-27 (4) access to information, counseling, and services  
1-28 relating to sex addiction, sexually transmitted diseases, mental  
1-29 health, and substance abuse;

1-30 (5) a coordinated strategy to govern program responses  
1-31 to participant compliance;

1-32 (6) monitoring and evaluation of program goals and  
1-33 effectiveness;

1-34 (7) continuing interdisciplinary education to promote  
1-35 effective program planning, implementation, and operations; and

1-36 (8) development of partnerships with public agencies  
1-37 and community organizations.

1-38 (b) If a defendant successfully completes a first offender  
1-39 prostitution prevention program, regardless of whether the  
1-40 defendant was convicted of the offense for which the defendant  
1-41 entered the program or whether the court deferred further  
1-42 proceedings without entering an adjudication of guilt, after notice  
1-43 to the state and a hearing on whether the defendant is otherwise  
1-44 entitled to the petition, including whether the required time  
1-45 period has elapsed, and whether issuance of the order is in the best  
1-46 interest of justice, the court shall enter an order of  
1-47 nondisclosure under Section 411.081, Government Code, as if the  
1-48 defendant had received a discharge and dismissal under Section  
1-49 5(c), Article 42.12, Code of Criminal Procedure, with respect to  
1-50 all records and files related to the defendant's arrest for the  
1-51 offense for which the defendant entered the program if the  
1-52 defendant:

1-53 (1) has not been previously convicted of a felony  
1-54 offense; and

1-55 (2) is not convicted of any other felony offense  
1-56 before the second anniversary of the defendant's successful  
1-57 completion of the program.

1-58 Sec. 169.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY.

1-59 (a) The commissioners court of a county or governing body of a  
1-60 municipality may establish a first offender prostitution  
1-61 prevention program for defendants charged with an offense under  
1-62 Section 43.02(a)(2), Penal Code, in which the defendant offered or  
1-63 agreed to hire a person to engage in sexual conduct.

1-64 (b) A defendant is eligible to participate in a first

2-1 offender prostitution prevention program established under this  
 2-2 chapter only if:  
 2-3 (1) the attorney representing the state consents to  
 2-4 the defendant's participation in the program; and  
 2-5 (2) the court in which the criminal case is pending  
 2-6 finds that the defendant has not been previously convicted of:  
 2-7 (A) an offense under Section 20A.02, 43.02,  
 2-8 43.03, 43.04, or 43.05, Penal Code;  
 2-9 (B) an offense listed in Section 3g(a)(1),  
 2-10 Article 42.12, Code of Criminal Procedure; or  
 2-11 (C) an offense punishable as a felony under  
 2-12 Chapter 481.  
 2-13 (c) For purposes of Subsection (b), a defendant has been  
 2-14 previously convicted of an offense listed in that subsection if:  
 2-15 (1) the defendant was adjudged guilty of the offense  
 2-16 or entered a plea of guilty or nolo contendere in return for a grant  
 2-17 of deferred adjudication, regardless of whether the sentence for  
 2-18 the offense was ever imposed or whether the sentence was probated  
 2-19 and the defendant was subsequently discharged from community  
 2-20 supervision; or  
 2-21 (2) the defendant was convicted under the laws of  
 2-22 another state for an offense containing elements that are  
 2-23 substantially similar to the elements of an offense listed in  
 2-24 Subsection (b).  
 2-25 (d) A defendant is not eligible to participate in the first  
 2-26 offender prostitution prevention program if the defendant offered  
 2-27 or agreed to hire a person to engage in sexual conduct and the  
 2-28 person was younger than 18 years of age at the time of the offense.  
 2-29 (e) The court in which the criminal case is pending shall  
 2-30 allow an eligible defendant to choose whether to participate in the  
 2-31 first offender prostitution prevention program or otherwise  
 2-32 proceed through the criminal justice system.  
 2-33 (f) If a defendant who chooses to participate in the first  
 2-34 offender prostitution prevention program fails to attend any  
 2-35 portion of the program, the court in which the defendant's criminal  
 2-36 case is pending shall issue a warrant for the defendant's arrest and  
 2-37 proceed on the criminal case as if the defendant had chosen not to  
 2-38 participate in the program.  
 2-39 Sec. 169.003. PROGRAM POWERS AND DUTIES. (a) A first  
 2-40 offender prostitution prevention program established under this  
 2-41 chapter must:  
 2-42 (1) ensure that a person eligible for the program is  
 2-43 provided legal counsel before volunteering to proceed through the  
 2-44 program and while participating in the program;  
 2-45 (2) allow any participant to withdraw from the program  
 2-46 at any time before a trial on the merits has been initiated;  
 2-47 (3) provide each participant with information,  
 2-48 counseling, and services relating to sex addiction, sexually  
 2-49 transmitted diseases, mental health, and substance abuse; and  
 2-50 (4) provide each participant with classroom  
 2-51 instruction related to the prevention of prostitution.  
 2-52 (b) To provide each program participant with information,  
 2-53 counseling, and services described by Subsection (a)(3), a program  
 2-54 established under this chapter may employ a person or solicit a  
 2-55 volunteer who is:  
 2-56 (1) a health care professional;  
 2-57 (2) a psychologist;  
 2-58 (3) a licensed social worker or counselor;  
 2-59 (4) a former prostitute;  
 2-60 (5) a family member of a person arrested for  
 2-61 soliciting prostitution;  
 2-62 (6) a member of a neighborhood association or  
 2-63 community that is adversely affected by the commercial sex trade or  
 2-64 trafficking of persons; or  
 2-65 (7) an employee of a nongovernmental organization  
 2-66 specializing in advocacy or laws related to sex trafficking or  
 2-67 human trafficking or in providing services to victims of those  
 2-68 offenses.  
 2-69 (c) A program established under this chapter shall

3-1 establish and publish local procedures to promote maximum  
 3-2 participation of eligible defendants in programs established in the  
 3-3 county or municipality in which the defendants reside.

3-4 Sec. 169.004. OVERSIGHT. (a) The lieutenant governor and  
 3-5 the speaker of the house of representatives may assign to  
 3-6 appropriate legislative committees duties relating to the  
 3-7 oversight of first offender prostitution prevention programs  
 3-8 established under this chapter.

3-9 (b) A legislative committee or the governor may request the  
 3-10 state auditor to perform a management, operations, or financial or  
 3-11 accounting audit of a first offender prostitution prevention  
 3-12 program established under this chapter.

3-13 (c) A first offender prostitution prevention program  
 3-14 established under this chapter shall:

3-15 (1) notify the criminal justice division of the  
 3-16 governor's office before or on implementation of the program; and

3-17 (2) provide information regarding the performance of  
 3-18 the program to the division on request.

3-19 Sec. 169.005. FEES. (a) A first offender prostitution  
 3-20 prevention program established under this chapter may collect from  
 3-21 a participant in the program a nonrefundable program fee in a  
 3-22 reasonable amount not to exceed \$1,000, from which the following  
 3-23 must be paid:

3-24 (1) a counseling and services fee in an amount  
 3-25 necessary to cover the costs of the counseling and services  
 3-26 provided by the program;

3-27 (2) a victim services fee in an amount equal to 10  
 3-28 percent of the amount paid under Subdivision (1), to be deposited to  
 3-29 the credit of the general revenue fund to be appropriated only to  
 3-30 cover costs associated with the grant program described by Section  
 3-31 531.383, Government Code; and

3-32 (3) a law enforcement training fee, in an amount equal  
 3-33 to five percent of the total amount paid under Subdivision (1), to  
 3-34 be deposited to the credit of the treasury of the county or  
 3-35 municipality that established the program to cover costs associated  
 3-36 with the provision of training to law enforcement personnel on  
 3-37 domestic violence, prostitution, and the trafficking of persons.

3-38 (b) Fees collected under this section may be paid on a  
 3-39 periodic basis or on a deferred payment schedule at the discretion  
 3-40 of the judge, magistrate, or program director administering the  
 3-41 first offender prostitution prevention program. The fees must  
 3-42 be based on the participant's ability to pay.

3-43 Sec. 169.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE  
 3-44 REQUIREMENT. (a) To encourage participation in a first offender  
 3-45 prostitution prevention program established under this chapter,  
 3-46 the judge or magistrate administering the program may suspend any  
 3-47 requirement that, as a condition of community supervision, a  
 3-48 participant in the program work a specified number of hours at a  
 3-49 community service project.

3-50 (b) On a participant's successful completion of a first  
 3-51 offender prostitution prevention program, a judge or magistrate may  
 3-52 excuse the participant from any condition of community supervision  
 3-53 previously suspended under Subsection (a).

3-54 SECTION 2. Subchapter B, Chapter 103, Government Code, is  
 3-55 amended by adding Section 103.0291 to read as follows:

3-56 Sec. 103.0291. ADDITIONAL MISCELLANEOUS FEES AND COSTS:  
 3-57 HEALTH AND SAFETY CODE. A nonrefundable program fee for a first  
 3-58 offender prostitution prevention program established under Section  
 3-59 169.002, Health and Safety Code, shall be collected under Section  
 3-60 169.005, Health and Safety Code, in a reasonable amount not to  
 3-61 exceed \$1,000, which includes:

3-62 (1) a counseling and services fee in an amount  
 3-63 necessary to cover the costs of counseling and services provided by  
 3-64 the program;

3-65 (2) a victim services fee in an amount equal to 10  
 3-66 percent of the total fee; and

3-67 (3) a law enforcement training fee in an amount equal  
 3-68 to five percent of the total fee.

3-69 SECTION 3. This Act takes effect immediately if it receives

4-1 a vote of two-thirds of all the members elected to each house, as  
4-2 provided by Section 39, Article III, Texas Constitution. If this  
4-3 Act does not receive the vote necessary for immediate effect, this  
4-4 Act takes effect September 1, 2011.

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