

## **BILL ANALYSIS**

C.S.S.B. 484  
By: Whitmire  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties have expressed concerns about the significant number of offenders charged with prostitution under control of the Texas Department of Criminal Justice and the high annual costs associated with housing such offenders in state jails and prisons. The high recidivism rate among inmates in this population, who often have long histories of abuse, neglect, and addiction, indicates that incarceration has not provided convicted prostitutes with the rehabilitation needed to break the cycle. Critics assert that rehabilitation programs specifically designed for prostitutes have been identified as a viable, cost-effective alternative to incarceration, at a much lower cost to taxpayers. To more directly address the needs of this specific population, C.S.S.B. 484 authorizes the establishment of prostitution prevention programs to provide certain prostitution offenders access to information, counseling, and services regarding sex addiction, sexually transmitted diseases, mental health, and substance abuse.

### **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.S.B. 484 amends the Health and Safety Code to require a court, if a defendant successfully completes a prostitution prevention program as defined by the bill, 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, and after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, to enter an order of nondisclosure with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program as if the defendant had received a discharge and dismissal on expiration of a deferred adjudication community supervision period or a discharge and dismissal based on the best interest of the state and the defendant.

C.S.S.B. 484 authorizes the commissioners court of a county or governing body of a municipality to establish a prostitution prevention program for defendants charged with an offense of prostitution in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee and makes a defendant eligible to participate in such a program only if the attorney representing the state consents to the defendant's participation. The bill requires the court in which the criminal case is pending to allow an eligible defendant to choose whether to participate in the prostitution prevention program or otherwise proceed through the criminal justice system. The bill authorizes the commissioners courts of two or more counties, or the governing bodies of two or more municipalities, to elect to establish a regional prostitution prevention program for the participating counties or municipalities.

C.S.S.B. 484 requires a prostitution prevention program to ensure that an eligible defendant is provided legal counsel before volunteering to proceed through the program and while participating in the program; to allow any participant to withdraw from the program at any time

before a trial on the merits has been initiated; to provide each participant with information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and to provide each participant with instruction related to the prevention of prostitution. The bill authorizes a program, for the purpose of providing each participant the specified information, counseling, and services, to employ a person or solicit a volunteer who is a health care professional, psychologist, licensed social worker or counselor, former prostitute, family member of a person arrested for soliciting prostitution, member of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons, or 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. The bill requires a program to 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.

C.S.S.B. 484 authorizes the lieutenant governor and the speaker of the house of representatives to assign to appropriate legislative committees duties relating to the oversight of 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 prostitution prevention program. The bill authorizes a legislative committee to require a county that does not establish a prostitution prevention program because of a lack of sufficient federal or state funding to provide the committee with any documentation in the county's possession that concerns federal or state funding received by the county. The bill requires a prostitution prevention program to notify the criminal justice division of the governor's office before or on the program's implementation and to provide information regarding the program's performance on the division's request.

C.S.S.B. 484 authorizes a prostitution prevention program to collect from a program participant a nonrefundable program fee in a reasonable amount based on the defendant's ability to pay and capped at \$1,000 to pay a counseling and services fee, victim services fee, and a law enforcement training fee in order to cover certain costs associated with the various program services. The bill authorizes fees collected 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 prostitution prevention program.

C.S.S.B. 484 requires the commissioners court of a county to establish a prostitution prevention program if the county has a population of more than 200,000 and a municipality in the county has not established a prostitution prevention program. The bill requires such a county to apply for federal and state funds available to pay the costs of the program and authorizes the criminal justice division of the governor's office to assist the county in applying for federal funds. The bill conditions the requirement that such a county establish a prostitution prevention program on the county's receipt of sufficient federal or state funding specifically for that purpose and makes a county that does not establish such a program as required and maintain the program ineligible to receive state funds for a community supervision and corrections department. The bill authorizes a judge or magistrate administering a prostitution prevention program, for purposes of encouraging program participation, to suspend any requirement that, as a condition of community supervision, a program participant work a specified number of hours at a community service project and authorizes the judge or magistrate, on the participant's successful completion of the program, to excuse the participant from any condition of community supervision previously suspended in that manner.

C.S.S.B. 484 amends the Government Code to expand the definition of "specialty court," for purposes of grant funding for specialty courts, to include a prostitution prevention program established under the bill's provisions.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 484 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

**SENATE ENGROSSED**

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

**CHAPTER 169A. PROSTITUTION PREVENTION PROGRAM**

**Sec. 169A.001. PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "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 to participant compliance;**
  - (6) monitoring and evaluation of program goals and effectiveness;**
  - (7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and**
  - (8) development of partnerships with public agencies and community organizations.**
- (b) If a defendant successfully completes a prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered**

**HOUSE COMMITTEE SUBSTITUTE**

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  - (3) early identification and prompt placement of eligible participants in the program;**
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  - (5) a coordinated strategy to govern program responses to participant compliance;**
  - (6) monitoring and evaluation of program goals and effectiveness;**
  - (7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and**
  - (8) development of partnerships with public agencies and community organizations.**
- (b) If a defendant successfully completes a 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 has elapsed, and whether issuance of the order is in the best interest of justice, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, 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:

(1) has not been previously convicted of a felony offense other than an offense under Section 43.02(a)(1), Penal Code; and

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

Sec. 169A.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY.

(a) The commissioners court of a county or governing body of a municipality may establish a prostitution prevention program for defendants charged with an offense under Section 43.02(a)(1), Penal Code, in which the defendant offered or agreed to engage in or engaged in sexual conduct for a fee.

(b) A defendant is eligible to participate in a 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 previously participated in a prostitution prevention program established under this chapter.

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

(d) If a defendant who chooses to participate in the prostitution prevention program fails to attend any portion of the

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 has elapsed, and whether issuance of the order is in the best interest of justice, the court shall enter an order of nondisclosure under Section 411.081, Government Code, as if the defendant had received a discharge and dismissal under Section 5(c), Article 42.12, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program.

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(b) A defendant is eligible to participate in a prostitution prevention program established under this chapter only if the attorney representing the state consents to the defendant's participation in the program.

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

program, the court in which the defendant's criminal case is pending shall 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. 169A.0025. ESTABLISHMENT OF REGIONAL PROGRAM.

Sec. 169A.003. PROGRAM POWERS AND DUTIES. (a) A prostitution prevention program established under this chapter must:

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

(1) a health care professional;

(2) a psychologist;

(3) a licensed social worker or 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) A program established under this chapter shall 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.

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(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 instruction related to the prevention of prostitution.

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

(1) a health care professional;

(2) a psychologist;

(3) a licensed social worker or counselor;

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(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) A program established under this chapter shall 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. 169A.004. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of prostitution prevention programs established under this chapter.

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

(c) A prostitution prevention program established under this chapter shall:

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

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

Sec. 169A.005. FEES.

Sec. 169A.0055. PROGRAM IN CERTAIN COUNTIES MANDATORY.

(a) The commissioners court of a county shall establish a prostitution prevention program if:

(1) the county has a population of more than 200,000; and

(2) a municipality in the county has not established a prostitution prevention program.

(b) A county required under this section to establish a prostitution prevention program shall apply for federal and state funds available to pay the costs of the program. The criminal justice division of the governor's office may assist a county in applying for federal funds as required by this subsection.

(c) Notwithstanding Subsection (a), a county is required to establish a prostitution prevention program under this section only if the county receives federal or state funding specifically for that purpose.

(d) A county that does not establish a prostitution prevention program as required

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

(c) A legislative committee may require a county that does not establish a prostitution prevention program under this chapter due to a lack of sufficient funding, as provided by Section 169A.0055(c), to provide the committee with any documentation in the county's possession that concerns federal or state funding received by the county.

(d) A prostitution prevention program established under this chapter shall:

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

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

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(b) A county required under this section to establish a prostitution prevention program shall apply for federal and state funds available to pay the costs of the program. The criminal justice division of the governor's office may assist a county in applying for federal funds as required by this subsection.

(c) Notwithstanding Subsection (a), a county is required to establish a prostitution prevention program under this section only if the county receives sufficient federal or state funding specifically for that purpose.

(d) A county that does not establish a prostitution prevention program as required

by this section and maintain the program is ineligible to receive from the state funds for a community supervision and corrections department.

Sec. 169A.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT.

SECTION 2. Subchapter B, Chapter 103, Government Code, is amended by adding Section 103.0292 to read as follows:

Sec. 103.0292. ADDITIONAL MISCELLANEOUS FEES AND COSTS: HEALTH AND SAFETY CODE. A

nonrefundable program fee for a prostitution prevention program established under Section 169A.002, Health and Safety Code, shall be collected under Section 169A.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. Subdivision (2), Subsection (a), Section 772.0061, Government Code, is amended.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

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nonrefundable program fee for a prostitution prevention program established under Section 169A.002, Health and Safety Code, shall be collected under Section 169A.005, Health and Safety Code, in a reasonable amount based on the defendant's ability to pay and 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. Same as engrossed version except for recitation.

SECTION 4. Same as engrossed version.