

BILL ANALYSIS

C.S.H.B. 4104
By: White
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that alternative sentencing options, as well as counseling services and other resources provided through rehabilitation programs, should be available for some defendants who are charged with prostitution. C.S.H.B. 4104 seeks to address this issue by providing for the creation of a rehabilitation program for certain prostitution offenders placed on community supervision and for an order of expunction for certain offenders after successful completion of certain programming.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 4104 amends the Government Code to require the Texas Department of Criminal Justice, in consultation with the Health and Human Services Commission, to establish, not later than September 1, 2020, and administer a rehabilitation program for certain prostitution offenders placed on community supervision and required by a judge to participate in the program under the bill's provisions. The bill sets out requirements for the program.

C.S.H.B. 4104 requires, with regard to a defendant who was arrested for or charged with but not convicted of or placed on deferred adjudication community supervision for an offense and who successfully completes the applicable commercially sexually exploited persons court program:

- a commercially sexually exploited persons court, after notice to the attorney representing the state and a hearing at which that court determines that a dismissal is in the best interest of justice, to provide to the court in which the criminal case is pending information about the dismissal, including all of the information required about the defendant for a petition for expunction; and
- the court in which the criminal case is pending to dismiss the case against the defendant and authorizes the court to take the following actions:
 - if the trial court is a district court, to enter an order of expunction on behalf of the defendant under the bill's provisions with the consent of the attorney representing the state; or
 - if the trial court is not a district court, to forward with the consent of the attorney representing the state the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf

of the defendant under the bill's provisions.

C.S.H.B. 4104 amends the Code of Criminal Procedure to require a judge, on a defendant's conviction for the offense of knowingly offering or agreeing to receive a fee to engage in sexual conduct punishable as a state jail felony prostitution offense due to certain previous prostitution convictions, to suspend the imposition of the sentence and place the defendant on community supervision. The bill restricts eligibility for such suspension and placement to a defendant who has not been previously convicted three or more times of a prostitution offense based on other conduct punishable as a state jail felony. The bill requires the judge who places such a defendant on community supervision to require, as a condition of community supervision, that the defendant submit to a term of confinement in a state jail felony facility and, while confined, participate in the rehabilitation program established under the bill's provisions. These provisions apply only to an offense committed on or after September 1, 2020.

C.S.H.B. 4104 entitles a person who completed a commercially sexually exploited persons court program to an expunction of arrest records and files only if, meeting other applicable requirements for expunction, the person:

- has not previously received an expunction for completing such a program; and
- submits to the court an affidavit attesting to that fact.

C.S.H.B. 4104 authorizes the appropriate trial court or district court dismissing a case following a person's successful completion of a commercially sexually exploited persons court program, with the consent of the attorney representing the state, to enter an order of expunction for the person not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. The bill prohibits such a court from charging any fee or assessing any cost for the expunction. These provisions apply to an expunction of arrest records and files for a person who successfully completes such a program before, on, or after the bill's effective date, regardless of when the underlying arrest occurred. The bill authorizes a court, for a person entitled to such expunction and with the consent of the attorney representing the state, to enter an order of expunction for the person as soon as practicable after the court receives written notice from any party to the case about the person's entitlement to the expunction.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4104 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions requiring the Office of Court Administration to develop and post online a screening tool to be used by a judge to determine if a defendant convicted of certain prostitution conduct is a victim of human trafficking and to inform the judge's sentencing decision.