

By: White

H.B. No. 4104

Substitute the following for H.B. No. 4104:

By: Sherman, Sr.

C.S.H.B. No. 4104

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the punishment for the offense of prostitution and to  
3 programs for certain defendants charged with or convicted of  
4 prostitution.

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

6 SECTION 1. Article 42A.551, Code of Criminal Procedure, is  
7 amended by adding Subsection (a-1) and amending Subsection (d) to  
8 read as follows:

9 (a-1) Notwithstanding Subsection (b), on the defendant's  
10 conviction of a state jail felony under Section 43.02(c)(2), Penal  
11 Code, that is punished under Section 12.35(a), Penal Code, the  
12 judge shall suspend the imposition of the sentence and place the  
13 defendant on community supervision. This subsection does not apply  
14 to a defendant who has previously been convicted of any other state  
15 jail felony under Section 43.02(c)(2), Penal Code, that is punished  
16 under Section 12.35, Penal Code.

17 (d) On conviction of a state jail felony punished under  
18 Section 12.35(a), Penal Code, other than a state jail felony listed  
19 in Subsection (a) or to which Subsection (a-1) applies, subject to  
20 Subsection (e), the judge may:

21 (1) suspend the imposition of the sentence and place  
22 the defendant on community supervision; or

23 (2) order the sentence to be executed:

24 (A) in whole; or

1 (B) in part, with a period of community  
2 supervision to begin immediately on release of the defendant from  
3 confinement.

4 SECTION 2. Article 42A.554, Code of Criminal Procedure, is  
5 amended by adding Subsection (d) to read as follows:

6 (d) A judge who places a defendant on community supervision  
7 under Article 42A.551(a-1) shall require, as a condition of  
8 community supervision, that the defendant submit to a term of  
9 confinement under Article 42A.555 and, while confined, participate  
10 in a program operated under Section 507.035, Government Code.

11 SECTION 3. Article 55.01, Code of Criminal Procedure, is  
12 amended by amending Subsection (a) and adding Subsection (a-4) to  
13 read as follows:

14 (a) A person who has been placed under a custodial or  
15 noncustodial arrest for commission of either a felony or  
16 misdemeanor is entitled to have all records and files relating to  
17 the arrest expunged if:

18 (1) the person is tried for the offense for which the  
19 person was arrested and is:

20 (A) acquitted by the trial court, except as  
21 provided by Subsection (c); or

22 (B) convicted and subsequently:

23 (i) pardoned for a reason other than that  
24 described by Subparagraph (ii); or

25 (ii) pardoned or otherwise granted relief  
26 on the basis of actual innocence with respect to that offense, if  
27 the applicable pardon or court order clearly indicates on its face

1 that the pardon or order was granted or rendered on the basis of the  
2 person's actual innocence; or

3 (2) the person has been released and the charge, if  
4 any, has not resulted in a final conviction and is no longer pending  
5 and there was no court-ordered community supervision under Chapter  
6 42A for the offense, unless the offense is a Class C misdemeanor,  
7 provided that:

8 (A) regardless of whether any statute of  
9 limitations exists for the offense and whether any limitations  
10 period for the offense has expired, an indictment or information  
11 charging the person with the commission of a misdemeanor offense  
12 based on the person's arrest or charging the person with the  
13 commission of any felony offense arising out of the same  
14 transaction for which the person was arrested:

15 (i) has not been presented against the  
16 person at any time following the arrest, and:

17 (a) at least 180 days have elapsed  
18 from the date of arrest if the arrest for which the expunction was  
19 sought was for an offense punishable as a Class C misdemeanor and if  
20 there was no felony charge arising out of the same transaction for  
21 which the person was arrested;

22 (b) at least one year has elapsed from  
23 the date of arrest if the arrest for which the expunction was sought  
24 was for an offense punishable as a Class B or A misdemeanor and if  
25 there was no felony charge arising out of the same transaction for  
26 which the person was arrested;

27 (c) at least three years have elapsed

1 from the date of arrest if the arrest for which the expunction was  
2 sought was for an offense punishable as a felony or if there was a  
3 felony charge arising out of the same transaction for which the  
4 person was arrested; or

5 (d) the attorney representing the  
6 state certifies that the applicable arrest records and files are  
7 not needed for use in any criminal investigation or prosecution,  
8 including an investigation or prosecution of another person; or

9 (ii) if presented at any time following the  
10 arrest, was dismissed or quashed, and the court finds that the  
11 indictment or information was dismissed or quashed because:

12 (a) the person completed a veterans  
13 treatment court program created under Chapter 124, Government Code,  
14 or former law, subject to Subsection (a-3);

15 (b) the person completed a pretrial  
16 intervention program authorized under Section 76.011, Government  
17 Code, other than specialty [~~a veterans treatment~~] court programs  
18 [~~program~~] created under Chapter 124 or 126, Government Code, or  
19 former law;

20 (c) the presentment had been made  
21 because of mistake, false information, or other similar reason  
22 indicating absence of probable cause at the time of the dismissal to  
23 believe the person committed the offense; [~~or~~]

24 (d) the indictment or information was  
25 void; or

26 (e) the person completed a  
27 commercially sexually exploited persons court program created

1 under Chapter 126, Government Code, or former law, subject to  
2 Subsection (a-4); or

3 (B) prosecution of the person for the offense for  
4 which the person was arrested is no longer possible because the  
5 limitations period has expired.

6 (a-4) A person is entitled under Subsection  
7 (a)(2)(A)(ii)(e) for an expunction of arrest records and files only  
8 if:

9 (1) the person has not previously received an  
10 expunction of arrest records and files under that sub-subparagraph;  
11 and

12 (2) the person submits to the court an affidavit  
13 attesting to that fact.

14 SECTION 4. Section 1a, Article 55.02, Code of Criminal  
15 Procedure, is amended by adding Subsection (a-2) to read as  
16 follows:

17 (a-2) A trial court dismissing a case following a person's  
18 successful completion of a commercially sexually exploited persons  
19 court program created under Chapter 126, Government Code, or former  
20 law, if the trial court is a district court, or a district court in  
21 the county in which the trial court is located may, with the consent  
22 of the attorney representing the state, enter an order of  
23 expunction for a person entitled to expunction under Article  
24 55.01(a)(2)(A)(ii)(e) not later than the 30th day after the date  
25 the court dismisses the case or receives the information regarding  
26 that dismissal, as applicable. Notwithstanding any other law, a  
27 court that enters an order for expunction under this subsection may

1 not charge any fee or assess any cost for the expunction.

2 SECTION 5. Section 126.001, Government Code, is amended by  
3 amending Subsection (b) and adding Subsection (c) to read as  
4 follows:

5 (b) If a defendant who was convicted of or placed on  
6 deferred adjudication community supervision for an offense  
7 successfully completes a commercially sexually exploited persons  
8 court program [~~regardless of whether the defendant was convicted~~  
9 ~~of the offense for which the defendant entered the program or~~  
10 ~~whether the court deferred further proceedings without entering an~~  
11 ~~adjudication of guilt~~], after notice to the state and a hearing on  
12 whether the defendant is otherwise entitled to the petition,  
13 including whether the required time has elapsed, and whether  
14 issuance of the order is in the best interest of justice, the court  
15 shall enter an order of nondisclosure of criminal history record  
16 information under Subchapter E-1, Chapter 411, as if the defendant  
17 had received a discharge and dismissal under Article 42A.111, Code  
18 of Criminal Procedure, with respect to all records and files  
19 related to the defendant's arrest for the offense for which the  
20 defendant entered the program.

21 (c) If a defendant who was arrested for or charged with, but  
22 not convicted of or placed on deferred adjudication community  
23 supervision for, an offense successfully completes a commercially  
24 sexually exploited persons court program, after notice to the  
25 attorney representing the state and a hearing in the commercially  
26 sexually exploited persons court at which that court determines  
27 that a dismissal is in the best interest of justice, the

1 commercially sexually exploited persons court shall provide to the  
2 court in which the criminal case is pending information about the  
3 dismissal and shall include all of the information required about  
4 the defendant for a petition for expunction under Section 2(b),  
5 Article 55.02, Code of Criminal Procedure. The court in which the  
6 criminal case is pending shall dismiss the case against the  
7 defendant and:

8 (1) if that trial court is a district court, the court  
9 may, with the consent of the attorney representing the state, enter  
10 an order of expunction on behalf of the defendant under Section  
11 1a(a-2), Article 55.02, Code of Criminal Procedure; or

12 (2) if that trial court is not a district court, the  
13 court may, with the consent of the attorney representing the state,  
14 forward the appropriate dismissal and expunction information to  
15 enable a district court with jurisdiction to enter an order of  
16 expunction on behalf of the defendant under Section 1a(a-2),  
17 Article 55.02, Code of Criminal Procedure.

18 SECTION 6. Subchapter B, Chapter 507, Government Code, is  
19 amended by adding Section 507.035 to read as follows:

20 Sec. 507.035. REHABILITATION PROGRAM FOR CERTAIN  
21 PROSTITUTION OFFENDERS. (a) The department, in consultation with  
22 the Health and Human Services Commission, shall establish and  
23 administer a rehabilitation program for defendants placed on  
24 community supervision and required to participate in the program  
25 under Article 42A.554(d), Code of Criminal Procedure.

26 (b) The program must:

27 (1) be evidence-based and designed to efficiently

1 rehabilitate defendants;

2 (2) provide defendants with access to:

3 (A) life skills, job, and vocational training  
4 programs;

5 (B) drug and alcohol rehabilitation programs;

6 (C) support group programs;

7 (D) counseling services; and

8 (E) other programs designed to facilitate the  
9 transition of defendants into society and to reduce incidents of  
10 recidivism; and

11 (3) house defendants participating in the program in a  
12 compassionate, safe, and secure environment that lacks the typical  
13 characteristics of a prison facility.

14 SECTION 7. Not later than September 1, 2020, the Texas  
15 Department of Criminal Justice shall establish the rehabilitation  
16 program required by Section 507.035, Government Code, as added by  
17 this Act.

18 SECTION 8. Articles 42A.551(a-1) and 42A.554(d), Code of  
19 Criminal Procedure, as added by this Act, apply only to an offense  
20 committed on or after September 1, 2020. An offense committed  
21 before September 1, 2020, is governed by the law in effect  
22 immediately before the effective date of this Act, and the former  
23 law is continued in effect for that purpose. For purposes of this  
24 section, an offense was committed before September 1, 2020, if any  
25 element of the offense occurred before that date.

26 SECTION 9. (a) Articles 55.01 and 55.02, Code of Criminal  
27 Procedure, as amended by this Act, apply to the expunction of arrest



1 records and files for a person who successfully completes a  
2 commercially sexually exploited persons court program under  
3 Chapter 126, Government Code, or former law before, on, or after the  
4 effective date of this Act, regardless of when the underlying  
5 arrest occurred.

6 (b) For a person who is entitled to expunction under Article  
7 55.01(a)(2)(A)(ii)(e), Code of Criminal Procedure, as added by this  
8 Act, based on a successful completion of a commercially sexually  
9 exploited persons court program under Chapter 126, Government Code,  
10 or former law before the effective date of this Act,  
11 notwithstanding the 30-day time limit provided for the court to  
12 enter an automatic order of expunction under Section 1a(a-2),  
13 Article 55.02, Code of Criminal Procedure, as added by this Act, the  
14 court may, with the consent of the attorney representing the state,  
15 enter an order of expunction for the person as soon as practicable  
16 after the court receives written notice from any party to the case  
17 about the person's entitlement to the expunction.

18 SECTION 10. This Act takes effect September 1, 2019.