

By: White

H.B. No. 4104

A BILL TO BE ENTITLED

AN ACT

relating to the sentencing procedures and punishment for the offense of prostitution and to programs for certain defendants charged with or convicted of prostitution.

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

SECTION 1. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.021 to read as follows:

Art. 42.021. USE OF SCREENING TOOL FOR SENTENCING PURPOSES IN CERTAIN PROSTITUTION CASES. In a case in which the judge will assess punishment for a defendant convicted of an offense under Section 43.02(a), Penal Code, the judge shall use the screening tool developed under Section 72.033, Government Code, to determine whether the defendant is a victim of human trafficking and to inform the judge's sentencing decision.

SECTION 2. Article 42A.551, Code of Criminal Procedure, is amended by adding Subsection (a-1) and amending Subsection (d) to read as follows:

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

1 under Section 12.35, Penal Code.

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

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

8 (2) order the sentence to be executed:

9 (A) in whole; or

10 (B) in part, with a period of community
11 supervision to begin immediately on release of the defendant from
12 confinement.

13 SECTION 3. Article 42A.554, Code of Criminal Procedure, is
14 amended by adding Subsection (d) to read as follows:

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

20 SECTION 4. Article 55.01, Code of Criminal Procedure, is
21 amended by amending Subsection (a) and adding Subsection (a-4) to
22 read as follows:

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

27 (1) the person is tried for the offense for which the

1 person was arrested and is:

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

4 (B) convicted and subsequently:

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

7 (ii) pardoned or otherwise granted relief
8 on the basis of actual innocence with respect to that offense, if
9 the applicable pardon or court order clearly indicates on its face
10 that the pardon or order was granted or rendered on the basis of the
11 person's actual innocence; or

12 (2) the person has been released and the charge, if
13 any, has not resulted in a final conviction and is no longer pending
14 and there was no court-ordered community supervision under Chapter
15 42A for the offense, unless the offense is a Class C misdemeanor,
16 provided that:

17 (A) regardless of whether any statute of
18 limitations exists for the offense and whether any limitations
19 period for the offense has expired, an indictment or information
20 charging the person with the commission of a misdemeanor offense
21 based on the person's arrest or charging the person with the
22 commission of any felony offense arising out of the same
23 transaction for which the person was arrested:

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

26 (a) at least 180 days have elapsed
27 from the date of arrest if the arrest for which the expunction was

sought was for an offense punishable as a Class C misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

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

(c) at least three years have elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense punishable as a felony or if there was a felony charge arising out of the same transaction for which the person was arrested; or

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

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

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

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

former law;

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

(d) the indictment or information was void; or

(e) the person completed a commercially sexually exploited persons court program created under Chapter 126, Government Code, or former law, subject to Subsection (a-4); or

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

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

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

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

SECTION 5. Section 1a, Article 55.02, Code of Criminal Procedure, is amended by adding Subsection (a-2) to read as follows:

(a-2) A trial court dismissing a case following a person's successful completion of a commercially sexually exploited persons

court program created under Chapter 126, Government Code, or former law, if the trial court is a district court, or a district court in the county in which the trial court is located may, with the consent of the attorney representing the state, enter an order of expunction for a person entitled to expunction under Article 55.01(a)(2)(A)(ii)(e) not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable. Notwithstanding any other law, a court that enters an order for expunction under this subsection may not charge any fee or assess any cost for the expunction.

SECTION 6. Section 126.001, Government Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) If a defendant who was convicted of or placed on deferred adjudication community supervision for an offense successfully completes a commercially sexually exploited persons court 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 of criminal history record information under Subchapter E-1, Chapter 411, as if the defendant had received a discharge and dismissal under Article 42A.111, 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.

(c) If a defendant who was arrested for or charged with, but not convicted of or placed on deferred adjudication community supervision for, an offense successfully completes a commercially sexually exploited persons court program, after notice to the attorney representing the state and a hearing in the commercially sexually exploited persons court at which that court determines that a dismissal is in the best interest of justice, the commercially sexually exploited persons court shall provide to the court in which the criminal case is pending information about the dismissal and shall include all of the information required about the defendant for a petition for expunction under Section 2(b), Article 55.02, Code of Criminal Procedure. The court in which the criminal case is pending shall dismiss the case against the defendant and:

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

(2) if that trial court is not a district court, the court may, with the consent of the attorney representing the state, forward 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 Section 1a(a-2), Article 55.02, Code of Criminal Procedure.

SECTION 7. Subchapter C, Chapter 72, Government Code, is

amended by adding Section 72.033 to read as follows:

Sec. 72.033. HUMAN TRAFFICKING SCREENING TOOL. (a) The office, in consultation with the office of the governor, the office of the attorney general, the Department of Public Safety, the Health and Human Services Commission, the Department of Family and Protective Services, the Texas Juvenile Justice Department, the Texas Department of Criminal Justice, nonprofit or community organizations involved in criminal justice issues, and other interested parties, shall develop a screening tool to be used to determine if a defendant convicted of an offense under Section 43.02(a), Penal Code, is a victim of human trafficking. The tool must be evidence-based and be designed to inform a judge's sentencing decision regarding a defendant determined to be a victim of human trafficking.

(b) The office shall make the tool available to judges on the office's Internet website.

SECTION 8. Subchapter B, Chapter 507, Government Code, is amended by adding Section 507.035 to read as follows:

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

(b) The program must:

(1) be evidence-based and designed to efficiently rehabilitate defendants;

- 1 (2) provide defendants with access to:
2 (A) life skills, job, and vocational training
3 programs;
4 (B) drug and alcohol rehabilitation programs;
5 (C) support group programs;
6 (D) counseling services; and
7 (E) other programs designed to facilitate the
8 transition of defendants into society and to reduce incidents of
9 recidivism; and
10 (3) house defendants participating in the program in a
11 compassionate, safe, and secure environment that lacks the typical
12 characteristics of a prison facility.

13 SECTION 9. (a) Not later than December 1, 2019, the Office
14 of Court Administration of the Texas Judicial System shall develop
15 and make available the screening tool as required by Section
16 72.033, Government Code, as added by this Act.

17 (b) Article 42.021, Code of Criminal Procedure, as added by
18 this Act, applies only to a defendant who is sentenced for an
19 offense on or after December 1, 2019, regardless of whether the
20 offense is committed before, on, or after that date.

21 SECTION 10. Not later than September 1, 2020, the Texas
22 Department of Criminal Justice shall establish the rehabilitation
23 program required by Section 507.035, Government Code, as added by
24 this Act.

25 SECTION 11. Articles [42A.551\(a-1\)](#) and [42A.554\(d\)](#), Code of
26 Criminal Procedure, as added by this Act, apply only to an offense
27 committed on or after September 1, 2020. An offense committed

1 before September 1, 2020, is governed by the law in effect
2 immediately before the effective date of this Act, and the former
3 law is continued in effect for that purpose. For purposes of this
4 section, an offense was committed before September 1, 2020, if any
5 element of the offense occurred before that date.

6 SECTION 12. (a) Articles 55.01 and 55.02, Code of Criminal
7 Procedure, as amended by this Act, apply to the expunction of arrest
8 records and files for a person who successfully completes a
9 commercially sexually exploited persons court program under
10 Chapter 126, Government Code, or former law before, on, or after the
11 effective date of this Act, regardless of when the underlying
12 arrest occurred.

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

25 SECTION 13. This Act takes effect September 1, 2019.