

- SUBJECT:** Creating a first-offender prostitution solicitation prevention program
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Gallego, Hartnett, Aliseda, Burkett, Rodriguez, Zedler
1 nays — Carter
2 absent — Christian, Y. Davis
- WITNESSES:** For — Anita Johnson, Waco Police Dept.; Dennis Mark, Redeemed Ministries; Deek Moore, Austin Police Department and City of Austin; (*Registered, but did not testify:* Donald Baker, Austin Police Department; Chris Cunico, Texas Criminal Justice Coalition; Ashley Harris, Texans Care for Children; Diana Martinez, Tex Protects, the Texas Association for the Protection of Children; Susan Milam, National Association of Social Workers, Texas Chapter; Anne Olson, Christian Life Commission; Marsha Solana, Catholic Bishops of Texas; Gyl Switzer, Mental Health America of Texas)
Against — None
On — Vikrant Reddy, Texas Public Policy Foundation
- BACKGROUND:** Government Code, subch. F, sec. 411.081 relates to criminal history record information. Sec. 531.383 allows the Health and Human Services Commission (HHSC) to fund and award money under a grant program for organizations that assist domestic violence victims.
Code of Criminal Procedure, Art. 42.12 governs community supervision. Sec. 3g(a)(1) prohibits judges from ordering community supervision for persons convicted of certain crimes including, but not limited to, murder, capital murder, indecency with a child, aggravated robbery, and aggravated kidnapping.
Sec. 43.02(a)(2) of the Penal Code describes the offense of soliciting prostitution. Ch. 20A and secs. 43.02, 43.03, 43.04, or 43.05 of the Penal Code all relate to human trafficking and prostitution, respectively.

DIGEST:

CSHB 1994 would create a first-offender prostitution prevention program. The bill would grant authority to a county commissioners courts or local city government to establish a first-offender prostitution prevention program for defendants charged with soliciting prostitution. A defendant only would be eligible if the state's attorney consented and the presiding court determined that the defendant had not been previously convicted of human trafficking or prostitution-related offenses under Texas law. The defendant would be characterized as previously convicted if the defendant was found guilty, entered a guilty plea or no contest for a deferred adjudication, or was convicted under another state's laws for an offense similar to human trafficking or prostitution.

A defendant would be ineligible to participate in the program if the defendant had solicited prostitution from someone who was younger than 18 at the time of the offense. The court would have to offer an eligible defendant the opportunity to enter the program or to proceed with normal criminal proceedings.

The program's essential characteristics would include:

- the integration of services for case processing in the judicial system;
- a nonadversarial approach to promote public safety, reduce demand for commercial sex trade and trafficking through offender education, and protect participants' due process;
- the early identification of eligible participants;
- access to information, counseling, and services regarding sex addiction, sexually transmitted diseases, mental health, and substance abuse;
- goals and effectiveness monitoring;
- continuing education to ensure program effectiveness; and
- partnerships with public agencies and community organizations.

If a defendant successfully completed the program, the court would have to enter an order of nondisclosure as if the defendant had received a discharge and dismissal under sec. 5(c), Art. 42.12 of the Code of Criminal Procedure, as long as the defendant had not previously been convicted of a felony and was not convicted of any other felony during the two years following the defendant's program completion date.

If a defendant who chose to participate failed to attend any portion of the program, the court would be required immediately to issue an arrest warrant. The court would then proceed with the criminal case as if the defendant had never entered the program.

The program would have to:

- ensure that an eligible defendant had legal counsel before entering and while participating in the program;
- allow any participant to withdraw from the program at any time before a trial on the merits had begun;
- provide each participant with information, counseling, and services regarding sex addiction, STDs, mental health, and drug abuse; and
- provide each participant with classroom instruction related to prostitution prevention.

The program could employ a paid or unpaid person who was a health care-affiliated professional, former prostitute, family member of a person arrested for soliciting prostitution, member of an association or community adversely affected by prostitution or human trafficking, or employee of a nongovernmental law or advocacy organization focused on prostitution and human trafficking.

The program would have to create and publish local procedures to encourage maximum program participation of eligible defendants in the cities and counties where the defendants lived.

CSHB 1994 would authorize the lieutenant governor and the House speaker to assign oversight duties concerning the program to the appropriate legislative committees. A legislative committee or the governor could request an audit of the program. The program administrator would have to provide information about its performance when requested by the criminal justice division of the Governor's Office.

The program could collect a nonrefundable fee of no more than \$1,000 from participants for:

- counseling and services fees;
- a victim services fee that would be 10 percent of counseling and services fees, to be deposited into general revenue (appropriated only to cover costs associated with the grant program under sec. 531.383 of the Government Code); and

- a law enforcement fee that would be 5 percent of the counseling and services fees, to be deposited into the county or city treasury to cover costs associated with personnel training on domestic violence, prostitution, and human trafficking.

The bill would authorize the judge or program director to set a deferred payment schedule or payment installment plan. CSHB 1994 would require the fees to be based on the participant's ability to pay.

The bill would authorize a judge to take certain actions to encourage program participation, such as by suspending a community service requirement. After a participant successfully completed the program, the court official could excuse the participant from any condition of community service for which the participant received suspension.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 1994 would help victims of the sex trade and human trafficking by effectively decreasing demand for these criminal activities. Addressing the problems on the demand side is necessary to confront the entire issue. Studies show that educating male solicitors is extremely effective. Many offenders think that these are victimless crimes, and the program would help them to understand the impact of these crimes on individuals and communities.

CSHB 1994 would ensure much lower recidivism and bring Texas to the forefront of states addressing the problems of the sex trade and human trafficking. There are approximately 40 such programs in the United States, not including programs in other countries. Waco, which modeled its program on those in San Francisco and Las Vegas, currently has the only one in Texas. Since its inception in 2002, the Waco program has had only three repeat offenders. On average, the recidivism rate in locales that have instituted similar programs has been very low.

The cost implications of the first-offender prostitution prevention program created by CSHB 1994 would be very positive. The permissive language of the bill would allow local courts and law enforcement to institute the program according to their needs. Because CSHB 1994 would require

10 percent of collected fees to be allocated to the state domestic violence grant program, 90 percent of the revenue would remain local.

The fee revenue would benefit law enforcement during lean economic times. For example, the one-day program in Waco charges a \$350 fee and costs approximately \$300 to 400 to administer. Therefore, the fee of one participant essentially pays for the class. The revenue that remains locally based has benefitted Waco law enforcement through the funding of equipment and other needs.

Since it generally is not cost effective to pursue criminal charges against solicitors, many are allowed to go unpunished. Therefore, the practical application of the program would be more effective to deter future crime than what often amounts to inaction. The treatment model presented by the bill would be less expensive than a more costly prosecution model, as it would cost more to pursue criminal charges against solicitors than to rehabilitate them.

**OPPONENTS
SAY:**

CSHB 1994 would protect men who seek out prostitutes to engage in illegal sexual conduct. By allowing offenders to participate in the program without experiencing appropriate consequences, the bill would allow offenders to go unpunished.

NOTES:

The companion bill, SB 1060 by Van de Putte, was referred to the Senate Criminal Justice Committee on March 16.