

SUBJECT: Authorizing county and city prostitution prevention programs

COMMITTEE: Criminal Jurisprudence — community substitute recommended

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth
0 nays
1 absent — Hughes

SENATE VOTE: On final passage, March 21 — 31- 0, on Local and Uncontested Calendar

WITNESSES: (*On companion bill, HB 3377:*)
For — Peggy Hoffman, Dallas County Criminal Court No. 9; Marc Levin, Texas Public Policy Foundation; Jorge Renaud, Texas Criminal Justice Coalition; (*Registered, but did not testify:* Yannis Banks, Texas NAACP; Jeff Patterson, Texas Catholic Conference of Bishops)

Against — (*Registered, but did not testify:* Annie Mahoney, Texas Conservative Coalition)

On — John Dahill, Texas Conference of Urban Counties

BACKGROUND: Penal Code, sec. 43.02 makes prostitution a crime. It is an offense to knowingly:

- offer to engage, agree to engage, or engage in sex for a fee; and
- solicit another in a public place to engage in sex for hire.

Offenses are class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000). Second and third offenses are class A misdemeanors (up to one year in jail and/or a maximum fine of \$4,000). Fourth and subsequent offenses are state-jail felonies (180 days to two years in a state jail and an optional fine of up to \$10,000).

DIGEST: CSSB 484 would authorize counties and cities to establish prostitution prevention programs for persons charged with prostitution for offering or

agreeing to engage in sex for a fee.

Counties with populations of more than 200,000 in which no city already had a prostitution prevention program would be required to establish one, if they received sufficient state or federal funding specifically for it. Counties required to establish programs would have to apply for federal and state funds to pay for the programs. Prostitution prevention programs would be added to the list of specialty courts eligible for certain grant funding from the governor's criminal justice division.

Counties that were required to establish a program but did not or did not maintain a program would be ineligible for state funding for a community supervision and corrections (probation) department. Two or more counties or two or more cities could establish a regional program.

Prosecutors would have to agree to a defendant's participation in a program. Courts would have to allow eligible participant to choose whether to participate in the program or proceed through the criminal justice system.

If defendants successfully completed a prostitution prevention program, and certain conditions were met, the court would have to enter an order of nondisclosure for the participant's records relating to the prostitution arrest as if the defendant had received a discharge and dismissal after a deferred adjudication. Before entering the nondisclosure order, the court would have to notify the prosecutor in the case and have hearing to consider whether the participant was entitled to disclosure, including considering whether disclosure was in the best interests of justice.

Program requirements. The programs would have to:

- ensure that participants were provided legal counsel before volunteering for the program and while in it;
- allow participants to withdraw any time before a trial had been initiated;
- give participants information, counseling, and services related to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and
- give participants instructions on the prevention of prostitution.

Programs could have employees or volunteers who were health care

professionals, psychologists, social workers, counselors, former prostitutes, family members of persons arrested for soliciting prostitution, representatives of communities affected by prostitution or trafficking, and employees of non-governmental organizations specializing in advocacy or laws relating to sex or human trafficking or in providing services to victims of those crimes.

Judges and magistrates would be able to suspend community service requirements that were part of a participant's probation. Upon successful completion of program, judges and magistrates could excuse participants from those requirements.

The bill lists seven characteristics that would be considered essential characteristics of the programs:

- the integration of services in the processing of cases in the judicial system;
- a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and reduce demand for the commercial sex trade and trafficking of persons and to protect program participants' due process rights;
- early identification and prompt placement of participants;
- access to information, counseling, and services;
- a coordinated strategy to govern program responses to participant compliance;
- monitoring and evaluation of the program;
- continuing education to promote program planning, implementation, and operations; and
- partnerships with public agencies and community organizations.

Programs would have to establish and publish local procedures to promote participation in the program.

Program oversight. The lieutenant governor and the speaker of the House of Representatives could assign oversight of the programs to legislative committees. A legislative committee could ask the state auditor to perform management, operations, financial, or accounting audits of the programs. Legislative committees could ask counties that do not establish programs due to a lack of funding to give the committee information about the county's federal and state funding.

Programs would have to notify the criminal justice division of the governor's office when they begin and would have to give the division information about its performance when requested.

Program fees. Programs could collect a non-refundable court fee from participants, up to \$1,000. A portion of the program fee would have to be designated as a counseling and services fee to cover the costs of those items. Another portion of the fee, equal to 10 percent of the counseling and services fee, would be designated as a victim services fee, and another portion, equal to 5 percent of the counseling and services fee, would be designated as a law enforcement training fee. The victims' services fee would go to a current grant program for certain victims of trafficking. The law enforcement training fee would go to the county or city establishing the program

Fees would have to be based on participants' ability to pay.

This 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, 2013.

**SUPPORTERS
SAY:**

SB 484 is needed to more effectively address the issue of prostitution. By taking a statewide approach to the issue, SB 484 could enhance public safety by reducing prostitution offenses in a cost-effective manner.

The punitive approach of dealing with prostitutes through the standard criminal justice system often leads to prostitutes cycling in and out of local jails and state facilities without being rehabilitated and without being deterred from committing additional offenses. This results in high costs for police, the courts, and the state and can leave prostitutes with felony criminal records. These records make it difficult for prostitutes to reintegrate into society by finding legitimate work or suitable, safe housing. This can start the cycle of prostitution again.

SB 484 would address this by authorizing cities and counties to establish local prostitution diversion programs. These programs could model themselves after existing successful programs and specialty courts that offer treatment, counseling, and education, rather than incarceration. Many prostitutes suffer from problems such as substance abuse, mental illness, or past trauma, and offering diversion programs would be more effective and more compassionate than locking them up. These programs can offer

safe, permanent exits from prostitution, benefitting the prostitute and the public.

While the bill would establish authorization for the programs, it would mandate them only for larger counties and only if sufficient state or federal funding were available. If there was not sufficient state or federal funding specifically for the program, counties would not be required to establish them. By creating a mandate dependent on funding, the bill would ensure that if resources were available, the state's largest counties would move forward to address this issue.

Safeguards in the bill would ensure that the diversion programs would be used in appropriate circumstances. Prosecutors would have to agree for a person to be allowed to participate, and prostitutes would have a choice about entering the program. Because of multiple and complex rehabilitation needs of some prostitutes, the bill would not limit participants to one time in the program or limit it to first-time offenders. In some cases, it could take more than one time through a program for rehabilitation to be successful.

The bill would encourage participation in the programs by offering participants an order of nondisclosure, but only for the criminal record relating to the prostitution offense for which the person entered the program. Before an order of nondisclosure could be entered, courts would have to have a hearing that included notice to the prosecutor and consideration of whether disclosure was in the best interests of justice.

The fee established by the bill would help fund the counseling and treatment in the programs and provide funds for certain crime victims and law enforcement. The fee would have to be based on a participant's ability to pay, and in many cases, could be less than a participant would pay in court fines and costs.

The bill would establish guidelines and parameters for the programs to ensure that they were set up in the most effective way. These guidelines are modeled after ones that apply to the first-offender prostitution solicitation prevention program authorized in 2011 to address the demand side of prostitution. Program performance would be monitored through legislative oversight and the criminal justice division of the governor's office.

CSSB 484 could save the state money as prostitutes were diverted from state jails, which can cost from about \$15,000 per year to house an offender. Community programs can be substantially less, with one estimate at \$4,300 per year. This savings could be used for treatment and rehabilitation. While the fiscal note lists one estimate for the bill of \$2.9 million needed from the criminal justice planning account, it also says that there likely would be smaller programs requiring fewer grant funds than the estimate used as the basis for the note. In addition, the fiscal note says an indeterminate amount of revenue would be generated by the bill's fee.

**OPPONENTS
SAY:**

The state should not mandate the establishment of local prostitution prevention programs, even when the mandate is predicated on funding. These decisions should be made on the local level. CSSB 484 could cost the state grant funds from the criminal justice planning account estimated at \$2.9 million per fiscal year, according to the fiscal note.

**OTHER
OPPONENTS
SAY:**

CSSB 484 should clearly be limited to first-time offenders and make those who complete the program once ineligible for another diversion. This would ensure the program was focused on those who deserved and were committed to change and was not abused by those wanting only a way to get out of jail.