

- SUBJECT:** Reducing certain prostitution penalties to misdemeanors
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Herrero, Moody, Canales, Hunter, Leach, Simpson
- 0 nays
- 1 absent — Shaheen
- WITNESSES:** For — Paul Blocker, Dallas County; Cate Graziani, Mental Health America of Texas; Sarah Pahl, Texas Criminal Justice Coalition; Marc Levin, Texas Public Policy Foundation Center for Effective Justice; Kathryn Griffin, We've Been There Done That, HCSO Reentry Services; Lisa Riles, Matilda Perez, Donna Forest, We've Been There Done That; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Thomas Ratliff, Harris/Fort Bend County Criminal Lawyers Association; Kristin Etter, Texas Criminal Defense Lawyers Association; Rebecca Bernhardt, Texas Fair Defense Project; Yannis Banks, Texas NAACP)
- Against — None
- On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)
- 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 sexual conduct for a fee; or
 - solicit another in a public place to engage in sexual conduct for hire.
- The offense is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). It is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for those with one or two previous convictions, and a state-jail felony (180 days to two years in a state jail

and an optional fine of up to \$10,000) for those with three or more previous convictions.

Health and Safety Code, ch. 169 and ch. 169A authorize cities and counties to establish first offender prostitution prevention programs and prostitution prevention programs. Both statutes include several requirements for the programs, including access to certain types of information.

DIGEST: CSHB 1363 would revise the penalties for knowingly offering to engage, agreeing to engage, or engaging in sexual conduct for a fee. First offenses would be reduced from the current penalty of a class B misdemeanor to a class C misdemeanor (maximum fine of \$500). Second or third offenses would be class B misdemeanors, instead of class A misdemeanors. After three previous convictions, the offense would be a class A misdemeanor, instead of a state jail felony.

Courts would be authorized in certain prostitution cases to defer proceedings without entering an adjudication of guilt and allow the defendant to participate in a prostitution prevention program. This deferment could occur on the request of the defendant and with the consent of the prosecutor. If the defendant successfully completed the program within a year of deferral, courts would be able to dismiss the proceedings.

The bill would require first offender prostitution prevention programs and prostitution prevention programs established under Health and Safety Code, ch. 169 and ch. 169A to provide participants with access to information about commercial sexual exploitation and human trafficking.

The bill would take effect September 1, 2015, and would apply to offenses committed on or after that date.

SUPPORTERS SAY: CSHB 1363 would allow Texas to take a less punitive, but fair and effective, approach to those who engage in prostitution by selling sex.

The current policy of increasing penalties up to a state jail felony for repeat prostitution offenses is overly punitive given that prostitution is a nonviolent offense and given the circumstances faced by many offenders. Women involved in prostitution often are dealing with numerous issues, including mental health, substance abuse, emotional trauma, and homelessness. These issues can make it difficult to leave prostitution, even after a conviction for the offense. Many of those convicted of prostitution continue to cycle through the criminal justice system, dealing with increasing penalties as they accumulate more offenses.

The bill would deescalate the penalties for prostitution so that they remain misdemeanors. Establishing the maximum penalty as a class A misdemeanor would allow for appropriate punishment that held offenders accountable without overcriminalizing these actions. The current state jail felony conviction for repeat offenses can make it difficult for those wanting to leave prostitution to obtain jobs, housing, and educational opportunities. The change also would create a distinction in the penalties for those engaging in prostitution and those soliciting.

The bill would encourage more participation in prostitution prevention programs because they are an effective and cost-efficient way of stopping the cycle of prostitution. The bill would make it clear that the programs were available, with the consent of prosecutors, before trials begin, that prosecutions can be deferred if someone enters a program, and that courts can dismiss offenses upon successful completion of the programs. The bill would make the programs more effective by including information about commercial sex exploitation and human trafficking .

**OPPONENTS
SAY:**

CSHB 1363 would make prostitution a class C misdemeanor for first offenses, which could be too much of a reduction in punishment and may have unintended consequences. Class C misdemeanors are subject only to a \$500 fine, which may not be enough of a penalty to influence someone to stop the activity. In addition, class C misdemeanors are handled by justice and municipal courts, which do not operate prostitution intervention programs, so it may be unclear how a first offender could be referred to such programs.

OTHER
OPPONENTS
SAY:

Limiting dismissals of prostitution cases to situations in which a defendant completed a prevention program within a year could disqualify some deserving defendants from gaining a dismissal. Some individuals may complete a program just past the deadline or have extenuating circumstances preventing them from completing a program within one year, and the bill might unfairly exclude them from gaining a dismissal.

NOTES:

The author plans to offer floor amendments that would leave first offenses for prostitution class B misdemeanors, instead of class C misdemeanors, and that would remove the requirement that prostitution prevention programs be completed within one year to make a defendant eligible for a dismissal.