

SUBJECT: Criminal record nondisclosure for prostitution by trafficking victim

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Herrero, Moody, Leach, Shaheen, Simpson

0 nays

2 absent — Canales, Hunter

WITNESSES: For — Kelly Cruse and Tom Mills, New Friends New Life; (*Registered, but did not testify*: Katie Pedigo, New Friends New Life; Kristin Etter, Texas Criminal Defense Lawyers Association)

Against — None

On — (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Under Government Code, sec. 411.081(d), persons receiving a discharge and dismissal from deferred adjudication (a form of probation) who also meet certain conditions may ask the court for an order of nondisclosure of their criminal records. These conditions include not being convicted of or placed on deferred adjudication for certain offenses while on deferred adjudication and not having previous convictions for certain violent, sex, or family violence offenses.

If a court issues an order of nondisclosure, criminal justice agencies are prohibited from disclosing to the public criminal history records subject to the order. This makes criminal history records unavailable to the public but allows criminal justice agencies access to them and allows access by certain other listed entities listed in Government Code, sec.411.081 (i).

Under Code of Criminal Procedure, art. 42.12, sec. 20(a), certain persons placed on community supervision (probation) who complete at least one-third of their probation terms, or two years, whichever is less, can have

their probation term reduced or terminated. If the probationer is discharged from a sentence, the judge can set aside the verdict or allow the probationer to withdraw a plea and must dismiss the case. The person is then released from the penalties from the offense except that the conviction or guilty plea would be made known in the course of licensing for certain human service agencies and to a judge if the person was convicted of another offense.

DIGEST: CSHB 2286 would allow certain individuals placed on probation for prostitution to ask a court for an order of nondisclosure for the records of their offense if they committed prostitution solely as a victim of human trafficking.

The bill would apply to those who had their convictions set aside under the current process that allows judges to set aside convictions that the court reduced or terminated probation early. Individuals requesting nondisclosure under CSHB 2286 also would have to meet current requirements in Government Code sec. 411.081(e) for nondisclosure requests, including not being convicted of other offenses during their probation and not having previous convictions for certain crimes.

Courts could issue orders of nondisclosure only after notice to the prosecutor, an opportunity for a hearing, and a determination by the court that the individual committed the offense solely as a human trafficking victim and that the nondisclosure would be in the best interest of justice.

The order would have to prohibit criminal justice agencies from disclosing to the public the criminal history record information about the prostitution offense for which the individual was placed on probation. Criminal justice agencies could disclose records subject to an order only to other criminal justice agencies for criminal justice purposes, an agency or entity listed as authorized to receive them under the current nondisclosure statute, or the person subject to the order. A request for an order of nondisclosure could be made only after a person's conviction had been set aside.

The bill would take effect September 1, 2015, and would apply to those

whose convictions were set aside by a court on or after that date.

**SUPPORTERS
SAY:**

CSHB 2286 would give help and relief to human trafficking victims forced into prostitution by allowing them to request nondisclosure to seal their criminal records. The bill would help make a pathway for these victims to begin to recover and rebuild their lives.

Currently, human trafficking victims who are coerced into prostitution and who are convicted and placed on probation do not have a way to request nondisclosure of their record, even if they successfully complete their probation. These trafficking victims can have their records misconstrued and held against them. When these criminal records are publically available, these victims can struggle to rebuild their lives and have difficulties with access to housing, jobs, and school.

CSHB 2286 would remedy this by creating a process for this narrow group of deserving individuals to ask to have their records sealed. It would apply only to those who have had been successful on probation and had their conviction set aside. A judge would have to find that the individual committed the offense solely as a human trafficking victim and that the nondisclosure would be in the best interest of justice. The current restrictions on who can obtain orders of nondisclosure would apply, including not having new offenses.

The state has deemed that restricting public access to criminal records is appropriate in some circumstances, and CSHB 2286 would be consistent with those circumstances. The bill would not guarantee nondisclosure, as courts would make the final decision. Criminal justice authorities would continue to have access to the records.

**OPPONENTS
SAY:**

The state should carefully evaluate any expansion of those who could have their records sealed through orders of nondisclosure. Access to public records can be important for employers, landlords, the press, and others, and as eligibility for nondisclosure is expanded, this access decreases.