

SUBJECT: Process to set aside certain prostitution convictions, expunge records

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

0 nays

2 absent — Canales, Hunter

WITNESSES: For — Brenda Koegler, League of Women Voters of Texas; Sarah Pahl, Texas Criminal Justice Coalition; (*Registered, but did not testify:* Grace Chimene; Jamey Caruthers, Children at Risk; Katie Pedigo, New Friends New Life; Josh Gravens, Texas Citizens United for Rehabilitation of Errants (CURE); Kristin Etter, Texas Criminal Defense Lawyers Association)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify:* Adrienne McFarland, Office of the Attorney General)

BACKGROUND: Code of Criminal Procedure, ch. 55 establishes procedures for certain individuals to ask to have criminal records and files expunged. Under sec. 55.03 when records are expunged, the release, maintenance, dissemination or use for any purpose is prohibited. Paper copies are destroyed and electronic copies are deleted.

Under Code of Criminal Procedure, sec. 42.12, sec. 20(a), certain persons placed on community supervision (probation) can have their probation term reduced or terminated and under certain circumstance, the judge can set aside the verdict or allow the probationer to withdraw a plea and must dismiss the case.

DIGEST: HB 3500 would establish a process for certain individuals convicted of

prostitution who establish that they engaged in prostitution solely as a victim of human trafficking or compelling prostitution to have their conviction set aside and a way to request to have certain arrest records relating to the prostitution offense expunged.

Courts would be authorized to hear petitions from someone convicted of prostitution requesting to set aside the order of conviction if the petition alleged that the petitioner engaged in prostitution solely as a victim of Penal Code offenses for human trafficking or compelling prostitution. When a petition was filed prosecutors would get a copy of would have 20 days to file a response.

The bill would establish a process to consider the petitions. A court would be required to hold a hearing on the petition if it found there were reasonable grounds to believe the facts in the petition. Petitions would have to be dismissed if the court did not find such grounds or if the petitioner had filed a previous petition based solely on the same evidence. Petitions could not be dismissed if a petitioner submitted a government document indicating that the petitioner had engaged in prostitution solely as a victim of trafficking or compelling prostitution. Submitting such a government document would create a presumption that a claim was true. Courts would have to appoint an attorney to represent a petitioner if the court found the petitioner was indigent.

Courts would be authorized to set aside the order of conviction for prostitution if it found that the petitioner engaged in prostitution solely as a victim of trafficking or compelling prostitution and that the set-aside was in the best interests of justice.

A court finding could be appealed in the same manner as an appeal of a conviction. Petitions would not constitute an application for a writ of habeas corpus or a proceeding based on an application.

When judges dismissed proceedings after completion of a term of deferred adjudication for prostitution, they could attach a statement that the defendant engaged in prostitution solely as a victim of trafficking or

compelling prostitution.

The bill would give those arrested for prostitution the right to have all arrest records and files expunged in the same way as other expunctions in Code of Criminal Procedure 55.01(a) if a court determined under the provisions of CSHB 3500 that the person engaged in prostitution solely as a victim of trafficking or compelling prostitution.

The bill would establish a process for the arrest records and files to be retained by a law enforcement agency. If a prosecutor established a need to retain the records in order to investigate trafficking or compelling prostitution, courts could provide in the expunction order that a law enforcement agency can retain them, if the person's personal information had been redacted.

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, 2015. The bill would apply to petitions to set aside convictions that were filed on or after the bill's effective date, regardless of when the offense occurred. The bill would apply to discharges and dismissals that occur on or after the effective date, regardless of when someone was placed on deferred adjudication. The bill's provisions also would apply to requests for expunctions filed on or after the effective date, regardless of when the offense occurred.