

SUBJECT: Allowing certain prostitution conviction set-asides, records expunged

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang,
Wilson

0 nays

WITNESSES: For —James Caruthers, CHILDREN AT RISK; Brenda Koegler, League of Women Voters of Texas; Bobbie Cohen, National Council of Jewish Women; Jeffrey Larson, Republican Liberty Caucus of Texas; Allen Place, Texas Criminal Defense Lawyers Association; Brittany Hopkins, Texas Criminal Justice Coalition; Allison Franklin; Julia Walsh); (*Registered, but did not testify*: Kathryn Freeman, Christian Life Commission; Jessica Anderson, Houston Police Department; Dennis Mark, Redeemed Ministries; Liz Boyce, Texas Association Against Sexual Assault; Yannis Banks, Texas NAACP; Jennifer Allmon, The Texas Catholic Conference of Bishops; Julie Wheeler, Travis County Commissioners Court; and six individuals)

Against — (*Registered, but did not testify*: Buddy Mills, Kelly Rowe, Ricky Scaman, and R Glenn Smith, Sheriffs' Association of Texas)

On — Floyd Goodwin and Skylor Hearn, Department of Public Safety; Kirsta Melton, Office of the Attorney General

DIGEST: HB 269 would establish a process for certain individuals convicted of prostitution solely as a victim of human trafficking or compelling prostitution to have their convictions set aside, as well as a process for expunging certain arrest records relating to the prostitution offense.

The bill would authorize courts to hear petitions requesting that an order of conviction be set aside if the court found that the person engaged in prostitution solely as a victim of human trafficking or compelling prostitution and that the set-aside was in the best interest of justice. Courts

in which a defendant was convicted would have jurisdiction to hear these requests for five years after a conviction.

The request to have a conviction set aside would have to allege facts to establish that the individual engaged in prostitution solely as a victim of the crimes of human trafficking, continuous human trafficking, or compelling prostitution. Those asking to have a conviction set aside also could give the court a federal, state, local, or tribal government document indicating that the person engaged in prostitution solely as a victim of human trafficking or compelling prostitution.

Court clerks would be required to promptly notify prosecutors of a request to set aside a conviction, and the prosecutor would have 20 days to file a response.

A court would be required to hold a hearing on the request to set aside a conviction if the court found reasonable grounds to believe the facts or if the individual had submitted a federal, state, local or tribal government document about the offense. The court could not dismiss a petition if the individual submitted such a government document. Courts would be required to dismiss petitions if they found there were not reasonable grounds to believe the alleged facts or if the person had filed a previous petition based on the same evidence. If a court holding a hearing found that a petitioner was indigent and needed an attorney, the court would be required to appoint one.

After ordering a hearing, a court could order discovery from the prosecutor or the individual submitting the request. Documents from federal, state, local, or tribal governments indicating that the prostitution was committed solely as a victim of human trafficking or compelling prostitution would create a presumption that an individual's claim was true.

The person requesting the set-aside and the prosecutor could appeal a court's findings. Court reporters would be required to record hearings and if the person requesting the set-aside was indigent, the hearing would be

transcribed at the county's expense.

The bill would entitle those arrested for prostitution to have their arrest records expunged if a court determined as part of the request to have a conviction set aside that the person engaged in prostitution solely as a victim of human trafficking or compelling prostitution.

In such an expunction order, courts could allow law enforcement agencies to retain records and files under certain circumstances. Information in arrest records or files, with personal information redacted, could be retained if the court found that law enforcement agencies needed access to evidence in the records or files to investigate human trafficking or compelling prostitution offenses.

HB 269 would take effect September 1, 2017. The bill would apply to petitions asking for a conviction set aside that were filed on or after the bill's effective date, regardless of when the offense occurred. It also would apply to requests to have records expunged filed on or after the bill's effective date, regardless of when the offense occurred.

**SUPPORTERS
SAY:**

HB 269 would provide relief to victims of human trafficking who have been forced into prostitution by allowing them to request that their prostitution convictions be set aside and their records be expunged. This could help these victims begin to recover and rebuild their lives.

Having a prostitution conviction, even if solely due to being a victim of human trafficking, can result in serious and lasting consequences. A conviction can interfere with efforts to get a job, housing, or education, which can make it hard to break the cycle of offending. These hurdles can prevent trafficking victims with prostitution convictions from rebuilding their lives and reintegrating into society.

The coercive nature of trafficking and being compelled into prostitution and the profound trauma these victims experience make this bill necessary. It would set up an appropriate judicial procedure for these unique cases and would not infringe on the clemency process. Setting

aside convictions already can occur under other circumstances.

HB 269 would establish a path to have a conviction set aside and records expunged along with strict criteria for these decisions and would place full discretion with a court. A petitioner would have to prove that he or she engaged in prostitution solely as a victim of trafficking or compelling prostitution. Judges would retain discretion throughout the process, and prosecutors would have the right to respond to petitions and to appeal rulings.

While current law may be able to provide some relief under certain situations, in too many cases it is unworkable or unhelpful and does not address the wide range of circumstances of trafficking victims. In some cases, current options do not provide the clean start that these victims need and deserve. For example, a trafficking victim still under the control of the trafficker might not be willing to raise a defense to prosecution saying the victim was trafficked or may be in an area without a diversion court that specializes in prostitution offenses.

The bill would meet the needs of both law enforcement agencies and victims relating to expunged information. If courts found that agencies conducting certain investigations needed access to information in the records or files that would be expunged, the information could be retained, as long as the victims' personal information was redacted. Expunctions allow people to move forward with their lives, and this bill would help a particularly worthy group of victims do so.

**OPPONENTS
SAY:**

The state should not create a new process that would allow cases up to five years old involving one type of offense to be re-opened and essentially undone. The process described by HB 269 would be more akin to clemency, a function of the executive branch rather than the judiciary.

While those convicted of prostitution who were victims of trafficking or forced into prostitution may deserve assistance and special consideration, current law already has ways to accomplish this goal. For example, it is a defense to prosecution for prostitution if the acts were due to being a

victim of human trafficking or compelling prostitution. In addition, certain individuals placed on community supervision can have their probation terms reduced or terminated, and under some circumstances judges can set aside these verdicts or dismiss the case after allowing the probationer to withdraw a plea.

Another option could be deferred adjudication, in which a judge postpones the determination of guilt while the defendant serves probation, which can result in the defendant being discharged and dismissed. Some jurisdictions have prostitution courts that can divert those accused of the offense from the criminal justice system. There also are several existing ways to request to have records sealed through orders of nondisclosure.

These current options are appropriate because they deal with a case either up front when it is before a court or while the defendant is involved in the judicial system; for example, when an individual is on probation. The procedure that would be established by the bill could occur years after these events and could effectively reopen a case and upend a conviction, even if handed down by a jury.

**OTHER
OPPONENTS
SAY:**

The provisions that would allow law enforcement agencies to retain records and files under certain circumstances are too limited. The bill would allow the retention if the records were needed to investigate human trafficking or compelling prostitution offenses, but they could be needed for investigation of other crimes, such as drug offenses.

NOTES:

A companion bill, SB 1165 by Garcia, was referred to the Senate Criminal Justice Committee on March 9.