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AB-1761 Human trafficking: victims: affirmative defense. (2015-2016)

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Assembly Bill No. 1761

CHAPTER 636

An act to add Section 1107.5 to the Evidence Code, and to add Section 236.23 to the Penal Code, relating to human trafficking.

[Approved by Governor September 26, 2016. Filed with Secretary of State September 26, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1761, Weber. Human trafficking: victims: affirmative defense.

(1) Under existing law, as amended by Proposition 35, an initiative measure approved by the voters at the November 6, 2012, statewide general election, a person who deprives or violates another person's personal liberty with the intent to obtain forced labor or services or who deprives or violates another person's personal liberty for the purpose of prostitution or sexual exploitation is guilty of human trafficking, a felony. Proposition 35 provides that it may be amended by a statute in furtherance of its objectives by a majority of the membership of each house of the Legislature concurring.

This bill would create an affirmative defense against a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had reasonable fear of harm. The bill would prohibit this defense from being used with respect to a serious or violent crime, as defined, or a charge of human trafficking. The bill would grant a person who prevails on that affirmative defense the right to have all records in the case sealed, except as specified, and to be released from all penalties and disabilities, as provided.

(2) Existing law makes expert testimony regarding intimate partner battering and its effects admissible in a criminal action.

This bill would make expert testimony regarding the effect of human trafficking on a human trafficking victim admissible in a criminal action.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1107.5 is added to the Evidence Code, to read:

1107.5. (a) In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding the effects of human trafficking on human trafficking victims, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of human trafficking victims.

(b) The foundation shall be sufficient for admission of this expert testimony if the proponent of the evidence establishes its relevancy and the proper qualifications of the expert witness.

(c) For purposes of this section, "human trafficking victim" is defined in Section 236.1 of the Penal Code.

(d) This section is intended as a rule of evidence only and no substantive change affecting the Penal Code is intended.

SEC. 2. Section 236.23 is added to the Penal Code, to read:

236.23. (a) In addition to any other affirmative defense, it is a defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. This defense does not apply to a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, or a violation of Section 236.1.

(b) A defendant asserting the affirmative defense specified in subdivision (a) has the burden of establishing the affirmative defense by a preponderance of the evidence.

(c) Certified records of a federal, state, tribal, or local court or governmental agency documenting the person's status as a victim of human trafficking at the time of the offense, including identification of a victim of human trafficking by a peace officer pursuant to Section 236.2 and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, may be presented to establish an affirmative defense pursuant to this section.

(d) The affirmative defense may be asserted at any time before the entry of a plea of guilty or nolo contendere or admission to the truth of the charges and before the conclusion of any trial for the offense. If asserted before the preliminary hearing held in a case, the affirmative defense shall, upon request by the defendant, be determined at the preliminary hearing.

(e) If the defendant prevails on the affirmative defense provided under subdivision (a), the defendant is entitled to all of the following relief:

(1) (A) The court shall order that all records in the case be sealed pursuant to Section 851.86.

(B) Records that have been sealed pursuant to this paragraph may be accessed, inspected, or utilized by law enforcement for subsequent investigatory purposes involving persons other than the defendant.

(2) The person shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement personnel, courts, or other government employees that led to the charge shall be deemed not to have occurred.

(3) (A) The person may in all circumstances state that he or she has never been arrested for, or charged with, the crime that is the subject of the charge or conviction, including without limitation in response to questions on employment, housing, financial aid, or loan applications.

(B) The person may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest or charge or his or her failure or refusal to disclose the existence of or information concerning those events.

(C) The person may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, or any arrest, indictment, trial, or other proceedings related thereto.

(f) If, in a proceeding pursuant to Section 602 of the Welfare and Institutions Code, the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a human trafficking victim, and the affirmative defense established in subdivision (a) is established by a preponderance of the evidence, the court shall dismiss the proceeding and order the relief prescribed in Section 786 of the Welfare and Institutions Code.