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AB-262 Human trafficking: vacatur relief for victims. (2021-2022)

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Assembly Bill No. 262

CHAPTER 193

An act to amend Section 236.14 of the Penal Code, relating to human trafficking.

[Approved by Governor September 22, 2021. Filed with Secretary of State September 22, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 262, Patterson. Human trafficking: vacatur relief for victims.

Existing law allows a person who was arrested or convicted of a nonviolent offense while they were a victim of human trafficking to petition the court for vacatur relief. Existing law requires the petitioner to establish by clear and convincing evidence that the arrest and conviction were the direct result of being a victim of human trafficking. Existing law requires that a petition be made and heard within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the petitioner has sought services, whichever is later. Existing law allows a petitioner, or the petitioner's attorney, to be excused from appearing in person at a hearing on the petition only if the court finds a compelling reason why the petitioner cannot attend, in which case existing law allows the petitioner to appear by electronic means.

This bill would prohibit a court from refusing to hear the petition on the basis of the petitioner's outstanding fines and fees or the petitioner's failure to meet the conditions of probation. With the exception of restitution, the bill would require that the collection of fines imposed as a result of a nonviolent offense that is the subject of the petition be stayed while the petition is pending. This bill would also allow the petitioner to appear at all hearings on the petition by counsel if the petition is unopposed. The bill would allow a petition to be made and heard at any time after the person has ceased to be a victim of human trafficking, or at any time after the petitioner has sought services for being a victim of human trafficking. The bill would specify that the right to petition for relief pursuant to these provisions does not expire with the passage of time.

Existing law requires the court, for petitioners who qualify for vacatur relief, to order designated law enforcement agencies to seal their records of the petitioner's arrest and the court order to seal and destroy the records within 3 years from the date of arrest, or within one year after the court order for vacatur relief is granted, whichever is later, and thereafter destroy those records. Existing law requires the court to provide the petitioner with a copy of any court order concerning the destruction of the arrest records.

This bill would designate additional agencies required to seal and destroy arrest records and require all designated agencies to seal and destroy the arrest records within one year of the date of arrest, or 90 days from the date the court order for vacatur relief is granted, whichever is later. The bill would also require the court to provide the petitioner and their counsel with a copy of any form the court submits to any agency related to the sealing and destruction of arrest records. The bill would require the department to notify the petitioner and their counsel that the department has complied with the order to seal the arrest records.

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

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

SECTION 1. Section 236.14 of the Penal Code is amended to read:

236.14. (a) If a person was arrested for or convicted of any nonviolent offense committed while they were a victim of human trafficking, including, but not limited to, prostitution as described in subdivision (b) of Section 647, the person may petition the court for vacatur relief of their convictions and arrests under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking.

(b) The petition for relief shall be submitted under penalty of perjury and shall describe all of the available grounds and evidence that the petitioner was a victim of human trafficking and the arrest or conviction of a nonviolent offense was the direct result of being a victim of human trafficking.

(c) The petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief.

(d) If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition.

(e) The court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

(f) If the petition is opposed or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. The hearing may consist of the following:

- (1) Testimony by the petitioner, which may be required in support of the petition.
- (2) Evidence and supporting documentation in support of the petition.
- (3) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

(g) After considering the totality of the evidence presented, the court may vacate the conviction and the arrests and issue an order if it finds all of the following:

- (1) That the petitioner was a victim of human trafficking at the time the nonviolent crime was committed.
- (2) The commission of the crime was a direct result of being a victim of human trafficking.
- (3) The victim is engaged in a good faith effort to distance themselves from the human trafficking scheme.
- (4) It is in the best interest of the petitioner and in the interests of justice.

(h) In issuing an order of vacatur for the convictions, an order shall do the following:

- (1) Set forth a finding that the petitioner was a victim of human trafficking when they committed the offense.
- (2) Set aside the verdict of guilty or the adjudication and dismiss the accusation or information against the petitioner.
- (3) Notify the Department of Justice that the petitioner was a victim of human trafficking when they committed the crime and of the relief that has been ordered.

(i) Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent crime, unless it has already been paid. With the exception of restitution, the collection of fines imposed as a result of a nonviolent offense that is the subject of the petition shall be stayed while the petition is pending.

(j) A person who was arrested as, or found to be, a person described in Section 602 of the Welfare and Institutions Code because they committed a nonviolent offense while they were a victim of human trafficking, including, but not limited to, prostitution, as described in subdivision (b) of Section 647, may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of human trafficking the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met.

(k) (1) If the court issues an order as described in subdivision (a) or (j), the court shall also order all of the following agencies to seal and destroy their records:

- (A) Any law enforcement agency having jurisdiction over the offense.

(B) The Department of Justice.

(C) Any law enforcement agency that arrested the petitioner.

(D) Any law enforcement agency that participated in the arrest of the petitioner.

(E) Any law enforcement agency that has taken action or maintains records because of the offense including, but not limited to, departments of probation, rehabilitation, corrections, and parole.

(2) Any government agency described in paragraph (1) shall seal their records of arrest and the court order to seal and destroy the records within one year from the date of arrest, or within 90 days after the court order is granted, whichever occurs later. The agency shall thereafter destroy their records of the arrest and court order to seal and destroy those records within one year of the date of the court order.

(3) The court shall provide the petitioner a certified copy of any court order concerning the sealing and destruction of the arrest records. The court shall provide the petitioner and petitioner's counsel a copy of any form that the court submits to any agency, including the Department of Justice, related to the sealing and destruction of the arrest records.

(4) The Department of Justice shall notify the petitioner and the petitioner's counsel that the department has complied with the order to seal the arrest records by the applicable deadline.

(l) A petition pursuant to this section shall be made and heard at any time after the person has ceased to be a victim of human trafficking, or at any time after the petitioner has sought services for being a victim of human trafficking, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of human trafficking who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section. The right to petition for relief pursuant to this section does not expire with the passage of time and may be made at any time after the time specified in this subdivision. A court shall not refuse to hear a petition that was properly made pursuant to this section on the basis of the petitioner's outstanding fines and fees or the petitioner's failure to meet the conditions of probation.

(m) (1) For the purposes of this section, official documentation of a petitioner's status as a victim of human trafficking may be introduced as evidence that their participation in the offense was the result of their status as a victim of human trafficking.

(2) For the purposes of this subdivision, "official documentation" means any documentation issued by a federal, state, or local agency that tends to show the petitioner's status as a victim of human trafficking. Official documentation shall not be required for the issuance of an order described in subdivision (a).

(n) If the petition is unopposed, the petitioner may appear at all hearings on the petition, if any, by counsel. If the petition is opposed and the court orders a hearing for relief on the petition, the petitioner shall appear in person unless the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear by telephone, videoconference, or by other electronic means established by the court.

(o) Notwithstanding any other law, a petitioner who has obtained an order pursuant to this section may lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to the order.

(p) Notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

(q) The record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner's full name.

(r) A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section.

(s) If the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial may be without prejudice. The court may state the reasons for its denial in writing or on the record that is memorialized by transcription, audio tape, or video tape, and, if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

(t) For the purposes of this section, the following terms apply:

(1) "Nonviolent offense" means any offense not listed in subdivision (c) of Section 667.5.

(2) "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section. The court shall provide the

petitioner with a copy of the orders described in subdivisions (a), (j), and (k), as applicable, and inform the petitioner that they may thereafter state that they were not arrested for the charge, or adjudicated or convicted of the charge, that was vacated.

(3) "Victim of human trafficking" means the victim of a crime described in subdivisions (a), (b), and (c) of Section 236.1.