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**AB-2169 Criminal procedure.** (2021-2022)

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**Assembly Bill No. 2169**

**CHAPTER 776**

An act to amend Sections 236.14 and 236.15 of the Penal Code, relating to criminal procedure.

[ Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2169, Gipson. Criminal procedure.

Existing law allows a person who was arrested or convicted of a nonviolent offense while they were a victim of human trafficking, intimate partner violence, or sexual violence, to petition the court for vacatur relief. Existing law requires, to receive that relief, that the person establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking, intimate partner violence, or sexual violence.

This bill would instead require that the petitioner establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking, intimate partner violence, or sexual violence, which demonstrates that the person lacked the requisite intent to commit the offense. The bill would require the court, under those circumstances, to find that the person lacked the requisite intent to commit the offense and to vacate the conviction as invalid due to legal effect at the time of the arrest or conviction.

Existing law, under these provisions, authorizes the court to vacate the conviction and arrests if it finds that the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence, at the time the crime was committed, the commission of the crime was a direct result of being a victim of human trafficking, intimate partner violence, or sexual violence, the victim is engaged in good faith efforts to distance themselves from the perpetrator of the harm or human trafficking scheme, and it is in the best interest of the petitioner and in the interests of justice.

This bill would remove the requirement that the victim is engaged in good faith efforts to distance themselves from the perpetrator of the harm or human trafficking scheme, and would remove the requirement that it be in the best interest of the petitioner. The bill would make additional clarifying changes.

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, arrests, and adjudications 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 which demonstrates that the person lacked the requisite intent to commit the offense. Upon this showing, the court shall find that the person lacked the requisite intent to commit the offense and shall therefore vacate the conviction as invalid due to legal defect at the time of the arrest or conviction.

(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 of the alleged commission of the qualifying crime.

(2) The arrest for or conviction of the crime was a direct result of being a victim of human trafficking.

(3) It is in the best interest of justice.

(h) An order of vacatur shall do all of the following:

(1) Set forth a finding that the petitioner was a victim of human trafficking at the time of the alleged commission of the qualifying crime and therefore lacked the requisite intent to commit the offense.

(2) Set aside the arrest, finding of guilt, or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of arrest or conviction.

(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 qualifying 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.

**SEC. 2.** Section 236.15 of the Penal Code is amended to read:

**236.15.** (a) If a person was arrested for or convicted of any nonviolent offense committed while the person was a victim of intimate partner violence or sexual violence, the person may petition the court for vacatur relief of their convictions, arrests, and adjudications 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 intimate partner violence or sexual violence which demonstrates that the person lacked the requisite intent to commit the offense. Upon this showing, the court shall find that the person lacked the requisite intent to commit the offense and shall therefore vacate the conviction as invalid due to legal defect at the time of the arrest or conviction.

(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 intimate partner violence or sexual violence and the arrest or conviction of a nonviolent offense was the direct result of being a victim of intimate partner violence or sexual violence.

(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 expunge the arrests and issue an order if it finds all of the following:

(1) That the petitioner was a victim of intimate partner violence or sexual violence at the time of the alleged commission of the qualifying crime.

(2) The arrest or conviction of the crime was a direct result of being a victim of intimate partner violence or sexual violence.

(3) It is in the best interest of justice.

(h) An order of vacatur shall do all of the following:

(1) Set forth a finding that the petitioner was a victim of intimate partner violence or sexual violence at the time of the alleged commission of the qualifying crime and therefore lacked the requisite intent to commit the offense.

(2) Set aside the arrest, finding of guilt, or the adjudication and dismiss the accusation or information against the petitioner as invalid due to a legal defect at the time of the arrest or conviction.

(3) Notify the Department of Justice that the petitioner was a victim of intimate partner violence or sexual violence 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 offense, unless it has already been paid.

(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 qualifying nonviolent offense while they were a victim of intimate partner violence or sexual violence, 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 intimate partner violence or sexual violence the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met.

(k) If the court issues an order as described in subdivision (a) or (j), the court shall also order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records within three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and

thereafter to destroy their records of the arrest and the court order to seal and destroy those records. The court shall provide the petitioner a copy of any court order concerning the destruction of the arrest records.

(l) A petition pursuant to this section shall be made and heard within a reasonable time after the person has ceased to be a victim of intimate partner violence or sexual violence, or within a reasonable time after the petitioner has sought services for being a victim of intimate partner violence or sexual violence, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of intimate partner violence or sexual violence who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section.

(m) For the purposes of this section, official documentation of a petitioner's status as a victim of intimate partner violence or sexual violence may be introduced as evidence that their participation in the offense was the result of their status as a victim of intimate partner violence or sexual violence. 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 intimate partner violence or sexual violence. Official documentation shall not be required for the issuance of an order described in subdivision (a).

(n) A petitioner, or their attorney, may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear telephonically, via 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.