
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 823 **Hearing Date:** April 12, 2016
Author: Block
Version: March 31, 2016
Urgency: No **Fiscal:** No
Consultant: JM

Subject: *Criminal Procedure: Human Trafficking*

HISTORY

Source: Author

Prior Legislation: AB 1585 (Alejo) – Ch. 708, Stats. 2014
AB 795 (Alejo) – failed Assembly Appropriations, 2013
AB 694 (Bloom) – Ch. 126, Stats. 2013
AB 1940 (Hill) – failed Assembly Appropriations, 2012
AB 651 (Bradford) – Ch. 787, Stats. 2012
AB 2040 (Swanson) – Ch. 197, Stats. 2012
Proposition 35 of the November 2012 General Election
AB 22 (Lieber) – Ch. 240, Stats. 2005

Support: California Public Defenders Association; California Catholic Conference, Inc.;
Junior Leagues of California State Public Affairs Committee; Legal Services for
Prisoners with Children; National Association of Social Workers

Opposition: California District Attorneys Association

PURPOSE

The purpose of this bill is to: 1) allow a person who was the victim of human trafficking to seek dismissal of a conviction or juvenile adjudication for any non-violent offense committed during his or her time as human trafficking victim and to have the arrest and court records for such an offense sealed; 2) direct the court granting such relief to notify the Department of Justice about the orders; and 3) set substantive and procedural rules for a hearing to determine whether a person seeking relief to prove that she or he was a human trafficking victim at the time of the offenses for which he or she seeks relief.

Existing law allows a court to set aside a conviction of a person who has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or who the court in its discretion and the interests of justice, determines that the person should be granted relief, provided that the person is not then serving a sentence for any other offense, is not on probation for any other offense, and is not being charged with any other offense. (Pen. Code § 1203.4, subd. (a).)

Existing law provides that the relief pursuant to Penal Code Section 1203.4 does not relieve the petitioner of the obligation to disclose the conviction in response to any direct question contained

in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission. The conviction can be alleged in any subsequent criminal prosecution. If the underlying conviction bars a person from possessing a firearm, the dismissal of the conviction does not eliminate that prohibition. (Pen. Code § 1203.4, subd. (a)-(b).)

Existing law states that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained. This relief is not available to a person who paid money or any other valuable thing, or attempted to pay money or any other valuable thing, to any person for the purpose of prostitution as defined. (Pen. Code § 1203.47.)

Existing law provides that a person who was under the age of 18 at the time of a commission of a misdemeanor and is eligible for, or has previously received expungement relief, may petition the court for an order sealing the record of conviction and other official records in the case, including records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether the defendant was acquitted or charges were dismissed. Thereafter the conviction, arrest, or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence. (Pen. Code § 1203.45.)

Existing law states that any person who was under the age of 18 when he or she was arrested for a misdemeanor may petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, in certain circumstances. (Pen. Code § 851.7.)

Existing law allows in certain cases, a person who has reached the age of 18 years to petition the juvenile court for sealing of his or her juvenile record. (Welf. & Inst. Code § 781.)

Existing law provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than \$500,000. (Pen. Code § 236.1, subd. (a).)

Existing law states that any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of specified sex crimes is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than \$500,000. (Pen. Code § 236.1, subd. (b).)

Existing law provides that the Department of Justice (DOJ) shall maintain state summary criminal history information and authorizes DOJ to furnish state summary criminal history information to statutorily authorized entities for specified purposes including employment and licensing. (Pen. Code § 11105.6.)

Existing law prohibits a public or private employer from asking an applicant for employment to disclose, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or post-trial diversion program; nor shall any employer seek from any source, or utilize, as a factor in determining any condition or facet of employment, or any apprenticeship or other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding any pretrial or post-trial diversion program. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial. This provision does not apply to employment of peace officers. (Lab. Code § 432.7(a) and (e).)

Existing law allows a court, upon making a finding that a defendant has been convicted of solicitation or prostitution as a result of his or her status as a victim of human trafficking, to issue an order that does all of the following:

- Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the crime;
- Orders expungement relief;
- Notifies the Department of Justice (DOJ) that the petitioner was a victim of human trafficking when he or she committed the crime and the relief that has been ordered by the court; and,
- Prohibits DOJ from disseminating the petitioner's record of conviction for specified licensing, employment and certification requirements. (Pen. Code § 1203.49.)

This bill extends the relief available under Penal Code Section 1203.49 for dismissal of adult prostitution convictions suffered by human trafficking victims to dismissal of any non-violent offenses (that is, offenses not listed in subdivision (c) of Penal Code section 667.5) committed as a result of or in clear connection with a human trafficking scheme of which the person was a victim.

This bill extends the expanded relief for dismissal of non-violent human trafficking crimes to a person who was subject to juvenile court adjudications for such an offense.

This bill provides that where a human trafficking victim is granted dismissal of an adult conviction or a juvenile adjudication suffered as a result of the person's status as a human trafficking victim, the arrest and court records of that offense shall be sealed.

This bill provides that a person who was arrested for a crime allegedly committed while the person was a human trafficking victim may petition for a judicial finding of his or her status as a human trafficking victim at the time of the offense and an order that the arrest record be sealed.

This bill provides that the following standards and procedures shall apply in a petition for relief by a human trafficking victim from the consequences of an arrest or arrest and conviction:

- The petition shall be made and heard within a reasonable time after the person ceased being a human trafficking victim or receiving services as a human trafficking victim, subject to concerns about at-risk family members or other human trafficking victims.
- Official documentation of the petitioner's victim status shall create a presumption that the person's offenses were the result of her or his status as a victim of human trafficking.

- Official documentation is that issued by a government agency that tends to show the petitioner's status as a human trafficking victim.
- The petitioner, or counsel, is not required to appear personally at a hearing for relief, but may instead by electronic means.
- A petitioner granted relief under this law may lawfully deny or refuse to acknowledge an arrest, conviction or adjudication as to which relief was granted and his or her records shall not be distributed to any state licensing board.
- The record of a proceeding for relief that is publically accessible shall not include the full name of the petitioner.
- A court may take any additional appropriate action to carry out the purposes of this law
- Denial of a petition on grounds of insufficient evidence of the petitioner's victim status shall be without prejudice and the court shall state the reasons for denial on the record and allow the petitioner reasonable time to cure the deficiencies in the petition.
- A non-violent offense is one not listed in Penal Code Section 667.5, subdivision (c).

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v.*

Brown (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

Victims of human trafficking are caught in a vicious cycle of injustice that continues long after they have escaped from their traffickers. Specifically, victims face criminal stigmatization from ... acts that they were forced to commit during their exploitation. Reports from organizations like the State Courts Collaborative and the Polaris Project show that victims are often charged and convicted of a variety of crimes beyond prostitution and solicitation, like drug offenses, theft, using false identification, and more. The reports state that these crimes are usually committed at the direction of the victim's trafficker, straddling victims with long criminal records that limit access to employment opportunities, housing, financial aid and other services necessary to get back on their feet.

Perhaps most notably, victims with a criminal record face a serious obstacle in gaining stable employment. A paper from the National Institute of Justice asserts that a criminal record will keep many people from "obtaining employment, even if they have already paid their dues, are qualified for the job and unlikely to reoffend". Research from the American Journal of Sociology shows that the chances of a person with a criminal record getting a callback after a job interview are reduced by more than 50%. It is unfair that survivors of human trafficking, after escaping from abuse and coercion, must face the difficulties that come with a criminal record caused by their victimization.

The state has removed a few barriers for victims, but there is much more to be done. Current law does not offer a complete remedy for the many offenses that victims of human trafficking may have on their criminal records. Penal Code Section 1203.49 allows courts to grant expungement relief to victims if the convictions are solely for solicitation or prostitution. The law limits the remedy to only two classes of crime, when in reality victims can have many different types of arrests and convictions on their records.

Since 2014, fifteen states have passed legislation that creates a process for victims to vacate or expunge a conviction that relates to their experience as human trafficking victims. In particular, vacatur laws are seen as the best legal remedy for clearing convictions in comparison with expungement provisions. Vacatur laws offer a more complete reprieve for victims of human trafficking by offering a clean slate. SB 823 would provide this legal remedy to any nonviolent offense if certain criteria are met so that victims can truly get back on their feet.

2. Dismissal of Prior Convictions Generally

Convicted defendants who have successfully completed probation or a conditional sentence can petition the court to set aside a guilty verdict or permit the person to withdraw his or her guilty or nolo contendere plea and dismiss the complaint, accusation, or information. (Penal Code § 1203.4; *People v. Bishop* (1992) 11 Cal.App.4th 1125, 1129.) Where the defendant fulfills the conditions of probation without violation or obtains early discharge, he or she has a right to dismissal of the underlying conviction. (*People v. Bradus* (2007) 149 Cal.App.4th 636.)

Although this form of relief is colloquially described as “expungement,” the relief granted has substantial limits. The conviction can be alleged in any subsequent prosecution. The dismissal does not restore a person’s right to possess a firearm and does not permit a person to hold public office if barred by the dismissed conviction. The conviction must be disclosed in an application for public office or licensure by any state or local agency, or in seeking a contract with the state lottery. The relief is not available for specified sex and child pornography or specified vehicle safety misdemeanors.

3. Relief for a Victim of Human Trafficking under Existing Law

Recently enacted legislation - AB 1585 (Alejo) Ch. 708, Stats. 2014 - provides that in cases where a person has been convicted of solicitation or prostitution, has completed probation, and can show the court that he or she was convicted of the offense because he or she was a victim of human trafficking, the court may offer relief under Penal Code Section 1203.4 for dismissal of a guilty verdict of the setting aside of a guilty or no contest plea. The court shall also notify the Department of Justice that the person was a victim of human trafficking when he or she committed the offense. Generally, when the Department of Justice sends out background information they include convictions that have later been dismissed under Penal Code Section 1203.4. A prostitution offense (Pen. Code § 647, subd. (b)) that is dismissed pursuant to Penal Code Section 1203.49 for a victim of human trafficking is not included in background check information.

4. Broad Relief for Human Trafficking Victims - Background Checks and State Licensing Issues

The relief granted pursuant to this bill can reasonably be described as true expungement. The bill provides: “Notwithstanding any other law, the records of the arrest, conviction or adjudication shall not be distributed to any state licensing board.” Further, unlike the relief granted under Section 1203.4, the records of the arrest and conviction shall be sealed.

It is not explicitly stated in the bill that the expungement would excuse a person granted the relief from disclosing the arrest or conviction in an application for a license issued by a local entity. The bill does not explicitly state that a person granted the relief under this bill would be

entitled to possess a firearm, if otherwise barred from possession of a firearm by any felony conviction or a specified misdemeanor. As noted above, a person whose conviction was dismissed pursuant to Section 1203.4 cannot possess a firearm. Given that the relief provided by this bill includes the sealing of the record of arrest or conviction for a covered offense, it can be argued that no adverse consequences of the conviction remain after relief is granted.

- END -