
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 262 **Hearing Date:** July 13, 2021
Author: Patterson
Version: March 15, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Human trafficking: vacatur relief for victims*

HISTORY

Source: Made for Them
Free to Thrive

Prior Legislation: AB 2868 (Patterson) not heard due to COVID-19
AB 2869 (Patterson) not heard due to COVID-19
AB 1762 (Campos) Vetoed 2016
SB 823 (Block) Chapter 650, Stats. 2016
AB 1585 (Alejo) Chapter 708, Stats. 2014
AB 795 (Alejo) failed Assembly Appropriations, 2013
AB 694 (Bloom) Chapter 126, Stats. 2013
AB 1940 (Hill) failed Assembly Appropriations, 2012
AB 651 (Bradford) Chapter 787, Stats. 2012
AB 2040 (Swanson) Chapter 197, Stats. 2012
Proposition 35 of the November 2012 General Election
AB 22 (Lieber) Chapter 240, Stats. 2005

Support: California Catholic Conference; California Public Defenders Association; Central Valley Justice Coalition; End Violence Against Women International; Every Neighborhood Partnership; Fresno Community Health Improvement Partnership; Fresno Pacific University Center for Community Transformation; Fresno Police Department; Global Center for Women and Justice; National Association of Social Workers, California Chapter; The Fresno Business Council

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to provide additional legal rights when a victim of human trafficking petitions the court to vacate a conviction for a non-violent crime that was committed while the petitioner was a victim of human trafficking. Allows a person, when petitioning to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel and removes time limitations to bring the petition.

Existing law provides that if a person was arrested for, or convicted of any nonviolent offense committed while he or she was a victim of human trafficking, the person may petition the court vacate their convictions and arrests. (Penal Code § 236.14 (a).)

Existing law requires the petitioner to establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking. (Penal Code § 236.14 (a).)

Existing law states that the petition to vacate conviction or arrest 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. (Penal Code § 236.14 (b))

Existing law provides that 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. (Penal Code § 236.14 (d).)

Existing law states that 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:

- a) Testimony by the petitioner, which may be required in support of the petition;
- b) Evidence and supporting documentation in support of the petition; or,
- c) Opposition evidence presented by any of the involved prosecutorial agencies that obtained the conviction. (Penal Code, § 236.14 (f)(1)-(3).)

Existing law allows the court after considering the totality of the evidence presented, to vacate the conviction and expunge the arrests and issue an order if it finds all of the following:

- a) That the petitioner was a victim of human trafficking at the time the nonviolent crime was committed;
- b) The commission of the crime was a direct result of being a victim of human trafficking;
- c) The victim is engaged in a good faith effort to distance himself or herself from the human trafficking scheme; and,
- d) It is in the best interest of the petitioner and in the interests of justice. (Pen. Code, § 236.14, subd. (g)(1)-(4).)

Existing law states that the order vacating a conviction or expunging and arrest shall do the following:

- a) Set forth a finding that the petitioner was a victim of human trafficking when he or she committed the offense;
- b) Set aside the verdict of guilty or the adjudication and dismiss the accusation or information against the petitioner; and,
- c) Notify the Department of Justice (DOJ) that the petitioner was a victim of human trafficking when he or she committed the crime and of the relief that has been ordered. (Penal Code, § 236.14 (h)(1)-(3).)

Existing law specifies that 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. (Penal Code §

236.14(i.)

Existing law specifies that when the court orders the conviction vacated, the court shall also order the law enforcement agency having jurisdiction over the offense, DOJ, 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 for 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. (Penal Code § 236.14 (k).)

Existing law requires the petition to vacate the conviction to 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 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. (Penal Code § 236.14 (l).)

Existing law states petitioner, or his or her 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. (Penal Code, § 236.14 (n).)

Existing law specifies that notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board. (Penal Code § 236.14 (p).)

Existing law defines a “nonviolent offense” for the purposes of vacatur relief, as one that does not appear on California’s violent felony list. (Penal Code § 236.14(t).)

Existing law provides if a defendant has been convicted of solicitation or prostitution, and if the defendant has completed any term of probation for that conviction, the defendant may petition the court for relief. If the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, the court may issue an order that does all of the following: (Penal Code § 1203.49.)

Existing law sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the crime;

- a) Order specified expungement relief; and,
- b) Notifies the Department of Justice that the petitioner was a victim of human trafficking when he or she committed the crime and the relief that has been ordered. (Penal Code § 1203.49 (a)-(c).)

Existing law establishes the DNA and Forensic Identification Database and Data Bank to assist federal, state, and local criminal justice and law enforcement agencies within and outside California in the expeditious and accurate detection and prosecution of individuals responsible for sex offenses and other crimes, the exclusion of suspects who are being investigated for these crimes, and the identification of missing and unidentified persons, particularly abducted children. (Penal Code § 295)

Existing law requires any person, including any juvenile who is convicted of a or pleads guilty or no contest to any felony offense, or is found not guilty by reason of insanity of any felony offense, or any juvenile who is adjudicated for committing any felony offense, as specified, to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis. (Penal Code § 296 (a)(1))

Existing law requires any adult person who is arrested for or charged with any felony offense to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis. (Penal Code § 296 (a)(2).)

Existing law requires any person, including any juvenile who is required to register as a sex offender or as an arsonist, because of the commission of, or the attempt to commit, a felony or misdemeanor offense, or any person, including any juvenile, who is housed in a mental health facility or sex offender treatment program after referral to such facility or program by a court after being charged with any felony offense, to provide buccal swab samples, right thumbprints, and a full palm print impression of each hand, and any blood specimens or other biological samples required for law enforcement identification analysis. ((Penal Code § 296 (a)(3).)

Existing law authorizes qualifying persons whose DNA profile has been included in the DOJ DNA and Forensic Identification Database and Databank Program to have their DNA specimen and sample destroyed and searchable database profile expunged from the databank program. (Penal Code § 299 (a).)

This bill specifies that with the exception of victim restitution, 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 states that if the petition to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking is unopposed, the petitioner may appear at all hearings on the petition, if any, by counsel.

This bill specifies that if the petition to vacate a non-violent conviction because the petitioner was victim of human trafficking and the conviction that was a direct result of being a victim of human trafficking 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.

This bill states that a petition can 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.

This bill provides that the right to petition for relief on a non-violent conviction, as described in this bill, does not expire with the passage of time.

This bill provides that if the court issues an order for vacatur relief it shall also order 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.

This bill requires that, if the court issues an order for vacatur relief, it shall also order specified entities 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.

This bill requires agencies who are ordered to seal and destroy their records to comply with the order within one year of the date of the court order.

This bill requires that, if the court issues an order for vacatur relief, it shall also 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.

This bill requires that, if the court issues an order for vacatur relief, order the expungement of the petitioner's searchable database profile and destruction of any DNA sample maintained by the Department of Justice's (DOJ) DNA and Forensic Identification Database and Databank Program.

This bill requires that the DOJ destroy the DNA sample within one year of the court order and notify the petitioner and petitioner's counsel that the department has complied with the order to destroy petitioner's DNA specimen and sample and expunge the petitioner's searchable database profile from the DOJ's DNA and Forensic Identification Database and Databank Program by the applicable deadline.

COMMENTS

1. Need for This Bill

According to the author:

Current law is problematic for victims of trafficking who, because of their record, often have difficulty finding a job and therefore cannot afford to pay their fines. In some counties, the court chooses to waive this requirement while others do not—it is up to the discretion of the judge and their interpretation of code. It is a catch 22: having a record prevents victims from building a successful life and finding meaningful employment, yet they cannot petition to have their records cleared until all fines and fees are paid in full. This barrier stops victims from addressing one of the most vital issues preventing them from starting a new life: clearing their record.

Current law is also unclear about how long a victim may have to file a petition to have their record cleared. This ambiguity causes confusion for survivors and the courts alike.

Current law also makes it difficult for victims to clear their name in a timely manner. Three years from the date of arrest or one year after the court order is granted is too long for these victims to seek relief from a crime they are a victim to. When the court issues a decision to have one's record cleared, that should be done

by the responsible agencies in a timely manner (this bill proposes 90 days as opposed to the current one year).

Additionally, while the law states a victim *may* be excused from appearing in person at a hearing and instead appear through electronic means, this discretion is not always granted. Many victims have multiple offenses in multiple counties, is problematic for victims of trafficking who, because of their record, often have difficulty finding a job and therefore cannot afford to pay their fines. In some counties, the court chooses to waive this requirement while others do not—it is up to the discretion of the judge and their interpretation of code. It is a catch 22: having a record prevents victims from building a successful life and finding meaningful employment, yet they cannot petition to have their records cleared until all fines and fees are paid in full. This barrier stops victims from addressing one of the most vital issues preventing them from starting a new life: clearing their record.

2. Vacating a Conviction

Defendants who have successfully completed probation (including early discharge) can petition the court to set aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismiss the complaint, accusation, or information. (Penal Code Section 1203.4.) Defendants who have successfully completed a conditional sentence also are eligible to petition the court for expungement relief under Penal Code Section 1203.4. (*People v. Bishop* (1992) 11 Cal.App.4th 1125, 1129.) Penal Code Section 1203.4 also provides that the court can, in the furtherance of justice, grant this relief if the defendant did not successfully complete probation. (Penal Code Section 1203.4; see *People v. McLernon* (2009) 174 Cal.App.4th 569, 577.)

Expungement 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 in any questionnaire or application for public office or for licensure by any state or local agency. Expungement relief pursuant to Penal Code Section 1203.4a, on the other hand, does not explicitly require the person to disclose the conviction in an application for a state license or public office. Penal Code Section 1203.4a is only available for defendants convicted of a misdemeanor and not granted probation.

By regulation, a private employer may not ask a job applicant about any misdemeanor conviction dismissed under Penal Code 1203.4. (2 Cal. Code of Regs. Section 7287.4(d).) Also, under Labor Code Section 432.7, a private or public employer may not ask 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. However, if the employer is an entity statutorily authorized to request criminal background checks on prospective employees, the background check would reveal the expunged conviction with an extra entry noting the dismissal on the record.

Current law allows a victim of human trafficking to vacate a non-violent conviction that was a direct result of being a victim of human trafficking. By vacating the conviction, the remedy is actually more forceful than an expungement. Unlike an expungement, getting a conviction vacated effectively means that the conviction never occurred. “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, as specified.

A petitioner who has their non-violent conviction vacated because it was a direct result of being a victim of human trafficking, may lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to the order. Current law also specifies that for a conviction that has been vacated, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

This bill specifically defines a “nonviolent offense” as one that does not appear in California’s list of violent felonies. The “violent felony list” includes offenses such as murder, rape, robbery, kidnapping, etc. All of the offenses on the violent felony list would count as a third strike under California’s reformed three strikes law. These offenses represent serious conduct for which a person can be charged and convicted and carry some of the most severe penalties.

3. Probation Fines and Petitions to Vacate Convictions for Victims of Human Trafficking

The author indicates that as a matter of practice, many counties in California are requiring human trafficking victims to have paid the fines on their conviction (that was a result of being a victim of human trafficking) before they are they are granted relief under the petition process.

The language of this clarifies that a court cannot refuse to hear the petition to vacate a non-violent conviction committed while the petitioner was the victim of human trafficking on the basis of the petitioner’s outstanding fines and fees or the petitioner’s failure to meet the conditions of probation.

4. Time Limits to Vacate a Non-Violent Conviction Because the Petitioner Was a Victim of Human Trafficking

Under current law, the petition to vacate the non-violent conviction must 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 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. (Penal Code § 236.14 (l).)

This bill would allow the petition to be made 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. This bill would specify that the right to petition for relief on a non-violent conviction, as described in this bill, does not expire with the passage of time.

5. Allowing Petitioner to Appear Through Counsel

Existing law generally requires the petitioner to be present at the hearing to vacate the non-violent conviction. Existing law allows the petitioner’s presence to be excused 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. (Penal Code § 236.14 (n).)

This bill would allow the petitioner not to be personally present at the hearing on the petition if the petition is unopposed. If the petitioner chooses not to appear under those circumstances, the petitioner would be represented by their counsel.

This bill further specifies that if the petition to vacate a non-violent conviction because the petitioner was victim of human trafficking and the conviction that was a direct result of being a victim of human trafficking 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.

6. DNA Collection and Removal from the Database

California law authorizes the collection of DNA from many people who are convicted or arrested for a variety of criminal offenses. DNA that is collected from convicted persons and arrestees is stored in the DOJ's DNA and Forensic Identification Database and Databank Program. Any person (adult or juvenile) who is newly convicted/adjudicated of a felony offense, or who is newly convicted or adjudicated of a misdemeanor but has a prior felony conviction will have to provide a DNA sample. Any person (adult or juvenile) currently in custody or on probation, parole, or any other supervised release after conviction for any felony offense committed prior to November 3, 2004 must provide a DNA sample. Any person (adult or juvenile) currently on probation or any other supervised release for any offense with a prior felony (California or equivalent out-of-state crime) on their record. Both sex registrants and arson registrants whose underlying offense was a misdemeanor are required to participate in DNA collection. In addition, as of January 1, 2009, adults arrested for any felony offense are subject to DNA collection.

Under existing law, certain persons qualify to have their DNA sample destroyed and their profile removed from the DNA database. If a person has no past or present offense or pending charge which qualifies that person for inclusion within the state's DNA and Forensic Identification Database and Databank Program, and there otherwise is no legal basis for retaining the specimen or sample or searchable profile, then the person may apply to have their profile expunged from the databank.

This bill provides that if the court issues the order under this bill then the court shall also order that any DNA specimen and sample of the petition be destroyed and any searchable database profile be expunged.

7. Argument in Support

In support the Global Center for Women and Justice states:

California has one of the highest rates for human trafficking within the United States. Survivors of human trafficking desire a fresh start on life and seek out secure housing, stable employment, counseling, and involvement within their community. Unfortunately, many survivors are unable to access resources or even stable housing because of their criminal records that are a result of their victimization at the hands of a trafficker.

AB 262 will make a handful of changes to the California code that will make it easier for survivors to fully reintegrate into their community. First, this bill will prevent a court from refusing to hear a human trafficking victim's petition to clear their record due to fines owed and/or probation requirements not met. Current law provides that a victim of human trafficking may petition the court for vacatur relief of nonviolent offenses, but they must first pay all fines and meet all probation requirements before petitioning the court. Although in some counties the court chooses to waive this requirement, many do not. Victims of human trafficking are then stuck because they cannot find stable and secure employment without clearing their records first, yet, they cannot clear their records without first finding a way to pay their fine or serve the terms of probation.

Additionally, AB 262 will clarify the code to state that a victim can petition the court for vacatur relief at any point in time once removed from trafficking. This bill will also allow a victim of human trafficking to appear at all court hearings via counsel. Many victims have multiple offenses in multiple counties requiring travel to locations where they were either trafficked or lived while being trafficked, making the petitioning process lengthy, time-consuming, costly, and traumatic.

AB 262 will clarify how and when a victim of human trafficking may petition for vacatur relief and ease the process along the way. For survivors of human trafficking, clearing their record of crimes that resulted from their victimhood is a significant step towards a new life, and one that cannot be understated for survivors trying to move beyond their traumatic past.

As an organization that advocates for victims and promotes human rights through collaborative and restorative justice principles, we recognize the need for and importance of survivors of human trafficking to clear their criminal records. Without this step, they continue to be reminded of their exploitation when having to retell employers or housing why they have a criminal record. And their criminal records taint who they are as a person beyond their victimization, preventing many survivors from moving forward on their journey.

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