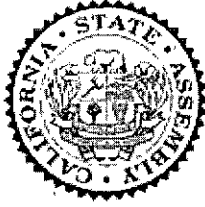


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LUIS A. ALEJO
ASSEMBLYMEMBER, THIRTIETH DISTRICT

Assembly Bill 1585: Protecting Victims of Human Trafficking

Summary

AB 1585 will give the courts the authority to prohibit the dissemination of a conviction record for solicitation or prostitution if the petitioner is a victim of human trafficking and the offense is the result of the petitioner's status as a victim of that crime.

Background

Human trafficking has become a serious issue in our state, with people being bought, sold and smuggled like modern-day slaves. It affects people of all races, religions and backgrounds, and can have long lasting effects on victims and their families. These individuals who have seen the worst of society need a pathway to a normal life.

Under current law, when a victim of human trafficking is convicted of solicitation or prostitution their only option is to have the conviction set aside or dismissed under Penal Code Section 1203.4. However, even when the conviction has been set aside, it may be discovered during the criminal history background check process. As a result, the current expungement process still requires the Department of Justice to reveal these convictions to employers, and licensing and certification entities.

The current law is unfair. These individuals are the true victims of the crime, and a victim should not be prevented opportunities that would allow them to live a normal life. According to a study by the Polaris Project, a group committed to combating human trafficking, having a conviction of prostitution on one's record makes it difficult for a victim of human trafficking to fully integrate back into society.

AB 1585 will help lift these barriers by adding a new section to the penal code that specifically addresses the issues victims of human trafficking face. The newly added section, 1203.49, will allow a court to make a specific finding as to the convicted person's status as a victim of human trafficking, allow the court to issue all of the relief provided by Section 1203.4, and will prohibit the dissemination of the victims record for specified employment, licensing, and certification requirements.

Date of Hearing: March 11, 2014

Counsel: Stella Choe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Tom Ammiano, Chair

AB 1585 (Alejo) – As Introduced: February 3, 2014

SUMMARY: Provides that a defendant who has been convicted of solicitation or prostitution may petition the court to set aside the conviction 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. Specifically, this bill:

- 1) Allows a court to issue an order that does all of the following:
 - a) Sets forth a finding that the petitioner was a victim of human trafficking when he or she committed the crime;
 - b) Orders expungement relief; and
 - c) 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.
- 2) Prohibits DOJ from disseminating the petitioner's record of conviction for applications and petitions related to adoptions, and other specified licensing, employment and certification requirements.

EXISTING LAW:

- 1) 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).)
- 2) 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. (Pen. Code, § 1203.4, subd. (a).)
- 3) Provides that a person who was under the age of 18 at the time of 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 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.)

- 4) 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.)
- 5) 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. (Penal Code, § 851.7.)
- 6) 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.)
- 7) 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).)
- 8) 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).)
- 9) Provides that 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.)
- 10) Prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program. Nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial 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,

subds. (a) & (e).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Statement: According to the author, "Human trafficking has become a serious issue in our state, with people being bought, sold and smuggled like modern-day slaves. It affects people of all races, religions and backgrounds, and can have long lasting effects on victims and their families. The purpose of this bill is to help those most affected by human trafficking create a new life and move beyond their harsh past. A person forced into a life of prostitution should not be branded as a criminal."
- 2) Expungement Relief Generally: 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 is not available for convictions of certain offenses. These include most felony child molestation offenses, other specific sex offenses, and a few traffic offenses. (Penal Code Sections 1203.4 and 1203.4a.) It does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution. [See *People v. Diaz* (1996) 41 Cal.App.4th 1424.]

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 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 posttrial 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.

- 3) Equal Protection Concerns: The Equal Protection Clause of the Fourteenth Amendment commands that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The California Constitution has a similar provision. (Cal. Const., art. I, § 7.)

An equal protection challenge is a claim that a law discriminates against a person by unequal treatment or unequal results.

Under current law, expungement relief does not erase a conviction, rather it provides additional information in an individual's criminal record showing that the conviction was set aside or dismissed. This bill establishes a separate procedure only available for one class of defendants and provides this class with the additional benefit of prohibiting DOJ from releasing information about the prior conviction for specified licensing, employment or certification requirements. This additional benefit is not available to other defendants who successfully petition for expungement relief. A state law that provides favorable treatment to one class of defendants based solely on their status, while denying all other classes of defendants the same treatment, may run afoul of the Equal Protection clause.

- 4) Argument in Support: California Communities United Institute writes, "The current law is unfair and does not adequately protect victims from future harm. Often, prostitutes are quickly arrested, charged, and sentenced with little to no investigation into their personal backgrounds. However, in many cases, if an inquiry had been made, it would become clear that these women and men were victims of human trafficking.

"The stigma that is attached to their prostitution-related charges can inhibit their ability to lead productive lives. Often, when they apply for a job, the employer will check their criminal record. A record of prostitution could kill any chance of finding a good job."

5) Related Legislation:

- a) AB 1747 (Holden), states the intent of the Legislature to enact legislation to prevent human trafficking and prostitution in massage therapy establishments. AB 1747 is pending referral by the Rules Committee.
- b) AB 1610 (Bonta), authorizes the defendant or the people to apply for an order that the witness be examined conditionally when the material witness is a victim of or witness to a felony prosecution involving human trafficking, commercial sex acts, or forced labor or services. AB 1610 is pending hearing by this Committee.
- c) AB 795 (Alejo) was substantially similar to this bill. AB 795 was held on the Committee on Appropriations' Suspense File.
- d) AB 694 (Bloom), Chapter 126, Statutes of 2013, prohibits the admissibility of evidence that a victim has engaged in any commercial sexual act as a result of being a victim of human trafficking in order to prove the victim's criminal liability for the commercial sexual act.
- e) AB 156 (Holden) would have expanded the provisions authorizing interception of wire or electronic communications to apply if a judge determines that, among other things, there is probable cause to believe that an individual is committing, has committed, or is about to commit a violation of human trafficking. AB 156 was held on the Committee on Appropriations' Suspense file.

- f) ACR 6 (Donnelly), Chapter 5, Statutes of 2013, recognizes the month of January 2013, and each following January, as National Slavery and Human Trafficking Prevention Month, and it would recognize February 1, 2013, and each following February 1, as California's Free From Slavery Day.
- g) SB 1085 (Walters) prohibits the granting of probation to, or the suspension of sentence for, a person who is convicted of human trafficking. SB 1085 is pending hearing by the Senate Committee on Public Safety.
- h) SB 327 (Yee) allows a writ of habeas corpus when competent and substantial evidence of human trafficking was not presented at trial and to provide that the Board of Parole Hearings shall give great weight to evidence that a prisoner was a victim of human trafficking. SB 327 was held on the Committee on Appropriations' Suspense file.
- i) SB 60 (Wright), Chapter 147, Statutes of 2013, includes victims of human trafficking within the definition of crimes that are eligible for compensation from the restitution fund administered by the California Victim Compensation and Government Claims Board.

6) Prior Legislation:

- a) AB 2040 (Swanson), Chapter 197, Statutes of 2012, provides 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.
- b) AB 1940 (Hill), of the 2011-12 Legislative Session, would have authorized a court to seal a record of conviction for prostitution based on a finding that the petitioner is a victim of human trafficking, that the offense is the result of the petitioner's status as a victim of that crime, and that the petitioner is therefore factually innocent. AB 1940 was held on the Committee on Appropriations' Suspense File.
- c) AB 702 (Swanson), of the 2011-12 Legislative Session, allows a person adjudicated a ward of the court or a person convicted of prostitution to have his or her record sealed or conviction expunged without showing that he or she has not been subsequently convicted or that he or she has been rehabilitated. AB 702 was never heard by this Committee and was returned to the Chief Clerk.
- d) AB 22 (Lieber), Chapter 240, Statutes of 2005, created the California Trafficking Victims Protection Act, which established civil and criminal penalties for human trafficking and allowed for forfeiture of assets derived from human trafficking. In addition, the Act required law enforcement agencies to provide Law Enforcement Agency Endorsement to trafficking victims, providing trafficking victims with protection from deportation and created the human trafficking task force.

REGISTERED SUPPORT / OPPOSITION:

Support

California Catholic Conference of Bishops
California Communities United Institute
Californians for Safety and Justice
Citizens for Law and Order
City and County of San Francisco
Crime Victims Action Alliance
Crime Victims United of California
Taxpayers for Improving Public Safety

Eight private individuals

Opposition

None

Analysis Prepared by: Stella Choe / PUB. S. / (916) 319-3744

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Approved as to Form and Legality
DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS KALB & GIBSON MCELHANEY

RESOLUTION IN SUPPORT OF STATE ASSEMBLY BILL (AB) 1585 (ALEJO) THAT WOULD PROVIDE FOR SOMEONE WHO HAS BEEN CONVICTED OF PROSTITUTION OR SOLICITATION WITH THE ABILITY TO HAVE THAT CONVICTION SET ASIDE IF THAT PERSON CAN ESTABLISH, BY CLEAR AND CONVINCING EVIDENCE, THAT THE CONVICTION WAS THE RESULT OF BEING A VICTIM OF HUMAN TRAFFICKING; AND MAKES APPROPRIATE AMENDMENTS AND ADDITIONS TO THE CA FAMILY AND PENAL CODES

WHEREAS, due to our proximity to international borders, human trafficking is a serious problem in California with an estimated 15,000-17,000 men, women and children trafficked into the United States every year; and

WHEREAS, human trafficking and sexual exploitation cause lasting psychological, physical, and financial harm to their victims; and

WHEREAS, some of the current laws prohibiting prostitution are unfair in that they do not adequately protect victims of human trafficking; and

WHEREAS, victims who are forced to do sexual acts, many of them minors or immigrants, struggle to access resources to free themselves and they face even greater challenges if they have a criminal record from the actions they were forced to do; and

WHEREAS, prostitutes are frequently arrested, charged, and sentenced with little or no investigation into their backgrounds, thereby overlooking the reality that some of them are victims of human trafficking and thus are being forced to do the sexual acts they are arrested for; and

WHEREAS, the stigma of prostitution-related charges can inhibit the ability of those charged to transition into and lead healthy, productive lifestyles; and

WHEREAS, Assembly Bill 1585, introduced by Assemblymember Luis Alejo on February 3, 2014 and co-authored by Assemblymember Nancy Skinner, would allow a prostitution conviction to be dismissed or set aside for victims of human trafficking, and prohibit dissemination of the record to employers and licensing and certification entities, thereby preventing victims of trafficking from being treated as criminals and giving them a better chance of improving their lives; now, therefore be it

RESOLVED: That the Oakland City Council endorses AB 1585; and be it

FURTHER RESOLVED: That a copy of this resolution shall be transmitted to Assembly Members Luis Alejo, Rob Bonta, Nancy Skinner, and Toni Atkins, and to Senators Loni Hancock and Kevin de Leon, and to Governor Jerry Brown.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF AND PRESIDENT
KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California