

BILL ANALYSIS

C.S.H.B. 3500
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

While not all human trafficking is done for the purpose of sexual exploitation, and not all prostitution is the result of trafficking, the two are inarguably connected. Interested parties contend that studies routinely demonstrate that persons and children who are trafficked and forced to turn to prostitution, along with the disenfranchised youth who exchange sex for favors and get trapped in that lifestyle, are victims of sexual abuse who believe they have limited choices. These parties also note that some criminals reportedly consider sex trafficking and compelling prostitution to be more lucrative and a lower risk than other criminal activity. Most often it is the victims of trafficking, and not those who pay for their services, who are convicted and punished. Unfortunately, these convictions can hinder the ability of victims to fully move on with their lives, preventing a victim from finding gainful employment or proper housing or from attaining a proper education. C.S.H.B. 3500 seeks to provide some relief for victims of trafficking by establishing a judicial process to set aside certain convictions and a process for the expunction of those convictions for certain victims of trafficking convicted of prostitution.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3500 amends the Code of Criminal Procedure to authorize a court in which a defendant has been convicted of a prostitution offense, if the court retains jurisdiction in the case, to hear a petition from the defendant to set aside the order of conviction. The bill requires the petition to allege specific facts that, if proved, would establish that the petitioner engaged in prostitution solely as a victim of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution. The bill authorizes the petitioner to submit with the petition a document of a federal, state, local, or tribal governmental agency indicating that the petitioner engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution, as applicable. The bill requires the clerk of the court, on the filing of such a petition, to promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state and requires any response to the petition by the attorney representing the state to be filed not later than the 20th business day after the date of service.

C.S.H.B. 3500 requires the court to order a hearing on the petition if the petitioner submits a document of a governmental agency as prescribed by the bill or if, in considering the petition, any supporting document, and any response of the attorney representing the state, the court finds that there are reasonable grounds to believe the facts alleged in the petition. The bill requires the

court to dismiss the petition and to promptly notify the petitioner of the court's decision if the court finds that there are not any reasonable grounds to believe the alleged facts exist or if the petitioner has filed a previous petition to set aside such a conviction based solely on the same evidence. The bill prohibits a court from dismissing the petition if the petitioner submits a document of a governmental agency as prescribed by the bill and establishes that such a document creates a presumption that the petitioner's claim is true.

C.S.H.B. 3500 authorizes the court, after the court orders a hearing and as the court considers necessary to ensure a fair hearing on the petition, to order any discovery from the attorney representing the state or from the petitioner. The bill authorizes such a discovery order to include any order for probative evidence relevant to proving or disproving the petitioner's claim of having engaged in the prostitution conduct for which the person was convicted solely as a victim of trafficking of persons, continuous trafficking of persons, or compelling prostitution. The bill requires the court, if the court finds after ordering a hearing that, based on the petitioner's sworn statements or submitted evidence or affidavits, the petitioner is not represented by an attorney and is indigent, to appoint an attorney to represent the petitioner at the hearing and, if appropriate, before the court of appeals and the court of criminal appeals. The bill requires the court, at the conclusion of the hearing, to make a finding as to whether the petitioner's claim is true and authorizes the court to set aside the order of conviction for the prostitution offense if the court finds that the petitioner engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution and that setting aside the conviction is in the best interest of justice.

C.S.H.B. 3500 requires the court reporter to record a hearing to set aside such a conviction and, at the county's expense, to transcribe the hearing, including the finding, if the court makes a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution and if the petitioner is indigent. The bill requires the entire record to be included with an application for appeal. The bill authorizes the petitioner and the attorney representing the state to appeal the findings of the court in the same manner as an appeal of a conviction in a criminal case. The bill establishes a filed petition for a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution and a related proceeding do not constitute an application for a writ of habeas corpus or a proceeding based on an application for a writ of habeas corpus and exempts such a petition or proceeding from the restriction against filing a subsequent application for a writ of habeas corpus. The bill establishes that its provisions relating to setting aside such a conviction are not intended to preclude a petitioner from receiving a reduction or termination of community supervision and a set-aside of verdict if the petitioner is otherwise statutorily qualified to receive such a dismissal. The bill establishes that the jurisdiction of a court in which a defendant has been convicted of a prostitution offense continues for a period of five years beginning on the date the conviction is entered.

C.S.H.B. 3500 authorizes a judge who dismisses proceedings against and discharges a defendant charged with prostitution to attach to the papers in the case a statement that the defendant engaged in the applicable conduct solely as a victim of an offense of trafficking of persons, continuous trafficking of persons, or compelling prostitution.

C.S.H.B. 3500 entitles a person who has been placed under a custodial or noncustodial arrest for commission of prostitution to have all records and files relating to the arrest expunged in the same manner provided for other persons entitled to expunction if a court determines that the person engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution. The bill authorizes the court, if the attorney representing the state establishes a need for law enforcement agencies, for the purpose of investigating trafficking of persons or compelling prostitution offenses, to have access to evidence contained in the arrest records or files of a person entitled to such an expunction, at the request of the attorney representing the state, to provide in its expunction order that a law enforcement agency may retain those records and files, provided that the person's personal information has been redacted from those records and files.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3500 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.13 to read as follows:

Art. 42.13. SETTING ASIDE CONVICTION FOR VICTIMS OF TRAFFICKING OF PERSONS.

(a) A court in which a defendant has been convicted of an offense under Section 43.02, Penal Code, may at any time hear a petition from the defendant to set aside the order of conviction. The petition must allege specific facts that, if proved, would establish that the petitioner engaged in prostitution solely as a victim of an offense under Section 20A.02(a)(3) or (7), 20A.03 (Sex Trafficking), or Section 43.05, Penal Code. The petitioner may submit with the petition a document of a federal, state, local, or tribal governmental agency indicating that the petitioner engaged in prostitution solely as a victim of trafficking of persons.

(b) On the filing of the petition under Subsection (a), the clerk of the court shall promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state. Any response to the petition by the attorney representing the state must be filed not later than the 20th business day after the date of service under this subsection.

(c) If in considering the petition, any supporting document, and any response of the attorney representing the state the court finds that there are reasonable grounds to believe the facts alleged in the petition or if the petitioner submits a document of a governmental agency described by Subsection (a), the court shall order a hearing on the petition. The court shall dismiss the petition and shall promptly notify the petitioner of the court's decision

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.13 to read as follows:

Art. 42.13. SETTING ASIDE CONVICTION FOR VICTIMS OF TRAFFICKING OF PERSONS OR COMPELLING PROSTITUTION.

(a) A court in which a defendant has been convicted of an offense under Section 43.02, Penal Code, may, if the court retains jurisdiction in the case, hear a petition from the defendant to set aside the order of conviction. The petition must allege specific facts that, if proved, would establish that the petitioner engaged in prostitution solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code. The petitioner may submit with the petition a document of a federal, state, local, or tribal governmental agency indicating that the petitioner engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution, as applicable.

(b) On the filing of the petition under Subsection (a), the clerk of the court shall promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state. Any response to the petition by the attorney representing the state must be filed not later than the 20th business day after the date of service under this subsection.

(c) If in considering the petition, any supporting document, and any response of the attorney representing the state the court finds that there are reasonable grounds to believe the facts alleged in the petition or if the petitioner submits a document of a governmental agency described by Subsection (a), the court shall order a hearing on the petition. The court shall dismiss the petition and shall promptly notify the petitioner of the court's decision if the

if the court finds that there are not any reasonable grounds to believe the alleged facts exist or if the petitioner has filed a previous petition under this article based solely on the same evidence. The court may not dismiss the petition if the petitioner submits a document of a governmental agency described by Subsection (a).

(d) After the court orders a hearing under this article, the court, as the court considers necessary to ensure a fair hearing on the petition, may order any discovery from the attorney representing the state or from the petitioner. An order of discovery may include any order for probative evidence relevant to proving or disproving the petitioner's claim of having engaged in the conduct for which the person was convicted under Section 43.02, Penal Code, solely as a victim of an offense under Section 20A.02(a)(3) or (7), 20A.03 (Sex Trafficking), or Section 43.05, Penal Code. A document of a governmental agency described by Subsection (a) creates a presumption that the petitioner's claim is true.

(e) If after the court orders a hearing under this article the court finds that, based on the sworn statements of the petitioner or based on submitted evidence or affidavits, the petitioner is not represented by an attorney and is indigent, the court shall appoint an attorney to represent the petitioner at the hearing and, if appropriate, before the court of appeals and the court of criminal appeals.

(f) At the conclusion of the hearing, the court shall make a finding as to whether the petitioner's claim of having engaged in prostitution solely as a victim of trafficking of persons is true.

(g) The court may set aside the order of conviction for the offense under Section 43.02, Penal Code, if the court finds that the petitioner engaged in prostitution solely as a victim of trafficking of persons and that set-aside is in the best interest of justice.

(h) The court reporter shall record a hearing under this article. If the court makes a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons, and if the petitioner is indigent, the court reporter shall transcribe the hearing, including the finding, at the county's expense. The entire

court finds that there are not any reasonable grounds to believe the alleged facts exist or if the petitioner has filed a previous petition under this article based solely on the same evidence. The court may not dismiss the petition if the petitioner submits a document of a governmental agency described by Subsection (a).

(d) After the court orders a hearing under this article, the court, as the court considers necessary to ensure a fair hearing on the petition, may order any discovery from the attorney representing the state or from the petitioner. An order of discovery may include any order for probative evidence relevant to proving or disproving the petitioner's claim of having engaged in the conduct for which the person was convicted under Section 43.02, Penal Code, solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code. A document of a governmental agency described by Subsection (a) creates a presumption that the petitioner's claim is true.

(e) If after the court orders a hearing under this article the court finds that, based on the sworn statements of the petitioner or based on submitted evidence or affidavits, the petitioner is not represented by an attorney and is indigent, the court shall appoint an attorney to represent the petitioner at the hearing and, if appropriate, before the court of appeals and the court of criminal appeals.

(f) At the conclusion of the hearing, the court shall make a finding as to whether the petitioner's claim of having engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution is true.

(g) The court may set aside the order of conviction for the offense under Section 43.02, Penal Code, if the court finds that the petitioner engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution and that set-aside is in the best interest of justice.

(h) The court reporter shall record a hearing under this article. If the court makes a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution, and if the petitioner is indigent, the court reporter shall transcribe the hearing, including the finding, at the county's expense. The entire

record must be included with an application for appeal filed as described by this article.

(i) The petitioner and the attorney representing the state may appeal the findings of the court in the same manner as an appeal of a conviction in a criminal case.

(j) A petition for a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons filed under this article and a proceeding conducted under this article do not constitute an application for a writ of habeas corpus or a proceeding based on an application for a writ of habeas corpus. A restriction on filing a subsequent application for a writ of habeas corpus imposed by Article 11.07 does not apply to a petition or proceeding under this article.

(k) This article is not intended to preclude a petitioner from receiving a reduction or termination of community supervision and a set-aside of verdict under Section 20, Article 42.12, if the petitioner is otherwise qualified to receive a dismissal under that section.

SECTION 2. Section 5, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (k) to read as follows:

(k) If a judge dismisses proceedings against a defendant charged with an offense under Section 43.02, Penal Code, and discharges the defendant, the judge may attach to the papers in the case a statement that the defendant engaged in the applicable conduct solely as a victim of an offense under Section 20A.02(a)(3) or (7), 20A.03 (Sex Trafficking), or Section 43.05, Penal Code.

SECTION 3. Article 55.01, Code of Criminal Procedure, is amended by adding Subsection (a-3) to read as follows:

(a-3) A person who has been placed under a custodial or noncustodial arrest for commission of an offense under Section 43.02, Penal Code, is entitled to have all records and files relating to the arrest expunged in the same manner provided for a person described by Subsection (a), if a court determines under Article 42.13(f) that

record must be included with an application for appeal filed as described by this article.

(i) The petitioner and the attorney representing the state may appeal the findings of the court in the same manner as an appeal of a conviction in a criminal case.

(j) A petition for a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution filed under this article and a proceeding conducted under this article do not constitute an application for a writ of habeas corpus or a proceeding based on an application for a writ of habeas corpus. A restriction on filing a subsequent application for a writ of habeas corpus imposed by Article 11.07 does not apply to a petition or proceeding under this article.

(k) This article is not intended to preclude a petitioner from receiving a reduction or termination of community supervision and a set-aside of verdict under Section 20, Article 42.12, if the petitioner is otherwise qualified to receive a dismissal under that section.

(l) For purposes of this article, the jurisdiction of a court in which a defendant has been convicted of an offense under Section 43.02, Penal Code, continues for a period of five years beginning on the date the conviction is entered.

SECTION 2. Section 5, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (k) to read as follows:

(k) If a judge dismisses proceedings against a defendant charged with an offense under Section 43.02, Penal Code, and discharges the defendant, the judge may attach to the papers in the case a statement that the defendant engaged in the applicable conduct solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code.

SECTION 3. Article 55.01, Code of Criminal Procedure, is amended by adding Subsection (a-3) to read as follows:

(a-3) A person who has been placed under a custodial or noncustodial arrest for commission of an offense under Section 43.02, Penal Code, is entitled to have all records and files relating to the arrest expunged in the same manner provided for a person described by Subsection (a), if a court determines under Article 42.13(f) that the

the person engaged in prostitution solely as a victim of trafficking of persons. Upon a request by the State, the court may grant an exception for law enforcement agencies to maintain some records if the State can establish a need for certain evidence containing information that would aid them in combating human trafficking. If the State establishes such a need, those records may be kept but all references to the applicant must still be removed and this removal must be certified to the court.

SECTION 4. (a) Articles 42.13, Code of Criminal Procedure, as added by this Act, apply to a petition to set aside a conviction filed on or after the effective date of this Act, regardless of whether the offense that is the subject of the petition occurred before, on, or after the effective date of this Act.

(b) Section 5(k), Article 42.12, Code of Criminal Procedure, as added by this Act, applies to a discharge and dismissal that occurs on or after the effective date of this Act, regardless of whether the offense for which the defendant was placed on deferred adjudication community supervision occurred before, on, or after the effective date of this Act.

(c) Article 55.01(a-3), Code of Criminal Procedure, as added by this Act, applies to a petition for expunction filed on or after the effective date of this Act, regardless of whether the offense that is the subject of the petition occurred before, on, or after the effective date of this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

person engaged in prostitution solely as a victim of trafficking of persons or compelling prostitution. If the attorney representing the state establishes a need for law enforcement agencies, for the purpose of investigating trafficking of persons or compelling prostitution offenses, to have access to evidence contained in the arrest records or files of a person entitled to an expunction under this subsection, at the request of the attorney representing the state, the court may provide in its expunction order that a law enforcement agency may retain those records and files, provided that the person's personal information has been redacted from those records and files.

SECTION 4. Substantially the same as introduced version.

SECTION 5. Same as introduced version.