

By: Thompson of Harris

H.B. No. 3500

Substitute the following for H.B. No. 3500:

By: Herrero

C.S.H.B. No. 3500

A BILL TO BE ENTITLED

AN ACT

1
2 relating to judicial proceedings on a petition to set aside a
3 conviction or an order of expunction of criminal history record
4 information for certain victims of trafficking of persons or
5 compelling prostitution who are convicted of prostitution.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

9 Art. 42.13. SETTING ASIDE CONVICTION FOR VICTIMS OF
10 TRAFFICKING OF PERSONS OR COMPELLING PROSTITUTION. (a) A court in
11 which a defendant has been convicted of an offense under Section
12 43.02, Penal Code, may, if the court retains jurisdiction in the
13 case, hear a petition from the defendant to set aside the order of
14 conviction. The petition must allege specific facts that, if
15 proved, would establish that the petitioner engaged in prostitution
16 solely as a victim of an offense under Section 20A.02, 20A.03, or
17 43.05, Penal Code. The petitioner may submit with the petition a
18 document of a federal, state, local, or tribal governmental agency
19 indicating that the petitioner engaged in prostitution solely as a
20 victim of trafficking of persons or compelling prostitution, as
21 applicable.

22 (b) On the filing of the petition under Subsection (a), the
23 clerk of the court shall promptly serve a copy of the petition and
24 any supporting document on the appropriate office of the attorney

1 representing the state. Any response to the petition by the
2 attorney representing the state must be filed not later than the
3 20th business day after the date of service under this subsection.

4 (c) If in considering the petition, any supporting
5 document, and any response of the attorney representing the state
6 the court finds that there are reasonable grounds to believe the
7 facts alleged in the petition or if the petitioner submits a
8 document of a governmental agency described by Subsection (a), the
9 court shall order a hearing on the petition. The court shall dismiss
10 the petition and shall promptly notify the petitioner of the
11 court's decision if the court finds that there are not any
12 reasonable grounds to believe the alleged facts exist or if the
13 petitioner has filed a previous petition under this article based
14 solely on the same evidence. The court may not dismiss the petition
15 if the petitioner submits a document of a governmental agency
16 described by Subsection (a).

17 (d) After the court orders a hearing under this article, the
18 court, as the court considers necessary to ensure a fair hearing on
19 the petition, may order any discovery from the attorney
20 representing the state or from the petitioner. An order of
21 discovery may include any order for probative evidence relevant to
22 proving or disproving the petitioner's claim of having engaged in
23 the conduct for which the person was convicted under Section 43.02,
24 Penal Code, solely as a victim of an offense under Section 20A.02,
25 20A.03, or 43.05, Penal Code. A document of a governmental agency
26 described by Subsection (a) creates a presumption that the
27 petitioner's claim is true.

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

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

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

17 (h) The court reporter shall record a hearing under this
18 article. If the court makes a finding that the petitioner engaged in
19 prostitution solely as a victim of trafficking of persons or
20 compelling prostitution, and if the petitioner is indigent, the
21 court reporter shall transcribe the hearing, including the finding,
22 at the county's expense. The entire record must be included with an
23 application for appeal filed as described by this article.

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

27 (j) A petition for a finding that the petitioner engaged in

1 prostitution solely as a victim of trafficking of persons or
2 compelling prostitution filed under this article and a proceeding
3 conducted under this article do not constitute an application for a
4 writ of habeas corpus or a proceeding based on an application for a
5 writ of habeas corpus. A restriction on filing a subsequent
6 application for a writ of habeas corpus imposed by Article 11.07
7 does not apply to a petition or proceeding under this article.

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

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

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

19 (k) If a judge dismisses proceedings against a defendant
20 charged with an offense under Section 43.02, Penal Code, and
21 discharges the defendant, the judge may attach to the papers in the
22 case a statement that the defendant engaged in the applicable
23 conduct solely as a victim of an offense under Section 20A.02,
24 20A.03, or 43.05, Penal Code.

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

27 (a-3) A person who has been placed under a custodial or

1 noncustodial arrest for commission of an offense under Section
2 43.02, Penal Code, is entitled to have all records and files
3 relating to the arrest expunged in the same manner provided for a
4 person described by Subsection (a), if a court determines under
5 Article 42.13(f) that the person engaged in prostitution solely as
6 a victim of trafficking of persons or compelling prostitution. If
7 the attorney representing the state establishes a need for law
8 enforcement agencies, for the purpose of investigating trafficking
9 of persons or compelling prostitution offenses, to have access to
10 evidence contained in the arrest records or files of a person
11 entitled to an expunction under this subsection, at the request of
12 the attorney representing the state, the court may provide in its
13 expunction order that a law enforcement agency may retain those
14 records and files, provided that the person's personal information
15 has been redacted from those records and files.

16 SECTION 4. (a) Article 42.13, Code of Criminal Procedure,
17 as added by this Act, applies to a petition to set aside a
18 conviction that is filed on or after the effective date of this Act,
19 regardless of whether the offense that is the subject of the
20 petition occurred before, on, or after the effective date of this
21 Act.

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

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

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