

By: Thompson of Harris

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 convicted  
5 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. (a) A court in which a defendant has been  
11 convicted of an offense under Section 43.02, Penal Code, may at any  
12 time hear a petition from the defendant to set aside the order of  
13 conviction. The petition must allege specific facts that, if  
14 proved, would establish that the petitioner engaged in prostitution  
15 solely as a victim of an offense under Section 20A.02(a)(3) or (7),  
16 20A.03 (Sex Trafficking), or Section 43.05, Penal Code. The  
17 petitioner may submit with the petition a document of a federal,  
18 state, local, or tribal governmental agency indicating that the  
19 petitioner engaged in prostitution solely as a victim of  
20 trafficking of persons.

21 (b) On the filing of the petition under Subsection (a), the  
22 clerk of the court shall promptly serve a copy of the petition and  
23 any supporting document on the appropriate office of the attorney  
24 representing the state. Any response to the petition by the

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

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

16 (d) After the court orders a hearing under this article,  
17 the court, as the court considers necessary to ensure a fair hearing  
18 on the petition, may order any discovery from the attorney  
19 representing the state or from the petitioner. An order of  
20 discovery may include any order for probative evidence relevant to  
21 proving or disproving the petitioner's claim of having engaged in  
22 the conduct for which the person was convicted under Section 43.02,  
23 Penal Code, solely as a victim of an offense under Section  
24 20A.02(a)(3) or (7), 20A.03 (Sex Trafficking), or Section 43.05,  
25 Penal Code. A document of a governmental agency described by  
26 Subsection (a) creates a presumption that the petitioner's claim is  
27 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 is true.

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

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

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

26       (j) A petition for a finding that the petitioner engaged in  
27 prostitution solely as a victim of trafficking of persons filed

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

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

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

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

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

22 (a-3) A person who has been placed under a custodial or  
23 noncustodial arrest for commission of an offense under Section  
24 43.02, Penal Code, is entitled to have all records and files  
25 relating to the arrest expunged in the same manner provided for a  
26 person described by Subsection (a), if a court determines under  
27 Article 42.13(f) that the person engaged in prostitution solely as

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

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

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

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

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

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1 Act takes effect September 1, 2015.