

By: Taylor of Collin

S.B. No. 1088

A BILL TO BE ENTITLED

AN ACT

1
2 relating to judicial proceedings on a petition for a pardon or an
3 order of expunction of criminal history record information for
4 certain victims of trafficking of persons convicted of
5 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, if the
12 court retains jurisdiction in the case, hear a petition from the
13 defendant to set aside the order of conviction. The petition must
14 allege specific facts that, if proved, would establish that the
15 petitioner engaged in prostitution solely as a victim of an offense
16 under Section 20A.02(a)(3) or (7), Penal Code. The petitioner may
17 submit with the petition a document of a federal, state, local, or
18 tribal governmental agency indicating that the petitioner engaged
19 in prostitution solely as a victim of trafficking of persons.

20 (b) On the filing of the petition under Subsection (a), the
21 clerk of the court shall promptly serve a copy of the petition and
22 any supporting document on the appropriate office of the attorney
23 representing the state. Any response to the petition by the
24 attorney representing the state must be filed not later than the

1 15th business day after the date of service under this subsection.

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

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

26 (e) If after the court orders a hearing under this article
27 the court finds that, based on the sworn statements of the

1 petitioner or based on submitted evidence or affidavits, the
2 petitioner is not represented by an attorney and is indigent, the
3 court shall appoint an attorney to represent the petitioner at the
4 hearing and, if appropriate, before the court of appeals and the
5 court of criminal appeals.

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

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

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

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

24 (j) A petition for a finding that the petitioner engaged in
25 prostitution solely as a victim of trafficking of persons filed
26 under this article and a proceeding conducted under this article do
27 not constitute an application for a writ of habeas corpus or a

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

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

10 SECTION 2. Chapter 48, Code of Criminal Procedure, is
11 amended by adding Article 48.07 to read as follows:

12 Art. 48.07. PETITION FOR PARDON FOR CERTAIN
13 TRAFFICKING-VICTIM OFFENDERS; JUDICIAL PROCEEDINGS. (a) In this
14 article, a person is considered to have been convicted in a case if:

15 (1) a judgment, a sentence, or both a judgment and a
16 sentence are imposed on the person;

17 (2) the person receives community supervision,
18 deferred adjudication, or deferred disposition; or

19 (3) the court defers final disposition of the case or
20 imposition of the judgment and sentence.

21 (b) This article applies only to a person described by
22 Subsection (c) who is unable to obtain relief under Section 20,
23 Article 42.12, or Article 42.13 because the convicting court no
24 longer retains jurisdiction over the case.

25 (c) A person convicted of an offense under Section 43.02,
26 Penal Code, may file in the court of conviction a petition alleging
27 specific facts that, if proved, would establish that the petitioner

1 engaged in prostitution solely as a victim of an offense under
2 Section 20A.02(a)(3) or (7), Penal Code. The petitioner may submit
3 with the petition a document of a federal, state, local, or tribal
4 governmental agency indicating that the petitioner engaged in
5 prostitution solely as a victim of trafficking of persons.

6 (d) On the filing of the petition under Subsection (c), the
7 clerk of the court shall promptly serve a copy of the petition and
8 any supporting document on the appropriate office of the attorney
9 representing the state. Any response to the petition by the
10 attorney representing the state must be filed not later than the
11 15th business day after the date of service under this subsection.

12 (e) If in considering the petition, any supporting
13 document, and any response of the attorney representing the state
14 the court finds that there are reasonable grounds to believe the
15 facts alleged in the petition or if the petitioner submits a
16 document of a governmental agency described by Subsection (a), the
17 court shall order a hearing on the petition. The court shall
18 dismiss the petition and shall promptly notify the petitioner of
19 the court's decision if the court finds that there are not any
20 reasonable grounds to believe the alleged facts exist or if the
21 petitioner has filed a previous petition under this article based
22 solely on the same evidence. The court may not dismiss the petition
23 if the petitioner submits a document of a governmental agency
24 described by Subsection (a).

25 (f) After the court orders a hearing under this article, the
26 court, as the court considers necessary to ensure a fair hearing on
27 the petition, may order any discovery from the attorney

1 representing the state or from the petitioner. An order of
2 discovery may include any order for probative evidence relevant to
3 proving or disproving the petitioner's claim of having engaged in
4 prostitution solely as a victim of an offense under Section
5 20A.02(a)(3) or (7), Penal Code. A document of a governmental
6 agency described by Subsection (a) creates a presumption that the
7 petitioner's claim is true.

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

15 (h) At the conclusion of the hearing, the court shall make a
16 finding as to whether the petitioner's claim of having engaged in
17 prostitution solely as a victim of trafficking of persons is true. A
18 finding that the petitioner did engage in prostitution solely as a
19 victim of trafficking of persons does not authorize the court to set
20 aside a conviction of the offense if the court is not authorized to
21 set aside that sentence under other law.

22 (i) If the court finds that the petitioner engaged in
23 prostitution solely as a victim of trafficking of persons, the
24 petitioner may file an application for a pardon, but the
25 application may not be filed later than the 90th day after the date
26 the court makes the finding.

27 (j) The court reporter shall record a hearing under this

1 article. If the court makes a finding that the petitioner engaged in
2 prostitution solely as a victim of trafficking of persons, and if
3 the petitioner is indigent, the court reporter shall transcribe the
4 hearing, including the finding, at the county's expense. The
5 entire record must be included with an application for a pardon
6 filed as described by this article.

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

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

18 SECTION 3. Section 5, Article 42.12, Code of Criminal
19 Procedure, is amended by adding Subsection (k) to read as follows:

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

26 SECTION 4. Article 55.01, Code of Criminal Procedure, is
27 amended by adding Subsection (a-3) to read as follows:

1 (a-3) A person who has been placed under a custodial or
2 noncustodial arrest for commission of an offense under Section
3 43.02, Penal Code, is entitled to have all records and files
4 relating to the arrest expunged in the same manner provided for a
5 person described by Subsection (a), if a court determines under
6 Article 42.13(f) or 48.07(h) that the person engaged in
7 prostitution solely as a victim of trafficking of persons.

8 SECTION 5. (a) Articles 42.13 and 48.07, Code of Criminal
9 Procedure, as added by this Act, apply to a petition to set aside a
10 conviction or for a pardon filed on or after the effective date of
11 this Act, regardless of whether the offense that is the subject of
12 the petition occurred before, on, or after the effective date of
13 this Act.

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

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

25 SECTION 6. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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1 Act does not receive the vote necessary for immediate effect, this

2 Act takes effect September 1, 2015.