

BILL ANALYSIS

H.B. 269
By: Thompson, Senfronia
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that certain victims of human trafficking and related prostitution offenses are often punished for crimes they are forced to commit and lack an adequate means by which to have the applicable conviction set aside or expunged. H.B. 269 seeks to remedy this situation by establishing a judicial process for the setting aside and expunction of those convictions.

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

H.B. 269 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 petitioner 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.

H.B. 269 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 the 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.

H.B. 269 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 set-aside is in the best interest of justice.

H.B. 269 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 that 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 related proceeding from a restriction against filing a subsequent application for a writ of habeas corpus. The bill's provisions relating to setting aside such a conviction expressly 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, for purposes of setting aside that conviction, continues for a period of five years beginning on the date the conviction is entered.

H.B. 269 authorizes a judge who dismisses proceedings against and discharges a defendant charged with prostitution to make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines 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.

H.B. 269 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

September 1, 2017.