

By: Garcia

S.B. No. 1165

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 arrest records and files for
4 certain victims of trafficking of persons or compelling
5 prostitution who are convicted of certain offenses.

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 that is not a
12 crime of violence, as defined by Article 59.01, may, if the court
13 retains jurisdiction in the case, hear a petition from the
14 defendant to set aside the order of conviction. The petition must
15 allege specific facts that, if proved, would establish that the
16 petitioner committed the offense solely as a victim of an offense
17 under Section 20A.02, 20A.03, or 43.05, Penal Code. The petitioner
18 may submit with the petition a document of a federal, state, local,
19 or tribal governmental agency indicating that the petitioner
20 committed the offense solely as a victim of trafficking of persons
21 or compelling prostitution, as 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 committed
23 the offense solely as a victim of an offense under Section 20A.02,
24 20A.03, or 43.05, Penal Code. A document of a governmental agency
25 described by Subsection (a) creates a presumption that the
26 petitioner's claim is true.

27 (e) If after the court orders a hearing under this article

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

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

11 (g) The court may set aside the order of conviction for the
12 offense if the court finds that the petitioner committed the
13 offense solely as a victim of trafficking of persons or compelling
14 prostitution and that set-aside is in the best interest of justice.

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

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

25 (j) A petition filed under this article and a proceeding
26 conducted under this article do not constitute an application for a
27 writ of habeas corpus or a proceeding based on an application for a

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

4 (k) This article is not intended to preclude a petitioner
5 from receiving a reduction or termination of community supervision
6 and a set-aside of verdict under Article 42A.701 if the petitioner
7 is otherwise qualified to receive a dismissal under that article.

8 (l) For purposes of this article, the jurisdiction of a
9 court in which a defendant has been convicted of an offense that is
10 not a crime of violence, as defined by Article 59.01, continues for
11 a period of five years beginning on the date the conviction is
12 entered.

13 SECTION 2. Article 42A.105, Code of Criminal Procedure, is
14 amended by adding Subsection (g) to read as follows:

15 (g) If a judge dismisses proceedings against a defendant
16 charged with an offense that is not a crime of violence, as defined
17 by Article 59.01, and discharges the defendant, the judge may make
18 an affirmative finding of fact and file a statement of that
19 affirmative finding with the papers in the case if the judge
20 determines that the defendant engaged in the applicable conduct
21 solely as a victim of an offense under Section 20A.02, 20A.03, or
22 43.05, Penal Code.

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

25 (a-3) A person who has been placed under a custodial or
26 noncustodial arrest for commission of an offense that is not a crime
27 of violence, as defined by Article 59.01, is entitled to have all

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

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

20 (b) Article 42A.105(g), Code of Criminal Procedure, as
21 added by this Act, applies to a discharge and dismissal that occurs
22 on or after the effective date of this Act, regardless of whether
23 the offense for which the defendant was placed on deferred
24 adjudication community supervision occurred before, on, or after
25 the effective date of this Act.

26 (c) Article 55.01(a-3), Code of Criminal Procedure, as
27 added by this Act, applies to a petition for expunction filed on or

1 after the effective date of this Act, regardless of whether the
2 offense that is the subject of the petition occurred before, on, or
3 after the effective date of this Act.

4 SECTION 5. This Act takes effect September 1, 2017.