

AMENDED IN ASSEMBLY MAY 25, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2040**

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**Introduced by Assembly Member Swanson**

February 23, 2012

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An act to add Section 1203.47 to the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2040, as amended, Swanson. Prostitution: human trafficking: expungement.

Existing law authorizes the court, upon petition from a person who has reached 18 years of age, to seal all records relating to the person's case in the custody of a juvenile court if the person has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, and if rehabilitation has been attained to the satisfaction of the court. ~~Under existing law, a person may have a conviction for a misdemeanor set aside if the court, in its discretion and the interests of justice, determines that a defendant should be granted relief, provided that the petitioner is not then serving a sentence for any other offense, is not on probation for another offense, and is not being charged with any other offense.~~

This bill would provide that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained, ~~as provided.~~

~~The bill would provide that a person who was 18 years of age or older, or who was under 18 years of age but was tried as an adult, at the time of a commission of a violation of specified provisions prohibiting prostitution may petition a court to allow the petitioner to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty, or to have the court set aside the verdict. The bill would require the court to grant the petition if the petitioner has made a satisfactory showing that the violation was a result of the petitioner having been a victim of human trafficking. The *provided*. The bill would provide specify that the relief provided by the bill would not apply to a person who paid money, or attempted to pay money, to any person for the purposes of prostitution, as specified.~~

~~The bill would provide and would also specify that these the provisions of the bill apply to convictions and adjudications that occurred before and after the effective date of the bill.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1203.47 is added to the Penal Code, to  
2 read:  
3 1203.47. (a) A person who was found to be a person described  
4 in Section 602 of the Welfare and Institutions Code by reason of  
5 the commission of an offense described in subdivision (b) of  
6 Section 647 or in Section 653.22 may, upon reaching 18 years of  
7 age, petition the court to have his or her record sealed, as provided  
8 in Section 781 of the Welfare and Institutions Code, except that,  
9 as pertaining to any records regarding the commission of an offense  
10 described in subdivision (b) of Section 647 or in Section 653.22,  
11 it shall not be a requirement in granting the petition for the person  
12 to show that he or she has not been convicted of a felony or of any  
13 misdemeanor involving moral turpitude, or that rehabilitation has  
14 been attained to the satisfaction of the court. Upon granting the  
15 petition, all records relating to the violation or violations of  
16 subdivision (b) of Section 647 or of Section 653.22, or both, shall  
17 be sealed pursuant to Section 781 of the Welfare and Institutions  
18 Code.  
19 ~~(b) A person who was 18 years of age or older at the time of a~~  
20 ~~commission of a violation of subdivision (b) of Section 647, or of~~

1 ~~Section 653.22, or a person who was under 18 years of age but~~  
2 ~~was tried as an adult, may petition a court to withdraw his or her~~  
3 ~~plea of guilty or plea of nolo contendere and enter a plea of not~~  
4 ~~guilty, or if he or she has been convicted after a plea of not guilty,~~  
5 ~~to petition the court to set aside the verdict of guilty. The court~~  
6 ~~shall grant the petition if, in the discretion of the court, the~~  
7 ~~petitioner has made a satisfactory showing that the violation was~~  
8 ~~a result of the petitioner having been a victim of human trafficking.~~  
9 ~~The conviction of another person pursuant to Section 236.1 in~~  
10 ~~relation to the petitioner's conviction under subdivision (b) of~~  
11 ~~Section 647, or of Section 653.22, shall be strongly considered as~~  
12 ~~evidence that the petitioner was a victim of human trafficking. If~~  
13 ~~the petition is granted pursuant to this subdivision, the court shall~~  
14 ~~dismiss the accusations or information against the petitioner, or~~  
15 ~~set aside the verdict of guilty, and the petitioner will thereafter be~~  
16 ~~released from all penalties and disabilities resulting from the~~  
17 ~~offense. Evidence that a violation of subdivision (b) of Section~~  
18 ~~647 or of Section 653.22 was the result of having been a victim~~  
19 ~~of human trafficking may include, but is not limited to, any of the~~  
20 ~~following:~~

21 ~~(1) Certified records of federal or state court proceedings that~~  
22 ~~demonstrate that the defendant was a victim of a trafficker who~~  
23 ~~was charged with a trafficking offense.~~

24 ~~(2) Certified records of approval notices or law enforcement~~  
25 ~~certifications generated from federal immigration proceedings~~  
26 ~~available to the victim.~~

27 ~~(3) A sworn statement from a trained professional staff member~~  
28 ~~of a victim services organization, an attorney, a member of the~~  
29 ~~clergy, or a medical or other professional from whom the defendant~~  
30 ~~sought assistance in addressing the trauma associated with being~~  
31 ~~trafficked.~~

32 ~~(4) Any evidence of probative value that the court deems~~  
33 ~~sufficiently credible.~~

34 ~~(e)~~

35 ~~(b) The relief provided by this section does not apply to a person~~  
36 ~~convicted pursuant to subdivision (b) of Section 647 or of Section~~  
37 ~~653.22 who paid money or any other valuable thing, or attempted~~  
38 ~~to pay money or any other valuable thing, to any person for the~~  
39 ~~purpose of prostitution as defined in subdivision (b) of Section~~  
40 ~~647.~~

1     ~~(d)~~

2     (c) This section applies to convictions and adjudications that  
3 occurred before, as well as those that occur after, the effective date  
4 of this section.

5     ~~(e)~~

6     (d) A petition granted pursuant to this section does not authorize  
7 the sealing of any part of a person's record that is unrelated to a  
8 violation of subdivision (b) of Section 647, Section 653.22, or  
9 both.