

Introduced by Senator YeeFebruary 19, 2013

An act to amend Section 1473.5 of the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 327, as introduced, Yee. Human trafficking: recall and resentencing.

Existing law authorizes every person who is unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of that imprisonment or restraint.

Existing law provides that a writ of habeas corpus based on intimate partner battering may be prosecuted if competent and substantial expert testimony relating to intimate partner battering and its effects was not presented to the trier of fact at the trial court proceedings, and is of such substance that, had it been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, the result of the proceedings would have been different, and that the burden of proof in this regard is on the petitioner.

This bill would make those provisions applicable to cases in which competent and substantial expert testimony relating to human trafficking, as defined, and its effects was not presented to the trier of fact at the trial court proceedings and is of such substance that, had the competent and substantial expert testimony been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, that the result of the proceedings would have been different.

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 1473.5 of the Penal Code is amended to
2 read:

3 1473.5. (a) A writ of habeas corpus also may be prosecuted
4 on the basis that (1) competent and substantial expert testimony
5 relating to intimate partner battering and its effects, within the
6 meaning of Section 1107 of the Evidence Code, *or* (2) *competent*
7 *and substantial expert testimony relating to human trafficking, as*
8 *described in Section 236.1, and its effects* was not presented to the
9 trier of fact at the trial court proceedings and is of such substance
10 that, had the competent and substantial expert testimony been
11 presented, there is a reasonable probability, sufficient to undermine
12 confidence in the judgment of conviction or sentence, that the
13 result of the proceedings would have been different. Sections 1260
14 to 1262, inclusive, apply to the prosecution of a writ of habeas
15 corpus pursuant to this section. As used in this section, “trial court
16 proceedings” means those court proceedings that occur from the
17 time the accusatory pleading is filed until and including judgment
18 and sentence.

19 (b) This section is limited to (1) violent felonies as specified in
20 subdivision (c) of Section 667.5 that were committed before August
21 29, 1996, and that resulted in judgments of conviction or sentence
22 after a plea or trial as to which expert testimony admissible
23 pursuant to Section 1107 of the Evidence Code may be probative
24 on the issue of culpability, *or* (2) *cases in which the defendant is*
25 *a victim of human trafficking, as described in Section 236.1.*

26 (c) A showing that expert testimony relating to intimate partner
27 battering and its effects *or human trafficking and its effects* was
28 presented to the trier of fact is not a bar to granting a petition under
29 this section if that expert testimony was not competent or
30 substantial. The burden of proof is on the petitioner to establish a
31 sufficient showing that competent and substantial expert testimony,
32 of a nature which would be competent using prevailing
33 understanding of intimate partner battering and its effects, *or*
34 *human trafficking and its effects*, was not presented to the trier of
35 fact, and had that evidence been presented, there is a reasonable
36 probability that the result of the proceedings would have been
37 different.

1 (d) If a petitioner for habeas corpus under this section has
2 previously filed a petition for writ of habeas corpus, it is grounds
3 for denial of the new petition if a court determined on the merits
4 in the prior petition that the omission of expert testimony *at trial*
5 relating to battered women's syndrome or intimate partner battering
6 and its effects ~~at trial~~ *or human trafficking and its effects* was not
7 prejudicial and did not entitle the petitioner to the writ of habeas
8 corpus.

9 (e) For purposes of this section, the changes that become
10 effective on January 1, 2005, are not intended to expand the uses
11 or applicability of expert testimony on battering and its effects that
12 were in effect immediately prior to that date in criminal cases.