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SENATE BILL

No. 823

Introduced by Senator Block
(Coauthors: Senators Glazer, Hertzberg, and Wieckowski)

January 6, 2016

An act to add Section ~~236.13~~ 236.14 to the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as amended, Block. Criminal procedure: human trafficking.

Existing law defines and proscribes the crimes of human trafficking, solicitation, and prostitution. Existing law provides that if a defendant has been convicted of solicitation or prostitution and has completed any term of probation for that conviction, the defendant may petition the court for relief if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking. Existing law authorizes a court to issue an order that (1) sets forth a finding that the defendant was a victim of human trafficking, as specified, (2) dismisses the accusation or information against the defendant, or orders other relief, and (3) notifies the Department of Justice that the defendant was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

Existing law authorizes a person who was adjudicated a ward of the juvenile court for solicitation or prostitution to, upon reaching 18 years of age, petition the court to have his or her record sealed, as specified.

This bill would establish a separate petition process for a person who has been arrested for, convicted of, or adjudicated a ward of the juvenile court for, committing a nonviolent offense, as defined, while he or she was a victim of human trafficking. The bill would require the petitioner to establish that the arrest, conviction, or adjudication was the direct result of being a victim of human trafficking in order to obtain relief. The bill would require the petition for relief to be submitted under penalty of perjury, thereby expanding the scope of a crime. The bill would authorize the court, upon making specified findings, to vacate the conviction or adjudication and issue an order that provides the relief described above and also provides for the sealing and destruction of the petitioner's arrest and court records, as specified. The bill would require that the petition be made within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the person has sought services for being a victim of human trafficking, whichever is later. The bill would provide that official documentation, as defined, of a petitioner's status as a victim of human trafficking may be introduced as evidence that his or her participation in the offense was the result of the petitioner's status as a victim of human trafficking. The bill would provide that a petitioner or his or her attorney is not required to appear in person at a hearing for the relief described above if the court finds a compelling reason why the petitioner cannot attend the hearing and may appear via alternate specified methods. The bill would prohibit the disclosure of the full name of a petitioner in the record of a proceeding related to his or her petition that is accessible by the public. The bill would authorize a petitioner who has obtained the relief described above to lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to that relief. By expanding the scope of a crime and increasing the number of records local agencies would be required to seal and destroy, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

1 SECTION 1. Section ~~236.13~~236.14 is added to the Penal Code,
2 to read:
3 ~~236.13.~~
4 236.14. (a) If a person was arrested for or convicted of any
5 nonviolent offense committed while he or she was a victim of
6 human trafficking, including, but not limited to, prostitution as
7 described in subdivision (b) of Section 647, the person may petition
8 the court for vacatur relief of his or her convictions and arrests
9 under this section. The petitioner shall establish, by clear and
10 convincing evidence, that the arrest or conviction was the direct
11 result of being a victim of human trafficking.
12 (b) The petition for relief shall be submitted under penalty of
13 perjury and shall describe all of the available grounds and evidence
14 that the petitioner was a victim of human trafficking and the arrest
15 or conviction of a nonviolent offense was the direct result of being
16 a victim of human trafficking.
17 (c) The petition for relief and supporting documentation shall
18 be served on the state or local prosecutorial agency that obtained
19 the conviction for which vacatur is sought or with jurisdiction over
20 charging decisions with regard to the arrest. The state or local
21 prosecutorial agency shall have 45 days from the date of receipt
22 of service to respond to the petition for relief.
23 (d) If opposition to the petition is not filed by the applicable
24 state or local prosecutorial agency, the court shall deem the petition
25 unopposed and may grant the petition.

1 (e) The court may, with the agreement of the petitioner and all
2 of the involved state or local prosecutorial agencies, consolidate
3 into one hearing a petition with multiple convictions from different
4 jurisdictions.

5 (f) If the petition is opposed or if the court otherwise deems it
6 necessary, the court shall schedule a hearing on the petition. The
7 hearing may consist of the following:

8 (1) Testimony by the petitioner, which may be required in
9 support of the petition.

10 (2) Evidence and supporting documentation in support of the
11 petition.

12 (3) Opposition evidence presented by any of the involved state
13 or local prosecutorial agencies that obtained the conviction.

14 (g) After considering the totality of the evidence presented, the
15 court may vacate the conviction and expunge the arrests and issue
16 an order if it finds all of the following:

17 (1) That the petitioner was a victim of human trafficking at the
18 time the nonviolent crime was committed.

19 (2) The commission of the crime was a direct result of being a
20 victim of human trafficking.

21 (3) The victim is engaged in a good faith effort to distance
22 himself or herself from the human trafficking scheme.

23 (4) It is in the best interest of the petitioner and in the interests
24 of justice.

25 (h) In issuing an order of vacatur for the convictions, an order
26 shall do the following:

27 (1) Set forth a finding that the petitioner was a victim of human
28 trafficking when he or she committed the offense.

29 (2) Set aside the verdict of guilty or the adjudication and dismiss
30 the accusation or information against the petitioner.

31 (3) Notify the Department of Justice that the petitioner was a
32 victim of human trafficking when he or she committed the crime
33 and of the relief that has been ordered.

34 (i) Notwithstanding this section, a petitioner shall not be relieved
35 of any financial restitution order that directly benefits the victim
36 of a nonviolent crime, unless it has already been paid.

37 (j) A person who was arrested as, or found to be, a person
38 described in Section 602 of the Welfare and Institutions Code
39 because he or she committed a nonviolent offense while he or she
40 was a victim of human trafficking, including, but not limited to,

1 prostitution, as described in subdivision (b) of Section 647, may
2 petition the court for relief under this section. If the petitioner
3 establishes that the arrest or adjudication was the direct result of
4 being a victim of human trafficking the petitioner is entitled to a
5 rebuttable presumption that the requirements for relief have been
6 met.

7 (k) If the court issues an order as described in subdivision (a)
8 or (j), the court shall also order the law enforcement agency having
9 jurisdiction over the offense, the Department of Justice, and any
10 law enforcement agency that arrested the petitioner or participated
11 in the arrest of the petitioner to seal their records of the arrest and
12 the court order to seal and destroy the records for three years from
13 the date of the arrest, or within one year after the court order is
14 granted, whichever occurs later, and thereafter to destroy their
15 records of the arrest and the court order to seal and destroy those
16 records. The court shall provide the petitioner a copy of any court
17 order concerning the destruction of the arrest records.

18 (l) A petition pursuant to this section shall be made and heard
19 within a reasonable time after the person has ceased to be a victim
20 of human trafficking, or within a reasonable time after the
21 petitioner has sought services for being a victim of human
22 trafficking, whichever occurs later, subject to reasonable concerns
23 for the safety of the petitioner, family members of the petitioner,
24 or other victims of human trafficking who may be jeopardized by
25 the bringing of the application or for other reasons consistent with
26 the purposes of this section.

27 (m) For the purposes of this section, official documentation of
28 a petitioner's status as a victim of human trafficking may be
29 introduced as evidence that his or her participation in the offense
30 was the result of his or her status as a victim of human trafficking.
31 For the purposes of this subdivision, "official documentation"
32 means any documentation issued by a federal, state, or local agency
33 that tends to show the petitioner's status as a victim of human
34 trafficking. Official documentation shall not be required for the
35 issuance of an order described in subdivision (a).

36 (n) A petitioner, or his or her attorney, may be excused from
37 appearing in person at a hearing for relief pursuant to this section
38 only if the court finds a compelling reason why the petitioner
39 cannot attend the hearing, in which case the petitioner may appear

1 telephonically, via videoconference, or by other electronic means
2 established by the court.

3 (o) Notwithstanding any other law, a petitioner who has obtained
4 an order pursuant to this section may lawfully deny or refuse to
5 acknowledge an arrest, conviction, or adjudication that is set aside
6 pursuant to the order.

7 (p) Notwithstanding any other law, the records of the arrest,
8 conviction, or adjudication shall not be distributed to any state
9 licensing board.

10 (q) The record of a proceeding related to a petition pursuant to
11 this section that is accessible by the public shall not disclose the
12 petitioner's full name.

13 (r) A court that grants relief pursuant to this section may take
14 additional action as appropriate under the circumstances to carry
15 out the purposes of this section.

16 (s) If the court denies the application because the evidence is
17 insufficient to establish grounds for vacatur, the denial may be
18 without prejudice. The court may state the reasons for its denial
19 in writing or on the record that is memorialized by transcription,
20 audio tape, or video tape, and if those reasons are based on curable
21 deficiencies in the application, allow the applicant a reasonable
22 time period to cure the deficiencies upon which the court based
23 the denial.

24 (t) For the purposes of this section, the following terms apply:

25 (1) "Nonviolent offense" means any offense not listed in
26 subdivision (c) of Section 667.5.

27 (2) "Vacate" means that the arrest and any adjudications or
28 convictions suffered by the petitioner are deemed not to have
29 occurred and that all records in the case are sealed and destroyed
30 pursuant to this section. The court shall provide the petitioner with
31 a copy of the orders described in subdivisions (a), (j), and (k), as
32 applicable, and inform the petitioner that he or she may thereafter
33 state that he or she was not arrested for the charge, or adjudicated
34 or convicted of the charge, that was vacated.

35 (3) "Victim of human trafficking" means the victim of a crime
36 described in subdivisions (a), (b), and (c) of Section 236.1.

37 SEC. 2. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution for certain
39 costs that may be incurred by a local agency or school district
40 because, in that regard, this act creates a new crime or infraction,

1 eliminates a crime or infraction, or changes the penalty for a crime
2 or infraction, within the meaning of Section 17556 of the
3 Government Code, or changes the definition of a crime within the
4 meaning of Section 6 of Article XIII B of the California
5 Constitution.

6 However, if the Commission on State Mandates determines that
7 this act contains other costs mandated by the state, reimbursement
8 to local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.

11 SEC. 3. The Legislature finds and declares that Section 1 of
12 this act, which adds Section ~~236.13~~ 236.14 to the Penal Code,
13 imposes a limitation on the public's right of access to the meetings
14 of public bodies or the writings of public officials and agencies
15 within the meaning of Section 3 of Article I of the California
16 Constitution. Pursuant to that constitutional provision, the
17 Legislature makes the following findings to demonstrate the interest
18 protected by this limitation and the need for protecting that interest:

19 In order to protect the privacy of victims of human trafficking
20 and to improve their opportunities for recovery, it is necessary that
21 this act limit the public's right of access to the full name of a
22 petitioner who seeks relief from an arrest or conviction for an
23 offense in which the petitioner participated as a result of his or her
24 status as a victim of human trafficking.