

RESOLUTION 08-06-2015

DIGEST

Criminal Law: Expungement of Certain Convictions of Human Trafficking Victims

Adds Penal Code section 1203.43 to provide expungement procedures for selected convictions suffered by defendants who are victims of human trafficking.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to add California Penal Code section 1203.43 to read as follows:

§1203.43

1 (a) An individual convicted of prostitution vagrancy, disorderly conduct, drug possession,
2 possession of a weapon, unauthorized street vending and other non-violent crimes committed as
3 a direct result of being a victim of human trafficking under Section 236.1 or trafficking in
4 persons under the federal Trafficking Victims Protection Act (22 U.S.C. Sec. 7101 et seq.) may
5 petition the court to vacate the petitioner's record of conviction for the offense. A court may
6 grant such petition on a finding that the defendant's participation in the offense was a direct
7 result of being a victim of human trafficking.

8 (b) Unless impossible, the petition shall be filed in the court where the conviction was
9 entered. If the petition cannot be filed in the court where the conviction was entered, the petition
10 shall be filed in the main criminal courthouse for the county in which the conviction was entered.

11 (c) The petition may be filed anonymously or confidentially and any hearing may be
12 conducted in private, outside of the view of the public, upon a showing of good cause. A finding
13 of good cause shall exist if the petitioner demonstrates a reasonable fear for their safety based
14 upon the fact that the perpetrator of human trafficking or his or her associates have not been
15 brought to justice or continue to operate.

16 (d) No official determination or documentation is required to grant a motion under this
17 section, but official documentation from a federal, state, local, or tribal government agency
18 indicating that the defendant was a victim at the time of the offense creates a presumption that
19 the defendant's participation in the offenses was a direct result of being a victim.

20 (e) A copy of the petition shall be served on the prosecuting attorney of the county or
21 city in which the accusatory pleading was filed at least 10 days prior to the hearing on the
22 petitioner to vacate the conviction. The prosecuting attorney may present evidence to the court at
23 the hearing.

24 (f) For purposes of this subdivision, the relief provided for may be granted
25 notwithstanding the fact that there may have been reasonable cause to believe the petitioner
26 committed the offense at the time of his or her conviction.

27 (g) In any case where a person who has been arrested is granted relief pursuant to this
28 subdivision, the law enforcement agency having jurisdiction over the offense or the court shall
29 issue a written declaration to the arrestee stating that it is the determination of the law
30 enforcement agency having jurisdiction over the offense or court that the conviction has been
31 vacated. Thereafter, the conviction shall be deemed not to have occurred and the person may
32 answer accordingly any question relating to its occurrence.

33 (h) Petitions brought pursuant to this section by persons determined to have been victims
34 of human trafficking under Section 236.1 or trafficking in persons under the federal Trafficking
35 Victims Protection Act (22 U.S.C. Sec. 7101 et seq.), shall be brought within two years of the
36 conviction. However, a waiver of the time restriction shall be granted upon showing of good
37 cause. When evaluating whether good cause exists, the court shall take into consideration
38 relevant factors, including, but not limited to, when the petitioner ceased to be a victim of human
39 trafficking or trafficking in persons, reasonable concern for the safety of the petitioner and the
40 petitioner's family, the age and capacity of the petitioner, the petitioner's ability to obtain legal
41 services, and other obstacles that may have prevented the petitioner from filing the petition
42 within the time period.

43 (i) Upon a finding under this subsection that a conviction should be vacated, the court
44 shall order all records related to the conviction to be sealed. The records shall remain sealed
45 absent a request by a government agency that they be unsealed for use in the prosecution of the
46 perpetrator of the human trafficking of the petitioner. In the event that the records are unsealed,
47 the name of the petitioner shall be redacted and shall not be disclosed.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Fernando Valley Bar Association

STATEMENT OF REASONS

The Problem: Victims of human trafficking who manage to extricate themselves from the situation often carry with them criminal convictions relating to prostitution, vagrancy, disorderly conduct, drug possession, possession of a weapon, unauthorized street vending, certain labor related offenses and other non-violent crimes. These convictions adversely affect their ability to get a job, enroll in educational classes, get a Visa and other things that will enable them to get on their feet and live as a productive member of society.

The Solution: Allowing victims of human trafficking to petition to and have their convictions vacated and sealed will take away a significant and substantial impediment to these victims integrating into society while still maintaining a record of their conviction in the event that perpetrator of the human trafficking is ever charged and brought to trial.

IMPACT STATEMENT

While there will be a small burden on the criminal courts to hear these petitions, it will be insignificant to the number of petitions filed annually.

CURRENT OR PRIOR RELATED LEGISLATION

AB 1887 (Campos)-A bill was authored in 2014 to allow victims of human trafficking to petition to have their criminal records sealed and destroyed. This Bill stalled in committee. It is believed that it stalled in part due to the lack of discretion provided to the court, due to the requirement that the court find the petitioner “factually innocent” of the crime, and due to the requirement that the records be destroyed, thereby making the records unavailable for use in a future case against the perpetrator of human trafficking.

AUTHOR AND/OR PERMANENT CONTACT: Caryn Brottman Sanders, President, San Fernando Valley Bar Association, 24307 Magic Mountain Parkway, #107, Valencia, CA 91355, (661)775-9873, fax (661)295-1582, carynsanders@sbcglobal.net.

RESPONSIBLE FLOOR DELEGATE: Caryn Brottman Sanders

**RESOLUTIONS COMMITTEE RECOMMENDATION
DISAPPROVE**

History:

No similar resolutions found.

Reasons:

This resolution adds Penal Code section 1203.43 to provide expungement procedures for selected convictions suffered by defendants who are victims of human trafficking. This resolution should be disapproved because it is insufficiently specific and too sweeping in its articulation of the crimes for which such expungement is available.

The proponent refers to the unsuccessful Assembly Bill No. 1887 (Reg. Sess. 2014) (“AB 1887”). AB 1887 was limited to violations of Penal Code section 647, subdivisions (a), (b), and (d) and Penal Code section 653.22, subdivision (a), all of which have to do with prostitution and related activities, e.g. loitering for purposes of prostitution. The proponents speculate that the bill did not succeed because of lack of discretion provided to the court, the requirement that the court find the petitioner “factually innocent,” and due to the requirement that the petitioner’s criminal records be destroyed, which would make them unavailable for use in prosecution of the human trafficking perpetrator.

This resolution appears to address all of those problems but it is also too broad in its scope. It not only provides relief for “prostitution, vagrancy, and disorderly conduct,” but also provides relief for “drug possession, possession of a weapon, unauthorized street vending and other non-violent crimes” with no reference to the actual Penal Code or other sections involved. Although conviction of any of these types of crimes is an impediment to future opportunities for such a victim, it is not clear that only victims of human trafficking commit the latter group of crimes. Given the presumptions involved, there is a question as to the level of discretion a court would have in making decisions in these matters, since there is no standard to determine whether the defendant was in fact a victim of human trafficking included in the resolution.