

BILL ANALYSIS

C.S.H.B. 2286
By: Parker
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that prior convictions of prostitution charges for victims of human trafficking often stand in the way of a former human trafficking victim obtaining a stable living environment, staying employed in a desirable field, obtaining certain professional licenses, pursuing higher education, and undertaking other pursuits. Recognizing the adversity such charges can cause for former victims of human trafficking, certain states have begun creating pathways for former human trafficking victims to vacate the prostitution convictions accrued while a victim. C.S.H.B. 2286 seeks to assist victims of human trafficking.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2286 amends the Government Code to authorize a person who on conviction for a prostitution offense is placed on community supervision and with respect to whom the conviction is subsequently set aside by a court to petition the court that placed the person on community supervision for an order of nondisclosure on the grounds that the person committed the offense solely as a victim of trafficking of persons if the person satisfies the applicable requirements for an order of nondisclosure. The bill requires the court, after notice to the state, an opportunity for a hearing, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that issuance of the order is in the best interest of justice, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the prostitution offense giving rise to the community supervision. The bill restricts disclosure by a criminal justice agency of criminal history record information that is the subject of the order to other criminal justice agencies for criminal justice purposes, to certain noncriminal agencies or entities, or to the person who is the subject of the order. The bill authorizes a person to petition the court that placed the person on community supervision for an order of nondisclosure only after the person's prostitution conviction is set aside. The bill applies to a person who is placed on community supervision for a prostitution offense and whose conviction for the offense is set aside on or after the bill's effective date, regardless of when the person committed the offense for which the person was convicted.

C.S.H.B. 2286 amends the Business & Commerce Code to make a conforming change.

C.S.H.B. 2286 amends the Occupations Code to make a technical correction.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2286 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.13 to read as follows:

No equivalent provision. (*But see SECTION 2 below.*)

Art. 42.13. SETTING ASIDE CONVICTION FOR VICTIMS OF TRAFFICKING OF PERSONS. (a) A court in which a defendant has been convicted of an offense under Section 43.02, Penal Code, may, if the court retains jurisdiction in the case, hear a petition from the defendant to set aside the order of conviction. The petition must allege specific facts that, if proved, would establish that the petitioner engaged in prostitution solely as a victim of an offense under Section 20A.02(a)(3) or (7), Penal Code. The petitioner may submit with the petition a document of a federal, state, local, or tribal governmental agency indicating that the petitioner engaged in prostitution solely as a victim of trafficking of persons.

No equivalent provision.

(b) On the filing of the petition under Subsection (a), the clerk of the court shall promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state. Any response to the petition by the attorney representing the state must be filed not later than the 15th business day after the date of service under this subsection.

No equivalent provision.

(c) If in considering the petition, any supporting document, and any response of the attorney representing the state the court finds that there are reasonable grounds to believe the facts alleged in the petition or if the petitioner submits a document of a governmental agency described by Subsection (a), the court shall order a hearing on the petition. The court shall

dismiss the petition and shall promptly notify the petitioner of the court's decision if the court finds that there are not any reasonable grounds to believe the alleged facts exist or if the petitioner has filed a previous petition under this article based solely on the same evidence. The court may not dismiss the petition if the petitioner submits a document of a governmental agency described by Subsection (a).

No equivalent provision.

(d) After the court orders a hearing under this article, the court, as the court considers necessary to ensure a fair hearing on the petition, may order any discovery from the attorney representing the state or from the petitioner. An order of discovery may include any order for probative evidence relevant to proving or disproving the petitioner's claim of having engaged in the conduct for which the person was convicted under Section 43.02, Penal Code, solely as a victim of an offense under Section 20A.02(a)(3) or (7), Penal Code. A document of a governmental agency described by Subsection (a) creates a presumption that the petitioner's claim is true.

No equivalent provision.

(e) If after the court orders a hearing under this article the court finds that, based on the sworn statements of the petitioner or based on submitted evidence or affidavits, the petitioner is not represented by an attorney and is indigent, the court shall appoint an attorney to represent the petitioner at the hearing and, if appropriate, before the court of appeals and the court of criminal appeals.

No equivalent provision.

(f) At the conclusion of the hearing, the court shall make a finding as to whether the petitioner's claim of having engaged in prostitution solely as a victim of trafficking of persons is true.

No equivalent provision.

(g) The court may set aside the order of conviction for the offense under Section 43.02, Penal Code, if the court finds that the petitioner engaged in prostitution solely as a victim of trafficking of persons and that set-aside is in the best interest of justice.

No equivalent provision.

(h) The court reporter shall record a hearing under this article. If the court makes a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons, and if the petitioner

is indigent, the court reporter shall transcribe the hearing, including the finding, at the county's expense. The entire record must be included with an application for appeal filed as described by this article.

No equivalent provision.

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

No equivalent provision.

(j) A petition for a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons filed under this article and a proceeding conducted under this article do not constitute an application for a writ of habeas corpus or a proceeding based on an application for a writ of habeas corpus. A restriction on filing a subsequent application for a writ of habeas corpus imposed by Article 11.07 does not apply to a petition or proceeding under this article.

No equivalent provision.

(k) This article is not intended to preclude a petitioner from receiving a reduction or termination of community supervision and a set-aside of verdict under Section 20, Article 42.12, if the petitioner is otherwise qualified to receive a dismissal under that section.

SECTION 2. Chapter 48, Code of Criminal Procedure, is amended by adding Article 48.07 to read as follows:

No equivalent provision. (*But see SECTION 2 below.*)

Art. 48.07. PETITION FOR PARDON FOR CERTAIN TRAFFICKING-VICTIM OFFENDERS; JUDICIAL PROCEEDINGS. (a) In this article, a person is considered to have been convicted in a case if:

(1) a judgment, a sentence, or both a judgment and a sentence are imposed on the person;

(2) the person receives community supervision, deferred adjudication, or deferred disposition; or

(3) the court defers final disposition of the case or imposition of the judgment and sentence.

No equivalent provision.

(b) This article applies only to a person described by Subsection (c) who is unable to obtain relief under Section 20, Article 42.12, or Article 42.13 because the convicting court no longer retains

jurisdiction over the case.

(c) A person convicted of an offense under Section 43.02, Penal Code, may file in the court of conviction a petition alleging specific facts that, if proved, would establish that the petitioner engaged in prostitution solely as a victim of an offense under Section 20A.02(a)(3) or (7), Penal Code. The petitioner may submit with the petition a document of a federal, state, local, or tribal governmental agency indicating that the petitioner engaged in prostitution solely as a victim of trafficking of persons.

No equivalent provision.

(d) On the filing of the petition under Subsection (c), the clerk of the court shall promptly serve a copy of the petition and any supporting document on the appropriate office of the attorney representing the state. Any response to the petition by the attorney representing the state must be filed not later than the 15th business day after the date of service under this subsection.

No equivalent provision.

(e) If in considering the petition, any supporting document, and any response of the attorney representing the state the court finds that there are reasonable grounds to believe the facts alleged in the petition or if the petitioner submits a document of a governmental agency described by Subsection (a), the court shall order a hearing on the petition. The court shall dismiss the petition and shall promptly notify the petitioner of the court's decision if the court finds that there are not any reasonable grounds to believe the alleged facts exist or if the petitioner has filed a previous petition under this article based solely on the same evidence. The court may not dismiss the petition if the petitioner submits a document of a governmental agency described by Subsection (a).

No equivalent provision.

(f) After the court orders a hearing under this article, the court, as the court considers necessary to ensure a fair hearing on the petition, may order any discovery from the attorney representing the state or from the petitioner. An order of discovery may include any order for probative evidence relevant to proving or disproving the petitioner's claim of having engaged in prostitution solely as a victim of an offense under Section 20A.02(a)(3)

No equivalent provision.

or (7), Penal Code. A document of a governmental agency described by Subsection (a) creates a presumption that the petitioner's claim is true.

No equivalent provision.

(g) If after the court orders a hearing under this article the court finds that, based on the sworn statements of the petitioner or based on submitted evidence or affidavits, the petitioner is not represented by an attorney and is indigent, the court shall appoint an attorney to represent the petitioner at the hearing and, if appropriate, before the court of appeals and the court of criminal appeals.

No equivalent provision.

(h) At the conclusion of the hearing, the court shall make a finding as to whether the petitioner's claim of having engaged in prostitution solely as a victim of trafficking of persons is true. A finding that the petitioner did engage in prostitution solely as a victim of trafficking of persons does not authorize the court to set aside a conviction of the offense if the court is not authorized to set aside that sentence under other law.

No equivalent provision.

(i) If the court finds that the petitioner engaged in prostitution solely as a victim of trafficking of persons, the petitioner may file an application for a pardon, but the application may not be filed later than the 90th day after the date the court makes the finding.

No equivalent provision.

(j) The court reporter shall record a hearing under this article. If the court makes a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons, and if the petitioner is indigent, the court reporter shall transcribe the hearing, including the finding, at the county's expense. The entire record must be included with an application for a pardon filed as described by this article.

No equivalent provision.

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

No equivalent provision.

(l) A petition for a finding that the petitioner engaged in prostitution solely as a victim of trafficking of persons filed under this article and a proceeding conducted under this article do not constitute an application for a writ of habeas corpus or a proceeding based on an

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

SECTION 3. Section 5, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (k) to read as follows:

(k) If a judge dismisses proceedings against a defendant charged with an offense under Section 43.02, Penal Code, and discharges the defendant, the judge may attach to the papers in the case a statement that the defendant engaged in the applicable conduct solely as a victim of an offense under Section 20A.02(a)(3) or (7), Penal Code.

No equivalent provision.

SECTION 4. Article 55.01, Code of Criminal Procedure, is amended by adding Subsection (a-3) to read as follows:

(a-3) A person who has been placed under a custodial or noncustodial arrest for commission of an offense under Section 43.02, Penal Code, is entitled to have all records and files relating to the arrest expunged in the same manner provided for a person described by Subsection (a), if a court determines under Article 42.13(f) or 48.07(h) that the person engaged in prostitution solely as a victim of trafficking of persons.

No equivalent provision.

SECTION 5. (a) Articles 42.13 and 48.07, Code of Criminal Procedure, as added by this Act, apply to a petition to set aside a conviction or for a pardon filed on or after the effective date of this Act, regardless of whether the offense that is the subject of the petition occurred before, on, or after the effective date of this Act.

(b) Section 5(k), Article 42.12, Code of Criminal Procedure, as added by this Act, applies to a discharge and dismissal that occurs on or after the effective date of this Act, regardless of whether the offense for which the defendant was placed on deferred adjudication community supervision occurred before, on, or after the effective date of this Act.

No equivalent provision.

(c) Article 55.01(a-3), Code of Criminal Procedure, as added by this Act, applies to a petition for expunction filed on or after the effective date of this Act, regardless of whether the offense that is the subject of the petition occurred before, on, or after the effective date of this Act.

No equivalent provision.

SECTION 1. Section 109.005(a), Business & Commerce Code, as added by Chapter 1200 (S.B. No. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(a) A business entity may not publish any criminal record information in the business entity's possession with respect to which the business entity has knowledge or has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d) or (d-1), Government Code.

No equivalent provision.

SECTION 2. Section 411.081, Government Code, is amended by adding Subsection (d-1) and amending Subsections (e), (f), (f-1), and (h) to read as follows:

(d-1)(1) This subsection applies only to a person who on conviction for an offense under Section 43.02, Penal Code, is placed on community supervision under Article 42.12, Code of Criminal Procedure, and with respect to whom the conviction is subsequently set aside by the court under Section 20(a) of that article.

(2) Notwithstanding any other provision of this subchapter, if a person to whom this subsection applies satisfies the requirements of Subsection (e), the person may petition the court that placed the person on community supervision for an order of nondisclosure on the grounds that the person committed the offense solely as a victim of trafficking of persons. After notice to the state, an opportunity for a hearing, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history

record information related to the offense under Section 43.02, Penal Code, giving rise to the community supervision. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies for criminal justice purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. A person may petition the court that placed the person on community supervision for an order of nondisclosure only after the person's conviction under Section 43.02, Penal Code, is set aside.

(e) A person is entitled to petition the court under Subsection (d) or (d-1) only if during the period of the community supervision, including deferred adjudication community supervision, for which the order of nondisclosure is requested and, for a petition under Subsection (d), only during the applicable period described by Subdivision (1) [Subsection (d)(1)], (2), or (3) of that subsection, as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. A person is not entitled to petition the court under Subsection (d) or (d-1) if the person was placed on community supervision, including [the] deferred adjudication community supervision, for, or has been previously convicted of or placed on any other deferred adjudication for:

- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or
- (4) any other offense involving family violence, as defined by Section 71.004, Family Code.

(f) For purposes of Subsections [Subsection] (d) and (e), a person is considered to have been placed on deferred adjudication community supervision if, regardless of the statutory authorization:

- (1) the person entered a plea of guilty or nolo contendere;
- (2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and
- (3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

(f-1) A person who petitions the court for an order of nondisclosure under Subsection (d) or (d-1) may file the petition in person, electronically, or by mail. The petition must be accompanied by payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The Office of Court Administration of the Texas Judicial System shall prescribe a form for the filing of a petition electronically or by mail. The form must provide for the petition to be accompanied by the required fees and any other supporting material determined necessary by the office of court administration, including evidence that the person is entitled to file the petition. The office of court administration shall make available on its Internet website the electronic application and printable application form. Each county or district clerk's office that maintains an Internet website shall include on that website a link to the electronic application and printable application form available on the office of court administration's Internet website. On receipt of a petition under this subsection, the court shall provide notice to the state and an opportunity for a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice. The court shall hold a hearing before determining whether to issue an order of nondisclosure, except that a hearing is not required if:

- (1) the state does not request a hearing on the issue before the 45th day after the date on which the state receives notice under this subsection; and
- (2) the court determines that:
 - (A) the defendant is entitled to file the petition; and
 - (B) the order is in the best interest of justice.

(h) The clerk of a court that collects a fee paid under Subsection (f-1) [~~(d)~~] shall remit

the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and the comptroller shall deposit the fee in the general revenue fund. The Department of Public Safety shall submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:

- (1) the number of petitions for nondisclosure and orders of nondisclosure received by the department in each of the previous two years;
- (2) the actions taken by the department with respect to the petitions and orders received;
- (3) the costs incurred by the department in taking those actions; and
- (4) the number of persons who are the subject of an order of nondisclosure and who became the subject of criminal charges for an offense committed after the order was issued.

No equivalent provision.

SECTION 3. Section 411.081(i), Government Code, as amended by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

(i) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) or (d-1) to the following noncriminal justice agencies or entities only:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, private school, regional education service center, commercial transportation company, or education shared service arrangement;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Board of Law Examiners;
- (6) the State Bar of Texas;
- (7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Juvenile Justice Department;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local mental

- retardation authority, or a community center providing services to persons with mental illness or an intellectual disability [~~retardation~~];
- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district, or a facility as defined by Section 250.001, Health and Safety Code;
- (18) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;
- (19) the Texas State Board of Public Accountancy;
- (20) the Texas Department of Licensing and Regulation;
- (21) the Health and Human Services Commission;
- (22) the Department of Aging and Disability Services;
- (23) the Texas Education Agency;
- (24) the Judicial Branch Certification Commission;
- (25) a county clerk's office in relation to a proceeding for the appointment of a guardian under Title 3, Estates Code [~~Chapter XIII, Texas Probate Code~~];
- (26) the Department of Information Resources but only regarding an employee, applicant for employment, contractor, subcontractor, intern, or volunteer who provides network security services under Chapter 2059 to:
- (A) the Department of Information Resources; or
- (B) a contractor or subcontractor of the Department of Information Resources;
- (27) the Texas Department of Insurance;
- (28) the Teacher Retirement System of Texas; and
- (29) [~~(30)~~] the Texas State Board of Pharmacy.

No equivalent provision.

SECTION 4. Section 411.0851(a), Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal

history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or
- (2) an order of nondisclosure has been issued under Section 411.081(d) or (d-1).

No equivalent provision.

SECTION 5. Section 552.142, Government Code, is amended to read as follows:

Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF CERTAIN CRIMINAL HISTORY INFORMATION [~~DEFERRED ADJUDICATIONS~~].

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) or (d-1).

(b) A person who is the subject of information that is excepted from the requirements of Section 552.021 under this section may deny the occurrence of the criminal proceeding [~~arrest and prosecution~~] to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

No equivalent provision.

SECTION 6. Section 552.1425(a), Government Code, is amended to read as follows:

(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or
- (2) an order of nondisclosure has been issued under Section 411.081(d) or (d-1).

No equivalent provision.

SECTION 7. Section 53.021(e), Occupations Code, is amended to read as follows:

(e) Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide:

- (1) law enforcement or public health,

education, or safety services; or
(2) financial services in an industry regulated by a person listed in Section 411.081(i)(18) [~~411.081(i)(19)~~], Government Code.

No equivalent provision.

SECTION 8. The change in law made by Section 411.081(d-1), Government Code, as added by this Act, applies to a person whose conviction for an offense under Section 43.02, Penal Code, is set aside under Section 20(a), Article 42.12, Code of Criminal Procedure, on or after the effective date of this Act, regardless of when the person committed the offense for which the person was convicted.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 9. This Act takes effect September 1, 2015.