

By: Thompson of Harris, Meyer,  
Johnson of Dallas

H.B. No. 269

A BILL TO BE ENTITLED

AN ACT

relating to judicial proceedings on a petition to set aside a conviction or an order of expunction of criminal history record information for certain victims of trafficking of persons or compelling prostitution who are convicted of prostitution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

Art. 42.13. SETTING ASIDE CONVICTION FOR VICTIMS OF TRAFFICKING OF PERSONS OR COMPELLING PROSTITUTION. (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, 20A.03, or 43.05, 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 or compelling prostitution, as applicable.

(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

1 representing the state. Any response to the petition by the  
2 attorney representing the state must be filed not later than the  
3 20th business day after the date of service under this subsection.

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

17 (d) After the court orders a hearing under this article, the  
18 court, as the court considers necessary to ensure a fair hearing on  
19 the petition, may order any discovery from the attorney  
20 representing the state or from the petitioner. An order of  
21 discovery may include any order for probative evidence relevant to  
22 proving or disproving the petitioner's claim of having engaged in  
23 the conduct for which the person was convicted under Section 43.02,  
24 Penal Code, solely as a victim of an offense under Section 20A.02,  
25 20A.03, or 43.05, Penal Code. A document of a governmental agency  
26 described by Subsection (a) creates a presumption that the  
27 petitioner's claim is true.

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

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

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

17       (h) The court reporter shall record a hearing under this  
18 article. If the court makes a finding that the petitioner engaged in  
19 prostitution solely as a victim of trafficking of persons or  
20 compelling prostitution, and if the petitioner is indigent, the  
21 court reporter shall transcribe the hearing, including the finding,  
22 at the county's expense. The entire record must be included with an  
23 application for appeal filed as described by this article.

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

27       (j) A petition for a finding that the petitioner engaged in

prostitution solely as a victim of trafficking of persons or compelling prostitution 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.

(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 Article 42A.701 if the petitioner is otherwise qualified to receive a dismissal under that article.

(l) For purposes of this article, the jurisdiction of a court in which a defendant has been convicted of an offense under Section 43.02, Penal Code, continues for a period of five years beginning on the date the conviction is entered.

SECTION 2. Article 42A.105, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) 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 make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that the defendant engaged in the applicable conduct solely as a victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code.

SECTION 3. 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

1 noncustodial arrest for commission of an offense under Section  
2 43.02, Penal Code, is entitled to have all records and files  
3 relating to the arrest expunged in the same manner provided for a  
4 person described by Subsection (a), if a court determines under  
5 Article 42.13(f) that the person engaged in prostitution solely as  
6 a victim of trafficking of persons or compelling prostitution. If  
7 the attorney representing the state establishes a need for law  
8 enforcement agencies, for the purpose of investigating trafficking  
9 of persons or compelling prostitution offenses, to have access to  
10 evidence contained in the arrest records or files of a person  
11 entitled to an expunction under this subsection, at the request of  
12 the attorney representing the state, the court may provide in its  
13 expunction order that a law enforcement agency may retain those  
14 records and files, provided that the person's personal information  
15 has been redacted from those records and files.

16 SECTION 4. (a) Article 42.13, Code of Criminal Procedure,  
17 as added by this Act, applies to a petition to set aside a  
18 conviction that is filed on or after the effective date of this Act,  
19 regardless of whether the offense that is the subject of the  
20 petition occurred before, on, or after the effective date of this  
21 Act.

22 (b) Article 42A.105(g), Code of Criminal Procedure, as  
23 added by this Act, applies to a discharge and dismissal that occurs  
24 on or after the effective date of this Act, regardless of whether  
25 the offense for which the defendant was placed on deferred  
26 adjudication community supervision occurred before, on, or after  
27 the effective date of this Act.

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

6           SECTION 5. This Act takes effect September 1, 2017.