

Date of Hearing: April 6, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2169 (Gipson) – As Amended March 17, 2022

Policy Committee: Public Safety

Vote: 7 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill clarifies that when a person demonstrates, for purposes of vacatur relief, they committed an offense because they were the victim of human trafficking, intimate partner violence or sexual violence, it means the person lacked the requisite intent to commit the offense and that the conviction is legally invalid and must be set aside. This bill also eliminates the requirement that: a court find the victim was engaged in a good-faith effort to distance themselves from the human trafficking scheme or the perpetrator of the harm and the vacatur relief be in the best interest of the petitioner.

FISCAL EFFECT:

Possible cost pressure (Trial Court Trust Fund) possibly in the low to mid-hundreds of thousands of dollars in increased staff workload to hear additional vacatur relief petitions, given this bill eliminates the requirement that a petitioner demonstrate a good-faith effort to distance themselves from the human trafficking scheme or perpetrator of the harm. This may increase the number of vacatur petitions filed in superior court. An hour of court time costs approximately \$1,000 in workload. If this bill results in 150 additional petitions filed statewide each requiring an hour of court time, the total cost would be \$150,000 annually. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. This is particularly true given that numerous court functions are funded through the imposition and collection of criminal fines and fees. However, the Legislature has eliminated most criminal fines and fees over the past five years. As a result, the Governor's proposed 2022-23 budget allocates \$13.4 million dollars annually to backfill the loss of funding from criminal fines and fees and \$117.8 million dollars annually to continue backfilling the Trial Court Trust Fund to address the decline in revenue.

COMMENTS:

1) **Purpose.** According to the author:

By clarifying the intent to vacate based on a substantive defect, this bill will ensure equal access to vacatur for non-citizen survivors. This effort will help undo the harm that non-citizens (undocumented), who are an integral piece to the American puzzle, have faced as victims of exploitation and then criminalized as a result of their abuse.

- 2) **Existing Law.** Under federal law, a vacated conviction remains valid for purposes of federal immigration laws where there is no legal defect in the conviction. A state order setting aside a conviction is invalid for immigration purposes where it is not based on any showing of innocence or on any suggestion that the conviction had been improperly obtained. AB 2169 clarifies that vacatur relief pursuant to Penal Code sections 236.14 and 236.15 is based on a substantive defect in the underlying arrest or conviction—that petitioner lacked the requisite intent to commit the offense, which is a necessary element of all criminal offenses. (Pen. Code, § 20.) This bill would also clarify that the vacatur is based on a finding that the conviction or arrest is invalid due to a legal defect.

3) Related Legislation.

- a) AB 124 (Kamlager), Chapter 695, Statutes of 2021, expands the affirmative defense of coercion for human trafficking victims and extends it and vacatur relief to victims of intimate partner violence and sexual violence
- b) AB 262 (Patterson), Chapter 193, Statutes of 2021, allows a person, when petitioning to vacate a non-violent conviction because the petitioner was a victim of human trafficking and the conviction was a direct result of being a victim of human trafficking, to appear at the court hearings by counsel and removes time limitations to bring the petition.
- c) AB 2195 (Jones-Sawyer), allows a defendant to be convicted of and sentenced for maintaining or committing a public nuisance based on a plea agreement that includes the dismissal of one or more specified drug charges, in order to avoid immigration consequences of the conviction. AB 2195 is pending in the Assembly Committee on Public Safety.

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