

ASSEMBLY THIRD READING

AB 2169 (Gipson)

As Amended March 17, 2022

Majority vote

SUMMARY

Clarifies that vacatur relief for offenses committed while the petitioner was a victim of human trafficking, intimate partner violence, or sexual violence demonstrates that the petitioner lacked the requisite intent to commit the offense, and that the conviction is invalid due to legal defect.

Major Provisions

- 1) States that a court may vacate the conviction and arrest and if it finds that the arrest or conviction was a direct result of being a victim of human trafficking, intimate partner violence or sexual violence.
- 2) Removes the requirement that a court must find that the victim was engaged in a good faith effort to distance themselves from the human trafficking scheme or the perpetrator of the harm and that the vacatur relief be in the best interest of the petitioner.
- 3) Requires an order of vacatur to set forth a finding that the petitioner lacked the requisite intent to commit the offense and to set aside the arrest and finding of guilt as invalid due to a legal defect at the time of the arrest or conviction.

COMMENTS**According to the Author**

"In our state, vulnerable Californians, particularly women and children, suffer disproportionately from human trafficking. When non-citizens (undocumented) are trafficked, their unique vulnerabilities are can be leveraged by their traffickers; a lack of immigration status, language barriers, cultural norms, being, and lack of familiarity with United States protections can all add to further exploitation. Traffickers may use legal mechanisms to enforce their control over non-citizen victims, threatening them with arrest or deportation should they consider seeking help or reaching out to law enforcement. Traffickers may even threaten to kill or harm victims or their family members to maintain control. Vacatur laws are intended to correct the record when a victim of trafficking, intimate partner violence, or sexual violence is wrongly arrested or convicted as a direct result of their victimization. This specialized vacatur relief should not inadvertently create a two-tiered system of unequal relief for non-citizen and citizen survivors of human trafficking and interpersonal violence. 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."

Arguments in Support

According to *California Public Defender Association*, "AB 2169 would provide that if an individual's arrest or conviction is vacated because the individual was the victim of human trafficking or domestic or sexual violence, the court has found that the arrest or conviction was

legally invalid. In other words, the evidence presented to the court that qualify a victim of trafficking, intimate partner violence, or sexual violence for relief from the consequences of arrest or convictions caused by their victimization show that they lacked the requisite intent to commit the offense of which they were arrested or convicted, and that the lack of intent rendered the arrest or conviction legally defective at the time of the arrest or conviction.

"Under existing law, a victim of human trafficking, intimate partner violence, or sexual violence who was arrested or convicted of a crime, including prostitution, as a direct result of their victimization may be granted relief including the sealing of their arrest and conviction records, and vacatur of their conviction.

"Under federal law, deportation proceedings can still be based on a vacated conviction unless the vacatur is based on a legal defect in the underlying arrest or conviction. With the recently enacted vacatur, relief is predicated on the court finding that the evidence is legally insufficient for a conviction. This relief is inadequate for federal immigration relief. Federal immigration law requires that the court pronounce that the conviction is invalid due to a legal defect at the time of the arrest or conviction, or that the arrested or convicted person lacked the requisite intent to commit the offense. Without these explicit statements in the statutes that authorize vacatur and court orders under them, AB 262 and AB 124 vacatur, under Penal Code sections 236.14 and 236.15, have been denied effect in immigration proceedings.

"ICE has successfully argued that a vacatur should not be given effect because it is not based on a legal error or defect in the underlying proceeding. Most individuals facing deportation cannot afford counsel, and do not have a right to the appointment of counsel. Without the assistance of counsel, the immigrant stands little chance of rebutting the ICE lawyer's attack on their California vacatur.

"AB 2169 would prevent victims of human trafficking and domestic violence from being deported. It would protect the validity of a vacatur in immigration proceedings by eliminating the vagueness in existing law. It would do so by making explicit the legal underpinnings of the post-conviction relief provided for by recent legislation. Thereby, it would ensure that all victims, regardless of immigration status, would avoid adverse consequences based on legally defective convictions."

Arguments in Opposition

None submitted

FISCAL COMMENTS

According to the Assembly Appropriations Committee, 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.

VOTES**ASM PUBLIC SAFETY: 7-0-0**

YES: Jones-Sawyer, Lackey, Mia Bonta, Bryan, Quirk, Santiago, Seyarto

ASM APPROPRIATIONS: 16-0-0

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

UPDATED

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