
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 2169 (Gipson) - Criminal procedure

Version: March 17, 2022
Urgency: No
Hearing Date: June 27, 2022

Policy Vote: PUB. S. 5 - 0
Mandate: No
Consultant: Matthew Fleming

Bill Summary: AB 2169 would make several changes to the process by which a human trafficking victim can petition for vacatur relief for a crime they committed as a result of being a victim.

Fiscal Impact: Unknown, potentially-significant workload cost pressures to the courts to the extent that lowering the burden on a petitioner for vacatur relief may result in additional petitions being filed (Special Fund - Trial Court Trust Fund, General Fund). See Staff Comments for additional detail.

Background: Penal Code section 236.14 provides post-conviction relief to human trafficking victims by vacating nonviolent arrests, charges and convictions that were a direct result of human trafficking. Penal Code section 236.15 extends the same form of post-conviction relief to intimate partner violence and/or sexual violence victims by vacating nonviolent arrests, charges and convictions that were a direct result of the intimate partner or sexual violence. Unlike an expungement, getting a conviction vacated effectively means that the conviction never occurred. “Vacate” means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed. The purpose of these laws is to provide relief for individuals who have criminal records as a result of their exploitation, by vacating nonviolent criminal offenses that were committed by human trafficking victims at the behest of their traffickers.

Vacatur under sections 236.14 and 236.15, is based on a substantive defect: because the arrest or conviction was a direct result of human trafficking, intimate partner violence, and/or sexual violence, the defendant had a lack of criminal intent, a necessary element of the crime, and the arrest or conviction should never have occurred given the defendant’s status as the victim. However, the current statutory language fails to explicitly specify that the vacatur relief is based on a substantive defect that legally invalidates the conviction. Accordingly, under federal immigration law, the conviction remains for immigration purposes, despite the fact that it has been erased under state law. As such, the current statutory language inadvertently creates a two-tiered system whereby citizens who obtain a vacatur under these statutes are entitled to complete relief from the collateral consequences of their convictions, while non-citizen victims continue to face collateral immigration consequences of their convictions.

AB 2169 would clarify that vacatur relief under 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. 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.

Proposed Law:

- Provides 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.
- 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.
- 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.

Staff Comments: This bill removes the requirement that a petitioner demonstrate they were trying to distance themselves from the human trafficking scheme or the perpetrator of the harm during the offense. Such a showing may be difficult to make, and may be a barrier for certain petitioners who would otherwise be eligible for relief. Because this bill removes that requirement, it may add to workload to the courts as petitioners who would be unable to make the showing under existing law file petitions in court. 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. Numerous trial court operations are funded through the imposition and collection of criminal fines and fees. However, the Legislature has reduced and eliminated criminal fines and fees over the past five years. As a result, the Governor's proposed 2022-23 budget anticipates annual allocations of \$117.8 million and \$13.4 million of General Fund backfill in order to address declining revenue to the Trial Court Trust Fund.

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