

**ASSEMBLY BILL**

**No. 2040**

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**Introduced by Assembly Member Swanson**

February 23, 2012

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An act to add Section 1203.47 to the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 2040, as introduced, Swanson. Prostitution: human trafficking: expungement.

Existing law authorizes the court, upon petition from a person who has reached 18 years of age, to seal all records relating to the person's case in the custody of a juvenile court if the person has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, and if rehabilitation has been attained to the satisfaction of the court. Under existing law, a person may have a conviction for a misdemeanor set aside if the court, in its discretion and the interests of justice, determines that a defendant should be granted relief, provided that the petitioner is not then serving a sentence for any other offense, is not on probation for another offense, and is not being charged with any other offense.

This bill would provide that a person who was adjudicated a ward of the court for the commission of a violation of specified provisions prohibiting prostitution may petition a court to have his or her records sealed as these records pertain to the prostitution offenses without showing that he or she has not been subsequently convicted of a felony or misdemeanor involving moral turpitude, or that rehabilitation has been attained, as provided.

The bill would provide that a person who was 18 years of age or older, or who was under 18 years of age but was tried as an adult, at the time of a commission of a violation of specified provisions prohibiting prostitution may petition a court to allow the petitioner to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty, or to have the court set aside the verdict. The bill would require the court to grant the petition if the petitioner has made a satisfactory showing that the violation was a result of the petitioner having been a victim of human trafficking. The bill would provide that the relief provided by the bill would not apply to a person who paid money, or attempted to pay money, to any person for the purposes of prostitution, as specified.

The bill would provide that these provisions apply to convictions and adjudications that occurred before and after the effective date of the bill.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1203.47 is added to the Penal Code, to  
2     read:  
3     1203.47. (a) A person who was found to be a person described  
4     in Section 602 of the Welfare and Institutions Code by reason of  
5     the commission of an offense described in subdivision (b) of  
6     Section 647 or in Section 653.22 may, upon reaching 18 years of  
7     age, petition the court to have his or her record sealed, as provided  
8     in Section 781 of the Welfare and Institutions Code, except that,  
9     as pertaining to any records regarding the commission of an offense  
10    described in subdivision (b) of Section 647 or in Section 653.22,  
11    it shall not be a requirement in granting the petition for the person  
12    to show that he or she has not been convicted of a felony or of any  
13    misdemeanor involving moral turpitude, or that rehabilitation has  
14    been attained to the satisfaction of the court. Upon granting the  
15    petition, all records relating to the violation or violations of  
16    subdivision (b) of Section 647 or of Section 653.22, or both, shall  
17    be sealed pursuant to Section 781 of the Welfare and Institutions  
18    Code.  
19    (b) A person who was 18 years of age or older at the time of a  
20    commission of a violation of subdivision (b) of Section 647, or of

1 Section 653.22, or a person who was under 18 years of age but  
2 was tried as an adult, may petition a court to withdraw his or her  
3 plea of guilty or plea of nolo contendere and enter a plea of not  
4 guilty, or if he or she has been convicted after a plea of not guilty,  
5 to petition the court to set aside the verdict of guilty. The court  
6 shall grant the petition if, in the discretion of the court, the  
7 petitioner has made a satisfactory showing that the violation was  
8 a result of the petitioner having been a victim of human trafficking.  
9 The conviction of another person pursuant to Section 236.1 in  
10 relation to the petitioner's conviction under subdivision (b) of  
11 Section 647, or of Section 653.22, shall be strongly considered as  
12 evidence that the petitioner was a victim of human trafficking. If  
13 the petition is granted pursuant to this subdivision, the court shall  
14 dismiss the accusations or information against the petitioner, or  
15 set aside the verdict of guilty, and the petitioner will thereafter be  
16 released from all penalties and disabilities resulting from the  
17 offense. Evidence that a violation of subdivision (b) of Section  
18 647 or of Section 653.22 was the result of having been a victim  
19 of human trafficking may include, but is not limited to, any of the  
20 following:

21 (1) Certified records of federal or state court proceedings that  
22 demonstrate that the defendant was a victim of a trafficker who  
23 was charged with a trafficking offense.

24 (2) Certified records of approval notices or law enforcement  
25 certifications generated from federal immigration proceedings  
26 available to the victim.

27 (3) A sworn statement from a trained professional staff member  
28 of a victim services organization, an attorney, a member of the  
29 clergy, or a medical or other professional from whom the defendant  
30 sought assistance in addressing the trauma associated with being  
31 trafficked.

32 (4) Any evidence of probative value that the court deems  
33 sufficiently credible.

34 (c) The relief provided by this section does not apply to a person  
35 convicted pursuant to subdivision (b) of Section 647 or of Section  
36 653.22 who paid money or any other valuable thing, or attempted  
37 to pay money or any other valuable thing, to any person for the  
38 purpose of prostitution as defined in subdivision (b) of Section  
39 647.

1 (d) This section applies to convictions and adjudications that  
2 occurred before, as well as those that occur after, the effective date  
3 of this section.

4 (e) A petition granted pursuant to this section does not authorize  
5 the sealing of any part of a person's record that is unrelated to a  
6 violation of subdivision (b) of Section 647, Section 653.22, or  
7 both.