

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: May 27, 2016

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations and Neighborhoods Committee

FROM: Sharon M. Tse 
Chief Legislative Analyst

Council File No: 15-0002-S154
Assignment No: 16-04-0359

SUBJECT: Resolution (Martinez – Harris-Dawson) to SUPPORT AB 1762 (Campos) to allow survivors of human trafficking who have been convicted of nonviolent crimes to apply to the court to vacate the conviction.

CLA RECOMMENDATION: Adopt Resolution (Martinez – Harris-Dawson) to include in the City's 2015-2016 State Legislative Program SUPPORT for AB 1762 (Campos), which would allow survivors of human trafficking who have been convicted of a nonviolent crime while he or she was a human trafficking victim to apply to the court to vacate the conviction at any time after it was entered or, in the case of a juvenile survivor of human trafficking, to have their petition dismissed.

SUMMARY

Resolution (Martinez – Harris-Dawson), introduced on April 13, 2016, supports AB 1762 (Campos), which would allow for survivors of human trafficking who have been convicted of a nonviolent crime while he or she was a victim of human trafficking to apply to the court to vacate the conviction at any time after it was entered. The Resolution states that similar protections are extended to juvenile survivors of human trafficking to apply to have their petition dismissed. The Resolution states that survivors of human trafficking face long-term barriers to employment or housing due to their criminal convictions for crimes they were forced to commit by their traffickers. The Resolution states that, according to the National Survivor Network Survey, 80% of human trafficking survivors lost or did not receive employment because of their criminal conviction, and 50% of trafficking survivors suffered barriers to access to housing, putting many survivors at risk of homelessness.

The Resolution further states that this bill would provide that if the court finds, by clear and convincing evidence, that the applicant's participation in the crime was a direct result of the applicant being a victim of human trafficking, the court shall grant the application and vacate the conviction, strike the adjudication of guilt, order the specified relief, and may grant additional relief as it deems appropriate. The Resolution also states that this bill would allow for an individual's criminal history information to exclude any charge or conviction if relief has been granted pursuant to the provisions of this bill. The Resolution recommends support for AB 1762.

BACKGROUND

Human trafficking involves the recruitment, transportation, or sale of people for forced labor through the use of violence, threats, and coercion. Survivors of trafficking are typically women and girls, and minors who constitute 80% and 50% of victims, respectively. According to a study from the University of California, Berkeley, there were 57 cited cases of forced labor in California between 1998 and 2003, with over 500 victims.

According to the authors of the bill, current law does not provide adequate legal remedies for victims of human trafficking who were convicted of non-violent crimes they were forced to commit by their traffickers. Current law states that if a defendant has been convicted of solicitation or prostitution, and the defendant has completed any term of probation for that conviction, they may petition the court for relief. In addition, if the defendant can establish clear and convincing evidence that their conviction was a result of human trafficking, the court may order, among other things, expungement relief. Although a victim of human trafficking may be granted expungement relief from the court, this does not relieve them from the obligation of disclosing their conviction in response to any direct question in any questionnaire or application for public office or for licensure by any state or local agency.

Under Penal Code Section 1203.4a, the defendant is also not required to explicitly disclose their conviction for a state license or public office under the condition that the conviction is a misdemeanor and not granted probation. Currently, the Penal Code 1203.4 protects applicants with misdemeanor convictions from disclosing related information to both private and public employers. However, if a background check is requested by the employer and authorized, the background check would reveal the expunged conviction and its dismissal from the record.

The lack of a legal remedy has caused victims of human trafficking to continue to have a criminal record, preventing them from having access to basic services and programs such as the ability to obtain student loans, receive housing assistance, or obtain employment. This bill proposes to vacate convictions considered to be non-violent crimes committed as a result of human trafficking. Vacating a conviction is seen as more forceful than expungement, as a vacatur indicates that a conviction never occurred. As a result, this bill would fully clear and seal criminal records of survivors of human trafficking, extending the same standards for relief that are given to factually innocent individuals wrongly convicted of crimes. Additionally, this bill also more broadly extends “human trafficking” to include trafficking victims who were forced into labor in order to entitle them to the same remedies granted to sex trafficking victims.

Support for AB 1762 (Campos) would be consistent with past and current City support for State legislation that further expands relief for victims of human trafficking.

BILL STATUS

05/11/16	In Committee: Set, first hearing. Referred to APPR.
04/05/16	Read second time and amended.
04/04/16	From Committee: Amend, and do pass as amended and re-refer to Com. on APPR.
02/18/16	Referred to Com. on PUB. S.
02/02/16	Read first time. To print.



Steve Luu
Analyst

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state, or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, survivors of human trafficking face long-term barriers to employment or housing due to their criminal convictions for crimes they were forced to commit by their traffickers; and

WHEREAS, the National Survivor Network Survey (Survey) indicates that 80% of trafficking survivors lost or did not receive employment because of their criminal convictions; and

WHEREAS, the Survey also indicated that 50% of trafficking survivors suffered barriers to access housing, which has put many trafficking survivors at risk of homelessness; and

WHEREAS, criminal convictions prohibit trafficking survivors from moving forward with their lives and prevent them from recovering from their experiences; and

WHEREAS, currently pending before the State Assembly is AB 1762 (Campos) that would allow an individual convicted of a nonviolent crime that was committed while he or she was a human trafficking victim to apply to the court to vacate the conviction at any time after it was entered; and

WHEREAS, this bill also allows an individual adjudicated a ward of the juvenile court as a result of a nonviolent crime that was committed while he or she was a human trafficking victim to apply to have the petition dismissed; and

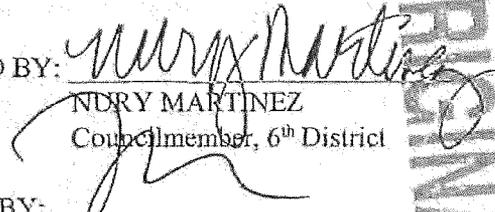
WHEREAS, this bill provides that if the court finds, by clear and convincing evidence, that the applicant's participation in the crime was a direct result of the applicant being a victim of human trafficking, the court shall grant the application and vacate the conviction, strike the adjudication of guilt, order the specified relief, and may grant additional relief as it deems appropriate; and

WHEREAS, AB 1762 would require the individual's criminal history information to exclude any charge or conviction if relief has been granted pursuant to the provisions of this bill; and

WHEREAS, supporters of this bill indicate that trafficking survivors should have an opportunity to fully expunge their criminal record of acts committed during their trafficking experience in order to facilitate healing and open the doors to economic self-sufficiency;

NOW, THEREFORE, BE IT RESOVLED, with the concurrence of the Mayor, that by adoption of this Resolution, the City of Los Angeles hereby includes in its 2015-2016 State Legislative Program support of AB 1762 (Campos) that would allow survivors of human trafficking who have been convicted of a nonviolent crime while he or she was a human trafficking victim to apply to the court to vacate the conviction at any time after it was entered or, in the case of a juvenile survivor of human trafficking, to have their petition dismissed.

PRESENTED BY:


NURY MARTINEZ
Councilmember, 6th District

SECONDED BY:


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