

SENATE BILL NO. 173—SENATORS OHRENSCHALL, PARKS, D. HARRIS, CANCELA, SPEARMAN; BROOKS, DENIS, DONDERO LOOP, RATTI AND WOODHOUSE

FEBRUARY 18, 2019

JOINT SPONSORS: ASSEMBLYMEN YEAGER, FUMO, CARRILLO; BENITEZ-THOMPSON, FRIERSON, MONROE-MORENO, NGUYEN, THOMPSON AND WATTS

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to criminal convictions of victims of sex trafficking and involuntary servitude. (BDR 14-595)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; revising provisions relating to vacating a judgment of conviction and sealing certain records of a victim of sex trafficking or involuntary servitude; revising provisions relating to the filing of a petition for the sealing of records of criminal history; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a person convicted of certain offenses and who was a victim of sex trafficking or involuntary servitude to petition the court to vacate his or her judgment of conviction and seal all documents related to the case. Under existing law, such offenses include, under certain circumstances, engaging in prostitution or solicitation for prostitution, unlawful trespass and loitering. (NRS 179.247) **Section 1** of this bill expands the list of offenses under which a person who was a victim of sex trafficking or involuntary servitude may petition the court to vacate his or her judgment of conviction and seal all documents related to the case to include any crime other than a crime of violence.

Before the court may decide whether to grant such a petition, existing law requires the court to: (1) notify the Central Repository for Nevada Records of Criminal History, the Office of the Attorney General and each office of the district attorney and law enforcement agency in this State; and (2) allow any person to



testify and present evidence on behalf of such an entity. (NRS 179.247) **Section 1** limits those offices of the district attorney and law enforcement agencies that must be notified and allowed to testify and present evidence to those offices and agencies in the county in which the petitioner was convicted. **Section 1** authorizes a prosecuting attorney who prosecuted the petitioner to stipulate to the vacation of the judgment of the petitioner and the sealing of all documents relating to the case in lieu of the court holding a hearing on the petition. **Section 1** requires the court to hold a hearing on the petition if the prosecutor does not so stipulate.

Existing law authorizes a person to file a petition for the sealing of records in district court if the person wishes to have more than one record sealed and would otherwise need to file a petition in more than one court. Existing law also authorizes the district court to order the sealing of any records in the justice or municipal courts in certain circumstances. (NRS 179.2595) **Section 2** of this bill clarifies that a district court may order the sealing of such records even if the petition does not include a request for the sealing of a record in a district court.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 179.247 is hereby amended to read as follows:

179.247 1. If a person has been convicted of any offense listed in subsection 2, the person may petition the court in which he or she was convicted or, if the person wishes to file more than one petition and would otherwise need to file a petition in more than one court, the district court, for an order:

(a) Vacating the judgment; and

(b) Sealing all documents, papers and exhibits in the person's record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order.

2. A person may file a petition pursuant to subsection 1 if the person was convicted of : ~~[a violation of:]~~

(a) *A violation of* NRS 201.354, for engaging in prostitution or solicitation for prostitution, provided that the person was not alleged to be a customer of a prostitute;

(b) ~~[NRS 207.200, for unlawful trespass:]~~ *A crime under the laws of this State, other than a crime of violence; or*

(c) ~~[Paragraph (b) of subsection 1 of NRS 463.350, for loitering; or~~

~~—(d)]~~ *A violation of a* county, city or town ordinance, for loitering for the purpose of solicitation or prostitution.

3. A petition filed pursuant to subsection 1 must satisfy the requirements of NRS 179.245.

4. The court may grant a petition filed pursuant to subsection 1 if:

(a) The petitioner was convicted of a violation of an offense described in subsection 2;



(b) The participation of the petitioner in the offense was the result of the petitioner having been a victim of:

(1) Trafficking in persons as described in the Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101 et seq.; or

(2) Involuntary servitude as described in NRS 200.463 or 200.4631; and

(c) The petitioner files a petition pursuant to subsection 1 with due diligence after the petitioner has ceased being a victim of trafficking or involuntary servitude or has sought services for victims of such trafficking or involuntary servitude.

5. Before the court decides whether to grant a petition filed pursuant to subsection 1, the court shall:

(a) Notify the Central Repository for Nevada Records of Criminal History, the Office of the Attorney General and each office of the district attorney and law enforcement agency in ~~this State~~ *the county in which the petitioner was convicted* and allow *the prosecuting attorney who prosecuted the petitioner for the crime* and any person to testify and present evidence on behalf of any such entity; and

(b) Take into consideration any reasonable concerns for the safety of the defendant, family members of the defendant or other victims that may be jeopardized by the granting of the petition.

6. *If the prosecuting attorney who prosecuted the petitioner for the crime stipulates to vacating the judgment of the petitioner and sealing all documents, papers and exhibits related to the case after receiving notification pursuant to subsection 5 and the court makes the findings set forth in subsection 4, the court may vacate the judgment and seal all documents, papers and exhibits in accordance with subsection 7 without a hearing. If the prosecuting attorney does not stipulate to vacating the judgment and sealing the documents, papers and exhibits, a hearing on the petition must be conducted.*

7. If the court grants a petition filed pursuant to subsection 1, the court shall:

(a) Vacate the judgment and dismiss the accusatory pleading; and

(b) Order sealed all documents, papers and exhibits in the petitioner's record, minute book entries and entries on dockets, and other documents relating to the case in the custody of such other agencies and officers as are named in the court's order.

~~7.1~~ 8. If a petition filed pursuant to subsection 1 does not satisfy the requirements of NRS 179.245 or the court determines that the petition is otherwise deficient with respect to the sealing of the petitioner's record, the court may enter an order to vacate the



judgment and dismiss the accusatory pleading if the petitioner satisfies all requirements necessary for the judgment to be vacated.

~~{8,}~~ 9. If the court enters an order pursuant to subsection ~~{7,}~~ 8, the court shall also order sealed the records of the petitioner which relate to the judgment being vacated in accordance with paragraph (b) of subsection ~~{6,}~~ 7, regardless of whether any records relating to other convictions are ineligible for sealing either by operation of law or because of a deficiency in the petition.

10. *As used in this section, "crime of violence" means:*

(a) *Any offense involving the use or threatened use of force or violence against the person or property of another; or*

(b) *Any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.*

Sec. 2. NRS 179.2595 is hereby amended to read as follows:

179.2595 Notwithstanding the procedure established in NRS 179.245, 179.255 or 179.259 for the filing of a petition for the sealing of records:

1. If a person wishes to have more than one record sealed and would otherwise need to file a petition in more than one court for the sealing of the records, the person may, instead of filing a petition in each court, file a petition in district court for the sealing of all such records.

2. If a person files a petition for the sealing of records in district court pursuant to subsection 1 or NRS 179.245, 179.255 or 179.259, the district court may order the sealing of any other records in the justice or municipal courts in accordance with the provisions of NRS 179.2405 to 179.301, inclusive.

3. *A district court shall act in accordance with subsection 2 regardless of whether a petition filed pursuant to this section includes a request for the sealing of a record in a district court.*

