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SB-4; Expungement; Human Trafficking Interested Party Testimony May 2, 2017 Senate Judiciary Committee

Our association has concerns with SB-4, the same as we had concerns about SB-284 in the last session. We do not oppose making trafficking victims eligible for intervention in lieu of conviction, but we have issues with the expungement provisions.

Section 2953.38 currently authorizes expungement of prostitution offenses “if the person’s participation in the offense was a result of the person having been a victim of human trafficking.” By changing the language at lines 263 to 265, SB-4 extends this expungement process to any conviction other than aggravated murder, murder, and rape. This would mean that other offenses, even first and second degree felonies, other than rape, could be expunged pursuant to this procedure.

The problem we see is if the person’s participation was the result of being a victim of human trafficking, there should have been a defense of duress. If successful, there would be no conviction to expunge. If the defense was not successful, it means the jury or judge did not believe the defense. So with this amendment, does this person now get to expunge that conviction based on duress, even though at the trial the fact finder did not believe the defense of duress? This may not be of great importance under current law, because this section only applies to conviction for prostitution offenses, but it could become of much greater consequence if expanded to convictions for serious offenses, as this bill provides.

It has been argued that a duress defense would not be offered or would not be successful because there are no witnesses other than the offender and her pimp, and further that to put the offender on the stand to testify about the duress risks subjecting her to cross examination and evidence of her criminal record. First, there may well be other witnesses to the duress, including other victims, and in any event, whatever risk there is in putting the defendant on the stand pales when facing an almost certain conviction without doing so.

Also under this 2953.38 process there is no waiting period (could this application be filed even while the person is still serving a sentence for the offense?), and no limit on prior convictions. Theoretically, this could apply to a long string of offenses.

The bill also includes a proposed new 2953.521 to authorize trafficking victims to expunge (not seal) any not guilty or dismissal. But existing 2953.52 provides for sealing of a not guilty or dismissal in any case, whether trafficking is involved or not. The process is slightly different. We see no reason why trafficking victims should be able to expunge these cases while others can only seal them. Nor do we see any reason for a different process for trafficking victims. One change we would like to suggest is that the court should not be able to order an expungement if the dismissal was without prejudice and the statute of limitations has not expired.

If these sections are to remain in the bill, we suggest at least these amendments:

1. That 2953.38 be amended to exclude any first or second degree felony.
2. That 2953.38 be amended to provide that the application may be filed only after completion of any sentence for the offense and final discharge by the court or DRC.
3. That 2953.321 be amended to include an explicit requirement that the court cannot order an expungement if the dismissal was without prejudice and the statute of limitations has not expired for that offense. Otherwise, since “expunged” means destroy, we could lose the file in a case that could still be prosecuted.