

By the Committee on Criminal Justice

591-01288-18

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 943.0583, F.S.,
4 relating to an exemption from public records
5 requirements for certain criminal history records
6 ordered expunged which are retained by the Department
7 of Law Enforcement; saving the exemption from repeal
8 under the Open Government Sunset Review Act; providing
9 an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Section 943.0583, Florida Statutes, is amended
14 to read:

15 943.0583 Human trafficking victim expunction.—

16 (1) As used in this section, the term:

17 (a) "Human trafficking" has the same meaning as provided in
18 s. 787.06.

19 (b) "Official documentation" means any documentation issued
20 by a federal, state, or local agency tending to show a person's
21 status as a victim of human trafficking.

22 (c) "Victim of human trafficking" means a person subjected
23 to coercion, as defined in s. 787.06, for the purpose of being
24 used in human trafficking, a child under 18 years of age
25 subjected to human trafficking, or an individual subjected to
26 human trafficking as defined by federal law.

27 (2) Notwithstanding any other provision of law, upon the
28 filing of a petition as provided in this section, any court in
29 the circuit in which the petitioner was arrested, so long as the

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30 court has jurisdiction over the class of offense or offenses
31 sought to be expunged, may order a criminal justice agency to
32 expunge the criminal history record of a victim of human
33 trafficking who complies with the requirements of this section.
34 A petition need not be filed in the court where the petitioner's
35 criminal proceeding or proceedings originally occurred. This
36 section does not confer any right to the expunction of any
37 criminal history record, and any request for expunction of a
38 criminal history record may be denied at the discretion of the
39 court.

40 (3) A person who is a victim of human trafficking may
41 petition for the expunction of a criminal history record
42 resulting from the arrest or filing of charges for an offense
43 committed or reported to have been committed while the person
44 was a victim of human trafficking, which offense was committed
45 or reported to have been committed as a part of the human
46 trafficking scheme of which the person was a victim or at the
47 direction of an operator of the scheme, including, but not
48 limited to, violations under chapters 796 and 847, without
49 regard to the disposition of the arrest or of any charges.
50 However, this section does not apply to any offense listed in s.
51 775.084(1)(b)1. Determination of the petition under this section
52 should be by a preponderance of the evidence. A conviction
53 expunged under this section is deemed to have been vacated due
54 to a substantive defect in the underlying criminal proceedings.
55 If a person is adjudicated not guilty by reason of insanity or
56 is found to be incompetent to stand trial for any such charge,
57 the expunction of the criminal history record may not prevent
58 the entry of the judgment or finding in state and national

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59 databases for use in determining eligibility to purchase or
60 possess a firearm or to carry a concealed firearm, as authorized
61 in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it
62 prevent any governmental agency that is authorized by state or
63 federal law to determine eligibility to purchase or possess a
64 firearm or to carry a concealed firearm from accessing or using
65 the record of the judgment or finding in the course of such
66 agency's official duties.

67 (4) A petition under this section must be initiated by the
68 petitioner with due diligence after the victim has ceased to be
69 a victim of human trafficking or has sought services for victims
70 of human trafficking, subject to reasonable concerns for the
71 safety of the victim, family members of the victim, or other
72 victims of human trafficking that may be jeopardized by the
73 bringing of such petition or for other reasons consistent with
74 the purpose of this section.

75 (5) Official documentation of the victim's status creates a
76 presumption that his or her participation in the offense was a
77 result of having been a victim of human trafficking but is not
78 required for granting a petition under this section. A
79 determination made without such official documentation must be
80 made by a showing of clear and convincing evidence.

81 (6) Each petition to a court to expunge a criminal history
82 record is complete only when accompanied by:

83 (a) The petitioner's sworn statement attesting that the
84 petitioner is eligible for such an expunction to the best of his
85 or her knowledge or belief and does not have any other petition
86 to expunge or any petition to seal pending before any court.

87 (b) Official documentation of the petitioner's status as a

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88 victim of human trafficking, if any exists.

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90 Any person who knowingly provides false information on such
91 sworn statement to the court commits a felony of the third
92 degree, punishable as provided in s. 775.082, s. 775.083, or s.
93 775.084.

94 (7) (a) In judicial proceedings under this section, a copy
95 of the completed petition to expunge shall be served upon the
96 appropriate state attorney or the statewide prosecutor and upon
97 the arresting agency; however, it is not necessary to make any
98 agency other than the state a party. The appropriate state
99 attorney or the statewide prosecutor and the arresting agency
100 may respond to the court regarding the completed petition to
101 expunge.

102 (b) The petitioner or the petitioner's attorney may appear
103 at any hearing under this section telephonically, via video
104 conference, or by other electronic means.

105 (c) The court shall allow an advocate from a state
106 attorney's office, law enforcement agency, safe house or safe
107 foster home as defined in s. 409.1678(1), or a residential
108 facility offering services to adult victims of human trafficking
109 to be present with the petitioner during any court proceedings
110 or hearings under this section, if the petitioner has made such
111 a request and the advocate is able to be present.

112 (d) If relief is granted by the court, the clerk of the
113 court shall certify copies of the order to the appropriate state
114 attorney or the statewide prosecutor and the arresting agency.
115 The arresting agency is responsible for forwarding the order to
116 any other agency listed in the court order to which the

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117 arresting agency disseminated the criminal history record
118 information to which the order pertains. The department shall
119 forward the order to expunge to the Federal Bureau of
120 Investigation. The clerk of the court shall certify a copy of
121 the order to any other agency that the records of the court
122 reflect has received the criminal history record from the court.

123 (8) (a) Any criminal history record of a minor or an adult
124 that is ordered expunged pursuant to this section must be
125 physically destroyed or obliterated by any criminal justice
126 agency having custody of such record, except that any criminal
127 history record in the custody of the department must be retained
128 in all cases.

129 (b) The person who is the subject of a criminal history
130 record that is expunged under this section may lawfully deny or
131 fail to acknowledge the arrests covered by the expunged record,
132 except when the subject of the record is a candidate for
133 employment with a criminal justice agency or is a defendant in a
134 criminal prosecution.

135 (c) Subject to the exceptions in paragraph (b), a person
136 who has been granted an expunction under this section may not be
137 held under any law of this state to commit perjury or to be
138 otherwise liable for giving a false statement by reason of such
139 person's failure to recite or acknowledge an expunged criminal
140 history record.

141 (9) Any reference to any other chapter, section, or
142 subdivision of the Florida Statutes in this section constitutes
143 a general reference under the doctrine of incorporation by
144 reference.

145 (10) ~~(a)~~ A criminal history record ordered expunged under

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146 this section that is retained by the department is confidential
147 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
148 Constitution, except that the record shall be made available to
149 criminal justice agencies for their respective criminal justice
150 purposes and to any governmental agency that is authorized by
151 state or federal law to determine eligibility to purchase or
152 possess a firearm or to carry a concealed firearm for use in the
153 course of such agency's official duties. Otherwise, such record
154 shall not be disclosed to any person or entity except upon order
155 of a court of competent jurisdiction. A criminal justice agency
156 may retain a notation indicating compliance with an order to
157 expunge.

158 ~~(b) This subsection is subject to the Open Government~~
159 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
160 ~~repealed on October 2, 2018, unless reviewed and saved from~~
161 ~~repeal through reenactment by the Legislature.~~

162 (11) (a) The following criminal intelligence information or
163 criminal investigative information is confidential and exempt
164 from s. 119.07(1) and s. 24(a), Art. I of the State
165 Constitution:

166 1. Any information that reveals the identity of a person
167 who is a victim of human trafficking whose criminal history
168 record has been expunged under this section.

169 2. Any information that may reveal the identity of a person
170 who is a victim of human trafficking whose criminal history
171 record has been ordered expunged under this section.

172 (b) Criminal investigative information and criminal
173 intelligence information made confidential and exempt under this
174 subsection may be disclosed by a law enforcement agency:

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175 1. In the furtherance of its official duties and
176 responsibilities.

177 2. For print, publication, or broadcast if the law
178 enforcement agency determines that such release would assist in
179 locating or identifying a person that the agency believes to be
180 missing or endangered. The information provided should be
181 limited to that needed to identify or locate the victim.

182 3. To another governmental agency in the furtherance of its
183 official duties and responsibilities.

184 (c) This exemption applies to such confidential and exempt
185 criminal intelligence information or criminal investigative
186 information held by a law enforcement agency before, on, or
187 after the effective date of the exemption.

188 (d) This subsection is subject to the Open Government
189 Sunset Review Act in accordance with s. 119.15 and shall stand
190 repealed on October 2, 2020, unless reviewed and saved from
191 repeal through reenactment by the Legislature.

192 Section 2. This act shall take effect July 1, 2018.