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1
2 An act relating to victims of human trafficking;
3 amending s. 90.803, F.S.; revising the mental,
4 emotional, or developmental age of a child victim
5 whose out-of-court statement describing specified
6 criminal acts is admissible in evidence in certain
7 instances; creating s. 943.0583, F.S.; providing
8 definitions; providing for the expungement of the
9 criminal history record of a victim of human
10 trafficking; designating what offenses may be
11 expunged; providing exceptions; providing that an
12 expunged conviction is deemed to have been vacated due
13 to a substantive defect in the underlying criminal
14 proceedings; providing for a period in which such
15 expungement must be sought; providing that official
16 documentation of the victim's status as a human
17 trafficking victim creates a presumption; providing a
18 standard of proof absent official documentation;
19 providing requirements for petitions; providing
20 criminal penalties for false statements on such
21 petitions; providing for parties to and service of
22 such petitions; providing for electronic appearances
23 of petitioners and attorneys at hearings; providing
24 for orders of relief; providing for physical
25 destruction of certain records; authorizing a person
26 whose records are expunged to lawfully deny or fail to
27 acknowledge the arrests covered by the expunged
28 record; providing exceptions; providing that such

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29 | lawful denial does not constitute perjury or subject
 30 | the person to liability; providing that cross-
 31 | references are considered general reference for the
 32 | purpose of incorporation by reference; amending ss.
 33 | 943.0582, 943.0585, 943.059, and 961.06, F.S.;
 34 | conforming provisions to changes made by the act;
 35 | providing an appropriation; providing for
 36 | applicability; providing effective dates.

37 |
 38 | WHEREAS, victims of trafficking may be forced to engage in
 39 | a variety of illegal acts beyond prostitution, and

40 | WHEREAS, trafficked persons have not always been recognized
 41 | as victims by the police and prosecutors and plead guilty or do
 42 | not understand the consequences of criminal charges, and

43 | WHEREAS, all persons with criminal records reflecting their
 44 | involvement in the sex industry may face barriers to employment
 45 | and other life opportunities long after they escape from their
 46 | trafficking situations, and

47 | WHEREAS, there is a genuine need for a workable solution to
 48 | alleviate the impact of the collateral consequences of
 49 | conviction for victims of human trafficking, NOW, THEREFORE,

50 |
 51 | Be It Enacted by the Legislature of the State of Florida:

52 |
 53 | Section 1. Paragraph (a) of subsection (23) of section
 54 | 90.803, Florida Statutes, is amended to read:

55 | 90.803 Hearsay exceptions; availability of declarant
 56 | immaterial.—The provision of s. 90.802 to the contrary

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57 | notwithstanding, the following are not inadmissible as evidence,
58 | even though the declarant is available as a witness:

59 | (23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—

60 | (a) Unless the source of information or the method or
61 | circumstances by which the statement is reported indicates a
62 | lack of trustworthiness, an out-of-court statement made by a
63 | child victim with a physical, mental, emotional, or
64 | developmental age of 16 ~~11~~ or less describing any act of child
65 | abuse or neglect, any act of sexual abuse against a child, the
66 | offense of child abuse, the offense of aggravated child abuse,
67 | or any offense involving an unlawful sexual act, contact,
68 | intrusion, or penetration performed in the presence of, with,
69 | by, or on the declarant child, not otherwise admissible, is
70 | admissible in evidence in any civil or criminal proceeding if:

71 | 1. The court finds in a hearing conducted outside the
72 | presence of the jury that the time, content, and circumstances
73 | of the statement provide sufficient safeguards of reliability.
74 | In making its determination, the court may consider the mental
75 | and physical age and maturity of the child, the nature and
76 | duration of the abuse or offense, the relationship of the child
77 | to the offender, the reliability of the assertion, the
78 | reliability of the child victim, and any other factor deemed
79 | appropriate; and

80 | 2. The child either:

81 | a. Testifies; or

82 | b. Is unavailable as a witness, provided that there is
83 | other corroborative evidence of the abuse or offense.

84 | Unavailability shall include a finding by the court that the

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85 child's participation in the trial or proceeding would result in
86 a substantial likelihood of severe emotional or mental harm, in
87 addition to findings pursuant to s. 90.804(1).

88 Section 2. Section 943.0583, Florida Statutes, is created
89 to read:

90 943.0583 Human trafficking victim expunction.-

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

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

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

97 (c) "Victim of human trafficking" means a person subjected
98 to coercion, as defined in s. 787.06, for the purpose of being
99 used in human trafficking, a child under 18 years of age
100 subjected to human trafficking, or an individual subjected to
101 human trafficking as defined by federal law.

102 (2) Notwithstanding any other provision of law, the court
103 of original jurisdiction over the crime sought to be expunged
104 may order a criminal justice agency to expunge the criminal
105 history record of a victim of human trafficking who complies
106 with the requirements of this section. This section does not
107 confer any right to the expunction of any criminal history
108 record, and any request for expunction of a criminal history
109 record may be denied at the discretion of the court.

110 (3) A person who is a victim of human trafficking may
111 petition for the expunction of any conviction for an offense
112 committed while he or she was a victim of human trafficking,

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113 which offense was committed as a part of the human trafficking
114 scheme of which he or she was a victim or at the direction of an
115 operator of the scheme, including, but not limited to,
116 violations under chapters 796 and 847. However, this section
117 does not apply to any offense listed in s. 775.084(1)(b)1.
118 Determination of the petition under this section should be by a
119 preponderance of the evidence. A conviction expunged under this
120 section is deemed to have been vacated due to a substantive
121 defect in the underlying criminal proceedings.

122 (4) A petition under this section must be initiated by the
123 petitioner with due diligence after the victim has ceased to be
124 a victim of human trafficking or has sought services for victims
125 of human trafficking, subject to reasonable concerns for the
126 safety of the victim, family members of the victim, or other
127 victims of human trafficking that may be jeopardized by the
128 bringing of such petition or for other reasons consistent with
129 the purpose of this section.

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

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

138 (a) The petitioner's sworn statement attesting that the
139 petitioner is eligible for such an expunction to the best of his
140 or her knowledge or belief and does not have any other petition

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141 to expunge or any petition to seal pending before any court.

142 (b) Official documentation of the petitioner's status as a
143 victim of human trafficking, if any exists.

144
145 Any person who knowingly provides false information on such
146 sworn statement to the court commits a felony of the third
147 degree, punishable as provided in s. 775.082, s. 775.083, or s.
148 775.084.

149 (7) (a) In judicial proceedings under this section, a copy
150 of the completed petition to expunge shall be served upon the
151 appropriate state attorney or the statewide prosecutor and upon
152 the arresting agency; however, it is not necessary to make any
153 agency other than the state a party. The appropriate state
154 attorney or the statewide prosecutor and the arresting agency
155 may respond to the court regarding the completed petition to
156 expunge.

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

160 (c) If relief is granted by the court, the clerk of the
161 court shall certify copies of the order to the appropriate state
162 attorney or the statewide prosecutor and the arresting agency.
163 The arresting agency is responsible for forwarding the order to
164 any other agency listed in the court order to which the
165 arresting agency disseminated the criminal history record
166 information to which the order pertains. The department shall
167 forward the order to expunge to the Federal Bureau of
168 Investigation. The clerk of the court shall certify a copy of

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169 the order to any other agency that the records of the court
170 reflect has received the criminal history record from the court.

171 (8) (a) Any criminal history record of a minor or an adult
172 that is ordered expunged by the court of original jurisdiction
173 over the crime sought to be expunged pursuant to this section
174 must be physically destroyed or obliterated by any criminal
175 justice agency having custody of such record, except that any
176 criminal history record in the custody of the department must be
177 retained in all cases.

178 (b) The person who is the subject of a criminal history
179 record that is expunged under this section may lawfully deny or
180 fail to acknowledge the arrests covered by the expunged record,
181 except when the subject of the record is a candidate for
182 employment with a criminal justice agency or is a defendant in a
183 criminal prosecution.

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

190 (9) Any reference to any other chapter, section, or
191 subdivision of the Florida Statutes in this section constitutes
192 a general reference under the doctrine of incorporation by
193 reference.

194 Section 3. Subsection (6) of section 943.0582, Florida
195 Statutes, is amended to read:

196 943.0582 Prearrest, postarrest, or teen court diversion

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197 | program expunction.—

198 | (6) Expunction or sealing granted under this section does
199 | not prevent the minor who receives such relief from petitioning
200 | for the expunction or sealing of a later criminal history record
201 | as provided for in ss. 943.0583, 943.0585, and 943.059, if the
202 | minor is otherwise eligible under those sections.

203 | Section 4. Paragraph (a) of subsection (4) of section
204 | 943.0585, Florida Statutes, is amended to read:

205 | 943.0585 Court-ordered expunction of criminal history
206 | records.—The courts of this state have jurisdiction over their
207 | own procedures, including the maintenance, expunction, and
208 | correction of judicial records containing criminal history
209 | information to the extent such procedures are not inconsistent
210 | with the conditions, responsibilities, and duties established by
211 | this section. Any court of competent jurisdiction may order a
212 | criminal justice agency to expunge the criminal history record
213 | of a minor or an adult who complies with the requirements of
214 | this section. The court shall not order a criminal justice
215 | agency to expunge a criminal history record until the person
216 | seeking to expunge a criminal history record has applied for and
217 | received a certificate of eligibility for expunction pursuant to
218 | subsection (2). A criminal history record that relates to a
219 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
220 | s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
221 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
222 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
223 | any violation specified as a predicate offense for registration
224 | as a sexual predator pursuant to s. 775.21, without regard to

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225 | whether that offense alone is sufficient to require such
226 | registration, or for registration as a sexual offender pursuant
227 | to s. 943.0435, may not be expunged, without regard to whether
228 | adjudication was withheld, if the defendant was found guilty of
229 | or pled guilty or nolo contendere to the offense, or if the
230 | defendant, as a minor, was found to have committed, or pled
231 | guilty or nolo contendere to committing, the offense as a
232 | delinquent act. The court may only order expunction of a
233 | criminal history record pertaining to one arrest or one incident
234 | of alleged criminal activity, except as provided in this
235 | section. The court may, at its sole discretion, order the
236 | expunction of a criminal history record pertaining to more than
237 | one arrest if the additional arrests directly relate to the
238 | original arrest. If the court intends to order the expunction of
239 | records pertaining to such additional arrests, such intent must
240 | be specified in the order. A criminal justice agency may not
241 | expunge any record pertaining to such additional arrests if the
242 | order to expunge does not articulate the intention of the court
243 | to expunge a record pertaining to more than one arrest. This
244 | section does not prevent the court from ordering the expunction
245 | of only a portion of a criminal history record pertaining to one
246 | arrest or one incident of alleged criminal activity.
247 | Notwithstanding any law to the contrary, a criminal justice
248 | agency may comply with laws, court orders, and official requests
249 | of other jurisdictions relating to expunction, correction, or
250 | confidential handling of criminal history records or information
251 | derived therefrom. This section does not confer any right to the
252 | expunction of any criminal history record, and any request for

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253 expunction of a criminal history record may be denied at the
254 sole discretion of the court.

255 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
256 criminal history record of a minor or an adult which is ordered
257 expunged by a court of competent jurisdiction pursuant to this
258 section must be physically destroyed or obliterated by any
259 criminal justice agency having custody of such record; except
260 that any criminal history record in the custody of the
261 department must be retained in all cases. A criminal history
262 record ordered expunged that is retained by the department is
263 confidential and exempt from the provisions of s. 119.07(1) and
264 s. 24(a), Art. I of the State Constitution and not available to
265 any person or entity except upon order of a court of competent
266 jurisdiction. A criminal justice agency may retain a notation
267 indicating compliance with an order to expunge.

268 (a) The person who is the subject of a criminal history
269 record that is expunged under this section or under other
270 provisions of law, including former s. 893.14, former s. 901.33,
271 and former s. 943.058, may lawfully deny or fail to acknowledge
272 the arrests covered by the expunged record, except when the
273 subject of the record:

- 274 1. Is a candidate for employment with a criminal justice
275 agency;
- 276 2. Is a defendant in a criminal prosecution;
- 277 3. Concurrently or subsequently petitions for relief under
278 this section, s. 943.0583, or s. 943.059;
- 279 4. Is a candidate for admission to The Florida Bar;
- 280 5. Is seeking to be employed or licensed by or to contract

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281 with the Department of Children and Family Services, the
282 Division of Vocational Rehabilitation within the Department of
283 Education, the Agency for Health Care Administration, the Agency
284 for Persons with Disabilities, the Department of Health, the
285 Department of Elderly Affairs, or the Department of Juvenile
286 Justice or to be employed or used by such contractor or licensee
287 in a sensitive position having direct contact with children, the
288 disabled, or the elderly;

289 6. Is seeking to be employed or licensed by the Department
290 of Education, any district school board, any university
291 laboratory school, any charter school, any private or parochial
292 school, or any local governmental entity that licenses child
293 care facilities; or

294 7. Is seeking authorization from a seaport listed in s.
295 311.09 for employment within or access to one or more of such
296 seaports pursuant to s. 311.12.

297 Section 5. Paragraph (a) of subsection (4) of section
298 943.059, Florida Statutes, is amended to read:

299 943.059 Court-ordered sealing of criminal history
300 records.—The courts of this state shall continue to have
301 jurisdiction over their own procedures, including the
302 maintenance, sealing, and correction of judicial records
303 containing criminal history information to the extent such
304 procedures are not inconsistent with the conditions,
305 responsibilities, and duties established by this section. Any
306 court of competent jurisdiction may order a criminal justice
307 agency to seal the criminal history record of a minor or an
308 adult who complies with the requirements of this section. The

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309 | court shall not order a criminal justice agency to seal a
 310 | criminal history record until the person seeking to seal a
 311 | criminal history record has applied for and received a
 312 | certificate of eligibility for sealing pursuant to subsection
 313 | (2). A criminal history record that relates to a violation of s.
 314 | 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 315 | 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 316 | 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 317 | 916.1075, a violation enumerated in s. 907.041, or any violation
 318 | specified as a predicate offense for registration as a sexual
 319 | predator pursuant to s. 775.21, without regard to whether that
 320 | offense alone is sufficient to require such registration, or for
 321 | registration as a sexual offender pursuant to s. 943.0435, may
 322 | not be sealed, without regard to whether adjudication was
 323 | withheld, if the defendant was found guilty of or pled guilty or
 324 | nolo contendere to the offense, or if the defendant, as a minor,
 325 | was found to have committed or pled guilty or nolo contendere to
 326 | committing the offense as a delinquent act. The court may only
 327 | order sealing of a criminal history record pertaining to one
 328 | arrest or one incident of alleged criminal activity, except as
 329 | provided in this section. The court may, at its sole discretion,
 330 | order the sealing of a criminal history record pertaining to
 331 | more than one arrest if the additional arrests directly relate
 332 | to the original arrest. If the court intends to order the
 333 | sealing of records pertaining to such additional arrests, such
 334 | intent must be specified in the order. A criminal justice agency
 335 | may not seal any record pertaining to such additional arrests if
 336 | the order to seal does not articulate the intention of the court

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337 to seal records pertaining to more than one arrest. This section
338 does not prevent the court from ordering the sealing of only a
339 portion of a criminal history record pertaining to one arrest or
340 one incident of alleged criminal activity. Notwithstanding any
341 law to the contrary, a criminal justice agency may comply with
342 laws, court orders, and official requests of other jurisdictions
343 relating to sealing, correction, or confidential handling of
344 criminal history records or information derived therefrom. This
345 section does not confer any right to the sealing of any criminal
346 history record, and any request for sealing a criminal history
347 record may be denied at the sole discretion of the court.

348 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
349 history record of a minor or an adult which is ordered sealed by
350 a court of competent jurisdiction pursuant to this section is
351 confidential and exempt from the provisions of s. 119.07(1) and
352 s. 24(a), Art. I of the State Constitution and is available only
353 to the person who is the subject of the record, to the subject's
354 attorney, to criminal justice agencies for their respective
355 criminal justice purposes, which include conducting a criminal
356 history background check for approval of firearms purchases or
357 transfers as authorized by state or federal law, to judges in
358 the state courts system for the purpose of assisting them in
359 their case-related decisionmaking responsibilities, as set forth
360 in s. 943.053(5), or to those entities set forth in
361 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
362 licensing, access authorization, and employment purposes.

363 (a) The subject of a criminal history record sealed under
364 this section or under other provisions of law, including former

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365 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
366 deny or fail to acknowledge the arrests covered by the sealed
367 record, except when the subject of the record:

368 1. Is a candidate for employment with a criminal justice
369 agency;

370 2. Is a defendant in a criminal prosecution;

371 3. Concurrently or subsequently petitions for relief under
372 this section, s. 943.0583, or s. 943.0585;

373 4. Is a candidate for admission to The Florida Bar;

374 5. Is seeking to be employed or licensed by or to contract
375 with the Department of Children and Family Services, the
376 Division of Vocational Rehabilitation within the Department of
377 Education, the Agency for Health Care Administration, the Agency
378 for Persons with Disabilities, the Department of Health, the
379 Department of Elderly Affairs, or the Department of Juvenile
380 Justice or to be employed or used by such contractor or licensee
381 in a sensitive position having direct contact with children, the
382 disabled, or the elderly;

383 6. Is seeking to be employed or licensed by the Department
384 of Education, any district school board, any university
385 laboratory school, any charter school, any private or parochial
386 school, or any local governmental entity that licenses child
387 care facilities;

388 7. Is attempting to purchase a firearm from a licensed
389 importer, licensed manufacturer, or licensed dealer and is
390 subject to a criminal history check under state or federal law;
391 or

392 8. Is seeking authorization from a Florida seaport

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393 identified in s. 311.09 for employment within or access to one
394 or more of such seaports pursuant to s. 311.12.

395 Section 6. Paragraph (e) of subsection (1) of section
396 961.06, Florida Statutes, is amended to read:

397 961.06 Compensation for wrongful incarceration.—

398 (1) Except as otherwise provided in this act and subject
399 to the limitations and procedures prescribed in this section, a
400 person who is found to be entitled to compensation under the
401 provisions of this act is entitled to:

402 (e) Notwithstanding any provision to the contrary in s.
403 943.0583 or s. 943.0585, immediate administrative expunction of
404 the person's criminal record resulting from his or her wrongful
405 arrest, wrongful conviction, and wrongful incarceration. The
406 Department of Legal Affairs and the Department of Law
407 Enforcement shall, upon a determination that a claimant is
408 entitled to compensation, immediately take all action necessary
409 to administratively expunge the claimant's criminal record
410 arising from his or her wrongful arrest, wrongful conviction,
411 and wrongful incarceration. All fees for this process shall be
412 waived.

413
414 The total compensation awarded under paragraphs (a), (c), and
415 (d) may not exceed \$2 million. No further award for attorney's
416 fees, lobbying fees, costs, or other similar expenses shall be
417 made by the state.

418 Section 7. Effective July 1, 2013, the sum of \$99,275 in
419 nonrecurring funds is appropriated from the General Revenue Fund
420 to the Department of Law Enforcement to fund programming costs

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421 | associated with this act during the 2013-2014 fiscal year.

422 | Section 8. Except as otherwise expressly provided in this
423 | act, this act shall take effect January 1, 2014, except that,
424 | before March 1, 2014, the Department of Law Enforcement or any
425 | other criminal justice agency is not required to comply with an
426 | order to expunge a criminal history record as required by this
427 | act.