

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1327 Pub. Rec./Crim. Hist./Human Trafficking Victims

**SPONSOR(S):** Judiciary Committee; Spano and others

**TIED BILLS:** CS/CS/HB 1325 **IDEN./SIM. BILLS:** CS/CS/SB 1734

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Jones	Cunningham
2) Government Operations Subcommittee	11 Y, 0 N	Stramski	Williamson
3) Judiciary Committee	18 Y, 0 N, As CS	Jones	Havlicak

### SUMMARY ANALYSIS

CS/HB 1325 authorizes a victim of human trafficking to petition the court for the expunction of any conviction for certain offenses committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme.

This bill, which is linked to the passage of CS/HB 1325, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and shall only be made available to criminal justice agencies for their respective criminal justice purposes.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Public Record Exemption for Criminal History Records Ordered Expunged

Any criminal history record of a minor or an adult that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that the Florida Department of Law Enforcement (FDLE) must retain criminal history records in all cases. Current law provides that a criminal history record ordered expunged that is retained by FDLE is confidential and exempt<sup>3</sup> from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution, and is not available to any person or entity except upon order of the court with jurisdiction.<sup>4</sup> In addition, information relating to the existence of an expunged criminal history record is confidential and exempt from public record requirements, except that FDLE must disclose the existence of such record to certain entities as provided for in current law.<sup>5</sup>

##### Committee Substitute for House Bill 1325

CS/HB 1325 (2013) creates s. 943.0583, F.S., entitled "human trafficking victim expunction." The bill authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense, except an offense listed in s. 775.084(1)(b)1., F.S., committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme. A "victim of human trafficking" is defined as a person subjected to coercion for the purpose of being used in human trafficking, a child

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>4</sup> Section 943.0585(4), F.S.

<sup>5</sup> Section 943.0585(4)(c), F.S.

under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

### **Effect of the Bill**

The bill, which is linked to the passage of House Bill 1325 or similar legislation, creates a public record exemption for a criminal history record of a victim of human trafficking that is ordered expunged. Specifically, such record retained by FDLE is confidential and exempt from public record requirements and shall only be made available to criminal justice agencies for their respective criminal justice purposes. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.<sup>6</sup>

#### **B. SECTION DIRECTORY:**

Section 1. Creates s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date to be the same as that of House Bill 1325 or similar legislation, if such legislation is passed during the same session and becomes law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

The bill likely could create a minimal fiscal impact on FDLE, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, FDLE could incur costs associated with redacting the confidential and exempt information

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<sup>6</sup> Article 1, Sec. 24(c), FLA. CONST.  
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prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

###### Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

###### Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

###### Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to expunged criminal records of victims of human trafficking. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 16, 2013, the Judiciary Committee adopted two amendments and reported the bill favorable as a committee substitute. The first amendment added language that allows the expunged record to be made available to criminal justice agencies for their respective criminal justice purposes. The second amendment clarified the public necessity statement.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.