

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 1327	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Judiciary Committee; Spano and others	116 Y's	0 N's
<b>COMPANION BILLS:</b>	(CS/CS/CS/SB 1734, CS/CS/HB 1325, CS/CS/CS/SB 1644)	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 1327 passed the House on April 26, 2013, and subsequently passed the Senate on April 26, 2013.

CS/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/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 the Florida Department of Law Enforcement 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 repeals 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.

The bill was approved by the Governor on May 30, 2013, ch. 2013-99, L.O.F., and will become effective on January 1, 2014.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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 CS/CS/HB 1325

CS/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"

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<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.

is defined as a person subjected to coercion for the purpose of being used in human trafficking, a child 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 CS/CS/HB 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 repeals 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>

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

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

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on state expenditures.

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

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have any impact on local government expenditures.

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

None.

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

None.

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<sup>6</sup> Article 1, Sec. 24(c), FLA. CONST.