

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1644

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Flores

SUBJECT: Victims of Human Trafficking

DATE: March 18, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1644 creates section 943.0583, Florida Statutes relating to the expunction of criminal records for victims of human trafficking. Specifically, the section provides:

- Definitions for the terms “human trafficking,” “official documentation,” and “victim of human trafficking.”
- A process for victims of human trafficking to petition the court for expunction of the criminal history record of certain crimes committed while he or she was a victim of human trafficking;
- Determination of the petition should be by a preponderance of the evidence;
- A conviction expunged is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings;
- A petition must be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking subject to specified reasonable concerns;
- Official documentation of the victim’s status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking but is

not required for granting a petition. A determination made without such official documentation must be made by a showing of clear and convincing evidence.

- A list of criteria that must be met for a petition to expunge a criminal history record to be considered complete;
- Requirements for judicial proceedings related to expunction of records; and
- Requirements that must be followed when any criminal history record of a minor or an adult is ordered expunged by the court.

This bill is anticipated to have an insignificant fiscal impact on state government and has an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 943.0582, 943.0585, 943.059 and 961.06. This bill creates section 943.0583 of the Florida Statutes.

II. Present Situation:

In 2000, the United States enacted the Trafficking Victims Protection Act (TVPA),¹ and the United Nations adopted the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, also known as the Palermo Protocol.²

The Palermo Protocol focused the attention of the global community on combating human trafficking. For the first time, an international instrument called for the criminalization of all acts of trafficking, including forced labor, slavery, and slavery like practices, and that governmental response should incorporate prevention, criminal prosecution, and victim protection.

The Palermo Protocol's "3P" paradigm of prevention, prosecution, and protection reflects a comprehensive victim-centered approach to ensuring that the rights of individuals are guaranteed.³ Through prevention measures, governments can work to forestall the violation of rights. Prosecution efforts seek to punish those whose actions have subjugated the lives of their victims through enslavement. Protection efforts seek to provide appropriate services to the survivors, maximizing their opportunity for a comprehensive recovery.⁴

Because the crime of human trafficking undermines the most basic human rights, protection services must be considered just as important as investigating and prosecuting the offenders. The damage inflicted by traffickers can never be undone, but it may be repaired. If governments fail to provide comprehensive protection as a complement to prevention and prosecution efforts, they risk deepening, rather than alleviating, the original harm.⁵

¹ The Victims of Trafficking and Violence Protection Act of 2000 (Pub. Law No. 106-386), The Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), The Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972), and The Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311) enhance pre-existing criminal penalties in other related laws, afford new protections to trafficking victims and make available certain benefits and services to victims of severe forms of trafficking once they become certified by the U.S. Department of Health and Human Services.

² U.S. Department of State, *Trafficking in Persons Report 2010*, available at <http://www.state.gov/documents/organization/142980.pdf> (last visited March 14, 2013).

³ *Id.*

⁴ U.S. Department of State, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/documents/organization/142980.pdf> (last visited March 14, 2013).

⁵ *Id.*

Survivors of human trafficking often confront the dual issues of criminalization and stigmatization long after they escape from their trafficking situations. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and related offenses. Trafficked persons are not often recognized as victims by the police and prosecutors, and are therefore pressured into pleading guilty and/or do not understand the consequences of the charges. Multiple arrests, incarceration, police violence, deportation, employment and housing discrimination related to having a criminal record, and social stigma are just a few of the barriers faced by those who have been forced into prostitution. There is a real need for a workable solution to alleviate the impact of collateral consequences of conviction for survivors of human trafficking.⁶

In 2010, New York became the first state to enact legislation that that allows survivors of trafficking to vacate their convictions for prostitution offenses.^{7,8} While every state has a slightly different criminal procedure into which this type of remedy must fit, the central purpose of this law is to give survivors the ability to live their lives unhindered by a criminal record: “Even after they escape from sex trafficking, the criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve.”⁹

The Urban Justice Center in New York, instrumental in drafting the law, recommends that a strong state law on vacating convictions should:

- Not be limited to vacating only certain prostitution offenses;
- Not require the survivor to present official documentation certifying them as a victim of trafficking;
- Not require the survivor to prove that he or she has left the sex industry or been “rehabilitated”;
- Offer confidentiality provisions to protect the client’s identity;
- Be the most complete remedy possible under the law;
- State that the court must vacate the convictions and dismiss the accusatory instrument if an individual meets the elements;
- Allow the court to take additional appropriate action beyond the mandate of the statute;
- Be retroactive and inclusive of those with older convictions; and
- Ensure availability of the remedy by funding legal services attorneys.

⁶ Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project (April, 2012) available at <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited March 14, 2013).

⁷ N.Y. CRIM. PROC. LAW § 440.10(1)(i)

⁸ As of June 2012, Hawaii became the sixth state to implement a law to allow criminal records related to human trafficking to be vacated. The Washington Times. *Hawaii: New law allows trafficking victims to vacate prostitution convictions* (June 11, 2012) available at <http://communities.washingtontimes.com/neighborhood/rights-so-divine/2012/jul/11/hawaii-new-law-allows-trafficking-victims-expunge/> (last visited March 14, 2013).

⁹ Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project (April, 2012) available at <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited March 14, 2013).

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 943.0583, F.S., related to human trafficking victim expunction, that provides:

- Definitions for the terms “human trafficking,” “official documentation,” and “victim of human trafficking.”
- The court of original jurisdiction over the crime that is sought to be expunged may order a criminal justice agency to expunge the criminal history record of a victim of human trafficking who complies with the requirements for expunction, but this does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.
- A person who is a victim of human trafficking may petition for the expunction of any conviction for an offense 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, including, but not limited to, violations under chs. 796¹⁰ and 847, F.S.¹¹ However, this section does not apply to any offense listed in s.775.084(1)(b)1, F.S.¹² Determination of the petition should be by a preponderance of the evidence. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.
- A petition must be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition or for other reasons consistent with the purpose of the law.
- Official documentation of the victim’s status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking but is not required for granting a petition. A determination made without such official documentation must be made by a showing of clear and convincing evidence.
- Each petition to a court to expunge a criminal history record is complete only when accompanied by:
 - The petitioner’s sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.
 - Official documentation of the petitioner’s status as a victim of human trafficking, if any exists.

Any person who knowingly provides false information on a sworn statement to the court commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

- In judicial proceedings relating to expunction:

¹⁰ Chapter 796, F.S., contains provisions related to prostitution.

¹¹ Chapter 847, F.S., contains provisions related to obscenity.

¹² Section 775.084(1)(b)1., F.S., lists the crimes of arson, sexual battery, robbery, kidnapping; aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

- A copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge;
 - The petitioner or the petitioner's attorney may appear at any hearing under this section telephonically, via video conference, or by other electronic means; and
 - If relief is granted by the court, the clerk of the court is required to certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information to which the order pertains. The department must forward the order to expunge to the Federal Bureau of Investigation (FBI). The clerk of the court must certify a copy of the order to any other agency that the records of the court reflect has received the criminal history record from the court.
- When any criminal history record of a minor or an adult is ordered expunged by the court:
 - The record must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the department must be retained in all cases;
 - The person who is the subject of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record; and
 - A person who has been granted an expunction may not be held under any law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

Section 2 of the bill amends s. 943.0582, F.S., to conform a cross reference.

Section 3 of the bill amends s. 943.0585, F.S., to conform a cross reference.

Section 4 of the bill amends s. 943.059, F.S., to conform a cross reference.

Section 5 of the bill amends s. 961.06, F.S. to conform a cross reference.

Section 6 of the bill provides for an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will allow certain individuals to expunge their criminal records. This will result in additional work for the Florida Department of Law Enforcement, the State Courts System, and local law enforcement. This additional workload is not expected to have a significant fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Department of Law Enforcement (FDLE) raised the following issues in the agency analysis of the bill:

- The intent and import of declaring that an expunged conviction shall, as a result of that expunction, which is based on a showing of victim status, be “deemed to have been vacated due to a substantive defect in the underlying criminal proceedings” is unclear and apparently unprecedented. The courts could take the position that vacation of a conviction as currently authorized by the Florida Rules of Criminal Procedure should precede and be a condition, rather than following and being a consequence, of expunction.
- Determining the effect of the “deem[ing] to have been vacated” could be controversial. The “due diligence” requirement has no parallel in existing law on expunction (other than juvenile diversion expunction under s. 943.0582, F.S., which has a fixed time limit for applying). Litigation could be expected over what is required to establish or refute victim status for purposes of the expunction authorized by the bill. The absence of any other prerequisites to expunction could give rise to litigation over the implicit eligibility of persons with prior or subsequent convictions, and prior or subsequent grants of expunction or sealing, for this form of relief. A denial of a petition could be appealed as an abuse of discretion, or as clear error in not finding victim status. The apparent limitation of relief to convictions, excluding eligibility for charges resulting in dismissal or acquittal, would be controversial.¹³

¹³ Florida Department of Law Enforcement, *Senate Bill 1644* (March 15, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).

The FDLE analysis also included the following comments:

- Determining eligibility will be up to the court in which the petition is filed, with optional (not mandatory) input from the prosecutor and arresting agency. It is not clear if other factors (e.g., prior criminal history, previous grants of expunction or sealing) could be taken into account by the court in addition to the necessary and apparently sufficient assessment of victim status.
- Objection by the prosecutor would, presumably, be limited to asserting that the petitioner was not a victim, that the petition was not timely filed, or that the petitioner was seeking to expunge the record of a listed offense (see above). If these conditions were satisfied, the prosecutor could, presumably, still argue that the court should exercise its discretion to deny the petition for other reasons (e.g., presence of other conviction or convictions).
- If the intent of the bill is to limit this remedy to persons convicted of the offense for which the record is to be expunged, on the premise that traditional expunction or sealing would still be available to persons not convicted, that assumption should be made explicit. Persons not convicted of the offense for which expunction was sought under this provision could easily be ineligible for other forms of relief, as by (for example) a single misdemeanor conviction as an adult.
- It is unclear why a person must acknowledge the existence of an expunged or sealed record granted under ss. 943.0585 and 943.059, F.S., if he or she petitions for relief under this section, since the existence of a prior expunction or sealing is not made disqualifying. Possibly this requirement could be defended as a factor for the court to consider in exercising its discretion to grant or deny the petition. If that is the intent, however, the requirement should be placed squarely and prominently in s. 943.0583, F.S., rather than (in effect) buried inside the court-ordered expunction and sealing statutes.¹⁴

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 18, 2013:

- The definition of the term “victim of human trafficking” was amended to remove the provision that minors who are victims of human trafficking are victims as the result of coercion.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁴ *Id.*