

By Senator Flores

37-01323C-13

20131644\_\_

1                   A bill to be entitled  
2           An act relating to victims of human trafficking;  
3           creating s. 943.0583, F.S.; providing definitions;  
4           providing for the expungement of the criminal history  
5           record of a victim of human trafficking; designating  
6           what offenses may be expunged; providing exceptions;  
7           providing that an expunged conviction is deemed to  
8           have been vacated due to a substantive defect in the  
9           underlying criminal proceedings; providing for a  
10          period in which such expungement must be sought;  
11          providing that official documentation of the victim's  
12          status as a human trafficking victim creates a  
13          presumption; providing a standard of proof absent  
14          official documentation; providing requirements for  
15          petitions; providing criminal penalties for false  
16          statements on such petitions; providing for parties to  
17          and service of such petitions; providing for  
18          electronic appearances of petitioners and attorneys at  
19          hearings; providing for orders of relief; providing  
20          for physical destruction of certain records;  
21          authorizing a person whose records are expunged to  
22          lawfully deny or fail to acknowledge the arrests  
23          covered by the expunged record; providing that such  
24          lawful denial does not constitute perjury or subject  
25          the person to liability; providing that cross-  
26          references are considered general reference for the  
27          purpose of incorporation by reference; amending ss.  
28          943.0582, 943.0585, 943.059, and 961.06, F.S.;  
29          conforming provisions to changes made by the act;

37-01323C-13

20131644\_\_

30 providing an effective date.

31  
32 WHEREAS, victims of trafficking may be forced to engage in  
33 a variety of illegal acts beyond prostitution, and

34 WHEREAS, trafficked persons are not always recognized as  
35 victims by the police and prosecutors and are thus pressured  
36 into pleading guilty or do not understand the consequences of  
37 criminal charges, and

38 WHEREAS, all persons with criminal records reflecting their  
39 involvement in the sex industry may face barriers to employment  
40 and other life opportunities long after they escape from their  
41 trafficking situations, and

42 WHEREAS, there is a genuine need for a workable solution to  
43 alleviate the impact of the collateral consequences of  
44 conviction for victims of human trafficking, NOW, THEREFORE,

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
48 Section 1. Section 943.0583, Florida Statutes, is created  
49 to read:

50 943.0583 Human trafficking victim expunction.—

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

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

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

57 (c) "Victim of human trafficking" means a person subjected  
58 to coercion, as defined in s. 787.06, for the purpose of being

37-01323C-13

20131644

59 used in human trafficking, a minor who is a victim of human  
60 trafficking through coercion, as defined in s. 787.06, or an  
61 individual subject to human trafficking as defined by federal  
62 law.

63 (2) Notwithstanding any other provision of law, the court  
64 of original jurisdiction over the crime sought to be expunged  
65 may order a criminal justice agency to expunge the criminal  
66 history record of a victim of human trafficking who complies  
67 with the requirements of this section. This section does not  
68 confer any right to the expunction of any criminal history  
69 record, and any request for expunction of a criminal history  
70 record may be denied at the sole discretion of the court.

71 (3) A person who is a victim of human trafficking may  
72 petition for the expunction of any conviction for an offense  
73 committed while he or she was a victim of human trafficking,  
74 which offense was committed as a part of the human trafficking  
75 scheme of which he or she was a victim or at the direction of an  
76 operator of the scheme, including, but not limited to,  
77 violations under chapters 796 and 847. However, this section  
78 does not apply to any offense listed in s. 775.084(1)(b)1.  
79 Determination of the petition under this section should be by a  
80 preponderance of the evidence. A conviction expunged under this  
81 section is deemed to have been vacated due to a substantive  
82 defect in the underlying criminal proceedings.

83 (4) A petition under this section must be initiated by the  
84 petitioner with due diligence after the victim has ceased to be  
85 a victim of human trafficking or has sought services for victims  
86 of human trafficking, subject to reasonable concerns for the  
87 safety of the victim, family members of the victim, or other

37-01323C-13

20131644

88 victims of human trafficking that may be jeopardized by the  
89 bringing of such petition or for other reasons consistent with  
90 the purpose of this section.

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

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

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

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

105

106 Any person who knowingly provides false information on such  
107 sworn statement to the court commits a felony of the third  
108 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
109 775.084.

110 (7) (a) In judicial proceedings under this section, a copy  
111 of the completed petition to expunge shall be served upon the  
112 appropriate state attorney or the statewide prosecutor and upon  
113 the arresting agency; however, it is not necessary to make any  
114 agency other than the state a party. The appropriate state  
115 attorney or the statewide prosecutor and the arresting agency  
116 may respond to the court regarding the completed petition to

37-01323C-13

20131644

117 expunge.

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

121 (c) If relief is granted by the court, the clerk of the  
122 court shall certify copies of the order to the appropriate state  
123 attorney or the statewide prosecutor and the arresting agency.  
124 The arresting agency is responsible for forwarding the order to  
125 any other agency listed in the court order to which the  
126 arresting agency disseminated the criminal history record  
127 information to which the order pertains. The department shall  
128 forward the order to expunge to the Federal Bureau of  
129 Investigation. The clerk of the court shall certify a copy of  
130 the order to any other agency that the records of the court  
131 reflect has received the criminal history record from the court.

132 (8) (a) Any criminal history record of a minor or an adult  
133 that is ordered expunged by the court of original jurisdiction  
134 over the crime sought to be expunged pursuant to this section  
135 must be physically destroyed or obliterated by any criminal  
136 justice agency having custody of such record, except that any  
137 criminal history record in the custody of the department must be  
138 retained in all cases.

139 (b) The person who is the subject of a criminal history  
140 record that is expunged under this section may lawfully deny or  
141 fail to acknowledge the arrests covered by the expunged record.

142 (c) A person who has been granted an expunction under this  
143 section may not be held under any law of this state to commit  
144 perjury or to be otherwise liable for giving a false statement  
145 by reason of such person's failure to recite or acknowledge an

37-01323C-13

20131644

146 expunged criminal history record.

147 (9) Any reference to any other chapter, section, or  
148 subdivision of the Florida Statutes in this section constitutes  
149 a general reference under the doctrine of incorporation by  
150 reference.

151 Section 2. Subsection (6) of section 943.0582, Florida  
152 Statutes, is amended to read:

153 943.0582 Prearrest, postarrest, or teen court diversion  
154 program expunction.—

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

160 Section 3. Paragraph (a) of subsection (4) of section  
161 943.0585, Florida Statutes, is amended to read:

162 943.0585 Court-ordered expunction of criminal history  
163 records.—The courts of this state have jurisdiction over their  
164 own procedures, including the maintenance, expunction, and  
165 correction of judicial records containing criminal history  
166 information to the extent such procedures are not inconsistent  
167 with the conditions, responsibilities, and duties established by  
168 this section. Any court of competent jurisdiction may order a  
169 criminal justice agency to expunge the criminal history record  
170 of a minor or an adult who complies with the requirements of  
171 this section. The court shall not order a criminal justice  
172 agency to expunge a criminal history record until the person  
173 seeking to expunge a criminal history record has applied for and  
174 received a certificate of eligibility for expunction pursuant to

37-01323C-13

20131644

175 subsection (2). A criminal history record that relates to a  
176 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
177 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
178 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
179 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
180 any violation specified as a predicate offense for registration  
181 as a sexual predator pursuant to s. 775.21, without regard to  
182 whether that offense alone is sufficient to require such  
183 registration, or for registration as a sexual offender pursuant  
184 to s. 943.0435, may not be expunged, without regard to whether  
185 adjudication was withheld, if the defendant was found guilty of  
186 or pled guilty or nolo contendere to the offense, or if the  
187 defendant, as a minor, was found to have committed, or pled  
188 guilty or nolo contendere to committing, the offense as a  
189 delinquent act. The court may only order expunction of a  
190 criminal history record pertaining to one arrest or one incident  
191 of alleged criminal activity, except as provided in this  
192 section. The court may, at its sole discretion, order the  
193 expunction of a criminal history record pertaining to more than  
194 one arrest if the additional arrests directly relate to the  
195 original arrest. If the court intends to order the expunction of  
196 records pertaining to such additional arrests, such intent must  
197 be specified in the order. A criminal justice agency may not  
198 expunge any record pertaining to such additional arrests if the  
199 order to expunge does not articulate the intention of the court  
200 to expunge a record pertaining to more than one arrest. This  
201 section does not prevent the court from ordering the expunction  
202 of only a portion of a criminal history record pertaining to one  
203 arrest or one incident of alleged criminal activity.

37-01323C-13

20131644\_\_

204 Notwithstanding any law to the contrary, a criminal justice  
205 agency may comply with laws, court orders, and official requests  
206 of other jurisdictions relating to expunction, correction, or  
207 confidential handling of criminal history records or information  
208 derived therefrom. This section does not confer any right to the  
209 expunction of any criminal history record, and any request for  
210 expunction of a criminal history record may be denied at the  
211 sole discretion of the court.

212 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
213 criminal history record of a minor or an adult which is ordered  
214 expunged by a court of competent jurisdiction pursuant to this  
215 section must be physically destroyed or obliterated by any  
216 criminal justice agency having custody of such record; except  
217 that any criminal history record in the custody of the  
218 department must be retained in all cases. A criminal history  
219 record ordered expunged that is retained by the department is  
220 confidential and exempt from the provisions of s. 119.07(1) and  
221 s. 24(a), Art. I of the State Constitution and not available to  
222 any person or entity except upon order of a court of competent  
223 jurisdiction. A criminal justice agency may retain a notation  
224 indicating compliance with an order to expunge.

225 (a) The person who is the subject of a criminal history  
226 record that is expunged under this section or under other  
227 provisions of law, including former s. 893.14, former s. 901.33,  
228 and former s. 943.058, may lawfully deny or fail to acknowledge  
229 the arrests covered by the expunged record, except when the  
230 subject of the record:

231 1. Is a candidate for employment with a criminal justice  
232 agency;



37-01323C-13

20131644\_\_

- 233           2. Is a defendant in a criminal prosecution;
- 234           3. Concurrently or subsequently petitions for relief under  
235 this section, s. 943.0583, or s. 943.059;
- 236           4. Is a candidate for admission to The Florida Bar;
- 237           5. Is seeking to be employed or licensed by or to contract  
238 with the Department of Children and Family Services, the  
239 Division of Vocational Rehabilitation within the Department of  
240 Education, the Agency for Health Care Administration, the Agency  
241 for Persons with Disabilities, the Department of Health, the  
242 Department of Elderly Affairs, or the Department of Juvenile  
243 Justice or to be employed or used by such contractor or licensee  
244 in a sensitive position having direct contact with children, the  
245 disabled, or the elderly;
- 246           6. Is seeking to be employed or licensed by the Department  
247 of Education, any district school board, any university  
248 laboratory school, any charter school, any private or parochial  
249 school, or any local governmental entity that licenses child  
250 care facilities; or
- 251           7. Is seeking authorization from a seaport listed in s.  
252 311.09 for employment within or access to one or more of such  
253 seaports pursuant to s. 311.12.

254           Section 4. Paragraph (a) of subsection (4) of section  
255 943.059, Florida Statutes, is amended to read:

256           943.059 Court-ordered sealing of criminal history records.—  
257 The courts of this state shall continue to have jurisdiction  
258 over their own procedures, including the maintenance, sealing,  
259 and correction of judicial records containing criminal history  
260 information to the extent such procedures are not inconsistent  
261 with the conditions, responsibilities, and duties established by

37-01323C-13

20131644\_\_

262 this section. Any court of competent jurisdiction may order a  
263 criminal justice agency to seal the criminal history record of a  
264 minor or an adult who complies with the requirements of this  
265 section. The court shall not order a criminal justice agency to  
266 seal a criminal history record until the person seeking to seal  
267 a criminal history record has applied for and received a  
268 certificate of eligibility for sealing pursuant to subsection  
269 (2). A criminal history record that relates to a violation of s.  
270 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
271 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
272 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
273 916.1075, a violation enumerated in s. 907.041, or any violation  
274 specified as a predicate offense for registration as a sexual  
275 predator pursuant to s. 775.21, without regard to whether that  
276 offense alone is sufficient to require such registration, or for  
277 registration as a sexual offender pursuant to s. 943.0435, may  
278 not be sealed, without regard to whether adjudication was  
279 withheld, if the defendant was found guilty of or pled guilty or  
280 nolo contendere to the offense, or if the defendant, as a minor,  
281 was found to have committed or pled guilty or nolo contendere to  
282 committing the offense as a delinquent act. The court may only  
283 order sealing of a criminal history record pertaining to one  
284 arrest or one incident of alleged criminal activity, except as  
285 provided in this section. The court may, at its sole discretion,  
286 order the sealing of a criminal history record pertaining to  
287 more than one arrest if the additional arrests directly relate  
288 to the original arrest. If the court intends to order the  
289 sealing of records pertaining to such additional arrests, such  
290 intent must be specified in the order. A criminal justice agency

37-01323C-13

20131644\_\_

291 may not seal any record pertaining to such additional arrests if  
292 the order to seal does not articulate the intention of the court  
293 to seal records pertaining to more than one arrest. This section  
294 does not prevent the court from ordering the sealing of only a  
295 portion of a criminal history record pertaining to one arrest or  
296 one incident of alleged criminal activity. Notwithstanding any  
297 law to the contrary, a criminal justice agency may comply with  
298 laws, court orders, and official requests of other jurisdictions  
299 relating to sealing, correction, or confidential handling of  
300 criminal history records or information derived therefrom. This  
301 section does not confer any right to the sealing of any criminal  
302 history record, and any request for sealing a criminal history  
303 record may be denied at the sole discretion of the court.

304 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
305 history record of a minor or an adult which is ordered sealed by  
306 a court of competent jurisdiction pursuant to this section is  
307 confidential and exempt from the provisions of s. 119.07(1) and  
308 s. 24(a), Art. I of the State Constitution and is available only  
309 to the person who is the subject of the record, to the subject's  
310 attorney, to criminal justice agencies for their respective  
311 criminal justice purposes, which include conducting a criminal  
312 history background check for approval of firearms purchases or  
313 transfers as authorized by state or federal law, to judges in  
314 the state courts system for the purpose of assisting them in  
315 their case-related decisionmaking responsibilities, as set forth  
316 in s. 943.053(5), or to those entities set forth in  
317 subparagraphs (a)1., 4., 5., 6., and 8. for their respective  
318 licensing, access authorization, and employment purposes.

319 (a) The subject of a criminal history record sealed under

37-01323C-13

20131644

320 this section or under other provisions of law, including former  
321 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
322 deny or fail to acknowledge the arrests covered by the sealed  
323 record, except when the subject of the record:

- 324 1. Is a candidate for employment with a criminal justice  
325 agency;
- 326 2. Is a defendant in a criminal prosecution;
- 327 3. Concurrently or subsequently petitions for relief under  
328 this section, s. 943.0583, or s. 943.0585;
- 329 4. Is a candidate for admission to The Florida Bar;
- 330 5. Is seeking to be employed or licensed by or to contract  
331 with the Department of Children and Family Services, the  
332 Division of Vocational Rehabilitation within the Department of  
333 Education, the Agency for Health Care Administration, the Agency  
334 for Persons with Disabilities, the Department of Health, the  
335 Department of Elderly Affairs, or the Department of Juvenile  
336 Justice or to be employed or used by such contractor or licensee  
337 in a sensitive position having direct contact with children, the  
338 disabled, or the elderly;
- 339 6. Is seeking to be employed or licensed by the Department  
340 of Education, any district school board, any university  
341 laboratory school, any charter school, any private or parochial  
342 school, or any local governmental entity that licenses child  
343 care facilities;
- 344 7. Is attempting to purchase a firearm from a licensed  
345 importer, licensed manufacturer, or licensed dealer and is  
346 subject to a criminal history check under state or federal law;  
347 or
- 348 8. Is seeking authorization from a Florida seaport

37-01323C-13

20131644

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

351 Section 5. Paragraph (e) of subsection (1) of section  
352 961.06, Florida Statutes, is amended to read:

353 961.06 Compensation for wrongful incarceration.—

354 (1) Except as otherwise provided in this act and subject to  
355 the limitations and procedures prescribed in this section, a  
356 person who is found to be entitled to compensation under the  
357 provisions of this act is entitled to:

358 (e) Notwithstanding any provision to the contrary in s.  
359 943.0583 or s. 943.0585, immediate administrative expunction of  
360 the person's criminal record resulting from his or her wrongful  
361 arrest, wrongful conviction, and wrongful incarceration. The  
362 Department of Legal Affairs and the Department of Law  
363 Enforcement shall, upon a determination that a claimant is  
364 entitled to compensation, immediately take all action necessary  
365 to administratively expunge the claimant's criminal record  
366 arising from his or her wrongful arrest, wrongful conviction,  
367 and wrongful incarceration. All fees for this process shall be  
368 waived.

369  
370 The total compensation awarded under paragraphs (a), (c), and  
371 (d) may not exceed \$2 million. No further award for attorney's  
372 fees, lobbying fees, costs, or other similar expenses shall be  
373 made by the state.

374 Section 6. This act shall take effect July 1, 2013.