

By the Committee on Children, Families, and Elder Affairs; and
Senator Flores

586-02626-13

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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;

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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

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59 used in human trafficking, a child under 18 years of age
60 subjected to human trafficking, or an individual subject to
61 human trafficking as defined by federal law.

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

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

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

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88 bringing of such petition or for other reasons consistent with
89 the purpose of this section.

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

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

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

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

104
105 Any person who knowingly provides false information on such
106 sworn statement to the court commits a felony of the third
107 degree, punishable as provided in s. 775.082, s. 775.083, or s.
108 775.084.

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

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

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

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

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

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

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

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

152 943.0582 Prearrest, postarrest, or teen court diversion
153 program expunction.—

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

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

161 943.0585 Court-ordered expunction of criminal history
162 records.—The courts of this state have jurisdiction over their
163 own procedures, including the maintenance, expunction, and
164 correction of judicial records containing criminal history
165 information to the extent such procedures are not inconsistent
166 with the conditions, responsibilities, and duties established by
167 this section. Any court of competent jurisdiction may order a
168 criminal justice agency to expunge the criminal history record
169 of a minor or an adult who complies with the requirements of
170 this section. The court shall not order a criminal justice
171 agency to expunge a criminal history record until the person
172 seeking to expunge a criminal history record has applied for and
173 received a certificate of eligibility for expunction pursuant to
174 subsection (2). A criminal history record that relates to a

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

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

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

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

- 230 1. Is a candidate for employment with a criminal justice
231 agency;
232 2. Is a defendant in a criminal prosecution;

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233 3. Concurrently or subsequently petitions for relief under
234 this section, s. 943.0583, or s. 943.059;

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

236 5. Is seeking to be employed or licensed by or to contract
237 with the Department of Children and Family Services, the
238 Division of Vocational Rehabilitation within the Department of
239 Education, the Agency for Health Care Administration, the Agency
240 for Persons with Disabilities, the Department of Health, the
241 Department of Elderly Affairs, or the Department of Juvenile
242 Justice or to be employed or used by such contractor or licensee
243 in a sensitive position having direct contact with children, the
244 disabled, or the elderly;

245 6. Is seeking to be employed or licensed by the Department
246 of Education, any district school board, any university
247 laboratory school, any charter school, any private or parochial
248 school, or any local governmental entity that licenses child
249 care facilities; or

250 7. Is seeking authorization from a seaport listed in s.
251 311.09 for employment within or access to one or more of such
252 seaports pursuant to s. 311.12.

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

255 943.059 Court-ordered sealing of criminal history records.—
256 The courts of this state shall continue to have jurisdiction
257 over their own procedures, including the maintenance, sealing,
258 and correction of judicial records containing criminal history
259 information to the extent such procedures are not inconsistent
260 with the conditions, responsibilities, and duties established by
261 this section. Any court of competent jurisdiction may order a

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

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

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

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

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

- 323 1. Is a candidate for employment with a criminal justice
324 agency;
- 325 2. Is a defendant in a criminal prosecution;
- 326 3. Concurrently or subsequently petitions for relief under
327 this section, s. 943.0583, or s. 943.0585;
- 328 4. Is a candidate for admission to The Florida Bar;
- 329 5. Is seeking to be employed or licensed by or to contract
330 with the Department of Children and Family Services, the
331 Division of Vocational Rehabilitation within the Department of
332 Education, the Agency for Health Care Administration, the Agency
333 for Persons with Disabilities, the Department of Health, the
334 Department of Elderly Affairs, or the Department of Juvenile
335 Justice or to be employed or used by such contractor or licensee
336 in a sensitive position having direct contact with children, the
337 disabled, or the elderly;
- 338 6. Is seeking to be employed or licensed by the Department
339 of Education, any district school board, any university
340 laboratory school, any charter school, any private or parochial
341 school, or any local governmental entity that licenses child
342 care facilities;
- 343 7. Is attempting to purchase a firearm from a licensed
344 importer, licensed manufacturer, or licensed dealer and is
345 subject to a criminal history check under state or federal law;
346 or
- 347 8. Is seeking authorization from a Florida seaport
348 identified in s. 311.09 for employment within or access to one

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349 or more of such seaports pursuant to s. 311.12.

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

352 961.06 Compensation for wrongful incarceration.-

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

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

368

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

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