

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

590-03880-13

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1                   A bill to be entitled  
2           An act relating to victims of human trafficking;  
3           amending s. 90.803, F.S.; revising the mental,  
4           emotional, or developmental age of a child victim  
5           whose out-of-court statement describing specified  
6           criminal acts is admissible in evidence in certain  
7           instances; creating s. 943.0583, F.S.; providing  
8           definitions; providing for the expungement of the  
9           criminal history record of a victim of human  
10          trafficking; designating what offenses may be  
11          expunged; providing exceptions; providing that an  
12          expunged conviction is deemed to have been vacated due  
13          to a substantive defect in the underlying criminal  
14          proceedings; providing for a period in which such  
15          expungement must be sought; providing that official  
16          documentation of the victim's status as a human  
17          trafficking victim creates a presumption; providing a  
18          standard of proof absent official documentation;  
19          providing requirements for petitions; providing  
20          criminal penalties for false statements on such  
21          petitions; providing for parties to and service of  
22          such petitions; providing for electronic appearances  
23          of petitioners and attorneys at hearings; providing  
24          for orders of relief; providing for physical  
25          destruction of certain records; authorizing a person  
26          whose records are expunged to lawfully deny or fail to  
27          acknowledge the arrests covered by the expunged  
28          record; providing that such lawful denial does not  
29          constitute perjury or subject the person to liability;

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30 providing that cross-references are considered general  
31 reference for the purpose of incorporation by  
32 reference; amending ss. 943.0582, 943.0585, 943.059,  
33 and 961.06, F.S.; conforming provisions to changes  
34 made by the act; providing an effective date.

35  
36 WHEREAS, victims of trafficking may be forced to engage in  
37 a variety of illegal acts beyond prostitution, and

38 WHEREAS, trafficked persons are not always recognized as  
39 victims by the police and prosecutors and are thus pressured  
40 into pleading guilty or do not understand the consequences of  
41 criminal charges, and

42 WHEREAS, all persons with criminal records reflecting their  
43 involvement in the sex industry may face barriers to employment  
44 and other life opportunities long after they escape from their  
45 trafficking situations, and

46 WHEREAS, there is a genuine need for a workable solution to  
47 alleviate the impact of the collateral consequences of  
48 conviction for victims of human trafficking, NOW, THEREFORE,

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Paragraph (a) of subsection (23) of section  
53 90.803, Florida Statutes, is amended to read:

54 90.803 Hearsay exceptions; availability of declarant  
55 immaterial.—The provision of s. 90.802 to the contrary  
56 notwithstanding, the following are not inadmissible as evidence,  
57 even though the declarant is available as a witness:

58 (23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—

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59 (a) Unless the source of information or the method or  
60 circumstances by which the statement is reported indicates a  
61 lack of trustworthiness, an out-of-court statement made by a  
62 child victim with a physical, mental, emotional, or  
63 developmental age of 16 ~~11~~ or less describing any act of child  
64 abuse or neglect, any act of sexual abuse against a child, the  
65 offense of child abuse, the offense of aggravated child abuse,  
66 or any offense involving an unlawful sexual act, contact,  
67 intrusion, or penetration performed in the presence of, with,  
68 by, or on the declarant child, not otherwise admissible, is  
69 admissible in evidence in any civil or criminal proceeding if:

70 1. The court finds in a hearing conducted outside the  
71 presence of the jury that the time, content, and circumstances  
72 of the statement provide sufficient safeguards of reliability.  
73 In making its determination, the court may consider the mental  
74 and physical age and maturity of the child, the nature and  
75 duration of the abuse or offense, the relationship of the child  
76 to the offender, the reliability of the assertion, the  
77 reliability of the child victim, and any other factor deemed  
78 appropriate; and

79 2. The child either:

80 a. Testifies; or

81 b. Is unavailable as a witness, provided that there is  
82 other corroborative evidence of the abuse or offense.  
83 Unavailability shall include a finding by the court that the  
84 child's participation in the trial or proceeding would result in  
85 a substantial likelihood of severe emotional or mental harm, in  
86 addition to findings pursuant to s. 90.804(1).

87 Section 2. Section 943.0583, Florida Statutes, is created

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88 to read:

89 943.0583 Human trafficking victim expunction.—

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

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

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

96 (c) "Victim of human trafficking" means a person subjected  
97 to coercion, as defined in s. 787.06, for the purpose of being  
98 used in human trafficking, a child under 18 years of age  
99 subjected to human trafficking, or an individual subjected to  
100 human trafficking as defined by federal law.

101 (2) Notwithstanding any other provision of law, the court  
102 of original jurisdiction over the crime sought to be expunged  
103 may order a criminal justice agency to expunge the criminal  
104 history record of a victim of human trafficking who complies  
105 with the requirements of this section. This section does not  
106 confer any right to the expunction of any criminal history  
107 record, and any request for expunction of a criminal history  
108 record may be denied at the sole discretion of the court.

109 (3) A person who is a victim of human trafficking may  
110 petition for the expunction of any conviction for an offense  
111 committed while he or she was a victim of human trafficking,  
112 which offense was committed as a part of the human trafficking  
113 scheme of which he or she was a victim or at the direction of an  
114 operator of the scheme, including, but not limited to,  
115 violations under chapters 796 and 847. However, this section  
116 does not apply to any offense listed in s. 775.084(1)(b)1.

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117 Determination of the petition under this section should be by a  
118 preponderance of the evidence. A conviction expunged under this  
119 section is deemed to have been vacated due to a substantive  
120 defect in the underlying criminal proceedings.

121 (4) A petition under this section must be initiated by the  
122 petitioner with due diligence after the victim has ceased to be  
123 a victim of human trafficking or has sought services for victims  
124 of human trafficking, subject to reasonable concerns for the  
125 safety of the victim, family members of the victim, or other  
126 victims of human trafficking that may be jeopardized by the  
127 bringing of such petition or for other reasons consistent with  
128 the purpose of this section.

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

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

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

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

143  
144 Any person who knowingly provides false information on such  
145 sworn statement to the court commits a felony of the third

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146 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
147 775.084.

148 (7) (a) In judicial proceedings under this section, a copy  
149 of the completed petition to expunge shall be served upon the  
150 appropriate state attorney or the statewide prosecutor and upon  
151 the arresting agency; however, it is not necessary to make any  
152 agency other than the state a party. The appropriate state  
153 attorney or the statewide prosecutor and the arresting agency  
154 may respond to the court regarding the completed petition to  
155 expunge.

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

159 (c) If relief is granted by the court, the clerk of the  
160 court shall certify copies of the order to the appropriate state  
161 attorney or the statewide prosecutor and the arresting agency.  
162 The arresting agency is responsible for forwarding the order to  
163 any other agency listed in the court order to which the  
164 arresting agency disseminated the criminal history record  
165 information to which the order pertains. The department shall  
166 forward the order to expunge to the Federal Bureau of  
167 Investigation. The clerk of the court shall certify a copy of  
168 the order to any other agency that the records of the court  
169 reflect has received the criminal history record from the court.

170 (8) (a) Any criminal history record of a minor or an adult  
171 that is ordered expunged by the court of original jurisdiction  
172 over the crime sought to be expunged pursuant to this section  
173 must be physically destroyed or obliterated by any criminal  
174 justice agency having custody of such record, except that any

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175 criminal history record in the custody of the department must be  
176 retained in all cases.

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

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

185 (9) Any reference to any other chapter, section, or  
186 subdivision of the Florida Statutes in this section constitutes  
187 a general reference under the doctrine of incorporation by  
188 reference.

189 Section 3. Subsection (6) of section 943.0582, Florida  
190 Statutes, is amended to read:

191 943.0582 Prearrest, postarrest, or teen court diversion  
192 program expunction.—

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

198 Section 4. Paragraph (a) of subsection (4) of section  
199 943.0585, Florida Statutes, is amended to read:

200 943.0585 Court-ordered expunction of criminal history  
201 records.—The courts of this state have jurisdiction over their  
202 own procedures, including the maintenance, expunction, and  
203 correction of judicial records containing criminal history

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204 information to the extent such procedures are not inconsistent  
205 with the conditions, responsibilities, and duties established by  
206 this section. Any court of competent jurisdiction may order a  
207 criminal justice agency to expunge the criminal history record  
208 of a minor or an adult who complies with the requirements of  
209 this section. The court shall not order a criminal justice  
210 agency to expunge a criminal history record until the person  
211 seeking to expunge a criminal history record has applied for and  
212 received a certificate of eligibility for expunction pursuant to  
213 subsection (2). A criminal history record that relates to a  
214 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
215 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
216 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
217 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
218 any violation specified as a predicate offense for registration  
219 as a sexual predator pursuant to s. 775.21, without regard to  
220 whether that offense alone is sufficient to require such  
221 registration, or for registration as a sexual offender pursuant  
222 to s. 943.0435, may not be expunged, without regard to whether  
223 adjudication was withheld, if the defendant was found guilty of  
224 or pled guilty or nolo contendere to the offense, or if the  
225 defendant, as a minor, was found to have committed, or pled  
226 guilty or nolo contendere to committing, the offense as a  
227 delinquent act. The court may only order expunction of a  
228 criminal history record pertaining to one arrest or one incident  
229 of alleged criminal activity, except as provided in this  
230 section. The court may, at its sole discretion, order the  
231 expunction of a criminal history record pertaining to more than  
232 one arrest if the additional arrests directly relate to the



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233 original arrest. If the court intends to order the expunction of  
234 records pertaining to such additional arrests, such intent must  
235 be specified in the order. A criminal justice agency may not  
236 expunge any record pertaining to such additional arrests if the  
237 order to expunge does not articulate the intention of the court  
238 to expunge a record pertaining to more than one arrest. This  
239 section does not prevent the court from ordering the expunction  
240 of only a portion of a criminal history record pertaining to one  
241 arrest or one incident of alleged criminal activity.

242 Notwithstanding any law to the contrary, a criminal justice  
243 agency may comply with laws, court orders, and official requests  
244 of other jurisdictions relating to expunction, correction, or  
245 confidential handling of criminal history records or information  
246 derived therefrom. This section does not confer any right to the  
247 expunction of any criminal history record, and any request for  
248 expunction of a criminal history record may be denied at the  
249 sole discretion of the court.

250 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
251 criminal history record of a minor or an adult which is ordered  
252 expunged by a court of competent jurisdiction pursuant to this  
253 section must be physically destroyed or obliterated by any  
254 criminal justice agency having custody of such record; except  
255 that any criminal history record in the custody of the  
256 department must be retained in all cases. A criminal history  
257 record ordered expunged that is retained by the department is  
258 confidential and exempt from the provisions of s. 119.07(1) and  
259 s. 24(a), Art. I of the State Constitution and not available to  
260 any person or entity except upon order of a court of competent  
261 jurisdiction. A criminal justice agency may retain a notation

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262 indicating compliance with an order to expunge.

263 (a) The person who is the subject of a criminal history  
264 record that is expunged under this section or under other  
265 provisions of law, including former s. 893.14, former s. 901.33,  
266 and former s. 943.058, may lawfully deny or fail to acknowledge  
267 the arrests covered by the expunged record, except when the  
268 subject of the record:

269 1. Is a candidate for employment with a criminal justice  
270 agency;

271 2. Is a defendant in a criminal prosecution;

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

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

275 5. Is seeking to be employed or licensed by or to contract  
276 with the Department of Children and Family Services, the  
277 Division of Vocational Rehabilitation within the Department of  
278 Education, the Agency for Health Care Administration, the Agency  
279 for Persons with Disabilities, the Department of Health, the  
280 Department of Elderly Affairs, or the Department of Juvenile  
281 Justice or to be employed or used by such contractor or licensee  
282 in a sensitive position having direct contact with children, the  
283 disabled, or the elderly;

284 6. Is seeking to be employed or licensed by the Department  
285 of Education, any district school board, any university  
286 laboratory school, any charter school, any private or parochial  
287 school, or any local governmental entity that licenses child  
288 care facilities; or

289 7. Is seeking authorization from a seaport listed in s.  
290 311.09 for employment within or access to one or more of such

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291 seaports pursuant to s. 311.12.

292 Section 5. Paragraph (a) of subsection (4) of section  
293 943.059, Florida Statutes, is amended to read:

294 943.059 Court-ordered sealing of criminal history records.—

295 The courts of this state shall continue to have jurisdiction  
296 over their own procedures, including the maintenance, sealing,  
297 and correction of judicial records containing criminal history  
298 information to the extent such procedures are not inconsistent  
299 with the conditions, responsibilities, and duties established by  
300 this section. Any court of competent jurisdiction may order a  
301 criminal justice agency to seal the criminal history record of a  
302 minor or an adult who complies with the requirements of this  
303 section. The court shall not order a criminal justice agency to  
304 seal a criminal history record until the person seeking to seal  
305 a criminal history record has applied for and received a  
306 certificate of eligibility for sealing pursuant to subsection  
307 (2). A criminal history record that relates to a violation of s.  
308 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
309 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
310 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
311 916.1075, a violation enumerated in s. 907.041, or any violation  
312 specified as a predicate offense for registration as a sexual  
313 predator pursuant to s. 775.21, without regard to whether that  
314 offense alone is sufficient to require such registration, or for  
315 registration as a sexual offender pursuant to s. 943.0435, may  
316 not be sealed, without regard to whether adjudication was  
317 withheld, if the defendant was found guilty of or pled guilty or  
318 nolo contendere to the offense, or if the defendant, as a minor,  
319 was found to have committed or pled guilty or nolo contendere to

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320 committing the offense as a delinquent act. The court may only  
321 order sealing of a criminal history record pertaining to one  
322 arrest or one incident of alleged criminal activity, except as  
323 provided in this section. The court may, at its sole discretion,  
324 order the sealing of a criminal history record pertaining to  
325 more than one arrest if the additional arrests directly relate  
326 to the original arrest. If the court intends to order the  
327 sealing of records pertaining to such additional arrests, such  
328 intent must be specified in the order. A criminal justice agency  
329 may not seal any record pertaining to such additional arrests if  
330 the order to seal does not articulate the intention of the court  
331 to seal records pertaining to more than one arrest. This section  
332 does not prevent the court from ordering the sealing of only a  
333 portion of a criminal history record pertaining to one arrest or  
334 one incident of alleged criminal activity. Notwithstanding any  
335 law to the contrary, a criminal justice agency may comply with  
336 laws, court orders, and official requests of other jurisdictions  
337 relating to sealing, correction, or confidential handling of  
338 criminal history records or information derived therefrom. This  
339 section does not confer any right to the sealing of any criminal  
340 history record, and any request for sealing a criminal history  
341 record may be denied at the sole discretion of the court.

342 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
343 history record of a minor or an adult which is ordered sealed by  
344 a court of competent jurisdiction pursuant to this section is  
345 confidential and exempt from the provisions of s. 119.07(1) and  
346 s. 24(a), Art. I of the State Constitution and is available only  
347 to the person who is the subject of the record, to the subject's  
348 attorney, to criminal justice agencies for their respective

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349 criminal justice purposes, which include conducting a criminal  
350 history background check for approval of firearms purchases or  
351 transfers as authorized by state or federal law, to judges in  
352 the state courts system for the purpose of assisting them in  
353 their case-related decisionmaking responsibilities, as set forth  
354 in s. 943.053(5), or to those entities set forth in  
355 subparagraphs (a)1., 4., 5., 6., and 8. for their respective  
356 licensing, access authorization, and employment purposes.

357 (a) The subject of a criminal history record sealed under  
358 this section or under other provisions of law, including former  
359 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
360 deny or fail to acknowledge the arrests covered by the sealed  
361 record, except when the subject of the record:

- 362 1. Is a candidate for employment with a criminal justice  
363 agency;
- 364 2. Is a defendant in a criminal prosecution;
- 365 3. Concurrently or subsequently petitions for relief under  
366 this section, s. 943.0583, or s. 943.0585;
- 367 4. Is a candidate for admission to The Florida Bar;
- 368 5. Is seeking to be employed or licensed by or to contract  
369 with the Department of Children and Family Services, the  
370 Division of Vocational Rehabilitation within the Department of  
371 Education, the Agency for Health Care Administration, the Agency  
372 for Persons with Disabilities, the Department of Health, the  
373 Department of Elderly Affairs, or the Department of Juvenile  
374 Justice or to be employed or used by such contractor or licensee  
375 in a sensitive position having direct contact with children, the  
376 disabled, or the elderly;
- 377 6. Is seeking to be employed or licensed by the Department

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378 of Education, any district school board, any university  
379 laboratory school, any charter school, any private or parochial  
380 school, or any local governmental entity that licenses child  
381 care facilities;

382 7. Is attempting to purchase a firearm from a licensed  
383 importer, licensed manufacturer, or licensed dealer and is  
384 subject to a criminal history check under state or federal law;  
385 or

386 8. Is seeking authorization from a Florida seaport  
387 identified in s. 311.09 for employment within or access to one  
388 or more of such seaports pursuant to s. 311.12.

389 Section 6. Paragraph (e) of subsection (1) of section  
390 961.06, Florida Statutes, is amended to read:

391 961.06 Compensation for wrongful incarceration.—

392 (1) Except as otherwise provided in this act and subject to  
393 the limitations and procedures prescribed in this section, a  
394 person who is found to be entitled to compensation under the  
395 provisions of this act is entitled to:

396 (e) Notwithstanding any provision to the contrary in s.  
397 943.0583 or s. 943.0585, immediate administrative expunction of  
398 the person's criminal record resulting from his or her wrongful  
399 arrest, wrongful conviction, and wrongful incarceration. The  
400 Department of Legal Affairs and the Department of Law  
401 Enforcement shall, upon a determination that a claimant is  
402 entitled to compensation, immediately take all action necessary  
403 to administratively expunge the claimant's criminal record  
404 arising from his or her wrongful arrest, wrongful conviction,  
405 and wrongful incarceration. All fees for this process shall be  
406 waived.

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

412 Section 7. This act shall take effect July 1, 2013.