

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

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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 for an appropriation to the
35 Department of Law Enforcement; providing that the
36 department or any other criminal justice agency is not
37 required to comply with certain requirements relating
38 to expunging criminal history records until a
39 specified date; providing effective dates.

40
41 WHEREAS, victims of trafficking may be forced to engage in
42 a variety of illegal acts beyond prostitution, and

43 WHEREAS, trafficked persons are not always recognized as
44 victims by the police and prosecutors and are thus pressured
45 into pleading guilty or do not understand the consequences of
46 criminal charges, and

47 WHEREAS, all persons with criminal records reflecting their
48 involvement in the sex industry may face barriers to employment
49 and other life opportunities long after they escape from their
50 trafficking situations, and

51 WHEREAS, there is a genuine need for a workable solution to
52 alleviate the impact of the collateral consequences of
53 conviction for victims of human trafficking, NOW, THEREFORE,

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. Paragraph (a) of subsection (23) of section
58 90.803, Florida Statutes, is amended to read:

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59 90.803 Hearsay exceptions; availability of declarant
60 immaterial.—The provision of s. 90.802 to the contrary
61 notwithstanding, the following are not inadmissible as evidence,
62 even though the declarant is available as a witness:

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

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

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

84 2. The child either:

85 a. Testifies; or

86 b. Is unavailable as a witness, provided that there is
87 other corroborative evidence of the abuse or offense.

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88 Unavailability shall include a finding by the court that the
89 child's participation in the trial or proceeding would result in
90 a substantial likelihood of severe emotional or mental harm, in
91 addition to findings pursuant to s. 90.804(1).

92 Section 2. Section 943.0583, Florida Statutes, is created
93 to read:

94 943.0583 Human trafficking victim expunction.-

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

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

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

101 (c) "Victim of human trafficking" means a person subjected
102 to coercion, as defined in s. 787.06, for the purpose of being
103 used in human trafficking, a child under 18 years of age
104 subjected to human trafficking, or an individual subjected to
105 human trafficking as defined by federal law.

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

114 (3) A person who is a victim of human trafficking may
115 petition for the expunction of any conviction for an offense
116 committed while he or she was a victim of human trafficking,

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117 which offense was committed as a part of the human trafficking
118 scheme of which he or she was a victim or at the direction of an
119 operator of the scheme, including, but not limited to,
120 violations under chapters 796 and 847. However, this section
121 does not apply to any offense listed in s. 775.084(1)(b)1.
122 Determination of the petition under this section should be by a
123 preponderance of the evidence. A conviction expunged under this
124 section is deemed to have been vacated due to a substantive
125 defect in the underlying criminal proceedings.

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

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

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

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

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

148
149 Any person who knowingly provides false information on such
150 sworn statement to the court commits a felony of the third
151 degree, punishable as provided in s. 775.082, s. 775.083, or s.
152 775.084.

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

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

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

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175 (8) (a) Any criminal history record of a minor or an adult
176 that is ordered expunged by the court of original jurisdiction
177 over the crime sought to be expunged pursuant to this section
178 must be physically destroyed or obliterated by any criminal
179 justice agency having custody of such record, except that any
180 criminal history record in the custody of the department must be
181 retained in all cases.

182 (b) The person who is the subject of a criminal history
183 record that is expunged under this section may lawfully deny or
184 fail to acknowledge the arrests covered by the expunged record,
185 except when the subject of the record is a candidate for
186 employment with a criminal justice agency or is a defendant in a
187 criminal prosecution.

188 (c) Subject to the exceptions in paragraph (b), a person
189 who has been granted an expunction under this section may not be
190 held under any law of this state to commit perjury or to be
191 otherwise liable for giving a false statement by reason of such
192 person's failure to recite or acknowledge an expunged criminal
193 history record.

194 (9) Any reference to any other chapter, section, or
195 subdivision of the Florida Statutes in this section constitutes
196 a general reference under the doctrine of incorporation by
197 reference.

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

200 943.0582 Prearrest, postarrest, or teen court diversion
201 program expunction.—

202 (6) Expunction or sealing granted under this section does
203 not prevent the minor who receives such relief from petitioning

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204 for the expunction or sealing of a later criminal history record
205 as provided for in ss. 943.0583, 943.0585, and 943.059, if the
206 minor is otherwise eligible under those sections.

207 Section 4. Paragraph (a) of subsection (4) of section
208 943.0585, Florida Statutes, is amended to read:

209 943.0585 Court-ordered expunction of criminal history
210 records.—The courts of this state have jurisdiction over their
211 own procedures, including the maintenance, expunction, and
212 correction of judicial records containing criminal history
213 information to the extent such procedures are not inconsistent
214 with the conditions, responsibilities, and duties established by
215 this section. Any court of competent jurisdiction may order a
216 criminal justice agency to expunge the criminal history record
217 of a minor or an adult who complies with the requirements of
218 this section. The court shall not order a criminal justice
219 agency to expunge a criminal history record until the person
220 seeking to expunge a criminal history record has applied for and
221 received a certificate of eligibility for expunction pursuant to
222 subsection (2). A criminal history record that relates to a
223 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
224 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
225 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
226 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
227 any violation specified as a predicate offense for registration
228 as a sexual predator pursuant to s. 775.21, without regard to
229 whether that offense alone is sufficient to require such
230 registration, or for registration as a sexual offender pursuant
231 to s. 943.0435, may not be expunged, without regard to whether
232 adjudication was withheld, if the defendant was found guilty of

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233 or pled guilty or nolo contendere to the offense, or if the
234 defendant, as a minor, was found to have committed, or pled
235 guilty or nolo contendere to committing, the offense as a
236 delinquent act. The court may only order expunction of a
237 criminal history record pertaining to one arrest or one incident
238 of alleged criminal activity, except as provided in this
239 section. The court may, at its sole discretion, order the
240 expunction of a criminal history record pertaining to more than
241 one arrest if the additional arrests directly relate to the
242 original arrest. If the court intends to order the expunction of
243 records pertaining to such additional arrests, such intent must
244 be specified in the order. A criminal justice agency may not
245 expunge any record pertaining to such additional arrests if the
246 order to expunge does not articulate the intention of the court
247 to expunge a record pertaining to more than one arrest. This
248 section does not prevent the court from ordering the expunction
249 of only a portion of a criminal history record pertaining to one
250 arrest or one incident of alleged criminal activity.

251 Notwithstanding any law to the contrary, a criminal justice
252 agency may comply with laws, court orders, and official requests
253 of other jurisdictions relating to expunction, correction, or
254 confidential handling of criminal history records or information
255 derived therefrom. This section does not confer any right to the
256 expunction of any criminal history record, and any request for
257 expunction of a criminal history record may be denied at the
258 sole discretion of the court.

259 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
260 criminal history record of a minor or an adult which is ordered
261 expunged by a court of competent jurisdiction pursuant to this

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262 section must be physically destroyed or obliterated by any
263 criminal justice agency having custody of such record; except
264 that any criminal history record in the custody of the
265 department must be retained in all cases. A criminal history
266 record ordered expunged that is retained by the department is
267 confidential and exempt from the provisions of s. 119.07(1) and
268 s. 24(a), Art. I of the State Constitution and not available to
269 any person or entity except upon order of a court of competent
270 jurisdiction. A criminal justice agency may retain a notation
271 indicating compliance with an order to expunge.

272 (a) The person who is the subject of a criminal history
273 record that is expunged under this section or under other
274 provisions of law, including former s. 893.14, former s. 901.33,
275 and former s. 943.058, may lawfully deny or fail to acknowledge
276 the arrests covered by the expunged record, except when the
277 subject of the record:

- 278 1. Is a candidate for employment with a criminal justice
279 agency;
- 280 2. Is a defendant in a criminal prosecution;
- 281 3. Concurrently or subsequently petitions for relief under
282 this section, s. 943.0583, or s. 943.059;
- 283 4. Is a candidate for admission to The Florida Bar;
- 284 5. Is seeking to be employed or licensed by or to contract
285 with the Department of Children and Family Services, the
286 Division of Vocational Rehabilitation within the Department of
287 Education, the Agency for Health Care Administration, the Agency
288 for Persons with Disabilities, the Department of Health, the
289 Department of Elderly Affairs, or the Department of Juvenile
290 Justice or to be employed or used by such contractor or licensee

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291 in a sensitive position having direct contact with children, the
292 disabled, or the elderly;

293 6. Is seeking to be employed or licensed by the Department
294 of Education, any district school board, any university
295 laboratory school, any charter school, any private or parochial
296 school, or any local governmental entity that licenses child
297 care facilities; or

298 7. Is seeking authorization from a seaport listed in s.
299 311.09 for employment within or access to one or more of such
300 seaports pursuant to s. 311.12.

301 Section 5. Paragraph (a) of subsection (4) of section
302 943.059, Florida Statutes, is amended to read:

303 943.059 Court-ordered sealing of criminal history records.—
304 The courts of this state shall continue to have jurisdiction
305 over their own procedures, including the maintenance, sealing,
306 and correction of judicial records containing criminal history
307 information to the extent such procedures are not inconsistent
308 with the conditions, responsibilities, and duties established by
309 this section. Any court of competent jurisdiction may order a
310 criminal justice agency to seal the criminal history record of a
311 minor or an adult who complies with the requirements of this
312 section. The court shall not order a criminal justice agency to
313 seal a criminal history record until the person seeking to seal
314 a criminal history record has applied for and received a
315 certificate of eligibility for sealing pursuant to subsection
316 (2). A criminal history record that relates to a violation of s.
317 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
318 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
319 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.

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320 916.1075, a violation enumerated in s. 907.041, or any violation
321 specified as a predicate offense for registration as a sexual
322 predator pursuant to s. 775.21, without regard to whether that
323 offense alone is sufficient to require such registration, or for
324 registration as a sexual offender pursuant to s. 943.0435, may
325 not be sealed, without regard to whether adjudication was
326 withheld, if the defendant was found guilty of or pled guilty or
327 nolo contendere to the offense, or if the defendant, as a minor,
328 was found to have committed or pled guilty or nolo contendere to
329 committing the offense as a delinquent act. The court may only
330 order sealing of a criminal history record pertaining to one
331 arrest or one incident of alleged criminal activity, except as
332 provided in this section. The court may, at its sole discretion,
333 order the sealing of a criminal history record pertaining to
334 more than one arrest if the additional arrests directly relate
335 to the original arrest. If the court intends to order the
336 sealing of records pertaining to such additional arrests, such
337 intent must be specified in the order. A criminal justice agency
338 may not seal any record pertaining to such additional arrests if
339 the order to seal does not articulate the intention of the court
340 to seal records pertaining to more than one arrest. This section
341 does not prevent the court from ordering the sealing of only a
342 portion of a criminal history record pertaining to one arrest or
343 one incident of alleged criminal activity. Notwithstanding any
344 law to the contrary, a criminal justice agency may comply with
345 laws, court orders, and official requests of other jurisdictions
346 relating to sealing, correction, or confidential handling of
347 criminal history records or information derived therefrom. This
348 section does not confer any right to the sealing of any criminal

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349 history record, and any request for sealing a criminal history
350 record may be denied at the sole discretion of the court.

351 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
352 history record of a minor or an adult which is ordered sealed by
353 a court of competent jurisdiction pursuant to this section is
354 confidential and exempt from the provisions of s. 119.07(1) and
355 s. 24(a), Art. I of the State Constitution and is available only
356 to the person who is the subject of the record, to the subject's
357 attorney, to criminal justice agencies for their respective
358 criminal justice purposes, which include conducting a criminal
359 history background check for approval of firearms purchases or
360 transfers as authorized by state or federal law, to judges in
361 the state courts system for the purpose of assisting them in
362 their case-related decisionmaking responsibilities, as set forth
363 in s. 943.053(5), or to those entities set forth in
364 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
365 licensing, access authorization, and employment purposes.

366 (a) The subject of a criminal history record sealed under
367 this section or under other provisions of law, including former
368 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
369 deny or fail to acknowledge the arrests covered by the sealed
370 record, except when the subject of the record:

- 371 1. Is a candidate for employment with a criminal justice
372 agency;
- 373 2. Is a defendant in a criminal prosecution;
- 374 3. Concurrently or subsequently petitions for relief under
375 this section, s. 943.0583, or s. 943.0585;
- 376 4. Is a candidate for admission to The Florida Bar;
- 377 5. Is seeking to be employed or licensed by or to contract

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378 with the Department of Children and Family Services, the
379 Division of Vocational Rehabilitation within the Department of
380 Education, the Agency for Health Care Administration, the Agency
381 for Persons with Disabilities, the Department of Health, the
382 Department of Elderly Affairs, or the Department of Juvenile
383 Justice or to be employed or used by such contractor or licensee
384 in a sensitive position having direct contact with children, the
385 disabled, or the elderly;

386 6. Is seeking to be employed or licensed by the Department
387 of Education, any district school board, any university
388 laboratory school, any charter school, any private or parochial
389 school, or any local governmental entity that licenses child
390 care facilities;

391 7. Is attempting to purchase a firearm from a licensed
392 importer, licensed manufacturer, or licensed dealer and is
393 subject to a criminal history check under state or federal law;
394 or

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

398 Section 6. Paragraph (e) of subsection (1) of section
399 961.06, Florida Statutes, is amended to read:

400 961.06 Compensation for wrongful incarceration.—

401 (1) Except as otherwise provided in this act and subject to
402 the limitations and procedures prescribed in this section, a
403 person who is found to be entitled to compensation under the
404 provisions of this act is entitled to:

405 (e) Notwithstanding any provision to the contrary in s.
406 943.0583 or s. 943.0585, immediate administrative expunction of

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407 the person's criminal record resulting from his or her wrongful
408 arrest, wrongful conviction, and wrongful incarceration. The
409 Department of Legal Affairs and the Department of Law
410 Enforcement shall, upon a determination that a claimant is
411 entitled to compensation, immediately take all action necessary
412 to administratively expunge the claimant's criminal record
413 arising from his or her wrongful arrest, wrongful conviction,
414 and wrongful incarceration. All fees for this process shall be
415 waived.

416

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

421 Section 7. Effective July 1, 2013, the sum of \$99,275 in
422 nonrecurring funds is appropriated from the General Revenue Fund
423 to the Department of Law Enforcement to fund the programming
424 costs associated with this act during the 2013-2014 fiscal year.

425 Section 8. Except as otherwise expressly provided in this
426 act, this act shall take effect January 1, 2014, except that,
427 before March 1, 2014, the Department of Law Enforcement or any
428 other criminal justice agency is not required to comply with an
429 order to expunge a criminal history record as required by this
430 act.

431 Section 9. This act shall take effect July 1, 2013.