

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7029 PCB OTA 18-04 OGSR/Human Trafficking Expunction
SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Edwards-Walpole
TIED BILLS: **IDEN./SIM. BILLS:** SB 7000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Harrington	Harrington
1) Government Accountability Committee	18 Y, 0 N	Harrington	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

“Human trafficking” is defined as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. Human trafficking is a form of modern-day slavery in which young children, teenagers, and adults are subjected to force, fraud, or coercion for sexual exploitation or forced labor.

Florida law allows a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. The offense must be related to the human trafficking scheme of which the person was a victim or must have been at the direction of an operator of the scheme. The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Any criminal history record that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.

Current law provides that a criminal history record related to human trafficking that is ordered expunged but that is retained by FDLE is confidential and exempt from public record requirements. Such records must be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency’s official duties; and upon order of a court of competent jurisdiction.

The bill reenacts the public record exemption, which will repeal on October 2, 2018, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Human Trafficking

Human trafficking is a form of modern-day slavery affecting young children, teenagers, and adults, who are subjected to force, fraud, or coercion for sexual exploitation or forced labor.⁶ Many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry. Trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.⁷ In 2004, the Legislature criminalized human trafficking and the unlawful procurement of human labor or services.⁸ Florida law defines the term "human trafficking" to include transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.⁹ Under current law, any person who knowingly engages in human trafficking commits a first-degree felony.¹⁰

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 787.06(1)(a), F.S.

⁷ *Id.*

⁸ Chapter 2004-391, L.O.F.; codified as s. 787.06, F.S.

⁹ Section 787.06(2)(d), F.S.

¹⁰ Section 787.06(3), F.S.

Expunction of Human Trafficking Records

In 2013, the Legislature created a process to allow a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. The offense must be related to the human trafficking scheme of which the person was a victim or must have been at the direction of an operator of the scheme.¹¹ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Any criminal history record that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.¹²

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for a criminal history record that is ordered expunged but that is retained by FDLE. Such record is confidential and exempt¹³ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.¹⁴ The record must be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties; and upon order of a court of competent jurisdiction.¹⁵

The 2013 public necessity statement for the exemption provided that:

The Legislature finds that it is a public necessity that a criminal history record ordered expunged under s. 943.0583, Florida Statutes, that is retained by the Department of Law Enforcement be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.¹⁶

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.¹⁷

During the 2017 interim, subcommittee staff consulted with staff from FDLE, the Florida Court Clerks and Comptrollers, and the Florida Prosecuting Attorney's Association as part of its review under the Open Government Sunset Review Act. According to FDLE, a total of 33 orders for expunction have

¹¹ Chapter 2013-99, L.O.F.; codified as s. 943.0583, F.S.

¹² Section 943.045(16), F.S.

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁴ Section 943.0583(10), F.S.

¹⁵ *Id.*

¹⁶ Section 2, ch. 2013-99, L.O.F.

¹⁷ Section 943.0583(10)(b), F.S.

been processed since 2014. Specifically, there was one order processed in 2014, there were 12 processed in 2015, and six in 2016, and there have been 14 thus far in 2017.¹⁸

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for a criminal history record of a victim of human trafficking that a court has ordered expunged but that has been retained by FDLE.

B. SECTION DIRECTORY:

Section 1 amends s. 943.0583, F.S., to reenact the public record exemption for certain expunged criminal history records retained by FDLE.

Section 2 provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

¹⁸ Email from Ronald E. Draa, Director of External Affairs, FDLE, to Senate Criminal Justice Committee staff on October 19, 2017 (on file with the Oversight, Transparency & Administration Subcommittee).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.