

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1441 Pub. Rec./Human Trafficking Victim Expunction

**SPONSOR(S):** Criminal Justice & Public Safety Subcommittee, Toledo

**TIED BILLS:** CS/CS/CS/HB 1439 **IDEN./SIM. BILLS:** CS/SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N, As CS	Mathews	Hall
2) Government Operations Subcommittee	13 Y, 0 N	Roth	Toliver
3) Judiciary Committee	19 Y, 0 N	Mathews	Kramer

### SUMMARY ANALYSIS

Human trafficking is modern day slavery which involves transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person. A human trafficking victim is authorized to petition a court for the expunction of his or her criminal history record resulting from an arrest or filing of charges for an offense committed or reported to have been committed while he or she was a victim of human trafficking, with the exception of certain offenses.

A petition for human trafficking victim expunction must be initiated with due diligence by the victim after he or she is no longer a victim of human trafficking or has sought human trafficking victim services. The petition to expunge must be accompanied by: a sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and official documentation of the petitioner's status as a human trafficking victim, if any exists. When a record is expunged, it is destroyed and any criminal intelligence and criminal investigative information that reveals or may reveal the human trafficking victim's identity is confidential and exempt from public records requirements.

While a human trafficking victim's expunged criminal history record itself is destroyed, current law does not exempt the information contained in the petition for expunction and accompanying information from public record.

CS/CS/CS/HB 1439 (2022), to which this bill is linked, expands eligibility for human trafficking victim expunction to records related to an arrest or charges filed for certain previously ineligible offenses committed or reported to have been committed by a person while he or she was a victim of human trafficking.

CS/HB 1441 amends s. 943.0583, F.S., to make confidential and exempt from public records any criminal history records related to an arrest or charges filed for newly eligible offenses that are ordered expunged by a court and any petition for human trafficking victim expunction and all related pleadings and documents.

Additionally, the bill provides that the expansion of the public records exemption for newly eligible expunged criminal records and the new exemption for human trafficking victim expunction petitions and related pleadings and documents are subject to the Open Government Sunset Review Act and will repeal on October 2, 2027, unless the Legislature reviews and reenacts the exemptions before that date.

The bill will become effective on the same date that CS/CS/CS/HB 1439 (2022) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of public records requirements of art. I, s. 24(a) of the Florida Constitution, provided the exemption passes by the two-thirds vote of each chamber. The general law must state with specificity the public necessity justifying the exemption, and must be no broader than necessary to meet its public purpose.<sup>1</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>3</sup> An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.<sup>4</sup>

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.

#### Human Trafficking

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploiting that person.<sup>5</sup> A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;<sup>6</sup>
- With or of a child or person believed to be a child younger than 18;<sup>7</sup> or
- If for commercial sexual activity, with a mentally defective<sup>8</sup> or mentally incapacitated<sup>9</sup> person.<sup>10</sup>

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<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> S. 787.06(2)(d), F.S.

<sup>6</sup> S. 787.06(3)(b), F.S.

<sup>7</sup> S. 787.06(3)(g), F.S.

<sup>8</sup> Mentally defective means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. 794.011(1)(a), F.S.

<sup>9</sup> Mentally incapacitated means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. S. 794.011(1)(b), F.S.

<sup>10</sup> *Id.*

## Human Trafficking Victim Expunction

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.<sup>11</sup> To be eligible for expunction, the offense must be related to a human trafficking scheme of which the person was a victim or must have been committed at the direction of an operator of the scheme,<sup>12</sup> and must not be one of the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child or person believed to be a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

A court located within the judicial circuit where the crime the human trafficking victim seeks to expunge took place is the court designated to hear the victim's petition.<sup>13</sup> A petition must be initiated by the petitioner with due diligence after he or she is no longer a victim of human trafficking or has sought human trafficking victim services.<sup>14</sup> The petition must be accompanied by:

- A sworn statement attesting that the petitioner is eligible for an expunction to the best of his or her knowledge and does not have other petitions to expunge or seal pending before any court; and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.<sup>15</sup>

When a criminal history record is ordered to be expunged, the record must be physically destroyed by any criminal justice agency possessing such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.<sup>16</sup>

Florida provides a public record exemption<sup>17</sup> for criminal intelligence<sup>18</sup> and criminal investigative information<sup>19</sup> that includes:

- Any information that reveals the identity of a victim of the crime of child abuse;<sup>20</sup>
- Any information that may reveal the identity of a person who is a victim of any sexual offense;<sup>21</sup> and

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<sup>11</sup> Ch. 2013-98, Laws of Fla.

<sup>12</sup> Chapter 2013-99, Laws of Fla.; codified as s. 943.0583, F.S.

<sup>13</sup> S. 943.0583(2), F.S.

<sup>14</sup> S. 943.0583(4), F.S.

<sup>15</sup> S. 943.0583(6), F.S.

<sup>16</sup> S. 943.045(16), F.S.

<sup>17</sup> S. 119.071(2)(h), F.S.

<sup>18</sup> The term "criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. S. 119.011(3)(a), F.S.

<sup>19</sup> The term "criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. S. 119.011(3)(b), F.S.

<sup>20</sup> See ch. 827, F.S.

<sup>21</sup> See chs. 794, 796, 800, 827, and 847, F.S.

- A photograph, videotape, or image of any part of the body of a victim of a crime of certain sexual offenses.<sup>22</sup>

In 2015, the Legislature expanded the exemption to include:<sup>23</sup>

- Any information that reveals the identity of a person under the age of 18 who is the victim of human trafficking for labor or services;<sup>24</sup>
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;<sup>25</sup> and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.<sup>26</sup>

Additionally, criminal intelligence and criminal investigative information that reveals or may reveal the identity of a victim of human trafficking whose criminal history has been expunged or ordered expunged is also confidential and exempt<sup>27</sup> from public records requirements.<sup>28</sup>

While criminal intelligence and criminal investigative information is confidential and exempt from public records requirements, a law enforcement agency may share such information:

- In the furtherance of its official duties and responsibilities;
- With another governmental agency in the furtherance of its official duties and responsibilities; or
- For print, publication, or broadcast, if the law enforcement agency determines that releasing the information will assist in locating or identifying a person the agency believes is missing or endangered; however, the information provided should be limited to information needed to identify or locate the victim.<sup>29</sup>

Current law does not provide a public records exemption for a human trafficking victim's petition and any accompanying documents for expunction of his or her criminal history record resulting from an offense committed while he or she was a victim of human trafficking.

#### CS/CS/CS/HB 1439 (2022)

CS/CS/CS/HB 1439 (2022), to which this bill is linked, amends s. 943.0583, F.S., to allow a human trafficking victim to seek expunction for an arrest or charges filed for the following criminal offenses, so long as he or she was not found guilty of or did not plead guilty or nolo contendere to the offense, which occurred as a result of the person being a victim of human trafficking:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;

<sup>22</sup> See s. 810.145, F.S., and chs. 794, 796, 800, 827, and 847, F.S.

<sup>23</sup> Ch. 2015-146, Laws of Fla.; S. 119.071(2)(h)1., F.S.

<sup>24</sup> See s. 787.06(3)(a), F.S.

<sup>25</sup> See s. 787.06(3)(b), (d), (f), and (g), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> There is a difference between records the Legislature designates 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. Sch. Bd. 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 683, 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 Op. Att'y Gen. Fla. 85-62(1985).

<sup>28</sup> S. 943.0583(11), F.S.

<sup>29</sup> Ss. 119.071(2)(h)2. and 943.0583(11)(b), F.S.

- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

## Effect of Proposed Changes

### Exemption for Expanded Expunged Records

CS/HB 1441 amends s. 943.0583, F.S., to make the expansion of the current public records exemptions in ss. 943.0583(10) and (11), F.S., pursuant to CS/CS/CS/HB 1439 (2022) expanding eligibility for human trafficking victim expunction, subject to the Open Government and Sunset Review Act. The expansion of the exemptions will be repealed on October 2, 2027, unless saved from repeal by the Legislature.

The bill provides a public necessity statement as required by the Florida Constitution. The statement provides that it is a public necessity that certain criminal history records of human trafficking victims that were expunged, because the charge was nolle prosequi, dismissed by a court, or resolved by a judgement of acquittal or a not guilty verdict be made confidential and exempt from public record.

### Exemption for Petition for Expunction

CS/HB 1441 amends s. 943.0583, F.S., to create a public records exemption for a petition for human trafficking victim expunction and all related pleadings and documents. As such, under the bill, a petition for human trafficking victim expunction and all related pleadings and documents are confidential and exempt from public records. The public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The public necessity statement provides that victims of human trafficking face barriers to employment and other opportunities and the potential for public knowledge that a human trafficking victim is seeking expungement and the information accompanying such petition may expose a human trafficking victim to possible discrimination. As such, it is necessary that such petitions and related documents be made confidential to allow human trafficking victims the opportunity to rebuild their lives and reenter society without facing potential discrimination.

The bill will become effective on the same date that CS/CS/CS/HB 1439 (2022) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

**Section 2:** Provides a public necessity statement as required by the Florida Constitution.

**Section 3:** Provides that the bill is effective on the same date that CS/CS/CS/HB 1439 (2022) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## 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.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for a human trafficking victim's petition for expunction of a criminal history record and all related pleadings and documents. The bill also expands existing public records exemptions related to expunged criminal history records of a human trafficking victim. Both the petition and all related documents, as well as the expunged criminal records are confidential and exempt from public records to protect a human trafficking victim from the potential for public knowledge that he or she is a human trafficking victim. The exemption does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2022, the Criminal Justice & Public Safety Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Expanded the existing public records exemption in ss. 943.0583(10) and (11), F.S., to make confidential and exempt newly eligible expunged human trafficking victim criminal history records;
- Provided the expanded exemptions are subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2027; and
- Specified that if the expanded exemptions are not saved from repeal, s. 948.0583, F.S., shall revert to the law in existence on June 30, 2022, with specified exceptions.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.