

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 841 Pub. Rec./Human Trafficking Victim Expunction

**SPONSOR(S):** Criminal Justice Subcommittee, Hawkins

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1210, SB 1428

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee	18 Y, 0 N	Skinner	Toliver
3) Judiciary Committee	20 Y, 0 N	Leshko	Kramer

### SUMMARY ANALYSIS

Human trafficking is modern day slavery which involves transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, 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. 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 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 whose criminal history record has been expunged or ordered expunged is confidential and exempt from public record requirements. Additionally, a criminal history record that is ordered expunged that is retained by the Florida Department of Law Enforcement is also confidential and exempt from public record requirements; however, current law does not exempt the information contained in the petition for expunction or accompanying information from public record requirements.

CS/HB 841 amends s. 943.0583, F.S., to make confidential and exempt from public record requirements a petition for human trafficking victim expunction and all related pleadings and documents. The public record exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, unless reviewed and saved from repeal by the Legislature.

The bill may have an indeterminate negative fiscal impact on agencies holding petitions and related pleadings and documents for human trafficking victim expunction if additional training is required to comply with the expanded public record exemption.

The bill provides an effective date of October 1, 2023.

**Article I, section 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:

#### **Background**

##### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person the right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>2</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>3</sup> Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record exemption may be created, revised, 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>5</sup> An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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
- Protects trade or business secrets.<sup>6</sup>

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2<sup>nd</sup> of the fifth year following enactment, unless the Legislature reenacts the exemption.<sup>7</sup>

Furthermore, 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. However, 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.<sup>8</sup>

##### Human Trafficking

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

<sup>2</sup> Art. I, s. 24(c), Fla. Const.

<sup>3</sup> A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, art. I of the Florida Constitution. S. 119.011(8), F.S.

<sup>4</sup> S. 119.15, F.S.

<sup>5</sup> S. 119.15(6)(b), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 119.15(3), F.S.

<sup>8</sup> 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); See Attorney General Opinion 85-62 (August 1, 1985).

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.<sup>9</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>10</sup>
- With or of a child or person believed to be a child younger than 18;<sup>11</sup> or
- If for commercial sexual activity, with a mentally defective<sup>12</sup> or mentally incapacitated<sup>13</sup> person.<sup>14</sup>

### *Public Record Exemptions*

Section 119.071(2)(h), F.S., provides a public record exemption for criminal intelligence<sup>15</sup> and criminal investigative information<sup>16</sup> that includes:

- Any information that reveals the identity of a victim of the crime of child abuse;<sup>17</sup>
- Any information that may reveal the identity of a person who is a victim of any sexual offense;<sup>18</sup> and
- A photograph, videotape, or image of any part of the body of a victim of a crime of certain sexual offenses.<sup>19</sup>

In 2015, the Legislature expanded the exemption to include:<sup>20</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>21</sup>
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;<sup>22</sup> and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.<sup>23</sup>

### 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, regardless of the disposition of the arrest or of any charges.<sup>24</sup> To be eligible for expunction, the offense must be committed or reported to have been committed while the person was a victim of a human trafficking scheme or must have been committed or reported to have been committed at the direction of an operator of the human trafficking scheme, and must not be one of the following offenses:

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<sup>9</sup> S. 787.06(2)(d), F.S.

<sup>10</sup> Ss. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.

<sup>11</sup> Ss. 787.06(3)(a)1., (c)1., (e)1., (f)1., and (g), F.S.

<sup>12</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)(c), F.S.

<sup>13</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)(d), F.S.

<sup>14</sup> S. 787.06(3)(g), F.S.

<sup>15</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>16</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>17</sup> See ch. 827, F.S.

<sup>18</sup> See chs. 794, 796, 800, 827, and 847, F.S.

<sup>19</sup> See ss. 119.071(2)(h) and 810.145, F.S., and chs. 794, 796, 800, 827, and 847, F.S.

<sup>20</sup> Ch. 2015-146, Laws of Fla.; S. 119.071(2)(h)1., F.S.

<sup>21</sup> See s. 787.06(3)(a), F.S.

<sup>22</sup> See ss. 787.06(3)(b), (d), (f), and (g), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Ch. 2013-98, Laws of Fla.; As such, a victim would be eligible to petition the court for expunction even if the charges resulted in a conviction.

- 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;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.<sup>25</sup>

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>26</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>27</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;<sup>28</sup> and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.<sup>29</sup>

A person who has his or her criminal history record expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except if the person is a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.<sup>30</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>31</sup> A criminal history record ordered expunged for a victim of human trafficking that is maintained by FDLE is confidential and exempt under s. 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const. The criminal history record, however, will still be 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.
- Upon order of a court of competent jurisdiction.<sup>32</sup>

Criminal intelligence and criminal investigative information that reveals or may reveal the identity of a victim of human trafficking whose criminal history record has been expunged or ordered expunged is also confidential and exempt from public records requirements.<sup>33</sup>

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

<sup>25</sup> S. 943.0583(3), F.S.

<sup>26</sup> S. 943.0583(2), F.S.

<sup>27</sup> S. 943.0583(4), F.S.

<sup>28</sup> Any person who knowingly provides false information in such a sworn statement commits a felony of the third degree. A third-degree felony is punishable by a term of imprisonment not exceeding five years and a \$5,000 fine. Ss. 943.0583(6), 775.082(3)(e) and 775.083(1)(c), F.S.

<sup>29</sup> S. 943.0583(6), F.S.

<sup>30</sup> S. 943.0583(8)(b), F.S.

<sup>31</sup> S. 943.0583(8)(a), F.S.

<sup>32</sup> S. 943.0583(10)(a), F.S.

<sup>33</sup> S. 943.0583(11), F.S.

- 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>34</sup>

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

### **Effect of Proposed Changes**

CS/HB 841 amends s. 943.0583, F.S., to make confidential and exempt from public record requirements a petition for human trafficking victim expunction and all related pleadings and documents. The public record exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, unless reviewed and saved from repeal by the Legislature.

The bill includes the constitutionally required public necessity statement.<sup>35</sup>

The bill provides an effective date of October 1, 2023.

#### **B. SECTION DIRECTORY:**

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

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date of October 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

See Fiscal Comments.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

See Fiscal Comments.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

<sup>34</sup> Ss. 119.071(2)(h)2. and 943.0583(11)(b), F.S.

<sup>35</sup> Art. I, s. 24(c), Fla. Const., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

The bill may have an indeterminate negative fiscal impact on agencies holding petitions, pleadings, and documents related to human trafficking victim expunction, as staff responsible for complying with public record requests may require training related to the expansion of the public record exemption. However, any additional costs will likely be absorbed within existing resources.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 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. The public necessity statement provides, in part, that the Legislature finds that a petition for human trafficking victim expunction and all related pleadings and documents be made confidential and exempt from public record requirements because 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, the Legislature finds 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.

###### Breadth of Exemption

Article I, 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 petition for human trafficking victim expunction and all related pleadings and documents, which does not appear to be broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 13, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language from the bill that would have changed the eligibility criteria for a human trafficking victim to have his or her criminal record history

expunged and removed an increase in the offense degree for providing false information, so that the bill complies with art. I, s. 24(c), of the Florida Constitution, requiring that laws pertaining to public record exemptions contain only exemptions and provisions governing the enforcement of public records requirements.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.