

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			
3) Judiciary Committee			

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 records 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 records requirements, however, current law does not exempt the information contained in the petition for expunction or accompanying information from public records requirements.

CS/HB 841 amends s. 943.0583, F.S., to make confidential and exempt from public records requirements a petition for human trafficking victim expunction and all related pleadings and documents. The public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, unless reviewed and saved from repeal by the Legislature.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 records or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Art. I, s. 24(a) of the Florida Constitution sets forth every person's right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide public records exemptions by general law.² The general law must state with specificity the public necessity justifying the exemption, be no broader than necessary to accomplish its purpose, and pass by a two-thirds vote of each chamber.³

Within Florida's Public Records laws, the Open Government Sunset Review (OGSR) Act⁴ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose. An exemption serves an identifiable public purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs the public policy interest in open government, and the purpose cannot be accomplished without the exemption:

- 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.⁵

There is a difference between records the Legislature has determined to be exempt from the Florida Public Records Act and those which the Legislature has determined to be exempt from the Florida Public Records Act and confidential.⁶ Information deemed confidential in the statutes is not subject to inspection and may only be released to the persons or organizations designated in the statute.⁷ On the other hand, information that is exempt but not confidential may be disclosed under certain circumstances.⁸

The OGSR Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁹ An exemption may be maintained only if it serves an identifiable public purpose and is not broader than necessary.¹⁰

Human Trafficking

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.¹¹ 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

¹ Art. 1, s. 24(a), Fla. Const.; Florida's Public Record laws are codified in ch. 119, F.S.

² Art. I, s. 24(c), Fla. Const.

³ *Id.*

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

⁷ *Id.*

⁸ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

⁹ S. 119.15(3), F.S.

¹⁰ S. 119.15(6)(b), F.S.

¹¹ S. 787.06(2)(d), F.S.

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;¹²
- With or of a child or person believed to be a child younger than 18;¹³ or
- If for commercial sexual activity, with a mentally defective¹⁴ or mentally incapacitated¹⁵ person.¹⁶

Public Records Exemptions

Section 119.071(2)(h), F.S., provides a public record exemption¹⁷ for criminal intelligence¹⁸ and criminal investigative information¹⁹ that includes:

- Any information that reveals the identity of a victim of the crime of child abuse;²⁰
- Any information that may reveal the identity of a person who is a victim of any sexual offense;²¹ and
- A photograph, videotape, or image of any part of the body of a victim of a crime of certain sexual offenses.²²

In 2015, the Legislature expanded the exemption to include:²³

- 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;²⁴
- Any information that may reveal the identity of a person who is the victim of human trafficking for commercial sexual activity;²⁵ and
- A photograph, videotape, or image of any part of the body of a victim of human trafficking involving commercial sexual activity.²⁶

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.²⁷ 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 scheme, and must not be one of the following offenses:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;

¹² S. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.

¹³ S. 787.06(3)(a)1., (c)1., (e)1., (f)1., and (g), F.S.

¹⁴ 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.

¹⁵ 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.

¹⁶ S. 787.06(3)(g), F.S.

¹⁷ S. 119.071(2)(h), F.S.

¹⁸ 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.

¹⁹ 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.

²⁰ See ch. 827, F.S.

²¹ See chs. 794, 796, 800, 827, and 847, F.S.

²² See ss. 119.071(2)(h) and 810.145, F.S., and chs. 794, 796, 800, 827, and 847, F.S.

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

²⁴ See s. 787.06(3)(a), F.S.

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

²⁶ *Id.*

²⁷ Ch. 2013-98, Laws of Fla.

- 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.²⁸

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.²⁹ 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.³⁰ 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;³¹ and
- Official documentation of the petitioner's status as a human trafficking victim, if any exists.

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.³²

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.³³ 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.³⁴

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.³⁵

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

²⁸ S. 943.0583(3), F.S.

²⁹ S. 943.0583(2), F.S.

³⁰ S. 943.0583(4), F.S.

³¹ 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.

³² S. 943.0583(8)(b), F.S.

³³ S. 943.0583(8)(a), F.S.

³⁴ S. 943.0583(10)(a), F.S.

³⁵ S. 943.0583(11), F.S.

endangered; however, the information provided should be limited to information needed to identify or locate the victim.³⁶

Current law does not provide a public records 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 records requirements a petition for human trafficking victim expunction and all related pleadings and documents. The public records 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 a public necessity statement, which 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 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:

³⁶ Ss. 119.071(2)(h)2. and 943.0583(11)(b), F.S.

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, 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 records or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public records or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records 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. 1, 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.