

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 exceptions; providing that such

29 | lawful denial does not constitute perjury or subject  
 30 | the person to liability; providing that cross-  
 31 | references are considered general reference for the  
 32 | purpose of incorporation by reference; amending ss.  
 33 | 943.0582, 943.0585, 943.059, and 961.06, F.S.;  
 34 | conforming provisions to changes made by the act;  
 35 | providing an appropriation; providing for  
 36 | applicability; providing effective dates.

37 |  
 38 | WHEREAS, victims of trafficking may be forced to engage in  
 39 | a variety of illegal acts beyond prostitution, and

40 | WHEREAS, trafficked persons have not always been recognized  
 41 | as victims by the police and prosecutors and plead guilty or do  
 42 | not understand the consequences of criminal charges, and

43 | WHEREAS, all persons with criminal records reflecting their  
 44 | involvement in the sex industry may face barriers to employment  
 45 | and other life opportunities long after they escape from their  
 46 | trafficking situations, and

47 | WHEREAS, there is a genuine need for a workable solution to  
 48 | alleviate the impact of the collateral consequences of  
 49 | conviction for victims of human trafficking, NOW, THEREFORE,

50 |  
 51 | Be It Enacted by the Legislature of the State of Florida:

52 |  
 53 | Section 1. Paragraph (a) of subsection (23) of section  
 54 | 90.803, Florida Statutes, is amended to read:

55 | 90.803 Hearsay exceptions; availability of declarant  
 56 | immaterial.—The provision of s. 90.802 to the contrary

57 | notwithstanding, the following are not inadmissible as evidence,  
 58 | even though the declarant is available as a witness:

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

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

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

80 | 2. The child either:

81 | a. Testifies; or

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

84 | Unavailability shall include a finding by the court that the

85 | child's participation in the trial or proceeding would result in  
 86 | a substantial likelihood of severe emotional or mental harm, in  
 87 | addition to findings pursuant to s. 90.804(1).

88 | Section 2. Section 943.0583, Florida Statutes, is created  
 89 | to read:

90 | 943.0583 Human trafficking victim expunction.-

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

92 | (a) "Human trafficking" has the same meaning as provided  
 93 | in s. 787.06.

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

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

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

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

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

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

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

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

138 (a) The petitioner's sworn statement attesting that the  
139 petitioner is eligible for such an expunction to the best of his  
140 or her knowledge or belief and does not have any other petition

141 to expunge or any petition to seal pending before any court.

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

144  
 145 Any person who knowingly provides false information on such  
 146 sworn statement to the court commits a felony of the third  
 147 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 148 775.084.

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

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

160 (c) If relief is granted by the court, the clerk of the  
 161 court shall certify copies of the order to the appropriate state  
 162 attorney or the statewide prosecutor and the arresting agency.  
 163 The arresting agency is responsible for forwarding the order to  
 164 any other agency listed in the court order to which the  
 165 arresting agency disseminated the criminal history record  
 166 information to which the order pertains. The department shall  
 167 forward the order to expunge to the Federal Bureau of  
 168 Investigation. The clerk of the court shall certify a copy of

169 the order to any other agency that the records of the court  
170 reflect has received the criminal history record from the court.

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

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

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

190 (9) Any reference to any other chapter, section, or  
191 subdivision of the Florida Statutes in this section constitutes  
192 a general reference under the doctrine of incorporation by  
193 reference.

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

196 943.0582 Prearrest, postarrest, or teen court diversion

197 program expunction.—

198 (6) Expunction or sealing granted under this section does  
199 not prevent the minor who receives such relief from petitioning  
200 for the expunction or sealing of a later criminal history record  
201 as provided for in ss. 943.0583, 943.0585, and 943.059, if the  
202 minor is otherwise eligible under those sections.

203 Section 4. Paragraph (a) of subsection (4) of section  
204 943.0585, Florida Statutes, is amended to read:

205 943.0585 Court-ordered expunction of criminal history  
206 records.—The courts of this state have jurisdiction over their  
207 own procedures, including the maintenance, expunction, and  
208 correction of judicial records containing criminal history  
209 information to the extent such procedures are not inconsistent  
210 with the conditions, responsibilities, and duties established by  
211 this section. Any court of competent jurisdiction may order a  
212 criminal justice agency to expunge the criminal history record  
213 of a minor or an adult who complies with the requirements of  
214 this section. The court shall not order a criminal justice  
215 agency to expunge a criminal history record until the person  
216 seeking to expunge a criminal history record has applied for and  
217 received a certificate of eligibility for expunction pursuant to  
218 subsection (2). A criminal history record that relates to a  
219 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
220 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
221 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
222 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
223 any violation specified as a predicate offense for registration  
224 as a sexual predator pursuant to s. 775.21, without regard to



225 whether that offense alone is sufficient to require such  
226 registration, or for registration as a sexual offender pursuant  
227 to s. 943.0435, may not be expunged, without regard to whether  
228 adjudication was withheld, if the defendant was found guilty of  
229 or pled guilty or nolo contendere to the offense, or if the  
230 defendant, as a minor, was found to have committed, or pled  
231 guilty or nolo contendere to committing, the offense as a  
232 delinquent act. The court may only order expunction of a  
233 criminal history record pertaining to one arrest or one incident  
234 of alleged criminal activity, except as provided in this  
235 section. The court may, at its sole discretion, order the  
236 expunction of a criminal history record pertaining to more than  
237 one arrest if the additional arrests directly relate to the  
238 original arrest. If the court intends to order the expunction of  
239 records pertaining to such additional arrests, such intent must  
240 be specified in the order. A criminal justice agency may not  
241 expunge any record pertaining to such additional arrests if the  
242 order to expunge does not articulate the intention of the court  
243 to expunge a record pertaining to more than one arrest. This  
244 section does not prevent the court from ordering the expunction  
245 of only a portion of a criminal history record pertaining to one  
246 arrest or one incident of alleged criminal activity.  
247 Notwithstanding any law to the contrary, a criminal justice  
248 agency may comply with laws, court orders, and official requests  
249 of other jurisdictions relating to expunction, correction, or  
250 confidential handling of criminal history records or information  
251 derived therefrom. This section does not confer any right to the  
252 expunction of any criminal history record, and any request for

253 | expunction of a criminal history record may be denied at the  
 254 | sole discretion of the court.

255 |       (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
 256 | criminal history record of a minor or an adult which is ordered  
 257 | expunged by a court of competent jurisdiction pursuant to this  
 258 | section must be physically destroyed or obliterated by any  
 259 | criminal justice agency having custody of such record; except  
 260 | that any criminal history record in the custody of the  
 261 | department must be retained in all cases. A criminal history  
 262 | record ordered expunged that is retained by the department is  
 263 | confidential and exempt from the provisions of s. 119.07(1) and  
 264 | s. 24(a), Art. I of the State Constitution and not available to  
 265 | any person or entity except upon order of a court of competent  
 266 | jurisdiction. A criminal justice agency may retain a notation  
 267 | indicating compliance with an order to expunge.

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

- 274 |           1. Is a candidate for employment with a criminal justice  
 275 | agency;
- 276 |           2. Is a defendant in a criminal prosecution;
- 277 |           3. Concurrently or subsequently petitions for relief under  
 278 | this section, s. 943.0583, or s. 943.059;
- 279 |           4. Is a candidate for admission to The Florida Bar;
- 280 |           5. Is seeking to be employed or licensed by or to contract

281 with the Department of Children and Family Services, the  
 282 Division of Vocational Rehabilitation within the Department of  
 283 Education, the Agency for Health Care Administration, the Agency  
 284 for Persons with Disabilities, the Department of Health, the  
 285 Department of Elderly Affairs, or the Department of Juvenile  
 286 Justice or to be employed or used by such contractor or licensee  
 287 in a sensitive position having direct contact with children, the  
 288 disabled, or the elderly;

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

294 7. Is seeking authorization from a seaport listed in s.  
 295 311.09 for employment within or access to one or more of such  
 296 seaports pursuant to s. 311.12.

297 Section 5. Paragraph (a) of subsection (4) of section  
 298 943.059, Florida Statutes, is amended to read:

299 943.059 Court-ordered sealing of criminal history  
 300 records.—The courts of this state shall continue to have  
 301 jurisdiction over their own procedures, including the  
 302 maintenance, sealing, and correction of judicial records  
 303 containing criminal history information to the extent such  
 304 procedures are not inconsistent with the conditions,  
 305 responsibilities, and duties established by this section. Any  
 306 court of competent jurisdiction may order a criminal justice  
 307 agency to seal the criminal history record of a minor or an  
 308 adult who complies with the requirements of this section. The

309 court shall not order a criminal justice agency to seal a  
310 criminal history record until the person seeking to seal a  
311 criminal history record has applied for and received a  
312 certificate of eligibility for sealing pursuant to subsection  
313 (2). A criminal history record that relates to a violation of s.  
314 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
315 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
316 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
317 916.1075, a violation enumerated in s. 907.041, or any violation  
318 specified as a predicate offense for registration as a sexual  
319 predator pursuant to s. 775.21, without regard to whether that  
320 offense alone is sufficient to require such registration, or for  
321 registration as a sexual offender pursuant to s. 943.0435, may  
322 not be sealed, without regard to whether adjudication was  
323 withheld, if the defendant was found guilty of or pled guilty or  
324 nolo contendere to the offense, or if the defendant, as a minor,  
325 was found to have committed or pled guilty or nolo contendere to  
326 committing the offense as a delinquent act. The court may only  
327 order sealing of a criminal history record pertaining to one  
328 arrest or one incident of alleged criminal activity, except as  
329 provided in this section. The court may, at its sole discretion,  
330 order the sealing of a criminal history record pertaining to  
331 more than one arrest if the additional arrests directly relate  
332 to the original arrest. If the court intends to order the  
333 sealing of records pertaining to such additional arrests, such  
334 intent must be specified in the order. A criminal justice agency  
335 may not seal any record pertaining to such additional arrests if  
336 the order to seal does not articulate the intention of the court

337 to seal records pertaining to more than one arrest. This section  
338 does not prevent the court from ordering the sealing of only a  
339 portion of a criminal history record pertaining to one arrest or  
340 one incident of alleged criminal activity. Notwithstanding any  
341 law to the contrary, a criminal justice agency may comply with  
342 laws, court orders, and official requests of other jurisdictions  
343 relating to sealing, correction, or confidential handling of  
344 criminal history records or information derived therefrom. This  
345 section does not confer any right to the sealing of any criminal  
346 history record, and any request for sealing a criminal history  
347 record may be denied at the sole discretion of the court.

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

363 (a) The subject of a criminal history record sealed under  
364 this section or under other provisions of law, including former

365 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
366 deny or fail to acknowledge the arrests covered by the sealed  
367 record, except when the subject of the record:

368 1. Is a candidate for employment with a criminal justice  
369 agency;

370 2. Is a defendant in a criminal prosecution;

371 3. Concurrently or subsequently petitions for relief under  
372 this section, s. 943.0583, or s. 943.0585;

373 4. Is a candidate for admission to The Florida Bar;

374 5. Is seeking to be employed or licensed by or to contract  
375 with the Department of Children and Family Services, the  
376 Division of Vocational Rehabilitation within the Department of  
377 Education, the Agency for Health Care Administration, the Agency  
378 for Persons with Disabilities, the Department of Health, the  
379 Department of Elderly Affairs, or the Department of Juvenile  
380 Justice or to be employed or used by such contractor or licensee  
381 in a sensitive position having direct contact with children, the  
382 disabled, or the elderly;

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

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

392 8. Is seeking authorization from a Florida seaport

393 identified in s. 311.09 for employment within or access to one  
394 or more of such seaports pursuant to s. 311.12.

395 Section 6. Paragraph (e) of subsection (1) of section  
396 961.06, Florida Statutes, is amended to read:

397 961.06 Compensation for wrongful incarceration.—

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

402 (e) Notwithstanding any provision to the contrary in s.  
403 943.0583 or s. 943.0585, immediate administrative expunction of  
404 the person's criminal record resulting from his or her wrongful  
405 arrest, wrongful conviction, and wrongful incarceration. The  
406 Department of Legal Affairs and the Department of Law  
407 Enforcement shall, upon a determination that a claimant is  
408 entitled to compensation, immediately take all action necessary  
409 to administratively expunge the claimant's criminal record  
410 arising from his or her wrongful arrest, wrongful conviction,  
411 and wrongful incarceration. All fees for this process shall be  
412 waived.

413  
414 The total compensation awarded under paragraphs (a), (c), and  
415 (d) may not exceed \$2 million. No further award for attorney's  
416 fees, lobbying fees, costs, or other similar expenses shall be  
417 made by the state.

418 Section 7. Effective July 1, 2013, the sum of \$99,275 in  
419 nonrecurring funds is appropriated from the General Revenue Fund  
420 to the Department of Law Enforcement to fund programming costs

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421 | associated with this act during the 2013-2014 fiscal year.

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