

Senate Study Bill 3131 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to the expungement of certain criminal history
2 records of victims of human trafficking, and including
3 penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 710A.8 Expungement of criminal
2 history records — human trafficking victims.

3 1. As used in this section, unless the context otherwise
4 requires:

5 a. "*Human trafficking*" means the same as defined in section
6 710A.1.

7 b. "*Official documentation*" means documentation issued by
8 a federal, state, or local office, agency, or department that
9 provides evidence of a person's status as a victim of human
10 trafficking.

11 c. "*Victim of human trafficking*" means a person subjected to
12 human trafficking.

13 2. a. (1) Except as otherwise provided in subsection 9, a
14 person may petition the court for expungement of the person's
15 criminal history record resulting from the arrest or filing of
16 a charge, without regard to the disposition of the arrest or
17 of the charge, for one or more offenses committed or reported
18 to have been committed while the person was a victim of human
19 trafficking.

20 (2) A petition for expungement may be filed by a person
21 at any time after the date on which the person is no longer a
22 victim of human trafficking or the date on which the person
23 has accessed services for victims of human trafficking. The
24 petition is not required to be filed in the court in which the
25 person's criminal proceedings originally took place.

26 b. A petition filed under this section shall be considered
27 complete only if accompanied by all of the following:

28 (1) The petitioner's sworn statement attesting that the
29 petitioner is eligible for such expungement to the best of the
30 petitioner's knowledge or belief. A petitioner who knowingly
31 provides false information on the sworn statement commits a
32 class "D" felony, punishable as provided in section 720.2.

33 (2) Official documentation, if available.

34 c. A clerk of court shall not charge a filing fee, service
35 charge, copy fee, or any other charge for a petition filed

1 under this section.

2 3. A copy of a petition filed under this section shall be
3 served upon the appropriate county attorney or the attorney
4 general, and the arresting law enforcement agency. The
5 county attorney, the attorney general, and the arresting law
6 enforcement agency may respond to the court regarding the
7 petition.

8 4. a. The petitioner and the petitioner's attorney
9 may appear at any court proceeding related to the petition
10 telephonically or via remote video conference.

11 b. The court shall allow a victim counselor from a county
12 attorney's office or from a law enforcement agency to be
13 present with the petitioner during any court proceeding related
14 to the petition if requested by the petitioner and if a victim
15 counselor is available.

16 5. a. If a petitioner submits official documentation
17 pursuant to subsection 2, paragraph "b", subparagraph (2), it
18 shall create a presumption that the petitioner's participation
19 in the offense or offenses for which expungement is sought
20 was due to the petitioner's status as a victim of human
21 trafficking, and the court's final determination of the
22 petition shall be by a preponderance of the evidence.

23 b. Official documentation shall not be required for a court
24 to grant a petition under this section; however, a court's
25 final determination without official documentation shall be
26 based on clear and convincing evidence.

27 6. a. Notwithstanding any law to the contrary, a court
28 may order the expungement of the criminal history record of a
29 victim of human trafficking if the victim of human trafficking
30 complies with the requirements of this section.

31 b. If relief is ordered by a court, the clerk of court shall
32 certify a copy of the court order to the appropriate county
33 attorney or attorney general, the arresting law enforcement
34 agency, and any other agency that court records reflect has
35 received the victim's criminal history record from the court.

1 The arresting law enforcement agency shall forward the court
2 order to each agency to which the arresting law enforcement
3 agency disseminated the criminal history record to which the
4 court order pertains. The department of public safety shall
5 forward the court order to the federal bureau of investigation.

6 7. *a.* A criminal history record that is expunged under this
7 section shall be a confidential record and exempt from public
8 access under section 22.7, except that the criminal history
9 record shall be made available by a clerk of district court
10 upon court order.

11 *b.* A criminal history record that is expunged under this
12 section that is retained by the department of public safety
13 shall be a confidential record and exempt from public access
14 under section 22.7, except that the criminal history record
15 shall be made available to all of the following:

16 (1) A criminal justice agency, upon request.

17 (2) A government agency that is authorized by state or
18 federal law to determine eligibility to purchase or possess a
19 firearm or to carry a concealed firearm for use in the course
20 of the government agency's official duties, upon request.

21 (3) Any other agency, upon court order.

22 *c.* Any information that reveals, or that may reveal, the
23 identity of a person whose criminal history record has been
24 expunged under this section shall be a confidential record and
25 exempt from public access under section 22.7.

26 *d.* Criminal investigative data and criminal intelligence
27 data that is confidential and exempt under paragraphs "a"
28 through "c" may be disclosed by a law enforcement agency for any
29 of the following reasons:

30 (1) In furtherance of the law enforcement agency's official
31 duties and responsibilities.

32 (2) For print, publication, or broadcast if the law
33 enforcement agency determines that such release will assist
34 in locating or identifying a person whom the agency believes
35 is missing or endangered. The information provided shall be

1 limited to only the information necessary to identify or locate
2 the missing or endangered person.

3 (3) To another government agency in the furtherance of the
4 government agency's official duties and responsibilities.

5 8. a. A person who is the subject of a criminal history
6 record that is expunged under this section may lawfully deny
7 or fail to acknowledge an arrest or conviction covered by the
8 expunged criminal history record, except if the person is a
9 candidate for employment with a criminal justice agency or is a
10 defendant in a criminal prosecution.

11 b. Subject to the exceptions in paragraph "a", a person who
12 has been granted an expungement of a criminal history record
13 under this section shall not be held under any law of this
14 state to have committed perjury or to be otherwise liable for
15 providing a false statement by reason of the failure to recite
16 or acknowledge the criminal history record.

17 9. This section shall not apply to any of the following
18 offenses:

19 a. Homicide or a related crime in violation of chapter 707.

20 b. Intimidation with a dangerous weapon in violation of
21 section 708.6.

22 c. Going armed with intent in violation of section 708.8.

23 d. Stalking in violation of section 708.11, subsection 3.

24 e. Sexual abuse in violation of chapter 709.

25 f. Kidnapping or related offenses in violation of chapter
26 710.

27 g. Robbery, aggravated theft, or extortion in violation of
28 chapter 711.

29 h. Arson in violation of chapter 712.

30 i. Burglary in the first degree in violation of section
31 713.3.

32 j. Burglary in the second degree in violation of section
33 713.5.

34 k. Neglect or abandonment of a dependent person in violation
35 of section 726.3.

1 1. Child endangerment in violation of section 726.6.

2 10. If a person has been adjudicated not guilty by reason
3 of insanity or was found to be incompetent to stand trial,
4 the expungement of the person's criminal history record shall
5 not prevent the entry of the judgment in state and national
6 databases for use in determining the person's eligibility to
7 purchase or possess a firearm or to carry a concealed firearm
8 pursuant to sections 724.8 and 724.26 and 18 U.S.C. §922(t),
9 and shall not prevent any government agency that is authorized
10 by state or federal law to determine the person's eligibility
11 to purchase or possess a firearm or to carry a concealed
12 firearm from accessing or using the person's criminal history
13 record during the course of such agency's official duties.

14 11. a. This section shall not be construed to confer any
15 right to any person to the expungement of the person's criminal
16 history record.

17 b. Any petition for expungement of a criminal history record
18 under this section may be denied at the discretion of the
19 court.

20 12. The supreme court may prescribe rules governing the
21 procedures applicable to the expungement of a criminal history
22 record under this section.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill is related to the expungement of certain criminal
27 history records (criminal record) of victims of human
28 trafficking. "Human trafficking" is defined in the bill as
29 participating in a venture to recruit, harbor, transport,
30 supply provisions, or obtain a person for forced labor or
31 service that results in involuntary servitude, peonage,
32 debt bondage, or slavery; or for commercial sexual activity
33 through the use of force, fraud, or coercion, except that if
34 the trafficked person is under the age of 18, the commercial
35 sexual activity need not involve force, fraud, or coercion;

1 and knowingly purchasing or attempting to purchase services
2 involving commercial sexual activity from a victim or another
3 person engaged in trafficking. "Victim of human trafficking"
4 is defined in the bill as a person subjected to human
5 trafficking.

6 The bill permits a person to petition the court for
7 expungement of the person's criminal record resulting from the
8 arrest or filing of a charge, without regard to the disposition
9 of the arrest or of the charge, for an offense committed or
10 reported to have been committed while the person was a victim
11 of human trafficking. A petition for expungement (petition)
12 may be filed any time after the date on which the person is no
13 longer a victim of human trafficking or the person has accessed
14 services for victims of human trafficking.

15 A petition must include the petitioner's sworn statement
16 attesting that the petitioner is eligible for expungement and
17 official documentation, if available. "Official documentation"
18 is defined as documentation issued by a federal, state, or
19 local office, agency, or department that provides evidence of a
20 person's status as a victim of human trafficking. A petitioner
21 who knowingly provides false information on the sworn statement
22 commits a class "D" felony, punishable as provided in Code
23 section 720.2. A copy of the petition shall be served upon the
24 appropriate county attorney or the attorney general, and the
25 arresting law enforcement agency.

26 A court's final determination of a petition shall be based
27 on a preponderance of the evidence. If the petitioner submits
28 official documentation to the court, the submission of such
29 documentation creates a presumption that the petitioner's
30 participation in the offense or offenses for which expungement
31 is sought was due to the petitioner's status as a victim
32 of human trafficking. Official documentation shall not be
33 required for a court to grant a petition; however, a final
34 determination made by the court without official documentation
35 shall be based on a showing of clear and convincing evidence.

1 Notwithstanding any law to the contrary, a court may order
2 the expungement of the criminal record of a victim of human
3 trafficking if the victim complies with the requirements of the
4 bill. If relief is ordered by a court, the requirements for
5 certification and distribution of copies of the court order
6 shall be as provided in the bill.

7 Under the bill, a criminal record that is expunged shall be
8 a confidential record and exempt from public access under Code
9 section 22.7, except as detailed in the bill. Any information
10 that reveals, or that may reveal, the identity of a person
11 whose criminal record has been expunged shall be a confidential
12 record and exempt from public access under Code section 22.7.
13 Criminal investigative data and criminal intelligence data that
14 is confidential and exempt under the bill may be disclosed by a
15 law enforcement agency for the reasons detailed in the bill.

16 A person who is the subject of a criminal record that is
17 expunged may lawfully deny or fail to acknowledge an arrest
18 or conviction covered by the expunged criminal record, except
19 if the person is a candidate for employment with a criminal
20 justice agency or is a defendant in a criminal prosecution.
21 Subject to those exceptions, a person who has been granted an
22 expungement shall not be held under any law of this state to
23 have committed perjury or to be otherwise liable for providing
24 a false statement by reason of the person's failure to recite
25 or acknowledge the criminal record.

26 The bill does not apply to certain criminal offenses as
27 detailed in the bill. If a person was adjudicated not guilty
28 by reason of insanity or was found to be incompetent to stand
29 trial, expungement of the person's criminal record shall
30 not prevent the entry of the judgment in state and national
31 databases for use in determining the person's eligibility to
32 purchase or possess a firearm or to carry a concealed firearm
33 pursuant to Code sections 724.8 and 724.26 and 18 U.S.C.
34 §922(t), and shall not prevent any government agency that is
35 authorized by state or federal law to determine the person's

1 eligibility to purchase or possess a firearm or to carry a
2 concealed firearm from accessing or using the person's criminal
3 record during the course of the agency's official duties.

4 The bill shall not be construed to confer any right to a
5 person to the expungement of the person's criminal record. Any
6 petition for expungement of a person's criminal record under
7 the bill may be denied at the discretion of the court.

8 The bill provides that the supreme court may prescribe rules
9 governing the procedures applicable to the expungement of a
10 criminal record under the bill.