

House File 2144 - Introduced

HOUSE FILE 2144
BY THOMPSON

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:

unofficial

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, "official documentation" means documentation issued by
5 a federal, state, or local office, agency, or department that
6 provides evidence of a person's status as a victim.

7 2. a. (1) Except as otherwise provided in subsection 9, a
8 person may petition the court for expungement of the person's
9 criminal history record resulting from the arrest or filing of a
10 charge, without regard to the disposition of the arrest or of the
11 charge, for one or more offenses committed or reported to have
12 been committed while the person was a victim.

13 (2) A petition for expungement may be filed by a person at
14 any time after the date on which the person is no longer a
15 victim or the date on which the person has accessed services for
16 victims. The petition is not required to be filed in the court
17 in which the person's criminal proceedings originally took place.

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

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

25 (2) Official documentation, if available.

26 c. A clerk of court shall not charge a filing fee, service
27 charge, copy fee, or any other charge for a petition filed under
28 this section.

29 3. A copy of a petition filed under this section shall be
30 served upon the appropriate county attorney or the attorney
31 general, and the arresting law enforcement agency. The county
32 attorney, the attorney general, and the arresting law enforcement
33 agency may respond to the court regarding the petition.

34 4. a. The petitioner and the petitioner's attorney may
35 appear at any court proceeding related to the petition

1 telephonically or via remote video conference.

2 b. The court shall allow a victim counselor from a county
3 attorney's office or from a law enforcement agency to be present
4 with the petitioner during any court proceeding related to the
5 petition if requested by the petitioner and if a victim counselor
6 is available.

7 5. a. If a petitioner submits official documentation
8 pursuant to subsection 2, paragraph "b", subparagraph (2), it
9 shall create a presumption that the petitioner's participation
10 in the offense or offenses for which expungement is sought was
11 due to the petitioner's status as a victim, and the court's final
12 determination of the petition shall be by a preponderance of the
13 evidence.

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

18 6. a. Notwithstanding any law to the contrary, a court may
19 order the expungement of the criminal history record of a victim
20 if the victim complies with the requirements of this section.

21 b. If relief is ordered by a court, the clerk of court shall
22 certify a copy of the court order to the appropriate county
23 attorney or attorney general, the arresting law enforcement
24 agency, and any other agency that court records reflect has
25 received the victim's criminal history record from the court.
26 The arresting law enforcement agency shall forward the court
27 order to each agency to which the arresting law enforcement
28 agency disseminated the criminal history record to which the
29 court order pertains. The department of public safety shall
30 forward the court order to the federal bureau of investigation.

31 7. a. A criminal history record that is expunged under this
32 section shall be a confidential record and exempt from public
33 access under section 22.7, except that the criminal history
34 record shall be made available by a clerk of district court upon
35 court order.

1 b. A criminal history record that is expunged under this
2 section that is retained by the department of public safety shall
3 be a confidential record and exempt from public access under
4 section 22.7, except that the criminal history record shall be
5 made available to all of the following:

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

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

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

12 c. Any information that reveals, or that may reveal, the
13 identity of a person whose criminal history record has been
14 expunged under this section shall be a confidential record and
15 exempt from public access under section 22.7.

16 d. Criminal investigative data and criminal intelligence data
17 that is confidential and exempt under paragraphs "a" through "c"
18 may be disclosed by a law enforcement agency for any of the
19 following reasons:

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

22 (2) For print, publication, or broadcast if the law
23 enforcement agency determines that such release will assist in
24 locating or identifying a person whom the agency believes is
25 missing or endangered. The information provided shall be limited
26 to only the information necessary to identify or locate the
27 missing or endangered person.

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

30 8. a. A person who is the subject of a criminal history
31 record that is expunged under this section may lawfully deny
32 or fail to acknowledge an arrest or conviction covered by the
33 expunged criminal history record, except if the person is a
34 candidate for employment with a criminal justice agency or is a
35 defendant in a criminal prosecution.

1 b. Subject to the exceptions in paragraph "a", a person who
2 has been granted an expungement of a criminal history record
3 under this section shall not be held under any law of this
4 state to have committed perjury or to be otherwise liable for
5 providing a false statement by reason of the failure to recite or
6 acknowledge the criminal history record.

7 9. This section shall not apply to any of the following
8 offenses:

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

10 b. Intimidation with a dangerous weapon in violation of
11 section 708.6.

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

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

14 e. Sexual abuse in violation of chapter 709.

15 f. Kidnapping or related offenses in violation of chapter
16 710.

17 g. Robbery, aggravated theft, or extortion in violation of
18 chapter 711.

19 h. Arson in violation of chapter 712.

20 i. Burglary in the first degree in violation of section
21 713.3.

22 j. Burglary in the second degree in violation of section
23 713.5.

24 k. Neglect or abandonment of a dependent person in violation
25 of section 726.3.

26 l. Child endangerment in violation of section 726.6.

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

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

4 11. a. This section shall not be construed to confer any
5 right to any person to the expungement of the person's criminal
6 history record.

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

9 12. The supreme court may prescribe rules governing the
10 procedures applicable to the expungement of a criminal history
11 record under this section.

12 EXPLANATION

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

15 This bill is related to the expungement of certain
16 criminal history records (criminal record) of victims of human
17 trafficking. "Human trafficking" is defined as participating
18 in a venture to recruit, harbor, transport, supply provisions,
19 or obtain a person for forced labor or service that results in
20 involuntary servitude, peonage, debt bondage, or slavery; or for
21 commercial sexual activity through the use of force, fraud, or
22 coercion, except that if the trafficked person is under the age
23 of 18, the commercial sexual activity need not involve force,
24 fraud, or coercion; and knowingly purchasing or attempting to
25 purchase services involving commercial sexual activity from a
26 victim or another person engaged in trafficking, or from a
27 law enforcement officer or agent posing as a person engaged in
28 human trafficking. "Victim" is defined as a person subjected
29 to or identified as being subjected to or targeted for human
30 trafficking, including a law enforcement officer or agent posing
31 as a person subjected to or a target for human trafficking.

32 The bill permits a person to petition the court for
33 expungement of the person's criminal record resulting from the
34 arrest or filing of a charge, without regard to the disposition
35 of the arrest or of the charge, for an offense committed or

1 reported to have been committed while the person was a victim.
2 A petition for expungement (petition) may be filed any time after
3 the date on which the person is no longer a victim or the person
4 has accessed services for victims.

5 A petition must include the petitioner's sworn statement
6 attesting that the petitioner is eligible for expungement and
7 official documentation, if available. "Official documentation"
8 is defined as documentation issued by a federal, state, or
9 local office, agency, or department that provides evidence of
10 a person's status as a victim. A petitioner who knowingly
11 provides false information on the sworn statement commits a
12 class "D" felony, punishable as provided in Code section 720.2.
13 A copy of the petition shall be served upon the appropriate
14 county attorney or the attorney general, and the arresting law
15 enforcement agency.

16 A court's final determination of a petition shall be based
17 on a preponderance of the evidence. If the petitioner
18 submits official documentation to the court, the submission of
19 such documentation creates a presumption that the petitioner's
20 participation in the offense or offenses for which expungement
21 is sought was due to the petitioner's status as a victim.
22 Official documentation shall not be required for a court to grant
23 a petition; however, a final determination made by the court
24 without official documentation shall be based on a showing of
25 clear and convincing evidence.

26 Notwithstanding any law to the contrary, a court may order
27 the expungement of the criminal record of a victim if the victim
28 complies with the requirements of the bill. If relief is ordered
29 by a court, the requirements for certification and distribution
30 of copies of the court order shall be as provided in the bill.

31 Under the bill, a criminal record that is expunged shall be
32 a confidential record and exempt from public access under Code
33 section 22.7, except as detailed in the bill. Any information
34 that reveals, or that may reveal, the identity of a person
35 whose criminal record has been expunged shall be a confidential

1 record and exempt from public access under Code section 22.7.
2 Criminal investigative data and criminal intelligence data that
3 is confidential and exempt under the bill may be disclosed by a
4 law enforcement agency for the reasons detailed in the bill.

5 A person who is the subject of a criminal record that is
6 expunged may lawfully deny or fail to acknowledge an arrest or
7 conviction covered by the expunged criminal record, except if
8 the person is a candidate for employment with a criminal justice
9 agency or is a defendant in a criminal prosecution. Subject to
10 those exceptions, a person who has been granted an expungement
11 shall not be held under any law of this state to have committed
12 perjury or to be otherwise liable for providing a false statement
13 by reason of the person's failure to recite or acknowledge the
14 criminal record.

15 The bill does not apply to certain criminal offenses as
16 detailed in the bill. If a person was adjudicated not guilty by
17 reason of insanity or was found to be incompetent to stand trial,
18 expungement of the person's criminal record shall not prevent the
19 entry of the judgment in state and national databases for use
20 in determining the person's eligibility to purchase or possess a
21 firearm or to carry a concealed firearm pursuant to Code sections
22 724.8 and 724.26 and 18 U.S.C. §922(t), and shall not prevent
23 any government agency that is authorized by state or federal law
24 to determine the person's eligibility to purchase or possess a
25 firearm or to carry a concealed firearm from accessing or using
26 the person's criminal record during the course of the agency's
27 official duties.

28 The bill shall not be construed to confer any right to a
29 person to the expungement of the person's criminal record. Any
30 petition for expungement of a person's criminal record under the
31 bill may be denied at the discretion of the court.

32 The bill provides that the supreme court may prescribe rules
33 governing the procedures applicable to the expungement of a
34 criminal record under the bill.