

House File 2696 - Introduced

HOUSE FILE 2696
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2144)

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, "*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
10 a charge, without regard to the disposition of the arrest or of
11 the charge, for one or more offenses committed or reported to
12 have been committed while the person was a victim.

13 (2) A petition for expungement may be filed by a person
14 at 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
16 for victims. The petition is not required to be filed in the
17 court in which the person's criminal proceedings originally
18 took place.

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

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

26 (2) Official documentation, if available.

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

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

1 4. *a.* The petitioner and the petitioner's attorney
2 may appear at any court proceeding related to the petition
3 telephonically or via remote video conference.

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

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

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

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

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

34 7. *a.* A criminal history record that is expunged under this
35 section shall be a confidential record and exempt from public

1 access under section 22.7, except that the criminal history
2 record shall be made available by a clerk of district court
3 upon court order.

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

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

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

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

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

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

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

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

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

33 8. *a.* A person who is the subject of a criminal history
34 record that is expunged under this section may lawfully deny
35 or fail to acknowledge an arrest or conviction covered by the

1 expunged criminal history record, except if the person is a
2 candidate for employment with a criminal justice agency or is a
3 defendant in a criminal prosecution.

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

10 9. This section shall not apply to any of the following
11 offenses:

12 *a.* Homicide or a related crime in violation of chapter 707.

13 *b.* Intimidation with a dangerous weapon in violation of
14 section 708.6.

15 *c.* Going armed with intent in violation of section 708.8.

16 *d.* Stalking in violation of section 708.11, subsection 3.

17 *e.* Sexual abuse in violation of chapter 709.

18 *f.* Kidnapping or related offenses in violation of chapter
19 710.

20 *g.* Robbery, aggravated theft, or extortion in violation of
21 chapter 711.

22 *h.* Arson in violation of chapter 712.

23 *i.* Burglary in the first degree in violation of section
24 713.3.

25 *j.* Burglary in the second degree in violation of section
26 713.5.

27 *k.* Neglect or abandonment of a dependent person in violation
28 of section 726.3.

29 *l.* Child endangerment in violation of section 726.6.

30 10. If a person has been adjudicated not guilty by reason
31 of insanity or was found to be incompetent to stand trial,
32 the expungement of the person's criminal history record shall
33 not prevent the entry of the judgment in state and national
34 databases for use in determining the person's eligibility to
35 purchase or possess a firearm or to carry a concealed firearm

1 pursuant to sections 724.8 and 724.26 and 18 U.S.C. §922(t),
2 and shall not prevent any government agency that is authorized
3 by state or federal law to determine the person's eligibility
4 to purchase or possess a firearm or to carry a concealed
5 firearm from accessing or using the person's criminal history
6 record during the course of such agency's official duties.

7 11. *a.* This section shall not be construed to confer any
8 right to any person to the expungement of the person's criminal
9 history record.

10 *b.* Any petition for expungement of a criminal history record
11 under this section may be denied at the discretion of the
12 court.

13 12. The supreme court may prescribe rules governing the
14 procedures applicable to the expungement of a criminal history
15 record under this section.

16

EXPLANATION

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

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

1 for human trafficking.

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

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

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

31 Notwithstanding any law to the contrary, a court may order
32 the expungement of the criminal record of a victim if the
33 victim complies with the requirements of the bill. If relief
34 is ordered by a court, the requirements for certification and
35 distribution of copies of the court order shall be as provided

1 in the bill.

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

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

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

34 The bill shall not be construed to confer any right to a
35 person to the expungement of the person's criminal record. Any

1 petition for expungement of a person's criminal record under
2 the bill may be denied at the discretion of the court.

3 The bill provides that the supreme court may prescribe rules
4 governing the procedures applicable to the expungement of a
5 criminal record under the bill.