

House File 2464 - Reprinted

HOUSE FILE 2464
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 721)

(As Amended and Passed by the House March 9, 2022)

A BILL FOR

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

1 Section 1. Section 232.68, subsection 2, paragraph a,
2 subparagraph (5), Code 2022, is amended to read as follows:

3 (5) ~~The acts or omissions of a person responsible for the~~
4 ~~care of a child which allow, permit, or encourage the child to~~
5 ~~engage~~ engaged in acts prohibited pursuant to [section 725.1](#).
6 Notwithstanding [section 702.5](#), ~~acts or omissions under this~~
7 ~~subparagraph include an act or omission referred to in this~~
8 ~~subparagraph with or to a person~~ applies to a child under the
9 age of eighteen years.

10 Sec. 2. NEW SECTION. 710A.8 Expungement of criminal history
11 records — human trafficking victims.

12 1. As used in this section, unless the context otherwise
13 requires:

14 a. *"Court records"* means the same as defined in Iowa court
15 rule 20.1(2).

16 b. *"Human trafficking"* means the same as defined in section
17 710A.1.

18 c. *"Official documentation"* means documentation issued by
19 a federal, state, or local office, agency, or department that
20 provides evidence of a person's status as a victim of human
21 trafficking.

22 d. *"Victim of human trafficking"* means a person subjected to
23 human trafficking.

24 2. a. (1) Except as otherwise provided in subsection 9, a
25 person may petition the court for expungement of the person's
26 criminal history record and associated court records resulting
27 from the arrest or filing of a charge, without regard to the
28 disposition of the arrest or of the charge, for one or more
29 offenses committed or reported to have been committed while the
30 person was a victim of human trafficking.

31 (2) A petition for expungement may be filed by a person
32 at any time after the date on which the person is no longer a
33 victim of human trafficking or the date on which the person
34 has accessed services for victims of human trafficking. The
35 petition is not required to be filed in the court in which the

1 person's criminal proceedings originally took place.

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

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

9 (2) Official documentation, if available.

10 *c.* A clerk of court shall not charge a filing fee, service
11 charge, copy fee, or any other charge for a petition filed
12 under this section.

13 3. A copy of a petition filed under this section shall be
14 served upon the appropriate county attorney or the attorney
15 general, and the arresting law enforcement agency. The
16 county attorney, the attorney general, and the arresting law
17 enforcement agency may respond to the court regarding the
18 petition.

19 4. *a.* The petitioner or the petitioner's attorney may
20 appear at any court proceeding related to the petition
21 telephonically or via remote video conference.

22 *b.* The court shall allow a victim counselor from a county
23 attorney's office, a law enforcement agency, or a local victim
24 services agency to be present with the petitioner during any
25 court proceeding related to the petition if requested by the
26 petitioner and if a victim counselor is available.

27 5. *a.* If a petitioner submits official documentation
28 pursuant to subsection 2, paragraph "b", subparagraph (2), it
29 shall create a presumption that the petitioner's participation
30 in the offense or offenses for which expungement is sought
31 was due to the petitioner's status as a victim of human
32 trafficking, and the court's final determination of the
33 petition shall be by a preponderance of the evidence.

34 *b.* Official documentation shall not be required for a court
35 to grant a petition under this section; however, a court's

1 final determination without official documentation shall be
2 based on clear and convincing evidence.

3 6. *a.* Notwithstanding any law to the contrary, a court
4 may order the expungement of the criminal history record and
5 associated court files of a victim of human trafficking if the
6 victim of human trafficking complies with the requirements of
7 this section.

8 *b.* If relief is ordered by a court, the clerk of court shall
9 certify a copy of the court order to the appropriate county
10 attorney or attorney general, the arresting law enforcement
11 agency, and any other agency that court records reflect has
12 received the victim's criminal history record from the court.
13 The arresting law enforcement agency shall forward the court
14 order to each agency to which the arresting law enforcement
15 agency disseminated the criminal history record to which the
16 court order pertains. The department of public safety shall
17 forward the court order to the federal bureau of investigation.

18 7. *a.* A criminal history record and associated court
19 records that are expunged under this section shall be
20 confidential records and exempt from public access under
21 section 22.7, except that the criminal history record and
22 associated court records shall be made available by a clerk of
23 district court upon court order.

24 *b.* A criminal history record that is expunged under this
25 section that is retained by the department of public safety
26 shall be a confidential record and exempt from public access
27 under section 22.7, except that the criminal history record
28 shall be made available to all of the following:

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

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

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

35 *c.* Any information that reveals, or that may reveal,

1 the identity of a person whose criminal history record and
2 associated court records have been expunged under this section
3 shall be confidential records and exempt from public access
4 under section 22.7.

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

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

11 (2) For print, publication, or broadcast if the law
12 enforcement agency determines that such release will assist
13 in locating or identifying a person whom the agency believes
14 is missing or endangered. The information provided shall be
15 limited to only the information necessary to identify or locate
16 the missing or endangered person.

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

19 8. *a.* A person who is the subject of a criminal history
20 record and associated court records that are expunged under
21 this section may lawfully deny or fail to acknowledge an
22 arrest or conviction covered by the expunged criminal history
23 record and associated court records, except if the person is a
24 candidate for employment with a criminal justice agency or is a
25 defendant in a criminal prosecution.

26 *b.* Subject to the exceptions in paragraph "a", a person who
27 has been granted an expungement of a criminal history record
28 and associated court records under this section shall not be
29 held under any law of this state to have committed perjury
30 or to be otherwise liable for providing a false statement by
31 reason of the failure to recite or acknowledge the criminal
32 history record and associated court records.

33 9. This section shall not apply to any of the following
34 offenses:

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

1 *b.* Intimidation with a dangerous weapon in violation of
2 section 708.6.

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

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

5 *e.* Kidnapping or related offenses in violation of chapter
6 710.

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

19 11. *a.* This section shall not be construed to confer any
20 right to any person to the expungement of the person's criminal
21 history record and associated court records.

22 *b.* Any petition for expungement of a criminal history record
23 under this section may be denied at the discretion of the
24 court.

25 12. The supreme court may prescribe rules governing the
26 procedures applicable to the expungement of a criminal history
27 record and associated court records under this section.

28 Sec. 3. Section 725.1, subsection 1, paragraphs b and c,
29 Code 2022, are amended to read as follows:

30 *b.* If the person who sells or offers for sale the person's
31 services as a partner in a sex act is under the age of eighteen,
32 ~~the county attorney may elect, in lieu of filing a petition~~
33 ~~alleging that the person has committed a delinquent act, to the~~
34 person shall not be arrested, charged, or prosecuted for an
35 offense under this section. A peace officer who encounters a

1 person under the age of eighteen engaged in a violation of this
2 section may take custody of the person under section 232.78
3 or 232.79. The peace officer shall refer that the person to
4 the department of human services for the possible filing of
5 a petition alleging that the person is a child in need of
6 assistance.

7 c. If the a person who sells or offers for sale the person's
8 services as a partner in a sex act is under the age of eighteen
9 has been convicted of a violation under paragraph "a", upon
10 the expiration of two years following the person's conviction
11 for a that violation of paragraph "a" or of a violation of a
12 similar local ordinance, the person may petition the court to
13 expunge the conviction, and if the person has had no other
14 criminal convictions, other than local traffic violations
15 or simple misdemeanor violations of [chapter 321](#) during the
16 two-year period, the conviction shall be expunged as a matter
17 of law. The court shall enter an order that the record of the
18 conviction be expunged by the clerk of the district court.
19 Notwithstanding [section 692.2](#), after receipt of notice from
20 the clerk of the district court that a record of conviction
21 for a violation of paragraph "a" has been expunged, the record
22 of conviction shall be removed from the criminal history data
23 files maintained by the department of public safety.