HOUSE FILE 2464
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 721)

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

[= New Language by the House

* = Language Stricken by the House

A BILL FOR

An Act relating to the expungement of certain criminal history records of victims of human trafficking, [child abuse and minors engaged in prostitution,] and including penalties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

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

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

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

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

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

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

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

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

person's criminal proceedings originally took place.

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

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

(2) Official documentation, if available.

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

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

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

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

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

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

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

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

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

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

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

(1) A criminal justice agency, upon request.

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

(3) Any other agency, upon court order.

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Kidnapping or related offenses in violation of chapter 710.

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

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

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

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

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

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

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

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