

IN THE SENATE

SENATE BILL NO. 1103

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO CRIMINAL HISTORY RECORDS; AMENDING CHAPTER 30, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-3014, IDAHO CODE, TO PROVIDE THAT A VICTIM OF HUMAN TRAFFICKING MAY PETITION FOR EXPUNGEMENT OF A CRIMINAL HISTORY RECORD UNDER CERTAIN CONDITIONS, TO PROVIDE FOR DENIAL OF A PETITION, TO PROVIDE FOR A HEARING ON A PETITION, TO PROVIDE REQUIREMENTS FOR A HEARING, TO PROVIDE FOR CONSIDERATION OF CERTAIN EVIDENCE AT A HEARING, TO PROVIDE FOR THE GRANTING OF A PETITION AND TO DEFINE TERMS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 30, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-3014, Idaho Code, and to read as follows:

67-3014. EXPUNGEMENT FOR VICTIMS OF HUMAN TRAFFICKING. (1) Any person who was arrested for and/or convicted of a violation of chapter 56, title 18, Idaho Code, or with an offense that is not a violent crime that was committed during a period of time when the person was a victim of human trafficking may petition the sentencing court for an order vacating the conviction and an order of expungement of the criminal history records taken in connection with the conviction if the person's participation in the offense is determined to be a result of being a victim of human trafficking as defined in section 18-8602, Idaho Code. If the person was arrested for such offense but not convicted, then the petition shall be filed in the magistrate division of the district court of the county where the arrest occurred. The person may file the petition at any time. The petition shall:

(a) Identify the petitioner, the offense for which the expungement is sought, the date and place of the arrest and the date of conviction of the offense and the court in which the conviction occurred;

(b) Describe the evidence and provide copies of any documentation showing that the petitioner is entitled to relief under this section; and

(c) Include a request for an order of expungement of the criminal history records taken in connection with the arrest and/or conviction.

(2) The court may deny a petition made under subsection (1) of this section if it finds that the petition fails to assert grounds upon which relief may be granted. If the court denies the petition, then it shall provide written notice to the petitioner of the denial.

(3) If the court does not deny the petition pursuant to subsection (2) of this section, then it shall set a date for a hearing on the petition and shall notify the prosecuting attorney for the case from which the subject conviction resulted of the hearing. The hearing on the petition shall be set no later than sixty (60) days after the petition is filed with the court. The prosecuting attorney may file an objection to the petition before the hear-

1 ing date. The objection, if any, shall specify the reasons for which the
2 prosecuting attorney objects to an order of expungement of the petitioner's
3 criminal history records. If the petitioner has or had a probation or parole
4 officer, then the court may direct the officer to make inquiries and written
5 reports relating to the petitioner as the court deems necessary or appropri-
6 ate.

7 (4) At the hearing upon the petition held pursuant to subsection (3) of
8 this section, the court shall:

9 (a) If the prosecuting attorney filed an objection with the court, con-
10 sider the reasons to deny the petition specified in the objection; and

11 (b) Determine whether the petitioner has demonstrated by a preponder-
12 ance of the evidence that the petitioner's participation in the subject
13 offense occurred during a period of time when the petitioner was a vic-
14 tim of human trafficking and whether the petitioner's participation in
15 the offense was a result of being a victim of human trafficking.

16 (5) In making a determination on a petition:

17 (a) Evidence documenting the person's status as a victim of human traf-
18 ficking at the time of the offense from a federal, state or local govern-
19 mental agency shall create a rebuttable presumption that the person's
20 participation in the offense was a result of having been a victim but
21 shall not be required to vacate a conviction under this section; and

22 (b) The court may additionally consider other evidence it deems appro-
23 priate in determining whether the person was a victim of human traffick-
24 ing including, but not limited to:

25 (i) Certified records of state or federal court proceedings
26 that demonstrate that the defendant was a victim of a trafficker
27 charged with a human trafficking offense under chapter 86, title
28 18, Idaho Code, or 18 U.S.C. chapter 77;

29 (ii) Certified records of approval notices or law enforcement
30 certifications generated from a federal immigration proceeding
31 available to victims of human trafficking; and

32 (iii) Testimony or a sworn statement from a trained professional
33 staff member of a victim services organization, an attorney, a
34 member of the clergy or a health care or other professional from
35 whom the person has sought assistance in addressing the trauma
36 associated with being a victim of human trafficking.

37 (6) If the court finds that the petitioner has demonstrated by a prepon-
38 derance of the evidence that the petitioner's participation in the subject
39 offense occurred during a period of time when the petitioner was a victim of
40 human trafficking and the person's participation in the offense is deter-
41 mined to be a result of being a victim of human trafficking, then the court
42 shall grant the petition, vacate the conviction and order that the criminal
43 history records taken in connection with the arrest and/or conviction be ex-
44 punged. The court shall send notice of the order of expungement to each pub-
45 lic office or agency that the court has reason to believe may have a record
46 pertaining to the subject case.

47 (7) If the court enters an order of expungement, then the proceedings
48 in the subject case shall be considered not to have occurred and the convic-
49 tion and the criminal history records taken in connection with the convic-

1 tion shall be expunged. The criminal history records expunged shall not be
2 used for any purpose.

3 (8) Upon entry of an order of expungement under this section, the pe-
4 titioner shall be deemed to have never been arrested with respect to the ex-
5 punged offense and may so swear under oath.

6 (9) For the purposes of this section:

7 (a) "Convicted" or "conviction" means that the person has pled guilty
8 or has been found guilty, notwithstanding the form of the judgment or
9 withheld judgment.

10 (b) "Expunge" or "expungement" means to destroy, delete or erase a
11 criminal history record as appropriate for the record's physical or
12 electronic form or characteristic so that the record is permanently
13 irretrievable.

14 (c) "Prosecuting attorney" has the same meaning as in section 18-6719,
15 Idaho Code.

16 (d) "Victim of human trafficking" means a person who is or who was a vic-
17 tim of a violation of section 18-8602, Idaho Code, regardless of whether
18 any person has been convicted of or pled guilty to a violation of section
19 18-8602, Idaho Code.