

IN THE SENATE

SENATE BILL NO. 1154

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO CRIMINAL HISTORY RECORDS; AMENDING CHAPTER 30, TITLE 67, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 67-3014, IDAHO CODE, TO PRO-
3 VIDE APPLICABILITY, TO PROVIDE THAT A VICTIM OF HUMAN TRAFFICKING MAY
4 PETITION FOR EXPUNGEMENT OF A CRIMINAL HISTORY RECORD UNDER CERTAIN
5 CONDITIONS, TO PROVIDE WHEN A PETITION SHALL BE FILED, TO PROVIDE FOR
6 DENIAL OF A PETITION, TO PROVIDE FOR INFORMATION REQUIRED IN A PETI-
7 TION, TO PROVIDE FOR SERVICE OF A PETITION, TO PROVIDE WHEN PRETRIAL
8 FOR A PETITION SHALL BE SET, TO PROVIDE FOR CONSIDERATION OF EVIDENCE,
9 TO PROVIDE FOR THE GRANTING OF A PETITION, TO PROVIDE THAT RECORDS AND
10 INFORMATION IN CONNECTION WITH A PETITION SHALL BE SEALED AND USED TO
11 PROSECUTE HUMAN TRAFFICKERS, TO PROVIDE THAT THE STATE OF IDAHO SHALL
12 NOT BE SUBJECT TO CIVIL LIABILITY AND TO DEFINE TERMS.
13

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

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

18 67-3014. EXPUNGEMENT FOR VICTIMS OF HUMAN TRAFFICKING. (1) The provi-
19 sions of this section shall only apply to individuals who are victims of hu-
20 man trafficking as defined in section 18-8602, Idaho Code, and shall only ap-
21 ply to arrests, criminal prosecutions and convictions that are the result of
22 acts induced by human traffickers.

23 (2) Any person who was arrested, prosecuted and/or convicted of a vio-
24 lation of section 18-5613, Idaho Code, or any other offense determined by the
25 court to be appropriate, except convictions for offenses for which a defense
26 of coercion would not be available and that was committed during a period of
27 time when the person was a victim of human trafficking and that was the result
28 of acts required by the human trafficker, may bring a petition under the pro-
29 visions of this section to vacate such conviction and/or to expunge the crim-
30 inal history records taken in connection with the conviction, including the
31 arrest and prosecution resulting in such conviction or to expunge any crim-
32 inal history records related to any arrest or prosecution that resulted in
33 a dismissal or acquittal. Actions brought under this section are civil ac-
34 tions and the petitioner shall not be entitled to the appointment of counsel.
35 Jury trial shall not be available in actions brought under this section.

36 (3) Relief shall not be available under this section if the petitioner
37 raised the affirmative defense of coercion at trial and was convicted.

38 (4) Any action brought under this section shall be filed within a rea-
39 sonable time after the arrest, prosecution or conviction that is the subject
40 of the action brought under this section, except that a petition to expunge
41 an arrest that did not result in a prosecution shall not be brought until two
42 (2) years after the arrest.

1 (5) If an action is filed under this section while a criminal case
2 against the petitioner is pending and the charges in the criminal case are
3 the same as the ones sought to be expunged or vacated in the action under
4 this section, then the action under this section shall be dismissed and the
5 petitioner shall be required to raise the defense in the criminal case.

6 (6) The petition filed in this action shall:

7 (a) Identify the petitioner, the case number and court in which any con-
8 viction or prosecution resulting in acquittal or dismissal occurred,
9 the date and place of arrest and the agency that performed any arrest;

10 (b) Include a short, plain statement under oath of the facts demon-
11 strating that the petitioner is entitled to relief under the provisions
12 of this section, including the identity of the human trafficker to the
13 best of the petitioner's knowledge; the approximate date, place and
14 manner in which the petitioner became a victim of human trafficking;
15 the petitioner's age at the time the petitioner became a victim of human
16 trafficking; and how the petitioner became involved in the activities
17 resulting in the arrest, prosecution and/or conviction; and

18 (c) Include a request for an order vacating the conviction and/or to ex-
19 punge the criminal history records taken in connection with the arrest,
20 conviction or prosecution.

21 (7) If the petition is in regard to a prosecution resulting in acquit-
22 tal or dismissal or a prosecution resulting in a conviction, then the peti-
23 tioner shall serve a copy of the petition on the prosecutor who handled such
24 prosecution. If the petition is in regard to an arrest that did not result in
25 a prosecution, then the petitioner shall serve a copy of the petition on the
26 police agency that effected the arrest. If such prosecutor or police agency
27 desires to contest the action under this section, an answer shall be filed in
28 accordance with the Idaho rules of civil procedure.

29 (8) The pretrial in any action under this section shall be set not later
30 than sixty (60) days after the petition is served.

31 (9) Evidence documenting the person's status as a victim of human traf-
32 ficking at the time of the offense from a federal, state or local governmen-
33 tal agency shall create a rebuttable presumption that the person was a victim
34 of human trafficking at the time of the offense but shall not be required to
35 obtain relief under this section.

36 (10) If the court finds that the petitioner has demonstrated by a pre-
37 ponderance of the evidence that the petitioner's participation in the activ-
38 ities that resulted in the arrest, prosecution and/or conviction, that is
39 the subject of the petition, occurred during a period of time when the peti-
40 tioner was a victim of human trafficking and that the petitioner's partic-
41 ipation in the activities that resulted in the arrest, prosecution and/or
42 conviction was the result of acts required by the human trafficker, then the
43 court shall vacate the conviction, if any, and order that the criminal his-
44 tory records taken in connection with the arrest, prosecution and conviction
45 be expunged. The court shall send notice of the order of expungement to each
46 public office or agency that the court has reason to believe may have a record
47 pertaining to the arrest, prosecution and conviction that is the subject of
48 the order of expungement.

49 (11) If the court enters an order of expungement, then the arrest and
50 all other proceedings that are the subject of the order of expungement shall

1 be considered not to have occurred and the criminal history records taken
2 in connection with the conviction shall be expunged. The criminal history
3 records that are expunged shall not be used against the petitioner for any
4 purpose.

5 (12) All pleadings and records filed with the court pursuant to the pro-
6 visions of this section shall be sealed, and any hearing on an action under
7 this section shall be closed to the public. Any information obtained in any
8 pleading or other filing or at a hearing in an action under this section may
9 be used to investigate and prosecute human traffickers.

10 (13) Upon the entry of an order of expungement under this section, the
11 petitioner shall be deemed to have never been arrested, prosecuted or con-
12 victed with respect to the matters that are the subject of the order of ex-
13 pungement, and the petitioner may so swear under oath.

14 (14) The state of Idaho and any of its political subdivisions shall not
15 be subject to any civil liability as a result of any arrest, conviction or
16 prosecution that resulted in a dismissal or acquittal that is expunged pur-
17 suant to the provisions of this section.

18 (15) For the purposes of this section:

19 (a) "Convicted" or "conviction" means that the person has pled guilty
20 or has been found guilty, notwithstanding the form of the judgment or
21 withheld judgment.

22 (b) "Expunge" or "expungement" means to destroy, delete or erase a
23 criminal history record as appropriate for the record's physical or
24 electronic form or characteristic so that the record is permanently ir-
25 retrievable. Provided however, that all records in a petitioner's case
26 conducted in accordance with the provisions of this section that are in
27 the custody of the court shall be sealed, and all references to an arrest
28 and/or prosecution resulting in dismissal or acquittal or conviction
29 shall be removed from all indices and records available to the public. A
30 special index of the expungement proceedings and records shall be kept
31 by the court ordering expungement but shall not be available to the pub-
32 lic and shall be revealed only to the petitioner or upon order of a court
33 of competent jurisdiction.

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

36 (d) "Victim of human trafficking" means a person who is or who was a vic-
37 tim of a violation of section 18-8602, Idaho Code, regardless of whether
38 any person has been convicted of or pled guilty to a violation of section
39 18-8602, Idaho Code.