

IN THE SENATE

SENATE BILL NO. 1154, As Amended

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 this  
4 section, then the petition under this section shall be dismissed without  
5 prejudice.

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 acquittal  
22 or dismissal or a prosecution resulting in a conviction, then the petitioner  
23 shall serve a copy of the petition on the prosecuting attorney's office that  
24 handled such prosecution. If the petition is in regard to an arrest that did  
25 not result in a prosecution, then the petitioner shall serve a copy of the pe-  
26 tition on the police agency that effected the arrest. If such prosecuting  
27 attorney or police agency desires to contest the action under this section,  
28 an answer shall be filed in accordance with the Idaho rules of civil proce-  
29 dure.

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

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

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

1 (11) If the court enters an order of expungement, then the arrest and  
2 all other proceedings that are the subject of the order of expungement shall  
3 be considered not to have occurred and the criminal history records taken  
4 in connection with the conviction shall be expunged. The criminal history  
5 records that are expunged shall not be used against the petitioner for any  
6 purpose.

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

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

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

20 (15) For the purposes of this section:

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

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

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

38 (d) "Victim of human trafficking" means a person who is or who was a vic-  
39 tim of a violation of section 18-8602, Idaho Code, regardless of whether  
40 any person has been convicted of or pled guilty to a violation of section  
41 18-8602, Idaho Code.