



JUSTICE RESTORATION CENTER

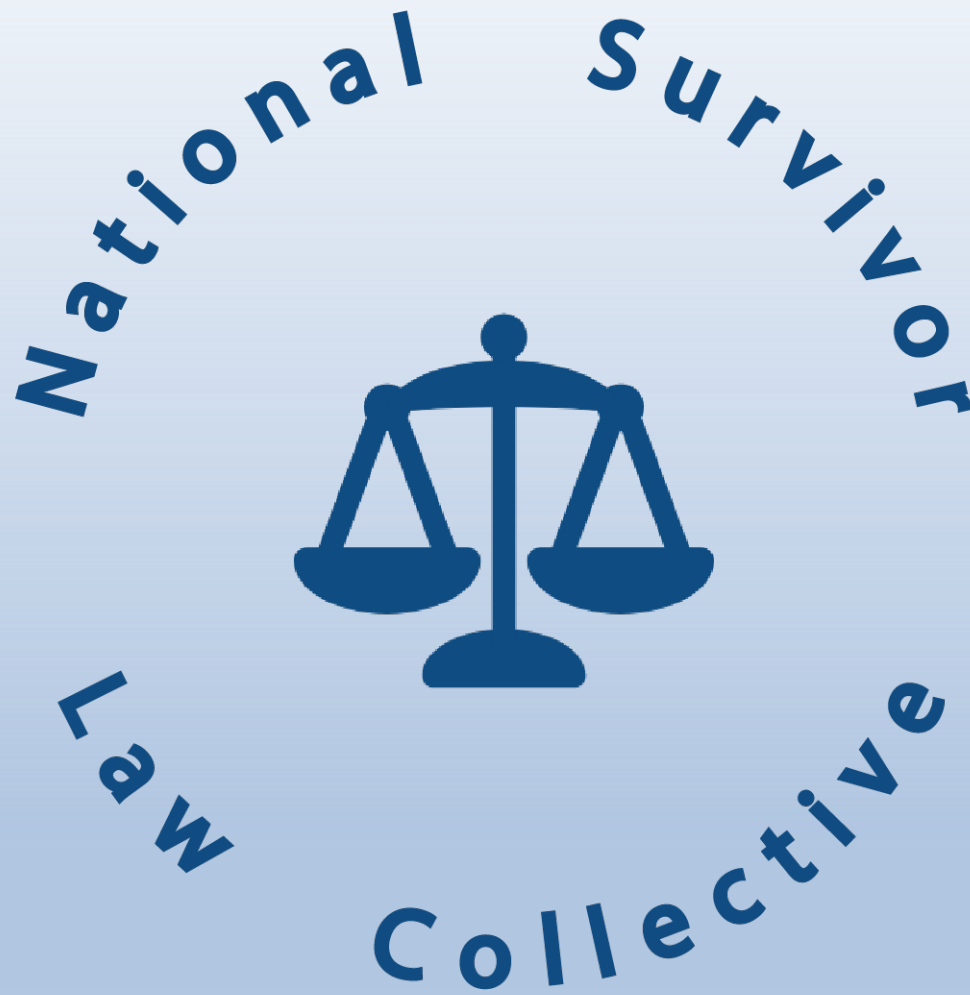
LEGAL AND ANTI-TRAFFICKING ADVOCACY



Providing *no-cost* legal services to victims and survivors of human trafficking.



Serving clients internationally on Florida and Tennessee legal matters resulting from their commercial exploitation for sex or labor.



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Human Trafficking-related Legal Issues

- State and federal criminal arrest records
- Coerced debt/debt bondage
- Family law matters
- Coordination of out-of-state counsel
- Warrants
- Intellectual property rights
- Immigration
- Federal tax matters

Trafficking-related Case Management

- Safe prison release
- Safe housing
- Trauma therapy
- Employment opportunities
- Collaboration with other service providers

Legislative and Policy Advocacy

- Florida
- Tennessee
- Federal
- Other states



Expungement of Florida Criminal Arrest Records

The Issue

- Human trafficking commonly results in a criminal record
 - Prostitution
 - Drugs
 - Theft crimes
 - Battery
 - Human trafficking

Practical Consequences of a Criminal Record

- Employment
- Housing
- Education
- Family law
- Immigration
- Volunteering
- Civic participation – voting

Criminalization of HT Victims



Non-legal Consequences of a Criminal Record

- Stigma
- Moral injury; shame/low self-esteem
- Re-traumatization
- Trauma triggers
- Family relationships
- Friendships

Section 943.0583, F.S.

- Passed in 2013
- Enacted in 2014
- First expungement in 2014
- Amended through the years

Warning! There are Other Kinds of Expungements in Florida

- 943.0583 – Human trafficking expungement
- 943.0585, et al. – Standard or traditional and administrative expungement

Important advantages of HT expungement:

1. Vacates any convictions associated with expunged record
2. Disclosure of previous arrest in only two instances

What is the Process?

- Determine eligibility for a human trafficking expungement
- Gather information generally in writing
- Determine where to file
- Prepare pleadings and documents to be filed
- File petition package
- Wait for State's response
- Proposed order to expunge to court

Eligibility for Expungement

- Petitioner must have been a victim of human trafficking
- Eligible offense
- Nexus to arrest/conviction
- Due diligence

“Victim of human trafficking”

...a person subjected to coercion, as defined in s. 787.06, for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.

Grooming

Ricchio v. McClean, 853 F.3d 553 (1st Cir. 2017)

Mentally Incapacitated Victim

787.06(3)(g) - For commercial sexual activity in which any child younger than 18 years of age or an adult believed by the person to be a child younger than 18 years of age, or in which any person who is *mentally defective or mentally incapacitated* as those terms are defined in s. 794.011(1)...

Eligible Offense

“Eligible offense” is any offense except those listed in F.S. 775.084(1)(b) 1.

Excluded Offenses

Arson;

Sexual Battery;

Robbery;

Kidnapping;

Aggravated Child Abuse;

Aggravated Abuse on the Elderly or Disabled Adult;

Aggravated Assault with a Deadly Weapon;

Murder;

Manslaughter;

Aggravated Manslaughter of an Elderly Person or Disabled Adult;

Aggravated Manslaughter of a Child;

Unlawful Throwing, Placing, or Discharging of a Destructive Device or Bomb;

Armed Burglary;

Aggravated Battery; or

Aggravated Stalking.

Nexus to Human Trafficking

The offense or offenses must have been committed or reported to have been committed while the person was a victim of human trafficking...as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme.

Due Diligence

Petition must be filed with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition or for other reasons consistent with the purpose of this section.

General

- No limitations on how many arrests or convictions may be expunged.
- May file in multiple circuits at the same time.
- Legal standards for judicial determination:
 - With official documentation - preponderance of evidence;
 - Without official documentation - clear and convincing evidence.
- No filing fee
- Previously paid fines for expunged record must be refunded
- Pleadings are statutorily exempt from public records

What Does the Survivor Have to Do?

- Provide information about what happened to her or him
- Help gather documents
- May need to interview with the prosecutor
- Does not have to go to court

Survivor Concerns

- How long will this take?
- Will I have to appear in court/testify?
- Is my information public? Will anyone know I filed this motion?
- What happens if we win? What happens if we lose?

Completing the Legal Process

- Based on the final order, the Clerk of Court seals the court records and forwards the expungement order to the other agencies who must expunge or seal their records

Post-expungement Concerns

- Deal with post-expungement residual issues
 - Government databases
 - Agencies that don't remove the records
 - Warrants in other counties

Post-expungement Concerns

- Commercial websites
 - Section 901.43 – May provide some relief from mugshots

Effects of Expungement under 943.0583

- Obliterates the arrest record
- Clerk seals the court file
- May lawfully deny the arrest with two exceptions – Important!!
- Vacates any underlying conviction

Vacating Convictions

- A conviction that is expunged under section 943.0583 is deemed to be vacated due to a substantive defect in the underlying criminal proceeding.

Effects of Vacating Convictions

- Eliminates fines, probation, warrants, even incarceration
- Restores civil rights as a matter of law if all felonies are expunged
- Reinstate driver's license

Effects of Vacating Convictions

- Fine refunds. *Nelson v. Colorado*

Non-legal Effects of Expungement

- Emotional
- Reputation
- Mitigate the effects of trauma caused by the criminal justice system
- Experiencing justice

Myths and Misinformation

1. YOU MUST HAVE A CERTIFICATE OF ELIGIBILITY FROM FDLE
2. YOU MUST “GO THROUGH” FDLE TO EXPUNGE YOUR RECORD
3. YOU SHOULD CALL FDLE FOR MORE INFORMATION
4. YOU NEED TO COMPLETE AN “EXPUNGEMENT PACKET”
5. IF YOU HAVE A CONVICTION (WHICH INCLUDES NO COSTESTS, GUILTY PLEAS) YOU CANNOT EXPUNGE YOUR RECORD
6. YOU MAY ONLY GET ONE EXPUNGEMENT IN YOUR LIFETIME
7. YOU MAY ONLY EXPUNGE ONE ARREST RECORD IN A SINGLE PETITION (UNLESS THERE ARE “RELATED” ARRESTS)

Myths and Misinformation

8. YOU MUST PAY ALL OUTSTANDING FINES BEFORE FILING A PETITION TO EXPUNGE

9. YOU MUST SATISFY PROBATION REQUIREMENTS BEFORE FILING A PETITION

(WHAT ABOUT PRETRIAL DIVERSION PROGRAMS?)

10. YOU MUST SATISFY OR RESOLVE ALL OUTSTANDING WARRANTS BEFORE FILING PETITION

11. IF YOU WERE CHARGED AS A MINOR, YOU DON'T NEED TO EXPUNGE YOUR RECORD

Myths and Misinformation

12. IF YOU HAVE WARRANTS OR VOPs IN OTHER JURISDICTIONS, YOU CANNOT EXPUNGE FLORIDA ARRESTS

13. IF YOUR FLORIDA CRIMINAL HISTORY DOES NOT SHOW UP ON A BACKGROUND CHECK, YOU DON'T NEED TO EXPUNGE YOUR RECORD

14. AN EXPUNGEMENT DOES NOT ELIMINATE UNPAID FINES AND COURT COSTS ASSOCIATED WITH THE EXPUNGED ARREST

15. AN EXPUNGEMENT DOES NOT ELIMINATE PROBATION OR OUTSTANDING WARRANTS ASSOCIATED WITH THE EXPUNGED RECORD

16. YOU STILL MUST DISCLOSE YOUR EXPUNGED ARREST RECORD IN MOST INSTANCES



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