

Supreme Court of Florida

No. SC21-1091

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL
PROCEDURE—2021 FAST-TRACK REPORT.**

October 28, 2021

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to the Florida Rules of Criminal Procedure. *See Fla. R. Gen. Prac. & Jud. Admin. 2.140(e)*. We have jurisdiction. *See art. V, § 2(a), Fla. Const.*

The Florida Bar’s Criminal Procedure Rules Committee (Committee) filed a fast-track report proposing amendments to the following Florida Rules of Criminal Procedure (rules) in response to recent legislation: 3.693 (Petition to Seal or Expunge; Human Trafficking), 3.986 (Forms Related to Judgment and Sentence), and 3.9895 (Human Trafficking: Sworn Statement; Petition; and Order to Expunge or Seal Records). Having considered the proposed amendments, the Court hereby amends rule 3.693 as proposed by

the Committee, and rules 3.986 and 3.9895, with the slight modification to the proposed amendments as discussed below.

First, rule 3.693(a)(1)(A) is amended to remove the requirement that a human trafficking victim petitioner swear that there are no other pending petitions to expunge or seal pending in any other courts. Additionally, subdivision (e), which required a petitioner to pay for certified copies related to the petition to expunge or seal unless indigent, is deleted. These amendments bring the rule into conformity with the recent legislative changes to section 943.0583, Florida Statutes, which was amended to delete the requirement in subsection (6)(a) that a petitioner swear that no other petition to expunge or seal is pending before any court and to include language in subsection (2) stating that a clerk of court may not charge any type of fee related to the petition for expungement filed under this section. *See* ch. 2021-189, § 3, Laws of Fla.

Next, the fingerprint certifications in rule 3.986 are amended to mirror the updated statutory language of section 921.241(3)(a)-(b), Florida Statutes. *See* ch. 2021-230, §§ 9-11, Laws of Fla. The new language allows for digital fingerprinting and does not require that fingerprints be taken in the presence of or be certified by a

judge. Instead, a court officer, employee of the court, or employee of a criminal justice agency may manually take or electronically capture the defendant's fingerprints and make such certification.

Finally, rule 3.9895(b) (Sworn Statement in Support of Petition; Human Trafficking Victim) is amended to remove the final sentence of the sworn statement, which required a petitioner to indicate whether there are other petitions to expunge pending before any court. Additionally, rule 3.9895(c) (Order to Expunge; Human Trafficking Victim) is amended to remove reference to the petitioner paying the costs of certified copies. These amendments bring the rule's language into conformity with the recent legislative changes to section 943.0583, Florida Statutes, which deletes reference to the petitioner swearing that no other petition to expunge or seal is pending before any court and prohibits the clerk of court from charging fees related to the petition. *See* ch. 2021-189, § 3, Laws of Fla.

Accordingly, we amend the Florida Rules of Criminal Procedure as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments to the rules shall become

effective immediately. Because the amendments were not published for comment previously, interested persons shall have seventy-five days from the date of this opinion in which to file comments with the Court.¹

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

1. All comments must be filed with the Court on or before January 11, 2022, with a certificate of service verifying that a copy has been served on the Committee Chair, Alan Scott Apte, P.O. Box 2286, Orlando, Florida 32802-2286, alan@florida-mediate.com, and on the Bar Staff Liaison to the Committee, Mikalla Andies Davis, 651 E. Jefferson Street, Tallahassee, Florida 32399-2300, midavis@floridabar.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until February 1, 2022, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

Original Proceeding – Florida Rules of Criminal Procedure

Alan S. Apte, Chair, Criminal Procedure Rules Committee, The Florida Bar, Orlando, Florida, Joshua E. Doyle, Executive Director, and Mikalla Andies Davis, Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

Appendix

RULE 3.693. PETITION TO SEAL OR EXPUNGE; HUMAN TRAFFICKING

(a) Requirements of Petition.

(1) [No Change]

(A) the petitioner's sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief ~~and does not have any other petition to expunge or any petition to seal pending before any court;~~ and

(B) [No Change]

(b) – (d) [No Change]

~~**(e) Costs.** Petitioner shall bear all costs of certified copies unless petitioner is indigent.~~

Committee Notes

[No Change]

RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE

(a) [No Change]

(b) Form for Judgment.

- Probation Violator
- Community Control Violator
- Retrial
- Resentence

In the Circuit Court,
 _____ Judicial Circuit, in and for
 _____ County, Florida
 Division _____
 Case Number _____

State of Florida

v.

 Defendant

JUDGMENT

The defendant, _____, being personally before this court represented by _____, the attorney of record, and the state represented by, _____, and having

been tried and found guilty by jury/by court of the following crime(s)

entered a plea of guilty to the following crime(s)

entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
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___ and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

___ and being a qualified offender pursuant to section 943.325, Florida Statutes, the defendant shall be required to submit DNA samples as required by law.

___ and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

DONE AND ORDERED in open court in _____ County, Florida, on(date).....

Judge

State of Florida

v.

Defendant

Case Number _____

FINGERPRINTS OF DEFENDANT

R. Thumb R. Index R. Middle R. Ring R. Little

L. Thumb L. Index L. Middle L. Ring L. Little

Fingerprints taken by: _____
(Name) (Title)

I HEREBY CERTIFY that the above and foregoing fingerprints ~~on this judgment~~ are the fingerprints of the defendant, (name) , and that they were placed thereon by the defendant in my presence ~~in open court~~ this date the day of , ...(year)....

[OR]

I HEREBY CERTIFY that the digital fingerprint record associated with Transaction Control Number _____ contains the fingerprints of the defendant, (name) _____, which were electronically captured from the defendant in my presence this the day of , ... (year).....

JudgeCourt Officer / Court
Employee / Criminal Justice Agency
Employee

(c) - (g) [No Change]

**RULE 3.9895 HUMAN TRAFFICKING: SWORN STATEMENT;
 PETITION; AND ORDER TO EXPUNGE OR SEAL
 RECORDS**

(a) [No Change]

**(b) Sworn Statement in Support of Petition; Human
 Trafficking Victim.**

In the Circuit Court of the
 _____ Judicial Circuit,
 in and for _____
 County, Florida

Case No.: _____
 Division _____

State of Florida,)
)
 Plaintiff,)
)
 v.)
)
 _____,)
)
 Defendant/Petitioner)
 _____)

SWORN STATEMENT/HUMAN TRAFFICKING VICTIM

State of Florida

County of _____

I,(name of defendant/petitioner)....., am the defendant/petitioner in the above-styled cause and I do hereby swear or affirm that:

1. I fully understand the meaning of all of the terms of this sworn statement.

2. I have been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and have committed, or was reported to have

committed, an offense, other than those offenses listed in section 775.084(1)(b)1, Florida Statutes, which was committed, or reported to have been committed, as a part of a human trafficking scheme of which I was the victim or at the direction of an operator of the scheme.

3. I was arrested and/or convicted on(date(s))....., by(arresting agency and/or name of prosecuting authority).....

4. I am eligible for the relief requested, to the best of my knowledge and belief, and ~~.....(do or do not)..... have any other petition to expunge or seal pending before any court.~~

Petitioner

Sworn to and subscribed before me on(date).....

NOTARY PUBLIC, or other person
authorized to administer an oath

Printed, typed, or stamped
commissioned name of Notary
Public

Personally known or produced identification

Type of identification produced

My commission expires:

(c) Order to Expunge; Human Trafficking Victim.

In the Circuit Court of the
Judicial Circuit,
in and for
County, Florida

Case No.:
Division

State of Florida,)
)
Plaintiff,)

v.)
)
)
 _____,)
)
 Defendant/Petitioner)
)

ORDER TO EXPUNGE, HUMAN TRAFFICKING VICTIM,
 UNDER SECTION 943.0583, FLORIDA STATUTES,
 AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.693

THIS CAUSE, having come on to be heard before me this date upon a petition to expunge certain records of the petitioner’s arrest and/or conviction on(date(s))....., by(arresting agency and/or name of prosecuting authority)....., for(charges and/or offenses)....., and the court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

The petitioner has been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and has committed an offense, or is reported to have committed, other than those offenses listed in section 775.084(1)(b)1, Florida Statutes, which was committed, or reported to have been committed, as a part of a human trafficking scheme of which he/she was the victim, or at the direction of an operator of the scheme. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

Whereupon it is

ORDERED AND ADJUDGED that the petition to expunge is granted. All court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in Florida Rule of Criminal Procedure 3.693; and it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this order to the (check one) state attorney, special prosecutor, statewide prosecutor,(arresting agency)....., and the Sheriff of County, who will comply with the procedures set forth in section 943.0583, Florida Statutes, and appropriate regulations of the Florida Department of Law Enforcement, and who will further forward a copy of this order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that(arresting agency)..... shall expunge all information concerning indicia of arrest, conviction, or criminal history record information regarding the arrest, conviction, or alleged criminal activity to which this petition pertains in accordance with the procedures set forth in section 943.0583, Florida Statutes, and Florida Rule of Criminal Procedure 3.693.

~~All costs of certified copies involved herein are to be borne by the~~
~~.....~~

DONE AND ORDERED in Chambers at County, Florida, on
.....(date).....

Circuit Court Judge

Committee Notes

[No Change]