

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1972

INTRODUCER: Senator Pizzo

SUBJECT: Expunction and Sealing of Judicial Records

DATE: March 22, 2021

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|-----------|----------------|-----------|--------------------|
| 1. Davis | Cibula | JU | Favorable |
| 2. Stokes | Jones | CJ | Pre-meeting |
| 3. _____ | _____ | RC | _____ |

I. Summary:

SB 1972 creates s. 741.301, F.S., permitting a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

This bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

Additionally, this bill provides that a person who is eligible to seek an expunction for an indictment, information, or other charging document that was filed and dismissed or nolle prosequi by the state, was dismissed by a court, or a judgment of acquittal or verdict of not guilty was rendered, is not ineligible if they had a prior sealing or expunction.

The bill requires the Florida Department of Law Enforcement (FDLE) to issue a certificate of eligibility or deny the request for a certificate no later than 6 months after the application is submitted.

This bill may have a negative fiscal impact on the FDLE and the courts. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2021.

II. Present Situation:

Domestic Violence Injunctions

Temporary Injunctions

If someone believes that she or he is a victim of domestic violence¹ or has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence, that person may petition a circuit court for an injunction for protection against domestic violence.² The clerk's office will take the sworn petition to a judge who rules on the petition, generally within 24 hours.

The judge examines the petition, *ex parte*, meaning that the judge examines only the information submitted by the petitioner. The parties are generally not present, and no additional evidence is submitted. If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction, pending a full hearing at a later date.³

Any *ex parte* temporary injunction is effective for a fixed period of time that does not exceed 15 days. A full hearing will be set for a date that is no later than the date when the temporary injunction expires, although the court may grant a continuance for good cause shown, including a continuance to obtain service of process on the respondent. A temporary injunction will be extended if it is necessary to remain in full force and effect during the continuance.⁴

Injunctions

The court may grant an injunction after a hearing is held and the court concludes that the petitioner is a victim of domestic violence or has reasonable cause to believe that she or he is in imminent danger of becoming a victim.⁵ The injunction remains in effect until it is modified or dissolved. The petitioner or respondent may move at any time for those actions.⁶

Sealing of Judicial Records

The Florida Constitution mandates that the public must have access to court records, subject only to certain enumerated limitations.⁷ The rules promulgated by the Florida Supreme Court govern public access and protection of records of the judicial branch.⁸ The rules provide that specified

¹ "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

"Family or household member means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit." Section 741.28(3), F.S.

² Section 741.30(1)(a), F.S.

³ Section 741.30(5)(a), F.S.

⁴ Section 741.30(5)(c), F.S.

⁵ Section 741.30(6)(a), F.S.

⁶ Section 741.30(6)(c), F.S.

⁷ Art. I, s. 24, Fla. Const.

⁸ Rule 2.420, Fla. R. Gen Prac. & Jud. Admin.

records of the judicial branch⁹ must be confidential, including all records made confidential under the Florida and United States Constitution and Florida and federal law.¹⁰ “Confidential,” means that such information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term “exempt” means that such information is confidential.¹¹ Additionally, a court can determine that any court record is confidential by:

- A finding that confidentiality is required to:
 - Prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
 - Protect trade secrets;
 - Protect a compelling governmental interest;
 - Obtain evidence to determine legal issues in a case;
 - Avoid substantial injury to innocent third parties;
 - Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;
 - Comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law.
- A finding that no less restrictive measures are available to protect the interest set forth above.¹²

A person may request the court to determine the confidentiality of trial court records in noncriminal cases. Such request must be made in writing in the form of a motion captioned, “Motion to Determine Confidentiality of Court Records.” Such motion must:

- Identify the particular court records or a portion of a record that the movant seeks to have determined as confidential with as much specificity as possible without revealing the information subject to the confidentiality determination;
- Specify the basis for determining that such court records are confidential without revealing confidential information; and
- Set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential without revealing confidential information.¹³

⁹ *Id.*, providing that “records of the judicial branch,” are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consists of: (1) “court records,” which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and (2) “administrative records,” which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

Florida statute and rule provide for the sealing of certain criminal history records. A criminal history record that is ordered sealed by the court is confidential and exempt from public record laws, and only available to specified persons.¹⁴

Expunction of Criminal History Records

State courts have continuing jurisdiction over their own procedures, including the expunction and sealing of judicial records that contain criminal history information.¹⁵ Pursuant to statute, judges have the discretion to order criminal records maintained by the court system and records held by law enforcement agencies to be sealed¹⁶ or expunged for either a minor or an adult.¹⁷ However, no one has a right to have a record expunged and the request may be denied at the sole discretion of the court.¹⁸

A person may have his or her criminal history record¹⁹ expunged under certain enumerated circumstances.²⁰ When a record is expunged, the criminal justice agencies²¹ that possess the record must physically destroy or obliterate it. However, a criminal justice agency may retain a notation indicating compliance with an order to expunge.²² The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.²³ The criminal history record retained by the FDLE is confidential and exempt.²⁴ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.²⁵

¹⁴ Section 943.059(6), F.S., providing that a sealed criminal history record is available to the subject of the record, the subject's attorney, criminal justice agencies for specified purposes, judges in the state court system for specified purposes, and specified entities for licensing access authorization and employment purposes.; *see also* Rule 2.420 Fla. R. Gen. Prac. & Jud. Admin.

¹⁵ Sections 943.0585(4)(a) and 943.059(4)(a), F.S. The procedures, however, must be consistent with the duties established in statute. *See also* Henry P. Trawick, Jr., *Florida Pleading and Practice Forms* 11B. Fla. Pl. & Pr. Forms s. 97:14 (May 2020).

¹⁶ In general terms, sealing makes records confidential in most cases while expunction requires the actual physical destruction of records held by courts and most law enforcement agencies. When a record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public records laws.

Sections 943.045(19), 943.059(6), and 119.07(1), F.S., and Art. I, s. 24(a), Fla. Const.

¹⁷ Sections 943.0585(4)(b) and 943.059(4)(b), F.S.

¹⁸ Section 943.0585(4)(b) and (e), F.S.

¹⁹ Section 943.045(6), F.S., provides that a "criminal history record" is any judicial record maintained by a criminal justice agency containing criminal history information.

²⁰ Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

²¹ Section 943.045(11), F.S., provides that "criminal justice agency," means: (1) A court; (2) the FDLE; (3) The Department of Juvenile Justice; (4) The protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and (5) Any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

²² Section 943.0585(6)(a), F.S.

²³ Section 943.045(16), F.S.

²⁴ Section 943.0585(6)(a), F.S.

²⁵ Section 943.0585(6), F.S.

Court-Ordered Expunction

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.²⁶ The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting the criteria set forth in statute.²⁷ Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other changing document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
 - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
 - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- The person is no longer under court supervision applicable to the disposition of arrest or alleged criminal activity to which the petition to expunge pertains.
- The person has never secured a prior sealing or expunction, unless:
 - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
 - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.²⁸

Certificate of Eligibility

Before petitioning a court to expunge a criminal history record, a person must apply to the FDLE for a certificate of eligibility for expunction. The FDLE must issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

- Is eligible for expunction, as described above;
- Has submitted to the FDLE a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with specified criteria;²⁹
- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition pertains; and

²⁶ Section 943.0585(4), F.S.

²⁷ Section 943.0585(2), F.S.

²⁸ Section 943.0585(1), F.S.

²⁹ Section 943.0585(2)(a)2., F.S.. Specified criteria include: An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record; An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court or a judgment of acquittal was rendered, or a verdict of not guilty was rendered; The person has never been adjudicated guilty or delinquent for committing any felony or specified misdemeanors.

- Pays a \$75 processing fee to the FDLE.³⁰

A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the FDLE.³¹

Other Types of Expunction

Other types of expunction include:

- Lawful self-defense expunction.³²
- Human trafficking victim expunction.³³
- Automatic juvenile expunction.³⁴
- Early juvenile expunction.³⁵
- Administrative expunction due to a mistake.³⁶
- Juvenile diversion program expunction.³⁷

III. Effect of Proposed Changes:

This bill creates s. 741.301, F.S., permitting a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

This bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

Additionally, this bill provides that a person who is eligible to seek an expunction for an indictment, information, or other charging document that was filed and dismissed or nolle prosequi by the state, was dismissed by a court, or a judgment of acquittal or verdict of not guilty was rendered, may seek such expunction even if they had a prior sealing or expunction.

The bill requires the FDLE to issue a certificate of eligibility or deny the request for a certificate no later than 6 months after the application is submitted. Current law does not provide a time frame for which the FDLE must issue a certificate of eligibility or deny a request.

The bill takes effect July 1, 2021.

³⁰ Section 943.0585(2)(a)1.-4., F.S.

³¹ Section 943.0585(2), F.S.

³² Section 943.0578, F.S.

³³ Section 943.0583, F.S.

³⁴ Section 943.0515(1)(b)1., F.S.

³⁵ Section 943.0515(1)(b)2., F.S.

³⁶ Section 943.0581, F.S.

³⁷ Section 943.0582, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE states that there are currently 1,454,269 unique identification numbers with criminal records. If one percent of those individuals apply for a Certificate of Eligibility each year, applications would increase by 14,543 applications each year.³⁸

In order to accommodate the increased workload, the Seal/Expunge Section would need 18 FTE positions (one Criminal Justice Information Consultant II, 2 Criminal Justice Consultant Is, 8 Criminal Justice Information Analyst IIs, 2 Criminal Justice Information Analyst Is, 3 Criminal Justice Information Examiners, one Operations and Management Consultant Manager, and one Senior Management Analyst Supervisor) for a total of \$1,207,115 of which \$1,137,005 is recurring.³⁹

³⁸ Florida Department of Law Enforcement, *2021 Agency Bill Analysis of SB 1972* (March 11, 2021) (on file with the Senate Committee on Criminal Justice).

³⁹ *Id.*

In order to maintain the proposed processing time of 6 months, the section would require five FTE positions (2 Criminal Justice Consultant Is, one Criminal Justice Information Analyst I, and 2 Criminal Justice Information Examiners) totaling \$315,359 (\$295,884 recurring).⁴⁰

The required changes to Computerized Criminal History will cost an estimated \$724,000 in non-recurring funds. The increase in positions would also require the acquisition of additional office space to house the new employees, because the department's headquarters building is currently at capacity.⁴¹

These amounts, according to the FDLE, would total \$2,249,474 of which \$1,432,889 is recurring.⁴²

It is likely that courts may also see an increase in requests for expunctions and an increase in workload to accommodate those requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0585 of the Florida Statutes.

This bill creates section 741.301 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*