

STORAGE NAME: h3653a.grr

DATE: April 7, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3653

RELATING TO: Expunction of Criminal History Records

SPONSOR(S): Representative Reddick

COMPANION BILL(S): SB 1856 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 4
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
- (3) CRIMINAL JUSTICE APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill provides for mandatory expunction of all criminal records upon the completion of an application to the Department of Law Enforcement when the following requirements are met:

1. Only second and third degree felonies may be expunged.
2. Only offenses that occurred before the person was 22 years old may be expunged.
3. The person has not committed an additional felony offense for at least 6 years since last being sentenced or confined for a felony offense.

A strike-everything amendment, adopted by the Committee on Crime and Punishment and traveling with the bill, would continue, as in present law, the requirement that a person petition a judge for expungement of the records, and would continue the requirement that the petitioner obtain a certificate of eligibility for expungement from the Department of Law Enforcement. The strike-everything amendment provides an alternative method of obtaining the certificate, including criteria under this method for obtaining the certificate of eligibility of expungement and barring certain criminal offenses from expungement under this alternative method.

The Committee on Governmental Rules and Regulations adopted a strike-everything amendment that provides an alternative method for the sealing of records. As with the strike-everything amendment adopted by the Committee on Crime and Punishment, the court remains the forum in which a person must obtain an order for the sealing of a record. The criteria for applying to the Department for a certificate under the alternative method for sealing records is identical to provisions in the Committee on Crime and Punishment amendment, as are the types of offenses that bar a person from obtaining a certificate under this method.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 943.0585, F.S., provides for expunction or deletion of records in certain limited instances. A judge has complete discretion to determine whether a criminal record may be expunged, as long as all records sought to be expunged pertain to one arrest or related arrests, and a certificate of eligibility for expunction has been issued by the Department of Law Enforcement. The following requirements must be met in order to receive a certificate authorizing the expunction of a criminal record for an offense for which a person has been sentenced:

1. The record to be expunged must have been sealed for 10 years.
2. The person has never been adjudicated guilty of a criminal offense regardless of whether the offense was a felony, a misdemeanor or an offense committed when the person was a juvenile.
3. The person has never had a criminal record sealed or expunged in the past.
4. The criminal record does not relate to a violation of chapter 794 (sexual battery), s. 800.04 (lewd and lascivious offenses), s. 817.034 (relating to schemes to defraud), s. 827.071 (relating to abuse of children), chapter 839 (relating to offenses by public employees and officials), s. 893.135 (relating to trafficking in controlled substances), or offenses enumerated in 907.041 (relating to violent felonies and sex offenses).
5. The person has submitted a certified copy of the disposition of the charge to be expunged.
6. The person is no longer under court supervision.

The sealing of a criminal record also requires an order by a judge and most of the same requirements that expungement requires including items 2 through 6 above. Section 943.059, F. S.

Effect of Expunction

When a criminal record is ordered expunged, it must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases but the record is exempt from a public records request. A criminal justice agency may retain a notation indicating compliance with an order to expunge. The "rap" sheet a law enforcement agency runs on a person with an expunged record would only see an entry stating that a record was expunged.

A person may lawfully deny or fail to acknowledge an expunged record unless the person:

1. Is a candidate for employment with a criminal justice agency;

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2. Is a defendant in a criminal prosecution;
3. Is a candidate for admission to The Florida Bar;
4. Is seeking to work with children, the developmentally disabled, the aged or the elderly as provided by statute.
5. Is seeking to be employed or licensed as a teacher.

A sealed record is confidential and may be denied to the same extent as an expunged record, however, it is available to criminal justice agencies.

B. EFFECT OF PROPOSED CHANGES:

The bill provides for mandatory expunction of all criminal records upon the completion of an application to the Department of Law Enforcement when the following requirements are met:

1. Only second and third degree felonies may be expunged.
2. Only offenses that occurred before the person was 22 years old may be expunged.
3. The person has not committed an additional felony offense for at least 6 years since last being sentenced or confined for a felony offense.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

More people will be entitled to having a criminal record expunged.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

A \$75 application fee is created to help cover the costs to the Department of Law Enforcement.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 943.0585, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Creates the Nathan McCall and Anderson C. Hill, II, Forgiveness Act.

Section 2. Provides for the mandatory expunction of criminal records as described in the Present Situation.

Section 3. Provides that the act will take effect July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

- 1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

There would be an expense to the Department of Law Enforcement for processing the applications, however, the expense would be offset to some extent by the \$75.00 fee.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The bill does not enhance criminal penalties and should have minimal costs. Since the bill creates a larger pool of people who will be able to obtain a certificate for expungement, there will be increased processing costs to the Department of Law Enforcement.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not impose a mandate on local governments.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not affect the revenue raising authority of local governments.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce any state tax shared with local governments.

V. COMMENTS:

While the strike-everything amendment greatly limits the effect of the bill, staff of the Committee on Crime and Punishment was unable to find an example of another state that is more permissive than the strike-everything amendment in allowing the expunction of records.

Currently, a person who has been adjudicated guilty of a felony offense is a "convicted felon" and may not have his or her criminal record expunged. It is also a second degree felony for a convicted felon to possess a firearm. The bill allows the expungement of convictions for third degree felonies for people who qualify, but the bill does not permit people with expunged felony convictions to possess a firearm. However, it will be more difficult to prosecute a person for possession of a firearm by a convicted felon. The prosecuting office will have to obtain a court order to compel FDLE to release a record of the expunged convictions.

Finally, sealed records are different than expunged records in that no court order is required for certain agencies such as law enforcement agencies, the Departments of Education, and the Department of Children and Families to obtain a sealed criminal record.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Governmental Rules and Regulations

On April 7, 1998, the Committee on Governmental Rules and Regulations adopted a strike-everything amendment offered by Representative Heyman. This amendment provides an alternative method for the sealing of records. As with the strike-everything amendment adopted by the Committee on Crime and Punishment, the court remains the forum in which a person must obtain an order for the sealing of a record. The criteria for applying to the Department for a certificate under the alternative method for sealing records is identical to provisions in the Committee on Crime and Punishment amendment, as are the types of offenses that bar a person from obtaining a certificate under this method.

Committee on Crime and Punishment

A strike-everything amendment was adopted by the Committee on Crime and Punishment and is traveling with the bill. The amendment gives a judge the decision on whether a record should be expunged. It is more lenient than current law, because a record will not have to be sealed for 10 years before expungement is permitted. Furthermore, the amendment would allow a record to be expunged for multiple offenses and adjudications of guilt. Like current law, the amendment would require a person to obtain a "certificate of eligibility for expungement" from the Department of Law Enforcement before a judge would have discretion to expunge records. However, the amendment creates an alternative and more lenient method to obtain a certificate from the department. The following requirements would have to be met in order for a person to qualify for this alternative "certificate of eligibility for expungement."

1. The offenses to be expunged may not be for domestic violence or driving under the influence.
2. The person has never been adjudicated delinquent or been sentenced for a second degree felony or a higher degree felony.
3. The person has never been adjudicated delinquent or been sentenced for any violation of chapter 794 (sexual battery), chapter 800 (lewd and lascivious offenses), chapter 827 (relating to abuse of children), chapter 839 (relating to offenses by public employees and officials), and s. 847.0145 (relating to the buying and selling of minors).
4. The person at the time of the request of expungement is over 25 and the person was under 20 when last sentenced for any criminal offense whether a felony or a misdemeanor.
5. The person has not been confined as the result of a criminal sentence or received a criminal sentence since the person became 20.
6. The person does not have a pending criminal charge and is not on supervision for a criminal offense.
7. The person paid a \$75.00 processing fee to the department unless waived.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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