

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 720

SPONSOR: Senator Carlton

SUBJECT: Criminal History Records

DATE: March 15, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Senate Bill 720 would include violations of s. 847.0133, F.S., relating to unlawful distribution of obscene materials to a minor, and violations of s. 847.0135, F.S., relating to unlawful activities involving computer pornography, to the list of offenses making a criminal history record ineligible to be sealed or expunged.

This bill substantially amends the following sections of the Florida Statutes: 943.0585 and 943.059.

**II. Present Situation:**

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The Florida Department of Law Enforcement (FDLE) can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the FDLE. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE, on the other hand, is required to retain expunged records. When a record is sealed it is not destroyed, but access is limited to the subject of the record, his attorney, and certain specified agencies. Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first-degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction. It is then up to the court to decide whether the sealing or expunction is appropriate.

A criminal history record may be expunged by a court if the petitioner has obtained a certificate of eligibility and swears that he or she: has not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses; has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged; has not obtained a prior sealing or expungement; and is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court. In addition, the record must have been sealed for ten years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court. s. 943.0585, F.S. The same criteria apply for sealing a criminal history record under s. 943.059, F.S. Any person knowingly providing false information on the sworn statement commits a felony of the third degree.

The Legislature also prohibits criminal history records relating to certain offenses in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication was withheld, from being sealed or expunged. These offenses include the following: sexual battery; lewd, lascivious, or indecent assault upon a child; communications fraud; sexual performance by a child; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, and burglary. ss. 943.0585 and 943.089, F.S.

Under s. 847.0133, F.S., it is a third-degree felony to knowingly sell, rent, distribute, or show any obscene material to a minor. Similarly, s. 847.0135, F.S., makes it a third-degree felony to knowingly transmit by computer certain information to facilitate or solicit sexual conduct of or with any minor, or to transmit the visual depiction of such conduct.

### **III. Effect of Proposed Changes:**

Senate Bill 720 would include violations of s. 847.0133, F.S., and s. 847.0135, F.S., to the list of offenses making a criminal history record ineligible to be sealed or expunged. Specifically, if a person has been found guilty of or pled guilty or nolo contendere to a violation of s. 847.0133, F.S., relating to unlawful distribution of obscene material to a minor, or to a violation of s. 847.0135, F.S., relating to unlawful activities involving computer pornography, such person's criminal history record could not be sealed or expunged under the bill.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.