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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY (HCC)
ANALYSIS**

BILL #: HB 811
RELATING TO: Criminal History Records
SPONSOR(S): Representative Clarke

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY (HCC)
- (2) JUVENILE JUSTICE (SGC)
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

I. SUMMARY:

Under current law, a person may have a criminal history record expunged or sealed if they meet certain requirements for eligibility. A person is not eligible to have a criminal history record expunged or sealed if their record relates to a violation of certain enumerated offenses, including the "dangerous crimes" listed in s. 907.041. This bill amends ss. 943.0585 and 943.059, F.S., prohibiting a court from expunging or sealing a criminal history record of a person convicted of distributing or showing obscene material to a minor or certain activities involving computer pornography.

House Bill 811 provides for an effective date of July 1, 2001.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The courts of this state have jurisdiction over the maintenance, expunction and correction of judicial records containing criminal history information. A court may order a criminal justice agency to expunge or seal the criminal history record of an adult or a minor who complies with the requirements provided in sections 943.0585 and 943.059, Florida Statutes.

Any criminal history record ordered *expunged* by a court must be physically destroyed by a criminal justice agency having custody of it, with the exception of any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE), which must be retained in all cases. Such record retained by FDLE is exempt from disclosure under the Public Records Law, s.119.07(1) and s. 24(a), Article I of the State Constitution, and may not be disclosed without a court order. A *sealed* criminal history record is also confidential and exempt from disclosure; it is available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies, or certain agencies as provided in s. 943.059(4), F.S., for licensing and employment purposes. A person who has had a criminal history record expunged or sealed may legally deny or fail to acknowledge the arrests covered by the expunged or sealed record, unless the subject is seeking employment with the agencies provided under ss. 943.0585(4)(a) and 943.059(4)(a).

A criminal history record may not be expunged or sealed if it relates to certain enumerated offenses, as follows:

- Sexual battery, Chapter 794, F.S.
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, s. 800.04, F.S.
- Communications fraud, s. 817.034, F.S.
- Sexual performance by a child, s. 827.071, F.S.
- Offenses by public officers and employers, Chapter 839, F.S.
- Narcotics trafficking, s. 893.15 F.S.
- Offenses designated as "dangerous crimes¹," under s. 907.041, F.S.:

A person may be eligible to have a criminal history record *expunged* if they have no criminal convictions on their record. A record may be expunged if the charge was dismissed or nolle

¹A "dangerous crime" includes offenses such as homicide, kidnapping, robbery, sexual battery, arson, aggravated assault, and other offenses enumerated in s. 907.041, F.S.

prosequi by the state attorney or was dismissed by the court, provided that the charge is not one of the enumerated offenses listed above. A person is eligible to have a criminal history record *sealed* if they have no criminal convictions on their record. If adjudication of guilt was withheld, the person is eligible to have a record sealed, provided that the charge is not one of the enumerated offenses listed above.

C. EFFECT OF PROPOSED CHANGES:

This bill amends ss. 943.0585 and 943.059, F.S., to provide that a person who has been found guilty of or pled guilty or nolo contendere to selling, renting, loaning, giving away, distributing, transmitting or showing any obscene material to a minor, as provided in s. 847.0133, F.S., is not eligible for the court ordered expunction or sealing of a criminal history record. It also amends the two sections to provide that a person who has been found guilty of or pled guilty or nolo contendere to certain activities involving computer pornography under the "Computer Pornography and Child Exploitation Prevention Act," s. 847.0135, F.S., is not eligible for the court ordered expunction or sealing of a criminal history record.

This bill amends s. 943.0585(2)(a), F.S., providing that, prior to petitioning the court to expunge a criminal history record, a person seeking to have a record expunged must obtain, and submit to the Florida Department of Law Enforcement, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record does not relate to a violation of ss. 847.0133 or 847.0135, F.S.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 943.0585 relating to the court-ordered expunction of criminal history records.

Section 2: Amends s. 943.059 relating to the court-ordered sealing of criminal history records.

Section 3: Provides an effective date of July 1, 2001.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require municipalities or counties to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Florida Department of Law Enforcement reported that this bill will have no or minimal fiscal impact on the department, and will result in a relatively minor impact on procedures relating to the expunction and sealing of criminal history records by the department.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY (HCC):

Prepared by:

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