

STORAGE NAME: h0811.hcc.doc
DATE: March 29, 2001

HOUSE OF REPRESENTATIVES
COUNCIL FOR HEALTHY COMMUNITIES
ANALYSIS

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

TIED BILL(S):

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY (HCC) YEAS 8 NAYS 0
- (2) JUVENILE JUSTICE YEAS 7 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 11 NAYS 0
- (4)
- (5)

I. SUMMARY:

Under current law, a person may have a criminal history record expunged or sealed if they meet statutory requirements for eligibility. A person is not eligible to have a criminal history record expunged or sealed if their record relates to certain enumerated offenses, including "dangerous crimes" specified in s. 907.041, F.S.

This bill amends ss. 943.0585 and 943.059, F.S., to expand the list of enumerated offenses for which a person may become ineligible to have his or her criminal history record sealed or expunged. The bill prohibits the court from expunging or sealing the criminal history record of a person who has been convicted of distributing or showing obscene material to a minor. The bill also prohibits the court from expunging or sealing the criminal history record of a person who has been convicted of certain offenses involving computer pornography.

There appears to be no or minimal fiscal impact associated with this bill.

The bill has 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:

Florida courts have jurisdiction over the maintenance, expunction and correction of judicial records containing state criminal history information. An adult or minor who complies with the provisions of ss. 943.0585 and 943.059, F.S., may seek a court order to have a criminal justice agency seal or expunge that person's criminal history record.

Any criminal history record ordered *expunged* by the court must be physically destroyed by a criminal justice agency having custody of it, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained in all cases. However, such record retained by FDLE is exempt from disclosure under the Public Records Law, s. 119.07(1), F.S., and s. 24(a), Article I, of the Florida Constitution. Once expunged, such record may not subsequently be disclosed without a court order.

A *sealed* criminal history record is also confidential and exempt from disclosure. Sealed records are available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies, or specific entities where the person is seeking employment with, admission to, or license by - such as The Florida Bar, Department of Children & Family Services, or Office of Teacher Certification, Staff Development, and Professional Practices of the Department of Education - as provided in s. 943.059(4), F.S.

A criminal history record may not be expunged or sealed if it relates to the following offenses:

- Sexual battery, as defined in Chapter 794, F.S.
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04, F.S.
- Communications fraud, as defined in s. 817.034, F.S.
- Sexual performance by a child, as defined in s. 827.071, F.S.
- Offenses by public officers and employers, as defined in Chapter 839, F.S.

- Narcotics trafficking, as defined in s. 893.135 F.S.
- Offenses designated as “dangerous crimes,”¹ as defined in s. 907.041, F.S.

A person who has had a criminal history record expunged or sealed may legally deny or fail to acknowledge the arrests that are the subject of 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), F.S.

A person is 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 prosequied 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:

The bill expands the list of enumerated offenses that make a person ineligible to have his or her criminal record expunged or sealed. The 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. The bill amends the same 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.

Section 943.0585(2)(a), F.S., provides 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 violations of specific statutes. This bill expands this list of statutes to include ss. 847.0133 and 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.

¹A “dangerous crime,” as defined in s. 907.041 (4)(a) means the following: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult; hijacking; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741. 28 and; attempting or conspiring to commit any such crime, and home invasion robbery.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill is expected to have no or minimal fiscal impact to state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL 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.

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.

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B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

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

Prepared by:

Staff Director:

Lynn Dodson

David De La Paz

AS REVISED BY THE COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

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Shari Z. Whittier

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AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

Lynn Dodson

Mary Pat Moore