

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 1154
 SPONSOR: Senator Klein
 SUBJECT: Investigative Incident Reports
 DATE: March 3, 2002 REVISED: 03/05/02 _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|------------|-------------------------|
| 1. | <u>Dugger</u> | <u>Cannon</u> | <u>CJ</u> | <u>Favorable</u> |
| 2. | <u>White</u> | <u>Wilson</u> | <u>GO</u> | <u>Fav/2 amendments</u> |
| 3. | _____ | _____ | <u>APJ</u> | _____ |
| 4. | _____ | _____ | <u>AP</u> | _____ |
| 5. | _____ | _____ | <u>RC</u> | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Senate Bill 1154 authorizes law enforcement investigative incident reports to be sealed if the person requesting the sealing obtains a certificate of eligibility from the Florida Department of Law Enforcement (FDLE), pays a \$75 processing fee, and is granted such a sealing by the court. Currently, only criminal history records may be sealed under s. 943.059, F.S.

Access to sealed investigative incident reports would be limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

This bill substantially amends s. 943.045 of the Florida Statutes, and creates s. 943.0595 of the Florida Statutes.

II. Present Situation:

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The definition of “criminal history record” in s. 943.045, F.S., includes notations of arrests, detentions, indictments, informations, or other formal criminal charges and dispositions. It does not include investigative activity contained in an investigative incident report that does not result in an arrest or in criminal charges being filed.

The court has jurisdiction over their own judicial records containing criminal history information and over its 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. The FDLE, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, and access to it is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

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 (law enforcement; the Florida Bar; or working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities), 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 the FDLE. A person receiving the certificate may then petition the court for a record sealing or expunction, which may be granted by the court if the petitioner swears that he or she: (a) has not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses; (b) has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged; (c) has not obtained a prior sealing or expungement; and (d) is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court. Additionally, for an expunction petition, the record must have been sealed for ten years before it may be expunged, unless charges were not filed or were dismissed by the prosecutor or court.¹

Statute 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; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, and burglary.²

There is currently no provision for sealing a law enforcement investigative incident report.

¹ Section 943.0585, F.S.

² Sections 943.0585 and 943.089, F.S

III. Effect of Proposed Changes:

Section 1. The bill amends s. 943.045, F.S., to provide that the term “investigative incident report” is defined as any nonjudicial record maintained by a criminal justice agency that documents criminal investigative activity and the results of such activity, and for which a final decision has been made that neither an arrest nor criminal charges will be brought concerning the alleged activity under investigation that is the subject of the report.

Section 2. The bill creates s. 943.0595, F.S., to permit investigative incident reports to be sealed. In order to have an investigative incident report sealed, the bill requires a person to first obtain a certificate of eligibility from the FDLE. The FDLE is required to issue the certificate when the person: (a) remits a \$75 processing fee to the FDLE, which shall be placed in the FDLE Operating Trust Fund; (b) has not been adjudicated guilty of a crime, or adjudicated delinquent of offenses specified in s. 943.051(3)(b), F.S.; and (c) has never secured a prior sealing or expunction of an investigative incident report or criminal history record.

Upon receipt of a certificate of eligibility, a person may petition the court to seal his or her investigative incident report. The petition must include the certificate of eligibility, and a sworn statement indicating that the petitioner: (a) has never been adjudicated guilty of a crime, or adjudicated delinquent of offenses specified in s. 943.051(3)(b), F.S.; (b) has never been arrested, charged, or prosecuted because of any incident reported in the investigative incident report; (c) has not received a prior sealing or expunction; and (d) does not have a petition to seal or expunge a criminal history record or investigative incident report pending before a court. Any person who knowingly provides false information on the sworn statement commits a felony of the third degree.

A copy of a completed petition to seal must be served upon the law enforcement agency that prepared the investigative incident report. The agency may respond to the court by showing good cause for why the petition should not be granted. If the court grants the sealing request, the clerk of the court must certify copies of the order to the originating law enforcement agency. The originating law enforcement agency is then required to forward the order to the FDLE and to any agency that it disseminated the investigative incident report to.

The FDLE, if it receives an order to seal that is not in compliance with the statute, is required to notify the issuing court, the agency that prepared the investigative incident report, and the petitioner or his attorney of the reason for noncompliance. The agency that prepared the investigative incident report shall within 60 days petition the court to void the order.

Under the bill, there is no cause of action, including contempt of court, against any criminal justice agency for failure to comply with an order to seal when the petitioner has failed to obtain the required certificate of eligibility or when the court order does not comply with the statute.

Further, an order to seal an investigative incident report does not require the originating agency to surrender the report to the court; rather, the agency is required to maintain the report.

Persons who have had their investigative incident report sealed may lawfully deny or fail to acknowledge the incidents covered by the sealed record, except when they are applying for

certain types of employment (law enforcement; the Florida Bar; or working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities), petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.

Section 3. The bill provides that it takes effect on October 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Senate Bill 1152, which is linked to this bill, creates a public records exemption for investigative incident reports that are sealed.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

A person applying to the FDLE to obtain a certificate of eligibility for sealing his or her investigative incident report is required to pay a processing fee of \$75 to the department, unless it is waived by the executive director. Current law also requires a \$75 fee for a certificate of eligibility to seal or expunge criminal history records.

B. Private Sector Impact:

A person applying to the FDLE to obtain a certificate of eligibility for sealing his or her investigative incident report is required to pay a processing fee of \$75 to the department, unless it is waived by the executive director.

C. Government Sector Impact:

According to the FDLE, there should not be a fiscal impact as a result of this bill.

VI. Technical Deficiencies:

The bill provides on page 6, lines 1-4, that the agency that created the investigative incident report may show cause as to why the petition to seal the report shall not be granted; however, the bill does not specify a time frame in which the agency may show cause. Additionally, the bill at page 6, lines 18-20, requires the agency to petition a court to void an order to seal that does not

comply with the section within 60 days; however, the bill does not specify what triggers the 60-day time frame. It may be desirable to amend the bill to clarify these time frames.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

Provides that the agency creating an investigative incident report has 30 days to show cause why a petition to seal should not be granted.

#2 by Governmental Oversight and Productivity:

Clarifies that the agency creating an investigative incident report has 60 days after receipt of notice from the FDLE to petition the court to void an order to seal that does not comply with statute.