

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 1082

SPONSOR: Senator Smith

SUBJECT: Sealed and Expunged Criminal History Records

DATE: March 19, 2003

REVISED: _____

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

I. Summary:

Senate Bill 1082 adds any predicate offense that requires a person to register as a sexual predator, sexual offender, or career offender to the list of offenses under ss. 943.0585 and 943.059, F.S., that prohibits a person from being eligible to receive a criminal history record sealing or expunction. Thus, someone who is found guilty of or who pleads guilty to or nolo contendere to a predicate offense requiring registration as one of these types of offenders, *regardless of whether adjudication is withheld*, will be unable to have his or her criminal history record sealed or expunged under the proposed change.

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 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 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 expunction; 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 is withheld*, from being sealed or expunged. These offenses include the following: luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child; lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

There is no specific prohibition in s. 943.0585 or s. 943.059, F.S., against sealing or expunging a criminal history record if it involves a predicate offense that requires registration as a sexual

offender, sexual predator, or as a career offender. Many of these predicate offenses such as murder, sexual battery, other sexual crimes, kidnapping, robbery, and burglary are already covered in the current listing of prohibited offenses (see the previous paragraph). However, some predicate offenses such as violations of s. 847.0138, F.S., (involving electronic transmission of harmful material to minors) and s. 847.0137, F.S., (involving electronic transmission of pornography) are not covered.

III. Effect of Proposed Changes:

Senate Bill 1082 adds any predicate offense that requires a person to register as a sexual predator, sexual offender, or career offender to the list of offenses under ss. 943.0585 and 943.059, F.S., that prohibits a person from being eligible to receive a criminal history record sealing or expunction. Thus, someone who is found guilty of or who pleads guilty to or nolo contendere to a predicate offense requiring registration as one of these types of offenders, *regardless of whether adjudication is withheld*, will be unable to have his or her criminal history record sealed or expunged under the proposed change. (Examples of predicate offenses that are not currently covered as prohibited offenses include violations of s. 847.0138, F.S., involving electronic transmission of materials harmful to minors and s. 847.0137, F.S., involving electronic transmission of pornography.)

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.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
