

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.)

Prepared By: Criminal Justice Committee

BILL: SB 1276

INTRODUCER: Senators Rich, Campbell, and Smith

SUBJECT: Sealing and Expunction of Criminal History Records

DATE: March 28, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Currently, criminal history records relating to certain offenses (these offenses are commonly referred to as “list 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, may not be sealed.

This bill specifies, in accordance with current law, that a criminal history record involving any of the “list offenses” may be sealed:

- if an indictment, information, or other charging document was not filed or issued;
- if a charging document was filed and the case was dismissed or a nolle prosequi was entered by the state attorney;
- if a charging document was filed and the case was dismissed by a court; or
- if a charging document was filed and the defendant was acquitted or found not guilty.

Current law states that a person seeking to have a record sealed must have never had a prior record sealed (or expunged). The bill provides that a person can have a record sealed even if they have had prior record(s) sealed so long as the past record(s) that were sealed were not related to offenses the person *pled guilty to* or *were found guilty of*.

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

II. Present Situation:

Sections 943.059 and 943.0585, F.S., provide that courts have jurisdiction to maintain, seal, expunge, and correct judicial records containing criminal history information. Currently, any court may order a criminal justice agency to seal and/or expunge the criminal history record of a minor or an adult who complies with certain requirements.¹

When a criminal history record is sealed, it is confidential and exempt from the public records provisions of s. 119.07(1), F.S., and Art. I, s. 24(a), of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, and to certain specified agencies for their respective licensing and employment purposes.² When a criminal history record is expunged, it is physically destroyed.³ With certain exceptions, it is a first degree misdemeanor to divulge information relating to the existence of a sealed or expunged record.⁴

Persons petitioning to have their criminal record sealed or expunged must first obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE).⁵ One of the criteria to receive a certificate of eligibility requires that an applicant must have never secured a prior sealing or expunction of a criminal history record.⁶

If the person meets certain statutory criteria and obtains a certificate of eligibility, he or she can petition the court to have his or her record sealed or expunged.⁷ The court then decides whether sealing or expunction is appropriate.⁸

Criminal history records relating to certain offenses⁹ (FDLE commonly refers to the offenses specified in this section as "list offenses") in which a defendant (adult or juvenile) has been found guilty of or has pled guilty or nolo contendere to, *regardless of whether adjudication is withheld*¹⁰, may not be sealed or expunged.¹¹

¹ ss. 943.059 and 943.0585, F.S.

² s. 943.059, F.S.

³ s. 943.0585, F.S.

⁴ ss. 943.059 and 943.0585, F.S.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; 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.

¹⁰ A withhold of adjudication is a manner of disposition in which the court does not pronounce a formal judgment of conviction. http://www.flcourts.org/gen_public/pubs/bin/srsmanual/Glossary_2002.pdf

¹¹ ss. 943.059 and 943.0585, F.S.

III. Effect of Proposed Changes:

This bill specifies, in accordance with current law, that a criminal history record involving any of the “list offenses” may be sealed:

- if an indictment, information, or other charging document was not filed or issued;
- if a charging document was filed and the case was dismissed or a nolle prosequi was entered by the state attorney;
- if a charging document was filed and the case was dismissed by a court; or
- if a charging document was filed and the defendant was acquitted or found not guilty.

The bill also changes one of the requirements necessary to have any criminal record sealed (note that the bill does not change the requirements to have a criminal history record *expunged*). As noted above, current law states that a person seeking to have a record sealed must have never had a prior record sealed (or expunged). The bill provides that a person can have a record sealed even if they have had prior record(s) sealed so long as the past record(s) that were sealed were not related to offenses the person *pled guilty to* or *were found guilty of*. For example, under the bill, if an individual had a case *dismissed* 5 years ago and had that record sealed, that individual would be able to petition for another record seal for any new eligible criminal record. However, if the same individual *pled guilty to* the crime 5 years ago, they would not be permitted to petition for another record seal.

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:

FDLE reported the following fiscal impact in their analysis¹²:

	<u>(FY 05-06)</u>	<u>(FY 06-07)</u>	<u>(FY 07-08)</u>
1. Revenues:			
Recurring	\$225,000.00	\$225,000.00	\$225,000.00
Non-Recurring	N/A	N/A	N/A
2. Expenditures:			
Recurring	\$ 38,381.00	\$ 38,381.00	\$ 38,381.00
Non-Recurring	\$ 10,600.00	N/A	N/A

This would impact the overall volume of Applications for Certification of Eligibility requests for FDLE’s Seal and Expunge Section. The number of certificates of eligibility issued would increase along with court orders for compliance and the need to modify additional judicial segments of the record.

VI. Technical Deficiencies:

An amendment is suggested to clarify when a person may have a record sealed because according to the FDLE, the bill as currently drafted may raise the potential for misinterpretation.

VII. Related Issues:

Regarding the portion of the bill allowing multiple seals in certain instances, FDLE states in their analysis that this is a major policy change in the state’s approach to sealing records. Currently, a person may only seal or expunge a record *once* in their lifetime. This bill would allow a person to seal *multiple* records so long as the record did not involve an offense for which the defendant was found guilty or pled guilty or nolo contendere.

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

¹² FDLE states that an analysis of Criminal History Files shows that there are a potential 58,000 additional records for individuals who have already had a record sealed that could qualify for an additional seal application. If only 5% of the potential is realized over a year, the workload would increase by approximately 2,900 applications a year, which would require one additional specialist to process the applications. For purposes of this analysis, FDLE anticipates 3,000 additional applications x \$75.00 processing fee.

VIII. Summary of Amendments:

None.

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