

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1369 Criminal History Records  
**SPONSOR(S):** Criminal Justice Subcommittee; Grant and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. 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, 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.

Currently a person may seal or expunge a criminal history record one time.

CS/HB 1369 allows for a second sealing and expunging of a criminal history record.

The bill provides additional eligibility requirements for obtaining a certificate for a second sealing or expunction.

The bill allows, in specific circumstances, a person to:

- Deny or fail to acknowledge arrests and subsequent dispositions covered by a sealed or expunged record; and
- Fail to recite or acknowledge a sealed or expunged record on an employment application.

The bill requires FDLE to disclose the contents of an expunged record to the subject of the record upon receiving a written, notarized request from the subject of the record.

The bill also requires each clerk of court website to include information relating to procedures to seal or expunge criminal history records and a link to related information on FDLE's website.

This bill may have a positive fiscal impact on FDLE and is effective July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### **Sealing and Expunction of Criminal History Records**

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.<sup>1</sup>

When a criminal history record is expunged, criminal justice agencies other than FDLE must physically destroy the record. 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, 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.<sup>2</sup>

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.<sup>3</sup>

A person who has had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their sealed or expunged record, except when they are applying for certain types of employment,<sup>4</sup> petitioning the court for a sealing or expunction, or are a defendant in a criminal prosecution.<sup>5</sup>

In 1992, the Legislature amended the sealing and expunction statutes to require a person seeking a sealing or expunction to first obtain a certificate of eligibility (certificate) from FDLE. Before a person can petition the court to seal or expunge a criminal history record, they must receive a certificate of eligibility from FDLE. In order to receive a certificate, a person must:

(1) Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor that indicates an indictment, information, or other charging document was not filed or issued in the case or if filed and was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction. Charges related to the record the person wishes to expunge cannot have resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.

Criminal history records relating to certain offenses<sup>6</sup> in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication is withheld,<sup>7</sup> may not be sealed or expunged.<sup>8</sup>

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<sup>1</sup> Section 943.0581, F.S.

<sup>2</sup> Section 943.0585(4), F.S.

<sup>3</sup> Section 943.0585(4)(c), F.S.

<sup>4</sup> These types of employment include: law enforcement, the Florida Bar, working with children, the developmentally disabled, or the elderly through the Department of Children and Families, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities, or a Florida seaport.

<sup>5</sup> Section 943.0585(4)(a), F.S.

<sup>6</sup> 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

(2) Pay a \$75 processing fee.

(3) Submit a certified copy of the disposition of the record they wish to have expunged.

(4) Have never been adjudicated guilty or delinquent for committing a felony or misdemeanor specified in 943.051(3)(b), F.S.,<sup>9</sup> prior to the date of their application for the certificate.<sup>10</sup>

(5) Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged.

(6) Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction. A record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.<sup>11</sup>

This requirement does not apply when a plea was not entered or all charges relating to the arrest or alleged criminal activity to which the petition to expunge pertains were dismissed prior to trial.<sup>12</sup>

(7) No longer be under any court supervision related to the disposition of the record they wish to have expunged.

In addition to the certificate, the petitioner must also submit a sworn statement that they:

- Have not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses;
- Have not been adjudicated guilty or delinquent for any of the charges they are currently trying to have sealed or expunged;
- Have not obtained a prior sealing or expunction; and
- Are eligible to the best of their knowledge and has no other pending expunction or sealing petitions before the court.<sup>13</sup>

Any person knowingly providing false information on the sworn statement commits a felony of the third degree.<sup>14</sup>

If the person meets the statutory criteria based on FDLE's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.<sup>15</sup> It is then up to the court to decide whether the sealing or expunction is appropriate.<sup>16</sup>

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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.

<sup>7</sup> 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](http://www.flcourts.org/gen_public/pubs/bin/srsmanual/Glossary_2002.pdf) (Last visited March 12, 2010).

<sup>8</sup> Sections 943.059 and 943.0585, F.S.

<sup>9</sup> These offenses include: assault, as defined in s. 784.011; battery, as defined in s. 784.03; carrying a concealed weapon, as defined in s. 790.01(1); unlawful use of destructive devices or bombs, as defined in s. 790.1615(1); negligent treatment of children, as defined in s. 827.05; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b); open carrying of a weapon, as defined in s. 790.053; exposure of sexual organs, as defined in s. 800.03; unlawful possession of a firearm, as defined in s. 790.22(5); petit theft, as defined in s. 812.014(3); cruelty to animals, as defined in s. 828.12(1); arson, as defined in s. 806.031(1); and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

<sup>10</sup> Section 943.0585(2)(d), F.S.

<sup>11</sup> Section 943.0585(2)(h), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 943.0585(1)(b), F.S.

<sup>14</sup> 14 Section 943.0585(1), F.S.

<sup>15</sup> Section 943.0585(2), F.S.

**STORAGE NAME:** h1369.CRJS

**DATE:** 4/6/2011

**PAGE:** 3

FDLE reports that it processes about 1,500 court orders per month that meet the sealing and expunging criteria.<sup>17</sup>

### **Sealing and Expunging Juvenile Records**

Juveniles have a few more options than adults do when choosing to have a record expunged. If a juvenile successfully completes a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor, he or she is eligible to have the arrest expunged providing there is no other past criminal history. This expunction does not prohibit the juvenile from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.<sup>18</sup>

Juvenile delinquency criminal history records maintained by the FDLE are also expunged automatically when the juvenile turns 24 years of age (if he or she is not a serious or habitual juvenile offender or committed to a juvenile prison) or 26 years of age (if he or she was a serious or habitual juvenile offender or was in a juvenile prison), as long as the juvenile is not arrested as an adult or adjudicated as an adult for a forcible felony.<sup>19</sup> This automatic expunction does not prohibit the juvenile from requesting a sealing or expunction under s. 943.0585 or s. 943.095, F.S., if he or she is otherwise eligible.

Criminal history records are public records under Florida law and must be disclosed unless they have been sealed or expunged or have otherwise been exempted or made confidential.<sup>20</sup> Fingerprints are exempt and are not disclosed by the FDLE. Juvenile criminal history information that has been compiled and maintained by the FDLE since July 1, 1996, is also considered by FDLE to be a public record, including felony and misdemeanor criminal history information.<sup>21</sup>

### **Effect of the Bill**

CS/HB 1369 allows for a second sealing and expunction of a criminal history record. The bill provides that a person must obtain a certificate from the department to seal or expunge a second criminal history record. The requirements regarding eligibility for the certificate are the same as current law.

In addition to the current requirement, the bill provides that FDLE will issue a certificate for a second sealing if:

- The person has had only one prior expunction or sealing of his or her criminal history record under ss. 943.0585 or 943.059, F.S., or one prior expunction following the sealing of the same arrest or alleged criminal activity that was expunged;
- The person has not been arrested in this state during the 5-year period prior to the date on which the application for the certificate is filed; and
- The person has not previously sealed or expunged a criminal history record that involved the same offense to which the petition to seal pertains.

FDLE will issue a certificate for a second expunction if:

- The person has had only one prior expunction of his or her criminal history record under this section or one prior expunction following the sealing of the same arrest or alleged criminal activity;
- The person has not been arrested in this state during the 10-year period prior to the date on which the application for the certificate is filed; and
- The person has not previously sealed or expunged a criminal history record that involved the same offense to which the petition to expunge pertains.

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<sup>16</sup> Section 943.0585(3)(b), F.S.

<sup>17</sup> FDLE 2011 Analysis of HB 1369.

<sup>18</sup> Section 943.0582, F.S.

<sup>19</sup> Section 943.0515(1) and (2), F.S.

<sup>20</sup> Section 119.07(1), F.S., s. 24(a), Art. I, State Constitution.

<sup>21</sup> Section 943.053(3)(a), F.S., ch. 96-388, L.O.F.

Except when applying for certain types of employment,<sup>22</sup> petitioning the court for a sealing or expunction, or a defendant in a criminal prosecution, the bill allows a person to:

- Deny or fail to acknowledge arrests *and subsequent dispositions* covered by a sealed or expunged record; and
- Fail to recite or acknowledge a sealed or expunged record on an employment application.

The bill requires FDLE to disclose the contents of an expunged record to the subject of the record upon receiving a written, notarized request from the subject of the record.

The bill also requires each clerk of court website to include information relating to procedures to seal or expunge criminal history records and a link to related information on FDLE's website.

#### B. SECTION DIRECTORY:

Section 1. Provides this act may be cited as the "Jim King Keep Florida Working Act."

Section 2. Amends 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 3. Amends 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 4. Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

FDLE would most likely experience an increase in re-occurring revenue of about \$350,000 the first year and approximately \$400,000 annually in subsequent years.<sup>23</sup>

##### 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.

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<sup>22</sup> These types of employment include: law enforcement, the Florida Bar, working with children, the developmentally disabled, or the elderly through the Department of Children and Families, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities, or a Florida seaport.

<sup>23</sup> FDLE 2011 Analysis of HB 1369 (Updated April 5, 2011.)

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Because the seal/expunge function of FDLE is implemented on a fee based system to the Operating Trust Fund, FDLE reports that authorizing language is needed to allow FDLE to expend revenue from the fees that are received to the Operating Trust Fund and to create the positions necessary to fulfill its obligations in implementing its responsibilities in the bill.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 6, 2011, the Criminal Justice Subcommittee adopted a Proposed Committee Substitute for HB 1369. The Proposed Committee Substitute:

- Allows for a second sealing and expunging of a criminal history record.
- Provides additional eligibility requirements for obtaining a certificate for a second sealing or expunction.
- Allows, in specific circumstances, a person to deny or fail to acknowledge arrests and subsequent dispositions covered by a sealed or expunged record; and fail to recite or acknowledge a sealed or expunged record on an employment application.
- Requires FDLE to disclose the contents of an expunged record to the subject of the record upon receiving a written, notarized request from the subject of the record.
- Requires each clerk of court website to include information relating to procedures to seal or expunge criminal history records and a link to related information on FDLE's website.

The bill was then reported favorably. The analysis is drafted to the committee substitute.