

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 1402

INTRODUCER: Criminal Justice Committee and Senator Smith

SUBJECT: Expunging Criminal History Records

DATE: April 22, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Dugger | Cannon | CJ | Fav/CS |
| 2. | O'Connor | Maclure | JU | Favorable |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill provides that the act may be cited as the “Jim King Keep Florida Working Act.” It does the following:

- 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 a person to deny or fail to acknowledge arrests and subsequent dispositions covered by a sealed or expunged record under specified circumstances, as well as fail to recite or acknowledge a sealed or expunged record on an employment application.
- Requires the Florida Department of Law Enforcement (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 the FDLE’s website.

This bill amends sections 943.0585 and 943.059, Florida Statutes.

II. Present Situation:

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 arrests 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, 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.¹

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,² petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.³

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, 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.⁴ 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, remits a \$75 processing fee, 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;

¹ Section 943.0585(4)(c), F.S.

² 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 Family Services, 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.

³ Section 943.0585(4)(a), F.S.

⁴ Section 943.0585(2), F.S.

- 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.⁵

In addition, the 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, regardless of the outcome of the trial.⁶ In other words, if the formal adjudication of guilt is withheld by the court, or the applicant is acquitted, the record must first be sealed. If the charges are dropped, the record can be immediately expunged. A conviction disqualifies a record from being expunged or sealed. The criteria only allow for one record sealing and expunction.

Law enforcement asserts that being found “not guilty” or being acquitted at trial means the prosecutor failed to meet the burden of proving guilt beyond a reasonable doubt; it is not necessarily equivalent to a finding of innocence. The same was said to apply when charges are dismissed because there are reasons other than innocence that can explain why an arrest may not result in a conviction. Examples given during testimony include witnesses being uncooperative, evidence being suppressed, or charges being dropped to secure a plea of guilty against another defendant.⁷

The same criteria relating to expunction apply when seeking to seal 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.⁸

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 was withheld, from being sealed or expunged.⁹

Expunction of Juvenile Criminal History Records

Juveniles have more options than adults 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 he or she has no other past criminal history.¹⁰ This expunction does not prohibit the

⁵ Section 943.0585(1)(b), F.S.

⁶ Section 943.0585(2)(h), F.S.

⁷ Public testimony by law enforcement during 2008 Senate Criminal Justice Committee hearings on CS/SB 2152 (employment barriers for ex-offenders).

⁸ Section 943.0585(1), F.S.

⁹ These offenses include the following: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients; 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 Section 985.125, F.S.

youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.¹¹

Juvenile delinquency criminal history records maintained by the FDLE are also expunged automatically when the youth 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 is a serious or habitual juvenile offender or committed to a juvenile prison), as long as the youth is not arrested as an adult or adjudicated as an adult for a forcible felony.¹² This automatic expunction does not prohibit the youth 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.¹³ 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 the department to be a public record, including felony and misdemeanor criminal history information.¹⁴

III. Effect of Proposed Changes:

The bill provides that the act may be cited as the “Jim King Keep Florida Working Act.” It allows for a second sealing or expunction of a criminal history record. The bill provides that a person must obtain a certificate from the Florida Department of Law Enforcement (FDLE) to seal or expunge a second criminal history record. Under the bill, the requirements in current law governing eligibility for a certificate for sealing or expunction of the first record apply as well in the case of a second sealing or expunction.

In addition to the current requirements, the bill provides that the 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 five-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.

The 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;

¹¹ Section 943.0582, F.S.

¹² Section 943.0515(1) and (2), F.S.

¹³ Section 119.07(1), F.S.; s. 24(a), Art. I, State Constitution.

¹⁴ Section 943.053(3)(a), F.S.; ch. 96-388, L.O.F.

- 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.

Except when applying for certain types of employment,¹⁵ 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 the 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 the FDLE's website.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An increased number of persons will be eligible to have their Florida criminal history record sealed/expunged under the bill. Under current law, there is a \$75 processing fee to have a criminal record sealed or expunged. The bill states that all provisions and

¹⁵ 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.

requirements of the existing section apply to a second application to seal or expunge, so second-time applicants will be responsible for an additional \$75 fee.

C. Government Sector Impact:

The fiscal impact to the FDLE is as follows:¹⁶

| Expenditures | FY 11 - 12 | FY 12 - 13 | FY 13 - 14 | |
|---|-------------------|-------------------|-------------------|--------------------------|
| 2 Positions - Criminal Justice Customer Service Specialists | \$92,547 | \$92,547 | \$92,547 | Salary & Benefits |
| Standard Expense for 2 Positions | \$20,906 | \$13,110 | \$13,110 | Expenses |
| Standard HR Services for 2 Positions | \$712 | \$712 | \$712 | Human Resources Services |
| System Programming to include analysis, design, documentation and testing | \$36,075 | 0 | 0 | Expense - programming |
| TOTAL 2 Positions | \$150,240 | \$106,369 | \$106,369 | |

However, the department estimates recurring revenues for the rest of FY 2010-11 and FY 2011-12 through FY 2012-13 to be \$498,525 based on the receipt of additional \$75 application fees.¹⁷

The increased volume of applicants for certification and eligibility will impact State Attorney’s Offices processing the applications that are submitted and approved, as well as the resulting court orders.¹⁸

The clerks of the court may also incur costs or have increased workload associated with the bill’s requirement that they revise their websites to include information relating to procedures to seal or expunge criminal history records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because the seal/expunge function of the FDLE is implemented on a fee-based system to the Operating Trust Fund, FDLE reports that authorizing language is needed to allow the 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.

¹⁶ FDLE 2011 Revised Legislative Analysis for SB 1402 (on file with the Senate Criminal Justice Committee).

¹⁷ *Id.*

¹⁸ *Id.*

The FDLE also notes that it cannot complete the necessary computer programming in time for an effective date of July 1, 2011, so it recommends an October 1, 2011, effective date.¹⁹

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 12, 2011:

The 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 a person to deny or fail to acknowledge arrests and subsequent dispositions covered by a sealed or expunged record under certain circumstances, as well as 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

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ *Id.*