

**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.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 1402

INTRODUCER: Senator Smith

SUBJECT: Expunging Criminal History Records

DATE: April 7, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.			JU	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

The bill creates s. 943.0595, F.S., which permits automatic qualification for expunction of criminal history records under certain circumstances. It authorizes a person who has been arrested but has not had any charges filed by the state attorney, or who has had charges dropped, dismissed, or nolle prossed, or who has been found not guilty or is acquitted after trial, to petition the court to have his or her criminal history record expunged, without first being required to obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE).

This bill creates section 943.0595, Florida Statutes. It also provides conforming cross-references to the following sections of the Florida Statutes: 943.0582, 943.0585, 943.059, 948.08, 948.16, 961.06, and 985.345.

**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 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, 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.<sup>1</sup>

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

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.<sup>4</sup> 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;
- 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.<sup>5</sup>

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.<sup>6</sup> 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 expungement.

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<sup>1</sup> Section 943.0585(4)(c), F.S.

<sup>2</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 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.

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

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

<sup>5</sup> Section 943.0585(1)(b), F.S.

<sup>6</sup> Section 943.0585(2)(h), F.S.

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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

### **Expunction of Juvenile Criminal History 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 their arrest expunged, providing they have no other past criminal history.<sup>10</sup> This expunction does not prohibit the 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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

<sup>8</sup> Section 943.0585(1), F.S.

<sup>9</sup> 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.

<sup>10</sup> Section 985.125, F.S.

<sup>11</sup> Section 943.0582, F.S.

<sup>12</sup> Section 943.0515(1) and (2), F.S.

<sup>13</sup> Section 119.07(1), F.S., s. 24(a), Art. I, State Constitution.

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.<sup>14</sup>

### **III. Effect of Proposed Changes:**

The bill creates s. 943.0595, F.S., which permits automatic qualification for expunction of criminal history records under certain circumstances. It authorizes a person who has been arrested but has not had any charges filed by the state attorney, or who has had charges dropped, dismissed, or nolle prossed, or who has been found not guilty or is acquitted after trial, to petition the court to have his or her criminal history record expunged, without first being required to obtain a certificate of eligibility from the FDLE. Instead of requiring a certificate from the FDLE, the bill requires a petition to be accompanied by a certified copy of the disposition of the offenses.

The state attorney and the arresting agency may respond to the court regarding the completed expungement petition. Multiple dates of arrest may be expunged in one court action under the bill. If relief is granted, the clerk of the court must notify the state attorney, the county, and the arresting agency. If the arresting agency disseminated the criminal history record information to any other agency, it must forward the court order to such agency. The FDLE must forward the order to the Federal Bureau of Investigation. If the county disseminated the information to any other agency, it too is responsible for forwarding the court order to that agency.

The FDLE and other criminal justice agencies are not required to comply with court orders that are contrary to law. The FDLE must notify the court, the state attorney, the petitioner, and the arresting agency within 5 business days of determining that an order is contrary to law. The state attorney must take action within 60 days to correct the record and petition the court to void the order. The record does not have to be surrendered to the court and it shall be maintained by the FDLE and other criminal justice agencies.

The bill also provides that a person obtaining an expungement under this newly created section can still seek an expungement or sealing under ss. 943.0585 or 943.059, F.S., if the person is otherwise eligible for such sealing or expungement.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>14</sup> Section 943.053(3)(a), F.S., ch. 96-388, L.O.F.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact to the FDLE is as follows:<sup>15</sup>

Expenditures	FY 11 – 12	FY 12 – 13	FY 13 - 14	
11 Positions - Government Analyst I and 10 Criminal Justice Customer Service Specialists	\$515,519	\$515,519	\$515,519	Salary & Benefits
Standard Expense for 11 Positions	\$114,983	\$72,105	\$72,105	Expenses
Standard HR Services for 11 Positions	\$3,916	\$3,916	\$3,916	Human Resources Services
System Programming to include analysis, design, documentation and testing	\$36,075			Expense - programming
<b>TOTAL</b>	<b>\$649,545</b>	<b>\$570,592</b>	<b>\$570,592</b>	

In addition, the bill will require local and county criminal justice agencies to process additional court orders generated by the automatic expunction of criminal history records. State attorneys will have new workloads in determining eligibility prior to court actions. Legal staff will have to address cases where FDLE notifies them that an order was issued in error.<sup>16</sup>

VI. Technical Deficiencies:

None.

<sup>15</sup> FDLE 2011 Legislative Analysis for SB 1402, on file with the Senate Criminal Justice Committee.

<sup>16</sup> *Id.*

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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