

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 Criminal Justice Committee

BILL: SB 1624

INTRODUCER: Senators Sachs and Wise

SUBJECT: Sealing/Expunging Criminal Traffic Offenses

DATE: February 18, 2012

REVISED: _____

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

I. Summary:

SB 1624 allows a person to apply to the Florida Department of Law Enforcement (FDLE) for a certificate of eligibility to have his or her criminal history record sealed or expunged if such person has been adjudicated delinquent for or found guilty of, regardless of adjudication, or pled guilty or nolo contendere to numerous specified criminal traffic offenses. The majority of these offenses are second or first degree misdemeanors, although a few are third degree felonies.

This bill allows a person who has an adjudication of guilt or delinquency for any of these specified criminal traffic offenses to be eligible for a criminal history record sealing or expungement, unlike current law which requires that an adjudication of guilt or delinquency be withheld before a person is eligible.

This bill creates an unnumbered section of the Florida Statutes.

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 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.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 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;
- 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 expungement.

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.

⁵ Section 943.0585(1)(b), F.S.

⁶ Section 943.0585(2)(h), F.S.

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.⁷

The Legislature also prohibits sealing or expunging 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.⁸

So, if a person has had his or her adjudication of guilt withheld and the offense is not one of the prohibited offenses, that person is eligible to apply to the FDLE to have his or her criminal history record sealed or expunged. Conversely, a person who is adjudicated guilty of any criminal offense (including the criminal traffic violations specified in the bill) is presently ineligible to have his or her criminal history record sealed or expunged.

III. Effect of Proposed Changes:

SB 1624 allows a person to apply to the FDLE for a certificate of eligibility to have his or her criminal history record sealed or expunged if such person has been adjudicated delinquent for or found guilty of, regardless of adjudication, or pled guilty or nolo contendere to numerous specified criminal traffic offenses. The majority of these offenses are second or first degree misdemeanor offenses,⁹ although a few are third degree felonies.¹⁰

This bill allows a person who has an adjudication of guilt or delinquency for any of these specified criminal traffic offenses to be eligible for a criminal history record sealing or expungement, unlike current law which requires the adjudication of guilt or delinquency to be withheld before a person can be eligible to receive one.

⁷ Section 943.0585(1), F.S.

⁸ 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, illegal use of explosives, child abuse or aggravated child abuse, elderly or disabled abuse, aggravated elderly or disabled abuse, aircraft piracy, sexual activity with a child, terrorism, manufacturing controlled substances, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, burglary and any violation specified as a predicate offense for sexual predator or sexual offender registration.

⁹ Second degree misdemeanors are punishable by potentially serving up to 60 days in jail and paying up to a \$500 fine. First degree misdemeanors are punishable by potentially serving up to one year in jail and paying up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ Third degree felonies are punishable by potentially serving up to five years in prison and paying up to a \$5,000 fine. Sections 775.082 and 775.083, F.S.

The specified offenses include the following:

- Submitting a false affidavit, in violation of s. 316.0083(1)(d)4., F.S.¹¹
- Failing to stop at a crash resulting in damage to another vehicle or property, in violation of s. 316.061(1), F.S.¹²
- Failing to stop at a crash involving an unattended vehicle or other property, in violation of s. 316.063(1), F.S.¹³
- Knowingly disclosing or obtaining confidential and exempt information, in violation of s. 316.066(3)(b) or (c), F.S.¹⁴
- Providing false information, in violation of s. 316.067, F.S.¹⁵
- Using a traffic control device in an unauthorized way, in violation of s. 316.0747, F.S.¹⁶
- Unauthorized racing on the highways, in violation of s. 316.191(2), F.S.¹⁷
- Reckless driving, in violation of ss. 316.192(2)(a), 316.192(2)(b), or 316.192(3), F.S.¹⁸
- Riding a moped or motorcycle, in violation of s. 316.1926(1), F.S.¹⁹
- Driving under the influence, in violation of ss. 316.193(1), 316.193(2)(a), 316.193(2)(a)3., or 316.193(3)(c)1., F.S.²⁰
- Failing to properly immobilize a vehicle, in violation of s. 316.193(13)(c), F.S.²¹
- Obstructing a road by soliciting, in violation of s. 316.2045(2), F.S.²²
- Knowingly selling a motor vehicle with tampered air pollution control equipment, in violation of s. 316.2935(5)(a), F.S.²³
- Selling or installing suncreening material, in violation of s. 316.2956(3), F.S.²⁴
- Knowingly presenting expired proof of insurance, in violation of s. 316.646(4), F.S.²⁵
- Failing to return a certificate of title or appropriate documentation upon satisfaction of a lien, in violation of s. 317.0014(7), F.S.²⁶
- Operating an off-highway vehicle without proper certificate of title or failing to surrender title when it is no longer an off-highway vehicle as described in the title, in violation of s. 317.0018(2) or (4), F.S.²⁷
- Violating any unspecified provision of ch. 317, F.S., in violation of s. 317.0018(5), F.S.²⁸

¹¹ Second degree misdemeanor.

¹² *Id.*

¹³ *Id.*

¹⁴ Third degree felony.

¹⁵ Second degree misdemeanor.

¹⁶ *Id.*

¹⁷ First degree misdemeanor.

¹⁸ Up to 90 days in jail and/or a fine of \$25-\$500 for a first conviction. Up to 6 months in jail and/or a fine of \$500-\$1,000. If there is property damage, it is a first degree misdemeanor. If serious bodily injury occurs, it is a third degree felony.

¹⁹ Moving violation.

²⁰ Up to 6 months in jail and a fine of \$500-\$1,000 for a first violation. Up to 9 months in jail and a fine of \$1,000 to \$2,000 for a second violation. It is a first degree misdemeanor if there is damage to property or person.

²¹ First degree misdemeanor.

²² Second degree misdemeanor.

²³ First degree misdemeanor.

²⁴ Second degree misdemeanor.

²⁵ First degree misdemeanor.

²⁶ Second degree misdemeanor.

²⁷ Up to 6 months and/or a \$500 fine.

²⁸ *Id.*

- Willfully refusing to sign a traffic summons, in violation of s. 318.14(3), F.S.²⁹
- Failing to send written notification for an address change, in violation of s. 320.02(4), F.S.³⁰
- Failing to timely register a motor vehicle or mobile home, in violation of s. 320.07(3)(c), F.S.³¹
- Failing to correctly place a license plate on a moped, in violation of s. 320.0803, F.S.³²
- Fraudulently obtaining an emergency service special registration plate, in violation of s. 320.0898(5), F.S.³³
- Knowingly misusing or maintaining records for a temporary tag, in violation of s. 320.131(5) and (7), F.S.³⁴
- Fraudulently attaching a registration license plate to a motor vehicle or mobile home, in violation of s. 320.261, F.S.³⁵
- Operating a motorcycle without valid license or a motor vehicle with an expired license, in violation of s. 322.03(4) or (5), F.S.³⁶
- Operating a motor vehicle without proper license, in violation of s. 322.16(5), F.S.³⁷
- Knowingly possessing an unauthorized license extension sticker, in violation of s. 322.18(8)(d), F.S.³⁸
- Operating a motor vehicle with a suspended license, in violation of s. 322.34(2)(a) or (b), F.S.³⁹
- Knowingly driving with a license that has been suspended for failure to pay reasons, in violation of s. 322.34(10)(b)1. or 2., F.S.⁴⁰
- Knowingly allowing an unauthorized minor to drive, in violation of s. 322.35, F.S.⁴¹
- Knowingly allowing an unauthorized person to drive your car, in violation of s. 322.36, F.S.⁴²
- Committing a misdemeanor in violation of ch. 322, in violation of s. 322.39, F.S.⁴³
- Failing to maintain proper liability insurance coverage, in violation of s. 324.022(1), F.S.⁴⁴
- Failing to return a license when it has been suspended, in violation of s. 324.201(1), F.S.⁴⁵
- Committing a forgery on the required notice for financial responsibility, failing to meet any other financial responsibility requirements, or operating a motor vehicle with an unauthorized license plate and suspended license or registration, in violation of s. 324.221(1), (2) or (3), F.S.⁴⁶

²⁹ Second degree misdemeanor.

³⁰ *Id.*

³¹ Second degree misdemeanor for a second or subsequent conviction.

³² Second degree misdemeanor.

³³ *Id.*

³⁴ Subsection (5) is a first degree misdemeanor and (7) is a second degree misdemeanor.

³⁵ Second degree misdemeanor.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Paragraph (2)(a) is a second degree misdemeanor and (2)(b) is a first degree misdemeanor.

⁴⁰ Subparagraph (10)(b)1. is a second degree misdemeanor and (10)(b)2. is a first degree misdemeanor.

⁴¹ Second degree misdemeanor.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Subsections (1) and (2) are second degree misdemeanors and (3) is a first degree misdemeanor.

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:

Persons applying to the FDLE for a sealing or expungement of their criminal history record will be required to pay \$75.

C. Government Sector Impact:

The FDLE was unable to determine what impact, if any, the bill will have on its workload.

VI. Technical Deficiencies:

Lines 64 and 65 list riding a moped or motorcycle in violation of s. 316.1926(1), F.S., but that is a moving traffic violation, not a criminal traffic offense.

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.

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