

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 Committee on Criminal Justice

BILL: SB 812

INTRODUCER: Senator Detert

SUBJECT: Court-ordered Expunction of Criminal History Records

DATE: March 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 812 allows a person to immediately apply for a certificate of eligibility for a criminal history record expunction if at trial the judge or jury renders a not guilty verdict. (Currently if the trial results in an acquittal, the accused is required to have his or her record sealed for ten years before being eligible to apply for an expunction.) However, the bill prohibits the records of a person adjudicated not guilty by reason of insanity from being eligible for a record expunction.

Additionally, the bill requires private entities that publish, display, or disseminate information about an arrest that has been expunged to remove that information from any publication, Internet posting, or credit report free-of-charge upon receiving notice of the expunction.

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 Florida Department of Law Enforcement (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 agency¹ 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, criminal justice agencies for their

¹ Section 943.045(11), F.S., defines a criminal justice agency as follows: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families (DCF), which investigates the crimes of abuse and neglect; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.²

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,³ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁴

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.⁵

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.⁶ It is then up to the court to decide whether the sealing or expunction is appropriate.

To receive a certificate of eligibility, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
 - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
 - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt; and
 - The criminal history record does not relate to a violation of specified offenses regardless of whether adjudication was withheld⁷;

² These types of employment include: a criminal justice agency; the Florida Bar; working in a sensitive position involving direct contact with children, the developmentally disabled, or the elderly through the DCF, Division of Vocational Rehabilitation within the Department of Education (DOE), the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; or persons seeking to be employed or licensed by the DOE, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity licensing child care facilities; or a Florida seaport.

³ *Id.*

⁴ Section 943.0585(4)(a), F.S.

⁵ Section 943.0585(4)(c), F.S.

⁶ Section 943.0585(2), F.S.

⁷ 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; voyeurism; 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 sex trafficking or prostitution, or 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

- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record desired to be expunged;
- Have not previously been adjudicated guilty of any offense or adjudicated delinquent for any felony or misdemeanor specified in s. 943.051(3)(b), F.S.⁸;
- Have never been adjudicated guilty or delinquent for any of the acts stemming from the arrest or alleged criminal activity of the record desired to be expunged;
- Have never had a prior sealing or expunction of a criminal history record (unless it is the required ten year sealing for the offense desired to be expunged); and
- No longer be under any court supervision related to the disposition of the record desired to be expunged.

In addition to the certificate, a petition to expunge a criminal history record must also include the petitioner's sworn statement that he or she:

- Has not previously been adjudicated guilty of any offense or adjudicated delinquent for any felony or misdemeanor offense specified in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have expunged;
- Has not obtained a prior sealing or expunction (unless it is the required ten year sealing for the offense desired to be expunged); and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.⁹

The statute also requires that the record be 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.¹⁰ 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 for ten years. If the charges are dropped, the record can be immediately expunged.

Any person knowingly providing false information on the sworn statement commits a felony of the third degree.¹¹

There is currently no provision in the expunction statute requiring persons or entities that display or disseminate arrest information that becomes expunged to remove it from the publication or Internet posting.

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.

⁸ These misdemeanors include: assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; negligent treatment of children; assault or battery on a law enforcement officer, firefighter, or other specified officers; open carrying of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; arson; and unlawful possession or discharge of a weapon or firearm at a school- sponsored event or on school property.

⁸ Section 943.0585(1)(b), F.S.

⁹ Section 943.0585(1)(b), F.S.

¹⁰ Section 943.0585(2)(h), F.S.

¹¹ Section 943.0585(1), F.S.

III. Effect of Proposed Changes:

The bill allows a person to immediately apply for a certificate of eligibility for a criminal history record expunction if at trial the judge or jury renders a not guilty verdict. (Currently if the trial results in an acquittal, the accused is required to have his or her record sealed for ten years before being eligible to apply for an expunction.) Such person must submit to FDLE a certified written statement from the state attorney or statewide prosecutor indicating that the judge or jury rendered a not guilty verdict.

However, the bill prohibits the records of a person adjudicated not guilty by reason of insanity from being eligible for a record expunction under this new provision.

Additionally, the bill requires private entities that publish, display, or disseminate information about an arrest that has been expunged to remove that information from any publication, Internet posting, or credit report free-of-charge upon receiving notice of the expunction. The bill specifies that such notice is a certified copy of an order granting a petition to expunge.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The requirement for private entities to remove expunged criminal history information from public access may raise First Amendment concerns to the extent that it regulates content of speech protected by the First Amendment.¹²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹² See *Fla. Star v. B.J.F.*, 491 U.S. 524, 525, 109 S.Ct. 2603, 105 L.Ed.2d 443 (1989) (holding that a news article about a rape was a matter of public concern and that the newspaper was not liable for the publication of the victim's identity obtained from a police report released by law enforcement in violation of a Florida statute and that imposing damages on the newspaper violated the First Amendment); *Bartnicki v. Vopper*, 532 U.S. 514, 535, 121 S.Ct. 1753, 149 L.Ed.2d 787 (2001) (holding that if a publisher lawfully obtains the information in question, the speech is protected by the First Amendment provided it is a matter of public concern, even if the source recorded it unlawfully.); and *Gawker Media, LLC v. Bollea*, 2014 WL 185217 (Fla. 2nd DCA Jan. 17, 2014).

B. Private Sector Impact:

The bill may have a fiscal impact upon private businesses that publish arrest information and are required to remove such information upon written proof that it has been expunged.

C. Government Sector Impact:

According to the Office of the State Courts Administrators, any increase in the fiscal impact on the State Courts System resulting from the expanded eligibility for records expunction is expected to be absorbed within existing resources.

The FDLE anticipates minimal revenues from the potential increase in the number of certificates of eligibility application fees as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0585 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.