

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1065 Expunction of Criminal History Records

**SPONSOR(S):** Criminal Justice Subcommittee; Eagle

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 0 N, As CS	Bruno	Sumner
2) Justice Appropriations Subcommittee	11 Y, 0 N	Welty	Gusky
3) Judiciary Committee	16 Y, 0 N	Bruno	Poche

### SUMMARY ANALYSIS

Expunction of a criminal history record requires all criminal justice agencies possessing such a record to physically destroy or obliterate it. Once the record is expunged, a person may lawfully deny or fail to acknowledge an arrest covered by the expunged record, subject to some exceptions.

A court, in its sole discretion, may order a criminal justice agency to expunge a person's criminal history record if the Department of Law Enforcement (FDLE) issues the person a certificate of eligibility for expunction. FDLE must issue the certificate to a person meeting all eligibility criteria, including that:

- The person has never had a record sealed or expunged previously;
- The person has never been adjudicated guilty as an adult for any offense or adjudicated delinquent as a juvenile for certain enumerated offenses;
- The person was not adjudicated guilty or delinquent for any acts stemming from the same arrest which the person seeks to expunge; and
- The case he or she seeks to have expunged:
  - Was dismissed by a no action, *nolle prosequi*, or court dismissal;
  - Does not relate to one of several enumerated offenses, which generally include violent and sexual crimes; and
  - Did not result in a trial, regardless of the outcome of the trial.

The statute prohibits expunction if the person was acquitted at trial, unless the person first has the record sealed for ten years. Consequently, a person who exercises his or her right to a trial is barred from the possibility of expunction for a minimum of ten years if he or she is acquitted. In contrast, a person whose case was dismissed for reasons including uncooperative witnesses, lack of evidence, or participation in a diversion program is eligible for expunction immediately, if he or she meets all other criteria.

CS/HB 1065 expands eligibility for court-ordered expunction to include a person who received a judgement of acquittal by a judge or a not guilty verdict, whether by judge or jury.

The bill has a negative fiscal impact on FDLE, which can be absorbed within existing resources, and has no impact on local government.

The bill provides an effective date of October 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

A criminal history record includes any nonjudicial record maintained by a criminal justice agency<sup>1</sup> that contains criminal history information.<sup>2</sup> Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.<sup>3</sup>

A person may have his or her criminal history record expunged under certain circumstances.<sup>4</sup> When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it.<sup>5</sup> The Department of Law Enforcement (FDLE) maintains a copy of the record in order to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.<sup>6</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to some exceptions.<sup>7</sup>

Court-ordered expunction is one type of expunction authorized by Florida law.<sup>8</sup> A court, in its sole discretion, may order a criminal justice agency to expunge a person's criminal history record if FDLE issues the person a certificate of eligibility for expunction.<sup>9</sup>

FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.<sup>10</sup> Generally, a person is eligible for expunction if:

- The person has never had a record sealed or expunged previously;<sup>11</sup>
- The person has never been adjudicated guilty as an adult for any offense or adjudicated delinquent as a juvenile for certain enumerated offenses;<sup>12</sup> and
- If the case he or she seeks to have expunged:
  - Was dismissed by a no action,<sup>13</sup> *nolle prosequi*,<sup>14</sup> or court dismissal;<sup>15</sup>
  - Does not relate to one of several enumerated offenses, which generally include violent and sexual crimes;<sup>16</sup> and
  - Did not result in a trial, regardless of the outcome of the trial.<sup>17</sup>

<sup>1</sup> Criminal justice agencies include the court, the Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

<sup>2</sup> S. 943.045(6), F.S.

<sup>3</sup> S. 943.045(5), F.S.

<sup>4</sup> SS. 943.0581, 943.0582, 943.0583, & 943.0585, F.S.

<sup>5</sup> S. 943.045(16), F.S.

<sup>6</sup> Id.

<sup>7</sup> S. 943.0585(4), F.S.

<sup>8</sup> S. 943.0585, F.S.; other types of expunction include lawful self-defense expunction, S. 943.0585(5), F.S.; administrative expunction, S. 943.0581, F.S.; prearrest, postarrest, or teen court diversion, S. 943.0582, F.S.; human trafficking victim expunction, S. 943.0583, F.S.; and automatic juvenile expunction, S. 943.0515, F.S.

<sup>9</sup> S. 943.0585(1), F.S.

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

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> A no action is the dismissal of the pending charges before an information or indictment has been filed. *Genden v. Fuller*, 648 So.2d 1183, 1183 n. 1 (Fla. 1994).

<sup>14</sup> A *nolle prosequi* is the dismissal of a pending information or indictment. Id.

<sup>15</sup> The court may dismiss a case under certain circumstances, including on a defense motion to dismiss under Rule 3.90(c)(4), Fla. R. Crim. P., upon expiration of the speedy trial period under Rule 3.191, Fla. R. Crim. P., or upon granting Stand Your Ground immunity under s. 776.032, F.S.

<sup>16</sup> S. 943.0585(2)(a)3., F.S.

<sup>17</sup> S. 943.0585(2)(a)2., F.S.

The statute prohibits expunction if the person was acquitted at trial, whether by a judge or the jury, unless the person first has the record sealed for ten years.<sup>18</sup> A person may be acquitted either by a judgment of acquittal or a not-guilty verdict. A judgment of acquittal results when, at the close of evidence in the case, a court is of the opinion that the evidence is insufficient to warrant a conviction.<sup>19</sup> A not guilty verdict results when the factfinder, whether judge or jury, determines that the prosecution did not prove the person's guilt beyond a reasonable doubt.<sup>20</sup>

Consequently, a person who exercises his or her right to a trial is barred from the possibility of expunction for a minimum of ten years if he or she is acquitted. In contrast, a person whose case was dismissed for reasons including uncooperative witnesses, lack of evidence, or participation in a diversion program is eligible for expunction immediately, if he or she meets all other criteria.

According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction.<sup>21</sup>

### **Effect of Proposed Changes**

CS/HB 1065 expands eligibility for court-ordered expunction to include a person whose case resulted in a judgment of acquittal or a not guilty verdict, whether by judge or jury. A person who has had a judgement of acquittal or a not guilty verdict may apply to have their record expunged without the prerequisite of first sealing the record for ten years.

The bill provides an effective date of October 1, 2018.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

**Section 2:** Provides an effective date of October 1, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

##### **1. Revenues:**

Current law allows FDLE to collect a \$75 processing fee to complete the certificate of eligibility for expunction.<sup>22</sup> According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction. The department assumes ten percent of those eligible would apply for a certificate of eligibility for an expunction of their criminal history record, resulting in 4,899 new applications and \$367,425 in projected processing fee revenue.

##### **2. Expenditures:**

The bill may have an indeterminate fiscal impact on state government, as it expands the pool of people eligible for expunction of their criminal records. This may result in increased applications for expunction.

According to FDLE's Statistical Analysis Center, there are currently 48,991 criminal history records that have an acquittal with no conviction. The department assumes ten percent of those eligible would apply for a certificate of eligibility for an expunction of their criminal history record. The department indicates an additional 4,899 applications would require one additional FTE with a first-

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<sup>18</sup> S. 943.0585(2)(h), F.S.

<sup>19</sup> Rule 3.380, Fla. R. Crim. P.

<sup>20</sup> Fla. Std. Crim. Jury Instr. 3.7 (Plea of not guilty; reasonable doubt; and burden of proof).

<sup>21</sup> Florida Department of Law Enforcement, Agency Analysis of 2018 House Bill 1065, p. 2 (Jan. 18, 2018).

<sup>22</sup> S. 943.0585(2)(b), F.S.

year cost of \$62,441 and a recurring cost of \$58,686.<sup>23</sup> However, these costs are offset by the projected processing fee revenue and the workload can be absorbed within existing resources of the department.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

FDLE has sufficient rule-making authority to implement the requirements of this bill.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 16, 2018, the Criminal Justice Subcommittee considered one amendment and reported the bill favorably as a committee substitute. The amendment added judgment of acquittal as a disposition eligible for expunction.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

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<sup>23</sup> Supra, FN 21 at pg. 3.  
**STORAGE NAME:** h1065e.JDC  
**DATE:** 2/27/2018