

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 1065	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Expunction of Criminal History Records	114	Y's 0	N's
<b>SPONSOR(S):</b>	Eagle and others	<b>GOVERNOR'S ACTION:</b>		Approved
<b>COMPANION BILLS:</b>	CS/SB 298			

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**SUMMARY ANALYSIS**

CS/HB 1065 passed the House on March 5, 2018, and subsequently passed the Senate on March 9, 2018.

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.

Expunction is prohibited if the person was acquitted at trial, unless he or she 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.

To have a record sealed, a person must obtain a certificate of eligibility from FDLE to present to the court. Although a person is statutorily ineligible for sealing if the record pertains to certain disqualifying offenses, FDLE lacks the authority under current law to deny a certificate of eligibility on these grounds. As a result, FDLE is required under law to issue a certificate to an ineligible person in certain circumstances.

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. A person seeking expunction of a judgment of acquittal or not guilty verdict is no longer required to first seal the record for ten years, if otherwise eligible for expunction. The bill also grants FDLE the authority to deny a certificate of eligibility based on a disqualifying offense.

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 was approved by the Governor on March 23, 2018, ch. 2018-101 L.O.F., and will become effective on October 1, 2018.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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>

#### *Expunction*

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>

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<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> Id.

<sup>14</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>15</sup> A *nolle prosequi* is the dismissal of a pending information or indictment. Id.

<sup>16</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>17</sup> S. 943.0585(2)(a)3., F.S.

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

Expunction is prohibited if the person was acquitted at trial, whether by a judge or the jury, unless he or she 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>

### *Sealing*

Sealing of a criminal record refers to the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record of information contained and preserved therein.<sup>22</sup> When a record is sealed, it is exempt from public records requests and only available to:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies, for criminal justice purposes;
- Judges, to assist with decisionmaking responsibilities; and
- Certain entities for licensing, access authorization, and employment purposes.<sup>23</sup>

A criminal history record relating to the following violations is not eligible for sealing:

- Homicide;
- Manslaughter;
- Robbery;
- Carjacking;
- Burglary of a dwelling;
- Stalking and aggravated stalking;
- Act of domestic violence as defined in s. 741.28;
- Home invasion robbery;
- Sexual battery;
- Lewd and lascivious offenses against minors;
- Voyeurism;
- Lewd and lascivious offenses against an elderly or disabled person;
- Public corruption;
- Sexual performance by a child offenses;
- Transmission of obscene material to a minor;
- Computer pornography and traveling to meet a minor offenses;
- Buying or selling of minors;
- Drug trafficking;
- Arson;

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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. 943.045(19), F.S.

<sup>23</sup> S. 943.059(4), F.S.

- Aggravated assault;
- Aggravated battery;
- Illegal use of explosives;
- Child abuse or aggravated child abuse;
- Abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult;
- Aircraft piracy;
- Kidnapping;
- Act of terrorism as defined in s. 775.30;
- Manufacturing any substances in violation of chapter 893;
- Attempting or conspiring to commit any such crime;
- Human trafficking;
- Sexual misconduct towards a mentally deficient or mentally ill patient by a covered person;
- Sexual misconduct towards a person with a developmental disability by a covered person;
- Sexual misconduct towards a patient by an employee;
- Luring or enticing a child; or
- Any offense that is a predicate offense to be a sexual predator or sexual offender.<sup>24</sup>

To have a record sealed, a person must obtain a certificate of eligibility from FDLE to present to the court. FDLE must issue a certificate of eligibility to an applicant who:

- Has submitted a certified copy of the disposition of the charge to which the petition to seal pertains;
- Remits a \$75 processing fee, unless waived;
- Has never, prior to the date on which the application for certificate is filed, been adjudicated guilty of a criminal offense or comparable ordinance or been adjudicated delinquent for certain specified offenses;
- Has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction of a criminal history record' and
- Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.

Because the criteria for issuance of a certificate of eligibility do not include disqualification for offenses enumerated elsewhere in the statute, the Fifth District Court of Appeal recently held that FLDE lacks the authority under current law to deny a certificate of eligibility on the ground that the record to be sealed pertains to a disqualifying offense.<sup>25</sup> As a result, FDLE is required under law to issue a certificate of eligibility for sealing to an ineligible person in certain circumstances.

### **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 also grants FDLE the authority to deny a certificate of eligibility for sealing of a criminal record based on a disqualifying offense by enumerating the offenses that disqualify a person from sealing as also disqualifying a person from receiving a certificate of eligibility.

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

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<sup>24</sup> S. 943.059, F.S.

<sup>25</sup> *Lazard v. State*, 229 So.3d 439 (Fla. 5th DCA 2017).

## 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>26</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-year cost of \$62,441 and a recurring cost of \$58,686.<sup>27</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.

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<sup>26</sup> S. 943.0585(2)(b), F.S.

<sup>27</sup> Supra, FN 21 at pg. 3.