

**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 Committee on Criminal Justice

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BILL: SB 1142

INTRODUCER: Senator Steube

SUBJECT: Expunction of Criminal History Records

DATE: February 5, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	<b>Favorable</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 1142 revises the eligibility requirements that must be met for a person to seek a court-ordered expunction of a criminal history record.

Currently, a person is ineligible for a court-ordered expunction of a criminal history record that resulted in a trial, without regard to the outcome. The bill permits a person to obtain a court-ordered expunction of a criminal history record if the outcome at trial was a not guilty verdict.

Currently, a person seeking to expunge a criminal history record that resulted in a trial, without regard to the outcome, must have the record sealed for a minimum of 10 years prior to seeking an expunction of such record. The bill provides that a person seeking to expunge his or her criminal history record that resulted in a not guilty verdict at trial does not have to obtain a sealing of the record for a minimum of 10 years prior to seeking an expunction of such record.

The bill is effective July 1, 2018.

**II. Present Situation:**

**Expunction of Criminal History Record**

A criminal history record<sup>1</sup> is any nonjudicial record maintained by a criminal justice agency containing criminal history information.<sup>2</sup> Florida law<sup>3</sup> makes adult criminal history records

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<sup>1</sup> Section 943.045(6), F.S.

<sup>2</sup> "Criminal history information" consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. *See s. 943.045(5)*, F.S.

<sup>3</sup> Section 943.053, F.S.

accessible to the public unless the record has been sealed or expunged.<sup>4</sup> Sealed records are placed under highly restricted access, while expunged records are removed from record systems and destroyed.<sup>5</sup> Florida statutes authorize the following expungement processes:

- Administrative;<sup>6</sup>
- Court-ordered;<sup>7</sup>
- Juvenile diversion;<sup>8</sup>
- Lawful self-defense;<sup>9</sup>
- Human trafficking;<sup>10</sup>
- Automatic juvenile;<sup>11</sup> and
- Early juvenile.<sup>12</sup>

### **Court-Ordered Expunction of Criminal Record**

A court may order a criminal history record of a minor or an adult to be expunged. A person is permitted to obtain one court-ordered expunction in their lifetime.<sup>13</sup>

To qualify for a court-ordered expunction, a person must first obtain a certificate of eligibility (COE) from the Florida Department of Law Enforcement (FDLE) pursuant to requirements set forth in ss. 943.0585(2) or 943.0585(5), F.S. To obtain a COE for expunction, a person must submit to the FDLE:

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:
  - An indictment, information, or other charging document was not filed or issued in the case.
  - An indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi<sup>14</sup> by the state attorney or statewide prosecutor, and that none of the charges that the person is seeking to expunge *resulted in a trial*, without regard to the outcome of the trial.
  - The criminal history record does not relate to certain violations.<sup>15</sup>

<sup>4</sup> Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited January 29, 2018). *See* s. 943.053, F.S.

<sup>5</sup> “Expunction of a criminal history record” is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. *See* s. 943.045(16), F.S.

<sup>6</sup> Section 943.0581, F.S.

<sup>7</sup> Section 943.0585, F.S.

<sup>8</sup> Section 943.0582, F.S.

<sup>9</sup> Section 943.0585(5), F.S.

<sup>10</sup> Section 943.0583, F.S.

<sup>11</sup> Section 943.0515, F.S.

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

<sup>13</sup> Section 943.0585, F.S.

<sup>14</sup> Nolle prosequi is a formal entry upon the record that declares that the case will not be further prosecuted. THE LAW DICTIONARY: FEATURING BLACK’S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY (2nd ed.), available at <http://thelawdictionary.org> (last visited January 29, 2018).

<sup>15</sup> These violations include sexual misconduct, luring or enticing a child, sexual battery, procuring a person under 18 for prostitution, lewd or lascivious offenses committed in front of a minor, an elderly person, or a disabled person, voyeurism, violations of the Florida Communications Fraud Act, sexual abuse of a child, offenses by public officers and employees, acts in connection with obscenity and minors, child pornography, selling or buying of minors, drug trafficking, violation of

- A \$75 processing fee, unless it is waived by the executive director.
- A certified copy of the disposition of the charge.<sup>16</sup>

In addition, the applicant must not:

- Prior to the date the application for a COE is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.;<sup>17</sup>
- Have been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- Be under court supervision for the arrest or alleged criminal activity to which the petition pertains; and
- Have secured a prior expunction or sealing of a criminal history record, unless the expunction sought is of a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S.<sup>18</sup>

Section 943.0585(2)(h), F.S., requires a person, prior to seeking a court-ordered expunction, to have a criminal history record that resulted in a withhold of adjudication or a trial sealed for a minimum of 10 years. This sealing requirement does not apply to a criminal history record that a plea was not entered or all charges were dismissed prior to trial.<sup>19</sup>

Upon receipt of a COE for expunction, a person must then petition the court to expunge his or her criminal history record. Along with the COE, the petition must include a sworn statement attesting that the petitioner:

- Has never been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor;<sup>20</sup>
- Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains;
- Has never secured a prior sealing or expunction of a criminal history record, unless the expunction is sought for a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S., and the record is otherwise eligible for expunction; and
- Is eligible for such an expunction and does not have any other petition to expunge or seal pending before any court.<sup>21</sup>

A copy of the completed petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the

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pretrial detention, and any violation specified as a predicated offense for registration as a sexual predator pursuant to the Florida Sexual Predators Act. *See* s. 943.0585(2)(a)3., F.S.

<sup>16</sup> Section 943.0585(2)(a)-(c), F.S.

<sup>17</sup> These offenses include assault, battery, carrying a concealed weapon, unlawful use of destructive devices or bombs, child neglect, assault or battery on a law enforcement officer, a firefighter, or other specified officer, open carrying of a weapon, indecent exposure, unlawful possession of a firearm, petit theft, animal cruelty, arson, and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property. *See* s. 943.051(3)(b), F.S.

<sup>18</sup> Section 943.0585(2)(d)-(g), F.S.

<sup>19</sup> The 10-year sealing requirement applies without regard to the outcome of the trial. Section 943.0585(2)(h), F.S.

<sup>20</sup> *Supra*, n. 17.

<sup>21</sup> Section 943.0585(1)(b), F.S.

petition.<sup>22</sup> There is no statutory right to a court-ordered expunction and any request for expunction of a criminal history record may be denied at the sole discretion of the court.<sup>23</sup>

### **Effect of a Court-Ordered Criminal History Record Expunction**

If the court grants a petition to expunge a criminal history record, the clerk of the court then certifies copies of the order to the appropriate state attorney and the arresting agency and any other agency that has received the criminal history record from the court. The arresting agency must provide the expunction order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the expunction order to the Federal Bureau of Investigation.<sup>24</sup>

Any criminal history record that the court grants the expunction of must be physically destroyed or obliterated by any criminal justice agency having such record. The FDLE, however, is required to maintain the record. However, that record is confidential and exempt from disclosure requirements under the public records laws. Only a court order would make the record available to a person or entity that is otherwise excluded.<sup>25</sup>

A person who has his or her criminal history record expunged may lawfully deny or fail to acknowledge the records that were expunged, unless they are:

- A defendant in a criminal prosecution;
- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agency Services within the Department of Financial Services, or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Petitioning to have a court-ordered criminal history record expunged or sealed or petitioning for relief under s. 943.0583, F.S.;<sup>26</sup> or
- A candidate for admission to The Florida Bar.<sup>27</sup>

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

Currently, a person is ineligible for a court-ordered expunction of a criminal history record that resulted in trial. The bill repeals this prohibition and permits a person to seek a court-ordered expunction of a criminal history record that resulted in a not guilty verdict, rendered by a judge or jury.

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<sup>22</sup> Section 943.0585(3)(a), F.S.

<sup>23</sup> Section 943.0585, F.S.

<sup>24</sup> Section 943.0585(3)(b), F.S.

<sup>25</sup> Section 943.0585(4), F.S.

<sup>26</sup> Section 943.0583, F.S., provides that a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committing while the person was a victim or human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chs. 796 and 847, F.S., without regard to the disposition of the arrest or of any charges. *See* s. 943.0583(3), F.S.

<sup>27</sup> Section 943.0585(4)(a), F.S.

Currently, a person seeking to expunge a criminal history record that resulted in a trial must have the record sealed for a minimum of 10 years prior to seeking an expunction of such record. The bill provides that a person seeking to expunge a criminal history record that resulted in a not guilty verdict at trial does not have to obtain a sealing of the record for a minimum of 10 years prior to seeking an expunction of such record.

The bill is effective July 1, 2018.

#### **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:

None.

C. Government Sector Impact:

Current law prohibits a person from seeking the expunction of a criminal history record that resulted in a trial, regardless of the outcome. However, current law allows a person to have this record sealed. The bill enables a person to seek the expunction of a criminal history record that resulted in a not guilty verdict at trial, and provides that a prior sealing is not required.

The FDLE estimates that this change would result in the submission of approximately 5,000 additional applications for a court-ordered expunction, which would require an additional full-time employee. The fiscal impact to accommodate for this increase in applications is projected to be \$62,441 in year one and \$58,686 in recurring years.<sup>28</sup>

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<sup>28</sup> Florida Department of Law Enforcement, *2018 Legislative Bill Analysis for SB 1142*, (January 5, 2018) (on file with the Senate Criminal Justice Committee).

However, it is unclear whether the bill would lead to an increase in applications, or rather a shift in the type of application submitted. The bill enables a person who was previously only eligible to have his or her criminal history record sealed to now be able to seek an expunction of a criminal history record without obtaining a prior sealing. It seems that this would result in such persons submitting an application for a court-ordered expunction, rather than a court-ordered sealing, which would modify the type of applications being submitted, but would not provide for a significant increase in applications.

**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.