

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 Judiciary

BILL: CS/SB 298

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Criminal History Records

DATE: January 24, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 298 relaxes two of the numerous requirements that a person must meet to obtain a court-ordered expunction (destruction) of a criminal history record, and the bill similarly relaxes one of the many requirements for obtaining a court-ordered sealing of a criminal history record.

Under current law, a person is disqualified from obtaining a court-ordered expunction or sealing of a criminal history record if he or she, as a minor, was adjudicated to have committed specified misdemeanors that generally involve firearms, violence, or the mistreatment of children. Under the bill, the disqualification expires 10 years after the most recent adjudication of delinquency for one of those crimes.

Under current law, a person is also disqualified from obtaining a court order for the expunction of a criminal history record if the case to which the record relates went to trial. Under the bill, however, the occurrence of a trial does not disqualify the expunction of a related record as long as the trial resulted in a judgment of acquittal or a not-guilty verdict.

II. Present Situation:

Overview

The statutes set forth the processes for petitioning a court for an order to seal or expunge (destroy) a criminal history record. A criminal history record is “any nonjudicial record

maintained by a criminal justice agency containing criminal history information.”¹ Unless sealed or expunged, a criminal history record must be accessible to the public. And the term “record” refers not to any single document, but instead to all documents or other records of a particular arrest or incident.²

The processes for obtaining a court order to seal or expunge a criminal history record involve several steps and are largely similar. Regarding expungement only, a person must first obtain a certified statement demonstrating the person’s eligibility from the appropriate prosecutor’s office. Then, whether seeking expungement or sealing of a record, a person must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE). Finally, a person must file a petition with the court for an order to seal or expunge one of his or her records.

To successfully complete this process and receive a court order, a person must meet several requirements.

The court-ordered expunction of criminal history records is one of several methods by which a criminal history record may be expunged. Other methods of expunction set forth in the statutes include:

- Administrative, for records of arrests determined to have been made contrary to law or by mistake;³
- Juvenile diversion, for records of arrests of minors who complete a prearrest or postarrest diversion program;⁴
- Lawful self-defense, for records relating to a person who is later found to have acted in lawful self-defense;⁵
- Human trafficking, for records of offenses committed while the person was being victimized as part of a human trafficking scheme;⁶
- Automatic juvenile, for records of juvenile offenses as long as the person does not commit any serious offenses between age 18 and 26;⁷ and
- Early juvenile, for records of juvenile offenses as long as the person does not commit any serious offenses between age 18 and 21.⁸

Court-Ordered Expunction of a Criminal History Record

Process for Obtaining Court-Ordered Expunction of a Criminal History Record

To proceed toward a court-ordered expungement, a person must first obtain documents demonstrating his or her eligibility from the appropriate prosecutor’s office. Next, he or she must obtain a certificate of eligibility from the FDLE. To obtain a certificate of eligibility for expunction, a person must submit each of the following to the FDLE:

¹ Section 943.0045(6), F.S.

² See s. 943.0585(17), F.S.

³ Section 943.0581, F.S.

⁴ Section 943.0582, F.S.

⁵ Section 943.0585(5), F.S.

⁶ Section 943.0583, F.S.

⁷ Section 943.0515, F.S.

⁸ Section 943.0515(1)(b)2., F.S.

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:
 - A charging document was not filed or issued in the case.
 - A charging document, if filed or issued in the case, was dismissed or prosecution was otherwise formally abandoned by the prosecutor, and that the charges that the person is seeking to expunge did not result in a trial.
 - The criminal history record does not relate to certain violations, which tend to be sex crimes or crimes involving the mistreatment of children.⁹
- A \$75 processing fee, unless it is waived by the executive director.
- A certified copy of the disposition of the charge.¹⁰

In addition, the applicant must not:

- Prior to the filing of the certificate of eligibility, have been adjudicated guilty of a criminal offense or comparable ordinance violation or have been adjudicated delinquent for committing certain felonies or misdemeanors involving violence, firearms, or the mistreatment of children;¹¹
- Have been adjudicated as 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; or
- Have secured a prior 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.¹²

Upon receipt of a certificate of eligibility for expunction, the person must then petition the court for an order of expungement. Along with the certificate of eligibility, 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 involving violence, firearms or mistreatment of children;
- 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.¹³

⁹ 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 pretrial detention, and any violation specified as a predicated offense for registration as a sexual predator pursuant to the Florida Sexual Predators Act. Section 943.0585(2)(a)3., F.S.

¹⁰ Section 943.0585(2)(a)-(c), F.S.

¹¹ See s. 943.051(3)(b), F.S.

¹² Section 943.0585(2)(d)-(g), F.S.

¹³ Section 943.0585(1)(b), F.S.

A copy of the completed petition to expunge 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 petition.¹⁴ Finally, the court decides whether to grant the petition—a decision over which it has sole discretion.¹⁵

Effect of Expunction of a Criminal History Record

If the court grants a petition to expunge, the clerk of the court then certifies copies of the order to the appropriate state attorney or statewide prosecutor and the arresting agency. 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.¹⁶

Any record that the court orders expunged must be physically destroyed. The only exception is any record held by the FDLE, which must be maintained. The FDLE's record is confidential and exempt from disclosure requirements under the public records laws, and only a court order would make the record available to a person or entity that is otherwise excluded.¹⁷

The person who has their criminal history record expunged has the right to lawfully deny or fail to acknowledge arrests relating to the expunged records. However, several categories of persons are excepted from this right, including defendants in criminal cases, persons seeking certain position of trust with regard to children or the elderly, persons seeking to a law enforcement position, and candidates for admission to The Florida Bar.¹⁸

Court-ordered Sealing of a Criminal History Record

Process for Obtaining Court-Ordered Sealing of a Criminal History Record

To qualify for a court-ordered sealing, a person must first obtain documents demonstrating his or her eligibility from the appropriate prosecutor's office. Then, he or she must obtain a certificate of eligibility from the FDLE. To obtain a certificate of eligibility for sealing, the applicant must not:

- Prior to the date on which the application is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing certain felonies or misdemeanors generally involving violence, firearms, or the mistreatment of children;
- 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 seal pertains;
- Have secured a prior sealing or expunction of a criminal history record; and

¹⁴ Section 943.0585(3)(a), F.S.

¹⁵ Section 943.0585, F.S.

¹⁶ Section 943.0585(3)(b), F.S.

¹⁷ Section 943.0585(4), F.S.

¹⁸ Section 943.0585(4)(a), F.S.

- Be under court supervision for the arrest or alleged criminal activity to which the petition to seal pertains.^{19, 20}

Upon receipt of a certificate of eligibility for sealing, the person must then petition the court to seal the criminal history record. Along with the certificate of eligibility, the petitioner must include a sworn statement attesting that the petitioner:

- Has not previously been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor generally involving firearms, violence, or mistreatment of children;²¹
- 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 to seal pertains;
- Has never secured a prior sealing or expunction of a criminal history record; and
- Is eligible for such a sealing and does not have any other petition to seal or expunge pending before any court.²²

A copy of the completed petition to seal is then served upon the appropriate prosecutor and the arresting agency, any of which may respond to the court regarding the petition.²³ There is no statutory right to a court-ordered sealing and any request for sealing of a criminal history record may be denied at the sole discretion of the court.²⁴

Effect of Sealing a Criminal History Record

If the court grants a petition to seal, the clerk of the court then certifies copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency must provide the sealing 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.²⁵ An order sealing a criminal history record does not require that record to be surrendered to the court. Additionally, the FDLE and other criminal justice agencies must continue to maintain the record.²⁶

A person who has his or her criminal history record sealed may lawfully deny or fail to acknowledge arrests relating to the records that were sealed. However, several categories of persons are excepted from this right, including criminal defendants, persons seeking a position of trust in relation to vulnerable people such as the elderly and children, those attempting to buy a firearm from a licensed dealer, and candidates for The Florida Bar.²⁷

¹⁹ Section 943.059(2)(c)-(f), F.S.

²⁰ The applicant must also submit to the FDLE a \$75 processing fee, unless waived by the executive director, and a certified copy of the disposition of the charge. Section 943.059(2)(a)-(b), F.S.

²¹ See s. 943.051(3)(b), F.S.

²² Section 943.059(1)(b), F.S.

²³ Section 943.059(3)(a), F.S.

²⁴ Section 943.059, F.S.

²⁵ Section 943.059(3)(b), F.S.

²⁶ Section 943.059(3)(e), F.S.

²⁷ Section 943.059(4)(a), F.S.

III. Effect of Proposed Changes:

This bill relaxes two of the numerous requirements that a person must meet to obtain a court-ordered expunction (destruction) of a criminal history record, and the bill makes similar changes to one of the many requirements for obtaining a court-ordered sealing of such a record.

Under current law, a person is disqualified from obtaining a court-ordered expunction or sealing of a criminal history record if he or she, as a minor, was adjudicated to have committed specified misdemeanors that generally involve firearms, violence, or the mistreatment of children. Under the bill, the disqualification expires 10 years after the most recent adjudication of delinquency.

Under current law, a person is also disqualified from obtaining a court order for the expunction of one of his or her criminal history records if the case to which the record relates went to trial. Under the bill, however, the occurrence of a trial does not disqualify the expunction of a related record as long as the trial resulted in a judgment of acquittal or a not-guilty verdict.

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:

This bill makes more people eligible to seek the court-ordered sealing or expunction of their criminal history records. As a result, there will likely be increases in judicial workloads to hear the petitions for sealing and expunction. Additionally, FDLE will likely incur increased costs for due to increases in the number of applications for a certificate of eligibility for court-ordered sealing or expunction of records.

According to FDLE's estimates for the original version of this bill, the bill will result in an additional 106,522 applications for a certificate of eligibility.²⁸ With an application fee of \$75, the additional applications will result in additional revenue to the agency of \$7,989,150. FDLE describes the costs to process these applications as follows:

There are 1,065,226 criminal history records that have an arrest that would be eligible to expunge a conviction for a misdemeanor from over 10 years ago.

If 10% of those eligible submitted an application, the application submissions would increase by 106,522. Based on this potential increase in applications, 150 additional FTE would be needed to handle various duties and responsibilities:

Positions requested include 1 Bureau Chief, 4 Senior Management Analyst Supervisor, 8 Operations and Management Consultant Manager, 2 Criminal Justice Information Consultant II, 10 Criminal Justice Information Consultant I, 105 Criminal Justice Information Analyst II, 10 Criminal Justice Information Analysts I, and 10 Criminal Justice Information Examiners.

It would cost \$9,612,004 in year one for salary, benefits, expense, and human resources services and \$9,048,754 in recurring years.

In addition, the increase in necessary positions will require obtaining additional office space to house the new members, as the FDLE headquarters building is currently at capacity. The cost associated with new space is yet to be determined.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.0585 and 943.059.

²⁸ Florida Department of Law Enforcement, *2018 FDLE Legislative Bill Analysis for SB 298* (Oct. 17, 2017) (on file with the Senate Committee on Judiciary).

²⁹ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on October 23, 2017:

The Committee Substitute:

- Clarifies that a person who has not been adjudicated delinquent of committing a specified misdemeanor offense in s. 943.051(3)(b), F.S., in the past 10 years is eligible to seek an expunction of a criminal history record; and
- Enables a person to be eligible to seek the sealing of a criminal history record if he or she has not been adjudicated delinquent for committing a specified misdemeanor generally involving firearms, violence, of the mistreatment of children in the previous 10 years.³⁰

- B. **Amendments:**

None.

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

³⁰ See s. 943.051(3)(b), F.S., for a list of these offenses.