

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: CS/SB 936

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Criminal History Records

DATE: March 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 936 provides for the administrative sealing of certain types of criminal history records of a minor.

Specifically, the bill requires the criminal history record of a minor who is arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance, to be administratively sealed upon notification by the clerk of the court that all charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict at trial.

Additionally, for a criminal history record to be administratively sealed, the bill requires all appeals to have been exhausted by the prosecution or the time to file an appeal must have expired.

The bill provides that the administrative sealing of a criminal history record will have the same effect as a court-ordered sealing pursuant to s. 943.059, F.S.

The Florida Department of Law Enforcement (FDLE) predicts a loss of revenue as a result of the creation of the administrative sealing process created by the bill. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019, but only if CS/SB 938 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

II. Present Situation:

Accessibility to a Minor's Criminal History Record

Florida law makes adult criminal history records¹ generally accessible to the public. In contrast, criminal history information² relating to a minor compiled by the Criminal Justice Information Program³ (CJIP) is confidential and exempt unless the minor has been:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Charged with a violation of law which, if committed by an adult, would be a felony;
- Found to have committed an offense which, if committed by an adult, would be a felony; or
- Transferred to adult court pursuant to part X of ch. 985, F.S.⁴

However, the criminal history information of a minor that is confidential and exempt will be available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S., for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.⁵

The exceptions to accessibility of a minor's criminal history record do not apply if the record has been sealed or expunged.⁶ 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 of the record.⁷ Current law authorizes certain types of expunction processes for

¹ "Criminal history record" means any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(6), F.S.

² "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. Section 943.045(5), F.S.

³ The CJIP is created within the Florida Department of Law Enforcement (FDLE) and is tasked with maintaining a system capable of transmitting criminal justice information to and between criminal justice agencies. The CJIP establishes procedures and a format for each criminal justice agency to monitor its records and submit reports to the program. Each clerk of the court is required to submit uniform dispositions to the CJIP at least once a month. *See* ss. 943.05 and 943.052, F.S.

⁴ Section 943.053(3)(b)1.a.-d., F.S.

⁵ Section 943.053(3)(c)1.a.-d., F.S.

⁶ Section 943.053(3)(b), F.S.

⁷ Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

the criminal history record of a minor.⁸ Additionally, there is an administrative expunction process, whereby the FDLE may expunge any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.⁹

Sealing of a Criminal History Record

Sealing of a criminal history 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 or the information contained and preserved therein.¹⁰

Section 943.059, F.S., authorizes the sealing of a criminal history record by court order. To qualify for a court-ordered sealing, a person must first obtain a certificate of eligibility (COE) from the FDLE and subsequently petition the court to seal the criminal history record. The petition must include the COE and a sworn statement¹¹ by the petitioner. 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 petition. 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.¹²

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 statewide prosecutor and the arresting agency and any other agency that has received the criminal history record from the court. 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 sealing order to the Federal Bureau of Investigation.¹³

A criminal history record which is ordered sealed by a court is confidential and exempt from public records, and is available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies for their respective criminal justice purposes, and judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities.¹⁴

Additionally, a person who has their criminal history record sealed may lawfully deny or fail to acknowledge the records that were sealed, unless he or she is:

⁸ See s. 943.0515, F.S. (automatic minor), s. 943.0515(1)(b)2., F.S. (early minor), and s. 943.0582, F.S. (minor diversion).

⁹ See s. 943.0581, F.S.

¹⁰ Section 943.045(19), F.S.

¹¹ In the sworn statement, the petitioner must attest that he or she: has never, prior to the date on which the petition is filed, 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.; 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 pursuant to ss. 943.059 or 943.0585, F.S., former s. 893.14, F.S., former s. 901.33, F.S., or former s. 943.058, F.S.; and is eligible for such a sealing to the best of his or her knowledge or belief and does not have any other petition to seal or any petition to expunge pending before the court. Section 943.059(1)(b)1.-4., F.S.

¹² Section 943.059, F.S.

¹³ Section 943.059(3)(b), F.S.

¹⁴ Section 943.059(4), F.S.

- A candidate for employment with a criminal justice agency;
- A defendant in a criminal prosecution;
- Petitioning to have a court-ordered criminal history record sealed or expunged;¹⁵
- A candidate for admission to The Florida Bar;
- Seeking appointment as a guardian or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services or the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm; or
- Attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law.¹⁶

An employee of an entity listed above may not disclose information relating to a sealed criminal history record, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions.¹⁷ Additionally, a person who has been granted a sealing of his or her criminal history record may not be held to commit perjury or otherwise be liable for giving a false statement by failing to recite or acknowledge a sealed criminal history record.¹⁸

III. Effect of Proposed Changes:

The bill requires certain criminal history records of minors to be administratively sealed. Specifically, the criminal history record of a minor charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency must be sealed upon notification by the clerk of the court¹⁹ that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi²⁰ before trial; or
- Resulted in a judgment of acquittal²¹ or a not guilty verdict at trial.

The bill requires that all appeals must have been exhausted by the prosecution or the time to file an appeal has expired in order for the record to qualify for administrative sealing.

¹⁵ See ss. 943.0583 and 943.0585, F.S.

¹⁶ *Supra*, n 14.

¹⁷ Section 943.059(4)(c), F.S.

¹⁸ Section 943.059(4)(b), F.S.

¹⁹ Each clerk of the court must submit the uniform dispositions to the CJIP or in a manner acceptable to the CJIP. The disposition report must be submitted at least once a month and the report is mandatory for each disposition relating to adult and minor offenders. Section 943.052(2), F.S.

²⁰ 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 <https://thelawdictionary.org/nolle-prosequi/> (last visited March 5, 2019).

²¹ A judgment of acquittal is rendered when a court determines the evidence is insufficient to sustain a conviction. Cornell Law School Legal Information Institute, *Rule 29: Motion for a Judgment of Acquittal*, available at https://www.law.cornell.edu/rules/frcrmp/rule_29 (last visited March 5, 2019).

The bill provides that an administrative sealing of a criminal history record will have the same effect as a court-ordered sealing.²² The bill also specifies that a minor who obtains an administrative sealing of his or her criminal history record is not precluded from seeking a sealing or expunction pursuant to a different section of Florida law, if he or she is otherwise eligible.

This act shall take effect July 1, 2019, but only if CS/SB 938 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The submission of an application to have a criminal history record sealed by court order requires a fee, while the newly-created administrative sealing process does not require the submission of a fee. The FDLE predicts a loss of \$90,000 in revenue for those people

²² *Supra*, n 14. See discussion in Section II. Present Situation.

who would have submitted an application to have his or her criminal history record sealed by court order, but will instead have such record administratively sealed. The FDLE also expects to incur costs associated with the implementation of the new programming required for the administrative sealing process.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current disposition reporting by the clerk of the court to the FDLE, pursuant to s. 943.052(2), F.S., does not consider whether all appeals have been exhausted by the prosecution or the time to file an appeal has expired. The administrative sealing process created by the bill would require changes to be made to disposition reporting that the FDLE receives from the clerks.²⁴

Additionally, the administrative sealing pursuant to the bill would only seal records held by the FDLE. Other records held by the clerk of the court, the office of the state attorney, and the arresting agency would not be impacted.²⁵

CS/SB 938 is the related public records bill linked to this bill. CS/SB 938 expands the current public records exemption for criminal history records sealed by court order to include administratively sealed criminal history records within the scope of the exemption.

VIII. Statutes Affected:

This bill creates section 943.0586 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.)

CS by Criminal Justice on March 11, 2019:

The Committee Substitute updates a reference to CS/SB 938.

- B. **Amendments:**

None.

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

²³ Florida Department of Law Enforcement, *2019 Legislative Bill Analysis for SB 936*, (March 8, 2019) (on file with the Senate Criminal Justice Committee).

²⁴ Email from Timothy Gisecke, Florida Department of Law Enforcement, (March 11, 2019) (on file with the Senate Criminal Justice Committee).

²⁵ *Supra*, n 23.