

**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: CS/SB 684

INTRODUCER: Criminal Justice Committee and Senator Pizzo and others

SUBJECT: Expunction of Criminal History Records

DATE: December 10, 2019      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Fav/CS</b>
2.			JU	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 684 amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction. This bill also provides that the record is exempt from the 10 year sealing requirement.

This bill may have a negative impact on the Florida Department of Law Enforcement and the courts. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

**II. Present Situation:**

There are multiple types of relief that may be sought in order to seal or expunge a criminal history record. The public will not have access to a criminal history record that has been sealed or expunged. Certain government or related entities have access to records even after they are sealed. Most of the entities who have access to sealed records also have access to see whether a

person has had an expunction. However, those entities do not have access to the expunged criminal history record without a court order.<sup>1</sup>

### **Sealing and Expunction of Criminal History Records**

A criminal history record includes any non-judicial record maintained by a criminal justice agency<sup>2</sup> that contains criminal history information.<sup>3</sup> Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.<sup>4</sup>

#### ***Sealing***

When a criminal history record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record.<sup>5</sup> A court may order a criminal history record sealed,<sup>6</sup> rendering it confidential and exempt from Florida's public records laws.<sup>7</sup> Only the following entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities<sup>8</sup> for licensing, access authorization, and employment purposes.<sup>9</sup>

To seal a record, a person must first apply to the Florida Department of Law Enforcement (FDLE) for a certificate of eligibility, which the FDLE must issue to a person who:

- Has submitted a certified copy of the charge disposition he or she seeks to seal;
- Is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses;

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<sup>1</sup> *Florida Department of Law Enforcement Frequently Asked Questions*, Florida Department of Law Enforcement, available at [http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed\\_vs\\_Expunged](http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed_vs_Expunged) (last visited November 11, 2019).

<sup>2</sup> Section 943.045(11), F.S., provides that criminal justice agencies include the court, the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice.

<sup>3</sup> Section 943.045(6), F.S.

<sup>4</sup> Section 943.045(5), F.S.

<sup>5</sup> Section 943.045(19), F.S.

<sup>6</sup> Section 943.059, F.S.

<sup>7</sup> Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

<sup>8</sup> Section 943.059(6)(b), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

<sup>9</sup> Sections 943.059(6)(a), F.S.

- Has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
  - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- 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; and
- Is no longer under court supervision related to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.<sup>10</sup>

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.<sup>11</sup> A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.<sup>12</sup> It is solely within the court's discretion to grant or deny a petition to seal.<sup>13</sup>

A criminal history record is not eligible for court-ordered sealing if it relates to:

- Sexual misconduct (Sections 393.135, 394.4593, and 916.1075, F.S.).
- Illegal use of explosives (Chapter 552, F.S.).
- Terrorism (Section 775.30, F.S.).
- Murder (Sections 782.04, 782.065, and 782.09, F.S.).
- Manslaughter or homicide (Sections 782.07, 782.071, and 782.072, F.S.).
- Assault or battery of one family or household member by another family or household member<sup>14</sup> (Sections 784.011 and 784.03, F.S.).
- Aggravated assault (Section 784.021, F.S.).
- Felony battery, domestic battery by strangulation, or aggravated battery (Sections 784.03, 784.041, and 784.045, F.S.).
- Stalking or aggravated stalking (Section 784.048, F.S.).
- Luring or enticing a child (Section 787.025, F.S.).
- Human trafficking (Section 787.06, F.S.).
- Kidnapping or false imprisonment (Sections 787.01 and 787.02, F.S.).
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation (Chapter 794, F.S.).
- Procuring a person under the age of 18 for prostitution (Section 796.03, F.S. (2013) (repealed by ch. 2014-160, s. 10, L.O.F.)).
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (Section 800.04, F.S.).
- Arson (Section 806.01, F.S.).
- Burglary of a dwelling (Section 810.02, F.S.).

<sup>10</sup> Section 943.059(2), F.S.

<sup>11</sup> Section 943.059(3), F.S.

<sup>12</sup> Section 943.059(2)(b), F.S.

<sup>13</sup> Section 943.059, F.S.

<sup>14</sup> Section 741.28(3), F.S., defines family or household member as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

- Voyeurism or video voyeurism (Sections 810.14 and 810.145, F.S.).
- Robbery or robbery by sudden snatching (Sections 812.13 and 812.131, F.S.).
- Carjacking (Section 812.133, F.S.).
- Home invasion robbery (Section 812.135, F.S.).
- A violation of the Florida Communications Fraud Act (Section 817.034, F.S.).
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult (Section 825.102, F.S.).
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person (Section 825.1025, F.S.).
- Child abuse or aggravated child abuse (Section 827.03, F.S.).
- Sexual performance by a child (Section 827.071, F.S.).
- Offenses by public officers and employees (Chapter 839, F.S.).
- Certain acts in connection with obscenity (Section 847.0133, F.S.).
- A violation of the Computer Pornography and Child Exploitation Prevention Act (Section 893.0135, F.S.).
- Selling or buying of minors (Section 847.0145, F.S.).
- Aircraft piracy (Section 860.16, F.S.).
- Manufacturing a controlled substance (Chapter 893, F.S.).
- Drug trafficking (Section 893.135, F.S.).
- Any violation specified as a predicate offense for registration as a sexual predator or sexual offender. (Sections 775.21 and 943.0535, F.S.).

Upon sealing of a criminal history record, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with exceptions for certain state employment positions, professional licensing purposes, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.<sup>15</sup>

### **Expunction**

A person may have his or her criminal history record expunged under certain circumstances.<sup>16</sup> When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.<sup>17</sup> The criminal history record retained by the FDLE is confidential and exempt.<sup>18</sup> Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.<sup>19</sup>

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<sup>15</sup> Sections 943.059(6)(b), F.S.

<sup>16</sup> Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

<sup>17</sup> Section 943.045(16), F.S.

<sup>18</sup> Section 943.0585(6)(a), F.S.

<sup>19</sup> Section 943.0585(6), F.S.

### ***Court-Ordered Expunction***

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.<sup>20</sup> The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.<sup>21</sup> Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
  - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person 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 expunge pertains;
- The person has never secured a prior sealing or expunction, unless:
  - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
  - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.<sup>22</sup>

### ***Other Types of Expunction***

Other types of expunction include:

- Lawful self-defense expunction.<sup>23</sup>
- Human trafficking victim expunction.<sup>24</sup>
- Automatic Juvenile expunction.<sup>25</sup>
- Early juvenile expunction.<sup>26</sup>
- Administrative Expunction<sup>27</sup>
- Juvenile diversion program expunction.<sup>28</sup>

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<sup>20</sup> Section 943.0585(4), F.S.

<sup>21</sup> Section 943.0585(2), F.S.

<sup>22</sup> Section 943.0585(1), F.S.

<sup>23</sup> Section 943.0578, F.S.

<sup>24</sup> Section 943.0583, F.S.

<sup>25</sup> Section 943.0515(1)(b)1., F.S.

<sup>26</sup> Section 943.0515(1)(b)2., F.S.

<sup>27</sup> Section 943.0581, F.S.

<sup>28</sup> Section 943.0582, F.S.

**III. Effect of Proposed Changes:**

The bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction. This bill also provides that the record is exempt from the 10 year sealing requirement.

This bill is effective July 1, 2020.

**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 FDLE reports that there are currently 32,793 individuals with criminal records who are under 18 years of age that could receive a court ordered expunction as a minor, who have not previously received a court ordered sealing or expunction. The FDLE estimates that if ten percent of those individuals apply for a Certificate of Eligibility, the increase in applicants would require seven additional FTE positions. Specifically, the FDLE reports

it would need one Operations and Management Consultant Manger, one Criminal Justice Information Consultant II, one Criminal Justice Consultant I, three Criminal Justice Information Analyst II's and one Criminal Justice Information Analyst I, totaling \$480,734 (\$453,469 recurring). Additionally the FDLE reports that it will need additional office space and changes in the CCH workflows including the addition of new fields and notification templates. The FDLE estimates the technology cost will total approximately \$120,000.<sup>29</sup>

According to the FDLE, the total fiscal impact will be \$600,734 (year one) and \$453,469 (recurring).<sup>30</sup>

The courts may also see an increase in requests for court ordered expunctions for those who would have been ineligible due to a previous expunction that was granted when he or she was a minor. Therefore, the bill may have a negative indeterminate fiscal impact on the courts.

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

**CS by Criminal Justice on December 10, 2019:**

The committee substitute permits a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

- B. **Amendments:**

None.

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

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<sup>29</sup> Florida Department of Law Enforcement, *2020 Agency Analysis of SB 684* (November 27, 2019), at 3.

<sup>30</sup> *Id.*