

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 468

INTRODUCER: Judiciary Committee and Senator Bracy

SUBJECT: Expunction of Criminal History Records Relating to Certain Cannabis Offenses

DATE: March 17, 2021 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Bond | Cibula | JU | Fav/CS |
| 2. | | | CJ | |
| 3. | | | AP | |

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 468 provides for expunction of certain arrests solely for misdemeanor possession 20 grams or less of cannabis. A person may only qualify once. The process, procedure, and cost is identical to the general expunction law, only the eligibility criteria is different. A person is eligible for expunction under this bill whether or not he or she previously received relief under the existing laws on sealing or expunction, and is eligible for relief in the future under those laws if otherwise qualified. Unlike the general sealing and expunction law, this procedure applies to convictions as well as dismissals and dispositions by adjudication withheld. A person is ineligible to apply for relief while on probation related to the offense or for 1 year after disposition.

The fiscal impact of this committee substitute is indeterminate.

The bill is effective July 1, 2021.

II. Present Situation:

There are several limited forms 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.¹

Sealing and Expunction of Criminal History Records

A criminal history record includes any non-judicial record maintained by a criminal justice agency² that contains criminal history information.³ Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, information, other formal criminal charges, and criminal dispositions.⁴

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.⁵ A court may order a criminal history record sealed,⁶ rendering it confidential and exempt from Florida's public records laws.⁷ 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 entities⁸ for licensing, access authorization, and employment purposes.⁹

To seal a record, a person must first apply to the 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;

¹ *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 (last visited March 11, 2021).

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

³ Section 943.045(6), F.S.

⁴ Section 943.045(5), F.S.

⁵ Section 943.045(19), F.S.

⁶ Section 943.059, F.S.

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

⁸ 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.

⁹ 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.¹⁰

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.¹¹ 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.¹² It is solely within the court's discretion to grant or deny a petition to seal.¹³

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 member¹⁴ (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, Laws of Fla.)).
- 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.).

¹⁰ Section 943.059(2), F.S.

¹¹ Section 943.059(3), F.S.

¹² Section 943.059(2)(b), F.S.

¹³ Section 943.059, F.S.

¹⁴ 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.¹⁵

Expunction

A person may have his or her criminal history record expunged under certain circumstances.¹⁶ 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.¹⁷ The criminal history record retained by the FDLE is confidential and exempt.¹⁸ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.¹⁹

¹⁵ Sections 943.059(6)(b), F.S.

¹⁶ Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

¹⁷ Section 943.045(16), F.S.

¹⁸ Section 943.0585(6)(a), F.S.

¹⁹ 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.²⁰ The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.²¹ 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.²²

Fees to Seal or Expunge Records

The application for a certificate of eligibility to seal or expunge under either statute must include a certified copy of the disposition. The length of a disposition is set locally. The clerk charges \$2 per document for a certification fee²³ plus \$1 a page for copying²⁴ the disposition. FDLE charges \$75 for the certificate of eligibility.²⁵

Other Types of Expunction

Other types of expunction include:

- Lawful self-defense expunction.²⁶
- Human trafficking victim expunction.²⁷
- Automatic Juvenile expunction.²⁸

²⁰ Section 943.0585(4), F.S.

²¹ Section 943.0585(2), F.S.

²² Section 943.0585(1), F.S.

²³ Section 28.24(2), F.S.

²⁴ Section 28.24(5)(a), F.S.

²⁵ Section 943.0585(2)(a)4., F.S.

²⁶ Section 943.0578, F.S.

²⁷ Section 943.0583, F.S.

²⁸ Section 943.0515(1)(b)1., F.S.

- Early juvenile expunction.²⁹
- Administrative Expunction.³⁰
- Juvenile diversion program expunction.³¹

III. Effect of Proposed Changes:

The bill creates s. 943.0586, F.S., to create a means for expunction of records related to a misdemeanor cannabis arrest.

A person is eligible for relief if such person:

- Was arrested for a misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis.
- Was not convicted of, or pled no contest to, a contemporaneous offense other than the misdemeanor offense for obtaining, purchasing, or possessing 20 grams or less of cannabis.
- At least 1 year has elapsed since disposition of the offense.
- Is no longer under court supervision related to the cannabis arrest.
- Has not previously received an expunction under this section.

The procedures, process, qualifications, costs, and limitations are otherwise the same as expungement pursuant to existing s. 943.0585, F.S., including:

- The requirement to apply for a certificate of eligibility from the Department of Law Enforcement.
- The requirement to file a motion for expungement with the sentencing court, attach the certificate of eligibility, and give notice to the state attorney.
- The right of the court to grant or deny relief.
- The effect of expungement, including the list of government agencies that may access the expunged record.
- The right of the person to lawfully deny the arrest, except as to the list of government agencies.

The bill provides that expungement under this section will not bar expungement under any other similar law on expungement of criminal history records.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

²⁹ Section 943.0515(1)(b)2., F.S.

³⁰ Section 943.0581, F.S.

³¹ Section 943.0582, F.S.

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:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 943.0586, 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 Judiciary on March 16, 2021:

The committee substitute re-drafted the bill in order to closely follow existing

expungement law codified at s. 943.0585, F.S. Significant policy changes made by the Committee Substitute include:

- The process is no longer completely free to the applicant, but will require a \$75 fee to the Department of Law Enforcement for a certificate of eligibility.
- The one year wait and the probation limitation are added.
- The petition must be filed with the sentencing court
- The clerk of court is not responsible for service on the state attorney.
- Expungement is limited to one time under this new section.
- No other contemporaneous offense is allowed.
- Expungement is not automatic, it may be denied by the court
- The exceptions allowing future access for select agencies was added.
- The CS specifies that expungement under this new section is not a bar to sealing or expungement of a different offense under another law.

B. Amendments:

None.