

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 593 Automatic Sealing of Criminal History Records and Making Confidential Related Court Records

SPONSOR(S): Judiciary Committee, Ethics, Elections & Open Government Subcommittee and Criminal Justice Subcommittee, Roach and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	18 Y, 1 N, As CS	Leshko	Kramer

SUMMARY ANALYSIS

A criminal history record includes any nonjudicial record maintained by a criminal justice agency that contains criminal history information. Criminal justice agencies may collect such information related to identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public record laws.

Section 943.0595, F.S., requires the Florida Department of Law Enforcement (FDLE) to automatically seal a criminal history record that did not result from an indictment, information, or other charging document for a forcible felony or an offense which requires the offender to register as a sexual offender, when:

- A charge was not filed in the case giving rise to the criminal history record;
- A charge was filed in the case giving rise to the criminal history record, but was later dismissed or nolle prosequi, unless the dismissal was due to a defendant being declared incompetent to proceed; or
- The defendant was acquitted, either by a verdict of not guilty or by a judgment of acquittal.

The eligibility requirements for automatic sealing do not consider a person's prior criminal history and there is no limitation on the number of times a person may obtain an automatic sealing for an eligible criminal history record.

Automatic sealing of a criminal history record does not require the *court* to seal the criminal history record and any criminal history record that is automatically sealed must be maintained by FDLE and other criminal justice agencies. In all other respects, automatic sealing of a criminal history record has the same effect as court-ordered sealing under s. 943.059, F.S., and the record may be disclosed in the same manner.

CS/CS/CS/HB 593 amends s. 943.0595, F.S., to revise the eligibility requirements for automatic sealing of criminal history records by FDLE by requiring:

- *All counts* charged to be dismissed or nolle prosequi when an indictment, information, or other charging document was filed in the case giving rise to the criminal history record; or
- A defendant to be acquitted of *all counts* charged by a verdict of not guilty or by a judgment of acquittal.

The bill requires FDLE to notify the clerk of court upon sealing a criminal history record as provided in s. 943.0595, F.S., and subsequently requires the clerk of court to automatically keep confidential and exempt the related court record in the case that gave rise to FDLE's sealing of the criminal history record.

Under the bill, a record that is automatically sealed by FDLE and made confidential and exempt by the clerk of court may be disclosed in the same manner as a record sealed under the court ordered sealing process. The bill retains the requirement under current law for other criminal justice agencies to continue to maintain any automatically sealed criminal history record.

The bill may have an indeterminate fiscal impact on local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Criminal History Records

A criminal history record includes any nonjudicial record maintained by a criminal justice agency¹ that contains criminal history information.² Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and criminal dispositions.³

Court-Ordered Sealing

Under s. 943.059, F.S., a court may order a criminal history record to be sealed, rendering it confidential and exempt from Florida's public record laws.⁴ The following persons and 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 entities⁵ for licensing access authorization and employment purposes.⁶

If a criminal history record is sealed, 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, seeking appointment as a guardian, 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.⁷

Under s. 943.0584, F.S., a criminal history record is not eligible for court-ordered sealing if the record is a conviction for:

- Sexual misconduct;⁸
- Illegal use of explosives;⁹
- Terrorism;¹⁰
- Murder;¹¹
- Manslaughter or homicide;¹²

¹ Criminal justice agencies include the court, the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), components of the Department of Financial Services, and other governmental agencies that administer criminal justice. S. 943.045(11), F.S.

² S. 943.045(6), F.S.

³ S. 943.045(5), F.S.

⁴ S. 943.059(6)(a), F.S.; See s. 119.07(1), F.S. and Art. I, s. 24(a), Fla. Const., for public record requirements.

⁵ Enumerated entities include criminal justice agencies, The Florida Bar, DCF, 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, DJJ, the Department of Education, a district school board, a university laboratory school, the Florida School for the Deaf and the Blind, the Florida Virtual school, a virtual instruction program, 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.

⁶ S. 943.059(6)(a), F.S.

⁷ S. 943.059(6)(b), F.S.

⁸ Ss. 393.135, 394.4593, and 916.1075, F.S.

⁹ Ch. 552, F.S.

¹⁰ S. 775.30, F.S.

¹¹ Ss. 782.04, 782.065, and 782.09, F.S.

¹² Ss. 782.07, 782.071, and 782.072, F.S.

- Assault¹³ or battery¹⁴ of one family or household member by another family or household member;¹⁵
- Aggravated assault;¹⁶
- Felony battery, domestic battery by strangulation, or aggravated battery;¹⁷
- Stalking or aggravated stalking;¹⁸
- Luring or enticing a child;¹⁹
- Human trafficking;²⁰
- Kidnapping or false imprisonment;²¹
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation;²²
- Procuring a person under the age of 18 for prostitution;²³
- Lewd or lascivious offenses committed upon or in the presence of a child less than 16 years of age;²⁴
- Arson;²⁵
- Burglary of a dwelling;²⁶
- Voyeurism or video voyeurism;²⁷
- Robbery or robbery by sudden snatching;²⁸
- Carjacking;²⁹
- Home invasion robbery;³⁰
- A violation of the Florida Communications Fraud Act;³¹
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult;³²
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;³³
- Child abuse or aggravated child abuse;³⁴
- Sexual performance by a child;³⁵
- Offenses by public officers and employees;³⁶
- Certain acts in connection with obscenity;³⁷
- A violation of the Computer Pornography and Child Exploitation Prevention Act;³⁸
- Selling or buying of minors;³⁹
- Aircraft piracy;⁴⁰
- Manufacturing a controlled substance;⁴¹

¹³ S. 784.011, F.S.

¹⁴ S. 784.03, F.S.

¹⁵ S. 741.28(3), F.S.

¹⁶ S. 784.021, F.S.

¹⁷ Ss. 784.03, 784.041, and 784.045, F.S.

¹⁸ S. 784.048, F.S.

¹⁹ S. 787.025, F.S.

²⁰ S. 787.06, F.S.

²¹ Ss. 787.01 and 787.02, F.S.

²² Ch. 794, F.S.

²³ S. 796.03, F.S. (2013) (repealed by ch. 2014-160, §10, Laws of Fla.).

²⁴ S. 800.04, F.S.

²⁵ S. 806.01, F.S.

²⁶ S. 810.02, F.S.

²⁷ Ss. 810.14 and 810.145, F.S.

²⁸ Ss. 812.13 and 812.131, F.S.

²⁹ S. 812.133, F.S.

³⁰ S. 812.135, F.S.

³¹ S. 817.034, F.S.

³² S. 825.102, F.S.

³³ S. 825.1025, F.S.

³⁴ S. 827.03, F.S.

³⁵ S. 827.071, F.S.

³⁶ Ch. 839, F.S.

³⁷ S. 847.0133, F.S.

³⁸ S. 847.0135, F.S.

³⁹ S. 847.0145, F.S.

⁴⁰ S. 860.16, F.S.

⁴¹ Ch. 893, F.S.

- Drug trafficking;⁴² or
- Any violation specified as a predicate offense for registration as a sexual predator⁴³ or sexual offender.⁴⁴

To obtain a court-ordered sealing, a person must first apply to FDLE for a certificate of eligibility, which 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 an ineligible offense;
- Has never, prior to filing the application for a certificate of eligibility, been either:
 - Adjudicated guilty in this state of any criminal offense; or
 - Adjudicated delinquent in this state of certain enumerated crimes 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.⁴⁵

Upon receiving a certificate of eligibility from FDLE, a person must petition the court to seal the record.⁴⁶ 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.⁴⁷ It is solely within the court's discretion to grant or deny a petition to seal a criminal history record.⁴⁸

Automatic Sealing by FDLE

Section 943.0595, F.S., requires FDLE to automatically seal a criminal history record that did not result from an indictment, information, or other charging document for a forcible felony⁴⁹ or an offense which requires the offender to register as a sexual offender,⁵⁰ when:

- A charge was not filed in the case giving rise to the criminal history record;
- A charge was filed in the case giving rise to the criminal history record, but was later dismissed or nolle prosequi, unless the dismissal was due to the defendant being declared incompetent to proceed;⁵¹ or
- The defendant was acquitted, either by a verdict of not guilty or by a judgment of acquittal.⁵²

The eligibility requirements for automatic sealing do not consider a person's prior criminal history and there is no limitation on the number of times a person may obtain an automatic sealing for an eligible criminal history record.⁵³

Automatic sealing of a criminal history record does not require the court to seal the criminal history record and any criminal history record that is automatically sealed must be maintained by FDLE and

⁴² S. 893.135, F.S.

⁴³ S. 775.21, F.S.

⁴⁴ S. 943.0435, F.S.

⁴⁵ S. 943.059(1-2), F.S.

⁴⁶ S. 943.059(3), F.S.

⁴⁷ S. 943.059(2-3), F.S.

⁴⁸ S. 943.059(4)(e), F.S.

⁴⁹ Forcible felonies include treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.

⁵⁰ A conviction for an offense enumerated in s. 943.0435(1)(h)1.a.(I), F.S., requires the offender to register as a sexual offender.

⁵¹ A defendant is incompetent to proceed when he or she is unable to consult with counsel with a reasonable degree of rational understanding or does not have a rational and factual understanding of the pending proceedings. Fla. R. Crim. P. 3.211; *Dusky v. United States*, 362 U.S. 402 (1960). Section 916.145, F.S., requires a court to dismiss the charges against a defendant who has been adjudicated incompetent to proceed due to mental illness under certain circumstances. Section 985.19, F.S., requires a court to dismiss the delinquency petition of a minor under certain circumstances.

⁵² S. 943.0595(2)(a), F.S.

⁵³ S. 943.0595(2)(b), F.S.

other criminal justice agencies.⁵⁴ In all other respects, automatic sealing of a criminal history record has the same effect as court-ordered sealing under s. 943.059, F.S., and the record may be disclosed in the same manner.⁵⁵

Effect of Proposed Changes

CS/CS/CS/HB 593 amends s. 943.0595, F.S., to revise the eligibility requirements for automatic sealing of criminal history records by FDLE by requiring:

- *All counts* charged to be dismissed or nolle prosequi when an indictment, information, or other charging document was filed in the case giving rise to the criminal history record; or
- A defendant to be acquitted of *all counts* charged by a verdict of not guilty or by a judgment of acquittal.

The bill requires FDLE to notify the clerk of court upon sealing a criminal history record as provided in s. 943.0595, F.S., and subsequently requires the clerk of court to automatically keep confidential and exempt the related court record in the case that gave rise to FDLE's sealing of the criminal history record.

Under the bill, a record that is automatically sealed by FDLE and made confidential and exempt by the clerk of court may be disclosed in the same manner as a record sealed under the court ordered sealing process. The bill retains the requirement under current law for other criminal justice agencies to continue to maintain any automatically sealed criminal history record.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.0595, F.S.; relating to automatic sealing of criminal history records.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on clerks of court. Under the bill, clerks of court may experience an increased workload by being required to determine which court records related to automatically-sealed criminal history records to make confidential and exempt. However, the bill also narrows the eligibility to have criminal history records automatically sealed, and as such, any increased workload in determining which court records to make confidential and exempt may be counterbalanced by fewer criminal history records being automatically sealed.

⁵⁴ S. 943.0595(3)(b), F.S.

⁵⁵ S. 943.0595(3)(c), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether the bill creates a new public record exemption, however, if it does, the bill does not include a public necessity statement.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 19, 2023, the Judiciary Committee adopted a proposed committee substitute (PCS) and one amendment and reported the bill favorably as a committee substitute. The PCS as amended differed from the original bill as it:

- Removed the requirement that a court seal eligible criminal history records and instead requires a clerk of court to keep confidential and exempt certain court records that relate to records that are automatically sealed by FDLE.
- Removed the creation of a public record exemption for certain criminal history records.
- Revised the eligibility requirements for automatic sealing of criminal history records by FDLE.
- Required FDLE to notify the clerk of court upon sealing a criminal history record and subsequently required the clerk of court to automatically keep confidential and exempt the related court record in the case that gave rise to FDLE's sealing of the criminal history record.
- Authorized the clerk of court to disclose a record that is made confidential and exempt in the same manner as a record sealed under the court ordered sealing process.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.