

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1039 Court-ordered Sealing of Criminal History Records

SPONSOR(S): Criminal Justice Subcommittee, Bracy Davis

TIED BILLS: **IDEN./SIM. BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 2 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

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. 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 of the record is a defendant in a criminal prosecution.

Section 943.059, F.S., requires a person to meet the following requirements to be eligible to petition the court to have a criminal history record sealed. He or she must:

- Have 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 for committing any felony or adjudicated delinquent of certain enumerated misdemeanors as a juvenile, unless such adjudication has been expunged.
- Not have 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;
- Never have secured a prior sealing or expunction; and
- No longer be under court supervision for the alleged criminal activity to which the petition pertains.

CS/HB 1039 amends s. 943.059, F.S., to expand court-ordered sealing eligibility to allow a person who was adjudicated guilty of a specified misdemeanor to petition the court to have his or her criminal history record sealed. The bill requires that the misdemeanor offense be nonviolent and not a misdemeanor offense related to: domestic violence; violating protective injunctions; stalking; or sexual cyberharassment.

The bill also expands eligibility for court-ordered sealing by modifying the eligibility requirements for court-ordered sealing from requiring that a person was never adjudicated guilty for *any criminal offense*, or adjudicated delinquent for *any felony*, to requiring that a person was never adjudicated guilty or delinquent for any specified offense listed in s. 943.0584, F.S.

The bill increases the number of court-ordered sealings a person may be eligible to receive, which is currently limited to *one* sealing in a person's lifetime, to authorize a person to receive up to *two* sealings of an adjudication that did *not* result in a guilty conviction or an adjudication of delinquency, and *one* sealing of a specified misdemeanor offense for which the person was *adjudicated guilty*. The bill also requires that a person must have completed any court-imposed sentence related to the disposition of an arrest or alleged criminal activity to which the petition to seal pertains prior to petitioning the court to seal a criminal history record.

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

The bill provides an effective date of July 1, 2024.

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 of the record 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 administrate 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 Elder 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 disposition of the charge 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 for committing any felony or adjudicated delinquent of certain enumerated misdemeanors⁴⁵ as a juvenile, unless such adjudication has been expunged pursuant to s. 943.0515, F.S.⁴⁶
- 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 of a criminal history record; 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.
- Remits a \$75 processing fee to FDLE, unless such fee is waived.⁴⁷

Upon receiving a certificate of eligibility from FDLE, a person may petition the court to seal the record.⁴⁸ 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.⁴⁹ It is solely within the court's discretion to grant or deny a petition to seal a criminal history record.⁵⁰

Currently, a person is limited to one court-ordered sealing in his or her lifetime.⁵¹

Effect of the Bill

CS/HB 1039 amends s. 943.059, F.S., to expand eligibility for court-ordered sealing to allow a person who was adjudicated guilty of a misdemeanor to petition the court to have his or her criminal history record sealed. The bill requires that the misdemeanor offense be nonviolent and not a misdemeanor related to:

- Domestic violence;
- Violating protective injunctions;
- Stalking; or
- Sexual cyberharassment.

The bill also expands eligibility for court-ordered sealing by modifying the eligibility requirements for court-ordered sealing from requiring that a person was never adjudicated guilty for *any criminal offense*, or adjudicated delinquent for *any felony*, to requiring that a person was never adjudicated guilty or delinquent for any specified offense listed in s. 943.0584, F.S.

The bill increases the number of court-ordered sealings a person may be eligible to receive, which is currently limited to *one* sealing in a person's lifetime, to authorize a person to receive up to *two* sealings

⁴² S. 893.135, F.S.

⁴³ S. 775.21, F.S.

⁴⁴ S. 943.0435, F.S.

⁴⁵ Ineligible misdemeanors include: assault; battery; assault on a law enforcement officer, a firefighter, or other specified officers; carrying a concealed weapon; open carrying of a weapon; unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property; unlawful use of destructive devices or bombs; unlawful possession of a firearm by a minor; exposure of sexual organs; arson; petit theft; neglect of a child; and cruelty to animals. S. 943.059(1)(b)1.-13., F.S.

⁴⁶ Relating to the retention of criminal history records of minors.

⁴⁷ S. 943.059(1-2), F.S.

⁴⁸ S. 943.059(3), F.S.

⁴⁹ S. 943.059(2-3), F.S.

⁵⁰ S. 943.059(4)(e), F.S.

⁵¹ S. 943.059(1)(e), F.S.

of an adjudication that did *not* result in a guilty conviction or an adjudication of delinquency, and *one* sealing of a specified misdemeanor offense for which the person was *adjudicated guilty*.

The bill also requires that a person must have completed any court-imposed sentence related to the disposition of an arrest or alleged criminal activity to which the petition to seal pertains prior to petitioning the court to seal a criminal history record.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on FDLE as the bill expands eligibility to petition for court-ordered sealing of a criminal history record and increases the number of sealings a person may be able to receive which may result in an increased number of applications for certificates of eligibility and accompanying \$75 processing fees being submitted to FDLE.

2. Expenditures:

FDLE reviewed a prior version of the bill and reported that the bill will have a negative fiscal impact on FDLE, as a change to FDLE's Seal and Expunge workflow, which is estimated to take four weeks and cost \$36,000,⁵² will be required to comply with the requirements of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on any local arresting agencies and clerks' offices based on the expanded eligibility to apply for a court-ordered sealing under the bill and an increase in the number of sealings a person may be able to receive, due to the costs associated with any increase in resources required for arresting agencies and clerks' offices to notify the appropriate agencies that certain criminal history records have been sealed.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Modified the eligibility requirements for court-ordered sealing from requiring that a person was never adjudicated guilty for any criminal offense to requiring that a person was never adjudicated guilty for any specified offense listed in s. 943.0584, F.S.
- Reduced the number of court-ordered sealings a person may receive in his or her lifetime from three to two.
- Made technical changes.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.