

COMMITTEE/SUBCOMMITTEE AMENDMENT
Bill No. PCS for CS/HB 369 (2017)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Plakon offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Effective upon the same date that HB 205 or
7 similar legislation takes effect, if such legislation is adopted
8 in the same legislative session or an extension thereof and
9 becomes a law, subsection (6) is added to section 901.40,
10 Florida Statutes, as created by HB 205, 2017 Regular Session, to
11 read:

12 901.40 Prearrest diversion programs.—

13 (6) PUBLIC RECORDS EXEMPTION.—The personal identifying
14 information of an adult participating in a civil citation or
15 prearrest diversion program is exempt from s. 119.07(1) and s.
16 24(a), Art. I of the State Constitution. The exemption does not

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT
Bill No. PCS for CS/HB 369 (2017)

Amendment No. 1

17 apply to the personal identifying information of an adult who
18 fails to complete the civil citation or prearrest diversion
19 program. This exemption applies to personal identifying
20 information held by a law enforcement agency, a program services
21 provider, a clerk of the circuit court, or the entity operating
22 an adult civil citation or prearrest diversion program before,
23 on, or after the effective date of this exemption. This
24 subsection is subject to the Open Government Sunset Review Act
25 in accordance with s. 119.15 and shall stand repealed on October
26 2, 2022, unless reviewed and saved from such repeal through
27 reenactment by the Legislature.

28 Section 2. Effective upon the same date that HB 205 or
29 similar legislation takes effect, if such legislation is adopted
30 in the same legislative session or an extension thereof and
31 becomes a law: The Legislature finds that it is a public
32 necessity that the personal identifying information of an adult
33 participating in a civil citation or prearrest diversion program
34 be exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
35 Article I of the State Constitution. The exemption does not
36 apply to the personal identifying information of an adult who
37 fails to complete the civil citation or prearrest diversion
38 program. The goal of such programs is to give a second chance to
39 adults who commit misdemeanor offenses and allow them the
40 opportunity to avoid having an arrest record. Such goal would be
41 defeated if the personal identifying information of such adults

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

Amendment No. 1

42 were not exempt from disclosure and, consequently, would create
43 negative consequences for these adults. If the public were able
44 to obtain the personal identifying information of these adults,
45 the disclosure might adversely impact the civil citation or
46 prearrest diversion program. For these reasons, the Legislature
47 finds that it is a public necessity that the personal
48 identifying information of an adult participating in a civil
49 citation or prearrest diversion program be exempt from public
50 records requirements.

51 Section 3. Effective July 1, 2018, and only if HB 857 or
52 similar legislation is adopted in the same legislative session
53 or an extension thereof and becomes a law, subsection (2) is
54 added to section 943.0586, Florida Statutes, as created by HB
55 857, 2017 Regular session, to read:

56 943.0586 Administrative sealing of criminal history
57 records.—

58 (2) The sealing under this section of a criminal history
59 record has the same effect as a sealing under s. 943.059(4).

60 Section 4. Effective July 1, 2018, and only if HB 857 or
61 similar legislation is adopted in the same legislative session
62 or an extension thereof and becomes a law, subsection (4) of
63 section 943.059, Florida Statutes, is amended to read:

64 943.059 Court-ordered sealing of criminal history
65 records.—The courts of this state shall continue to have
66 jurisdiction over their own procedures, including the

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

Amendment No. 1

67 maintenance, sealing, and correction of judicial records
68 containing criminal history information to the extent such
69 procedures are not inconsistent with the conditions,
70 responsibilities, and duties established by this section. Any
71 court of competent jurisdiction may order a criminal justice
72 agency to seal the criminal history record of a minor or an
73 adult who complies with the requirements of this section. The
74 court shall not order a criminal justice agency to seal a
75 criminal history record until the person seeking to seal a
76 criminal history record has applied for and received a
77 certificate of eligibility for sealing pursuant to subsection
78 (2). A criminal history record that relates to a violation of s.
79 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
80 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
81 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
82 s. 916.1075, a violation enumerated in s. 907.041, or any
83 violation specified as a predicate offense for registration as a
84 sexual predator pursuant to s. 775.21, without regard to whether
85 that offense alone is sufficient to require such registration,
86 or for registration as a sexual offender pursuant to s.
87 943.0435, may not be sealed, without regard to whether
88 adjudication was withheld, if the defendant was found guilty of
89 or pled guilty or nolo contendere to the offense, or if the
90 defendant, as a minor, was found to have committed or pled
91 guilty or nolo contendere to committing the offense as a

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT
Bill No. PCS for CS/HB 369 (2017)

Amendment No. 1

92 delinquent act. The court may only order sealing of a criminal
93 history record pertaining to one arrest or one incident of
94 alleged criminal activity, except as provided in this section.
95 The court may, at its sole discretion, order the sealing of a
96 criminal history record pertaining to more than one arrest if
97 the additional arrests directly relate to the original arrest.
98 If the court intends to order the sealing of records pertaining
99 to such additional arrests, such intent must be specified in the
100 order. A criminal justice agency may not seal any record
101 pertaining to such additional arrests if the order to seal does
102 not articulate the intention of the court to seal records
103 pertaining to more than one arrest. This section does not
104 prevent the court from ordering the sealing of only a portion of
105 a criminal history record pertaining to one arrest or one
106 incident of alleged criminal activity. Notwithstanding any law
107 to the contrary, a criminal justice agency may comply with laws,
108 court orders, and official requests of other jurisdictions
109 relating to sealing, correction, or confidential handling of
110 criminal history records or information derived therefrom. This
111 section does not confer any right to the sealing of any criminal
112 history record, and any request for sealing a criminal history
113 record may be denied at the sole discretion of the court.

114 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
115 history record of a minor or an adult which is ordered sealed by
116 a court pursuant to this section or sealed administratively

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

Amendment No. 1

117 | pursuant to s. 943.0586 is confidential and exempt from the
118 | provisions of s. 119.07(1) and s. 24(a), Art. I of the State
119 | Constitution and is available only to the person who is the
120 | subject of the record, to the subject's attorney, to criminal
121 | justice agencies for their respective criminal justice purposes,
122 | which include conducting a criminal history background check for
123 | approval of firearms purchases or transfers as authorized by
124 | state or federal law, to judges in the state courts system for
125 | the purpose of assisting them in their case-related
126 | decisionmaking responsibilities, as set forth in s. 943.053(5),
127 | or to those entities set forth in subparagraphs (a)1., 4., 5.,
128 | 6., 8., 9., and 10. for their respective licensing, access
129 | authorization, and employment purposes.

130 | (a) The subject of a criminal history record sealed under
131 | this section, s. 943.0586, or under other provisions of law,
132 | including former s. 893.14, former s. 901.33, and former s.
133 | 943.058, may lawfully deny or fail to acknowledge the arrests
134 | covered by the sealed record, except when the subject of the
135 | record:

- 136 | 1. Is a candidate for employment with a criminal justice
137 | agency;
- 138 | 2. Is a defendant in a criminal prosecution;
- 139 | 3. Concurrently or subsequently petitions for relief under
140 | this section, s. 943.0583, or s. 943.0585;
- 141 | 4. Is a candidate for admission to The Florida Bar;

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT
Bill No. PCS for CS/HB 369 (2017)

Amendment No. 1

142 5. Is seeking to be employed or licensed by or to contract
143 with the Department of Children and Families, the Division of
144 Vocational Rehabilitation within the Department of Education,
145 the Agency for Health Care Administration, the Agency for
146 Persons with Disabilities, the Department of Health, the
147 Department of Elderly Affairs, or the Department of Juvenile
148 Justice or to be employed or used by such contractor or licensee
149 in a sensitive position having direct contact with children, the
150 disabled, or the elderly;

151 6. Is seeking to be employed or licensed by the Department
152 of Education, a district school board, a university laboratory
153 school, a charter school, a private or parochial school, or a
154 local governmental entity that licenses child care facilities;

155 7. Is attempting to purchase a firearm from a licensed
156 importer, licensed manufacturer, or licensed dealer and is
157 subject to a criminal history check under state or federal law;

158 8. Is seeking to be licensed by the Division of Insurance
159 Agent and Agency Services within the Department of Financial
160 Services;

161 9. Is seeking to be appointed as a guardian pursuant to s.
162 744.3125; or

163 10. Is seeking to be licensed by the Bureau of License
164 Issuance of the Division of Licensing within the Department of
165 Agriculture and Consumer Services to carry a concealed weapon or

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT
Bill No. PCS for CS/HB 369 (2017)

Amendment No. 1

166 concealed firearm. This subparagraph applies only in the
167 determination of an applicant's eligibility under s. 790.06.

168 (b) Subject to the exceptions in paragraph (a), a person
169 who has been granted a sealing under this section, s. 943.0586,
170 former s. 893.14, former s. 901.33, or former s. 943.058 may not
171 be held under any provision of law of this state to commit
172 perjury or to be otherwise liable for giving a false statement
173 by reason of such person's failure to recite or acknowledge a
174 sealed criminal history record.

175 (c) Information relating to the existence of a sealed
176 criminal record provided in accordance with the provisions of
177 paragraph (a) is confidential and exempt from the provisions of
178 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
179 except that the department shall disclose the sealed criminal
180 history record to the entities set forth in subparagraphs (a)1.,
181 4., 5., 6., 8., 9., and 10. for their respective licensing,
182 access authorization, and employment purposes. An employee of an
183 entity set forth in subparagraph (a)1., subparagraph (a)4.,
184 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
185 subparagraph (a)9., or subparagraph (a)10. may not disclose
186 information relating to the existence of a sealed criminal
187 history record of a person seeking employment, access
188 authorization, or licensure with such entity or contractor,
189 except to the person to whom the criminal history record relates
190 or to persons having direct responsibility for employment,

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT
Bill No. PCS for CS/HB 369 (2017)

Amendment No. 1

191 access authorization, or licensure decisions. A person who
192 violates the provisions of this paragraph commits a misdemeanor
193 of the first degree, punishable as provided in s. 775.082 or s.
194 775.083.

195 (d) The expansion of the public records exemption under
196 this subsection to include records sealed administratively under
197 s. 943.0586 is subject to the Open Government Sunset Review Act
198 in accordance with s. 119.15 and shall stand repealed on October
199 2, 2023, unless reviewed and saved from repeal through
200 reenactment by the Legislature. If the expansion of the
201 exemption is not saved from repeal, this subsection shall revert
202 to that in existence on June 30, 2017, except that any
203 amendments to such text other than by this act shall be
204 preserved and continue to operate to the extent that such
205 amendments are not dependent upon the portions of text which
206 expire pursuant to this paragraph.

207 Section 5. Effective July 1, 2018, and only if HB 857 or
208 similar legislation is adopted in the same legislative session
209 or an extension thereof and becomes a law: The Legislature
210 finds that it is a public necessity that the criminal history
211 records of a minor or an adult, which have been administratively
212 sealed pursuant to s. 943.0586, Florida Statutes, because the
213 case was not filed, was dismissed or nolle prosequi, or resulted
214 in the granting of a judgment of acquittal or verdict of not
215 guilty, be made confidential and exempt from s. 119.07(1),

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

Amendment No. 1

216 Florida Statutes, and s. 24(a), Article I of the State
217 Constitution. The presence of a criminal history record in an
218 individual's past which has not been validated through criminal
219 proceedings can jeopardize his or her ability to obtain
220 education, employment, and other achievements necessary to
221 becoming a productive, contributing, self-sustaining member of
222 society. Such negative consequences are unwarranted in cases in
223 which the individual was not found to have committed the offense
224 that is the subject of the sealed criminal history record. For
225 these reasons, the Legislature finds that it is a public
226 necessity that the criminal history records of a minor or an
227 adult which have been administratively sealed be confidential
228 and exempt from public records requirements.

229 Section 6. Except as otherwise expressly provided in this
230 act, this act shall take effect on July 1, 2017.

231

232

233

234

T I T L E A M E N D M E N T

235

236

237

238

239

240

Remove everything before the enacting clause and insert:
An act relating to public records; amending s. 901.40, F.S.;
creating an exemption from public records requirements for the
personal identifying information of adults who participate in a
civil citation or prearrest diversion program; providing
applicability; providing retroactive application; providing for

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT
Bill No. PCS for CS/HB 369 (2017)

Amendment No. 1

241 future review and repeal of the exemption; providing a statement
242 of public necessity; amending s. 943.0586, F.S.; providing
243 applicability for the administrative sealing of specified
244 criminal history records; amending s. 943.059, F.S.; expanding
245 an existing public records exemption to include the
246 administrative sealing of specified criminal history records;
247 conforming provisions to changes made by the act; providing for
248 future review and repeal of the expanded exemption; providing
249 for reversion of specified language if the exemption is not
250 saved from repeal; providing a statement of public necessity;
251 providing effective dates, including contingent effective dates.

PCS for CSHB 369 Strike1

Published On: 4/19/2017 7:57:56 PM