



Criminal Justice Subcommittee

**Wednesday, February 11, 2015
3:30 PM - 5:30 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Carlos Trujillo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Wednesday, February 11, 2015 03:30 pm
End Date and Time: Wednesday, February 11, 2015 05:30 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 9 Use of a Wireless Communications Device While Operating a Motor Vehicle by Slosberg
HB 235 Restitution by Eagle
HB 465 Human Trafficking by Spano
HB 467 Pub. Rec./Human Trafficking Victims by Spano
HB 469 Pub. Rec./Residential Facilities Serving Victims of Sexual Exploitation by Spano

Consideration of the following proposed committee substitute(s):

PCS for HB 57 -- Law Enforcement Officer Body Cameras

Presentation by the Office of Program Policy & Government Accountability on Florida's seal/expunge process and how Florida's seal/expunge laws compare with those in other states.

NOTICE FINALIZED on 02/04/2015 16:00 by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 9 Use of a Wireless Communications Device While Operating a Motor Vehicle
SPONSOR(S): Slosberg
TIED BILLS: None **IDEN./SIM. BILLS:** SB 270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox <i>kaa</i>	Cunningham <i>su</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Currently, s. 316.305, F.S., prohibits a person from using a wireless communication device (WCD) while operating a motor vehicle to:

- Manually type or enter multiple letters, numbers, symbols, or other characters into the device; or
- Send or read data for the purpose of nonvoice interpersonal communication, which in addition to texting, includes e-mailing and instant messaging.

Florida law does not specifically make it a crime for a person to cause the death of another while operating a vehicle and using a WCD. However, depending on the facts of the case, a person who kills another while operating a vehicle and using a WCD could be prosecuted for vehicular homicide or DUI manslaughter.

The bill creates s. 316.3035, F.S., making it a second degree felony for a person to cause the death of a human being or unborn child while operating a vehicle and using a WCD in violation of s. 316.305, F.S. The offense is reclassified to a first degree felony if:

- At the time of the accident, the person knew, or should have known, that the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.

The bill defines "wireless communications device" in accordance with s. 316.305, F.S., as "any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15, F.S., and that allows text communications." Additionally, the bill defines "unborn child" in accordance with s. 782.071, F.S., as "a member of the species Homo sapiens, at any stage of development, who is carried in the womb."

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of this bill. However, there will likely be a negative prison bed impact to the Department of Corrections because the bill creates new first and second degree felonies.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Traffic Fatalities – Wireless Communication Devices

According to the Florida Department of Highway Safety and Motor Vehicles (DHSMV), there were 316,943 total crashes in Florida in 2013, up from 281,340 in 2012.¹ Mirroring trends nationally, traffic fatalities in Florida have been trending downward.² In 2013, Florida's 2,407 traffic fatalities represented a 1.0 percent decrease from the previous year.³

DHSMV is unable to determine how many of Florida's traffic fatalities are a direct result of distracted driving as this information may or may not show up on a crash report. However, the National Highway Traffic Safety Administration (NHTSA) reports that ten percent of fatal crashes nationwide in 2011 were reported as distraction-affected crashes.⁴ NHTSA further reports that "text messaging creates a crash risk 23 times worse than driving while not distracted,"⁵ largely because "sending or receiving a text takes a driver's eyes from the road for an average of 4.6 seconds, the equivalent – at 55 mph – of driving the length of an entire football field."⁶ Researchers have identified texting-while-driving as among the most dangerous of distractions because it involves "manual, visual, and cognitive distraction simultaneously."⁷

Driving Offenses Involving the Death of a Person

Currently, s. 316.305, F.S. (the texting-while-driving ban), prohibits a person from using a wireless communication device⁸ (WCD) while operating a motor vehicle to:

- Manually type or enter multiple letters, numbers, symbols, or other characters into the device; or
- Send or read data for the purpose of nonvoice interpersonal communication, which in addition to texting, includes e-mailing, and instant messaging.

The offense is punishable as a noncriminal traffic infraction, punishable as a nonmoving violation,⁹ and enforcement is only permitted as a secondary offense.¹⁰

The texting-while-driving ban does not apply to a person operating a vehicle who is:

- Performing official duties as:
 - An operator of an authorized emergency vehicle;

¹ 2013 Traffic Crash Facts, <http://www.flhsmv.gov/html/safety.html> (last visited February 3, 2015).

² The National Highway Traffic Safety Administration (NHTSA) 2013 Fatality Analysis Reporting System (FARS) data shows a 3.1 percent decrease in overall highway deaths from the previous year and a nearly 25 percent decline since 2004. *Roadway Deaths Fall Nearly 25 Percent in a Decade, Fatality Rates at a Historic Low*, NHTSA December 19, 2014, press release, <http://www.nhtsa.gov/About+NHTSA/Press+Releases/2014/traffic-deaths-decline-in-2013> (last visited on February 3, 2015).

³ *Id.*

⁴ *Distracted Driving 2011*, U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA), <http://www.distraction.gov/content/press-release/2013/04-05.html> (last visited February 3, 2015) (In 2011, there were a total of 29,757 fatal crashes in the United States involving 43,668 drivers. In those crashes, 32,367 people were killed. In 2011, 3,020 fatal crashes occurred that involved distraction [10% of all fatal crashes]).

⁵ *Id.* While this information may be accessed via the NHTSA website, the study itself was authored by Rebecca L. Olson, Richard J. Hanowski, Jeffrey S. Hickman, and Joseph Bocanegra of the Virginia Tech Transportation Institute.

⁶ *Id.*

⁷ *Id.*

⁸ Section 316.305(3)(a), F.S., defines a "wireless communications device" as any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications.

⁹ A second or subsequent violation within 5 years after the date of a prior conviction for a violation is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S. Section 316.305(4)(b), F.S.

¹⁰ Section 316.305(5), F.S. Because texting while driving is a secondary offense, a driver must be first pulled over for a violation of another traffic law before that driver may be cited for violating the texting-while-driving ban.

- A law enforcement or fire service professional; or
- An emergency medical services professional;
- Reporting an emergency or criminal or suspicious activity to law enforcement authorities;
- Receiving messages that are:
 - Related to the operation or navigation of the motor vehicle;
 - Safety-related information, including emergency, traffic, or weather alerts;
 - Data used primarily by the motor vehicle; or
 - Radio broadcasts;
- Using a device or system for navigation purposes;
- Conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function;
- Conducting wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function; or
- Operating an autonomous vehicle in autonomous mode.¹¹

Florida law does not specifically make it a crime for a person to cause the death of another while operating a vehicle and using a WCD. However, depending on the facts of the case, a person who kills another while operating a vehicle and using a WCD can be prosecuted for one of the offenses described below.

Vehicular Homicide

Vehicular homicide, a second degree felony,¹² is the killing of a human being, or the killing of an unborn child¹³ by any injury to the mother, caused by the operation of a vehicle by another in a reckless manner likely to cause the death of, or great bodily harm to, another.¹⁴ The offense is reclassified to a first degree felony¹⁵ if:

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.^{16,17}

Courts have held that vehicular homicide cannot be proven without proving the elements that constitute reckless driving.¹⁸

A person commits the offense of “reckless driving” if he or she drives a vehicle in willful or wanton¹⁹ disregard for the safety of persons or property.²⁰ In determining whether a person was driving recklessly, the essential inquiry is whether the defendant knowingly drove the vehicle in such a manner

¹¹ Section 316.305(3)(b), F.S.

¹² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹³ Section 775.021(5)(e), F.S., defines the term “unborn child” to mean “a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb.”

¹⁴ Section 782.071, F.S.

¹⁵ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁶ Section 782.071(1), F.S.

¹⁷ Section 316.062, F.S., requires the driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle or other property to give his or her name, address, and the registration number of the vehicle he or she is driving. Upon request and if available, the person must exhibit his or her license or permit to drive, to any person injured in such crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash and must give such information and, upon request, exhibit such license or permit to any police officer at the scene of the crash or who is investigating the crash. Additionally, the person must render to any person injured in the crash reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

¹⁸ *W.E.B. v. State*, 553 So.2d 323, 326 (Fla. 1st DCA 1989); *Berube v. State*, 6 So.3d 624 (Fla. 5th DCA 2008).

¹⁹ “Willful” means intentionally, knowingly, and purposely. “Wanton” means with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property. *W.E.B.*, 553 So.2d at 326.

²⁰ Section 316.192, F.S. A first conviction of reckless driving is punishable by no more than 90 days imprisonment or a fine of \$25-\$500, or by both. A second or subsequent conviction is punishable by no more than six months or by a fine of not less than \$50-\$1,000, or by both.

and under such conditions as was likely to cause death or great bodily harm.²¹ A person need not have foreseen the specific circumstances causing the death of the particular victim, it is sufficient that he or she should have reasonably foreseen that the same general type of harm might occur if he or she knowingly drives the vehicle under circumstances that would likely cause the death of another.²²

DUI Manslaughter

DUI manslaughter, a second degree felony, occurs when a person commits the offense of driving under the influence²³ and, by operating such vehicle, causes or contributes to causing the death of an unborn child or human being.²⁴ As with vehicular homicide, the offense is reclassified to a first degree felony if:

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.²⁵

A person convicted of DUI manslaughter must be sentenced to a mandatory minimum term of imprisonment of 4 years.²⁶

Effect of the Bill

The bill creates s. 316.3035, F.S., making it a second degree felony for a person to cause the death of a human being or unborn child while operating a vehicle and using a WCD in violation of s. 316.305, F.S. (the texting-while-driving ban). The offense is reclassified to a first degree felony if:

- At the time of the accident, the person knew or should have known the accident occurred; and
- The person failed to give information and render aid as required by s. 316.062, F.S.

The bill defines “wireless communications device” in accordance with s. 316.305, F.S., as “any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15, F.S., and that allows text communications.” Additionally, the bill defines “unborn child” in accordance with s. 782.071, F.S., as “a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb.”

B. SECTION DIRECTORY:

Section 1. Creates s. 316.3035, F.S., relating to death caused by motor vehicle operator using a wireless communications device; criminal penalty.

Section 2. Provides and effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

²¹ The Florida Supreme Court describes recklessness as a degree of negligence that falls short of culpable negligence, but more than a mere failure to use ordinary care. *McCreary v. State*, 371 So.2d 1024, 1026 (Fla. 1979).

²² *W.E.B.*, 553 So.2d at 326.

²³ Section 316.193, F.S., provides that a person commits the offense of “driving under the influence” if he or she is driving or in actual physical control of a vehicle and the person:

- Is under the influence, to the extent that the person’s normal faculties are impaired, of alcoholic beverages, any chemical substance as provided in s. 877.111, F.S., or any substance controlled under ch. 893, F.S.;
- Has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- Has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

²⁴ Section 316.193(3)(a), F.S.

²⁵ Section 316.193(3)(b), F.S.

²⁶ Section 316.193(3), F.S.

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the fiscal impact of this bill. However, the bill may have a negative prison bed impact on the Department of Corrections because it creates a new first and second degree felony offense for causing the death of a person or unborn child by operating a vehicle while using a WCD. The extent of the impact is unknown, however, because in many instances, a person who causes the death of another by operating a vehicle while using a WCD could currently be charged with another criminal offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an effective date of July 1, 2015. Generally, bills that provide a new criminal penalty or enhance a current criminal penalty are effective October 1st so as to give agencies enough time for implementation and provide the public with sufficient notice of the conduct that is prohibited.

Line 21 – The bill states that the term “unborn child” has the same meaning as provided in s. 782.071, F.S. It may provide more clarity to state that “unborn child” has the same meaning as *defined in s. 782.071, F.S.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the use of a wireless
 3 communications device while operating a motor vehicle;
 4 creating s. 316.3035, F.S.; defining the term
 5 "wireless communications device"; providing a criminal
 6 penalty if a person operating a motor vehicle while
 7 using a wireless communications device causes the
 8 death of a human being or an unborn child; providing
 9 an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 316.3035, Florida Statutes, is created
 14 to read:

15 316.3035 Death caused by motor vehicle operator using a
 16 wireless communications device; criminal penalty.-

17 (1) As used in this section, the term "wireless
 18 communications device" has the same meaning as provided in s.
 19 316.305.

20 (2) A person who causes the death of a human being or an
 21 unborn child as provided in s. 782.071 while operating a motor
 22 vehicle and using a wireless communications device in violation
 23 of s. 316.305 commits:

24 (a) A felony of the second degree, punishable as provided
 25 in s. 775.082, s. 775.083, or s. 775.084; or

26 (b) A felony of the first degree, punishable as provided

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27 | in s. 775.082, s. 775.083, or s. 775.084, if:

28 | 1. At the time of the accident, the person knew, or should
29 | have known, that the accident occurred; and

30 | 2. The person failed to give information and render aid as
31 | required by s. 316.062.

32 | Section 2. This act shall take effect July 1, 2015.



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: Criminal Justice
 2 Subcommittee

3 Representative Slosberg offered the following:
 4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 782.071, Florida Statutes, is amended
 8 to read:

9 782.071 Vehicular homicide.—

10 (1) "Vehicular homicide" is the killing of a human being,
 11 or the killing of an unborn child by any injury to the mother,
 12 caused by the operation of a motor vehicle by another:

13 (a) In a reckless manner likely to cause the death of, or
 14 great bodily harm to, another; or

15 (b) While using a wireless communications device in
 16 violation of s. 316.305.

17 (2)~~(1)~~ Vehicular homicide is:



Amendment No. 1

18 (a) A felony of the second degree, punishable as provided
19 in s. 775.082, s. 775.083, or s. 775.084.

20 (b) A felony of the first degree, punishable as provided
21 in s. 775.082, s. 775.083, or s. 775.084, if:

22 1. At the time of the accident, the person knew, or should
23 have known, that the accident occurred; and

24 2. The person failed to give information and render aid as
25 required by s. 316.062.

26
27 This paragraph does not require that the person knew that the
28 accident resulted in injury or death.

29 ~~(3)(2)~~ For purposes of this section, the term "unborn
30 child" has the same meaning as provided in s. 775.021(5).

31 ~~(4)(3)~~ A right of action for civil damages shall exist
32 under s. 768.19, under all circumstances, for all deaths
33 described in this section.

34 ~~(5)(4)~~ In addition to any other punishment, the court may
35 order the person to serve 120 community service hours in a
36 trauma center or hospital that regularly receives victims of
37 vehicle accidents, under the supervision of a registered nurse,
38 an emergency room physician, or an emergency medical technician
39 pursuant to a voluntary community service program operated by
40 the trauma center or hospital.

41 Section 2. This act shall take effect October 1, 2015.
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Amendment No. 1

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

Remove everything before the enacting clause and insert:
An act relating to the use of a wireless communications device while operating a motor vehicle; amending s. 782.071, F.S.; providing vehicular manslaughter includes causing the death of a human being or unborn child while operating a motor vehicle and using a wireless communications device; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 235 Restitution
SPONSOR(S): Eagle
TIED BILLS: None **IDEN./SIM. BILLS:** SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox	Cunningham <i>SM</i>
2) Health & Human Services Committee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.437, F.S., authorizes a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for any damage or loss caused by the child's offense in a reasonable amount or manner. Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service. A parent or guardian may be absolved of liability for restitution in their child's criminal case if the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

The bill amends s. 985.437, F.S., to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution in cases where court has determined that restitution is appropriate. The bill further amends s. 985.437, F.S., to:

- Authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment;
- Absolve a parent or guardian of any liability for restitution if, after a hearing:
 - The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
 - If the victim entitled to the restitution is that child's parent or guardian;
- Authorize the court to order both of the child's parents or guardians liable for such child's restitution, regardless of whether one parent has sole parental responsibility for the child; and
- Specify that the Department of Children and Families, a foster parent, or the community-based care lead agency supervising the placement of a child while under contract with the department is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

To the extent that the bill increases the number and/or length of restitution hearings, which must be conducted by the court prior to entering an order of restitution, it could create an insignificant increased workload on the courts.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Restitution in Juvenile Criminal Cases

Currently, s. 985.437, F.S., authorizes, but does not require, a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for *any* damage¹ or loss caused by the child's offense² in a reasonable amount or manner.³ Similarly, s. 985.35, F.S., authorizes the court to place a child found to have committed a violation of law in a probation program.⁴ The probation program may include restitution in money or in kind.⁵ The court determines the amount or manner of restitution that is reasonable.⁶

To enter an order of restitution, a trial court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.⁷ A restitution hearing is not required if the child previously entered into an agreement to pay⁸ or has waived his or her right to attend a restitution hearing.⁹ When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the parent or guardian could reasonably be expected to pay.¹⁰

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service.¹¹ However, a parent or guardian may be absolved of any liability for restitution if, after a hearing, the court finds that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."¹²

The clerk of the circuit court receives and dispenses restitution payments, and must notify the court if restitution is not made. The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.¹³

Court's Powers over a Juvenile Offender's Parent or Guardian

Section 985.513, F.S., authorizes, but does not require, a court that has jurisdiction over a child that has been adjudicated delinquent to order the parents or guardians of such child to perform community service and participate in family counseling. The statute also authorizes the court to:

- Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense; and

¹ "Any damage" has been interpreted by Florida's courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).

² The damage or loss must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).

³ If restitution is ordered, it becomes a condition of probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program. Section 985.437(1), F.S.

⁴ Section 985.35(4) and (5), F.S.

⁵ Section 985.35(4)(a), F.S.

⁶ Section 985.437(2), F.S.

⁷ *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

⁸ *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

⁹ *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

¹⁰ Section 985.437(2), F.S.

¹¹ Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child, without the court providing the parent with meaningful notice and an opportunity to be heard, or without making a determination of the parents' ability to do so. *See S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999); *A.T. v. State*, 706 So.2d 109 (Fla. 2d DCA 1998); and *M.H. v. State*, 698 So.2d 395 (Fla. 4th DCA 1997).

¹² Section 985.437(4), F.S.

¹³ Section 985.437(5), F.S.

- Require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437, F.S.¹⁴

Current law does not specifically exempt the Department of Children and Families, a foster parent, or a community-based care organization supervising a dependent child from paying restitution when a court requires the child's parent or legal guardian to be responsible for restitution ordered against the child.

Failing to Pay Restitution Order

Section 985.0301(h), F.S., states that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. Section 775.089, F.S., provides that a restitution order may be enforced in the same manner as a judgment in a civil lien. Thus, if a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the parent or child's real property.¹⁵ The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.¹⁶

Effect of the Bill

The bill amends s. 985.437, F.S., to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution in cases where court has determined that restitution is appropriate. The bill further amends s. 985.437, F.S., to authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment. The payment plan must reflect the ability of a child and the child's parent or legal guardian to pay the restitution amount.

The bill absolves a parent or guardian of any liability for restitution if, after a hearing:

- The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
- The victim entitled to the restitution is the child's parent or guardian.

The bill authorizes the court to order both of the child's parents or guardians liable for such child's restitution, regardless of whether one parent has sole parental responsibility for the child.

The bill specifies that the Department of Children and Families, which includes a foster parent or community-based care lead agency, is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent, as defined in s. 39.01(15), F.S.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.

Section 2. Amends s. 985.437, F.S., relating to restitution.

Section 3. Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.

Section 4. Provides an effective date of July 1, 2015.

¹⁴ Section 985.513(1)(b), F.S.

¹⁵ Section 775.089(5), F.S.

¹⁶ Section 985.045, F.S., also states that this is allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill amends s. 985.437, F.S., to require, rather than authorize, the court to order a child and the child's parent or legal guardian to pay restitution in cases where court has determined that restitution is appropriate. To enter an order of restitution, the court must conduct a restitution hearing. To the extent that the bill increases the number and/or length of restitution hearings, it may result in a workload increase for the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents and legal guardians of children that have been adjudicated delinquent will be liable for restitution in money or in kind for damages caused by the child's offense. Therefore, a victim of a child's offense may be more likely to receive restitution.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to restitution for juvenile offenses;
 3 amending s. 985.35, F.S.; conforming provisions to
 4 changes made by the act; amending s. 985.437, F.S.;
 5 requiring a child's parent or guardian, in addition to
 6 the child, to make restitution for damage or loss
 7 caused by the child's offense; providing for payment
 8 plans in certain circumstances; authorizing the parent
 9 or guardian to be absolved of liability for
 10 restitution in certain circumstances; authorizing the
 11 court to order both parents or guardians liable for
 12 the child's restitution regardless of one parent or
 13 guardian having sole parental responsibility;
 14 specifying that the Department of Children and
 15 Families, foster parents, and specified agencies
 16 contracted with the department are not guardians for
 17 purposes of restitution; amending s. 985.513, F.S.;
 18 removing duplicative provisions authorizing the court
 19 to require a parent or guardian to be responsible for
 20 any restitution ordered against the child; providing
 21 an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:
 24

25 Section 1. Paragraph (a) of subsection (4) of section
 26 985.35, Florida Statutes, is amended to read:

27 985.35 Adjudicatory hearings; withheld adjudications;
 28 orders of adjudication.-

29 (4) If the court finds that the child named in the
 30 petition has committed a delinquent act or violation of law, it
 31 may, in its discretion, enter an order stating the facts upon
 32 which its finding is based but withholding adjudication of
 33 delinquency.

34 (a) Upon withholding adjudication of delinquency, the
 35 court may place the child in a probation program under the
 36 supervision of the department or under the supervision of any
 37 other person or agency specifically authorized and appointed by
 38 the court. The court may, as a condition of the program, impose
 39 as a penalty component restitution in money or in kind to be
 40 made by the child and the child's parent or guardian as provided
 41 in s. 985.437, community service, a curfew, urine monitoring,
 42 revocation or suspension of the driver license of the child, or
 43 other nonresidential punishment appropriate to the offense, and
 44 may impose as a rehabilitative component a requirement of
 45 participation in substance abuse treatment, or school or other
 46 educational program attendance.

47 Section 2. Subsection (5) of section 985.437, Florida
 48 Statutes, is renumbered as subsection (7), subsections (1), (2),
 49 and (4) are amended, and new subsections (5) and (6) are added
 50 to that section, to read:

51 985.437 Restitution.-

52 (1) Regardless of whether adjudication is imposed or

53 | withheld, the court that has jurisdiction over a an adjudicated
 54 | ~~delinquent~~ child may, by an order stating the facts upon which a
 55 | determination of a sanction and rehabilitative program was made
 56 | at the disposition hearing, order the child and the child's
 57 | parent or guardian to make restitution in the manner provided in
 58 | this section. This order shall be part of the child's probation
 59 | program to be implemented by the department or, in the case of a
 60 | committed child, as part of the community-based sanctions
 61 | ordered by the court at the disposition hearing or before the
 62 | child's release from commitment.

63 | (2) If the court orders restitution, the court shall ~~may~~
 64 | order the child and the child's parent or guardian to make
 65 | restitution in money, through a promissory note ~~assigned by the~~
 66 | ~~child's parent or guardian,~~ or in kind for any damage or loss
 67 | caused by the child's offense in a reasonable amount or manner
 68 | to be determined by the court. When restitution is ordered by
 69 | the court, the amount of restitution may not exceed an amount
 70 | the child and the parent or guardian could reasonably be
 71 | expected to pay or make. If the child and the child's parent or
 72 | guardian are unable to pay the restitution in one lump-sum
 73 | payment, the court may set up a payment plan that reflects their
 74 | ability to pay the restitution amount.

75 | (4) The parent or guardian may be absolved of liability
 76 | for restitution under this section if:

77 | (a) After a hearing, the court finds that it is the
 78 | child's first referral to the delinquency system and ~~A finding~~

79 ~~by the court, after a hearing,~~ that the parent or guardian has
 80 made diligent and good faith efforts to prevent the child from
 81 engaging in delinquent acts; or

82 (b) The victim entitled to restitution as a result of
 83 damage or loss caused by the child's offense is that child's
 84 ~~absolves the parent or guardian of liability for restitution~~
 85 ~~under this section.~~

86 (5) The court may order both parents or guardians liable
 87 for restitution associated with the child's care regardless of
 88 whether one parent or guardian has sole parental responsibility.

89 (6) For purposes of this section, the Department of
 90 Children and Families, a foster parent with whom the child is
 91 placed, or the community-based care lead agency supervising the
 92 placement of the child pursuant to a contract with the
 93 Department of Children and Families is not considered a guardian
 94 responsible for restitution for the delinquent acts of a child
 95 who is found to be dependent as defined in s. 39.01(15).

96 Section 3. Subsection (1) of section 985.513, Florida
 97 Statutes, is amended to read:

98 985.513 Powers of the court over parent or guardian at
 99 disposition.—

100 (1) The court that has jurisdiction over an adjudicated
 101 delinquent child may, by an order stating the facts upon which a
 102 determination of a sanction and rehabilitative program was made
 103 at the disposition hearing, +

104 ~~(a)~~ order the child's parent or guardian, together with

105 | the child, to render community service in a public service
 106 | program or to participate in a community work project. In
 107 | addition to the sanctions imposed on the child, the court may
 108 | order the child's parent or guardian to perform community
 109 | service if the court finds that the parent or guardian did not
 110 | make a diligent and good faith effort to prevent the child from
 111 | engaging in delinquent acts.

112 | ~~(b) Order the parent or guardian to make restitution in~~
 113 | ~~money or in kind for any damage or loss caused by the child's~~
 114 | ~~offense. The court may also require the child's parent or legal~~
 115 | ~~guardian to be responsible for any restitution ordered against~~
 116 | ~~the child, as provided under s. 985.437. The court shall~~
 117 | ~~determine a reasonable amount or manner of restitution, and~~
 118 | ~~payment shall be made to the clerk of the circuit court as~~
 119 | ~~provided in s. 985.437. The court may retain jurisdiction, as~~
 120 | provided under s. 985.0301, over the child and the child's
 121 | parent or legal guardian whom the court has ordered to pay
 122 | restitution until the restitution order is satisfied or the
 123 | court orders otherwise.

124 | Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 465 Human Trafficking
SPONSOR(S): Spano
TIED BILLS: HB 467, HB 469 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Aziz PA	Cunningham <i>su</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 787.06, F.S., Florida's human trafficking statute, defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, marinating, or obtaining of another person for the purpose of exploitation of that person. In recent years, the Legislature has overhauled Florida's human trafficking laws to increase penalties for human trafficking and to make human trafficking prosecutions easier. The greatest driver of human trafficking in Florida is prostitution.

Currently, the penalty for soliciting another for prostitution is a second degree misdemeanor for the first offense, a first degree misdemeanor for the second offense, and a third degree felony for a third or subsequent offense. Anyone who is convicted, pleads guilty or pleads nolo contendere for solicitation for prostitution is subject to a \$5,000 fine.

The bill increases the criminal penalties for soliciting, inducing, enticing, or procuring another to commit prostitution. The penalties are increased as follows:

- First offense is a first degree misdemeanor;
- Second offense is a third degree felony; and
- Third, or subsequent, offense is a second degree felony.

The bill also authorizes the court to require a person convicted of solicitation to complete an educational program on the negative effects of prostitution and human trafficking. The bill also authorizes a judge to impound or immobilize the car of a person convicted of solicitation for up to 60 days..

The bill also allows a judge, during a human trafficking criminal record expunction hearing, to close the courtroom if he or she determines that the public interest or the welfare of the human trafficking victim is best served by doing so.

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, because the bill increases misdemeanor penalties for prostitution to felonies, it will likely have a negative prison bed impact on the Department of Corrections, and a positive jail bed impact.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women, and are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.² The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.³

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them. These children often become involved in prostitution as a way to support themselves financially.⁵ The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.⁶

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and are trafficked nationally. They are transported around the United States by a variety of means - cars, buses, vans, trucks or planes - and are often provided counterfeit identification to use in the event of arrest.

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and other related offenses, and may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.⁷

Prostitution

Human trafficking in Florida proliferates through illegal industries such as prostitution.⁸ This illegal industry is thriving because of the demand of men soliciting prostitution.⁹ Chapter 796, F.S., defines

¹ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on February 3, 2015).

² See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited on February 3, 2015).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on February 3, 2015).

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited February 3, 2015).

⁵ Tamar R. Birkhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).

⁶ *Id.*

⁷ Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project, April 3, 2012, <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited on February 3, 2015).

⁸ Florida State University Center for the Advancement of Human Rights, "Florida Responds to Human Trafficking" Fall 2003 available at http://www.cahr.fsu.edu/sub_category/floridarespondstohumantrafficking.pdf (last visited January 29, 2015).

⁹ Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 FLA. COASTAL L. REV. 293, 299 (2012).

prostitution as “the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.”¹⁰ Currently, a person who solicits, induces, entices, or procures another to commit prostitution, lewdness or assignation (solicits) commits a second degree misdemeanor.¹¹ However, a second offense is a first degree misdemeanor,¹² and a third or subsequent offense is a third degree felony.^{13, 14}

In addition to the criminal penalties, a civil penalty must be assessed against individuals that solicit prostitution.¹⁵ Prior to 2012, the civil penalty was \$500. In 2012, in an attempt to reduce instances of solicitation, the Legislature increased the civil penalty to \$5,000.¹⁶ In May of 2014, a Manatee County judge declared the \$5,000 civil penalty unconstitutional as an excessive fine in violation with both the state and federal constitution.¹⁷ The judge found the required \$5,000 fine excessive since the first offense for soliciting another to commit prostitution is a second degree misdemeanor, which is generally subject to a \$500 fine. The judge’s order is currently on appeal before Florida’s Third Circuit Court of Appeals.

Sexual Violence Education Programs

Several states require a person convicted of soliciting prostitution to attend an educational program on sexual violence. For example, in Kansas, a judge may order a person convicted of buying sexual relations to complete an educational program on commercial sexual exploitation.¹⁸ In Nebraska, as a term of one’s probation, a john must complete a mental health and substance abuse assessment by a licensed mental health professional.¹⁹ New Jersey has even created a “Prostitution Offender Program” for those convicted patrons of prostitutes, which includes information on the causes of prostitution and its relationship to human trafficking.²⁰

In Florida, the Department of Health’s Sexual Violence Prevention Program contracts with rape crisis centers, county health departments, and other community based organizations to provide presentations on consent, coercion, and primary prevention of sexual assault.²¹ However, there is no current requirement for anyone convicted of s.796.07, F.S., to attend such presentations.

Effect of the Bill

The bill increases the criminal penalties for solicitation as follows:

- First offense is increased from a second degree misdemeanor to a first degree misdemeanor;
- Second offense is increased from a first degree misdemeanor to a third degree felony; and
- Third or subsequent offenses are increased from a third degree felony to a second degree felony.²²

¹⁰ Section 796.07(1)(a), F.S. “Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation. . .” Section 796.07(1)(d), F.S.

¹¹ A second degree misdemeanor is punishable by up to one year in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹⁴ Section 796.07(4), F.S.

¹⁵ Section 796.07(6), F.S. The civil penalty is imposed in any judicial disposition other than acquittal or dismissal.

¹⁶ Chapter 2012-105, L.O.F. The civil penalty is distributed with the first \$500 paid to the circuit court administrator and the remaining amount of the penalty deposited to the Operations and Maintenance trust fund at DCF for the purpose of funding safe houses.

¹⁷ *State v. Cotton*, Case No. 2013-MM-004788 (Fla. Manatee Cty. Ct. May 16, 2014). *See also* U.S. Const. VII and Fla. Const. art. 1, s. 17.

¹⁸ Kan. Stat. Ann. § 21-6421.

¹⁹ Neb. Rev. Stat. § 28-801.01.

²⁰ N.J. Stat. Ann. § 2C:34-1.2.

²¹ Florida Department of Health, *Sexual Abuse or Violence Prevention*, <http://www.floridahealth.gov/programs-and-services/prevention/sexual-abuse-or-violence-prevention/index.html> (last visited February 3, 2015).

²² A second degree felony is punishable by up to 15 year imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

By increasing the penalty for a first offense of solicitation from a second degree misdemeanor to a first degree misdemeanor, courts may be less-inclined to deem the \$5,000 fine excessive since the amount of the fine is not as “grossly disproportional to the defendant’s offense.”²³

The bill also authorizes the court to require a person convicted of solicitation to complete an educational program on the negative effects of prostitution and human trafficking. The person attending the program is required to pay a fee to cover the costs of the program.

The bill also allows a judge to impound or immobilize the vehicle of a person convicted of solicitation for up to 60 days if the vehicle was used in the course of the violation.²⁴ Within 7 business days of the judge’s order, the clerk of court must send notice²⁵ of the order to the registered owner of the vehicle (if other than the defendant) and any one claiming a lien on the vehicle. A person who owns but was not operating the vehicle at the time of the offense may submit documentation to the court that the vehicle was stolen at the time of the offense or that he or she purchased the vehicle after the offense from someone other than the defendant. If the court finds the vehicle was stolen or sold so as not to circumvent the impoundment order, the order must be dismissed. If not dismissed, the petitioner may request an evidentiary hearing. The court must dismiss the order if, at the hearing, the court finds:

- Either the vehicle was stolen or the purchase was made without knowledge of the offense;
- That the purchaser had no relationship to the defendant other than through the transaction; and
- That such purchase would not circumvent the order and allow the defendant continued access to the vehicle,

The impoundment order must also be dismissed if the court finds that the family or owner of the vehicle has no other private or public means of transportation. The court may dismiss the order an order impounding a vehicle owned by the defendant but that are operated solely by the defendant’s employees.

Expunging Human Trafficking Criminal History Records

Section 943.0583, F.S., authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking. A “victim of human trafficking” is defined as a person subjected to coercion for the purpose of being used in human trafficking, a minor who is a victim of human trafficking, or an individual subject to human trafficking as defined by federal law.²⁶

A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking.²⁷ The petition must include:

- A sworn statement attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation of the victim’s status as a victim of human trafficking, if any exists.²⁸

At any hearing regarding the expunction, the petitioner or the petitioner’s attorney may appear telephonically, via video conference, or by other electronic means.²⁹ The court’s determination of the petition must be by a preponderance of the evidence.³⁰ A determination made without official documentation must be made by a showing of clear and convincing evidence.³¹ If a court grants an

²³ *United States v. Bajakajian*, 524 U.S. 321, 336 (1998).

²⁴ The order of impoundment or immobilization must include the names and telephone numbers of all immobilization agencies meeting all of the conditions of s. 316.193(13), F.S.

²⁵ The notice must be by certified mail, return receipt requested.

²⁶ Section 943.0583(1)(c), F.S.

²⁷ Section 943.0583(4), F.S.

²⁸ Section 943.0583(6), F.S.

²⁹ Section 943.0583(7)(b), F.S.

³⁰ Section 943.0583(3), F.S.

³¹ Section 943.0583(5), F.S.

expunction, criminal justice agencies with custody of the expunged record, except FDLE, must physically destroy the record.³² Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests that were expunged unless they are a candidate for employment with a criminal justice agency or a defendant in a criminal prosecution.³³

Effect of the Bill

The bill allows a judge to close any hearing related to expunging the criminal records of a victim of human trafficking. The judge may close the hearing upon determining that the public interest or the welfare of the victim is best served by doing so.

B. SECTION DIRECTORY:

Section 1. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 2. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 3. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, because the bill increases misdemeanor penalties for prostitution to felonies, it will likely have a negative prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Because the bill increases misdemeanor penalties for prostitution to felonies, it will likely have a positive jail bed impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

³² Section 943.0583(8)(a), F.S. Records retained by FDLE are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except that the record must be made available to criminal justice agencies for their respective criminal justice purposes. Section 943.0583(10)(a), F.S.

³³ Section 943.0583(8)(b), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

The bill allows a judge, at his or her discretion, to close a courtroom during an expunction hearing if he or she determines that the public interest or the welfare of the human trafficking victim is best served by doing so. The Florida Supreme Court has held that both civil and criminal court proceedings are public events and adhere to the right of access to court proceedings and records.³⁴ In order for a judge to close a criminal proceeding, they must meet a three prong test which requires, among other things, that no alternatives are available.³⁵ As such, the provision allowing a judge to close the courtroom may be challenged as unconstitutional.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁴ *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (1988).

³⁵ *Morris Publishing Group, LLC v. State*, 136 So. 3d 770, 779 (Fla. 1st DCA 2014)(citing *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1,6 (Fla. 1982)).

1 A bill to be entitled
 2 An act relating to human trafficking; amending s.
 3 796.07, F.S.; providing enhanced criminal penalties
 4 for soliciting another to commit prostitution and
 5 similar offenses; providing that persons convicted of
 6 such offenses may be required to attend an education
 7 program; requiring such persons to pay the costs of
 8 the program; providing for impoundment of a vehicle
 9 used in soliciting another to commit prostitution and
 10 similar offenses; providing exceptions; providing an
 11 opportunity for an owner who was not operating the
 12 vehicle when the offense occurred to prevent the
 13 impoundment or immobilization in certain
 14 circumstances; amending s. 943.0583, F.S.; authorizing
 15 a judge to close a hearing on the expunction of
 16 criminal records of a human trafficking victim in
 17 certain circumstances; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsections (4) and (6) of section 796.07,
 22 Florida Statutes, are amended to read:

23 796.07 Prohibiting prostitution and related acts.—

24 (4) (a) A person who violates any provision of this section
 25 other than paragraph (2)(f) commits:

26 1.(a) A misdemeanor of the second degree for a first

27 violation, punishable as provided in s. 775.082 or s. 775.083.

28 ~~2. (b)~~ A misdemeanor of the first degree for a second
 29 violation, punishable as provided in s. 775.082 or s. 775.083.

30 ~~3. (c)~~ A felony of the third degree for a third or
 31 subsequent violation, punishable as provided in s. 775.082, s.
 32 775.083, or s. 775.084.

33 (b) A person who violates paragraph (2)(f) commits:

34 1. A misdemeanor of the first degree for a first
 35 violation, punishable as provided in s. 775.082 or s. 775.083.

36 2. A felony of the third degree for a second or subsequent
 37 violation, punishable as provided in s. 775.082, s. 775.083, or
 38 s. 775.084.

39 3. A felony of the second degree for a third or subsequent
 40 violation, punishable as provided in s. 775.082, s. 775.083, or
 41 s. 775.084.

42 (6) (a) A person who violates paragraph (2)(f) shall be
 43 assessed a civil penalty of \$5,000 if the violation results in
 44 any judicial disposition other than acquittal or dismissal. Of
 45 the proceeds from each penalty assessed under this subsection,
 46 the first \$500 shall be paid to the circuit court administrator
 47 for the sole purpose of paying the administrative costs of
 48 treatment-based drug court programs provided under s. 397.334.
 49 The remainder of the penalty assessed shall be deposited in the
 50 Operations and Maintenance Trust Fund of the Department of
 51 Children and Families for the sole purpose of funding safe
 52 houses and safe foster homes as provided in s. 409.1678.

53 (b) A person who violates paragraph (2)(f) may be required
 54 to complete an educational program about the negative effects of
 55 prostitution and human trafficking. Violators required to attend
 56 an educational program under this paragraph shall be required to
 57 pay a fee to cover the costs of the program.

58 (c)1. If a vehicle is used by a person who violates
 59 paragraph (2)(f) in the course of the violation, the judge, upon
 60 the person's conviction, may issue an order for the impoundment
 61 or immobilization of the vehicle for a period of up to 60 days.
 62 The order of impoundment or immobilization must include the
 63 names and telephone numbers of all immobilization agencies
 64 meeting all of the conditions of s. 316.193(13). Within 7
 65 business days after the date that the court issues the order of
 66 impoundment or immobilization, the clerk of the court must send
 67 notice by certified mail, return receipt requested, to the
 68 registered owner of the vehicle, if the registered owner is a
 69 person other than the defendant, and to each person of record
 70 claiming a lien against the vehicle.

71 2. A person who owns but was not operating the vehicle
 72 when the offense occurred may submit to the court a police
 73 report indicating that the vehicle was stolen at the time of the
 74 offense or documentation of having purchased the vehicle after
 75 the offense was committed from an entity other than the
 76 defendant or the defendant's agent. If the court finds that the
 77 vehicle was stolen or that the sale was not made to circumvent
 78 the order and allow the defendant continued access to the

79 vehicle, the order must be dismissed and the owner of the
 80 vehicle will incur no costs. If the court denies the request to
 81 dismiss the order of impoundment or immobilization, the
 82 petitioner may request an evidentiary hearing.

83 3. A person who owns but was not operating the vehicle
 84 when the offense occurred, and whose vehicle was stolen or who
 85 purchased the vehicle after the offense was committed directly
 86 from the defendant or the defendant's agent, may request an
 87 evidentiary hearing to determine whether the impoundment or
 88 immobilization should occur. If the court finds that either the
 89 vehicle was stolen or the purchase was made without knowledge of
 90 the offense, that the purchaser had no relationship to the
 91 defendant other than through the transaction, and that such
 92 purchase would not circumvent the order and allow the defendant
 93 continued access to the vehicle, the order must be dismissed and
 94 the owner of the vehicle will incur no costs.

95 4. The court shall dismiss the order of impoundment or
 96 immobilization of the vehicle if the court finds that the family
 97 of the owner of the vehicle has no other private or public means
 98 of transportation.

99 5. The court may dismiss the order of impoundment or
 100 immobilization of any vehicles that are owned by the defendant
 101 but that are operated solely by the employees of the defendant
 102 or a business owned by the defendant.

103 Section 2. Paragraph (d) is added to subsection (7) of
 104 section 943.0583, Florida Statutes, to read:

HB 465

2015

105 943.0583 Human trafficking victim expunction.—
 106 (7)
 107 (d) A judge may close any hearing under this section to
 108 the public upon determining that the public interest or the
 109 welfare of the human trafficking victim is best served by so
 110 doing.
 111 Section 3. This act shall take effect October 1, 2015.



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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: Criminal Justice
 2 Subcommittee

3 Representative Spano offered the following:
 4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (4), (5), and (6) of section
 8 796.07, Florida Statutes, are amended to read:

9 796.07 Prohibiting prostitution and related acts.—

10 (4) (a) A person who violates any provision of this
 11 section, other than paragraph (2)(f), commits:

12 1.-(a) A misdemeanor of the second degree for a first
 13 violation, punishable as provided in s. 775.082 or s. 775.083.

14 2.-(b) A misdemeanor of the first degree for a second
 15 violation, punishable as provided in s. 775.082 or s. 775.083.



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16 3. ~~(e)~~ A felony of the third degree for a third or
17 subsequent violation, punishable as provided in s. 775.082, s.
18 775.083, or s. 775.084.

19 (b) ~~(5)~~ A person who is charged with a third or subsequent
20 violation of this section, other than paragraph (2)(f), shall be
21 offered admission to a pretrial intervention program or a
22 substance abuse treatment program as provided in s. 948.08.

23 (6)(a) A person who violates paragraph (2)(f) commits:

24 1. A misdemeanor of the first degree for a first violation,
25 punishable as provided in s. 775.082 or s. 775.083.

26 2. A felony of the third degree for a second violation,
27 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

28 3. A felony of the second degree for a third or subsequent
29 violation, punishable as provided in s. 775.082, s. 775.083, or
30 s. 775.084.

31 (b) In addition to any other penalty imposed, the court
32 shall order a person convicted of a violation of paragraph
33 (2)(f) to:

34 1. Perform 100 hours of community service; and

35 2. Pay for and attend an educational program about the
36 negative effects of prostitution and human trafficking, such as
37 a sexual violence prevention education program, if such program
38 exists in the judicial circuit in which the offender is
39 sentenced.

40 (c) In addition to any other penalty imposed, the court
41 shall sentence a person convicted of a second or subsequent



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42 violation of paragraph (2)(f) to a minimum mandatory period of
43 incarceration of 10 days.

44 (d)1. If a person who violates paragraph (2)(f) uses a
45 vehicle in the course of the violation, the judge, upon the
46 person's conviction, may issue an order for the impoundment or
47 immobilization of the vehicle for a period of up to 60 days. The
48 order of impoundment or immobilization must include the names
49 and telephone numbers of all immobilization agencies meeting all
50 of the conditions of s. 316.193(13). Within 7 business days
51 after the date that the court issues the order of impoundment or
52 immobilization, the clerk of the court must send notice by
53 certified mail, return receipt requested, to the registered
54 owner of the vehicle, if the registered owner is a person other
55 than the defendant, and to each person of record claiming a lien
56 against the vehicle.

57 2. The owner of the vehicle may request the court to
58 dismiss the order. If the owner of the vehicle alleges and the
59 court finds to be true any of the following, the court must
60 dismiss the order, and the owner of the vehicle will incur no
61 costs:

62 a. The owner's family has no other private or public means
63 of transportation;

64 b. The vehicle was stolen at the time of the offense;

65 c. The owner purchased the vehicle after the offense was
66 committed, and the sale was not made to circumvent the order and
67 allow the defendant continued access to the vehicle; or



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68 d. The vehicle is owned by the defendant but is operated
69 solely by employees of the defendant or employees of a business
70 owned by the defendant.

71 3. If the court denies the request to dismiss the order,
72 the petitioner may request an evidentiary hearing. If, at the
73 evidentiary hearing, the court finds to be true any of the
74 circumstances described in sub-subparagraphs (d)2.a.-d., the
75 court must dismiss the order and the owner of the vehicle will
76 incur no costs.

77 ~~(7)~~ (6) A person who violates paragraph (2) (f) shall be
78 assessed a civil penalty of \$5,000 if the violation results in
79 any judicial disposition other than acquittal or dismissal. Of
80 the proceeds from each penalty assessed under this subsection,
81 the first \$500 shall be paid to the circuit court administrator
82 for the sole purpose of paying the administrative costs of
83 treatment-based drug court programs provided under s. 397.334.
84 The remainder of the penalty assessed shall be deposited in the
85 Operations and Maintenance Trust Fund of the Department of
86 Children and Families for the sole purpose of funding safe
87 houses and safe foster homes as provided in s. 409.1678.

88 Section 2. Subsections (2) and (7) and paragraph (a) of
89 subsection (8) of section 943.0583, Florida Statutes, are
90 amended to read:

91 943.0583 Human trafficking victim expunction.—

92 (2) Notwithstanding any other provision of law, a circuit
93 court in the circuit in which the petitioner was arrested the



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94 ~~court of original jurisdiction over the crime sought to be~~
95 ~~expunged~~ may order a criminal justice agency to expunge the
96 criminal history record of a victim of human trafficking who
97 complies with the requirements of this section. This section
98 does not confer any right to the expunction of any criminal
99 history record, and any request for expunction of a criminal
100 history record may be denied at the discretion of the court.

101 (7) (a) In judicial proceedings under this section, a copy
102 of the completed petition to expunge shall be served upon the
103 appropriate state attorney or the statewide prosecutor and upon
104 the arresting agency; however, it is not necessary to make any
105 agency other than the state a party. The appropriate state
106 attorney or the statewide prosecutor and the arresting agency
107 may respond to the court regarding the completed petition to
108 expunge.

109 (b) The petitioner or the petitioner's attorney may appear
110 at any hearing under this section telephonically, via video
111 conference, or by other electronic means.

112 (c) The court shall allow an advocate from a state
113 attorney's office, law enforcement agency, safe house or safe
114 foster home as defined in s. 409.1678(1), or a residential
115 facility offering services to adult victims of human trafficking
116 to be present with the petitioner during any court proceedings
117 or hearings under this section, provided the petitioner has made
118 such a request and the advocate is able to be present.



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119 (d)~~(e)~~ If relief is granted by the court, the clerk of the
120 court shall certify copies of the order to the appropriate state
121 attorney or the statewide prosecutor and the arresting agency.
122 The arresting agency is responsible for forwarding the order to
123 any other agency listed in the court order to which the
124 arresting agency disseminated the criminal history record
125 information to which the order pertains. The department shall
126 forward the order to expunge to the Federal Bureau of
127 Investigation. The clerk of the court shall certify a copy of
128 the order to any other agency that the records of the court
129 reflect has received the criminal history record from the court.

130 (8) (a) Any criminal history record of a minor or an adult
131 that is ordered expunged ~~by the court of original jurisdiction~~
132 ~~over the charges sought to be expunged~~ pursuant to this section
133 must be physically destroyed or obliterated by any criminal
134 justice agency having custody of such record, except that any
135 criminal history record in the custody of the department must be
136 retained in all cases.

137 Section 3. This act shall take effect October 1, 2015.

138
139 -----

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

141 Remove everything before the enacting clause and insert:
142 An act relating to human trafficking; amending s. 796.07, F.S.;
143 providing enhanced criminal penalties for soliciting another to
144 commit prostitution and similar offenses; requiring persons



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145 convicted of such offenses to perform community service and pay
146 for and attend an education program; requiring the court to
147 impose minimum mandatory terms of incarceration for persons
148 convicted two or more times of soliciting another to commit
149 prostitution and similar offenses; providing for impoundment of
150 a vehicle used in soliciting another to commit prostitution and
151 similar offenses; providing an opportunity for owners to prevent
152 the impoundment or immobilization in certain circumstances;
153 amending s. 943.0583, F.S.; providing that a circuit court in
154 the circuit in which the petitioner was arrested may expunge the
155 criminal history record of a victim of human trafficking;
156 requiring a judge to allow an advocate to be present with a
157 human trafficking victim in an expunction hearing; providing an
158 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 467 Pub. Rec./Human Trafficking Victims
SPONSOR(S): Spano
TIED BILLS: HB 465 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Aziz PA	Cunningham <i>SC</i>
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, s. 119.071(2)(h), F.S., makes specified criminal intelligence information or criminal investigative information confidential and exempt from public records requirements. Similarly, §. 943.0583, F.S., provides a public records exemption for criminal history records of a human trafficking victim that have been ordered expunged.

This bill, which is linked to the passage of HB 465, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include:

- Any information that reveals the identity of a person under the age of 18 who is the victim of a crime of human trafficking for labor or services proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S.; and
- A photograph, videotape, or image of any part of the body of a victim of a crime of human trafficking involving commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S.

The bill also amends s. 943.0583, F.S., making the above-described criminal intelligence and criminal investigative information confidential and exempt from public records requirements under the section providing expunction for human trafficking victims.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

Article I, Section 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may exempt records from the requirements of Article I, Section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ The Act also requires specified questions to be considered during the review process.⁷

¹ Article 1, Sec. 24(a), FLA. CONST.

² Article 1, Sec. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Public Record Exemption for Certain Agency Investigation Information

Currently, s. 119.071(2)(h), F.S., makes specified criminal intelligence information⁸ or criminal investigative information⁹ confidential and exempt¹⁰ from public records requirements. This information includes:

- Any information, including the photograph, name, address, or other fact, which reveals the identity of the victim of the crime of child abuse as defined by ch. 827, F.S. (child abuse);
- Any information, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution); ch. 800, F.S. (lewdness and indecent exposure); ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity); and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense prohibited under ch. 794, F.S. (sexual battery), ch. 796, F.S. (prostitution), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), or ch. 847, F.S. (obscenity), regardless of whether the photograph, videotape, or image identifies the victim.¹¹

Such confidential and exempt criminal investigative and criminal intelligence information may be disclosed by a law enforcement agency in specified instances, including:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered;¹² or
- To another governmental agency in the furtherance of its official duties and responsibilities.

This public records exemption is scheduled to repeal on October 2, 2016.

Human Trafficking Victim Expunction

In 2013, the Legislature passed legislation that authorized a victim of human trafficking to petition the court¹³ for the expunction of any *conviction* for an offense¹⁴ committed while he or she was a victim of human trafficking.¹⁵ Last year, the Legislature expanded what could be expunged to include records resulting from the *arrest or filing of charges* for an offense committed or reported to have been committed while he or she was a victim of human trafficking.¹⁶

⁸ Section 119.011(3)(a), F.S., defines “criminal intelligence information” to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁹ Section 119.011(3)(b), F.S., defines “criminal investigative information” to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

¹⁰ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See Attorney General Opinion 85-62* (August 1, 1985).

¹¹ Section 119.071(2)(h)3., F.S., requires the exemption to apply to confidential and exempt criminal intelligence and criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

¹² Section 119.071(2)(h)2.c., F.S., provides the information disclosed should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

¹³ Section 943.0583(4), F.S., requires a petition under this section to be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking, subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition or for other reasons consistent with the purpose of s. 943.0583, F.S.

¹⁴ Except an offense listed in s. 775.084(1)(b)1., F.S.

¹⁵ Chapter 2013-98, L.O.F.

¹⁶ Chapter 2014-160, L.O.F.

Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record and not face perjury charges or otherwise be liable for giving a false statement for failing to acknowledge an expunged criminal record unless they are a candidate for employment with a criminal justice agency or is a defendant in a criminal prosecution.¹⁷ However, persons are required to acknowledge such arrests when applying for future sealing or expunctions under ss. 943.059, 943.0585, or 943.0583, F.S.¹⁸

Currently, s. 943.0583, F.S., provides a public records exemption for criminal history records of a victim of human trafficking that have been ordered expunged. Such records are retained by FDLE, but are confidential and exempt from public record requirements and can only be made available to criminal justice agencies for their respective criminal justice purposes. A criminal justice agency may retain a notation indicating compliance with an order to expunge. This exemption repeals on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

Effect of the Bill

The bill, which is linked to the passage of HB 465, amends s. 119.071(2)(h), F.S., to expand the types of criminal intelligence and criminal investigative information that are confidential and exempt from public records requirements to include:

- Any information that reveals the identity of a person under the age of 18 who is the victim of a crime of human trafficking for labor or services proscribed in s. 787.06(3)(a), F.S.;
- Any information that may reveal the identity of a person who is the victim of a crime of human trafficking for commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S.; and
- A photograph, videotape, or image of any part of the body of a victim of a crime of human trafficking involving commercial sexual activity proscribed in s. 787.06(3)(b), (d), (f), or (g), F.S.

The bill also amends s. 943.0583, F.S., providing that the above-described criminal intelligence and criminal investigative information related to victims of human trafficking that is made confidential and exempt from public records requirements in s. 119.071(2)(h), F.S., is also made confidential and exempt from public records requirements under the section providing expunction for human trafficking victims.

The bill provides for repeal of the exemptions on October 2, 2020, unless both exemptions are reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.¹⁹

B. SECTION DIRECTORY:

Section 1. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Amends s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 3. Provides a public necessity statement.

Section 4. Provides an effective date that is the same as that of HB 465 or similar legislation, if such legislation is passed during the same session and becomes law.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Article 1, Sec. 24(c), FLA. CONST.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to expunged criminal records of victims of human trafficking. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; revising an exemption from public
 4 records requirements for certain criminal intelligence
 5 and investigative information to exempt information
 6 that reveals the identity of a victim of certain human
 7 trafficking offenses; amending s. 943.0583, F.S.;
 8 providing an exemption from public records
 9 requirements for investigative information relating to
 10 criminal history records of human trafficking victims
 11 that have been ordered expunged; providing for future
 12 legislative review and repeal of the exemption;
 13 providing a statement of public necessity; providing a
 14 contingent effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (h) of subsection (2) of section
 19 119.071, Florida Statutes, is amended to read:

20 119.071 General exemptions from inspection or copying of
 21 public records.—

22 (2) AGENCY INVESTIGATIONS.—

23 (h)1. The following criminal intelligence information or
 24 criminal investigative information is confidential and exempt
 25 from s. 119.07(1) and s. 24(a), Art. I of the State
 26 Constitution:

27 a. Any information ~~that, including the photograph, name,~~
 28 ~~address, or other fact, which~~ reveals the identity of the victim
 29 of the crime of child abuse as defined by chapter 827 or that
 30 reveals the identity of a person under the age of 18 who is the
 31 victim of the crime of human trafficking proscribed in s.
 32 787.06(3)(a).

33 b. Any information that ~~which~~ may reveal the identity of a
 34 person who is a victim of any sexual offense, including a sexual
 35 offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter
 36 794, chapter 796, chapter 800, chapter 827, or chapter 847.

37 c. A photograph, videotape, or image of any part of the
 38 body of the victim of a sexual offense prohibited under s.
 39 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796,
 40 chapter 800, s. 810.145, chapter 827, or chapter 847, regardless
 41 of whether the photograph, videotape, or image identifies the
 42 victim.

43 2. Criminal investigative information and criminal
 44 intelligence information made confidential and exempt under this
 45 paragraph may be disclosed by a law enforcement agency:

46 a. In the furtherance of its official duties and
 47 responsibilities.

48 b. For print, publication, or broadcast if the law
 49 enforcement agency determines that such release would assist in
 50 locating or identifying a person that such agency believes to be
 51 missing or endangered. The information provided should be
 52 limited to that needed to identify or locate the victim and not

53 include the sexual nature of the offense committed against the
 54 person.

55 c. To another governmental agency in the furtherance of
 56 its official duties and responsibilities.

57 3. This exemption applies to such confidential and exempt
 58 criminal intelligence information or criminal investigative
 59 information held by a law enforcement agency before, on, or
 60 after the effective date of the exemption.

61 4. This paragraph is subject to the Open Government Sunset
 62 Review Act in accordance with s. 119.15, and shall stand
 63 repealed on October 2, ~~2020~~ 2016, unless reviewed and saved from
 64 repeal through reenactment by the Legislature.

65 Section 2. Subsection (11) is added to section 943.0583,
 66 Florida Statutes, to read:

67 943.0583 Human trafficking victim expunction.-

68 (11)(a) The following criminal intelligence information or
 69 criminal investigative information is confidential and exempt
 70 from s. 119.07(1) and s. 24(a), Art. I of the State
 71 Constitution:

72 1. Any information that reveals the identity of a person
 73 who is a victim of human trafficking whose criminal history
 74 record has been expunged under this section.

75 2. Any information that may reveal the identity of a
 76 person who is a victim of human trafficking whose criminal
 77 history record has been ordered expunged under this section.

78 (b) Criminal investigative information and criminal

79 intelligence information made confidential and exempt under this
 80 subsection may be disclosed by a law enforcement agency:

81 1. In the furtherance of its official duties and
 82 responsibilities.

83 2. For print, publication, or broadcast if the law
 84 enforcement agency determines that such release would assist in
 85 locating or identifying a person that the agency believes to be
 86 missing or endangered. The information provided should be
 87 limited to that needed to identify or locate the victim.

88 3. To another governmental agency in the furtherance of
 89 its official duties and responsibilities.

90 (c) This exemption applies to such confidential and exempt
 91 criminal intelligence information or criminal investigative
 92 information held by a law enforcement agency before, on, or
 93 after the effective date of the exemption.

94 (d) This subsection is subject to the Open Government
 95 Sunset Review Act in accordance with s. 119.15 and shall stand
 96 repealed on October 2, 2020, unless reviewed and saved from
 97 repeal through reenactment by the Legislature.

98 Section 3. The Legislature finds that it is a public
 99 necessity to make confidential and exempt from public records
 100 requirements certain criminal intelligence information or
 101 criminal investigative information that reveals the identity of
 102 a victim of the crime of human trafficking of a minor for labor
 103 or any victim of human trafficking for commercial sexual
 104 activity. The Legislature finds that it is important to

105 strengthen the protections afforded victims of human trafficking
 106 for labor who are minors and victims of human trafficking for
 107 commercial sexual activity, regardless of age, in order to
 108 ensure their privacy and to prevent their revictimization by
 109 making such information confidential and exempt. The identity of
 110 these victims is information of a sensitive personal nature. As
 111 such, this exemption serves to minimize the trauma to victims
 112 because the release of such information would compound the
 113 tragedy already visited upon their lives and would be defamatory
 114 to or cause unwarranted damage to the good name or reputation of
 115 the victims. Protecting the release of identifying information
 116 of such victims protects them from further embarrassment,
 117 harassment, or injury. The Legislature also finds that it is a
 118 public necessity that information in the investigative or
 119 intelligence records related to a criminal history record
 120 ordered expunged under s. 943.0583, Florida Statutes, which
 121 would or could reasonably be expected to reveal the identity of
 122 a person who is a victim of human trafficking whose criminal
 123 history record has been ordered expunged under s. 943.0583,
 124 Florida Statutes, be made confidential and exempt from s.
 125 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 126 State Constitution. Persons who are victims of human trafficking
 127 and who have been charged with crimes allegedly committed at the
 128 behest of their traffickers are themselves victims of crimes.
 129 Such victims face barriers to employment and other life
 130 opportunities as long as these criminal charges remain on record

131 | and accessible to potential employers and others. Therefore, it
132 | is necessary that these records be made confidential and exempt
133 | in order for human trafficking victims to have the chance to
134 | rebuild their lives and reenter society.

135 | Section 4. This act shall take effect on the same date
136 | that HB 465 or similar legislation relating to human trafficking
137 | takes effect, if such legislation is adopted in the same
138 | legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 469 Pub. Rec./Residential Facilities Serving Victims of Sexual Exploitation
SPONSOR(S): Spano
TIED BILLS: HB 465 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Aziz PA	Cunningham <i>gll</i>
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor. Safe homes, safe foster homes, and other residential facilities provide services and residential care to child victims of sexual exploitation. Adult victims of human trafficking involving commercial sexual activity can be served in residential facilities as well.

This bill, which is linked to the passage of HB 465, creates a public record exemption for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity. Specifically, the bill provides that the information regarding the location of these facilities that is held by an agency is confidential and exempt from public record requirements. However, the bill allows this information to be provided to any agency in order to maintain health and safety standards and to address emergency situations.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on the state or local governments.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, Section 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may exempt records from the requirements of Article I, Section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption; and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ The Act also requires specified questions to be considered during the review process.⁷

Human Trafficking

Florida law defines human trafficking as "soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."⁸ Human

¹ Article 1, Sec. 24(a), FLA. CONST.

² Article 1, Sec. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ Section 787.06 (2)(d), F.S.

trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.⁹ Trafficking subjects victims to force, fraud, or coercion.¹⁰ Individuals experiencing this type of sexual exploitation often become bonded with their exploiters and do not see themselves as victims. These individuals experience trauma and are exposed to danger but are often unable to leave their exploiter to seek help.¹¹

Residential Treatment for Victims of Human Trafficking

Safe Houses

Section 409.1678, F.S., defines the term “sexually exploited child” as a child who has suffered sexual exploitation¹² and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act.¹³ In 2012, Florida passed the Safe Harbor Act,¹⁴ which established “safe houses.” Sexually exploited children older than six who have been adjudicated dependent or delinquent may be placed in a safe house by the Department of Children and Families (DCF) if an assessment indicates such placement is appropriate.¹⁵

Safe houses must provide a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children and must have staff members who are awake on duty 24 hours a day.¹⁶ A safe house serving children who have been sexually exploited must have available staff or contract personnel who have the clinical expertise, credentials, and training to provide a variety of services (e.g., security, crisis intervention services, residential care, and transportation).¹⁷

Safe Foster Homes

Legislation passed in 2014 created the term “safe foster homes,” and defines the term as “a foster home certified by DCF to care for sexually exploited children.”¹⁸ The State requires safe foster homes to provide the same services and meet the same requirements as safe houses, except for the requirement to have awake staff on duty 24 hours a day.

Additional Residential Facilities

Traditional residential facilities serve both children and adults who are victims of sexual exploitation. If these facilities serve adults, they cannot be designated safe houses or safe foster homes.

If a trafficker learned the location of a safe house, safe foster home, or other residential facility and went to such location, the staff as well as the individuals residing in those locations could be in danger of physical or emotional harm.

Effect of the Bill

The bill creates a public record exemption for information about the location of safe houses, safe foster homes, residential facilities serving victims of sexual exploitation, and residential facilities serving adult victims of human trafficking. Specifically, the bill provides that the information regarding the location of

⁹ Section 787.06(1)(a), F.S.

¹⁰ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, available at <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on February 3, 2015).

¹¹ See Adam S. Butkus, *Ending Modern-Day Slavery in Florida: Strengthening Florida's Legislation in Combating Human Trafficking*, 37 STETSON L. REV. 297, 307 (2007).

¹² As defined in s. 39.01(69)(g), F.S.

¹³ 22 U.S.C. ss. 7101 et seq.

¹⁴ Chapter 2012-105, L.O.F.

¹⁵ Section 39.524, F.S.

¹⁶ Section 409.1678 (1)(b), F.S. Safe houses must also hold a license as a family foster home or residential child-caring agency, be appropriately licensed in this state as a residential child-caring agency as defined in s. 409.175, F.S., and must have applied for accreditation within 1 year after being licensed (according to DCF, there are currently no entities that accredit safe houses and safe houses are not sure what type of accreditation they are required to have. No safe houses have applied for accreditation at this time).

¹⁷ Section 409.1671, F.S.

¹⁸ Chapter 2014-161, L.O.F.

these facilities that is held by an agency, as defined in s.119.011, F.S.,¹⁹ is confidential and exempt²⁰ from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. However, the bill allows this information to be provided to any agency as necessary to maintain health and safety standards and to address emergency situations.

The bill provides that the public record exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation.

Section 2. Amends s. 787.06, F.S., relating to human trafficking.

Section 3. Provides a public necessity statement.

Section 4. Provides an effective date to be the same as that of HB 465 or similar legislation, if such legislation is passed during the same session and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

The bill does not appear to have any impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹⁹ Agency is defined in s. 119.011, F.S., as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

²⁰ There is a difference between records the Legislature has determined to be exempt from public records requirements and those that have been determined to be confidential and exempt. If the Legislature has determined the information to be confidential and exempt then the information is not subject to inspection. Also, if the information is deemed to be confidential and exempt it may only be released to those person and entities designated in statute. However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt from public records requirements. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991); *see* Attorney General Opinion 85-62 (August 1, 1985).

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to the identification and location of safe houses. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 409.1678, F.S.; providing an exemption from public
 4 records requirements for information about the
 5 location of safe houses, safe foster homes, and other
 6 residential facilities serving victims of sexual
 7 exploitation held by an agency; providing for future
 8 legislative review and repeal of the exemption;
 9 amending s. 787.06, F.S.; providing an exemption from
 10 public records requirements for information held by an
 11 agency about the location of residential facilities
 12 serving adult victims of human trafficking involving
 13 commercial sexual activity; providing for future
 14 legislative review and repeal of the exemption;
 15 providing a statement of public necessity; providing a
 16 contingent effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsection (6) is added to section 409.1678,
 21 Florida Statutes, to read:

22 409.1678 Specialized residential options for children who
 23 are victims of sexual exploitation.—

24 (6) (a) LOCATION INFORMATION.—Information about the
 25 location of a safe house, safe foster home, or other residential
 26 facility serving victims of sexual exploitation, as defined in

27 s. 39.01(69)(g), which is held by an agency, as defined in s.
 28 119.011, is confidential and exempt from s. 119.07(1) and s.
 29 24(a), Art. I of the State Constitution.

30 (b) Information about the location of a safe house, safe
 31 foster home, or other residential facility serving victims of
 32 sexual exploitation, as defined in s. 39.01(69)(g), may be
 33 provided to an agency, as defined in s. 119.011, as necessary to
 34 maintain health and safety standards and to address emergency
 35 situations in the safe house, safe foster home, or other
 36 residential facility.

37 (c) This subsection is subject to the Open Government
 38 Sunset Review Act in accordance with s. 119.15 and shall stand
 39 repealed on October 2, 2020, unless reviewed and saved from
 40 repeal through reenactment by the Legislature.

41 Section 2. Subsection (9) is added to section 787.06,
 42 Florida Statutes, to read:

43 787.06 Human trafficking.—

44 (9)(a) Information about the location of a residential
 45 facility offering services for adult victims of human
 46 trafficking involving commercial sexual activity, which is held
 47 by an agency, as defined in s. 119.011, is confidential and
 48 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 49 Constitution.

50 (b) Information about the location of a residential
 51 facility offering services for adult victims of human
 52 trafficking involving commercial sexual activity may be provided

53 to an agency, as defined in s. 119.011, as necessary to maintain
 54 health and safety standards and to address emergency situations
 55 in the residential facility.

56 (c) This subsection is subject to the Open Government
 57 Sunset Review Act in accordance with s. 119.15 and shall stand
 58 repealed on October 2, 2020, unless reviewed and saved from
 59 repeal through reenactment by the Legislature.

60 Section 3. The Legislature finds that it is a public
 61 necessity that information about the location of safe houses,
 62 safe foster homes, and other residential facilities serving
 63 victims of sexual exploitation, as defined in s. 39.01(69)(g),
 64 Florida Statutes, or adult victims of human trafficking
 65 involving commercial sexual activity, held by an agency, as
 66 defined in s. 119.011, Florida Statutes, be made confidential
 67 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 68 Article I of the State Constitution. Safe houses, safe foster
 69 homes, and other residential facilities serving victims of
 70 sexual exploitation, as defined in s. 39.01(69)(g), Florida
 71 Statutes, or adult victims of human trafficking involving
 72 commercial sexual activity, are intended as refuges for sexually
 73 exploited victims from those who exploited them. If the
 74 individuals who victimized these people were able to learn the
 75 location of such facilities, they may attempt to contact their
 76 victims, exploit their vulnerabilities, and return them to the
 77 situations in which they were victimized. Even without the
 78 return of these victims to their former situations, additional

79 contact with those who victimized them would have the effect of
80 continuing their victimization and inhibiting their recoveries.
81 Additionally, knowledge about the location of safe houses, safe
82 foster homes, and other residential facilities serving victims
83 of sexual exploitation, as defined in s. 39.01(69)(g), Florida
84 Statutes, or adult victims of human trafficking involving
85 commercial sexual activity, could enable other individuals to
86 locate and attempt to victimize the residents. Therefore, it is
87 the finding of the Legislature that such information must be
88 made confidential and exempt from public records requirements.



89 Section 4. This act shall take effect on the same date
90 that HB 465 or similar legislation relating to human trafficking
91 takes effect, if such legislation is adopted in the same
92 legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 57 Law Enforcement Officer Body Cameras

SPONSOR(S): Criminal Justice Subcommittee

TIED BILLS: None **IDEN./SIM. BILLS:** SB 248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Keegan 	Cunningham 

SUMMARY ANALYSIS

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Nationally, a small number of law enforcement agencies have opted to allow their law enforcement officers to wear body cameras. Preliminary studies on the effects of using body cameras on law enforcement officers indicated a reduction of citizen complaints against officers who wore the cameras while on duty.

Similar to the national trend, only a handful of Florida law enforcement agencies have elected to use body cameras. Currently, Florida law does not require such agencies to have policies in place that govern the use such technology.

The bill creates a new section of statute requiring law enforcement agencies that permit law enforcement officers to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on the situations in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires law enforcement agencies to provide policies and procedures training to all personnel who use, maintain, store, or release body camera recording data. The bill also requires law enforcement agencies to retain body camera recording data in compliance with s. 119.021, F.S., and to perform periodic reviews of agency practices to ensure compliance with the agency's policies and procedures. The bill also exempts body camera recordings from the requirements of ch. 934, F.S. This allows law enforcement officers to wear body cameras during their patrol duties without having to inform each individual they make contact with that they are being recorded.

The bill may have a minimal impact on state and local government expenditures because the bill creates a new requirement for law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

The bill is effective January 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Law Enforcement Body Cameras

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Nationally, a small number of law enforcement agencies have opted to allow their law enforcement officers to wear body cameras. The Police Executive Research Forum conducted a national study in 2013 to determine the number of law enforcement agencies currently using body cameras,¹ and only sixty-three agencies nationwide reported using them.²

A limited number of studies have been conducted in the United States to determine the positive and negative effects of using body cameras on law enforcement officers.³ The empirical studies that have been conducted in the United States focused on the effects of using body cameras in the Rialto Police Department (California) and the Mesa Police Department (Arizona).⁴ While the relative lack of peer-reviewed research makes it difficult to accurately identify the benefits and drawbacks of requiring the use of body cameras, the findings of the Rialto and Mesa studies indicated a significant reduction of citizen complaints against officers who wore the cameras while on duty.⁵

More extensive studies have been conducted on the effects of using in-car cameras, commonly referred to as “dash cams,” in law enforcement patrol vehicles. The International Association of Chiefs of Police (hereinafter “IACP”) published findings in 2003 from an extensive study of the effects of using cameras in patrol vehicles.⁶ The IACP study surveyed 47 agencies that owned a total of 31,498 patrol vehicles and 17,500 camera systems.⁷ The study found that the presence of a camera had a small impact on perceptions of officer safety.⁸ Only 33% of the officers surveyed reported increased personal safety on patrol due to the presence of a camera, while 64% reported no change in officer safety.⁹ Conversely, findings indicated that the presence of in-car cameras had a significant impact on resolving citizen complaints and internal affairs investigations.¹⁰ The outcomes of citizen complaints involving incidents that were videotaped resulted in exonerations for the officers in 93% of recorded incidents.¹¹ The immediate supervisors of patrol officers also reported that in at least half of complaints, when the complainant learned the incident was videotaped, the complaint was subsequently withdrawn.¹²

¹ Miller, Lindsay, & Jessica Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, POLICE EXECUTIVE RESEARCH FORUM, 2014.

² *Id.* (Note: The surveyor contacted 500 law enforcement agencies nationwide and received responses from 254 of those agencies. Of the 254 responding agencies, 63 agencies reported using body-worn cameras.)

³ White, Michael D., *Police Officer Body-Worn Cameras: Assessing the Evidence*, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, 2014.

⁴ *Id.*; Studies are currently being conducted in the Phoenix Police Department (Arizona), the Orlando Police Department (Florida), the Las Vegas Metro Police Department (Nevada), and the Los Angeles Police Department (California). (See White, Michael D., *Police Officer Body-Worn Cameras: Assessing the Evidence*, Office of Community Oriented Policing Services, 2014; Mora, Gema, *Department of Criminology to Study the Effectiveness of Body Cameras on Police Officers*, University of South Florida, <http://criminology.cbcs.usf.edu/NewsEvents/ViewNews.cfm?NewsID=908> (last visited Jan. 21, 2015); National Institute of Justice, *Research on Body-Worn Cameras and Law Enforcement*, <http://www.nij.gov/topics/law-enforcement/technology/pages/body-worn-cameras.aspx> (last visited Feb. 2, 2015).)

⁵ *Id.* (citing to Farrar, William. *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras and Police Use-of-Force*, MESA POLICE DEPARTMENT, 2013.)

⁶ International Association of Chiefs of Police, *The Impact of Video Evidence on Modern Policing: Research and Best Practices from the IACP Study on In-Car Cameras*, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, 2003.

⁷ *Id.* at 10.

⁸ *Id.* at 13.

⁹ *Id.*

¹⁰ *Id.* at 15.

¹¹ *Id.*

¹² *Id.*

Similar to the national trend, only a handful of Florida law enforcement agencies have elected to use body cameras. Currently, Florida law does not require such agencies to have policies in place that govern the use such technology.

Privacy

Chapter 934, F.S., governs the security of various types of communications in the State, and limits the ability to intercept, monitor, and record such communications. The Chapter provides for criminal penalties¹³ and civil remedies¹⁴ in circumstances where communications are intercepted in violation of Chapter 934, F.S. Additionally, s. 934.03(2)(d), F.S., creates the “two party consent rule,” which requires that all parties to a communication or conversation must consent to having the communication recorded before it can be done so legally.¹⁵ Chapter 934, F.S., provides a limited exception for law enforcement-related recordings when “such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.”¹⁶

Public Records

Chapter 119, F.S., the Public Records Act, governs the maintenance and availability of state, county, and municipal records.¹⁷ While the intent of the Act was to make most records available for anyone to copy or inspect them, the public records laws in Florida exempt certain records from public view.¹⁸

There are several public records exemptions that may apply to law enforcement body camera recordings as a result of privacy or public policy concerns. One such exemption relates to criminal investigation records pursuant to s. 119.071(2)(c). This section exempts records related to active criminal intelligence information and active criminal investigations, as well as documentation of public records requests made by law enforcement agencies.¹⁹ A similar such exemption applies to information revealing surveillance techniques, procedures, or personnel.²⁰ Additionally, exemptions exist to protect private and personal information, such as certain personal identifying information²¹ or victim information.²² Data recorded by body cameras will have to be screened for confidential or exempt data before it is released pursuant to a public records request.

The General Records Schedule, issued by the Florida Department of State, Division of Library and Information Services, establishes the requirements and timelines for agencies to maintain public records.²³ General Records Schedule GS2 governs the records maintenance and retention requirements for law enforcement, correctional facilities, and district medical examiners.²⁴ Schedule GS2 does not currently specify a retention requirement for video or audio recordings from body cameras.²⁵ However, a recording from a body camera could fall under existing areas of the retention schedule, depending on what is recorded.

For example, if a body camera records a criminal incident, retention of the recording for most offenses is governed by Item # 129, Criminal Investigative Records, in the Retention Schedule, and must be

¹³ Section 934.04, F.S.; section 934.21, F.S.; section 934.215, F.S.; section 934.31, F.S.; section 934.43, F.S.

¹⁴ Section 934.05, F.S.;

¹⁵ See *State v. Walls*, 356 So.2d 294 (Fla. 1978).

¹⁶ Section 934.03(c), F.S.

¹⁷ Section 119.01, F.S.

¹⁸ Section 119.071-0713, F.S.; see also *Alice P. v. Miami Daily News, Inc.*, 440 So.2d 1300 (Fla. 3d DCA 1983); *Patterson v. Tribune Co.*, 146 So.2d 623 (Fla. 2d DCA 1962); *Staton v. McMillan*, 597 So.2d 940 (Fla. 1st DCA 1992).

¹⁹ Section 119.071(2)(c), F.S.

²⁰ Section 119.071(2)(d), F.S.

²¹ Section 501.171, F.S.

²² Section 119.071(j), F.S.

²³ Rule 1B-24.003, F.A.C.

²⁴ Florida Dep’t of State, Div. of Library & Info. Servs., GENERAL RECORDS SCHEDULE GS2 (2010).

²⁵ *Id.*

retained for 4 anniversary years after the offense is committed.²⁶ If the recording documents a criminal incident that constitutes a capital or life felony, Item # 31, Criminal Investigative Records: Capital/Life Felony, requires that the recording be retained for 100 anniversary years after the incident.²⁷

Effect of the Bill

The bill creates a new section of statute requiring law enforcement agencies that permit law enforcement officers to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on the situations in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to provide policies and procedures training to all personnel who use, maintain, store, or release body cameras or recording data. The bill also requires law enforcement agencies to retain body camera recording data in compliance with s. 119.021, F.S., and to perform periodic reviews of agency practices to ensure compliance with the agency's policies and procedures.

The bill specifies that ch. 934, F.S., does not apply to body camera recordings. This allows law enforcement officers to wear body cameras during their patrol duties without having to inform each individual they make contact with that they are being recorded.

The bill also creates the following definitions:

- "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's person that records audio and video data of the officer's activities;
- "Law enforcement agency" means an agency that has a primary mission of preventing and detecting crime and the enforcement of the penal, criminal, traffic, or highway laws of the state and that in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 943.1718, F.S., body cameras; policies and procedures.

Section 2. Provides an effective date of January 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have an impact on state revenues.

²⁶ *Id.* at page 7.

²⁷ *Id.*

2. Expenditures:

The bill may have a minimal impact on state expenditures because the bill creates a new requirement for state law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill may have a minimal impact on local expenditures because the bill creates a new requirement for local law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to law enforcement officer body
 3 cameras; creating s. 943.1718, F.S.; providing
 4 definitions; requiring a law enforcement agency that
 5 permits its law enforcement officers to wear body
 6 cameras to establish policies and procedures
 7 addressing the proper use, maintenance, and storage of
 8 body cameras and the data recorded by body cameras;
 9 requiring such policies and procedures to include
 10 specified information; requiring a law enforcement
 11 agency that permits its law enforcement officers to
 12 wear body cameras to ensure that specified personnel
 13 are trained in the law enforcement agency's policies
 14 and procedures, to retain data recorded by body
 15 cameras in accordance with the requirements of s.
 16 119.021, F.S., and to perform a periodic review of
 17 actual agency body camera practices to ensure
 18 conformity with the agency's policies and procedures;
 19 providing an effective date.

20
 21 WHEREAS, advancements in technology allow body cameras to
 22 be affordable and practical tools for law enforcement use, and

23 WHEREAS, body cameras can provide a valuable source of
 24 information to both law enforcement and the general public, and

25 WHEREAS, the audio and video recording of police and
 26 citizen interactions allows law enforcement agencies to improve

27 efforts to reduce crime and properly address citizen complaints,
 28 and

29 WHEREAS, establishing uniform procedural requirements for
 30 the use of body cameras by law enforcement will provide
 31 consistency and reliability throughout the State, and

32 WHEREAS, there are currently no statewide mandatory and
 33 uniform standards or guidelines that apply to use of body
 34 cameras by law enforcement officers, NOW, THEREFORE,

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. Section 943.1718, Florida Statutes, is created
 39 to read:

40 943.1718 Body cameras; policies and procedures.-

41 (1) As used in this section, the term:

42 (a) "Body camera" means a portable electronic recording
 43 device that is worn on a law enforcement officer's person that
 44 records audio and video data of the officer's activities;

45 (b) "Law enforcement agency" means an agency that has a
 46 primary mission of preventing and detecting crime and the
 47 enforcement of the penal, criminal, traffic, or highway laws of
 48 the state and that in furtherance of that primary mission
 49 employs law enforcement officers as defined in s. 943.10, F.S.

50 (2) A law enforcement agency that permits its law
 51 enforcement officers to wear body cameras shall establish
 52 policies and procedures addressing the proper use, maintenance,

53 and storage of body cameras and the data recorded by body
 54 cameras. The policies and procedures must include:
 55 (a) General guidelines for the proper use, maintenance,
 56 and storage of body cameras;
 57 (b) Any limitations on which law enforcement officers are
 58 permitted to wear body cameras;
 59 (c) Any limitations on the situations in which law
 60 enforcement officers are permitted to wear body cameras; and
 61 (d) General guidelines for the proper storage, retention,
 62 and release of audio and video data recorded by body cameras.
 63 (3) A law enforcement agency that permits its law
 64 enforcement officers to wear body cameras shall:
 65 (a) Ensure that all personnel who wear, use, maintain, or
 66 store body cameras are trained in the law enforcement agency's
 67 policies and procedures;
 68 (b) Ensure that all personnel who or use, maintain, store,
 69 or release audio or video data recorded by body cameras are
 70 trained in the law enforcement agency's policies and procedures;
 71 (c) Retain audio and video data recorded by body cameras
 72 in accordance with the requirements of s. 119.021, F.S., except
 73 as otherwise provided by law; and
 74 (d) Perform a periodic review of actual agency body camera
 75 practices to ensure conformity with the agency's policies and
 76 procedures.
 77 (4) Chapter 934 does not apply to body camera recordings
 78 made by law enforcement agencies that elect to use body cameras.

PCS for HB 57

ORIGINAL

2015

79
80

Section 2. This act shall take effect January 1, 2016.

Florida's Adult Criminal History Records Restriction Process

February 9, 2015

Summary

As requested, this memo provides information on Florida policies related to the restriction of access to adult criminal history records and compares those policies with policies in other states.

Our review answered three questions.

- What are Florida's policies and processes for the sealing and expunging of criminal history records?
- How many people have received certificates allowing them to restrict their criminal history records in Florida and what are their characteristics?
- How do Florida's sealing and expunging policies compare to other states' record restriction policies?

Background

The U.S. Department of Justice has estimated that one in three adults in the United States has a criminal history record. Many of these records are for arrests without conviction, convictions without incarceration, or convictions for non-violent crimes. Having a criminal record can affect people's lives in many ways. In addition to a negative social stigma, it can create barriers to self-sufficiency, such as employment. Many employers are hesitant to hire candidates with any criminal history record. In addition, having a criminal history can prevent people from becoming licensed in many professions and occupations. Given this context, state policies to restrict or limit access to a criminal record, often termed sealing or expunging, are critical to the social and economic opportunities of many citizens.¹ However, these policies vary across states in many respects, such as which types of criminal charges and dispositions can be restricted or how soon after a disposition a record restriction is available.

¹ Generally, expungement refers to deleting a criminal record from all official records, as if it never existed. Sealing refers to the act or practice of officially preventing access to a criminal record, except when the law allows access to entities such as law enforcement agencies.

What are Florida's policies and processes for the sealing and expunging of criminal history records?

Florida primarily limits the restriction of criminal history records to arrests. Florida law allows for the sealing and expunging of arrest records.^{2,3} Individuals are eligible if an indictment or other charging document was not filed after an arrest, charges were dismissed or nolle prosequi, or none of the charges resulted in an adjudication of guilt.⁴ Generally, individuals are allowed to seal or expunge only one arrest record and may not have another record sealed or expunged in Florida. However, multiple arrest records from one incident can be sealed or expunged at the discretion of the court if it finds them to be directly related. In addition, individuals with a criminal history of any felony or misdemeanor conviction are ineligible, regardless of whether it is related to the charge they are seeking to seal or expunge. Also, statute restricts sealing and expunging when adjudication is withheld for crimes that could generally be termed violent or sexual.⁵ If eligible, an individual must complete any court-ordered supervision related to the arrest before receiving a sealing or expungement.

In some cases, an individual cannot have a non-conviction record of arrest expunged without first having the record sealed for at least 10 years. When an arrest is sealed, the public does not have access to the information and, in most cases, a person may lawfully deny or fail to acknowledge the sealed arrest. However, certain governmental and related entities do have access to the information in its entirety; primarily for criminal justice, employment, and licensure purposes.⁶ For example, a judge has access to the information if the individual is a defendant in a criminal prosecution. In addition, entities that employ people to work with vulnerable populations such as children, the disabled, or the elderly also have access. An individual whose adjudication was withheld, or whose trial ended in a not guilty verdict, is required to have a record sealed before requesting it be expunged. When a record is expunged, those entities that would have access to a sealed record will be informed that the person has had a record expunged, but would not have access to the record without a court order.⁷ Individuals whose charge was dismissed prior to trial are eligible to apply immediately for expungement, as long as any required court supervision is complete.

² Sections 943.0585 and 943.059, *F.S.*

³ Section 943.0583, *F.S.*, allows the expungement of criminal history records, including convictions, only for victims of human trafficking. Specifically, the statute provides for expungement, without regard to the disposition of the arrest or of any charges, for individuals whose offense was committed while the person was a victim of human trafficking and as part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme. However, these provisions do not apply to offenses listed in s. 775.084(1)(b)1, *F.S.*, which includes violent felonies such as robbery, armed burglary, aggravated and sexual battery, and murder.

⁴ Nolle prosequi or nolle prossed denotes that the prosecutor will proceed in no further action, meaning the case against the defendant is being dropped.

⁵ Sections 943.0585 and 943.059, *F.S.*, cite s. 907.041, *F.S.*, which lists several of these crimes, including arson, aggravated assault and battery, child abuse, homicide, manslaughter, stalking, and sexual crimes such as lewd and lascivious offenses. In addition, drug trafficking, certain types of fraud, and offenses committed by public employees are also ineligible for sealing or expunging.

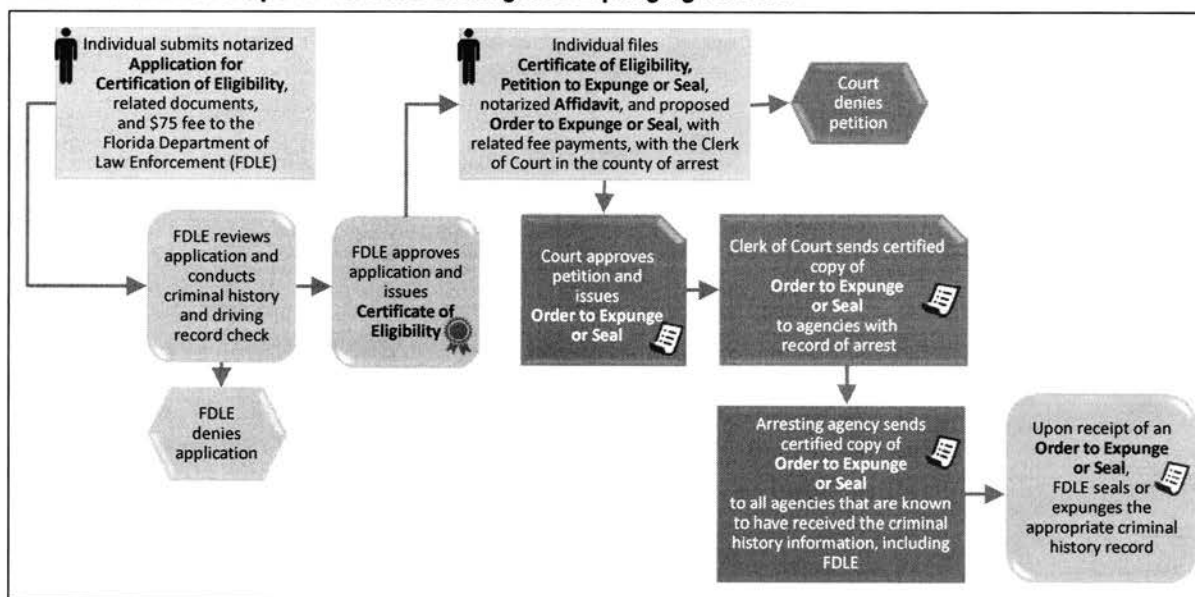
⁶ These entities include criminal justice agencies, state agencies providing educational and social services, The Florida Bar, and the Department of Financial Services. Section 943.059(4)(a), *F.S.*, also allows access to sealed records for criminal history checks related to purchasing a firearm or applying for a concealed weapons permit.

⁷ When a record has been expunged, those entities which would have access to a sealed record will be informed that the subject of the record has had a record expunged, but would not have access to the record itself without a court order. All they would receive is a caveat statement indicating that "criminal information has been expunged from this record."

Florida centralizes much of its records restriction process through the Florida Department of Law Enforcement (FDLE). Florida has a centralized state-level application process for sealing and expunging. Individuals with a Florida arrest record may apply to FDLE for a Certification of Eligibility to Seal or Expunge. This is the first of several steps in the sealing and expunging process, as shown in Exhibit 1.

Exhibit 1

There Are Several Steps in Florida's Sealing and Expunging Process



Source: Florida Department of Law Enforcement and court clerks.

To obtain a certificate of eligibility from FDLE an individual must complete a standard application with a notarized signature, a non-refundable processing fee of \$75, and supporting documentation.^{8, 9} This documentation includes a set of official fingerprints taken by authorized law enforcement personnel and a certified copy of the final disposition(s) of the charge(s) the applicant is seeking to seal or expunge from the clerk of court where the arrest occurred. In the case of an expunction, the individual must also obtain a state attorney's signature from the judicial circuit where the arrest occurred.¹⁰ On the application, the state attorney must indicate whether the charges are eligible or ineligible for expungement.¹¹

⁸ Section 943.0585(5), *F.S.*, provides an exception for lawful self-defense. A separate, standard application is submitted by individuals seeking expungement when the state attorney or court dismissed the charge because it was found that the person acted in lawful self-defense pursuant to statutory provisions related to justifiable use of force in Ch. 776, *F.S.*

⁹ Individuals seeking relief under s. 943.0583, *F.S.*, which provides for expungement, without regard to the disposition of the arrest or of any charges, for individuals whose offense was committed while they were a victim of human trafficking can apply for relief directly to the court of jurisdiction and are not required to apply for a certification of eligibility from FDLE.

¹⁰ If this section of the application is not completed by the state attorney, the Florida Department of Law Enforcement will process the application as a sealing of the criminal history record.

¹¹ The state attorney is not certifying that the applicant has satisfied all other statutory eligibility criteria, or that their office would not oppose a petition to expunge.

After receiving the application package, FDLE conducts criminal history record checks through the Florida Crime Information Center (FCIC), the National Crime Information Center (NCIC), local court databases, and the Florida Department of Highway Safety and Motor Vehicles in order to determine the eligibility of an individual to have a criminal history record sealed or expunged.¹² According to the department, complete applications are processed within 90 days or less, and the applicant will receive either a certificate of eligibility or a denial letter. If the application is incomplete, the department will return the application to the individual with a letter stating what items need to be resubmitted.

To complete the sealing and expunging process, the applicant must file a petition to restrict criminal history information in court. If an individual receives a certificate of eligibility from FDLE, to complete the process the individual must file a petition for relief in the court in the county of the arrest within one year of issuance. To complete the court portion of the process, the individual completes three forms available from the clerk of court: a petition, a notarized affidavit, and a proposed order to seal or expunge. They then provide copies of these forms, the certificate of eligibility, and filing fees (which are a minimum of \$42) to the court clerk and copies are forwarded to the state attorney and the arresting agency. Depending on the case and local judicial practices, the judge may sign the petition with or without an appearance of the individual at a hearing. If the state attorney does not object at a hearing, the judge will typically grant the sealing or expunction.

Once the petition is approved, the clerk sends a certified copy of the order to the state attorney's office and the arresting agency. The arresting agency is then required to send a certified copy of the order to all agencies that are known to have received the criminal history information. In addition to FDLE, these agencies could include local law enforcement, the Department of Corrections, and the Department of Juvenile Justice. Upon receipt of an order from the court, FDLE seals or expunges the appropriate criminal history record in both the Florida Crime Information Center (FCIC) and the National Crime Information Center (NCIC) databases and sends a notification letter to applicable agencies to notify them the department has complied with the order.

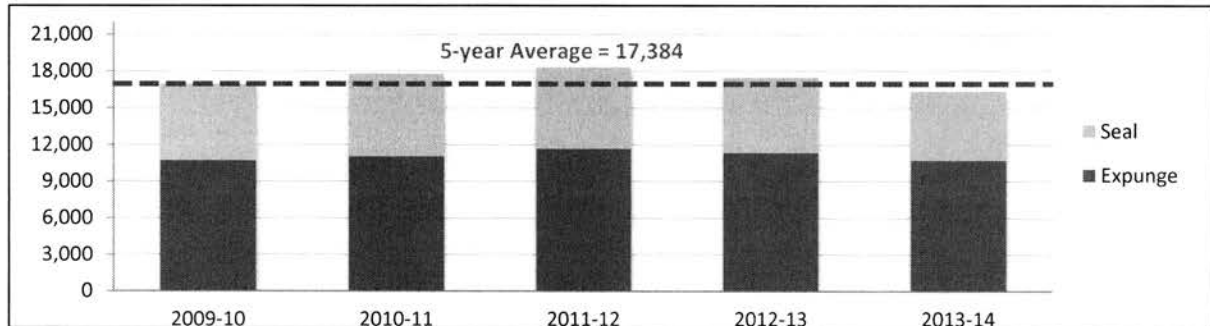
How many people have received certificates allowing them to restrict their criminal history records in Florida and what are their characteristics?

Certificates of eligibility issued by FDLE averaged more than 17,000 annually for the last five years. As shown in Exhibit 2, from Fiscal Year 2009-10 through Fiscal Year 2013-14, FDLE issued a total of 86,918 certificates to either seal or expunge; an average of 17,384 certificates per year. Approximately 64% of the certificates granted (55,515) were for expunctions. After receiving a certificate, many individuals go on to successfully petition the court to have a criminal history record sealed or expunged. Over the past five fiscal years FDLE processed a total of 69,164 court orders, an average of 13,832 per year. Not all certificates result in a court order to seal or expunge a record because individuals may not petition the court in the required one year time frame or the court may deny the petition.

¹² FDLE conducts driving history checks through the Florida Department of Highway Safety and Motor Vehicles in order to obtain information on criminal traffic offenses such as driving under the influence (DUI) and reckless driving.

Exhibit 2

The Number of Sealing and Expunging Certificates FDLE Issued Has Remained Relatively Stable for the Past Five Fiscal Years



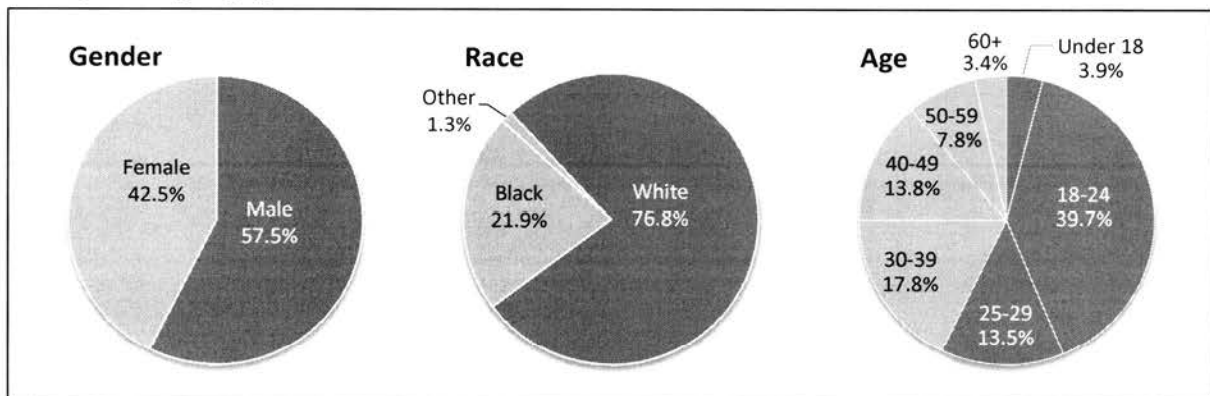
Source: OPPAGA analysis of data from the Florida Department of Law Enforcement.

FDLE has denied an average of almost 3,000 certifications per year over the past five fiscal years. The department denied the majority, 71%, of these applications because the individual had a conviction for a felony or misdemeanor in their criminal history. The next most prevalent denial reason, 12%, was that the individual had been adjudicated guilty for committing one or more of the acts related to the arrest they were applying to seal or expunge. Approximately 10% of applications were denied because the individual was applying to have an excluded offense sealed or expunged. Other denial reasons included having a prior or pending sealing or expunction or not completing required court supervision.

Males, whites, and individuals arrested under the age of 30 received most of the certificates in Fiscal Year 2013-14. As shown in Exhibit 3, over half of the individuals receiving a certificate to seal or expunge were male, and three out of every four were white. Over half were under 30 years of age at the time of their arrest. Assault and larceny were the most common arrest categories for which certificates were given. (See Exhibit 4.)

Exhibit 3

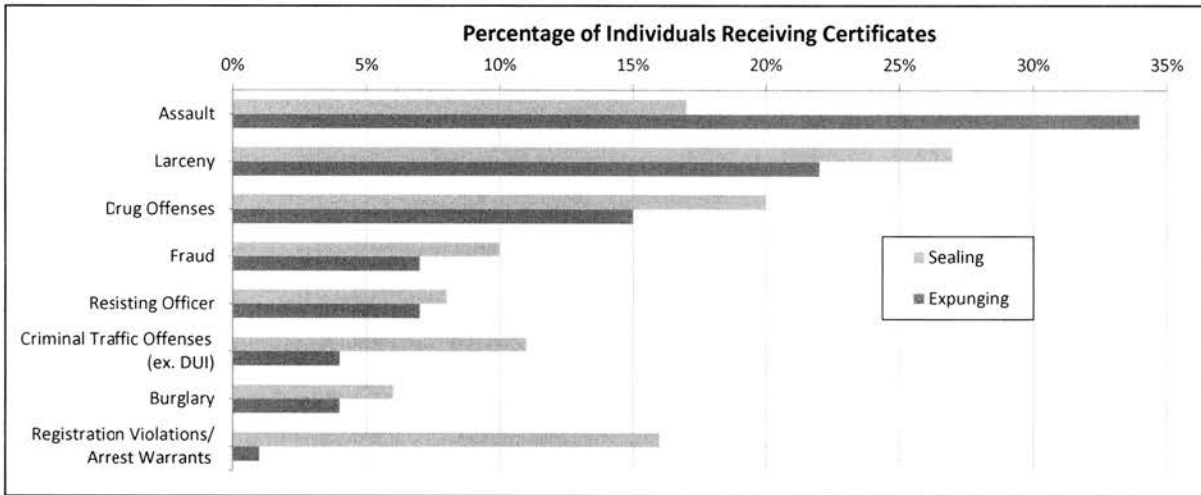
Males, Whites, and Individuals Who Had Been Arrested Under the Age of Thirty Received Most of the Sealing and Expunging Certificates in Fiscal Year 2013-14



Note: Certificates granted for persons who were arrested under the age of 18 were included in this analysis because they were charged as adults.

Source: OPPAGA analysis of data provided by the Florida Department of Law Enforcement.

Exhibit 4
Individuals Who Received Certificates in Fiscal Year 2013-14 Were Most Typically Seeking to Seal or Expunge Assault and Larceny Arrests

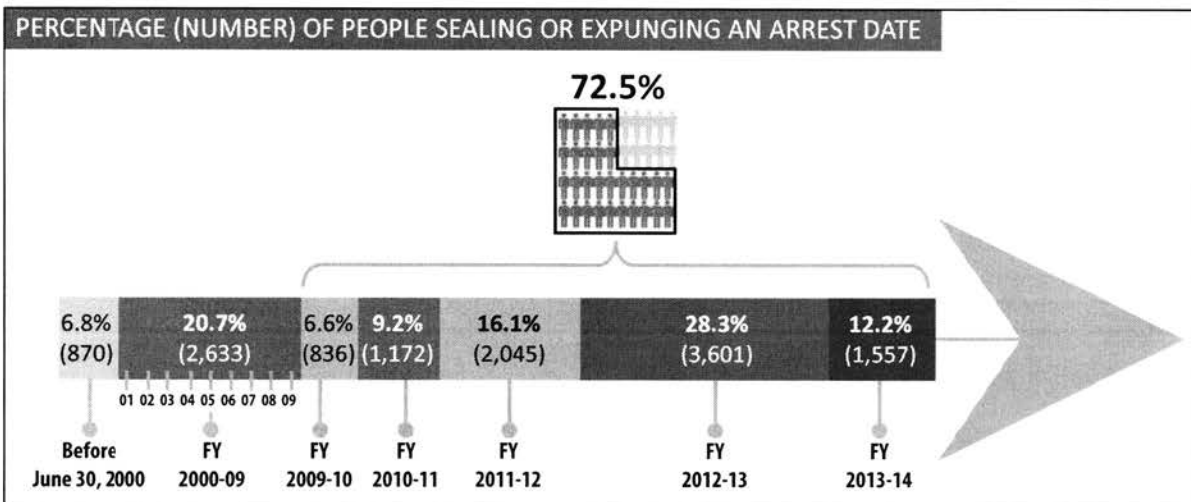


Note: The eight arrest categories in the exhibit accounted for 77% of all arrests for which FDLE issued certificates.

Source: OPPAGA analysis of data provided by the Florida Department of Law Enforcement.

As shown in Exhibit 5, over 72% of the individuals receiving a certificate of eligibility were sealing or expunging an arrest date from the last five fiscal years. Over 12% were seeking to seal or expunge an arrest that occurred during the same year (Fiscal Year 2013-14).

Exhibit 5
Over 72% of People Receiving a Certificate of Eligibility in Fiscal Year 2013-14 Were Sealing or Expunging an Arrest Date from the Last Five Fiscal Years



Source: OPPAGA analysis of data from the Florida Department of Law Enforcement.

How do Florida's sealing and expunging policies compare to other states' record restriction policies?

We examined the sealing and expunging laws and processes in 12 states and found that Florida's policies differ in several key ways.¹³ These differences included whether convictions as well as arrests can be restricted, how many times a record can be restricted, and whether there are other mechanisms to assist individuals with records in getting jobs or licensure. Appendix A provides an overview of the records restriction processes in Florida and the 12 other states we reviewed.

In 11 of the 12 states some convictions are eligible for records restriction. Florida allows for the sealing and expunging of arrest records only.¹⁴ This differs from most of the other states we examined. In 11 of 12 states, convictions are eligible for records restriction in addition to arrests, although in many states, there are limitations on the types of convictions. For example, they must be for a minor or non-violent offense or committed by youthful offenders under a certain age. In North Carolina, convictions for first-time nonviolent felonies and misdemeanors and certain drug convictions for offenders under age 22 can be restricted. In Michigan, only convictions and not arrests are eligible. Virginia was the only state that we reviewed that did not allow the restriction of any convictions.

Like Florida, many states we examined exempt sexual and violent crimes from records restriction.¹⁵ Georgia is one state that does not provide for these exemptions. States may also have additional types of crimes that are not eligible for restriction. For example, Illinois, which allows the restriction of certain misdemeanor convictions, does not allow the restriction of dog fighting and DUI. In Ohio, tampering with an odometer or knowingly offering to sell a car whose odometer was tampered with are ineligible crimes.

Some states do not limit the number of times an individual can have a record restricted. While Florida allows only one record or multiple records from one incident of alleged criminal activity to be restricted, eight states have no limit on the number of records that can be restricted, provided all other eligibility requirements are met. These states are California, Georgia, Illinois, New York, Ohio, Pennsylvania, Texas, and Virginia. This practice varies widely by state. For example, Ohio has no limits on the number of arrests or minor misdemeanor convictions that can be restricted, but does limit other convictions to one restriction. South Carolina limits the number of restrictions for a type of offense, but it may be possible to obtain more than one record restriction if they are for different convictions.

Eleven states impose waiting periods to qualify for records restriction. In most instances, Florida has no required waiting period between an arrest and the date a person may apply for a records restriction, provided the individual is no longer under court supervision for the arrest to

¹³ We reviewed 11 other states with large populations: California, Georgia, Illinois, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Virginia. We also reviewed South Carolina, which while less populous, is a southern state that recently created a legislative study committee to determine which criminal offenses may be appropriate for expungement after a certain time period and under certain circumstances. Of the 12 states we reviewed, most (8) had arrest rates greater than 3,000 per 100,000 population.

¹⁴ Section 943.0583, *F.S.*, only allows the expungement of criminal history records, including convictions, for victims of human trafficking. Specifically, the statute provides for expunction of criminal history records, without regard to the disposition of the arrest or of any charges, for individuals whose offense was committed while the person was a victim of human trafficking and as part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme.

¹⁵ In Florida, in addition to certain sexual and violent crimes, drug trafficking, certain types of fraud, and offenses committed by public employees are also ineligible for sealing or expunging if the adjudication was withheld.

which the restriction pertains. However, an individual whose charges resulted in a withheld adjudication or a not guilty verdict are required to seal a record for ten years before requesting it be expunged. Eleven of the 12 other states we examined imposed some waiting periods, particularly for the restriction of a conviction. Generally, these waiting periods require that the individual remain arrest free and the length of time typically varies by offense. Ohio, for example, has a one-year waiting period for misdemeanor convictions and a three-year waiting period for felony convictions. Georgia's waiting period varies from two years for most misdemeanors to seven years for a serious sex offense. Of the states we examined, North Carolina had the longest waiting period at fifteen years for nonviolent felony or misdemeanor convictions.

In three states, restriction for some records is automatic. In Florida, an individual must obtain a certificate of eligibility from FDLE and file a petition in court to have an arrest record restricted. In Georgia, New York, and South Carolina, records restriction is automatic for some types of criminal history records and the individual is not required to take any action. For example, in New York all eligible records since 1991 are automatically restricted by the court without further action on the part of the individual. Similarly, in some South Carolina courts, non-convictions are automatically expunged as a part of the court process. Georgia automatically restricts non-conviction dispositions of all arrests since July 2013 after a period of two years for misdemeanors, four years for most felonies, and seven years for serious violent and sex-related felonies.

Some states provide mechanisms to assist individuals with criminal history records with obtaining employment or licensure. California, Illinois, New York, and North Carolina limit what employers or potential employers can ask about an individual's criminal history. For example, in California public employers are prohibited from asking prospective employees about their criminal history on an initial employment application. Private employers are allowed to ask about an applicant's criminal history on the initial application, but are not allowed to ask further questions if the conviction has been expunged. A 2013 North Carolina law prohibited employers from knowingly and willingly inquiring about expunged criminal history records and from requiring an applicant to disclose this information.

States may also provide mechanisms to assist individuals with obtaining employment or licensure if they have arrests or convictions which are ineligible for records restriction. These mechanisms do not guarantee licensure or employment but allow individuals with criminal records who have met certain criteria to apply. Certificates are a flexible mechanism as they allow a judge or other entity to restore specified rights to employment. For example, an individual may be permitted to pursue licensure as an electrician or barber but not as a nurse.

North Carolina offers certificates of relief. Individuals may obtain certificates if they have not been convicted of more than two felonies or misdemeanors or have any pending criminal charges. A certificate of relief has the effect of limiting the liability of a person who employs or rents housing to someone who received a certificate of relief. In addition, while a certificate does not bar an entity from imposing discretionary disqualifications because they have a conviction, the entity may consider the certificate favorably in deciding whether to impose the disqualification.

New York offers a certificate of relief from disabilities and a certificate of good conduct for individuals whose convictions are not eligible for restriction. Both instruments require potential employers or occupational licensing agencies to consider the holder of the certificate rehabilitated.^{16, 17} These instruments can also restore eligibility for certain benefits such as public housing. The individual seeking either certificate must apply either to the judge or the division of parole, depending on the disposition of the case. Although the law requires potential employers and licensing agencies to take the certificates into account, the employer or agency may still refuse to hire or license the individual if the convictions are job related or if hiring or licensing the individual would create unreasonable risk.

Ohio offers a certificate of qualification for employment for individuals whose conviction(s) are not eligible for restriction. Effective 2012, a certificate allows persons living in the community who have a previous felony or misdemeanor conviction to apply to the court to lift the collateral sanction that bars them from being considered for employment in a particular field. A collateral sanction is a penalty, disability, or disadvantage that is related to employment or occupational licensing as a result of a conviction or plea of guilty. Individuals seeking relief can file a court petition one year after release from incarceration and all periods of supervision for a felony conviction and six months for a misdemeanor conviction.

An individual can present the certificate of qualification for employment to the applicable agency, where the appropriate decision maker can review on a case by case basis whether to issue or reissue a license and/or permit an employment opportunity within the desired occupation. The certificate may be used for general employment opportunities as well. Hiring a petitioner who has been granted a certificate provides the prospective employer with immunity from negligent hiring claims when the employer is aware of the certificate at hiring. Certificates may be revoked if the offender is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate.

¹⁶ Applicants for certificates of relief from disabilities can have any number of misdemeanors but only one felony conviction.

¹⁷ Applicants for certificates of good conduct can have any number of misdemeanors and two or more felony convictions. The certificate is the only mechanism that lifts the statutory bar to employment in public office jobs such as police officer and fire fighter.

Appendix A

States Have Varying Policies Related to the Restriction of Adult Criminal History Records

State	Arrests	Convictions	General Description of Record Restriction	Waiting Period	Number of Restrictions Permitted	Automatic
California	Yes	Yes	<p><i>Arrests</i> – In cases where a person has been arrested but not charged or convicted, the person may petition the arresting agency or the court to seal the arrest record.</p> <p><i>Convictions</i> – Certain convictions can be expunged, known as dismissed. These convictions are limited to those cases in which the defendant was convicted of a misdemeanor or a felony that could have been charged as a misdemeanor and was sentenced to county jail time, probation, and/or a fine.</p> <p>A conviction will not be dismissed if an individual is currently charged with, on probation for, or serving a sentence for another offense. In addition, individuals are not eligible for a dismissal if they have committed a sex crime against a minor, or certain offenses under the California Vehicle Code.</p>	Until all conditions of sentence, such as probation, are complete, or one year after conviction if no probation given.	No limit	No
Florida	Yes	No ¹⁸	<p><i>Arrests</i> – Dismissed, nolle prosequi, or none of the charges resulted in an adjudication of guilt.</p> <p><i>Convictions</i> – Only in very limited circumstances for offenses committed by victims of human trafficking, as part of the human trafficking scheme.</p> <p>Previous state or federal convictions and sealing or expunction disqualifies individual from record restriction.</p>	<p>No waiting period for most arrests.</p> <p>Charges where adjudication was withheld or where there was a not guilty verdict after trial may not be expunged until they have first been sealed for at least 10 years.</p>	<p>One arrest¹⁹</p> <p>At the judges' discretion, multiple arrest records from one incident of alleged criminal activity can be sealed or expunged.</p>	No
Georgia	Yes	Yes	<p><i>Arrests</i> - Any charge that was closed by the arresting agency, dismissed, nolle prossed, placed on the "dead docket" can be expunged, or disposed as not guilty. In addition, if a felony charge is closed without conviction but the individual is convicted of an unrelated misdemeanor the felony charge can be expunged. Certain first time drug offenses under the Conditional Discharge Act and charges after successful completion of a pretrial intervention or diversion program, including drug or mental health court treatment, may be expunged.</p> <p><i>Convictions</i> – Certain misdemeanor convictions that occur before the age of 21 and vacated or reversed convictions may be expunged.</p> <p>Previous state or federal charges or convictions do not affect eligibility for record restriction.</p>	<p>Varies by arrest offense, ranging from 2 years for misdemeanors to 4 years for most felonies and 7 years for serious violent and sex-related felonies.</p> <p>Misdemeanor convictions, drug or mental health court program 5 years.</p>	<p>No limit</p> <p>Restriction may be granted for as many charges as qualify.</p>	<p>Yes</p> <p>For all arrests after July 2013.</p>

¹⁸ Section 943.0583, F.S., allows the expungement of criminal history records, including convictions, only for victims of human trafficking. Specifically, the statutes provide for the expungement without regard to the disposition of the arrest or of any charges, for individuals whose offense was committed while they were a victim of human trafficking and as part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme.

¹⁹ Individuals receiving expungements under the human trafficking and lawful self-defense provisions are not prohibited from seeking additional record restriction.

State	Arrests	Convictions	General Description of Record Restriction	Waiting Period	Number of Restrictions Permitted	Automatic
Illinois	Yes	Yes	<p><i>Arrests</i> – Only arrests can be expunged. An individual is eligible for expunction of an arrest record if they have no convictions and/or no supervision for violent or sexual crimes.</p> <p><i>Convictions</i> – Misdemeanor convictions and most Class 3 and Class 4 felony convictions (less serious) are eligible for sealing. Violent and sexual crimes are not eligible for sealing.</p>	Varies by offense and whether supervision or probation was ordered, ranging from no waiting period for acquittals/ dismissals without supervision to 4 years for felony convictions.	No limit	No
Michigan	No	Yes	<p><i>Arrests</i> – Not eligible for record restriction.</p> <p><i>Convictions</i> – Most convictions eligible except a felony or an attempt to commit a felony for which the maximum punishment is life imprisonment, felony criminal sexual conduct, assault with intent to commit criminal sexual conduct, or traffic offenses.</p> <p>Previous conviction (state or federal) disqualifies individual from record restriction; except for one or two minor convictions that occurred at 21 years of age or younger, where maximum sentence was 90 days in jail or a fine of \$1,000.</p>	5 years for convictions.	One	No
New Jersey	Yes	Yes	<p><i>Arrests</i> – Dismissed charges, including those dismissed by completing pre-trial intervention program, and those disposed not guilty.</p> <p><i>Convictions</i> – Including municipal ordinance violations, disorderly persons (misdemeanors) violations, some indictable (felonies) violations, and certain drug convictions.</p> <p>Generally, a person must not have had two or more indictable convictions, any open charges, or been previously granted expungement for an indictable (felony) offense.</p>	<p>No waiting period for arrests.</p> <p>Varies by conviction offense, ranging from 6 months for pretrial intervention to 10 years for indictable (felony) offenses.</p>	<p>One</p> <p>In certain limited cases, the court may count convictions with the same disposition date as on expungeable offense.</p>	No
New York (Sealing only)	Yes	Yes	<p><i>Arrests</i> – Any arrest that ended in an acquittal, dismissal, adjournment in contemplation of dismissal, declined prosecution or voided is eligible for sealing.</p> <p><i>Convictions</i> – Only convictions for non-criminal offenses (e.g. loitering, disorderly conduct), and certain misdemeanor and felony convictions under the Rockefeller Drug Law Reform (e.g. 3rd degree burglary, 2nd degree criminal mischief, and 3rd degree grand larceny) can be sealed.</p> <p>Sealing of felonies and misdemeanors is conditional. If the individual is arrested again for a misdemeanor or felony offense the case(s) will be unsealed pending favorable resolution of the new charges.</p>	Cases which end in a conditional discharge or adjournment in contemplation of dismissal cannot be sealed until end of conditional discharge or adjournment period, usually 6 months to a year.	No limit	<p>Yes</p> <p>All eligible records since 1991 are automatically restricted by the court without further action necessary on the part of the individual.</p>
North Carolina	Yes	Yes	<p><i>Arrests</i> – Dismissed misdemeanor and felony charges, those disposed not guilty, and certain infractions with findings of not responsible.</p> <p><i>Convictions</i> – Including nonviolent felonies and misdemeanors, certain drug convictions under age 22, and prostitution.</p> <p>In most instances, a person must not have any other misdemeanor or felony convictions (other than traffic violations), have completed their sentence, including probation, have no outstanding warrants or criminal cases, and have no previous expunctions. For felonies and misdemeanors, the individual must demonstrate that their "character and reputation are good" by having two non-relatives file character affidavits.</p>	<p>No waiting period for arrests.</p> <p>Varies by conviction offense, ranging from 1 year for certain drug convictions to 15 years for non-violent offense convictions.</p>	<p>One</p> <p>Multiple charges may be expunged if each alleged offense occurred within same 12-month period or all the charges were resolved in same session of court.</p>	<p>No</p> <p>For arrests, the court must grant expunction if petitioner is otherwise eligible, however individual must still petition court.</p>

State	Arrests	Convictions	General Description of Record Restriction	Waiting Period	Number of Restrictions Permitted	Automatic
Ohio (Sealing only)	Yes	Yes	<p><i>Arrests</i> – Dismissed, found not guilty or “no-bill” where the grand jury found there was not enough evidence to indict. If convicted of one or more charges that arose out of the same incident while other charges were dismissed, the dismissed charges cannot be sealed unless the convictions are also eligible to be sealed as well.</p> <p><i>Convictions</i> – Convictions that cannot be sealed include 1st or 2nd degree felonies, any offense with a mandatory prison term, any offense of violence, specified non-violent sex offenses, driving under the influence (DUI), and street racing.</p> <p>An eligible offender can have at most two misdemeanor convictions, or one misdemeanor and one felony conviction. Other state and federal are counted in this process. Minor misdemeanors are the least serious offenses and may be punished only by a fine of \$100 or less. These include most traffic offenses and do not count as criminal convictions.</p>	<p>No waiting period for arrest if charges were dismissed or individual found not guilty; 2-year waiting period for “no-bill” cases.</p> <p>Varies by conviction offense; ranging from 1 year for misdemeanors and 3 years for felonies.</p>	No limit on arrests or minor misdemeanor convictions; limit of one for other convictions.	No
Pennsylvania	Yes	Yes	<p><i>Arrests</i> – Non-conviction records where no disposition is indicated after 18 months, or where the court orders it, including cases of pre-plea diversion for first time offenders in summary (minor) cases and probation, summary (minor) offense cases, and probation without verdict for nonviolent drug dependent first time offenders. In addition, if convicted of some charges from an arrest but not others, the non-conviction charges can be expunged.</p> <p><i>Convictions</i> – Including summary (minor) offense convictions such as disorderly conduct, reckless driving and some retail theft, usually punishable only by a fine. For elderly offenders, the court may order that conviction records be expunged when a person has reached 70 years old.</p> <p>Previous charges or convictions (state or federal) do not affect eligibility.</p>	<p>18 months.</p> <p>Varies by conviction offense, ranging from 5 years for summary offenses to 10 years for elderly offenders.</p>	No limit	No
South Carolina	Yes	Yes	<p><i>Arrests</i> – Dismissed charges, nolle prosequi, or disposed not guilty, including those not pressed due to the successful completion of a pre-trial intervention alcohol education or traffic education program.</p> <p><i>Convictions</i> – First offenses for crimes not carrying a penalty of not more than 30 days imprisonment or a \$1,000 fine, misdemeanor fraudulent check law convictions, simple drug possession with conditional discharge, nonviolent youthful offenders age 17-24, and misdemeanor failure to stop motor vehicle.</p> <p>In most instances, a person must not have any other misdemeanor or felony convictions. In addition, a person is ineligible for arrest expungement for charges or violations of fish, game, watercraft, traffic laws, and some county or city laws.</p>	<p>No waiting period for arrests.</p> <p>Varies by conviction offense, ranging from 1 year for misdemeanor fraudulent check to 5 years for youthful offenders.</p>	No limit on arrests In certain cases, more than one conviction may be expunged depending on the type.	Yes Some courts are required to automatically issue expungement orders when a defendant is found not guilty, or when the charges are dismissed or nolle prosequi.
Texas	Yes	Yes	<p><i>Arrests</i> – Eligible for expunction if charges were never filed, charges were dismissed, individual was acquitted, individual was pardoned, or individual has not been tried and prosecutor recommends expunction.</p> <p><i>Convictions</i> – Convictions cannot be expunged, only eligible for non-disclosure/sealing. Only certain deferred adjudication offenses are eligible. (Deferred adjudication is a special type of probation for first-time offenders.) Convictions which cannot be sealed include family violence, sex offense requiring registration, aggravated kidnapping, and murder.</p>	<p>Waiting period for expunction of arrest varies by offense, from 180 days for Class 3 misdemeanors to 3 years for felonies.</p> <p>Waiting period for sealing of convictions varies by offense, from no waiting period for non-sexual or violent crimes to 10 years for felonies.</p>	No limit	No Persons acquitted at trial have expedited right to expunction.

State	Arrests	Convictions	General Description of Record Restriction	Waiting Period	Number of Restrictions Permitted	Automatic
Virginia	Yes	No	<p><i>Arrests</i> – Dismissed charges, a nolle prosequi, or disposed not guilty. Deferred adjudication is not eligible for expunging.</p> <p><i>Convictions</i> – Convictions cannot be expunged except in cases where a conviction has been vacated pursuant to a writ of actual innocence.</p> <p>Criminal history may be used by a commonwealth attorney to argue against the petition for expungement. If an individual had a felony charge or other multiple charges, the burden is on them to show “manifest injustice” if record is not expunged.</p>	None	No limit	No

Source: OPPAGA analysis of information from other states.

Florida's Adult Criminal History Records Restriction Process

Florida House Criminal Justice Subcommittee

Laurie Scott, Senior Legislative Analyst

February 11, 2015



Florida's Adult Criminal History Records Restriction Process

- ▶ Florida and other states have processes, often known as sealing and expunging, to restrict access to criminal history records
- ▶ OPPAGA Review Questions
 - *What is Florida's process?*
 - *Who receives certificates allowing record restriction?*
 - *How do Florida's policies compare to other states'?*

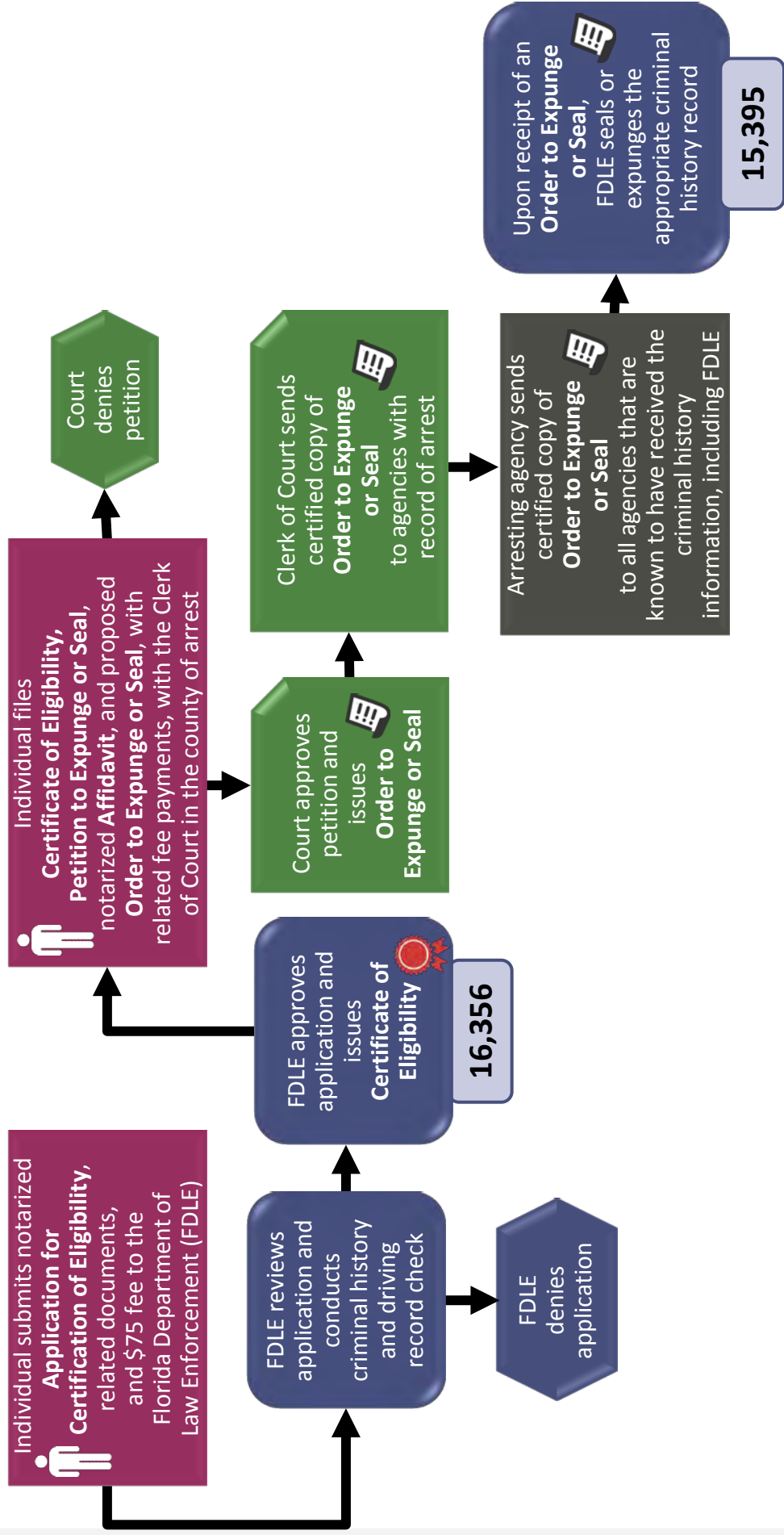
Eligibility

- ▶ Primarily limited to arrests
 - Indictment not filed
 - Charges were dismissed or nolle prossed
 - None of the charges resulted in an adjudication of guilt
 - Only non-violent, non-sexual crimes if adjudication withheld
- ▶ No misdemeanor or felony convictions in criminal history
- ▶ Generally, only one arrest record may be restricted
 - Multiples from one incident at discretion of the court

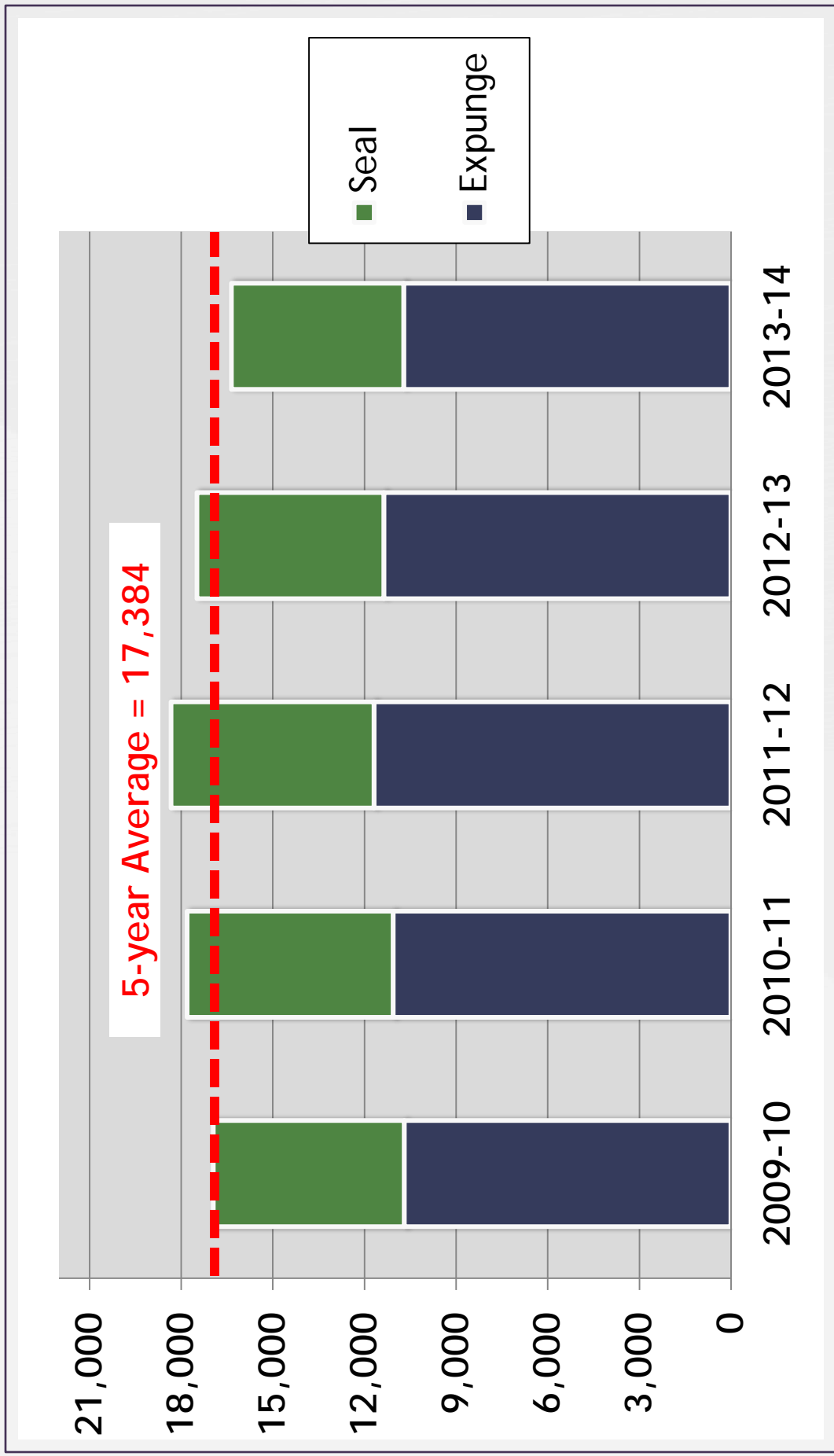
Sealing vs. Expunging

- ▶ Difference between sealing and expunging
 - **Sealing** – records cannot be accessed by the general public
 - **Expunging** – even entities with access to sealed records cannot see
- ▶ Waiting Periods
 - Applicant can usually apply immediately for expungement
 - Applicant must wait 10 years after sealing to have a record expunged
 - Adjudication withheld
 - Not guilty verdict

Much of Florida's Process Centralized Through FDLE

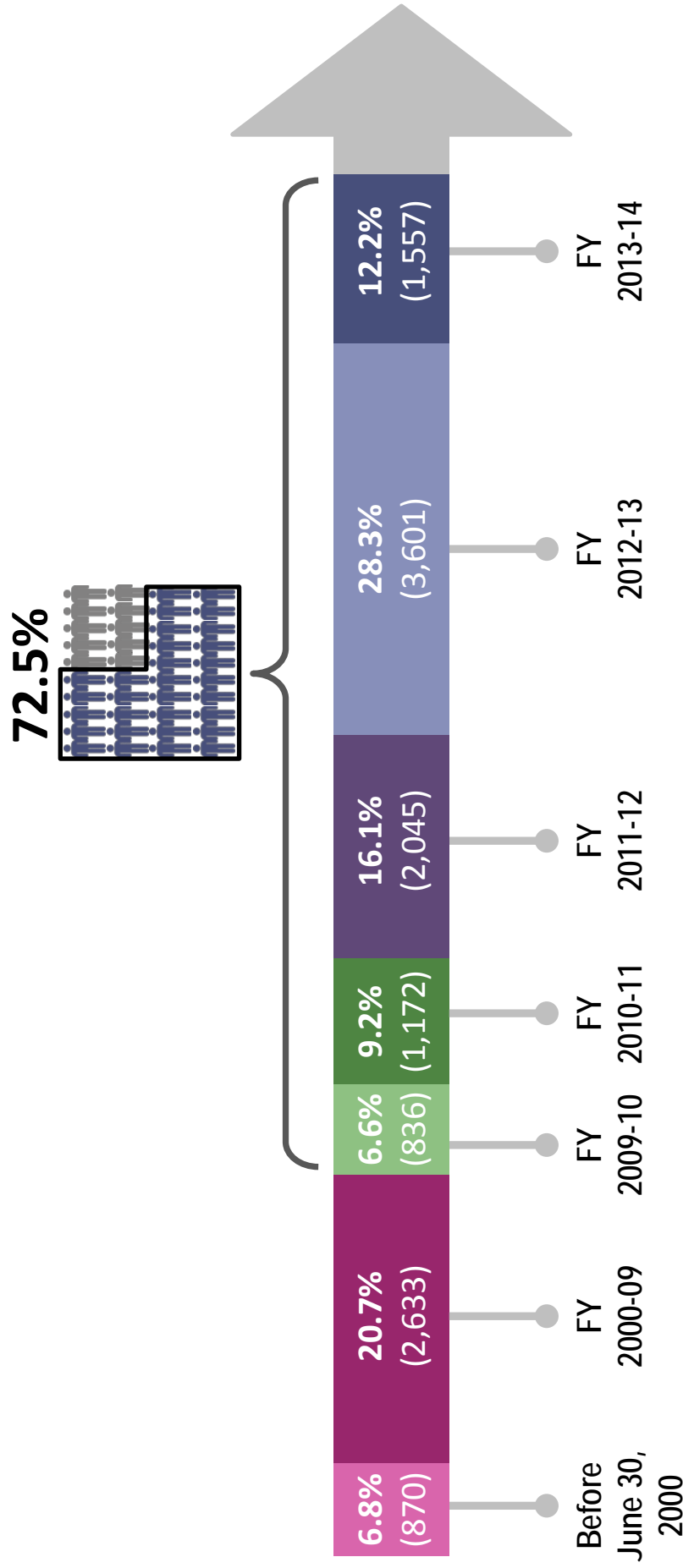


The Number of Certificates Issued by FDLE Has Remained Relatively Stable



Over 72% of Certificates Issued in 2013-14 Were for Arrest Dates in Last Five Years

PERCENTAGE (NUMBER) OF PEOPLE SEALING OR EXPUNGING AN ARREST DATE



How Are Policies Different in Other States?

- ▶ We examined criminal records restriction policies in 12 other large states
 - California, Georgia, Illinois, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, and Virginia
- ▶ Florida's policies differ in several key ways
 - Types of dispositions eligible
 - Number of times a record can be restricted
 - Length of waiting periods
 - Availability of automatic restriction

Eligibility in Other States

- ▶ In 11 states some convictions are eligible for records restriction
 - North Carolina
 - First-time non-violent felonies and misdemeanors
 - Certain drug convictions – offenders under the age of 22
- ▶ In most states, there is no limit on the number of times an individual can have a record restricted

Waiting Periods and Automatic Restriction

- ▶ In 11 states there is a waiting period to qualify for records restriction
 - Ohio
 - 1 year for misdemeanor convictions
 - 3 years for felony convictions
- ▶ In 3 states restriction for some records is automatic
 - New York
 - All eligible records since 1991 automatically restricted by the court

Other Mechanisms

- ▶ Limits on what employers can ask
 - North Carolina
 - Prohibits employers from knowingly and willingly inquiring about expunged records
- ▶ Certificates of relief or good conduct
 - New York
 - For individuals with convictions not eligible for restriction
 - Require potential employer/licensing entity to consider the holder of the certificate rehabilitated
 - Restores eligibility for certain benefits like public housing
 - May still refuse to hire or license if convictions are job-related, or if hiring would create unreasonable risk

Questions?

THE FLORIDA LEGISLATURE'S
OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations.

Contact Information

Laurie Scott

Senior Legislative Analyst

(850) 717-0566

scott.laurie@oppaga.fl.gov

Claire K. Mazur

Staff Director

OPPAGA Criminal Justice Policy Area

(850) 717-0575

mazur.claire@oppaga.fl.gov

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