

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 16-03 Expunging and Sealing Criminal History Records

**SPONSOR(S):** Criminal Justice Subcommittee; Trujillo

**TIED BILLS:** PCB CRJS 16-04 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	11 Y, 0 N	Cox	White

### SUMMARY ANALYSIS

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records. Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record.

When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record. Only FDLE may retain expunged records. When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities. Expunged and sealed records are confidential and exempt from public records, and it is a first degree misdemeanor to divulge their existence.

Persons who have had their record expunged or sealed may lawfully deny or fail to acknowledge arrests in the record, except when applying for certain types of employment, petitioning the court for an expunge or seal, or when they are a defendant in a criminal prosecution.

Currently, a person may only expunge or seal one record, may not expunge or seal any record that resulted in a conviction, and may not expunge or seal a record if he or she has previous convictions. Additionally, only the court can order a record to be expunged or sealed.

The bill retains the court-ordered expunction and sealing processes, but expands both of their applications. The bill also creates a nonjudicial process for the sealing of criminal history records.

The bill expands the types of records that may be expunged or sealed by permitting a person to obtain:

- One court-ordered expunction for a record that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered sealing of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; or
- One court-ordered sealing of a record that resulted in a conviction for a specified “nonviolent misdemeanor,” regardless of whether the person has a previous misdemeanor conviction.

Additionally, a person may obtain an unlimited number of “nonjudicial sealings” for records that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions.

The bill will likely have both a positive and a negative fiscal impact on FDLE and the state court system. See “Fiscal Impact on State Government,” *infra*.

The bill is effective July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Sealing and Expunging Criminal History Records**

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.<sup>1</sup> Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order.<sup>2</sup> FDLE is required to retain expunged records.<sup>3</sup>

When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, criminal justice agencies for their respective criminal justice purposes, judges in the state courts system for the purpose of assisting them in their case-related decision-making responsibilities, and certain other specified agencies for their respective licensing and employment purposes.<sup>4</sup>

Records that have been sealed or expunged are confidential and exempt<sup>5</sup> from the public records law.<sup>6</sup> It is a first degree misdemeanor<sup>7</sup> to divulge their existence.<sup>8</sup>

Persons who have had their criminal history records expunged or sealed may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,<sup>9</sup> petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.<sup>10</sup>

#### Process for Expunging or Sealing a Record

The processes for expunging and sealing criminal history records are very similar. Every person seeking to expunge or seal a record must obtain a certificate of eligibility<sup>11</sup> from FDLE and then subsequently petition a court to expunge or seal the record. To obtain the certificate from FDLE, a person must:

- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record they wish to have expunged or sealed;

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<sup>1</sup> s. 943.0585(4), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> s. 943.059(4), F.S.

<sup>5</sup> 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); *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 the statutory exemption. See 85-62 Fla. Op. Att’y Gen. (1985).

<sup>6</sup> ss. 943.059(4)(c) and 943.0585(4)(c), F.S.

<sup>7</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>8</sup> Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.

<sup>9</sup> These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

<sup>10</sup> ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

<sup>11</sup> A certificate of eligibility for expunction or sealing is valid for 12 months after the date stamped on the certificate. If the certificate expires then a person must reapply for a new certificate of eligibility. The new certificate of eligibility must be based on the status of the applicant and the law in effect at the time of the reapplication. ss. 943.0585(2) and 943.059(2), F.S.

- Prior to the date of the application for the certificate, have never been adjudicated guilty or delinquent of:
  - A criminal offense;
  - Comparable ordinance violation; or
  - A felony or misdemeanor specified in s. 943.051(3)(b), F.S.;<sup>12</sup>
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record sought to be expunged or sealed;
- Have never had a prior sealing or expunction of criminal history record under ss. 943.0585 or 943.059, F.S., or former ss. 893.14, 901.33, or 943.058, F.S.;<sup>13</sup> and
- No longer be under any court supervision related to the disposition of the record they wish to have expunged.<sup>14</sup>

Additionally, a person seeking an expunction must submit a written, certified statement from the appropriate state attorney or statewide prosecutor indicating the following:

- That an indictment, information, or other charging document was:
  - Not filed or issued in the case;
  - Dismissed or nolle prosequi by the state attorney or statewide prosecutor, if filed or issued in the case; or
  - Dismissed by a court of competent jurisdiction, if filed or issued in the case;
- That none of the charges related to the arrest or alleged criminal activity that the petition to expunge pertains to resulted in a trial; and
- The record does not relate to a specified violation of law known as a “list offense.”<sup>15,16</sup>

After receiving a person’s application for a certificate of eligibility, FDLE conducts a record check through the Florida Crime Information Center, the National Crime Information Center, local court

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<sup>12</sup> These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; neglect of a child, as defined in s. 827.03(1)(e), F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

<sup>13</sup> This provision does not prevent a person from obtaining an expunction for a record previously sealed for 10 years and the record is otherwise eligible for expunction. Section 943.0585(2)(h), F.S., provides that a record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.

<sup>14</sup> ss. 943.0585(2) and 943.059(2), F.S.

<sup>15</sup> s. 943.0585(2)(a), F.S.

<sup>16</sup> The “list offenses” include: sexual misconduct against a covered person, as defined in s. 393.135, F.S.; sexual misconduct against a patient, as defined in s. 394.4593, F.S.; luring or enticing a child, as defined in s. 787.025, F.S.; sexual battery offense, as defined in ch. 794; procuring person under age of 18 for prostitution, as defined in former s. 796.03, F.S.; lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04, F.S.; voyeurism, as defined in s. 810.14, F.S.; lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person, as defined in s. 825.1025, F.S.; sexual performance by a child, as defined in s. 827.071, F.S.; protection of minors/prohibition of certain acts in connection with obscenity, as defined in s. 847.0133, F.S.; computer pornography, as defined in s. 847.0135, F.S.; selling or buying minors, as defined in s. 847.0145, F.S.; sexual misconduct of a mentally deficient or mentally ill defendant, as defined in s. 916.1075, F.S.; any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S., without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.; violations of the Florida Communications Act, as defined in s. 817.034, F.S.; offenses by public officers and employees, as defined in ch. 839, F.S.; drug trafficking, as defined in s. 893.135, F.S.; and enumerated offenses included in s. 907.041, F.S. Additionally, the enumerated offenses included in s. 907.041, F.S., are: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime. The list offenses preclude a person from obtaining an expunction or sealing if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or pled nolo contendere to committing, the offense as a delinquent act, regardless of whether adjudication was withheld.

databases, and the Florida Department of Highway Safety and Motor Vehicles (DHSMV) to determine the person's eligibility to have the record expunged or sealed.<sup>17</sup> FDLE reports that the process is completed within 90 days and each applicant either receives a certificate of eligibility or a denial letter.<sup>18</sup>

Once a person has received a certificate of eligibility from FDLE, he or she must file a petition to expunge or seal the record with the court.<sup>19</sup> In addition to the certificate of eligibility, a petition to expunge or seal a record must also include the petitioner's sworn statement<sup>20</sup> that he or she:

- Has not previously been adjudicated guilty of any offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or misdemeanor specified in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for committing any of the acts he or she is currently trying to have expunged or sealed;
- Has not obtained a prior expunction or sealing;<sup>21</sup> and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before any court.<sup>22</sup>

It is up to the court to decide whether the expunction or sealing is appropriate.<sup>23</sup> Generally, the court will grant the expunction or sealing if the state attorney does not object at a hearing.<sup>24</sup> The court is only authorized to order the expunction or sealing of a record that pertains to one arrest or one incident of alleged criminal activity.<sup>25</sup> However, the court may order the expunction or sealing of a record pertaining to more than one arrest if such additional arrests directly relate to the original arrest.<sup>26</sup>

#### Eligibility of a Record to be Expunged v. Sealed

A person may seek an expunction immediately, provided the person is no longer subject to court supervision, if none of the charges related to the arrest or alleged criminal activity resulted in a trial, and:

- An indictment, information, or other charging document was not filed or issued in the case (no-information);<sup>27</sup>
- An indictment, information, or other charging document was filed or issued in the case, but it was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction (dismissal);<sup>28</sup> or
- An indictment, information, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to the provisions related to justifiable use of force in ch. 776, F.S.<sup>29</sup> (dismissal based on lawful self-defense exception).<sup>30</sup>

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<sup>17</sup> *Florida's Adult Criminal History Records Restriction Process*, OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY, January 30, 2015, at pg. 14. (on file with the Criminal Justice Subcommittee) (hereinafter cited as "OPPAGA Report").

<sup>18</sup> *Id.*

<sup>19</sup> There is an additional filing fee associated with filing a petition to expunge or seal. The fee varies by circuit, but is a minimum of \$42. OPPAGA Report at pg. 4.

<sup>20</sup> It is a third degree felony to knowingly provide false information on this sworn statement. ss. 943.0585(1)(b) and 943.059(1)(b), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>21</sup> Unless the prior sealing was in accordance with s. 985.0585(2)(h), F.S.

<sup>22</sup> ss. 943.059(1)(b) and 943.0585(1)(b), F.S. Any person knowingly providing false information on the sworn statement commits a third degree felony.

<sup>23</sup> ss. 943.0585(1) and 943.059(1), F.S.

<sup>24</sup> OPPAGA Report at pg. 4.

<sup>25</sup> ss. 943.0585(1) and 943.059(1), F.S.

<sup>26</sup> *Id.* The court must articulate in writing its intention to expunge or seal a record pertaining to multiple arrests and a criminal justice agency may not expunge or seal multiple records without such written documentation. The court is also permitted to expunge or seal only a portion of a record.

<sup>27</sup> See s. 943.0585(2), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> s. 943.0585(5), F.S. The lawful self-defense exception requires a person obtain a certificate of eligibility from FDLE and file a petition for expunction with the court just as required with other petitions to expunge, but the information the person must provide to obtain an expunction based on the lawful self-defense exception is slightly different.

<sup>30</sup> See s. 943.0585(2), F.S.

If a person proceeded to trial, received a not-guilty verdict, or received a withhold of adjudication<sup>31</sup> for any of the charges to which the petition pertains, an order to seal the record must be obtained first and then the record becomes eligible for expunction after it has been sealed for ten years.<sup>32</sup>

A person is not currently eligible to have a record expunged or sealed if the person was convicted for any of the charges to which the petition to expunge or seal pertains. Additionally, a person who has a previous unrelated conviction is ineligible to have a record expunged or sealed. Lastly, as stated above, a court may not expunge or seal a record that relates to any of the list offenses where the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or pled nolo contendere to committing, the offense as a delinquent act.<sup>33</sup>

### **Effect of the Bill**

The bill retains the court-ordered expunction and sealing processes, but expands the application of both. The bill also creates a nonjudicial process for the sealing of criminal history records.

The bill permits a person to obtain:

- One court-ordered expunction for a record that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered sealing of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; or
- One court-ordered sealing of a record that resulted in a conviction for a specified “nonviolent misdemeanor,” regardless of whether the person has a previous misdemeanor conviction.

Additionally, a person may obtain an unlimited number of “nonjudicial sealings” for records that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions.

### Court-Ordered Expunction

Codified in s. 943.0585, F.S., the bill leaves the general process of court-ordered expunction intact. A person must still obtain a certificate of eligibility from FDLE and petition the court to expunge the record. The bill does not alter current law as it relates to the processing of an order to expunge, how the record is treated once an order to expunge is granted, or the persons who have access to a record that has been expunged.

However, the bill expands the application of court-ordered expunction by removing the current requirement that a record related to a not-guilty verdict be sealed for ten years prior to such record being eligible for expunction. The bill also removes the current requirement that a person seeking to expunge a record pursuant to this section must not have previously been adjudicated guilty of a criminal offense or been adjudicated delinquent for committing any felony or a specified misdemeanor.<sup>34</sup>

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<sup>31</sup> When a defendant is found guilty after a trial or pleads guilty or nolo contendere, a judge is permitted to withhold the judgment of guilt for the offense. This is known as a withhold of adjudication. Section 948.01(2), F.S., provides that if it appears to a judge that a defendant is “not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by the law”, the judge may withhold the adjudication of guilt and place the defendant on probation. In Florida, a felony conviction impacts a person’s civil rights such as the right to vote and to possess a firearm. However, if adjudication of guilt is withheld, these rights are not suspended. Fla. Const. art. VI, s.4; s. 97.041, F.S.; and *See Snyder v. State*, 673 So.2d 9 (Fla. 1996).

<sup>32</sup> s. 943.0585(2)(h), F.S.

<sup>33</sup> This restriction is without regard to whether adjudication was withheld on any of the listed offenses. ss. 943.0585(1) and 943.059(1), F.S.

<sup>34</sup> The specified misdemeanors are those offenses listed in s. 943.051(3)(b), F.S., which include: assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; open carrying of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; and arson.

The bill provides that a person may not obtain a court-ordered expunction unless all charges stemming from the arrest or alleged criminal activity to which the application for expunction pertains were not filed or issued, dismissed or discharged, or resulted in an acquittal. A record may not be expunged if the:

- Case was dismissed as a result of a judicial finding or adjudication that the person is incompetent to proceed; or
- Verdict at trial was not-guilty by reason of insanity.

Additionally, a person may not obtain a court-ordered expunction if he or she:

- Has previously obtained a prior sealing or expunction of a criminal history record under ss. 943.0585 or 943.059, F.S., or former ss. 893.14, 901.33, or 943.058, F.S., unless expunction is sought for a specified record related to a withhold of adjudication or was previously nonjudicially sealed; or
- Is still under court supervision applicable to the disposition of the arrest or incident of alleged criminal activity to which the petition to expunge pertains.

To obtain a certificate of eligibility from FDLE, a person seeking to expunge a record pertaining to a no-information, a dismissal, or a not-guilty verdict must submit a:

- Written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be expunged is related to an eligible offense;
- A \$75 processing fee to FDLE for placement in the FDLE Operating Trust Fund, unless such fee is waived by the executive director;
- Certified copy of the disposition of the charge to which the petition to expunge pertains; and
- Full set of fingerprints taken by a law enforcement agency for purposes of identity verification.

The bill retains current law regarding the length of time the certificate of eligibility is valid and the reapplication process.

The bill requires the petition to expunge an eligible record to include:

- A valid certificate of eligibility for sealing issued by FDLE; and
- The petitioner's sworn statement<sup>35</sup> attesting that:
  - The criminal history record sought to be expunged is related to an eligible offense;
  - The petitioner has not previously obtained a sealing or expunction of an unrelated offense; and
  - The petitioner is eligible for the expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

The bill also retains the requirement that a court only expunge a record pertaining to one arrest or one incident of alleged criminal activity, unless the court finds that the additional arrests are directly related to the original arrest and provides written documentation of the intent to expunge such additional arrests.

It should be noted that the bill does not alter current law as it relates to obtaining an expunction when the dismissal was based on the lawful self-defense exception.

### Court-ordered Sealing

Codified in s. 943.059, F.S., the bill leaves the general process of court-ordered sealing intact. As with the court-ordered expunction process, a person must still obtain a certificate of eligibility from FDLE and petition the court to seal the record. The bill does not alter current law as it relates to the processing of an order to seal or how the record is treated once an order to seal is granted. The bill does not impact the persons that have access to a record that has been sealed. However, the bill adds DHSMV as an entity that has access to court-ordered sealed records for the limited purpose of making

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<sup>35</sup> The bill retains the criminal penalty for knowingly providing false information on this sworn statement to the court. Current law makes it a third degree felony to knowingly provide false information on this sworn statement. s. 943.0585(1)(b), F.S.

necessary determinations related to a person seeking to obtain a restricted driver license or to be employed or licensed by or to contract with DHSMV.

The bill expands the application of court-ordered sealing by permitting the court to seal one criminal history record of a minor or adult relating to cases where a person was convicted of a “nonviolent misdemeanor.” The bill retains current law regarding a person sealing a record when the record to be sealed pertains to a withhold of adjudication.

The bill defines “nonviolent misdemeanor” to include misdemeanor violations of the following offenses:

- Misrepresent or misstate one’s age or the age of any other person to induce another to sell, serve, etc. alcoholic beverages to a minor, or for any person under 21 years of age to purchase or attempt to purchase alcoholic beverages;<sup>36</sup>
- Possession of alcohol by a minor;<sup>37</sup>
- Make or cause a false fire alarm;<sup>38</sup>
- Criminal mischief;<sup>39</sup>
- Trespass in structure or conveyance;<sup>40</sup>
- Trespass on property other than structure or conveyance;<sup>41</sup>
- Willful removal, destruction, etc. of a posted notice intended to legally enclose property;<sup>42</sup>
- Unauthorized placement of signs upon land or trees adjacent to public highways;<sup>43</sup>
- Breaking or injuring another property owner’s fences;<sup>44</sup>
- Cave vandalism and other related offenses;<sup>45</sup>
- Petit Theft;<sup>46</sup>
- Nuisances;<sup>47</sup>
- Building bonfires within specified distance to a home or building;<sup>48</sup>
- Disorderly intoxication;<sup>49</sup>
- Open house parties;<sup>50</sup>
- Unlawful assemblies;<sup>51</sup>
- Delivery of 20 grams or less of cannabis;<sup>52</sup>
- Possession of 20 grams or less of cannabis;<sup>53</sup>
- Possession of drug paraphernalia;<sup>54</sup> or
- Any offense found in chs. 316-324, F.S., unless the violation of such offense:
  - Directly caused serious bodily injury or death to a person;
  - Was committed by a person holding a commercial driver license as defined in s. 322.01, F.S.;<sup>55</sup> or
  - Was committed by a person driving a commercial motor vehicle as defined in s. 316.003, F.S.<sup>56</sup>

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<sup>36</sup> s. 562.11(2), F.S.

<sup>37</sup> s. 562.111, F.S.

<sup>38</sup> s. 806.101, F.S.

<sup>39</sup> s. 806.13, F.S.

<sup>40</sup> s. 810.08, F.S.

<sup>41</sup> s. 810.09, F.S.

<sup>42</sup> s. 810.10, F.S.

<sup>43</sup> s. 810.11, F.S.

<sup>44</sup> s. 810.115, F.S.

<sup>45</sup> s. 810.13, F.S.

<sup>46</sup> s. 812.014(3)(a), F.S.

<sup>47</sup> s. 823.01, F.S.

<sup>48</sup> s. 823.02, F.S.

<sup>49</sup> s. 856.011, F.S.

<sup>50</sup> s. 856.015, F.S.

<sup>51</sup> s. 870.02, F.S.

<sup>52</sup> s. 893.13(3), F.S.

<sup>53</sup> s. 893.13(6)(b), F.S.

<sup>54</sup> s. 893.147, F.S.

<sup>55</sup> Section 322.01(7), F.S., defines “commercial driver license” to mean a Class A, Class B, or Class C driver license issued in accordance with the requirements of ch. 322, F.S.

A criminal history record may not be approved for court-ordered sealing if the:

- Person seeking the sealing has, at any time prior to the date of the application for certificate of eligibility, been adjudicated guilty or adjudicated delinquent for a felony; or
- Record relates to a list offense, regardless of whether the court withheld adjudication.

To obtain a certificate of eligibility from FDLE, a person seeking to seal a record pertaining to a withhold of adjudication or a conviction of a nonviolent misdemeanor must submit a:

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be sealed is eligible;
- A \$75 processing fee to FDLE for placement in the FDLE Operating Trust Fund, unless such fee is waived by the executive director;
- A certified copy of the disposition of the charge to which the application to seal pertains;
- A full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification; and
- A sworn, written statement from the person seeking the sealing that he or she:
  - Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the application to seal pertains;
  - Has never secured a prior sealing or expunction of a criminal history record under ss. 943.0585 or 943.059, F.S., or former ss. 893.14, 901.33, or 943.058, F.S.; and
  - Has not been arrested for or charged with a criminal offense, in any jurisdiction of the state or within the United States, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to seal pertains to the date of the application for the certificate of eligibility.<sup>57</sup>

The bill retains current law regarding the length of time the certificate of eligibility is valid and the reapplication process.

The bill requires the petition to seal an eligible record to include:

- A valid certificate of eligibility for sealing issued by FDLE; and
- The petitioner's sworn statement<sup>58</sup> attesting that:
  - The criminal history record sought to be sealed is related to an eligible offense;
  - The petitioner has not previously obtained a sealing or expunction of an unrelated offense;
  - The petitioner has not been arrested for or charged with a criminal offense, in this state or any other jurisdiction within the United States between the date that the person completed the sentence imposed by the court for the offense to which the petition to seal pertains and the date of the petition for court-ordered sealing; and
  - The petitioner is eligible for the expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

The bill also retains the requirement that a court only seal a record pertaining to one arrest or one incident of alleged criminal activity, unless the court finds that the additional arrests are directly related to the original arrest and provides written documentation of the intent to seal such additional arrests.

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<sup>56</sup> Section 316.003(66), F.S., defines "commercial motor vehicle" to mean any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle: (a) has a gross vehicle weight rating of 10,000 pounds or more; (b) is designed to transport more than 15 passengers, including the driver; or (c) is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.). A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09 (1)(a), F.S., is not a commercial motor vehicle if it is not used for profit and corporate sponsorship is not involved. The term "corporate sponsorship" means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

<sup>57</sup> The bill requires this time frame to be a minimum of three years.

<sup>58</sup> The bill retains the criminal penalty for knowingly providing false information on this sworn statement to the court. Current law makes it a third degree felony to knowingly provide false information on this sworn statement. s. 943.0585(1)(b), F.S.



The bill provides that a sealed criminal history record continues to be considered a prior conviction<sup>59</sup> for purposes of any statute that uses a prior conviction as a basis for determining:

- The applicable degree of felony or misdemeanor for a criminal offense;
- The penalty for a criminal offense; or
- Any other issue with respect to a criminal offense.

#### Nonjudicial Sealing

The bill creates s. 943.0595, F.S., requiring specified records to be sealed without petitioning the court. The bill requires FDLE to approve the nonjudicial sealing of an unlimited number of criminal history records of a minor or adult relating to cases where a:

- No-Information was issued;
- Dismissal was issued by the state attorney or statewide prosecutor, or by a court of competent jurisdiction; or
- Not-guilty verdict was rendered subsequent to a trial or adjudicatory hearing.

It should be noted that, as in court-ordered expunction, a person may not obtain a nonjudicial sealing:

- Unless all charges stemming from the arrest or alleged criminal activity to which the application for sealing pertains were not filed or issued, dismissed or discharged, or resulted in an acquittal; or
- For a record related to a:
  - Case dismissed as a result of a judicial finding or adjudication that the person is incompetent to proceed; or
  - Verdict of not-guilty by reason of insanity at trial.

To apply for a nonjudicial sealing under s. 943.0595, F.S., the bill requires a person to include:

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be sealed is eligible;
- A \$75 processing fee to FDLE for placement in the FDLE Operating Trust Fund, unless such fee is waived by the executive director;
- A certified copy of the disposition of the charge to which the application to seal pertains; and
- A full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification.

Upon approval of a nonjudicial sealing, FDLE must forward a certified copy of the form approving the nonjudicial sealing to the state attorney or statewide prosecutor, the arresting agency, the clerk of the court, and the FBI. The arresting agency must forward the approval form to any other agency that they disseminated the criminal history record information to which the form pertains. Lastly, the clerk of the court must forward a copy of the form to any other agency which the records of the court reflect has received the criminal history record from the court.

The bill does not alter current law as it relates to how the record is treated once an order to seal is granted, or the persons that have access to the record that has been sealed (i.e., that the record continues to be maintained by FDLE and other criminal justice agencies, specified persons can access the sealed record, and the list of entities to which the person may not lawfully deny the existence of the sealed record). However, unlike a record that is sealed through the court-ordered process, DHSMV does not have access to a record sealed through the nonjudicial process.

It should be noted that a person whose eligible record is nonjudicially sealed under s. 943.0595, F.S., may subsequently obtain a court-ordered expunction of that same record.

The bill provides FDLE with authority to adopt rules pursuant to ch. 120, F.S., for the nonjudicial sealing of any criminal history record of a minor or an adult described in this section.

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<sup>59</sup> The bill defines “conviction” to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. However, whether a conviction for which adjudication is withheld may be considered a prior conviction is controlled by the statute using the prior conviction as the basis for determining the applicable degree of offense, penalty, or other issue.

Lastly, the bill provides language related to statutory references in all three of the processes addressed in the bill: court-ordered expunction and sealing and nonjudicial sealing. Specifically, the bill provides that any reference to another chapter, section, or other subdivision of the Florida Statutes found in ss. 943.0585, 943.059, or 943.0595, F.S., is considered a general reference under the doctrine of incorporation by reference. Additionally, the bill provides that any reference of ss. 943.0585, 943.059, and 943.0595, F.S., found in another chapter, section, or other subdivision of the Florida Statutes also a general reference under the doctrine of incorporation by reference.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 2. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 3. Creates s. 943.0595, F.S., relating to nonjudicial sealing of criminal history records.

Section 4. Amends s. 776.09, F.S., relating to retention of records pertaining to persons found to be acting in lawful self-defense; expunction of criminal history records.

Section 5. Amends s. 943.053, F.S., relating dissemination of criminal justice information; fees.

Section 6. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 7. Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill expands the expunction and sealing process by making more offenses eligible for expunction and sealing. The bill also increases the number of times a person may have a record expunged or sealed. To the extent that this results in more people submitting the \$75 fee to FDLE to obtain a certificate of eligibility, the bill may result in a positive fiscal impact on FDLE.

##### 2. Expenditures:

The bill creates a nonjudicial process for sealing. FDLE will have to train staff on how to conduct this program in accordance with this bill. Additionally, the expansion of the expunction and sealing laws will likely result in an increased workload to FDLE as it will require staff to process more applications for certificates of eligibility. To the extent that expanding these provisions results in an increased workload, the bill will likely result in a negative fiscal impact on FDLE.

Persons who would have previously had to restrict a record related to a no-information, dismissal, or not guilty sealed through the court-ordered processes, may now choose to have the same record restricted through the nonjudicial sealing process. However, the bill also expands the types of records that are eligible for court-ordered expunction and court-ordered sealing. This expansion will likely result in an increased workload to the state courts as a result of conducting more hearings related to petitions to seal or expunge. Thus, to the extent the bill results in an overall increase in hearings that must be conducted by the courts, the bill will likely result in a negative fiscal impact on 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:

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 requires FDLE to create rules related to the newly-created nonjudicial sealing process. The bill provides the necessary authority to FDLE to create such rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A