

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 298

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Criminal History Records

DATE: October 24, 2017      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.			JU	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 298 allows a person who has not been adjudicated delinquent of a misdemeanor specified in s. 943.051(3)(b), F.S., in the past 10 years to be eligible to seek a sealing or expunction of a criminal history record.

The bill also enables a person to seek the expunction of a criminal history record associated with a judgment of acquittal or a not guilty verdict.

The bill is effective July 1, 2018.

**II. Present Situation:**

**Expunction and Sealing of Criminal History Records**

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.<sup>1</sup> Sealed records are placed under highly restricted access by court

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<sup>1</sup> Florida Department of Law Enforcement, *Seal and Expunge Process*, <http://www.fdle.state.fl.us/cms/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited October 18, 2017). See s. 943.053, F.S.

order,<sup>2</sup> while expunged records are removed from record systems and destroyed.<sup>3</sup> Florida statutes authorize a court-ordered sealing process<sup>4</sup> and the following expungement processes:

- Administrative;<sup>5</sup>
- Court-ordered;<sup>6</sup>
- Juvenile diversion;<sup>7</sup>
- Lawful self-defense;<sup>8</sup>
- Human trafficking;<sup>9</sup>
- Automatic juvenile;<sup>10</sup> and
- Early juvenile.<sup>11</sup>

### ***Court-Ordered Expunction of Criminal History Record***

A court may order a criminal history record of a minor or an adult to be expunged. A person is permitted to obtain one court-ordered expunction in their lifetime.<sup>12</sup>

To qualify for a court-ordered expunction, a person must first obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) pursuant to requirements set forth in ss. 943.0585(2) or 943.0585(5), F.S. To obtain a certificate of eligibility for expunction, a person must submit to the FDLE:

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:
  - An indictment, information, or other charging document was not filed or issued in the case.
  - An indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi<sup>13</sup> by the state attorney or statewide prosecutor, and that none of the charges that the person is seeking to expunge resulted in a trial.
  - The criminal history record does not relate to certain violations.<sup>14</sup>

<sup>2</sup> “Sealing of a criminal history record” is the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

<sup>3</sup> “Expunction of a criminal history record” is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Section 943.045(16), F.S.

<sup>4</sup> Section 943.059, F.S.

<sup>5</sup> Section 943.0581, F.S.

<sup>6</sup> Section 943.0585, F.S.

<sup>7</sup> Section 943.0582, F.S.

<sup>8</sup> Section 943.0585(5), F.S.

<sup>9</sup> Section 943.0583, F.S.

<sup>10</sup> Section 943.0515, F.S.

<sup>11</sup> Section 943.0515(1)(b)2., F.S.

<sup>12</sup> Section 943.0585, F.S.

<sup>13</sup> Nolle prosequi is a formal entry upon the record that declares that the case will not be further prosecuted. THE LAW DICTIONARY: FEATURING BLACK’S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY (2nd ed.), <http://thelawdictionary.org> (last visited October 18, 2017).

<sup>14</sup> These violations include sexual misconduct, luring or enticing a child, sexual battery, procuring a person under 18 for prostitution, lewd or lascivious offenses committed in front of a minor, an elderly person, or a disabled person, voyeurism, violations of the Florida Communications Fraud Act, sexual abuse of a child, offenses by public officers and employees, acts in connection with obscenity and minors, child pornography, selling or buying of minors, drug trafficking, violation of

- A \$75 processing fee, unless it is waived by the executive director.
- A certified copy of the disposition of the charge.<sup>15</sup>

In addition, the applicant must not:

- Prior to the date the application for a certificate of eligibility is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.;<sup>16</sup>
- Have been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- Be under court supervision for the arrest or alleged criminal activity to which the petition pertains; and
- Have secured a prior expunction or sealing of a criminal history record, unless the expunction sought is of a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S.<sup>17</sup>

Upon receipt of a certificate of eligibility for expunction, the person must then petition the court to expunge the criminal history record. Along with the certificate of eligibility, the petition must include a sworn statement attesting that the petitioner:

- Has never been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor;<sup>18</sup>
- Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains;
- Has never secured a prior sealing or expunction of a criminal history record, unless the expunction is sought for a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S., and the record is otherwise eligible for expunction; and
- Is eligible for such an expunction and does not have any other petition to expunge or seal pending before any court.<sup>19</sup>

A copy of the completed petition to expunge is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the petition.<sup>20</sup> There is no statutory right to a court-ordered expunction and any request for expunction of a criminal history record may be denied at the sole discretion of the court.<sup>21</sup>

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pretrial detention, and any violation specified as a predicated offense for registration as a sexual predator pursuant to the Florida Sexual Predators Act. Section 943.0585(2)(a)3., F.S.

<sup>15</sup> Section 943.0585(2)(a)-(c), F.S.

<sup>16</sup> These offenses include assault, battery, carrying a concealed weapon, unlawful use of destructive devices or bombs, child neglect, assault on a law enforcement officer, a firefighter, or other specified officer, open carrying of a weapon, indecent exposure, unlawful possession of a firearm, petit theft, animal cruelty, arson, and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property. Section 943.051(3)(b), F.S.

<sup>17</sup> Section 943.0585(2)(d)-(g), F.S.

<sup>18</sup> *Supra* note 16.

<sup>19</sup> Section 943.0585(1)(b), F.S.

<sup>20</sup> Section 943.0585(3)(a), F.S.

<sup>21</sup> Section 943.0585, F.S.

### ***Effect of Expunction of Criminal History Record***

If the court grants a petition to expunge, the clerk of the court then certifies copies of the order to the appropriate state attorney and the arresting agency and any other agency that has received the criminal history record from the court. The arresting agency must provide the expunction order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the expunction order to the Federal Bureau of Investigation.<sup>22</sup>

Any record that the court grants the expunction of must be physically destroyed or obliterated by any criminal justice agency having such record. The FDLE, however, is required to maintain the record. That record is confidential and exempt from disclosure requirements under the public records laws. Only a court order would make the record available to a person or entity that is otherwise excluded.<sup>23</sup>

The person who has their criminal history record expunged may lawfully deny or fail to acknowledge the records that were expunged, unless they are:

- A defendant in a criminal prosecution;
- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agency Services within the Department of Financial Services, or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Petitioning to have a court-ordered criminal history record expunged or sealed or petitioning for relief under s. 943.0583, F.S.; or
- A candidate for admission to The Florida Bar.<sup>24</sup>

### ***Court-ordered Sealing of Criminal History Record***

A court may order a criminal history record of a minor or an adult to be sealed. To qualify for a court-ordered sealing, a person must first obtain a certificate of eligibility from the FDLE pursuant to requirements set forth in s. 943.059(2), F.S. To obtain a certificate of eligibility for sealing, the applicant must not:

- Prior to the date on which the application is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.;<sup>25</sup>
- Have been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Have secured a prior sealing or expunction of a criminal history record; and
- Be under court supervision for the arrest or alleged criminal activity to which the petition to seal pertains.<sup>26</sup>

The applicant must also submit to the FDLE:

- A \$75 processing fee, unless it is waived by the executive director.

<sup>22</sup> Section 943.0585(3)(b), F.S.

<sup>23</sup> Section 943.0585(4), F.S.

<sup>24</sup> Section 943.0585(4)(a), F.S.

<sup>25</sup> *Supra* note 16.

<sup>26</sup> Section 943.059(2)(c)-(f), F.S.

- A certified copy of the disposition of the charge.<sup>27</sup>

Upon receipt of a certificate of eligibility for sealing, the person must then petition the court to seal the criminal history record. Along with the certificate of eligibility, the petitioner must include a sworn statement attesting that the petitioner:

- Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor;<sup>28</sup>
- Has not been adjudicated guilty of or adjudicated delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to seal pertains;
- Has never secured a prior sealing or expunction of a criminal history record; and
- Is eligible for such a sealing and does not have any other petition to seal or expunge pending before any court.<sup>29</sup>

A copy of the completed petition to seal is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the completed petition to seal.<sup>30</sup> There is no statutory right to a court-ordered sealing and any request for sealing of a criminal history record may be denied at the sole discretion of the court.<sup>31</sup>

### ***Effect of Sealing of Criminal History Record***

If the court grants a petition to seal, the clerk of the court then certifies copies of the order to the appropriate state attorney or prosecutor and the arresting agency. The arresting agency must provide the sealing order to any agencies that received the criminal history record information from the arresting agency. The FDLE must provide the expunction order to the Federal Bureau of Investigation.<sup>32</sup> An order sealing a criminal history record does not require that record to be surrendered to the court. Additionally, the FDLE and other criminal justice agencies shall continue to maintain the record.<sup>33</sup>

The person who has their criminal history record sealed may lawfully deny or fail to acknowledge the records that were sealed, unless they are:

- A defendant in a criminal prosecution;
- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agency Services within the Department of Financial Services, or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Petitioning to have a court-ordered criminal history record expunged or sealed or petitioning for relief under s. 943.0583, F.S.;
- A candidate for admission to The Florida Bar;

<sup>27</sup> Section 943.059(2)(a)-(b), F.S.

<sup>28</sup> *Supra* note 16.

<sup>29</sup> Section 943.059(1)(b), F.S.

<sup>30</sup> Section 943.059(3)(a), F.S.

<sup>31</sup> Section 943.059, F.S.

<sup>32</sup> Section 943.059(3)(b), F.S.

<sup>33</sup> Section 943.059(3)(e), F.S.

- Attempting to purchase a firearm from a licensed imported, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or
- Seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm.<sup>34</sup>

### III. Effect of Proposed Changes:

Current law prohibits a person who has ever been adjudicated delinquent of a misdemeanor specified in s. 943.051(3)(b), F.S., from being eligible to have any criminal history record sealed or expunged. The bill allows a person who has not been adjudicated delinquent of a misdemeanor specified in s. 943.051(3)(b), F.S., in the past 10 years to be eligible to seek a sealing or expunction of a criminal history record.<sup>35</sup>

The bill also enables a person to seek the expunction of a criminal history record that resulted in a judgment of acquittal<sup>36</sup> or a not guilty verdict. However, current law would require the person to have the criminal history record sealed for a minimum of 10 years before seeking an expunction.

The bill is effective July 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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<sup>34</sup> Section 943.059(4)(a), F.S.

<sup>35</sup> *Supra* note 16.

<sup>36</sup> A judgment of acquittal is rendered when a person accused of a crime is legally freed by a court generally as a result of lack of evidence. THE LAW DICTIONARY: FEATURING BLACK'S LAW DICTIONARY FREE ONLINE LEGAL DICTIONARY (2nd ed.), <http://thelawdictionary.org> (last visited October 18, 2017).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill allows a person who has not been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the previous 10 years to be eligible to seek a sealing or expunction of a criminal history record.

An increase in eligible people who may seek a sealing or expunction of a criminal history record may yield an increased number of applications to the FDLE, which would likely have a negative, indeterminate fiscal impact on the FDLE.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 943.0585 and 943.059.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on October 23, 2017:**

The Committee Substitute:

- Clarifies that a person who has not been adjudicated delinquent of committing a specified misdemeanor offense in s. 943.051(3)(b), F.S., in the past 10 years is eligible to seek an expunction of a criminal history record; and
- Enables a person to be eligible to seek the sealing of a criminal history record if he or she has not been adjudicated delinquent for committing a specified misdemeanor offense in 943.051(3)(b), F.S., in the previous 10 years.<sup>37</sup>

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>37</sup> *Supra* note 16.