

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.)

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

BILL: SB 860

INTRODUCER: Senator Bracy

SUBJECT: Criminal History Records

DATE: January 26, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Storch | Jones | CJ | Pre-meeting |
| 2. | | | JU | |
| 3. | | | RC | |

I. Summary:

SB 860 provides for the administrative sealing of certain types of criminal history records of a minor.

The bill requires the criminal history record of a minor who is arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance, to be administratively sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict at trial.

The bill also requires all appeals to have been exhausted by the prosecution or the time to file an appeal must have expired in order for a criminal history record to be administratively sealed.

The bill provides that the administrative sealing of a criminal history record will have the same effect as a sealing under s. 943.059, F.S.

The bill is effective July 1, 2018.

II. Present Situation:

Access to Juvenile Criminal History Records

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged. Sealed records are placed under highly restricted access, while expunged records are removed from record systems and destroyed.¹

In contrast, criminal history information related to juveniles is generally confidential and exempt from public access.² Section 943.053(3)(b)1., F.S., provides that criminal history information³ relating to a juvenile compiled by the Criminal Justice Information Program (CJIP) is confidential and exempt unless the juvenile has been:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult would be a felony;
- Charged with a violation of law which, if committed by an adult, would be a felony;
- Found to have committed an offense which, if committed by an adult, would be a felony; or
- Transferred to adult court pursuant to part X of ch. 985, F.S.⁴

However, a criminal history record that has been expunged or sealed will remain confidential and exempt.⁵

Criminal history information relating to juveniles that is confidential and exempt is available to:

- A criminal justice agency for criminal justice purposes;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.⁶

¹ Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited January 23, 2018).

² Florida Department of Law Enforcement, *2018 Legislative Bill Analysis for SB 860*, (December 6, 2017) (on file with the Senate Criminal Justice Committee).

³ “Criminal history information” is information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. *See* s. 943.045(5), F.S.

⁴ Criminal history information related to a juvenile who has been transferred to adult court by waiver, direct file, or indictment, is not confidential and exempt. *See* s. 943.053(3)(b)1., F.S.

⁵ *Id.*

⁶ Sections 943.0585(4) and 943.059(4), F.S., provide that the person who is the subject of a criminal history record that is sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by the sealed or expunged record, except when the subject of the record: is a candidate for employment with a criminal justice agency; is a defendant in a criminal prosecution; concurrently or subsequently petitions for relief under s. 943.053, s. 943.0585, or s. 943.059, F.S.; is a candidate for admission to The Florida Bar; is seeking appointment as a guardian, a position with a criminal justice agency or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly; or is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services. Additionally, s. 943.059(4), F.S., prohibits a person who is the subject of a criminal history record that is sealed pursuant to s. 943.059, F.S., from denying or failing to acknowledge the arrests covered by the sealed record if the person: is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a

Sealing of Criminal History Record

Section 943.059, F.S., authorizes the sealing of a criminal history record by court order. To qualify for a court-ordered sealing, a person must first obtain a certificate of eligibility (COE) from the Florida Department of Law Enforcement (FDLE). The FDLE must issue a COE for sealing to a person who is the subject of a criminal history record provided that such person:

- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition to seal pertains;
- Remits a \$75 processing fee, unless it is waived by the executive director;
- Has never, prior to the date on which the application for a certificate of eligibility is filed, 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.;⁷
- 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 not under court supervision for the arrest or alleged criminal activity to which the petition to seal pertains.⁸

Upon receipt of a COE for sealing, a person must then petition the court to seal the criminal history record. The petition must include the COE and 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;⁹
- 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.¹⁰

A copy of the completed petition 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

criminal history check under state or federal law; or is 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. *See* ss. 943.053(3)(c)1., 943.0585(4), and 943.059(4), F.S.

⁷ 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. *See* s. 943.051(3)(b), F.S.

⁸ Section 943.059(2), F.S.

⁹ *Supra*, n. 7.

¹⁰ Section 943.059(1)(b), F.S.

petition.¹¹ 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.¹²

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 and the arresting agency and any other agency that has received the criminal history record from the court. 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 sealing order to the Federal Bureau of Investigation.¹³

A criminal history record which is ordered sealed by a court pursuant to s. 943.059, F.S., is confidential and exempt from public records, and is available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies for their respective criminal justice purposes, and judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities.¹⁴

Additionally, the person who has their criminal history record sealed by court order may lawfully deny or fail to acknowledge the arrests covered by the sealed record, unless they are:

- A candidate for employment with a criminal justice agency;
- A defendant in a criminal prosecution;
- Petitioning to have a court-ordered criminal history record sealed or expunged or petitioning for relief under s. 943.0583, F.S.;¹⁵
- A candidate for admission to The Florida Bar;
- Seeking appointment as a guardian or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services or 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; or
- Attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law.¹⁶

An employee of an entity listed above may not disclose information relating to a sealed criminal history record, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions.¹⁷

¹¹ Section 943.059(3)(a), F.S.

¹² Section 943.059, F.S.

¹³ Section 943.059(3)(b), F.S.

¹⁴ Section 943.059(4), F.S.

¹⁵ Section 943.0583, F.S., provides that a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committing while the person was a victim or human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chs. 796 and 847, F.S., without regard to the disposition of the arrest or of any charges. *See* s. 943.0583(3), F.S.

¹⁶ Section 943.059(4)(a)1.-10., F.S.

¹⁷ Section 943.059(4)(c), F.S.

Additionally, a person who has been granted a sealing of his or her criminal history record may not be held to commit perjury or otherwise be liable for giving a false statement by failing to recite or acknowledge a sealed criminal history record.¹⁸

Criminal Justice Information Program

The CJIP is created within the FDLE.¹⁹ The program is tasked with maintaining a system capable of transmitting criminal justice information²⁰ to and between criminal justice agencies.²¹ The program also operates a crime information system that develops and maintains an offender-based transaction system in cooperation with other criminal justice agencies.²²

Additionally, the CJIP establishes procedures and a format for each criminal justice agency to monitor its records and submit reports to the program. Each clerk of the court is required to submit the uniform dispositions²³ to the CJIP at least once a month.²⁴

III. Effect of Proposed Changes:

The bill creates s. 943.0586, F.S., authorizing the CJIP to administratively seal certain criminal history records of minors.²⁵ The bill provides that the criminal history record of a minor charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency will be sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi²⁶ before trial; or

¹⁸ Section 943.059(4)(b), F.S.

¹⁹ Section 943.05(1), F.S.

²⁰ “Criminal justice information” means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistically or analytical records or reports in which individuals are not identified to and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information. *See* s. 943.045(12), F.S.

²¹ Section 943.05(2)(a), F.S.

²² Section 943.05(2)(c)3., F.S.

²³ “Disposition” means details relating to the termination of an individual criminal defendant’s relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probations, paroles, and releases from correctional institutions. *See* s. 943.045(14), F.S.

²⁴ Section 943.052(2), F.S.

²⁵ Current law does not provide for administrative sealing of criminal history records. In contrast, s. 943.0581, F.S., provides for administrative expunction of criminal history records. The law authorizes the FDLE to administratively expunge any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake. A law enforcement agency must apply to the FDLE for the administrative expunction or alternatively, an adult or the parent or legal guardian of a minor may apply. *See* s. 943.0581, F.S.

²⁶ 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.), available at <http://thelawdictionary.org> (last visited January 23, 2018).

- Resulted in a judgment of acquittal²⁷ or a not guilty verdict at trial.

Additionally, the bill requires that, in order for the CJIP to administratively seal a criminal history record, all appeals must have been exhausted by the prosecution or the time to file an appeal has expired.

The administrative sealing of a criminal history record under the bill would not require an application for a COE or the payment of a fee.

The bill provides that an administrative sealing of a criminal history record pursuant to s. 943.0586, F.S., will have the same effect as a court-ordered sealing under s. 943.059(4), F.S., as described above.²⁸

Current law establishes that a misdemeanor criminal history record of a juvenile is confidential and exempt.²⁹ The bill requires this record to be administratively sealed if the misdemeanor arrest or charge was not filed, dismissed or nolle prosequi before trial, or resulted in a judgment of acquittal or a not guilty verdict at trial. The sealing of the record would permit the juvenile to lawfully deny or fail to acknowledge the existence of the record, subject to the exceptions enumerated under s. 943.059(4), F.S.³⁰

This act shall take effect July 1, 2018, but only if SB 862 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. The effective date of the bill will need to be linked to a specific Senate bill. SB 862 (2017) is the bill connected to this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁷ 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.), available at <http://thelawdictionary.org> (last visited January 24, 2018).

²⁸ *Supra*, n. 16.

²⁹ Section 943.053(3)(b)-(c), F.S.

³⁰ *Supra*, n. 16.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FDLE predicts a loss of \$90,000 in revenue for those people who would have submitted an application to have his or her criminal history record sealed by court order, but will opt instead for the administrative sealing and avoid paying a fee. The FDLE also predicts a cost of \$254,000 to implement the new programming required for the administrative sealing process.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current disposition reporting by the clerk of the court to the FDLE, pursuant to s. 943.052(2), F.S., does not consider whether all appeals have been exhausted by the prosecution or the time to file an appeal has expired. The bill would require changes to be made to disposition reporting to ensure that the clerks of the court are verifying that this prerequisite to administratively sealing has been met.³²

Currently, a misdemeanor criminal history record of a minor is confidential and exempt.³³ The bill provides that the misdemeanor criminal history record of a minor qualifies for administrative sealing if the case was not filed, dismissed or nolle prosequi, or resulted in a judgment of acquittal or a not guilty verdict at trial. The administrative sealing of a record that is already confidential and exempt will permit the subject of the criminal history record that is sealed to lawfully deny or fail to acknowledge the criminal history record at issue, subject to certain exceptions.³⁴ Additionally, a confidential and exempt record is made available to people that are otherwise unable to obtain a criminal history record that is sealed.

A linked bill, SB 862, expands the current public records exemption for criminal history records sealed by court order to include administratively sealed criminal history records within the scope of the exemption.

³¹ Florida Department of Law Enforcement, *2018 Legislative Bill Analysis for SB 860*, (December 6, 2017) (on file with the Senate Criminal Justice Committee).

³² *Id.*

³³ Section 943.053(3)(b), F.S.

³⁴ *Supra*, n. 16.

VIII. Statutes Affected:

This bill creates section 943.0586 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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