

**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 1506

INTRODUCER: Criminal Justice Committee and Senators Brandes and Bracy

SUBJECT: Public Records/Expunction of Specified Convictions

DATE: February 5, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.			GO	
3.			AP	

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1506, which is linked to SB 1504, amends s. 943.0587, F.S., created by the linked bill, providing an exemption from public records requirements for an expunged criminal history record related to certain driving while license suspended, revoked, canceled, or disqualified (DWLSR) offenses that were classified as a felony prior to changes made in CS/HB 7125 (2019).

Specifically, the bill provides that a criminal history record ordered expunged related to certain DWLSR offenses pursuant to s. 943.0587, F.S., which is retained by the FDLE is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. Similar to the court-ordered expunction process, a criminal justice agency is authorized pursuant to the bill to retain a notation indicating compliance with an order to expunge.

The bill also provides that information relating to the existence of an expunged criminal history record pursuant to s. 943.0587, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, except that the FDLE must disclose the existence of a criminal history record ordered expunged to specified enumerated entities for their respective licensing, access authorization, and employment purposes and to criminal justice agencies for their respective criminal justice purposes.

The bill provides that both of these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stand repealed on October 2, 2025, unless reviewed and saved from such repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by the FDLE related to the expunction of such records may be covered by the \$75 processing fee for obtaining a certificate of eligibility for expunction of such records.

The bill is effective on the same date that SB 1504 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

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

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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 this chapter, 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.”

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>10</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.<sup>12</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>14</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>15</sup> public records or open meetings exemptions, with specified exceptions.<sup>16</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>17</sup>

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<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>11</sup> *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>12</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>13</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>16</sup> Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>17</sup> Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>18</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>19</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>20</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>21</sup>

The Act also requires specified questions to be considered during the review process.<sup>22</sup> In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>23</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>24</sup>

## Driver Licenses

Florida law requires a person to hold a driver license<sup>25</sup> or be exempted from licensure to operate a motor vehicle on the state's roadways.<sup>26</sup> Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government, employees operating a government vehicle for official business, and people operating a road

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<sup>18</sup> Section 119.15(6)(b), F.S.

<sup>19</sup> Section 119.15(6)(b)1., F.S.

<sup>20</sup> Section 119.15(6)(b)2., F.S.

<sup>21</sup> Section 119.15(6)(b)3., F.S.

<sup>22</sup> Section 119.15(6)(a), F.S. 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 the 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?

<sup>23</sup> See generally s. 119.15, F.S.

<sup>24</sup> Section 119.15(7), F.S.

<sup>25</sup> "Driver license" is a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle and denotes an operator's license as defined in 49 U.S.C. s. 30301. Section 322.01(17), F.S.

<sup>26</sup> Section 322.03(1), F.S.

machine, tractor, or golf cart.<sup>27</sup> The Department of Highway Safety and Motor Vehicles (DHSMV) can suspend or revoke a driver license or driving privilege for both driving-related and non-driving related reasons. Suspension means the temporary withdrawal of the privilege to drive<sup>28</sup> and revocation means a termination of the privilege to drive.<sup>29</sup>

***Section 322.34, F.S. (2018)***

Prior to October 1, 2019, a person committed the offense of driving while license suspended, revoked, canceled, or disqualified (DWLSR) if his or her driver license or driving privilege had been canceled, suspended, or revoked and he or she, knowing of such cancellation, suspension, revocation, or suspension,<sup>30</sup> drove any motor vehicle. The penalties for DWLSR ranged from a moving traffic violation to a third degree felony.<sup>31</sup>

Under the former provisions, a person could be charged with a third-degree felony<sup>32</sup> for the offense of DWLSR if:

- He or she knew of the suspension or revocation and had at least two prior convictions for DWLSR;
- He or she qualified as a habitual traffic offender;<sup>33</sup> or
- His or her license had been permanently revoked.<sup>34</sup>

***Section 322.34, F.S. (2019) and CS/HB 7125 (2019)***

The 2019 Legislature passed and the Governor signed into law CS/HB 7125, which, in part, amended the provisions related to DWLSR.<sup>35</sup> Subsequent to the effective date of CS/HB 7125 (2019), the offense of DWLSR is classified as a:

- Misdemeanor of the second degree, upon a first conviction.<sup>36</sup>
- Misdemeanor of the first degree, upon a second or subsequent conviction, unless the suspension is related to an enumerated offense discussed below.<sup>37</sup>
- A felony of the third degree, upon a third or subsequent conviction if the current violation of DWLSR or the most recent prior violation of DWLSR is resulting from a violation of:
  - DUI;

<sup>27</sup> Section 322.04, F.S.

<sup>28</sup> Section 322.01(40), F.S.

<sup>29</sup> Section 322.01(36), F.S.

<sup>30</sup> The element of knowledge is satisfied in several ways, including: if the person has been previously cited as provided in s. 322.34(1), F.S., the person admits to knowledge of the cancellation, suspension, or revocation, or the person received notice of such status. There is a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order appears in the DHSMV's records for any case except for one involving a suspension by the department for failure to pay a traffic fine or for a financial responsibility violation. *See* s. 322.34(2), F.S.

<sup>31</sup> *See* s. 322.34(2), F.S.

<sup>32</sup> A third degree felony is punishable by up to 5 years' incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>33</sup> *See* s. 322.264, F.S.

<sup>34</sup> *See* ss. 322.34 and 322.341, F.S. (2018).

<sup>35</sup> Chapter 2019-167, L.O.F.

<sup>36</sup> Section 322.34(2)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>37</sup> Additionally, a person convicted under this paragraph for a third or subsequent conviction must serve a minimum of ten days in jail. Section 322.34(2)(b), F.S. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

- Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
- A traffic offense causing death or serious bodily injury; or
- Fleeing or eluding.<sup>38</sup>

### **Florida’s Statutory Savings Clause**

The 2019 Legislature also passed and the Governor signed into law CS/SB 1656 (2019), which created s. 775.022, F.S., a general savings statute for criminal statutes.<sup>39</sup> Typically, a general savings statute prevents the repeal of a criminal statute from abating pending criminal prosecutions, unless the repealing act expressly provides for abatement. “Abatement” means no further prosecution for the criminal violation.

In part, s. 775.022, F.S., did not preclude the Legislature from expressly providing for a more extensive retroactive application either to legislation in the future or legislation that was enacted prior to the effective date of the general savings statute. This is because the general savings statute specifically provides for a legislative exception to the default position of prospectivity.

### **Expunction of Criminal History Records**

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.<sup>40</sup> Criminal history records related to certain offenses are barred from being expunged through the court-order process.<sup>41</sup> Section 943.0585, F.S., sets forth procedures for expunging criminal history records through court-order. 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>42</sup> Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The FDLE is required to retain expunged records.<sup>43</sup>

Records that have been expunged are confidential and exempt from the public records law.<sup>44</sup> As a result, persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain

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<sup>38</sup> The penalties amended in CS/HB 7125 (2019) do not apply to all persons who commit the offense of DWLSR. Section 322.34(5)-(7) and (10), F.S., provide different penalties for certain offenders who violate these provisions.

<sup>39</sup> See ch. 2019-63, L.O.F.

<sup>40</sup> 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 21, 2020). See also s. 943.053, F.S.

<sup>41</sup> See s. 943.0584, F.S., for a complete list of offenses that are ineligible for court-ordered expunction.

<sup>42</sup> Section 943.0585(6)(a), F.S. Section 943.045(16), F.S., defines “expunction of a criminal history record” to mean 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, except that criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction.

<sup>43</sup> Section 943.0585(6)(a), F.S.

<sup>44</sup> Section 943.0585(6)(d), F.S.

types of employment,<sup>45</sup> petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.<sup>46</sup>

#### **Provisions made in SB 1504**

SB 1504, which is tied to this bill, creates s. 322.3401, F.S., expressly providing for the retroactive application of the changes made by CS/HB 7125 (2019) to s. 322.34, F.S., related to the offense of DWLSR. SB 1504 also provides procedures for the resentencing of eligible persons.

SB 1504 defines two terms for purposes of s. 322.3401, F.S., including the term:

- “Former s. 322.34”, which means a reference to s. 322.34, F.S., as it existed at any time before its amendment by ch. 2019-167, L.O.F.
- “New s. 322.34”, which means a reference to s. 322.34, F.S., as it exists after the amendments made by ch. 2019-167, L.O.F., became effective.

SB 1504 requires a person who committed the offense of DWLSR:

- Before October 1, 2019, but who was not sentenced under former s. 322.34, F.S., before October 1, 2020, to be sentenced for the degree of offense as provided for in the new s. 322.34, F.S.
- Before October 1, 2019, who was sentenced before October 1, 2019 to a term of imprisonment pursuant to former s. 322.34, F.S., and who is serving such term of imprisonment on or after October 1, 2020, to be resentenced to the degree of offense that is consistent with the degree provided for in the new s. 322.34, F.S.

In addition to the retroactive application of sentencing provisions of the new s. 322.34, F.S., the bill provides that a person who has been convicted of a felony under former s. 322.34, F.S., and whose offense would not be classified as a felony under the new s. 322.34, F.S., must:

- Be treated as if he or she had been convicted of a misdemeanor violation for purposes of any right, privilege, benefit, remedy, or collateral consequence that the person might be entitled to but for such felony conviction.
- Have all fines, fees, and costs related to such felony conviction waived.

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<sup>45</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>46</sup> Section 943.0585(6)(a), F.S.

### *Expunction Related to DWLSR Offenses*

SB 1504 also creates s. 943.0587, F.S., authorizing a person to petition a court to expunge a criminal history record for a conviction under former s. 322.34, F.S., under certain circumstances, including if the person:

- Received a withholding of adjudication or adjudication of guilt for a violation of DWLSR under former s. 322.34, F.S., and whose conviction would not be classified as a felony under the new s. 322.34, F.S.; and
- Only has felony convictions for the offense of DWLSR pursuant to the former s. 322.34, F.S.

Unlike other expunctions, an expunction granted in accordance with s. 943.0587, F.S., does not prevent the person who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0585, and 943.059, F.S., if the person is otherwise eligible under those sections.

SB 1504 provides that if relief is granted by the court, the following actions must be taken:

- The clerk of the court must certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency.
- The arresting agency is required to forward the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains.
- The FDLE must forward the order to expunge to the Federal Bureau of Investigation.
- The clerk of the court must certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

Further, SB 1504 provides that the effect of the expunction order is identical to the effect of court-ordered expunction orders that have been issued pursuant to s. 943.0585, F.S. Specifically, the bill provides:

- The person who is the subject of a criminal history record that is expunged may lawfully deny or fail to acknowledge the arrests and convictions covered by the 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 this section, s. 943.0583, F.S., s. 943.059, F.S., or s. 943.0585, F.S.;
  - Is a candidate for admission to The Florida Bar;
  - Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation of 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 or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
  - Is 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;
  - Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or



- Is seeking to be appointed as a guardian pursuant to s. 744.3125, F.S.
- Except as mentioned above, a person who has been granted an expunction may not be held to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

### **III. Effect of Proposed Changes:**

The bill, which is linked to SB 1504, amends s. 943.0587, F.S., created by the linked bill, providing an exemption from public records requirements for an expunged criminal history record related to certain DWLSR offenses that were classified as a felony prior to changes made in CS/HB 7125 (2019).

Specifically, the bill provides that any criminal history record of a person which is ordered expunged by a court of competent jurisdiction must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the FDLE must be retained in all cases.

Further, the bill provides that a criminal history record ordered expunged which is retained by the FDLE is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. Similar to the court-ordered expunction process, a criminal justice agency is authorized pursuant to the bill to retain a notation indicating compliance with an order to expunge.

The bill also provides that information relating to the existence of an expunged criminal history record pursuant to s. 943.0587, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, except that the FDLE must disclose the existence of a criminal history record ordered expunged to specified entities mentioned above for their respective licensing, access authorization, and employment purposes and to criminal justice agencies for their respective criminal justice purposes.

The bill provides that both of these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stand repealed on October 2, 2025, unless reviewed and saved from such repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution, which notes:

The Legislature finds that it is a public necessity that the expunged criminal history record of a person who has been convicted of a felony offense of driving while license suspended, revoked, canceled, or disqualified which is no longer classified as a felony be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature further finds that any information relating to the existence of an expunged criminal history record resulting from a felony offense of driving while license suspended, revoked, canceled, or disqualified which is no longer classified as a felony be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The presence of a criminal history record in a person's past can jeopardize his or her ability to obtain education, employment, and other opportunities. The presence of such a criminal history record in these individuals' past creates an unnecessary barrier to becoming productive, contributing, self-sustaining members of society and can jeopardize individuals' ability to achieve a safe livelihood. The Legislature therefore finds that it is in the best interest of the public that such individuals are given the opportunity to become contributing members of society.

The bill is effective on the same date that SB 1504 or similar legislation takes effect if such legislation is enacted in the same legislative session or an extension thereof and becomes a law.

#### **IV. Constitutional Issues:**

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

None.

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

###### **Voting Requirement**

Article I, s. 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill enacts a new exemption for criminal history records related to offenses of DWLSR that are expunged pursuant to the newly created s. 943.0587, F.S. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is required.

###### **Public Necessity Statement**

Article I, s. 24(c), of the Florida Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity

justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

**Breadth of Exemption**

Article I, s. 24(c), of the Florida Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to ensure criminal history records related to a felony offense of DWLSR which is no longer classified as a felony that has been expunged does not jeopardize a person's ability to obtain education, employment, and other opportunities. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 943.0587 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.)

**CS by Criminal Justice on February 4, 2020:**

The committee substitute:

- Includes the tied bill number in the effective date clauses; and
- Makes technical changes to the public necessity statement.

- B. **Amendments:**

None.