

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 Judiciary

BILL: SB 1972

INTRODUCER: Senator Pizzo

SUBJECT: Expunction and Sealing of Judicial Records

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			CJ	
3.			RC	

I. Summary:

SB 1972 provides for the sealing of certain records in civil cases and the expunction of criminal history records in criminal cases. The bill authorizes a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

The bill also permits a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

The bill takes effect July 1, 2021.

II. Present Situation:

Domestic Violence Injunctions

Temporary Injunctions

If someone believes that she or he is a victim of domestic violence¹ or has reasonable cause to believe that she or he is in imminent danger of becoming a victim of domestic violence, that

¹ "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Section 741.28(2), F.S.

"Family or household member means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in

person may petition a circuit court for an injunction for protection against domestic violence.² The clerk's office will take the sworn petition to a judge who rules on the petition, generally within 24 hours.

The judge examines the petition, *ex parte*, meaning that the judge examines only the information submitted by the petitioner. The parties are generally not present, and no additional evidence is submitted. If it appears to the court that an immediate and present danger of domestic violence exists, the court may grant a temporary injunction, pending a full hearing at a later date

Any *ex parte* temporary injunction is effective for a fixed period of time that does not exceed 15 days. A full hearing will be set for a date that is no later than the date when the temporary injunction expires, although the court may grant a continuance for good cause shown, including a continuance to obtain service of process on the respondent. A temporary injunction will be extended if it is necessary to remain in full force and effect during the continuance.³

Injunctions

Once notice is given, a hearing is held, and the court concludes that the petitioner is a victim of domestic violence or has reasonable cause to believe that she or he is in imminent danger of becoming a victim, the court may grant an injunction, no longer a temporary injunction. The injunction remains in effect until it is modified or dissolved. The petitioner or respondent may move at any time for those actions.⁴

Expunction of Criminal History Records

State courts have continuing jurisdiction over their own procedures, including the expunction and sealing of judicial records that contain criminal history information.⁵ Pursuant to statute, judges have the discretion to order criminal records maintained by the court system and records held by law enforcement agencies to be sealed⁶ or expunged for either a minor or an adult.⁷ However, no one has a right to have a record expunged and the request may be denied at the sole discretion of the court.⁸

common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.” Section 741.28(3), F.S.

² Section 741.30(1)(a), F.S.

³ Section 741.30(5)(c), F.S.

⁴ Section 741.30(6)(c), F.S.

⁵ Sections 943.0585(4)(a), F.S. and 943.059(4)(a), F.S. The procedures, however, must be consistent with the duties established in statute. See also Henry P. Trawick, Jr., *Florida Pleading and Practice Forms* 11B. Fla. Pl. & Pr. Forms s. 97:14 (May 2020).

⁶ In general terms, sealing makes records confidential in most cases while expunction requires the actual physical destruction of records held by courts and most law enforcement agencies. When a record is sealed, it is preserved so that it is secure and inaccessible to any person who does not have a legal right to access the record or the information contained within the record. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public records laws. Sections 943.045(19), F.S., 943.059(6), 119.07(1), F.S. and Art. I, s. 24(a), Fla. Const.

⁷ A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public records law.

⁸ Section 943.0585(4)(b) and (e), F.S.

A person may have his or her criminal history record expunged under certain enumerated circumstances.⁹ When a record is expunged, the criminal justice agencies that possess the record must physically destroy or obliterate it. The Florida Department of Law Enforcement (FDLE) maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.¹⁰ The criminal history record retained by FDLE is confidential and exempt.¹¹ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.¹²

Court-Ordered Expunction

A court, in its discretion, may order the expunction of a person's criminal history record if FDLE issues the person a certificate of eligibility for expunction.¹³ FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting the criteria set forth in statute.¹⁴ Generally, a person is eligible for expunction if:

- An indictment, information, or other charging document was not filed or issued in the case giving rise to the criminal history record.
- An indictment, information, or other charging document was filed or issued in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the State, was dismissed by the court, a judgment of acquittal was rendered, or a verdict of not guilty was rendered.
- The person is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses.
- The person has never, prior to filing the application for a certificate of eligibility, been either:
 - Adjudicated guilty of any criminal offense or comparable ordinance violation; or
 - Adjudicated delinquent of any felony or certain enumerated misdemeanors as a juvenile.
- The person has not been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- The person is no longer under court supervision applicable to the disposition of arrest or alleged criminal activity to which the petition to expunge pertains;
- The person has never secured a prior sealing or expunction, unless:
 - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
 - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered.¹⁵

Other Types of Expunction

Other types of expunction include:

⁹ Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

¹⁰ Section 943.045(16), F.S.

¹¹ Section 943.0585(6)(a), F.S.

¹² Section 943.0585(6), F.S.

¹³ Section 943.0585(4), F.S.

¹⁴ Section 943.0585(2), F.S.

¹⁵ Section 943.0585(1), F.S.

- Lawful self-defense expunction.¹⁶
- Human trafficking victim expunction.¹⁷
- Automatic Juvenile expunction.¹⁸
- Early juvenile expunction.¹⁹
- Administrative expunction due to a mistake.²⁰
- Juvenile diversion program expunction.²¹

III. Effect of Proposed Changes:

The bill authorizes a person, who was the respondent to a domestic violence injunction petition, to request that the court seal the injunction petition and all related records and documents, if the petition for the injunction was withdrawn or dismissed or if there was a ruling in favor of the respondent. The petition for sealing may be filed at any time.

The bill amends s. 943.0585, F.S., to permit a person who has had a prior expunction granted for an offense that was committed when he or she was a minor to have another eligible record expunged. If the prior expunction was for an offense in which the minor was charged as an adult, the person is not eligible for a subsequent expunction.

The bill requires FDLE to issue a certificate or deny the request for a certificate no later than 6 months after the application is submitted.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁶ Section 943.0578, F.S.

¹⁷ Section 943.0583, F.S.

¹⁸ Section 943.0515(1)(b)1., F.S.

¹⁹ Section 943.0515(1)(b)2., F.S.

²⁰ Section 943.0581, F.S.

²¹ Section 943.0582, F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

FDLE states that there are currently 1,454,269 unique identification numbers with criminal records. If one percent of those individuals apply for a Certificate of Eligibility each year, applications would increase by 14,543 applications each year.

In order to accommodate the increased workload, the Seal/Expunge Section would need 18 FTE positions (one Criminal Justice Information Consultant II, 2 Criminal Justice Consultant Is, 8 Criminal Justice Information Analyst IIs, 2 Criminal Justice Information Analyst Is, 3 Criminal Justice Information Examiners, one Operations and Management Consultant Manager and one Senior Management Analyst Supervisor) for a total of \$1,207,115 of which \$1,137,005 recurring.

In order to maintain the proposed processing time of 6 months, the section would require five FTE positions (2 Criminal Justice Consultant Is, one Criminal Justice Information Analyst I and 2 Criminal Justice Information Examiners) totaling \$315,359 (\$295,884 recurring).

The required changes to Computerized Criminal History will cost an estimated \$724,000 in non-recurring funds. The increase in positions would also require the acquisition of additional office space to house the new employees, because the department's headquarters building is currently at capacity.

These amounts, according to FDLE, would equal \$2,249,474 of which \$1,432,889 is recurring.²²

It is likely that courts may also see an increase in requests for expunctions and an increase in workload to accommodate those requests.

VI. Technical Deficiencies:

None.

²² Florida Department of Law Enforcement, *SB 1972 Agency Bill Analysis Request* (March 11, 2021) <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=27871&yr=2021>.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 943.0585, Florida Statutes.

This bill creates s.741.301, 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.
