

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 468

INTRODUCER: Senator Bracy

SUBJECT: Expunction of Criminal History Records Relating to Certain Cannabis Offenses

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			CJ	
3.			AP	

I. Summary:

SB 468 provides for free and unlimited expunction of most convictions for misdemeanor possession of less than 20 grams of cannabis.

A person who has been convicted of a qualifying cannabis offense may petition for relief unless the offense was related to an offense in connection with the cannabis offense which was a felony, driving under the influence, or an act of domestic or dating violence.

A petition for expunction can be filed at any time, and in any court in the judicial circuit of the arrest or in any court where the petitioner resides. The petition must include the petitioner's sworn statement of eligibility and a certified copy of the conviction. The court must grant the petition unless the state attorney or arresting agency files an objection within 10 days after the filing of the petition. Upon filing an objection, the court must set a hearing, at which the petition must be granted unless the state attorney or arresting agency shows, by clear and convincing evidence, that there is good cause not to grant the petition.

If the petition to expunge is granted, the clerk must send a certified copy of the order to the state attorney, arresting agency, and agency known to have received arrest information. The arresting agency must send a copy of the order to any other agency that the arresting agency sent arrest information to. Once expunged, the petitioner may lawfully deny or fail to acknowledge the arrest or conviction.

There is no charge to a petitioner for the filing of a petition or the furnishing of certified copies necessary to the petition. The Florida Department of Law Enforcement (FDLE) estimates that currently there are at least 194,900 eligible individuals.

The fiscal impact on the FDLE for Fiscal Year 2021-22 is estimated at \$1,916,038, of which \$856,508 is recurring. The fiscal impact on the courts and the clerks of court is indeterminate.

The bill is effective July 1, 2021.

II. Present Situation:

There are multiple types of relief that may be sought in order to seal or expunge a criminal history record. The public will not have access to a criminal history record that has been sealed or expunged. Certain government or related entities have access to records even after they are sealed. Most of the entities who have access to sealed records also have access to see whether a person has had an expunction. However, those entities do not have access to the expunged criminal history record without a court order.¹

Sealing and Expunction of Criminal History Records

A criminal history record includes any non-judicial record maintained by a criminal justice agency² that contains criminal history information.³ Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, information, other formal criminal charges, and criminal dispositions.⁴

Sealing

When a criminal history 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.⁵ A court may order a criminal history record sealed,⁶ rendering it confidential and exempt from Florida's public records laws.⁷ Only the following entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and

¹ *Florida Department of Law Enforcement Frequently Asked Questions*, Florida Department of Law Enforcement, available at http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Frequently-Asked-Questions#Sealed_vs_Expunged (last visited March 11, 2021).

² Section 943.045(11), F.S., provides that criminal justice agencies include the court, the FDLE, the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice.

³ Section 943.045(6), F.S.

⁴ Section 943.045(5), F.S.

⁵ Section 943.045(19), F.S.

⁶ Section 943.059, F.S.

⁷ Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

- Certain enumerated entities⁸ for licensing, access authorization, and employment purposes.⁹

To seal a record, a person must first apply to the FDLE for a certificate of eligibility, which the FDLE must issue to a person who:

- Has submitted a certified copy of the charge disposition he or she seeks to seal;
- Is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses;
- 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.
- 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 seal pertains;
- Has never secured a prior sealing or expunction; and
- Is no longer under court supervision related to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains.¹⁰

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.¹¹ A complete petition contains both a valid certificate of eligibility, issued within the previous 12 months, and a sworn statement from the petitioner attesting to his or her eligibility.¹² It is solely within the court's discretion to grant or deny a petition to seal.¹³

A criminal history record is not eligible for court-ordered sealing if it relates to:

- Sexual misconduct (Sections 393.135, 394.4593, and 916.1075, F.S.).
- Illegal use of explosives (Chapter 552, F.S.).
- Terrorism (Section 775.30, F.S.).
- Murder (Sections 782.04, 782.065, and 782.09, F.S.).
- Manslaughter or homicide (Sections 782.07, 782.071, and 782.072, F.S.).
- Assault or battery of one family or household member by another family or household member¹⁴ (Sections 784.011 and 784.03, F.S.).
- Aggravated assault (Section 784.021, F.S.).

⁸ Section 943.059(6)(b), F.S., provides that enumerated entities include criminal justice agencies, The Florida Bar, the Department of Children and Families, the 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, the Department of Juvenile Justice, the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, a local governmental entity that licenses child care facilities, the Division of Insurance Agent and Agency Services within the Department of Financial Services, and the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services.

⁹ Sections 943.059(6)(a), F.S.

¹⁰ Section 943.059(2), F.S.

¹¹ Section 943.059(3), F.S.

¹² Section 943.059(2)(b), F.S.

¹³ Section 943.059, F.S.

¹⁴ Section 741.28(3), F.S., defines family or household member as 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 common the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

- Felony battery, domestic battery by strangulation, or aggravated battery (Sections 784.03, 784.041, and 784.045, F.S.).
- Stalking or aggravated stalking (Section 784.048, F.S.).
- Luring or enticing a child (Section 787.025, F.S.).
- Human trafficking (Section 787.06, F.S.).
- Kidnapping or false imprisonment (Sections 787.01 and 787.02, F.S.).
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation (Chapter 794, F.S.).
- Procuring a person under the age of 18 for prostitution (Section 796.03, F.S. (2013) (repealed by ch. 2014-160, s. 10, Laws of Fla.)).
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (Section 800.04, F.S.).
- Arson (Section 806.01, F.S.).
- Burglary of a dwelling (Section 810.02, F.S.).
- Voyeurism or video voyeurism (Sections 810.14 and 810.145, F.S.).
- Robbery or robbery by sudden snatching (Sections 812.13 and 812.131, F.S.).
- Carjacking (Section 812.133, F.S.).
- Home invasion robbery (Section 812.135, F.S.).
- A violation of the Florida Communications Fraud Act (Section 817.034, F.S.).
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult (Section 825.102, F.S.).
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person (Section 825.1025, F.S.).
- Child abuse or aggravated child abuse (Section 827.03, F.S.).
- Sexual performance by a child (Section 827.071, F.S.).
- Offenses by public officers and employees (Chapter 839, F.S.).
- Certain acts in connection with obscenity (Section 847.0133, F.S.).
- A violation of the Computer Pornography and Child Exploitation Prevention Act (Section 893.0135, F.S.).
- Selling or buying of minors (Section 847.0145, F.S.).
- Aircraft piracy (Section 860.16, F.S.).
- Manufacturing a controlled substance (Chapter 893, F.S.).
- Drug trafficking (Section 893.135, F.S.).
- Any violation specified as a predicate offense for registration as a sexual predator or sexual offender. (Sections 775.21 and 943.0535, F.S.).

Upon sealing of a criminal history record, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with exceptions for certain state employment positions, professional licensing purposes, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.¹⁵

¹⁵ Sections 943.059(6)(b), F.S.

Expunction

A person may have his or her criminal history record expunged under certain circumstances.¹⁶ When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it. The 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.¹⁷ The criminal history record retained by the FDLE is confidential and exempt.¹⁸ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.¹⁹

Court-Ordered Expunction

A court, in its discretion, may order the expunction of a person's criminal history record if the FDLE issues the person a certificate of eligibility for expunction.²⁰ The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.²¹ 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 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.²²

Fees to Seal or Expunge Records

The application for a certificate of eligibility to seal or expunge under either statute must include a certified copy of the disposition. The length of a disposition is set locally. The clerk charges \$2

¹⁶ Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

¹⁷ Section 943.045(16), F.S.

¹⁸ Section 943.0585(6)(a), F.S.

¹⁹ Section 943.0585(6), F.S.

²⁰ Section 943.0585(4), F.S.

²¹ Section 943.0585(2), F.S.

²² Section 943.0585(1), F.S.

per document for a certification fee²³ plus \$1 a page for copying²⁴ the disposition. FDLE charges \$75 for the certificate of eligibility.²⁵

Other Types of Expunction

Other types of expunction include:

- Lawful self-defense expunction.²⁶
- Human trafficking victim expunction.²⁷
- Automatic Juvenile expunction.²⁸
- Early juvenile expunction.²⁹
- Administrative Expunction.³⁰
- Juvenile diversion program expunction.³¹

III. Effect of Proposed Changes:

The bill creates s. 943.0586, F.S., to create a means for expunction of certain misdemeanor cannabis convictions.

A person who has been convicted of a qualifying cannabis offense may petition the court to expunge the criminal record related to such offense. A qualifying cannabis offense is any misdemeanor conviction for obtaining, purchasing, or possession of 20 grams or less of cannabis. However, the offense is not a qualifying offense if the offender was found guilty of, or pled no contest to, an offense in connection with the cannabis offense that was a felony, driving under the influence, or an act of domestic or dating violence.

The term “domestic violence” is defined by the bill to mean 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.
- Dating violence, which is violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship is determined based on the consideration of the following factors:
 - A dating relationship must have existed within the past 6 months;
 - The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
 - The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

²³ Section 28.24(2), F.S.

²⁴ Section 28.24(5)(a), F.S.

²⁵ Section 943.0585(2)(a)4., F.S.

²⁶ Section 943.0578, F.S.

²⁷ Section 943.0583, F.S.

²⁸ Section 943.0515(1)(b)1., F.S.

²⁹ Section 943.0515(1)(b)2., F.S.

³⁰ Section 943.0581, F.S.

³¹ Section 943.0582, F.S.

- Dating violence does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

A petition for expunction can be filed in any court in the judicial circuit of arrest or in any court where the petitioner resides. Thus, the expungement petition need not be filed in the sentencing court. The petition may be filed at any time. The petition must include the petitioner's sworn statement of eligibility and a certified copy of the conviction.

Upon receipt of the petition, the clerk of court is responsible for serving a copy of the petition on the state attorney and the arresting agency. The court must grant the petition unless the state attorney or arresting agency files an objection within 10 days of the filing of the petition. Upon filing an objection, the court must set a hearing, at which the petition must be granted unless the state attorney or arresting agency shows, by clear and convincing evidence, that there is good cause not to grant the petition. At any hearing, the court must allow the petitioner and his or her attorney to appear by telephone or electronically.

If the petition to expunge is granted, the clerk must send a certified copy of the order to the state attorney, arresting agency, and agency known to have received arrest information. The arresting agency must send a copy of the order to any other agency that the arresting agency sent arrest information to.

The bill recognizes that the courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information, to the extent that such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section.

The bill provides that expungement means physical destruction or obliteration of any criminal history record related to cannabis offense.

Once expunged, the petitioner may lawfully deny or fail to acknowledge the arrest or conviction.

There is no charge to a petitioner for the filing of a petition or the furnishing of certified copies necessary to the petition.

The FDLE estimates that currently there are 194,900 individuals with a criminal history record containing a conviction using a variation of the word cannabis under 20 grams without a connection to a guilty felony offence, driving under the influence or an act of domestic violence. This does not account for additional records contained in CCH without a disposition.³²

The bill is effective July 1, 2021.

³² FDLE Analysis, page 3, February 17, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

A law that **requires** a court to seal or expunge its own records violates the separation of powers and is therefore unconstitutional. *Johnson v. State*, 336 So.2d 93 (Fla. 1976).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate as to the court system. SB 468 provides that no fee can be charged to the offender for expunction under this bill. The clerks of court will thus be required to perform duties without compensation. The court system has not furnished an estimate.

The bill does not require certification by FDLE, but requires other duties of FDLE for which there is no corresponding fee. FDLE estimates that 194,900 individuals are eligible for relief under the bill, and that 10 percent of them will annually apply for relief under this bill. To manage the increased workload, the department is requesting 14 FTE positions (one Operations and Management Consultant Manager, one Criminal Justice Information Consultant II, two Criminal Justice Consultant I, four Criminal Justice Information Analyst II, two Criminal Justice Information Analyst I and four Criminal Justice Information Examiners) totaling \$911,038 (\$856,508 recurring). The department

is also requesting \$1,005,000 in nonrecurring funding for necessary technology modifications.

Total FDLE Fiscal for Fiscal Year 2021-22: \$1,916,038 (\$856,508 recurring).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 943.0586, 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.