

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: CS/SB 376

INTRODUCER: Criminal Justice Committee and Senators Burgess and Perry

SUBJECT: Automatic Sealing of Criminal History Records

DATE: April 5, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|---------------|
| 1. | <u>Parker</u> | <u>Stokes</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | _____ | _____ | <u>JU</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 376 amends s. 943.0595, F.S., to specify that a criminal history record is eligible for automatic sealing when an indictment, information, or other charging document was dismissed *as to all counts*, or a not guilty verdict was rendered *as to all counts*.

Additionally, the bill requires the Florida Department of Law Enforcement (FDLE), to notify the clerk upon the sealing of a criminal history record. Upon such notification the clerk must automatically keep confidential the court record in the case giving rise to the FDLE's sealing of such record.

The bill may have an indeterminate fiscal impact on the clerk of court.

The bill is effective July 1, 2023.

II. Present Situation:

Sealing and Expunction of Criminal History Records

A criminal history record includes any non-judicial record maintained by a criminal justice agency¹ that contains criminal history information.² Criminal history information is information collected by criminal justice agencies and consists of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.³

Sealing of a Criminal History Record

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.⁴ A court may order a criminal history record sealed,⁵ rendering it confidential and exempt from Florida's public records laws.⁶ 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
- Certain enumerated entities⁷ for licensing, access authorization, and employment purposes.⁸

Court Ordered Sealing

To seal a record, a person must first apply to the Florida Department of Law Enforcement (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

¹ Section 943.045(11), F.S., provides that criminal justice agencies include a court, the Florida Department of Law Enforcement, the Department of Juvenile Justice, components of the Department of Children and Families, other governmental agencies that administrate criminal justice, and the investigations component of the Department of Financial Services.

² Section 943.045(6), F.S.

³ Section 943.045(5), F.S.

⁴ Section 943.045(19), F.S.

⁵ Section 943.059, F.S.

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

⁷ 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.

⁸ Sections 943.059(6)(a), F.S.

- 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;
- Is no longer under court supervision related to the disposition of the arrest or alleged criminal activity to which the petition to seal pertains; and
- Pays a \$75 processing fee to the FDLE.⁹

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.¹⁰ 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.¹¹ It is solely within the court's discretion to grant or deny a petition to seal.¹²

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.¹³

Automatic Sealing

Some criminal history records are automatically sealed by the FDLE, and do not require a court to order such sealing. Section 943.0595, F.S., provides that the FDLE must automatically seal a criminal history record that does not result from an indictment, information, or other charging document for a forcible felony or for an offense that would designate a person as a sexual offender, 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 in the case giving rise to the criminal history record, but was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction.¹⁴
- A not guilty verdict was rendered by a judge or jury.¹⁵
- A judgement of acquittal was rendered by the jury.¹⁶

The clerk of court must transmit a certified copy of the disposition of the criminal history record that is eligible for automatic expunction to the FDLE. The FDLE must seal the criminal history record upon receipt of the certified copy.¹⁷ There is no limitation on the number of records that a person may have automatically sealed.¹⁸

⁹ Section 943.059(2), F.S.

¹⁰ Section 943.059(3), F.S.

¹¹ Section 943.059(2)(b), F.S.

¹² Section 943.059, F.S.

¹³ Sections 943.059(6)(b), F.S.

¹⁴ A person is not eligible for automatic sealing if the dismissal was pursuant to s. 916.145 or s. 985.19, F.S.

¹⁵ A person is not eligible for automatic sealing if the defendant was found not guilty by reason of insanity.

¹⁶ Section 943.0595(2)(a), F.S.

¹⁷ Section 943.0595(3), F.S.

¹⁸ Section 943.0595(2)(b), F.S.

Automatic sealing of a criminal history record does not require sealing by the court or other criminal justice agencies, or that such record be surrendered to the court. The record must continue to be maintained by the FDLE and other criminal justice agencies.¹⁹

III. Effect of Proposed Changes:

The bill amends s. 943.0595, F.S., to specify that a criminal history record is eligible for automatic sealing when an indictment, information, or other charging document was dismissed *as to all counts*, or a not guilty verdict was rendered *as to all counts*.

Additionally, the bill requires the Florida Department of Law Enforcement (FDLE), to notify the clerk upon the sealing of a criminal history record. Upon such notification the clerk must automatically keep confidential the court record in the case giving rise to the FDLE's sealing of such record.

The bill is effective July 1, 2023.

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.

E. Other Constitutional Issues:

The Florida Constitution provides that the state government shall be divided into legislative, executive, and judicial branches and prohibits a person belonging to one branch from exercising any powers appertaining to either of the other branches unless expressly provided in the Constitution. The bill may be subject to challenges concerning separation of powers as the bill removes judicial discretion regarding the sealing of court records.²⁰

¹⁹ Section 943.0595(3), F.S.

²⁰ Art. III, s. 3, Fla. Const.; *See also 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:

The bill may have an indeterminate fiscal impact on the clerk of courts due to the increased workload to seal criminal history records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section 943.0595, of the Florida Statutes.

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 April 4, 2023:

The committee substitute:

- Specifies that a criminal history record is eligible for automatic sealing when an indictment, information, or other charging document was dismissed as to all counts, or a not guilty verdict was rendered as to all counts.
- Provides that the clerk of court must automatically keep confidential the court record in the case giving rise to the automatic sealing.

B. Amendments:

None.