

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/CS/SB 504

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee; and Senator Rodriguez and others

SUBJECT: Expunction of Criminal History Records

DATE: April 13, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 504 amends s. 943.0585, F.S., to permit a person who has had one 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. This bill also provides that the record is exempt from the 10 year sealing requirement.

Additionally, this bill specifies that a person is not eligible for expunction if the indictment, information, or other charging document in the case giving rise to the criminal history record was dismissed pursuant to s. 916.145, F.S., or s. 985.19, F.S., which provides statutory guidelines for the dismissal of charges when a defendant is adjudicated incompetent to proceed due to mental illness.

This bill may generate additional workload and IT costs for the Florida Department of Law Enforcement (FDLE), which may be offset by revenues from processing fees. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2023.

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, informations, other formal criminal charges, and criminal dispositions.⁴

Expunction of a Criminal History Record

A person may have his or her criminal history record expunged under certain circumstances.⁵ 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.⁶ The criminal history record retained by the FDLE is confidential and exempt.⁷ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.⁸

Certificate of Eligibility

Before petitioning a court to expunge a criminal history record, a person must apply to the FDLE for a certificate of eligibility for expunction. The FDLE must issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

- Is eligible for expunction, as described above;

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 13, 2023).

² Section 943.045(11), F.S., provides that criminal justice agencies include a court, the Florida Department of Law Enforcement (FDLE), 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.

³ Section 943.045(6), F.S.

⁴ Section 943.045(5), F.S.

⁵ Sections 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

⁶ Section 943.045(16), F.S.

⁷ Section 943.0585(6)(a), F.S.

⁸ Section 943.0585(6), F.S.

- Has submitted to the FDLE a written certified statement from the appropriate state attorney or statewide prosecutor which confirms the criminal history record complies with specified criteria;⁹
- Has submitted to the FDLE a certified copy of the disposition of the charge to which the petition pertains; and
- Pays a \$75 processing fee to the FDLE.¹⁰

A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the FDLE.¹¹

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.¹² The FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.¹³ 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 expunge 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.¹⁴

⁹ Section 943.0585(2)(a)2., F.S., Specified criteria include: 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, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court or a judgment of acquittal was rendered, or a verdict of not guilty was rendered; The person has never been adjudicated guilty or delinquent for committing any felony or specified misdemeanors.

¹⁰ Section 943.0585(2)(a)1.-4., F.S.

¹¹ Section 943.0585(2), F.S.

¹² Section 943.0585(4), F.S.

¹³ Section 943.0585(2), F.S.

¹⁴ Section 943.0585(1), F.S.

A criminal history record is not eligible for court-ordered sealing or expunction 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 member¹⁵ (Sections 784.011 and 784.03, F.S.).
- Aggravated assault (Section 784.021, F.S.).
- 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, L.O.F.)).
- 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.).

¹⁵ 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.

- 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.).¹⁶

Other types of expunction include: lawful self-defense expunction;¹⁷ human trafficking victim expunction;¹⁸ automatic juvenile expunction;¹⁹ early juvenile expunction;²⁰ administrative expunction;²¹ and juvenile diversion program expunction.²²

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.²³ A court may order a criminal history record sealed,²⁴ rendering it confidential and exempt from Florida's public records laws.²⁵ 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 entities²⁶ for licensing, access authorization, and employment purposes.²⁷

Certificate of Eligibility

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:

¹⁶ Section 943.0584, F.S.

¹⁷ Section 943.0578, F.S.

¹⁸ Section 943.0583, F.S.

¹⁹ Section 943.0515(1)(b)1., F.S.

²⁰ Section 943.0515(1)(b)2., F.S.

²¹ Section 943.0581, F.S.

²² Section 943.0582, F.S.

²³ Section 943.045(19), F.S.

²⁴ Section 943.059, F.S.

²⁵ Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

²⁶ 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.

²⁷ Sections 943.059(6)(a), F.S.

- 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;
- 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
- Pay a \$75 processing fee to the FDLE.²⁸

Court Ordered Sealing

Upon receiving a certificate of eligibility from the FDLE, a person must petition the court to seal the record.²⁹ 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.³⁰ It is solely within the court's discretion to grant or deny a petition to seal.³¹

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.³²

Dismissal Incompetence to Proceed Due to Mental Illness

Section 916.145, F.S., provides that the charges against a defendant who has been adjudicated incompetent to proceed due to mental illness must be dismissed without prejudice to the state if the defendant remains incompetent to proceed for 5 continuous, uninterrupted years after such determination, unless the court in its order specifies:

- Its reason for believing that the defendant will become competent to proceed within the foreseeable future; and
- The time within which the defendant is expected to become competent to proceed.

The court may dismiss charges against a defendant who has been adjudicated incompetent to proceed due to mental illness 3 years after such determination, unless the charge is for a specified offense.³³

²⁸ Section 943.059(2), F.S.

²⁹ Section 943.059(3), F.S.

³⁰ Section 943.059(2)(b), F.S.

³¹ Section 943.059, F.S.

³² Sections 943.059(6)(b), F.S.

³³ Section 916.145(1)(a)-(u), F.S.; Specified offenses include: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, projecting, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; a forcible felony as defined in s. 776.08, F.S.; an offense where an element of the offense requires the possession, use, or discharge of a firearm; an attempt to commit any offense listed herein; an offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the 5 years immediately preceding the date of arrest for the nonviolent felony sought to be dismissed; an offense allegedly committed by a defendant who, after having been found incompetent and placed under court supervision in a community-based program, is formally charged by a state attorney or the

The state may refile any charge that was dismissed pursuant to s. 916.145, F.S.

Section 985.19, F.S., provides the process for a finding of incompetency in juvenile delinquency cases. The court retains jurisdiction for up to two years after a child is found incompetent. If the court determines at any time that the child will never become competent to proceed, the court may dismiss the delinquency petition. The court must dismiss a delinquency petition if, after the two years following the order of incompetency, the child has not attained competency and there is no evidence that the child will attain competency within a year.³⁴

III. Effect of Proposed Changes:

The bill amends s. 943.0585, F.S., to permit a person who has had one 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. This bill also provides that the record is exempt from the 10 year sealing requirement.

Additionally, this bill specifies that a person is not eligible for expunction if the indictment, information, or other charging document in the case giving rise to the criminal history record was dismissed pursuant to s. 916.145 F.S., or s. 985.19, F.S., which provides statutory guidelines for the dismissal of charges when a defendant is adjudicated incompetent to proceed due to mental illness.

This 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.

Office of the Statewide Prosecutor with a new felony offense; or an offense for which there is an identifiable victim and such victim has not consented to the dismissal.

³⁴ Section 985.19(5), 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:

According to FDLE, this bill may generate additional workload and IT costs. These costs may be offset by revenues derived from processing fees of applicants. The FDLE cites the need for 2 FTE positions (Criminal Justice Information Analyst II) totaling \$139,140 (\$129,776 recurring). If programmatic changes are required, the analysis, design, programming and testing is estimated to cost approximately \$35,000 in nonrecurring funds. In total, the fiscal impact to the agency may be \$174,140 (\$129,776 recurring); these costs may be offset by the \$75 processing fee that must be paid to the FDLE when a person applies for a certificate of eligibility.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0585 of the Florida Statutes.

³⁵ Florida Department of Law Enforcement, 2023 Agency Analysis of SB 504 (March 22, 2023).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations Committee on Criminal and Civil Justice on April 12, 2023:

The committee substitute:

- Adds a reference to s. 985.19, F.S., making a person ineligible for expunction if the case giving rise to the criminal history record was dismissed due to a finding of incompetency in a juvenile proceeding.
- Specifies that the exception is for one prior expunction.

CS by Criminal Justice on March 20, 2023:

The committee substitute:

- Specifies that a person is not eligible for expunction if the indictment, information, or other charging document in the case giving rise to the criminal history record was dismissed pursuant to s. 916.145 F.S.

- B. **Amendments:**

None.