

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 593 Pub. Rec./Automatic Sealing of Criminal History Records

**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee, Criminal Justice Subcommittee, Roach and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 1 N, As CS	Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee	16 Y, 1 N, As CS	Skinner	Toliver
3) Judiciary Committee			

### SUMMARY ANALYSIS

A criminal history record includes any nonjudicial record maintained by a criminal justice agency that contains criminal history information. Criminal justice agencies may collect such information related to identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions. A court may order a criminal history record sealed, rendering it confidential and exempt from Florida's public record laws.

Section 943.0595, F.S., requires the Florida Department of Law Enforcement (FDLE) to automatically seal a criminal history record that did not result from an indictment, information, or other charging document for a forcible felony or an offense which requires the offender to register as a sexual offender, when:

- A charge was not filed in the case giving rise to the criminal history record;
- A charge was filed in the case giving rise to the criminal history record, but was later dismissed or nolle prosequi, unless the dismissal was due to a defendant being declared incompetent to proceed; or
- The defendant was acquitted, either by a verdict of not guilty or by a judgment of acquittal.

The eligibility requirements for automatic sealing do not consider a person's prior criminal history and there is no limitation on the number of times a person may obtain an automatic sealing for an eligible criminal history record.

Automatic sealing of a criminal history record does not require the court to seal the criminal history record and any criminal history record that is automatically sealed must be maintained by FDLE and other criminal justice agencies. In all other respects, automatic sealing of a criminal history record has the same effect as court-ordered sealing under s. 943.059, F.S., and the record may be disclosed in the same manner.

The bill amends s. 943.0595, F.S., to require a court, in addition to FDLE, to automatically seal an eligible criminal history record in its possession upon disposition of a criminal case. Under the bill, a record that is automatically sealed by the court may be disclosed by the court in the same manner as a record sealed under the court ordered-sealing process. The bill retains the requirement under current law for other criminal justice agencies to continue to maintain any automatically sealed criminal history record. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill may have an indeterminate fiscal impact on local governments.

The bill provides an effective date of July 1, 2023.

**Article I, section 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 or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person the right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>2</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>3</sup> Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>5</sup> An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.<sup>6</sup>

##### Criminal History Records

A criminal history record includes any nonjudicial record maintained by a criminal justice agency<sup>7</sup> that contains criminal history information.<sup>8</sup> Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and criminal dispositions.<sup>9</sup>

##### Court-Ordered Sealing

Under s. 943.059, F.S., a court may order a criminal history record to be sealed, rendering it confidential and exempt from Florida's public record laws.<sup>10</sup> The following persons and entities may access a sealed criminal history record:

- The subject of the record;
- His or her attorney;

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

<sup>2</sup> Art. I, s. 24(c), FLA. CONST.

<sup>3</sup> A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. S. 119.011(8), F.S.

<sup>4</sup> S. 119.15, F.S.

<sup>5</sup> S. 119.15(6)(b), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Criminal justice agencies include the court, the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), components of the Department of Financial Services, and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

<sup>8</sup> S. 943.045(6), F.S.

<sup>9</sup> S. 943.045(5), F.S.

<sup>10</sup> S. 943.059(6)(a), F.S.; See s. 119.07(1), F.S. and Art. I, s. 24(a), Fla. Const., for public record requirements.

- 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 entities<sup>11</sup> for licensing access authorization and employment purposes.<sup>12</sup>

If a criminal history record is sealed, 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, seeking appointment as a guardian, 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.<sup>13</sup>

Under s. 943.0584, F.S., a criminal history record is not eligible for court-ordered sealing if the record is a conviction for:

- Sexual misconduct;<sup>14</sup>
- Illegal use of explosives;<sup>15</sup>
- Terrorism;<sup>16</sup>
- Murder;<sup>17</sup>
- Manslaughter or homicide;<sup>18</sup>
- Assault<sup>19</sup> or battery<sup>20</sup> of one family or household member by another family or household member;<sup>21</sup>
- Aggravated assault;<sup>22</sup>
- Felony battery, domestic battery by strangulation, or aggravated battery;<sup>23</sup>
- Stalking or aggravated stalking;<sup>24</sup>
- Luring or enticing a child;<sup>25</sup>
- Human trafficking;<sup>26</sup>
- Kidnapping or false imprisonment;<sup>27</sup>
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation;<sup>28</sup>
- Procuring a person under the age of 18 for prostitution;<sup>29</sup>
- Lewd or lascivious offenses committed upon or in the presence of a child less than 16 years of age;<sup>30</sup>
- Arson;<sup>31</sup>
- Burglary of a dwelling;<sup>32</sup>

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<sup>11</sup> Enumerated entities include criminal justice agencies, The Florida Bar, DCF, 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, DJJ, the Department of Education, a district school board, a university laboratory school, the Florida School for the Deaf and the Blind, the Florida Virtual school, a virtual instruction program, 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.

<sup>12</sup> S. 943.059(6)(a), F.S.

<sup>13</sup> S. 943.059(6)(b), F.S.

<sup>14</sup> Ss. 393.135, 394.4593, and 916.1075, F.S.

<sup>15</sup> Ch. 552, F.S.

<sup>16</sup> S. 775.30, F.S.

<sup>17</sup> Ss. 782.04, 782.065, and 782.09, F.S.

<sup>18</sup> Ss. 782.07, 782.071, and 782.072, F.S.

<sup>19</sup> S. 784.011, F.S.

<sup>20</sup> S. 784.03, F.S.

<sup>21</sup> S. 741.28(3), F.S.

<sup>22</sup> S. 784.021, F.S.

<sup>23</sup> Ss. 784.03, 784.041, and 784.045, F.S.

<sup>24</sup> S. 784.048, F.S.

<sup>25</sup> S. 787.025, F.S.

<sup>26</sup> S. 787.06, F.S.

<sup>27</sup> Ss. 787.01 and 787.02, F.S.

<sup>28</sup> Ch. 794, F.S.

<sup>29</sup> S. 796.03, F.S. (2013) (repealed by ch. 2014-160, §10, Laws of Fla.).

<sup>30</sup> S. 800.04, F.S.

<sup>31</sup> S. 806.01, F.S.

<sup>32</sup> S. 810.02, F.S.

- Voyeurism or video voyeurism;<sup>33</sup>
- Robbery or robbery by sudden snatching;<sup>34</sup>
- Carjacking;<sup>35</sup>
- Home invasion robbery;<sup>36</sup>
- A violation of the Florida Communications Fraud Act;<sup>37</sup>
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult;<sup>38</sup>
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;<sup>39</sup>
- Child abuse or aggravated child abuse;<sup>40</sup>
- Sexual performance by a child;<sup>41</sup>
- Offenses by public officers and employees;<sup>42</sup>
- Certain acts in connection with obscenity;<sup>43</sup>
- A violation of the Computer Pornography and Child Exploitation Prevention Act;<sup>44</sup>
- Selling or buying of minors;<sup>45</sup>
- Aircraft piracy;<sup>46</sup>
- Manufacturing a controlled substance;<sup>47</sup>
- Drug trafficking;<sup>48</sup> or
- Any violation specified as a predicate offense for registration as a sexual predator<sup>49</sup> or sexual offender.<sup>50</sup>

To obtain a court-ordered sealing, a person must first apply to FDLE for a certificate of eligibility, which 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 an ineligible offense;
- Has never, prior to filing the application for a certificate of eligibility, been either:
  - Adjudicated guilty in this state of any criminal offense; or
  - Adjudicated delinquent in this state of certain enumerated crimes 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.<sup>51</sup>

Upon receiving a certificate of eligibility from FDLE, a person must petition the court to seal the record.<sup>52</sup> A complete petition contains both a valid certificate of eligibility, issued within the previous 12

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<sup>33</sup> Ss. 810.14 and 810.145, F.S.

<sup>34</sup> Ss. 812.13 and 812.131, F.S.

<sup>35</sup> S. 812.133, F.S.

<sup>36</sup> S. 812.135, F.S.

<sup>37</sup> S. 817.034, F.S.

<sup>38</sup> S. 825.102, F.S.

<sup>39</sup> S. 825.1025, F.S.

<sup>40</sup> S. 827.03, F.S.

<sup>41</sup> S. 827.071, F.S.

<sup>42</sup> Ch. 839, F.S.

<sup>43</sup> S. 847.0133, F.S.

<sup>44</sup> S. 847.0135, F.S.

<sup>45</sup> S. 847.0145, F.S.

<sup>46</sup> S. 860.16, F.S.

<sup>47</sup> Ch. 893, F.S.

<sup>48</sup> S. 893.135, F.S.

<sup>49</sup> S. 775.21, F.S.

<sup>50</sup> S. 943.0435, F.S.

<sup>51</sup> S. 943.059(1-2), F.S.

<sup>52</sup> S. 943.059(3), F.S.

months, and a sworn statement from the petitioner attesting to his or her eligibility.<sup>53</sup> It is solely within the court's discretion to grant or deny a petition to seal a criminal history record.<sup>54</sup>

### Automatic Sealing by FDLE

Section 943.0595, F.S., requires FDLE to automatically seal a criminal history record that did not result from an indictment, information, or other charging document for a forcible felony<sup>55</sup> or an offense which requires the offender to register as a sexual offender,<sup>56</sup> when:

- A charge was not filed in the case giving rise to the criminal history record;
- A charge was filed in the case giving rise to the criminal history record, but was later dismissed or nolle prosequi, unless the dismissal was due to the defendant being declared incompetent to proceed;<sup>57</sup> or
- The defendant was acquitted, either by a verdict of not guilty or by a judgment of acquittal.<sup>58</sup>

The eligibility requirements for automatic sealing do not consider a person's prior criminal history and there is no limitation on the number of times a person may obtain an automatic sealing for an eligible criminal history record.<sup>59</sup>

Automatic sealing of a criminal history record does not require the court to seal the criminal history record and any criminal history record that is automatically sealed must be maintained by FDLE and other criminal justice agencies.<sup>60</sup> In all other respects, automatic sealing of a criminal history record has the same effect as court-ordered sealing under s. 943.059, F.S., and the record may be disclosed in the same manner.<sup>61</sup>

### **Effect of Proposed Changes**

The bill amends s. 943.0595, F.S., to require a court, in addition to FDLE, to automatically seal an eligible criminal history record in its possession upon the disposition of a criminal case.

Under the bill, a record that is automatically sealed by the court may be disclosed by the court in the same manner as a record sealed under the court ordered sealing process. The bill retains the requirement under current law for other criminal justice agencies to continue to maintain any automatically sealed criminal history record.

The bill also includes the constitutionally required public necessity statement,<sup>62</sup> which provides, in part, that the eligible criminal history records that have been automatically sealed by FDLE and a court because an indictment, information, or other charging document was not filed or issued, was dismissed or nolle prosequi, or resulted in a judgement of acquittal or verdict of not guilty is confidential and exempt from public record requirements. The public necessity statement provides that the presence of a criminal history in a person's past that did not result in a criminal conviction can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to becoming a productive,

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<sup>53</sup> S. 943.059(2-3), F.S.

<sup>54</sup> S. 943.059(4)(e), F.S.

<sup>55</sup> Forcible felonies include treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.

<sup>56</sup> A conviction for an offense enumerated in s. 943.0435(1)(h)1.a.(l), F.S., requires the offender to register as a sexual offender.

<sup>57</sup> A defendant is incompetent to proceed when he or she is unable to consult with counsel with a reasonable degree of rational understanding or does not have a rational and factual understanding of the pending proceedings. Fla. R. Crim. P. 3.211; *Dusky v. United States*, 362 U.S. 402 (1960). Section 916.145, F.S., requires a court to dismiss the charges against a defendant who has been adjudicated incompetent to proceed due to mental illness under certain circumstances. Section 985.19, F.S., requires a court to dismiss the delinquency petition of a minor under certain circumstances.

<sup>58</sup> S. 943.0595(2)(a), F.S.

<sup>59</sup> S. 943.0595(2)(b), F.S.

<sup>60</sup> S. 943.0595(3)(b), F.S.

<sup>61</sup> S. 943.0595(3)(c), F.S.

<sup>62</sup> Art. I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

contributing, self-sustaining member of society and such negative consequences in such cases are unwarranted.

The bill provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 943.0595, F.S.; relating to automatic sealing of criminal history records.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on clerks of court. Under the bill, clerks of court may experience an increased workload by being required to redact more criminal history information from a greater number of sealed criminal history records.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article II, s. 3, of 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 implicate these constitutional provisions concerning separation of powers as the bill removes judicial discretion regarding the sealing of court-held criminal history records.

### Vote 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 or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that the Legislature finds that such eligible criminal history records that have been automatically sealed be made confidential and exempt from public record requirements because the presence of a criminal history in a person's past that did not result in a criminal conviction can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to becoming a productive, contributing, self-sustaining member of society and such negative consequences in such cases are unwarranted.

### Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill requires a court to automatically seal a criminal history record, which does not appear to be broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 7, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made a technical change to clarify that courts are excluded from the list of criminal justice agencies that are not required to automatically seal records.

On March 29, 2023, the Ethics, Elections & Open Government Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS converted the bill into a public record exemption bill, included the required public necessity statement, and made clarifying changes.

The analysis is drafted to the committee substitute adopted by the Ethics, Elections & Open Government Subcommittee.