

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 605 Expunction of Criminal History Records

**SPONSOR(S):** Criminal Justice Subcommittee, Smith and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 1 N, As CS	Padgett	Hall
2) Judiciary Committee	21 Y, 0 N	Padgett	Kramer

### SUMMARY ANALYSIS

A criminal history record includes any nonjudicial record maintained by a criminal justice agency that contains criminal history information. When a criminal history record is expunged, the criminal justice agencies possessing the record must physically destroy or obliterate it, and a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.

Section 943.0585, F.S., authorizes a court, in its sole discretion, to order a criminal justice agency to expunge a person's criminal history record if a person meets specified criteria related to his or her prior criminal history, the crime which he or she is seeking to have expunged, the disposition of the case giving rise to the criminal history record, and whether the person has previously had a criminal history record sealed or expunged. Generally, a person may only have one criminal history record sealed or expunged by court order unless:

- Expunction is sought for a criminal history record previously sealed for at least 10 years; and
- The record was sealed because adjudication was withheld, or because all charges related to the arrest or alleged criminal activity to which the petition for expunction pertains were not dismissed before trial, and the trial did not result in an adjudication of guilt.

There are several other types of expunction such as juvenile diversion expunction, automatic juvenile expunction, and early juvenile expunction which are not considered court-ordered expunction for the purposes of s. 943.0585, F.S., and are not subject to the one-time limitation for court-ordered expunction. As a result, a person who uses a court-ordered expunction to remove a juvenile offense from his or her criminal record will have used his or her one available court-ordered expunction, even though he or she may have been eligible for an alternative expunction as a juvenile.

CS/HB 605 amends s. 943.0585, F.S., to create an exception to court-ordered expunction's one time eligibility limitation for a person seeking to expunge a criminal history record when he or she has received a prior specified court-ordered expunction. The bill allows a subsequent court-ordered expunction when:

- The prior expunction was granted for an offense that was committed when the person was a minor, provided he or she was not charged as an adult; and
- The criminal history record is otherwise eligible for expunction.

Under the bill, a person who receives a court-ordered expunction for an offense committed when the person was a juvenile will be treated the same way as a person who received a juvenile diversion expunction, automatic juvenile expunction, or early juvenile expunction when seeking a subsequent court-ordered expunction. The court still retains discretion on whether to expunge a criminal history record and the state attorney is still provided with notice of a petition to expunge and the opportunity to object to such a petition, which is unchanged from current law.

The bill also makes a person *ineligible* for a court-ordered expunction if the case giving rise to the criminal history record was dismissed by a court because the defendant was found incompetent to proceed under s. 916.145, F.S., or s. 985.19, F.S.

The bill will likely have a negative indeterminate fiscal impact on the Florida Department of Law Enforcement (FDLE) due to an increased number of records that will be eligible for expunction and the related costs associated with processing applications for expunction. The cost of the increased workload may be offset by the \$75 fee processing fee that is required to be remitted to FDLE when a person applies for a certificate of eligibility for expunction, unless such fee is waived by FDLE.

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

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives .**

**STORAGE NAME:** h0605c.JDC

**DATE:** 3/14/2023

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

A criminal history record includes any nonjudicial record maintained by a criminal justice agency<sup>1</sup> that contains criminal history information.<sup>2</sup> Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.<sup>3</sup>

#### Court-Ordered Expunction

An adult or juvenile may have his or her criminal history record expunged under certain circumstances.<sup>4</sup> When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it.<sup>5</sup> 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.<sup>6</sup>

Under s. 943.0585(1), F.S., a court, in its sole discretion, may order a criminal justice agency to expunge a person's criminal history record if FDLE issues the person a certificate of eligibility for expunction.<sup>7</sup> FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.<sup>8</sup> 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 listed in s. 943.0584, F.S.<sup>9</sup>
- The person has never, as of the date when the application to FDLE for a certificate of eligibility is filed, been adjudicated guilty of a criminal offense.
- The person has never, as of the date when the application to FDLE for a certificate of eligibility is filed, been adjudicated delinquent for committing any felony or certain enumerated misdemeanor offenses,<sup>10</sup> unless such adjudication of delinquency has been expunged.
- The person has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the current petition for expunction pertains.
- The person is no longer under court supervision for the alleged criminal activity to which the current petition for expunction pertains.
- The person has never had a record sealed or expunged by court order previously, unless;<sup>11</sup>

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<sup>1</sup> Criminal justice agencies include the court, the Department of Law Enforcement, the Department of Juvenile Justice, components of the Department of Children and Families, and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

<sup>2</sup> S. 943.045(6), F.S.

<sup>3</sup> S. 943.045(5), F.S.

<sup>4</sup> Ss. 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

<sup>5</sup> S. 943.045(16), F.S.

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

<sup>7</sup> S. 943.0585(1), F.S.

<sup>8</sup> S. 943.0585(2), F.S.

<sup>9</sup> Some offenses ineligible for expunction that are enumerated in s. 943.0584, F.S., include murder, sexual battery, aggravated battery, domestic battery, lewd or lascivious offenses, burglary, robbery, and drug trafficking.

<sup>10</sup> Examples of disqualifying misdemeanor offenses include assault, battery, carrying a concealed weapon, petit theft, and exposure of sexual organs. S. 943.0585(1)(d), F.S.

<sup>11</sup> S. 943.0585(1)(g), F.S.

- Expunction is sought for a criminal history record previously sealed for at least 10 years;<sup>12</sup> and
- The record was sealed because adjudication was withheld, or because all charges related to the arrest or alleged criminal activity to which the petition for expunction pertains were not dismissed before trial, and the trial did not result in an adjudication of guilt.

After a person files a petition to expunge a criminal history record with the court, a copy of the petition is provided to the state attorney and the arresting law enforcement agency.<sup>13</sup> The state attorney and the arresting law enforcement agency may file with the court a response to the petition to expunge objecting to the court granting such expunction.<sup>14</sup>

If the court grants a petition to expunge a person's criminal history record, the person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to specified exceptions.<sup>15</sup>

## Juvenile Expunction

### *Juvenile Diversion Expunction*

A juvenile who completes one of the following diversion programs may petition for juvenile diversion expunction:<sup>16</sup>

- Civil citation or a similar prearrest diversion program;<sup>17</sup>
- Prearrest or postarrest diversion program;<sup>18</sup>
- Neighborhood restorative justice;<sup>19</sup>
- Community arbitration;<sup>20</sup> or
- A program to which a state attorney refers the juvenile.<sup>21</sup>

FDLE is required to expunge a juvenile's nonjudicial arrest record after he or she successfully completes a diversion program, if the juvenile:

- Submits an application for diversion expunction;
- Submits a written statement from the state attorney for the county in which the arrest occurred certifying that he or she:
  - Successfully completed that county's diversion program;
  - That his or her participation in the program was based on an arrest for a misdemeanor or for a felony other than a forcible felony<sup>22</sup> or a felony involving the manufacture, sale, purchase, transport, possession, or use of a firearm or weapon; and
  - That he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation; and
- Has never been, before the filing of the application for expunction, charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.<sup>23</sup>

<sup>12</sup> The requirement for a record to have been sealed for 10 years does not apply if a plea was not entered or all charges related to the arrest or alleged criminal activity to which the petition for expunction pertains were dismissed before trial or a judgment of acquittal was rendered by a judge or a verdict of not guilty was rendered by a jury. S. 943.0585(1)(h), F.S.

<sup>13</sup> S. 943.0585(5)(a), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> S. 943.0585(6)(b), F.S. Such exceptions include when the person is a defendant in a criminal prosecution; when the person is seeking an additional sealing or expunction; when the person is seeking employment with a criminal justice agency, admission to the Florida Bar, or employment or licensure by specified agencies for certain sensitive employment positions; or when a person applies for appointment as a guardian under s. 744.3125, F.S.

<sup>16</sup> S. 943.0582, F.S.

<sup>17</sup> S. 985.12, F.S.

<sup>18</sup> S. 985.125, F.S.

<sup>19</sup> S. 985.155, F.S.

<sup>20</sup> S. 985.16, F.S.

<sup>21</sup> S. 985.15(1)(g), F.S.

<sup>22</sup> "Forcible felony" means 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>23</sup> S. 943.0582(3), F.S.

Juvenile diversion expunction has the same effect as court-ordered expunction of a criminal history record under s. 943.0585, F.S., except that:

- FDLE may make an expunged juvenile diversion criminal record available to a criminal justice agency for the purpose of:
  - Determining eligibility for diversion programs;
  - A criminal investigation; or
  - When making a prosecutorial decision;<sup>24</sup> and
- Local criminal justice agencies in the county in which an arrest occurred must seal instead of destroy any relevant records.<sup>25</sup>

A juvenile who successfully completes a diversion program for a first-time offense may lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record, unless the inquiry is made by a criminal justice agency for the purpose of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision under s. 985.15, F.S.<sup>26</sup>

#### *Automatic Juvenile Expunction*

Section 943.0515, F.S., requires FDLE to automatically expunge a criminal history record of a juvenile when he or she reaches the age of 21 unless the person was classified as a serious or habitual juvenile offender or was committed to a juvenile correctional facility or juvenile prison. FDLE is required to retain the criminal history of a person who was classified as a serious or habitual juvenile offender or a person who was committed to a juvenile correctional facility or juvenile prison for five years after such person reaches 21 years of age.<sup>27</sup>

A juvenile's criminal history may not be expunged and must be merged with, and retained as part of, the person's adult record if:

- A person 18 years of age or older has a juvenile criminal history record has not been expunged and such person is charged with or convicted of a forcible felony; or
- The juvenile was adjudicated as an adult for committing a forcible felony.<sup>28</sup>

#### *Early Juvenile Expunction*

Under s. 943.0515(1)(b)2., F.S., a person may apply to FDLE to have his or her criminal history record expunged before he or she reaches 21 years of age. FDLE must expunge the juvenile criminal history record before the applicant turns 21 years old if:

- The minor has reached 18 years of age and has not been charged with or found to have committed a criminal offense in the five-year period before the application; and
- The State Attorney for each circuit in which an offense specified in the criminal history record occurred has given approval.<sup>29</sup>

Juvenile diversion expunction, automatic juvenile expunction, and early juvenile expunction are not considered court-ordered expunction for the purposes of s. 943.0585, F.S., and are not subject to court-ordered expunction's one time limitation. As a result, a person who uses a court-ordered expunction to remove a juvenile offense from his or her criminal record will have used his or her one available court-ordered expunction under current law, even though he or she may have been eligible for an alternative expunction as a juvenile.

### **Effect of Proposed Changes**

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<sup>24</sup> S. 943.0582(2)(b)1., F.S.

<sup>25</sup> S. 943.0582(2)(b)2., F.S.

<sup>26</sup> Ss. 985.126(5) and 943.045(11), F.S.

<sup>27</sup> S. 943.0515(1)(a), F.S.

<sup>28</sup> S. 943.0515(2), F.S.

<sup>29</sup> S. 943.0515(1)(b)2, F.S.

CS/HB 605 amends s. 943.0585, F.S., to create an exception to court-ordered expunction's one time eligibility limitation for a person seeking to expunge a criminal history record when he or she has received a prior specified court-ordered expunction. The bill allows a subsequent court-ordered expunction when:

- The prior expunction was granted for an offense that was committed when the person was a minor, provided he or she was not charged as an adult; and
- The criminal history record is otherwise eligible for expunction.

The bill provides that the criminal history record is exempt from the 10 year sealing requirement in s. 943.0585(1)(h), F.S.

Under the bill, a person who receives a court-ordered expunction for an offense committed when the person was a juvenile will be treated the same way as a person who received a juvenile diversion expunction, automatic juvenile expunction, or early juvenile expunction when seeking a subsequent court-ordered expunction. The court still retains discretion on whether to expunge a criminal history record and the state attorney is still provided with notice of a petition to expunge and the opportunity to object to such a petition, which is unchanged from current law.

The bill also makes a person *ineligible* for a court-ordered expunction if the case giving rise to the criminal history record was dismissed by a court because the defendant was found incompetent to proceed under s. 916.145, F.S., or s. 985.19, F.S.

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

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

**Section 2:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

See Fiscal Comments.

##### 2. Expenditures:

See Fiscal Comments.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill may have a negative indeterminate impact on local government expenditures related to complying with orders to expunge. The costs, however, would likely be absorbed within existing resources they are part of the day-to-day responsibilities of local government.

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

None.

**D. FISCAL COMMENTS:**

The bill will likely have a negative indeterminate fiscal impact on FDLE due to an increased number of records that will be eligible for expunction and the related costs associated with processing applications for expunction. The cost of the increased workload may be offset by the \$75 fee processing fee that is required to be remitted to FDLE when a person applies for a certificate of eligibility for expunction, unless such fee is waived by FDLE.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

FDLE has sufficient rulemaking authority to implement the provisions of the bill.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 7, 2023, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made a person ineligible for a court-ordered expunction if the case giving rise to the criminal history record was dismissed by a court because the defendant was found incompetent to proceed under s. 916.145, F.S., or s. 985.19, F.S.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.