HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1259 Criminal Records
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Wright	Anstead

SUMMARY ANALYSIS

A criminal history record includes any nonjudicial record maintained by a criminal justice agency that contains criminal history information. Such information may be collected by criminal justice agencies 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 records laws.

To obtain a court sealing, a person must first apply to the Department of Law Enforcement (FDLE) for a certificate of eligibility, which FDLE must issue to a person who, among other statutory qualifiers, is not seeking to seal a criminal history record relating to a violation of certain enumerated offenses, and has never secured a prior sealing or expunction.

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

In 2019, an additional process for sealing of criminal records was adopted, providing for the automatic sealing of records by FDLE. A criminal history record that does not relate to a forcible felony or an offense which requires the offender to register as a sexual offender, must be automatically sealed by FDLE when:

- Charges were not filed;
- Charges were dismissed, unless the dismissal was due to incompetency to proceed; or
- The defendant was acquitted, by either a verdict of not guilty or a judgment of acquittal.

Unlike the court-ordered sealing process, there no limit on the number of criminal records a person may seal by the automatic sealing process by FDLE.

Currently, a criminal justice agency or a court is not required to seal its records as a result of automatic sealing by FDLE. Thus, prosecutors, law enforcement, and judges retain access to certain records automatically sealed by FDLE.

The PCS provides that a person is eligible to petition a court to seal a criminal history record when the criminal history record was automatically sealed by FDLE, and the subject of the sealed record presents proof of the sealing by FDLE to the court.

The PCS allows the court to grant the sealing of a criminal history record that was automatically sealed by FDLE at any time and without limitation based on any prior sealing of a subject's criminal records.

The PCS requires FDLE to issue a certificate of eligibility for sealing upon request to a person who is the subject of a criminal history record automatically sealed by FDLE.

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

The PCS provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sealing of Criminal History Records

A criminal history record includes any nonjudicial record maintained by a criminal justice agency[1] that contains criminal history information.[2] 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.[3]

Sealing

A court may order a criminal history record sealed,[4] rendering it confidential and exempt from Florida's public records laws.[5] Only the following 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 entities[6] for licensing, access authorization, and employment purposes.[7]

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.[8]

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

- Sexual misconduct;[9]
- Illegal use of explosives;[10]
- Terrorism;[11]
- Murder;[12]
- Manslaughter or homicide;[13]

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[1] Criminal justice agencies include the court, the Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

[2] S. 943.045(6), F.S.

[3] S. 943.045(5), F.S.

[4] S. 943.059, F.S.

[5] Ss. 943.059(4) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

[6] 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.

[7] S. 943.059(4)(a), F.S.

[8] *Id.*

[9] Ss. 393.135, 394.4593, and 916.1075, F.S.

[10] Ch. 552, F.S.

[11] S. 775.30, F.S.

[12] Ss. 782.04, 782.065, and 782.09, F.S.

[13] Ss. 782.07, 782.071, and 782.072, F.S.

- Assault[14] or battery[15] of one family or household member by another family or household member;[16]
- Aggravated assault;[17]
- Felony battery, domestic battery by strangulation, or aggravated battery;[18]
- Stalking or aggravated stalking;[19]
- Luring or enticing a child;[20]
- Human trafficking;[21]
- Kidnapping or false imprisonment;[22]
- Sexual battery, unlawful sexual activity with a minor, or female genital mutilation;[23]
- Procuring a person under the age of 18 for prostitution;[24]
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;[25]
- Arson;[26]
- Burglary of a dwelling;[27]
- Voyeurism or video voyeurism;[28]
- Robbery or robbery by sudden snatching;[29]
- Carjacking;[30]
- Home invasion robbery;[31]
- A violation of the Florida Communications Fraud Act;[32]
- Abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult;[33]
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;[34]
- Child abuse or aggravated child abuse;[35]
- Sexual performance by a child;[36]
- Offenses by public officers and employees;[37]
- Certain acts in connection with obscenity;[38]
- A violation of the Computer Pornography and Child Exploitation Prevention Act;[39]
- Selling or buying of minors;[40]

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[14] S. 784.011, F.S.
[15] S. 784.03, F.S.
[16] S. 741.28(3), F.S.
[17] S. 784.021, F.S.
[18] Ss. 784.03, 784.041, and 784.045, F.S.
[19] S. 784.048, F.S.
[20] S. 787.025, F.S.
[21] S. 787.06, F.S.
[22] Ss. 787.01 and 787.02, F.S.
[23] Ch. 794, F.S.
[24] S. 796.03, F.S. (2013) (repealed by ch. 2014-160, §10, Laws of Fla.).
[25] S. 800.04, F.S.
[26] S. 806.01, F.S.
[27] S. 810.02, F.S.
[28] Ss. 810.14 and 810.145, F.S.
[29] Ss. 812.13 and 812.131, F.S.
[30] S. 812.133, F.S.
[31] S. 812.135, F.S.
[32] S. 817.034, F.S.
[33] S. 825.102, F.S.
[34] S. 825.1025, F.S.
[35] S. 827.03, F.S.
[36] S. 827.071, F.S.
[37] Ch. 839, F.S.
[38] S. 847.0133, F.S.
[39] S. 893.0135, F.S.
[40] S. 847.0145, F.S.

- Aircraft piracy;[41]
- Manufacturing a controlled substance;[42]
- Drug trafficking;[43] or
- Any violation specified as a predicate offense for registration as a sexual predator[44] or sexual offender.[45]

To obtain a court-ordered sealing, a person must first apply to the Department of Law Enforcement (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 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 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.[46]

Upon receiving a certificate of eligibility from FDLE, a person must petition the court to seal the record.[47] 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.[48] It is solely within the court's discretion to grant or deny a petition to seal.[49]

Automatic Sealing by FDLE

In 2019, an additional process for sealing of criminal records was adopted by the Florida Legislature. It provides for the automatic sealing of certain criminal history records by FDLE.

FDLE must automatically seal a criminal history record if the record does not result from an indictment, information, or other charging document for a forcible felony[50] or for an offense which requires the offender to register as a sexual offender[51] when:[52]

- Charges were not filed;
- Charges were dismissed, unless the dismissal was due to incompetency to proceed;[53] or
- The defendant was acquitted, by either a verdict of not guilty or a judgment of acquittal.

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[41] S. 860.16, F.S.
[42] Ch. 893, F.S.
[43] S. 893.135, F.S.
[44] S. 775.21, F.S.
[45] S. 943.0535, F.S.
[46] S. 943.059(2), F.S.
[47] *Id.*
[48] S. 943.059(1), F.S.
[49] S. 943.059, F.S.
[50] 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.
[51] Conviction for an offense enumerated in s. 943.0435(1)(h)1.a.(I), F.S., requires the offender to register as a sexual offender.
[52] S. 943.0595(2)(a), F.S.
[53] 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.

Unlike the court-ordered sealing process, automatic sealing is not contingent on the person's prior criminal history. A prior adjudication of guilt does not disqualify an applicant. Additionally, there is no limit on the number of sealings a person may receive by this process.[54]

However, if the criminal history record is an indictment, information, or other charging document for a forcible felony or a sexual offender offense, the record is not eligible for automatic sealing.[55]

Currently, a criminal justice agency or a court is not required to seal its records as a result of automatic sealing.[56] Thus, certain government agencies, prosecutors, law enforcement, and judges retain access to a record automatically sealed by FDLE.[57]

Separation of Powers

Article II, section 3 of the Florida Constitution, known as the "separation of powers doctrine," provides that "no person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided [in the constitution]." The Florida Constitution vests legislative power in the legislative branch, executive power in the executive branch, and judicial power in the judicial branch.[58]

Generally, the legislature has the power to enact substantive law for which courts are established to administer, while the Florida judiciary has the power to enact procedural law.[59] Substantive law is that which defines, creates, or regulates rights, which may be enforced by the judiciary.[60] In contrast, procedural law is the form, manner, or means by which substantive law is implemented, including all rules governing the parties, their counsel and the court throughout the progress of the case from the time of its initiation until final judgment and its execution; it may be described as the "machinery of the judicial process as opposed to the product thereof."[61] However, the legislature can repeal rules of court by general law enacted by a two-thirds vote of the members of each house, but the legislature may not amend or supersede such rules.[62]

Effect of the PCS

The PCS provides that a person is eligible to petition a court to seal a criminal history record when the criminal history record was automatically sealed by FDLE, and the subject of the sealed record presents proof of the sealing by FDLE to the court.

The PCS allows the court to grant the sealing of a criminal history record that was automatically sealed by FDLE at any time and without limitation based on any prior sealing by FDLE of a subject's criminal records.

The PCS requires FDLE to issue a certificate of eligibility for sealing upon request to a person who is the subject of a criminal history record automatically sealed by FDLE.

The PCS provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.059, F.S.; relating to when a court may seal a record.

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[54] S. 943.0595(2)(b), F.S.
[55] S. 943.0595(2)(a), F.S.
[56] S. 943.0595(3)(b), F.S.
[57] S. 943.0595(3)(c), F.S.
[58] Art. III, IV, and V, Fla. Const.
[59] Art. III and V, Fla. Const.; *DeLisle v. Crane Co.*, 258 So. 3d 1219 (Fla. 2018).
[60] *DeLisle*, 259 So. 3d at 1224.
[61] *Id.* at 1224; *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65 (Fla. 1972).
[62] *In re Clarification of Fla. Rules of Practice and Procedure,* 281 So. 2d 204 (Fla. 1973).

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   FDLE provided the following estimate based on a similar Senate bill:[63]

   Requiring FDLE to issue a certificate of eligibility would result in an application process. Assuming FDLE adopts the same application rules as outlined for relief under court-ordered sealing laws, there would be a processing fee of $75 per application. Based on 24,015 estimated new applications for processing, FDLE would collect approximately $1.8 million in new fees. If there is no application fee applied, there no revenue would be generated.

2. Expenditures:

   FDLE provided the following estimate based on a similar Senate bill:[64]

   FDLE estimated that it will need 60 additional full time employees (FTEs) totaling $4,142,020 ($3,869,260 recurring) and approximately $147,000 to modify existing IT systems necessary to implement the changes related to a similar Senate bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   There may be an increase in requests to courts for sealing of records, and therefore an increase in workload.

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 PCS does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[63] Florida Department of Law Enforcement, Agency Analysis of 2022 Senate Bill 1302, p. 3 (Jan. 13, 2022).
[64] *Id*. at 3-5.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES