

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1302

INTRODUCER: Appropriations Committee; Regulated Industries Committee; and Senators Burgess and Perry

SUBJECT: Criminal History Records

DATE: March 2, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Recommend: Favorable</u>
3.	<u>Kolich</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1302 amends section 943.0595, Florida Statutes, to expand provisions relating to the eligibility of automatic sealing of criminal history records by providing that the *court* must seal criminal history records that are eligible for automatic sealing. Currently, the Florida Department of Law Enforcement (FDLE) is the only entity required to automatically seal certain criminal history records under this section.

Additionally, the bill expands the process and effect of automatic sealing by directing the *clerk of court*, upon the disposition of a criminal case resulting in a criminal history record eligible for automatic sealing, to seal the criminal history record. Currently, the clerk of court transmits certified copies of such dispositions to the FDLE, and the FDLE seals the criminal history record.

The bill provides that the court may disclose a record it has automatically sealed in the same manner as a record sealed pursuant to section 943.059, Florida Statutes, relating to court ordered sealing.

The bill may have an indeterminate negative fiscal impact on the clerks of court and the courts. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

## II. Present Situation:

### Sealing of Criminal History Records

A criminal history record is any nonjudicial record maintained by a criminal justice agency<sup>1</sup> containing criminal history information.<sup>2</sup> Criminal history information is information collected by criminal justice agencies on persons, which consists of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and disposition thereof.<sup>3</sup>

A criminal history record of an adult is generally a public record unless sealed or expunged.<sup>4</sup> The “sealing of a criminal history record” means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.<sup>5</sup>

### *Automatic Sealing of Criminal History Record*

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<sup>6</sup> or for other specified offenses,<sup>7</sup> 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;<sup>8</sup>
- A not guilty verdict was rendered by a judge or jury;<sup>9</sup> or

<sup>1</sup> Section 943.045(11), F.S., provides that “criminal justice agency” means: a court; the FDLE; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice; or the investigations component of the Department of Financial Services which investigates the crimes of fraud and official misconduct in all public assistance given to residents of this state or provided to others by this state.

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

<sup>3</sup> Section 943.045(5), F.S. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

<sup>4</sup> Section 943.045(16), F.S. The “expunction of a criminal history record” means the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction

<sup>5</sup> Section 943.045(19), F.S.

<sup>6</sup> Section 776.08, F.S., provides that a “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.

<sup>7</sup> Specified offenses include certain sexual offenses provided in s. 943.0435(1)(h)1.a.(I), F.S.

<sup>8</sup> Section 943.0595(2)(a)2., F.S., provides a person is not eligible for automatic sealing if the dismissal was pursuant to ss. 916.145 or 985.19, F.S., relating to adjudication of incompetency to proceed.

<sup>9</sup> Section 943.059(2)(a)3., F.S., provides a person is not eligible for automatic sealing under this section if the defendant was found not guilty by reason of insanity.

- A judgment of acquittal was rendered by a judge.<sup>10</sup>

There is no limitation on the number of times a person may obtain an automatic sealing for an eligible criminal history record.<sup>11</sup> The clerk of court must transmit a certified copy of the disposition of the criminal history record to the FDLE, which must seal the record. The automatic sealing of such records does not require sealing by the court or other criminal justice agencies, or that such record be surrendered to the court, and such record must continue to be maintained by the department and other criminal justice agencies.<sup>12</sup>

Records automatically sealed by the FDLE have the same effect, and the department may disclose such record in the same manner as a record ordered sealed by the court under s. 943.059, F.S.<sup>13</sup>

### ***Court Ordered Sealing***

A person seeking the court ordered sealing of a record must first obtain a certificate of eligibility from the FDLE, and file a petition with the court for an order to seal his or her criminal history record.<sup>14</sup> The FDLE must issue a certificate of eligibility if the person meets the statutory eligibility requirements,<sup>15</sup> submits a certified copy of the disposition of charge to which the petition pertains, and remits a \$75 processing fee to the FDLE.<sup>16</sup>

The court, at its sole discretion, may deny a petition to seal a criminal history record.<sup>17</sup> If the court grants the petition, the clerk of court must certify copies of the order to the appropriate state attorney, statewide prosecutor and arresting agency, and any other agency that the records of the court reflect has received the criminal history record from the court.<sup>18</sup>

A criminal history record that is ordered sealed, is confidential and exempt from Florida's public records laws.<sup>19</sup> The following persons and entities may access a sealed criminal history record:

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

<sup>10</sup> Section 943.0595(2), F.S.

<sup>11</sup> Section 943.0595(2)(b), F.S.

<sup>12</sup> Section 943.0595(3), F.S.

<sup>13</sup> Section 943.0595(3)(c), F.S.

<sup>14</sup> Section 943.059, F.S.

<sup>15</sup> Section 943.059(1), F.S., provides that a person is eligible to petition a court to seal a criminal history record when: The criminal history record is not ineligible for court-ordered sealing under s. 943.0584, F.S.; the person has never, before the date the application for a certificate of eligibility is filed, been adjudicated guilty in this state of a criminal offense or been adjudicated delinquent in this state for committing any felony or any of the specified misdemeanor offenses, unless the record of such adjudication for delinquency has been expunged pursuant to s. 943.0515, F.S.; 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 seal pertains; the person is no longer under court supervision for the arrest or alleged criminal activity to which the petition to seal pertains; or the person has never secured a prior sealing or expunction of a criminal history record under ss. 943.059 or 943.0585, F.S.

<sup>16</sup> Section 943.059(2), F.S.

<sup>17</sup> Section 943.059(5), F.S.

<sup>18</sup> Section 943.059(5), F.S. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information. The FDLE must forward the order to seal to the Federal Bureau of investigation.

<sup>19</sup> Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

- Criminal justice agencies for criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers;
- Judges in the state courts system for assisting in their case-related decision-making responsibilities; and
- Certain enumerated entities<sup>20</sup> for licensing, access authorization, and employment purposes.<sup>21</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, 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>22</sup>

### III. Effect of Proposed Changes:

The bill amends s. 943.0595, F.S., to expand provisions relating to the eligibility of automatic sealing of criminal history records by providing that the *court* must seal criminal history records eligible for automatic sealing.

Additionally, the bill expands the process and effect of automatic sealing by directing the *clerk of court*, upon the disposition of a criminal case resulting in a criminal history record eligible for automatic sealing, to seal the criminal history record.

The bill provides that the court may disclose a record it has automatically sealed in the same manner, as a record sealed pursuant to s. 943.059, F.S., relating to court ordered sealing.

The bill takes effect July 1, 2022.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>20</sup> Enumerated entities include criminal justice agencies, The Florida Bar, 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, 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.

<sup>21</sup> Section 943.059(6), F.S.

<sup>22</sup> *Id.*

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the clerks of court and the courts. The bill may result in an increased workload to the clerks of court by directing them, upon the disposition of a criminal case resulting in a criminal history record eligible for automatic sealing, to seal the criminal history record. The bill may also result in an increased workload to the courts by requiring that they must seal criminal history records eligible for automatic sealing.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill directs the court and the clerk of court to automatically seal a criminal history record eligible for automatic sealing under s. 943.0595, F.S. The Supreme Court of Florida has held that legislation directing the court to expunge *judicial* records was unconstitutional, and stated that “the judicial department of government has the inherent power and duty to keep records of its proceedings.” *Johnson v. State*, 336 So. 2d 93 (1976). The definition of “criminal history record,” is clear that it is a *nonjudicial* record. It is unclear what *nonjudicial* record the court, or clerk of court as extension of the court, may have in its possession.

**VIII. Statutes Affected:**

This bill substantially amends 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/CS by Appropriations on February 28, 2022:**

The committee substitute:

- Removes language related to general licensing and court ordered sealing.
- Amends sections relating to automatic sealing of a criminal history record to specify that the court and clerk of court must automatically seal a criminal history record that is eligible for automatic sealing.

**CS by Regulated Industries on January 18, 2022:**

The committee substitute:

- Extends the requirements in the bill to license applications submitted to the Department of Business and Professional Regulation (DBPR). The effect of the bill is limited to boards within the DBPR. Some professions are licensed by DBPR and not boards.
- Clarifies that the DBPR or its boards or agents may not use, distribute, or disseminate the specified criminal history information by removing an incorrect reference to “political subdivisions.”
- Expands the license review process in the bill to include all of an applicant’s criminal history that is not exempted by the bill. The bill limited the review process to applicants with a felony criminal history.
- Removes from the bill the requirement that the DBPR or board, when it denies a license application solely or in part on the basis of the applicant’s prior criminal record, give the applicant written notice of the applicant’s eligibility for other licenses or professions and the earliest date the applicant may reapply for a license.

- B. **Amendments:**

None.