

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 16-04 Public Records/Expunging and Sealing Criminal History Records

**SPONSOR(S):** Criminal Justice Subcommittee; Trujillo

**TIED BILLS:** PCB CRJS 16-03 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	11 Y, 0 N	Cox	White

### SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24 of the State Constitution after meeting certain requirements.

Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record. When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record. Only FDLE may retain expunged records. When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities. Expunged and sealed records are confidential and exempt from public records, and it is a first degree misdemeanor to divulge their existence.

PCB CRJS 16-03, which is tied to this PCB, makes substantial changes to Florida's expunge and seal laws by creating a nonjudicial process for the sealing of criminal history records and expanding application of the court-ordered expunction and sealing processes to additional types of criminal history records.

PCB CRJS 16-03 expands the types of records that may be expunged or sealed by permitting a person to obtain:

- One court-ordered expunction for a record that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered sealing of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction;
- One court-ordered sealing of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction; and
- An unlimited number of "nonjudicial sealings" for records that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions.

This PCB makes records expunged or sealed pursuant to PCB CRJS 16-03 confidential and exempt from public records. The PCB repeals the exemptions on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State 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 expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect on the same date as PCB CRJS 16-03 or similar legislation relating to expunging and sealing of criminal history records takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Public Records**

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a 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 the exemption of records from the requirements of article I, section 24 of the State Constitution, provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.<sup>2</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of such exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>4</sup> The Act also requires specified questions to be considered during the review process.

#### **Sealing and Expunging Criminal History Records**

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.<sup>5</sup> Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order.<sup>6</sup> FDLE is required to retain expunged records.<sup>7</sup>

When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, criminal justice agencies for their respective criminal justice purposes, judges in the state courts system for the purpose of assisting them in their case-related decision-making responsibilities, and certain other specified agencies for their respective licensing and employment purposes.<sup>8</sup>

Records that have been sealed or expunged are confidential and exempt<sup>9</sup> from the public records law.<sup>10</sup> It is a first degree misdemeanor<sup>11</sup> to divulge their existence.<sup>12</sup>

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

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

<sup>3</sup> See s. 119.15, F.S.

<sup>4</sup> s. 119.15(3), F.S.

<sup>5</sup> s. 943.0585(4), F.S.

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

<sup>7</sup> *Id.*

<sup>8</sup> s. 943.059(4), F.S.

<sup>9</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record

Persons who have had their criminal history records expunged or sealed may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,<sup>13</sup> petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.<sup>14</sup>

Currently, a person may only expunge or seal one record, may not expunge or seal any record that resulted in a conviction, and may not expunge or seal a record if he or she has previous convictions. Additionally, only the court can order a record to be expunged or sealed.

PCB CRJS 16-03, which is tied to this PCB, makes substantial changes to Florida's expunge and seal laws by creating a nonjudicial process for the sealing of criminal history records. The bill retains the court-ordered expunction and sealing processes, but expands their application to additional types of criminal history records.

PCB CRJS 16-03 expands the types of records that may be expunged or sealed by:

- Amending s. 943.0585, F.S., to permit a person obtain one court-ordered expunction for a record that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- Amending s. 943.059, F.S., to permit a person to obtain one court-ordered sealing of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction;
- Amending s. 943.059, F.S., to permit a person to obtain one court-ordered sealing of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction; and
- Creating s. 943.0595, F.S., which permits a person to obtain an unlimited number of "nonjudicial sealings" for records that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions.

### **Effect of the Bill**

The PCB makes records expunged or sealed pursuant to PCB CRJS 16- confidential and exempt from public records.

The PCB repeals the exemptions on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

### **B. SECTION DIRECTORY:**

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

Section 2. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 3. Amends s. 943.0595, F.S., relating to nonjudicial sealing of criminal history records.

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as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* 85-62 Fla. Op. Att'y Gen. (1985).

<sup>10</sup> ss. 943.059(4)(c) and 943.0585(4)(c), F.S.

<sup>11</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>12</sup> Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.

<sup>13</sup> These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, 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, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

<sup>14</sup> ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

Section 4. Provides a public necessity statement.

Section 5. Provides an effective date to be the same as that of PCB CRJS 16- or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

##### Vote Requirement

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 expands a public record exemption; therefore, it requires a two-thirds vote for final passage.

##### Public Necessity Statement

Article I, section 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 expands a public record exemption; therefore, it includes a public necessity statement.

### Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

### Requirements for Legislative Review

Section 119.15(3), F.S., requires that any public records exemption must be repealed five years after the enactment or substantial amendment of the exemption unless reviewed and saved from repeal by the Legislature. When reviewing an exemption, s. 119.15(6)(a), F.S., requires the Legislature to consider the following matters:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for rulemaking or rulemaking authority.

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

None.

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

N/A