

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1154
 SPONSOR: Senator Klein
 SUBJECT: Investigative Incident Reports
 DATE: February 12, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	APJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1154 would authorize law enforcement investigative incident reports to be sealed if the person requesting the sealing obtains a certificate of eligibility from the FDLE, pays a \$75 processing fee, and is granted such a sealing by the court (currently this is not possible because only criminal history records are available to be sealed under s. 943.059, F.S.).

The bill would create a new section of law that essentially mirrors the current sealing statute except that instead of allowing criminal history records to be sealed, it would allow law enforcement investigative incident reports to be sealed. These investigative incident reports would include any nonjudicial record maintained by a criminal justice agency that documents criminal investigative activity and the results of such activity, and for which a final decision has been made that neither an arrest nor criminal charges will be brought concerning the alleged activity under investigation that is the subject of the report.

Access to sealed investigative incident reports would be limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

This bill would substantially amend and create the following sections of the Florida Statutes: 943.045 and 943.0595.

II. Present Situation:

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The definition of “criminal history record” in s. 943.045, F.S., includes notations of arrests, detentions, indictments, informations, or other formal criminal charges and

dispositions. It does not include investigative activity contained in an investigative incident report that does not result in an arrest or in criminal charges being filed.

The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The Florida Department of Law Enforcement (FDLE) can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the FDLE. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE, on the other hand, is required to retain expunged records. When a record is sealed it is not destroyed, but access is limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment (law enforcement; the Florida Bar; or working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities), petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction. It is then up to the court to decide whether the sealing or expunction is appropriate.

A criminal history record may be expunged by a court if the petitioner has obtained a certificate of eligibility and swears that he or she: has not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses; has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged; has not obtained a prior sealing or expungement; and is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.

In addition, the record must have been sealed for ten years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court. s. 943.0585, F.S. The same criteria apply for sealing a criminal history record under s. 943.059, F.S. Any person knowingly providing false information on the sworn statement commits a felony of the third degree.

The Legislature also prohibits criminal history records relating to certain offenses in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication was withheld, from being sealed or expunged. These offenses include the following: sexual battery; lewd, lascivious, or indecent assault upon a child; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, and burglary. ss. 943.0585 and 943.089, F.S.

There is currently no provision for sealing a law enforcement investigative incident report.

III. Effect of Proposed Changes:

Senate Bill 1154 would authorize law enforcement investigative incident reports to be sealed if the person requesting the sealing obtains a certificate of eligibility from the FDLE, pays a \$75 processing fee, and is granted such a sealing by the court (currently this is not possible because only criminal history records are available to be sealed under s. 943.059, F.S.).

The bill would create a new section of law that essentially mirrors the current sealing statute except that instead of allowing criminal history records to be sealed, it would allow law enforcement investigative incident reports to be sealed. These investigative incident reports would include any nonjudicial record maintained by a criminal justice agency that documents criminal investigative activity and the results of such activity, and for which a final decision has been made that neither an arrest nor criminal charges will be brought concerning the alleged activity under investigation that is the subject of the report. (Under the bill, the court would be able to order the sealing of only a portion of an investigative incident report pertaining to one incident of alleged or suspected criminal activity.)

Access to these sealed investigative incident reports would be limited to the subject of the record, his or her attorney, law enforcement agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes, just as current law provides for sealed criminal history records.

Persons who have had their investigative incident report sealed may lawfully deny or fail to acknowledge the incidents covered by the sealed record, except when they are applying for certain types of employment (law enforcement; the Florida Bar; or working with children, the developmentally disabled, or the elderly through the Department of Children and Family Services, the Department of Juvenile Justice, the Department of Education, any district school board, or local governmental entity licensing child care facilities), petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.

The person requesting a court to seal his or her investigative incident report would be required to apply for and obtain a certificate of eligibility from FDLE, along with a sworn statement that the petitioner has never been adjudicated guilty of a criminal offense or adjudicated delinquent for committing a felony or certain specified misdemeanors; has never been arrested, charged, or prosecuted because of any incident reported in the investigative incident report; has not gotten a prior sealing or expunction; and does not have a petition to seal or expunge a criminal history

record or investigative incident report pending before a court. Any person knowingly providing false information on the sworn statement commits a felony of the third degree.

The law enforcement agency that prepared the investigative incident report would be served with a copy of the completed sealing petition and would be able to respond to the court to show cause why the petition should not be granted. If the court grants the sealing request, the clerk of the court would be required to certify copies of the order to the originating law enforcement agency. The originating law enforcement agency would then be required to forward the order to the FDLE and to any agency that it disseminated the investigative incident report to.

The FDLE, if it receives an order to seal that is not in compliance with the statute, would be required to notify the issuing court, the agency that prepared the investigative incident report, and the petitioner or his attorney of the reason for noncompliance. The agency that prepared the investigative incident report would then be required to take action within 60 days to petition the court to void the order. This newly created sealing statute would provide that there is not a cause of action, including contempt of court, against any criminal justice agency for failure to comply with an order to seal when the petitioner has failed to obtain the required certificate of eligibility or when the court order does not comply with the statute.

The bill would also provide that an order to seal an investigative incident report does not require the originating agency to surrender the report to the court, but rather requires the agency to continue to maintain the report.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person applying to the FDLE to obtain a certificate of eligibility for sealing his or her investigative incident report is required to pay a processing fee of \$75 to the department, unless it is waived by the executive director.

C. Government Sector Impact:

According to the FDLE, there should not be a fiscal impact as a result of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Senate Bill 1152 is the bill “linked” to this bill in that it would create a public records exemption for this sealed investigative incident report information.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
