



May 8, 2017

The Honorable Rick Scott  
Office of the Governor  
The Capitol  
400 South Monroe Street  
Tallahassee, FL 32399-0001

Re: VETO REQUEST CS/SB 118 Criminal History Records

Dear Governor Scott:

We are writing to respectfully request that you veto CS/SB 118, which would create a process by which millions of criminal history records will be automatically sealed. This legislation constitutes a significant threat to the public safety.

Of particular concern is Section 2, which requires an automatic administrative sealing of criminal history records of adults or minors charged with a misdemeanor or felony if charges were eventually dropped or the person charged was acquitted or found not guilty at trial.

As originally drafted, CS/SB 118 amended s. 943.0586, F.S., to allow those adults or minors charged with a misdemeanor or felony to apply for expunction of a criminal history record if charges were dropped or a trial resulted in an acquittal or a not guilty verdict. The legislation was amended on third reading in the Senate to strip out the expunction language replacing it with the automatic administrative seal that is the focus of our concern. Given that the bill was amended on third reading, there was no opportunity for an analysis of the amendatory language by legislative staff and the public was denied any opportunity for input on this critical and alarming change to state criminal justice law and procedure.

There is a significant difference between the expunction of a criminal history record and the automatic administrative sealing required by CS/SB 118.

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Current law allows for expunction of a criminal history record under specified conditions and there is a statutory structure in place with clearly defined steps and requirements. All expunction applications are *manually reviewed* for compliance with those legal requirements. Importantly, a request for expunction can be denied after a manual review and a person can have a criminal history record expunged only once, ensuring that repeat offenders can't hide behind multiple expunctions.

In direct contrast, CS/SB 118 requires an *automatic administrative seal* for those acquitted or found not guilty – an application isn't required and the criminal history records aren't reviewed before sealed. Additionally, there is no limit on the number of times a person's criminal history records can be sealed so it's entirely possible that a person who is tried multiple times for the same or similar crime to have multiple records sealed.

As we know, there are a host of reasons for acquittals and findings of not guilty, including a lack of evidence or when a witness fails to appear. Many sexual assault victims, for example, do not want to testify in an open courtroom and as a result charges against the defendant can be dropped or, if the case goes to trial, the court may acquit or find the defendant not guilty.

If CS/SB 118 were to become law, a person could be charged and tried one or more times for a lewd and lascivious act on a child, for example, and if acquitted or found not guilty because of a lack of evidence, that person would not show up on FDLE's criminal background check webpage. If that person then applies for a position with a school or day care center, there would be no mention of the charges. It should be noted that the current expunction statutes require a person charged with a crime such as lewd and lascivious act on a child – as well as a number of other crimes – disclose that fact if seeking employment with an agency responsible for the protection of vulnerable persons, including children, the elderly and the disabled. Such is *not* the case with the required automatic administrative seal process under CS/SB 118, which does not require disclosure.

Equally alarming, as a diligent employer I would not find any record on the FDLE website of a potential employee who had been charged and acquitted of stealing from a former employer regardless of the basis for that acquittal.

The First Amendment Foundation was not opposed to CS/SB 118 as it was drafted and amended during the committee process, Governor Scott. However, we believe that the automatic administrative sealing of criminal history records is a dramatic shift in public policy. The bill as approved by the Legislature poses a serious and real threat to public safety and requires more consideration and a thorough vetting of potential consequences.

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We ask that you veto CS/SB 118 and allow the Legislature to revisit the issue in the next session, hopefully in a more open and transparent manner.

Sincerely,



Barbara A. Petersen, President

Cc: Jon Kaney, General Counsel, First Amendment Foundation  
Samuel Morley, General Counsel, Florida Press Association  
Gil Thelen, Executive Director, Florida Society of News Editors