

May 13, 2019

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

Re: VETO REQUEST CS/HB 7125 Public Safety

Dear Governor DeSantis:

We are writing to respectfully request that you veto CS/HB 7125, which in part would create a process by which millions of criminal history records will be automatically sealed by the Florida Department of Law Enforcement (FDLE). The automatic administrative sealing of criminal history records constitutes a significant threat to the public safety, contrary to the bill title.

Of particular concern is Section 52 (page 161, starting on line 4013), 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.

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.

Additionally, criminal history records can be judicially sealed. As with as with expunction, requests for judicial seals are individually reviewed by a court and then granted or denied.

In direct contrast, CS/HB 7125 requires an *automatic administrative seal* for when charges are dropped or a person is 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 arrested or tried multiple times for the same or similar crime to have multiple records administratively 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



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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/HB 7125 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/HB 7125.

Oddly, the automatic administrative sealing applies only to FDLE – in other words, a criminal history record in the hands of a clerk of court or local law enforcement agency would remain subject to disclosure. But as a diligent employer, I would check the FDLE website and would not necessarily know that I should also check the websites of all 67 clerks of court or make a public record request of the myriad of local law enforcement agencies. If CS/HB 7125 becomes law, 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 automatic administrative sealing of criminal history records is a dramatic shift in public policy. While there are many good provisions in CS/HB 7125, we believe the automatic sealing requirement taints the entire bill. The CS/HB 7125 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.

We ask that you veto CS/HB 7125 and allow the Legislature to revisit the criminal justice reform issues in the next session.

Sincerely,



Barbara A. Petersen, President

Cc: Carol LoCicero, Chair, First Amendment Foundation
Samuel Morley, General Counsel, Florida Press Association
