IN THE SUPREME COURT OF FLORIDA

TIMES PUBLISHING COMPANY, MIAMI HERALD PUBLISHING COMPANY and THE STATE OF FLORIDA,

Petitioners,

v. CASE NO. 79,496

JOHN LEWIS RUSSELL, III,

Respondent.

ON REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL

PETITIONERS' BRIEF ON JURISDICTION

Lawson L. Lamar
State Attorney
Ninth Judicial Circuit
William C. Vose
Chief Assistant State Attorney
Florida Bar No. 0165831
P.O. Box 1673
Orlando, FL 32802
(407) 836-2425
Attorneys for State of Florida

Alison M. Steele
Florida Bar No.: 0701106
George K. Rahdert
Florida Bar No. 213365
RAHDERT & ANDERSON
535 Central Avenue
St. Petersburg, Florida 33701
(813) 823-4191
Attorneys for Times Publishing Company and Miami Herald Publishing Company

TABLE OF CONTENTS

TABLE OF CITATIONS

Statement of the Case and Facts

Petitioners the Times Publishing Company ("the Times"), the Miami Herald Publishing Company ("the Herald") and the State of Florida ("the State"), seek this Court's review of a Fifth District Court of Appeal decision holding that movants seeking to unseal closed criminal court files relating to John Lewis Russell, III ("Russell") must show "good cause" for doing so and that the movants had not.[1] Jurisdiction is grounded in Article V, Section 3(b)3 of the Florida Constitution.

John Lewis Russell, III is the founder and chief executive officer of the Bureau of Missing Children, Inc., a fund raising organization. While litigation wa5 pending between the Times, the Herald and Russell to unseal certain criminal court files and other law enforcement agency records relating to three late 70's to mid-80's arrests of Russell in Hillsborough County, Florida's Thirteenth Judicial Circuit, the Times and Herald discovered that Russell had also been arrested and had three criminal court files sealed in Orange County, Florida, the Ninth Judicial Circuit.[2]

Thus, the Times and Herald filed their motion in the Ninth Judicial Circuit Court, seeking to intervene in the three cases and unseal them for public inspection. Among other grounds, the Times and Herald asserted that "[w]ell established principles of federal and state constitutional and common law require that these court

---

[1] A conformed copy of the Fifth District Court's opinion is contained in the Appendix to this Brief and is reported at 17 F.L.W. D417 (Feb. 7, 1992).

[2] As the case numbers cited in the Fifth District Court's opinion reflect, the Ninth Circuit cases occurred in the mid- to late 1970's.

records be opened for public inspection." The trial court granted the motion and ordered the records unsealed. Russell appealed.

On February 7, 1992, the Fifth District Court of Appeal issued its opinion reversing the Ninth Judicial Circuit trial court's order. The court stated,

> The question before us is whether properly sealed court records remain "public records" within the meaning of our statutes and constitution. We hold that they do not. They are former public records, now sealed, subject to being reopened as public records upon "good cause shown."

The court, stating that a court's authority to seal its own records is not based on statute but is "analogous" to a court's authority to seal or expunge arrest records, cited Johnson v. State, 336 So.2d 93 (Fla. 1976) as the basis for its holding.

The court remanded the case to the trial court with directions to continue the files under seal. The Petitioners thereafter timely filed their Notice of Intent to Seek Discretionary Review in this Court.

Summary of Argument

Two District Courts of Appeal facing the same question have established two different tests applicable to motions to unseal criminal court case files which are sealed or expunged pursuant to the various versions of § 943.058 of the Florida Statutes in effect in the late 1970's and throughout the 1980's. Both holdings conflict with this Court's and other district courts of appeals' holdings in cases decided after Johnson v. State, 336 So.2d 93 (Fla. 1976), that persons seeking to keep court files secret must establish a serious and imminent threat to the administration of

justice if the files are unsealed, that closure will be effective and that there is no means less restrictive than total closure to protect the secrecy interest asserted. Thus, there is confusion and doubt in the courts of this state concerning the proper standard for sealing court files (as opposed to records of law enforcement agencies), and for considering motions to unseal.

The Times, the Herald, and the State of Florida petition this court to accept jurisdiction of this case, to resolve the express and otherwise irreconcilable conflict in the law of this State, to provide guidance to the judicial branch of government, and to reverse the decision of the Fifth District Court of Appeal.

ARGUMENT

I. The Fifth District Court of Appeal's Decision Expressly and Directly Conflicts with Decisions of this Court and Other District Courts of Appeal on the Same Question of Law.

When confronted with an order unsealing criminal court files, the Fifth District Court of Appeal held that sealed criminal court records are not "public records," but are "former public records, now sealed, subject to being reopened as public records upon 'good cause shown.'"[3] The court derived this standard from Johnson v. State, 336 So.2d 93 (Fla. 1976), where this Court held § 901.033[4] unconstitutional on separation of powers grounds to the extent it

---

[3] How the Fifth District Court came to use the term "public records" in this case is unclear. No party has contended that the Florida Public Records Act, Chapter 119 of the Florida Statutes, controls the availability of court records.

[4] Section 901.33, Fla. Stat. (1974), the codified version of Chapter 74-206, Laws of Florida (1974) and the statute addressed in Johnson, remained in effect until October 1, 1980 when it was replaced by section 934.058, Fla. Stat. (1980). Section 934.058, Fla. Stat. (1980) remained in effect substantially unchanged until 1988, when a provision was added making clear that courts had the discretion to deny a former defendant's request to seal or expunge the records of law enforcement agencies other than the court. All three versions of Florida's "sealing and expunction" statute are contained in Appendix B to this brief.

mandates destruction of judicial records. Instead of destruction, this Court directed that the courts of this state, in granting such motions, seal court records and retain them in that fashion "subject to the power of the court for good cause shown to open [them] under conditions wherein the ends of justice may require it." Johnson, 336 So.2d at 95.

Subsequent to Johnson, however, this Court has articulated precise, constitutional standards for closure of court proceedings and records, with which the Fifth District Court of Appeal's decision conflicts. In Miami Herald Publishing Co. v. Lewis, 426 So.2d 1 (Fla. 1982), this court held that to exclude the press and public from pre-trial judicial proceedings, the party seeking closure must show that (1) closure is necessary to prevent a serious and imminent threat to the administration of justice; (2) no alternatives are available, other than a change of venue, which would protect a defendant's right to a fair trial; and (3) closure would be effective in protecting the rights of the accused, without being broader than necessary to accomplish this purpose. Id. at 426. At issue in that case was a criminal defendant's request to exclude the press and public from pre-trial suppression hearings. This Court made clear that its holding was firmly grounded in the common law of this state, the historical support for open government evidenced by previous decisions, and the important and salutary purposes to be served by openness.[5] In Bundy v. State,

[5] At the time of Lewis, the United States Supreme Court had not *yet* decided Press Enterprise I Co. v. Suwrior Court, ___ U.S. ___, 104 S.Ct. 819 (1984)(Press Enterprise I)(finding First Amendment right of public access to voir dire in criminal cases) or Press Enterprise Co. v. Superior Court, ___ U.S. ___, 106 S.Ct. 2735 (1986)(Press Enterprise II)(finding First Amendment right of access to pre-trial preliminary hearing), both

455 So.2d 330 (Fla. 1984), this Court explicitly held the Lewis three-part test applicable to persons requesting closure of the records of pretrial proceedings,[6] Bundy, 455 So. 2d at 338, carefully noting the long line of Florida cases recognizing the important societal interests in openness of court proceedings and records.[7]

In Barron v. Florida Freedom Newspapers, Inc., 531 So.2d 113 (Fla. 1988), this Court again reaffirmed the applicability of the Lewis three-part test to court records, with slight modification to make the language of the test directly applicable to civil cases. This court stated, "At the outset, we hold that both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records." & at 116. Barron explicitly reaffirmed the "strong presumption of openness" in court records and proceedings, further stating, "both the public and news media shall have standing to challenge any closure order. The burden of proof in these proceedings shall always be on the party seeking closure." Id. at 118. In concluding that State Senator Dempsey Barron had not established any privacy interest in his divorce proceedings

---

cases recognizing a three-part inquiry similar to Florida's but in some respects less stringent. This Court's decision in Lewis was, of course, foreshadowed by its decision in State ex rel. Miami Herald Publishing Co. v. McIntosh, *340* So.2d *904* (Fla. 1977), in which it established a three-part test very similar to the Lewis test, for "gag" orders which restrict the press' and therefore the public's right to learn what occurs in the criminal courts. McIntosh was squarely grounded in the First Amendment.

[6] The Lewis court faced the issue of records but did not explicitly decide it. However, this Court did not purport to differentiate court proceedings from court records with regard to the test it adopted.

[7] This Court cited eight district court of appeal cases, both civil and criminal, from 1975 to 1981 as examples of the Florida courts' vigorous support of and protection for public scrutiny of court records and proceedings.

sufficient to overcome the presumption of openness, this court noted, "a privacy claim may be negated if the content of the subject matter directly concerns a position of public trust held by the party seeking closure." Id.[8]

The Fifth District Court of Appeal in the instant case expressly rejected the Times' and Herald's assertion of these long established principles of state common law as grounds for opening the sealed criminal court files at issue, allowing only that these authorities related to "trials and other public proceedings." Thus, the Fifth District's decision expressly conflicts with, indeed contradicts, the long line of cases from this and other Florida appellate courts. The Fifth District's decision also places the burden of proof on the party seeking access, rather than the party seeking to keep court files closed, directly contrary to Lewis, Barron and Goldberg.

II. The Decision Expressly and Directly Conflicts with a Decision of the Second District Court of Appeal.

The Fifth District's decision also expressly and directly conflicts with the Second District's decision in Russell v. Miami Herald Publishing Co., 570 So.2d 979 (Fla. 2d DCA 1990). When confronted with the Herald's request to unseal four criminal court files sealed pursuant to Florida's expungement statute and also reflecting charges against John Lewis Russell 111, the Second

---

[8] Barron expressly disapproved a Fifth District Court of Appeal decision placing the burden of proof on the party challenging closure. Id. at 119. Prior to Barron, the Fourth District Court of Appeal, applying the Lewis/Bundy test, had overturned a trial court's decision, based on asserted privacy rights, to keep sealed the records of a guardianship proceeding. Goldberg v. Johnson, 485 So.2d 1386 (Fla. 4th DCA 1986). The Fourth District Court expressly rejected inquiry into the reason the movant had to seek access to the information, emphasizing that it was the public's right, not its reason for seeking access, that must be considered. Id. at 1389.

District Court of Appeal cited Johnson v. State for the principle that the Thirteenth Judicial Circuit trial court had jurisdiction to rehear and vacate the orders sealing the files. But without reference to the "good cause" language in Johnson, the Second District held that courts considering unsealing such files must apply the following test, the burden of proof resting upon the party seeking unsealing: (1) vacation of the expungement order would serve the public interest; (2) there is a "substantial probability" that, in the absence of vacation of the closure order, the public interest would be harmed; and (3) no less restrictive alternatives are available. Russell v. Miami Herald, 570 So.2d at 983. The Second District's test, a "modification" of the United States' Supreme Court's test in Press Enterprise (II), is actually the Press Enterprise/Lewis test turned on its head.' Thus, the Fifth District's holding as to the proper inquiry is directly and expressly at odds with the Second District's opinion and disposition of the Russell case and is irreconcilable; both decisions are at odds with the legion of authorities decided by this Court heretofore governing sealing and unsealing of court files.

111. This Court Should Accest Jurisdiction To Review the Fifth District Court of Appeal's Decision.

Throughout the 1970's and '80's untold numbers of criminal

---

9 The Second District also held in Russell that in order for section 943.058, Fla. Stat. to be "constitutional," courts considering requests to seal court files pursuant to the statute must apply the Press Enterprise (II) three-part test. Thus, it is somewhat unclear from the Second District's decision whether the court decided that a movant for sealing must also satisfy the statutory criteria in addition to the three-part test to seal a criminal court file. Johnson seems to indicate that the statute accords a substantive right to have arrest records, including court files, sealed. Such a holding would appear to conflict with this Court's view of the separation of powers doctrine.

court files were sealed with reference to one or the other versions of Florida's sealing and expungement statute. Without direction from this Court, the trial and other appellate courts of Florida face a burden of cases that are diametrically opposed to one another regarding the issue at hand -- the proper inquiry in ruling on motions for access to those criminal court files. The Fifth District's decision here adopts a standard for unsealing which is at odds with this Court's decisions in Lewis, Bundy, and Barron. This Court should accept jurisdiction of this case to clarify the law. If the Fifth District's decision accurately states the law, there exist different inquiries for courts facing access motions filed in cases sealed pursuant to a request based on Florida Statute §943.058, and those sealed on some other basis or authority. In addition, the Fifth District and the Second District have established two different inquiries for access motions in cases sealed pursuant to the arrest record expungement statute. The Fifth District's decision and Johnson also raise the prospect that a former criminal defendant has a substantive right to secrecy of his file where, to the contrary, and subsequent to Johnson, this Court has throughout the 1980's stood firmly behind the presumption of openness attaching to court files, civil and criminal.

Moreover, without any clarification from this court, the law in the Fifth District is directly contrary to that in the Second, without any factual or legal basis for distinguishing the cases. Both cases involve criminal court files sealed at least facially pursuant to a statute enacted to give an unconvicted criminal

defendants a "fresh start" or "second chance," and involve two of the same adverse parties.

In a larger sense, this case presents this Court with an early and timely opportunity to address the controversial subject of multiple sealings and expungements of criminal court records. The Florida Legislature has undertaken efforts to correct the law to curb such abuses in the future. However, because this Court's earliest precedent, Johnson, and its more recent opinions on the separation of powers doctrine suggest limitations on the efficacy of this legislation as to court records, see, e.g., Locke v. Hawkes, Nos. 76,090 and 76,803 (February 27, 1992) and Locke v. Hawkes, 16 F.L.W. 5716 (Nov. 7, 1991), this Court should accept this opportunity to decide for the judicial branch of government that it is improper for a single defendant to seek repeated sealings of criminal court records and expect persons seeking access to those records to bear the burden of showing why they should be unsealed.

Conclusion

For the foregoing reasons, this Court should accept jurisdiction to review this case.

Wm C Vose by Ams s/permission

Lawson L. Lamar
State Attorney
Ninth Judicial Circuit
William C. Vose
Chief Assistant State Attorney
Florida Bar No. 0165831
P.O. Box 1673
Orlando, FL 32802
(407) 836-2425
Attorneys far State of Florida

Alison M. Steele
Florida Bar No.: 0701106
George K. Rahdert
Florida Bar No. 213365
RAHDERT & ANDERSON
535 Central Avenue
St. Petersburg, Florida 33701
(813) 823-4191
Attorneys for Times Publishing Company and Miami Herald Publishing Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to RICHARD S. BLUNT, ESQ., 110 South Armenia Avenue, Tampa, FL 33609, this 16th day of March, 1992.

Attorney

APPENDICES

TABLE OF CONTENTS

APPENDIX A

Opinion *of* the Florida Fifth District Court of Appeal

in

JOHN LEWIS RUSSELL, 111, V. TIMES PUBLISHING COMPANY. MIAMI HERALD PUBLISHING COMPANY, AND STATE OF FLORIDA

Case No. 91-1469

Rendered February ***7,*** **1992**

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 1992

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

JOHN LEWIS RUSSELL, III,

Appellant,

v.

CASE NO. **91-1469**

TIMES PUBLISHING COMPANY, MIAMI HERALD PUBLISHING COMPANY, and STATE OF FLORIDA,

Appellees.

Opinion filed February 7, 1992

Appeal from the Circuit Court for Orange County, George A. Sprinkle, IV, Judge.

Richard S. Blunt, **Tampa,** for Appellant.

George K. Rahdert, Thomas H. McGowan, Alison M. Steele, of Rahdert & Anderson, St. Petersburg, for Appellees Times Publishing Company and Miami Herald Publishing Company.

Lawson L. Lamar, State Attorney, and William C. Vose, Chief Assistant State Attorney, Orlando, for Appellee State of Florida.

HARRIS, J.

In the spring of 1991, the Times Publishing Company (the St. Petersburg Times) and the Miami Herald Publishing Company discovered that John Lewis Russell, III (the founder and chief executive officer of the Bureau of Missing

Children, Inc. - a charitable fund raising organization) had obtained three orders sealing court files relating to arrests in Orange County.[1]

The Times and the Herald moved to "intervene" in the closed, sealed cases of ***State v. Russell,*** numbers 77-1096, **75-3275** and one other unknown number and to **unseal** these records because:

> Well established principles of federal and state constitutional and common law require that these court records be opened for public inspection.

The trial court, without taking any testimony and without receiving any documentary evidence, granted the motion to intervene and unsealed the court files. We reverse.

Most of the authority cited by petitioner relates to open court proceedings. **We** agree that the public should have full access to trials and other public proceedings. **The** rights of the press are coextensive with the rights of the public.

The question before **US** is whether properly sealed court records remain "public records" within the meaning of our statutes and constitution.[2] We hold that they do not. They are former public records, now sealed, subject to being reopened **as** public records upon "good cause shown."[3]

---

[1] This information was discovered during litigation to unseal certain records of Russell in Hillsborough County, a matter presently pending before the Second District Court of Appeal.

[2] Neither party in their brief nor in their oral presentation discussed the Florida constitutional right to privacy. Although the right yields to public records disclosure, does it attach to those records once public but now sealed?

[3] Although the court's authority to seal its own records is not based on statute, it is nevertheless analogous to the statutory power given to "seal or expunge" arrest records. **As** the supreme court held in ***Johnson v. State,*** **336** So.2d 93 (Fla. 1976):

We can envision some "good cause" reasons for unsealing records; for example, if judicial conduct is questioned. In that event the court file, with the individual defendant's name redacted, could be made available. Also, if it is shown that the defendant perjured himself in order to obtain the sealing, the file should be reopened.

In the instant case, there was no "good cause" pled and no evidence offered. The cause is remanded with directions to continue the files under seal.

REVERSED and REMANDED.

COWART and DIAMANTIS, J.J., concur.

Therefore, to achieve the legislative purpose in this case we hold that to the extent that Chapter 74-206, Laws of Florida 1974, grants a substantive right to a defendant, the statute is valid; and we find that the law is substantive to the degree that it protects appellant from having his record left open for public inspection in the Criminal Division of the Circuit Court. To achieve the legislative intent under the unique circumstances of the instant case without violating the Constitution, we direct the learned trial judge to seal Appellant's record and to retain it sealed subject to the power of the court for good cause shown to open it under conditions wherein the ends of justice may require it.

* * *

Nevertheless, insofar as chapter 74-206, Laws of Florida 1974, attempts to establish procedure for the accomplishment of the new, substantive right, we find and so hold that it is an encroachment upon the judicial function and, therefore, unconstitutional to that degree. Consequently, the Court will consider adoption of a rule to effectuate the legislative intent by requiring the sealing of court records of first offenders found innocent or those persons against whom criminal proceedings are dismissed. [Emphasis added.]

APPENDIX B

Section 901.33, Fla. Stat. (1974)

Section 943.058, Fla. Stat. (1980 Supp.)

Section 943.058, Fla. Stat. (1988)

901.29 Authorization to take person to medical facility.—Even though a notice to appear is issued, a law enforcement officer shall be authorized to take a person to a medical facility for such care as appropriate.

History.—s. 1, ch. 73-27.

901.30 Slow notice to appear served.-The officer shall deliver one copy of the notice to appear to the arrested person, and such person, in order to secure release, shall give his written promise to appear in court by signing the two notice copies to be retained by the oflicer. The orresting officer or other duly authorized official shnll then release the person arrested from custody.

History.—s. 1. ch. 73.27,

901.31 Failure to obey written promise to appear.—Any person who willfully fails to appear hefore nny court or judicinl officer as required by n written notice to appear shall be fined not more than the fine of the principal charge or imprisoned up to the maximum sentence of imprisonment of the principal chnrge, or both, regardless of the disposition of the charge upon which he was originally arrested. Nothing in this section shall interfere with or prevent the court from exercising its power to punish for contempt.

History.—s. 1, ch. 73-27.

901.32 Issuance of warrant on failure to appear.—When a person signs a written notice to apprnt and fails to respond to the notice to appear, a warrant of arrest shall be issued.

History.—s. 1, ch. 73.27.

901.33 Arrest records; expunging; exceptions.—If a person who has never previously been convicted of a criminal offense or municipal ordinance violation is charged with a violation of a municipal ordinance or a felony or misdemeanor, but is acquitted or released without being adjudicated guilty, he may file a motion with thr court wherein the chnrge was brought tn expunge the record of arrest from the official records of the arresting authority. Notice of such motion shall be served upon the prosecuting authority charged with the duty of prosecuting the offense and upon the arresting authority. The court shall issue an order to expunge ail official records relating to such arrest, indictment or information, trial, nnd dismissal or discharge. However, the court shall require that nonpublic records be retained by the Department of Law Enforcement and be made available by said department only to law enforcement agencies in the event of a future investigation of said person relative to A pending charge, indictment, or information against or upon said person for nn act which, if committed, would be an offense similar in nature to the offense for which said person had been charged and not found guilty. The court shall not enter an order expunging the records as above provided when there are several acts, or said pcrson hns been charged with several offenses originating out of or related to the offense or offenses Ibr which such pcrson had been charged and not found guilty, and when the chnrge and adjudication of nonguilt did not include all such charges or all such several acts. The effect of such order shall he to restore such person, in the contemplation of the law, to the status he occupied before such nrrcst or indictment or information. No person as to whom such order has been entered shall be held thereafter under nny provision of Floridn law to he guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest in response to nny nonjudicial inquiry made of him for nriy purpose.

History.—s. 1, ch. 74-206; s. 1, ch. 77-174; s. 32, ch. 79-8.
cf.—s. 30.31 Fingerprinting persons charged with crime.

943.055 Records arid **audit.**—

(1) Criminal justice agencies disseminating crim inal justice information derived fi om a Department of Law Enforcement criminal justice infortnation system shall maintain a rccord of dissemination in accordance with rules promulgated by the Department of Law Enforcement.

(2) The Division of Criminal Justice Information Systems shall arrange for any audits of state and local criminal justice agencies necessary to assure compliance with federal laws and regulations, this chapter, and rules of the Department of **Law** Enforcement pertaining to the establishment, operation, security, **and** maintenance of criminal justice information systems.

History.—s 7, ch 80-409

943.056 Access to, review and challenge **of,** criminal history **records.**—

(1) When a person requests a copy of his own criminal history record not otherwise available as provided by s **119.07,** the Department of Law Enforcement shall provide such record for review upon verification, by fingerprints, of the identity of the requesting person. The providing of such record shall not require thr payment of any fees, except those provided for by federal regulations.

(2) Criminal justice agencies subject to chapter 120 shall be subject to hearings regarding those portions of criminal history records **for** which the agency served as originntor. When it **is** determined what the record should contain in order to be complete and nccurate, the Division of Criminal Justice Information Systems shall be advised and shall conform state and federal records to the corrected criminal history record information.

(3) Criminal justice agencies not subject to chapter **120** shall be subject to administrative proceedings for challenges to criminal history record information in accordance with rules established by the Department of Law Enforcement.

(4) Upon request, an individual whose record has been corrected shall be given the names of all **known** noncriminal justice agencies to which the data has been given. The correcting agency shall notify all known criminal justice recipients of the corrected information, and those agencies shall modify their records to conform to the corrected record.

History - ss 8, 9, ch 80409

943.057 Access to **criminal** justice **information for** research or statistical purposes. — The Department of Law Enforcement may provide by rule for access to and dissemination and use of criminal justice information for research or statistical purposes. **All** requests for rccords or information in the criminal justice information systems of the department shall require the requesting individual or entity to enter into an appropriate privacy and security agreement which provides that the requesting Individual or entity shall comply with all laws and rules governing the use of criminal justice information for research **or** statistical purposes. The department may charge a fee for the production of criminal justice information hereunder. Such fee shall **approximate** the actual cost of production. This section shall not be construed to require the release of confidential information or to require the department to accommodate requests which would disrupt ongoing operations beyond the extent required by s. 119.07.

History.—s 10, ch RU409

943.0575 Public access *to* **records.—Nothing in** this act shall be construed to restrict or condition public access to records as provided by **s. 119.07.**

History. -s 16, ch. *80* 409

943.058 Criminal history **record** expunction or **sealing.**—

(1) Notwithstanding statutes dealing more generally with the preservation and destruction of public records, the Department of Law Enforcement, in consultation with the Department of State, may provide, by rule adopted pursuant to chapter **120,** for the administrative expunction of any nonjudicial rccord of arrest made contrary to law or by mistake or when the record no longer serves a useful purpose.

(2) The courts of this state shall continua to have jurisdiction over their **own** procedures, including the keeping, sealing, expunction, or correction of judicial records containing criminal history information. The courts may order the scaling or expunction of any other criminal history rrcord provided:

(a) The person who is the subject of the recoid has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation;

(b) The person who is the subject of the record **has** not been ndjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the records expunction petition pertains;

(c) **The** person who is the subject of the record has not secured a prior records expunction or sealing under this section, former **s. 893.14,** or former s **901.33;** and

(d) Such record **has** brrn sealed under this section, formers **893.14,** or formers. **901.33** for at least **10** years; except that, this condition shall not apply in any instance in which an indictment or information was not filed against the person who is the subject of the record.

(3) Notwithstanding subsection (2), criminal history records maintained by the Depai tment of Law Enforcement may **be** ordered expunged only upon a specific finding by a circuit court **of** unusual circumstances requiring the exercise **of** the extraordinary equitable powers of the court. Upon a finding that the criteria set out in paragraphs (2)(a)-(c) have brrn met, the records maintained by the department may be ordered sealed by any court of competent jurisdiction; and thereafter such records and other records sealed pursuant to this section, former s **893.14,** former s. **901.33,** or similar **laws, shall** be nonpublic records, available only to the subject, his attornry, or to criminal justice agencies for their respective criminal justice purposes. An order sealing criminal history records pursuant to this subsection shall not be construed to require that the records be surrendered to the court, and such records shall continue to bc maintained by the department.

(4) In judicial proceedings under subsections (2) and (3), it shall not be necessary to make any agency other than the state a party. The appropriate state attornry shall be served with the petition and shall respond after a review of the petitioner's entire mul-

tistate criminal history record. If relief is granted, the clerk of the court shall certify copies of the order to the prosecutor **and** to the arresting agency. The arresting agency shall be responsible for forwarding the ***order*** to the Department of Law Enforcement and to any other agency to which the arresting agency itself disseminated the criminal history record information within the purview of the order. The Department of Lnw Enforcement **shall** fbrward the order to all agencies, including the Federal Bureau of Investigation, to which it disseminated the affected criminal history information. The clerk of the court shall certify a copy of the order to any other agency which tlie records of the clerk reflect has received the affected criminal history information from the court. A notation indicating compliance with an order to expunge may be retained for use thereafter only to confirm the expunction upon inquiry of the ordering court.

(5) Notwithstanding other laws to the contrary, a criminal justice agency may honor laws, court *orders,* and official requests of other jurisdictions relating to expunction, sealing, correction, or confidential handling of criminal history records or information derived therefrom.

(6) The effect of expunction or sealing of criminal history records undcr this section *or* other provisions of law, including former ss. 893.14 and **901.33,** shall be as follows:

(a) **Whorl** all criminal history records, including the records maintained by the Department of Law Enforcement and the courts, have been cxpunged, the subject of such records shall be restored, in the full and unreserved contemplation of the law, to the status occupied before the arrest, indictment, information, *or* judicial proceedings covered by the expunged record.

(b) When all criminal history records, except for records retained under seal by the courts or the Department of Law Enforcement., have been expunged, the subject of such records may lawfully deny or fail to acknowledge the events covered by tlie expunged or sealed records, except in the following circumstances:

1. When the person who *is* the subject of the record is a candidate for employment with a criminal justice agency;
2. When the person who is the subject of the record is a defendant in a criminal prosecution;
3. When the person who is the subject of the record subsequently petitions for relief undcr this section; or
4. When the person who is the subject. of the record is a candidate for admission to The Florida Bar.

The courts or the Department of Law Enforcement may refer to and disseminate information contained in sealed records in any of these circumstances. Subject to the exceptions stated hcrcin, no person as to whom an expunction or sealing has hccn accomplished shall be held thereafter undcr any provision of law of this state to be guilty of perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge expunged or sealed criminal history records.

(7) An order or request to **expunge** or seal a criminal history record shall **he** deemed an order **or** request to seek the expunction or sealing of such record by all other agencies and persons known to have rcccived it.

(8) Each petition to a court for scaling or expunction of criminal history records shall be complete only when accompanied by the petitioner's sworn statement that, to the best of his knowledge and belief, he is eligible for such a sealing or expunction,

History.—s. 11, ch. 80-409.

'943.06 **Criminal** Justice Information Systems Council. — There is created a Criminal Justice Information Systems Council within the Department of Law Enforcement.

(1) The council shall be composed of 10 members, consisting of the Attorney General or a designated assistant; the Secretary of the Department of Corrections; the chairman of the Parole and Probation Commission; the State Courts Administrator; and 6 members, to be appointed by the Governor, consisting of 2 sheriffs, 2 police chiefs, 1 public defender, and 1 state attorney.

(2) Members appointed by the Governor shall be appointed for terms of 4 years, except that in the first appointment under this section, two members shall be appointed for terms of 2 years, two members for terms of 3 years, and two niembers for terms of 4 years; and the terms of such members shall be designated by the Governor at, the time of appointment. No appointive member shall serve heyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to tho council. Any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and **qualifies.**

(3) The council shall annually elect its chairman and other officers. The council shall hold at least four regular meetings each year at the call of the chairman *or* upon the written request by three members of the council. A majority of the members of the council constitutes a quorum.

(4) Membership on the council shall not disqualify a member from holding any other public office or being employed by a public entity except that no member of the Legislature shall serve on the council. The Legislature finds that the council serves a state, county, and municipal purpose and that service on the council is consistent with a member's principal service in a public office or employment.

(5) Members of the council shall serve without compensation, but shall be untitled to be reimbursed for per diem and traveling expenses as provided by s. 112.061.

History.—s. 6, ch 74-386; s 1, ch. 77-174; s. 4, ch 78 323; s 2, ch 78-347; s. 12, ch 80 409

'Note.—Repealed by s 4, ch 78-323, effective October 1. 1981, except for the possible effect of laws affecting this section prior to that date

943.07 **Definitions; ss. 943.06-943.08.**—[Amended and transferred to s. 943.045 by s. 1, ch. 80-409.]

943.0535 Aliens, felony records.—Upon the official request of the United **States** immigration officer in charge of the territory or district in which is located any court commitling an alien, for the conviction of a felony, to any slate or county institution which is supported, wholly or in part, by public funds, it shall be the duty of the clerk of such court to furnish without charge a certified copy of the complaint, information, or indictment and the judgment and sentence and any other record pertaining to the case of the convicted alien.

History.– s 2, ch 88-248

943.058 Criminal history record expunction or sealing.—

(1) Notwithstanding statutes dealing more generally with the preservation and destruction of public records, the Department of Law Enforcement, in consultation with the Department of State, may provide, by rule adopted pursuant to chapter 120, for the administrative expunction of any nonjudicial record of arrest made contrary to law or by mistake or when the record no longer serves a useful purpose.

(2) The courts of this state shall continue to have jurisdiction over their own procedures, including the keeping, sealing, expunction, or correction of judicial records containing criminal history information. The courts may order the sealing or expunction of any other criminal history record, provided:

(a) The person who is the subject of the record has never previously been adjudicated guilty of a criminal offense or comparable ordinance violalion;

(b) The person who is the subject of the record has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the records expunction petilion pertains:

(c) The person who is the subject of the record has not secured a prior records expunction or sealing under this section, former s 893.14, or former s. 901.33; and

(d) Such record has been sealed under this section, formers 893.14. or formers.901.33 for at least 10 years; except that, this condition shall not apply in any instance in which an indictment or information was not filed against the persori who is the subject of the record or in which an indictment or information was dismissed by the prosecutor or the court.

This subsection does not confer upon any person who meets the criteria **set** out in this subsection a right to the scaling or expunction of any criminal history record, and any request for sealing or expunction of a criminal history record may be denied at the sole discrelion of the court.

(3)(a) Upon a finding that all the relevant criteria set out in paragraphs (2)(a)–(d) have been met, the records maintained by the Department of Law Enforcement may be ordered sealed or expunged by any court of competent jurisdiction; and thereafter such records and other records scaled pursuant to this section, former s. 893.14, former s. 901.33, or similar laws shall be nonpublic records available only to the subject, his attorney, criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in paragraph (6)(a), paragraph (6)(d), or paragraph (6)(e) for their respective licensing and employment purposes.

(b) It **is** unlawful for any employee of an entity set forth in paragraph (6)(a), paragraph (6)(d), or paragraph (6)(e), or for a private contractor or any employee of such contractor, to disclose information relating to the existence of a **sealed** or expunged record of a person who seeks employment or licensure with such entity or contractor, except to the person to whom the record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates this paragraph is guilty of a misdemeanor of the first degree, punishable as provided in **s.** 775.082, s. *775.083,* or 's. 775.084.

An order sealing criminal history records pursuant to this subsection shall riot **be** construed to require that the records be surrendered to the court, and such records shall continue to be maintained by the Department of Law Enforcement as well as by other involved criminal justice agencies.

(4) In judicial proceedings under subsections (2) and (3), a copy of the petition for sealing or the petition for expunction shall **be** served upon the prosecuting authority charged with the duty of prosecuting the offense and upon the arresting agency; however, it shall not be necessary to make any agency other than the state a party. The appropriate state attorney shall be served with the petition and shall respond after a review of the petitioner's entire multistate criminal history record. If relief is granted, the clerk of the court shall certify copies of the order to the prosecutor and to the arresting agency. The arresting agency shall be responsible for forwarding the order to any other agency to which the arresting agency itself disseminated the criminal history record information within the purview of the order. The Department of Law Enforcement shall forward the order to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the clerk reflect has received the affected criminal history information from the court. **A** notation indicating compliance with an order to expunge may be retainsd for use thereafter only to confirm the expunction upon inquiry of the ordering court.

(5) Notwithstanding other laws to the contrary, a criminal justice agency may honor laws, court orders, and official requests of other jurisdictions relating to expunction, sealing, correction, or confidential handling of criminal history records or information derived therefrom.

(6) The effect of expunction or sesling *of* criminal history records under this section or other provisions of law, including former ss. 893.14 and 901.33, shall be that when all criminal history records have been sealed or expunged, the subject of such records may lawfully deny or fail to acknowledge the events covered by the expunged or sealed records, except in the following circumstances:

(a) When the person who is the subject of the record is a candidate for employment with a criminal justice agency;

(b) When the person who is the subject of the record is a defendant in a criminal prosecution;

(c) When the person who is the subject of the record subsequently petitions for relief under this section;

(d) When the person who is the subject of the record is a candidate lor admission to The Florida Bar; or

(e) When the person who is the subject of the record is seeking to be employed or licensed by or to contract with the Department of Health and Rehabilitative Services or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children or the developmentally disabled or the aged or elderly as provided in s. 110.1127(3), s. 393.063(1), s. 394.455(20), s. 396.032(8), s. 397.021(8), s. 402.302(8), s. 402.313(3), s. 409.175(2)(h), s. 415.102(4), s. 415 103, chapter 400, or s. 959.06, or lo be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity licensing child care facilities.

The courts or the Department of Law Enforcement may refer to and disseminate information contained in sealed records in any of these circumstances. Subject to the exceptions stated herein, no person as to whom an expunction or sealing has been accomplished shall be held thereafter under any provision of law of this state to be guilty of perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge expunged or sealed criminal history records

(7) Each petition to a court for sealing or expunclion of criminal history records shall be complete only when accompanied by the petitioner's sworn statement that:

(a) The petitioner has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation

(b) The petitioner has not been adjudicated guilty of any of the charges stemming from the arrest or alleged critninal activity to which the petition pertains.

(c) The petitioner has never secured a prior sealing or expunction of records under this section, former s. 893 14, or former s 901 33, nor from any other jurisdiction outside of the state

(d) To the best of his knowledge and belief, the petitioner is eligible for such a sealing or expunction,

Any person who knowingly provides false informalion on such sworn statement to the court shall be guilty of a felony of the third degree, punishable as provided in s. 775.052, s. 775.083, or s. 775.004.

(8) The Department of Law Enforcement shall notify the appropriate state attorney of any order lo seal or expunge which is contrary to law because the subject of the record has previously been convicted of a crime or comparable ordinance violation or has a prior criminal history record sealed or expunged. Upon receipt of such notice, the state attorney shall take action to correct the record and petition the court to void the order. The Department of Law Enforcement shall seal the record until such time as the order is voided by the court

(9) A criminal history record relating to a violation of chapter 794, s. 800.04, or s. 827 071 in which the victim was under the age of 18 years shall not be expunged in any instance where the defendant was found or pled guilty, without regard to whether adjudication was withheld,

History.—s 11. ch 80-409; s 1.ch 88 248
'Note.—Section 775 084 was amended hy s 6. ch 88-131, deleting all reference lo misdemeanors

1943.06 Criminal **Justice** Information **Systems** Council.—There is created a Criminal Justice Information Systems Council within the department.

(1) The council shall be composed of 11 members, consisting of the Attorney General or a designated assistant; the secretary of the Department of Corrections or a designated assistant; the chairman of the Parole Commission or a designated assistant; the State Courts Administrator or a designated assistant; and 7 members, to be appointed by the Governor, consisting of 2 sheriffs, 2 police chiefs, 1 public defender, 1 slate attorney, and 1 clerk of the circuit court.

(2) Members appointed by the Governor shall be appointed for terms of 4 years. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the council. Any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and qualifies. Any member who, without cause, fails to attend two consecutive meetings may be removed by the Governor.

(3) The council shall annually elect its chairman and other officers. The council shall meet semiannually or at the call of its chairman, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules. A majority of the members of the council constitutes a quorum, and action by a majority of the council shall be official.

(4) Membership on the council shall not disqualify a member from holding any other public office or being erriployed by a public entity except that no member of the Legislature shall serve on the council The Legislalure finds that the council serves a state, county, and municipal purpose and that service on Ihe council is