

APPENDIX C

Proposed Rule	Reason for Change
<p>RULE 3.692. PETITION TO SEAL OR EXPUNGE</p> <p>(a) Requirements of Petition.</p> <p>(1) All relief sought by reason of sections 943.0585–943.059, Florida Statutes, shall be by written petition, filed with the clerk. The petition shall state the grounds on which it is based and the official records to which it is directed and shall be supported by an affidavit of the party seeking relief, which affidavit shall state with particularity the statutory grounds and the facts in support of the motion. A petition seeking to seal or expunge nonjudicial criminal history records must be accompanied by a certificate of eligibility issued to the petitioner by the Florida Department of Law Enforcement. must be accompanied by:</p> <p><u>(A) a valid certificate of eligibility issued by the Florida Department of Law Enforcement; and</u></p> <p><u>(B) a sworn statement by the petitioner attesting that the petitioner:</u></p> <p><u>(i) satisfies the eligibility requirement in section 943.0585(1), Florida Statutes;</u></p> <p><u>(ii) is eligible for an expunction to the best of the petitioner’s knowledge; and</u></p> <p><u>(iii) does not have any other petition to seal or expunge criminal history record pending</u></p>	<p>The rule is reorganized so that subdivision (a)(1) addresses relief sought under section 943.0585, Florida Statutes, “Court-ordered expunction of criminal history records.”</p> <p>Deletes “s” in “sections” and deletes the reference to section 943.059, Florida Statutes.</p> <p>Deletes the remainder of existing subdivision (a)(1).</p> <p>Amends the rule to add new subdivisions detailing the requirements of the petition.</p> <p>Creates new subdivision (a)(1)(A) to address section 943.0858, Florida Statutes, as amended by section 50(3)(a), Chapter 2019-167, Laws of Florida, that requires the petition to be accompanied by a valid certificate of eligibility issued by the Florida Department of Law Enforcement.</p> <p>Creates new subdivision (a)(1)(B) to address section 943.0858, Florida Statutes, as amended by section 50(3)(b), Chapter 2019-167, Laws of Florida, that requires the petition to include a sworn statement.</p> <p>New subdivisions (a)(1)(B)(i)–(a)(1)(B)(iii) require that the sworn statement include that the petitioner satisfies the eligibility requirements and does not have any other pending petitions to address section 943.0858(3)(b)1.–2., Florida Statutes, as amended by section 50, Chapter 2019-167, Laws of</p>

RECEIVED 12/02/2019 11:45:30 AM, Clerk, Supreme Court

<p><u>before any court.</u></p> <p><u>A copy of the completed petition, and affidavits, sworn statement, and certificate of eligibility shall be served on the prosecuting attorney and the arresting authority; however, it is not necessary to make any agency other than the state a party.</u></p> <p>(2) <u>All relief sought by reason of section 943.0583, Florida Statutes, shall be by written petition, filed with the clerk. The petition shall state the grounds on which it is based and the official records to which it is directed; shall be supported by the petitioner's sworn statement attesting that the petitioner is eligible for such an expunction; and to the best of his or her knowledge or belief that the petitioner does not have any other petition to expunge or any petition to seal pending before any court; and shall be accompanied by official documentation of the petitioner's status as a victim of human trafficking, if any exists. A petition to expunge, filed under section 943.0583, Florida Statutes, is not required to be accompanied by a certificate of eligibility from the Florida Department of Law Enforcement. A copy of the completed petition, sworn statement, and any other official documentation of the petitioner's status as a victim of human trafficking, shall be served on the prosecuting attorney and the arresting authority. All relief sought pursuant to section 943.059, Florida Statutes, shall be by written petition, filed with the clerk. The petition must be accompanied by:</u></p> <p style="padding-left: 40px;"><u>(A) a valid certificate of eligibility issued by the Florida Department of Law Enforcement; and</u></p> <p style="padding-left: 40px;"><u>(B) a sworn statement by the petitioner attesting that the petitioner:</u></p>	<p>Florida.</p> <p>Amends the rule to delete the reference to “copy” to conform to electronic service. The new language at the end of the subdivision is added to address section 943.0585, Florida Statutes, as amended by section 50, Chapter 2019-167, Laws of Florida.</p> <p>Amends existing subdivision (a)(2) to relocate language addressing section 943.0583, Florida Statutes, to new Rule 3.693.</p> <p>Proposed new subdivision (a)(2) addresses petitions pursuant to section 943.059, Florida Statutes, as amended by section 51, Chapter 2019-167, Laws of Florida.</p> <p>New subdivision (a)(2)(A) requires the petition to be accompanied by a certificate of eligibility pursuant to section 943.059(3)(a), Florida Statutes, as amended by section 51, Chapter 2019-167, Laws of Florida.</p>
---	---

(i) _____ satisfies the eligibility requirement in section 943.059(1), Florida Statutes;

(ii) _____ is eligible for a sealing to best of the petitioner’s knowledge; and

(iii) _____ does not have any other petition to seal or expunge a criminal history record pending before the court.

The completed petition, sworn statement, and certificate of eligibility shall be served on the prosecuting attorney and the arresting authority; however, it is not necessary to make any agency other than the state a party.

(b) State’s Response; Evidence. The prosecuting attorney and arresting agency may respond to the petition and affidavitsworn statement. The court may receive evidence on any issue of fact necessary to rule on the petition.

(c) Written Order. If the petition is granted, the court shall enter its written order so stating and further setting forth the records and agencies or departments to which it is directed. Any request for expunging or sealing of a criminal history record may be denied at the sole discretion of the court. The court may not order a criminal justice agency to expunge or seal a criminal history record until the petitioner has applied for and received a certificate of eligibility.

(d) Copies of Order. ~~On the receipt of an order sealing or expunging nonjudicial criminal history records, the clerk shall furnish a certified copy thereof to each agency or~~

New subdivisions (a)(2)(B)(i)–(a)(2)(B)(iii) require that the sworn statement include that the petitioner satisfies the eligibility requirements and does not have any other pending petitions to address section 943.059(3)(b)1.–2., Florida Statutes, as amended by section 51, Chapter 2019-167, Laws of Florida.

Amends the end of subdivision (a)(2) to address section 943.059(5)(a), Florida Statutes, as amended by section 51, Chapter 2019-167, Laws of Florida.

Amended to address section 943.0585(5)(a), Florida Statutes, as amended by section 50, chapter 2019-167, Laws of Florida. Amended to address section 943.059(5)(a), Florida Statutes, as amended by section 51, Chapter 2019-167, Laws of Florida.

Amended to address section 943.059(4)(e), Florida Statutes, as amended by section 51, Chapter 2019-167, Laws of Florida. Amended to address section 943.059(4)(b), Florida Statutes, as amended by section 51, Chapter 2019-167, Laws of Florida. The same language appears in sections 943.0585(4)(e) and (4)(b), Florida Statutes as amended by section 50, Chapter 2019-167, Laws of Florida.

Existing subdivision (d) is merged with existing subdivision (e) to address what happens after an order is

<p>department named therein except the court.</p> <p>(e) — Clerk’s Duties.</p> <p><u>(1) On receipt of an order sealing or expunging non judicial criminal history records, the clerk shall:</u></p> <p><u>(A) furnish a certified copy thereof to each agency or department named therein except the court;</u></p> <p><u>(B) certify copies of the order to the appropriate state attorney, or statewide prosecutor, and the arresting agency; and</u></p> <p><u>(C) certify a copy of the order to any other agency that the records of the court reflect has received the criminal history record from the court.</u></p> <p><u>(2) In regard to the official records of the court, including the court file of the cause, the clerk shall:</u></p> <p><u>(+A) remove from the official records of the court, excepting the court file, all entries and records subject to the order, provided that, if it is not practical to remove the entries and records, the clerk shall make certified copies thereof and then expunge by appropriate means the original entries and records;</u></p> <p><u>(2B) seal the entries and records, or certified copies thereof, together with the court file and retain the same in a nonpublic index, subject to further order of the court (see <i>Johnson v. State</i>, 336 So. 2d 93 (Fla. 1976)); and</u></p>	<p>granted.</p> <p>New subdivisions (d)(1)(A)–(d)(1)(C) address section 943.0585(5)(b), Florida Statutes, as amended by section 50, Chapter 2019-167, Laws of Florida. Addresses section 943.059(5)(b), Florida Statutes, as amended by section 51, Chapter 2019-167, Laws of Florida.</p> <p>Amended to move the contents of existing subdivision (e) into new subdivisions (d)(2)(A)–(d)(2)(C).</p> <p>Amended to renumber the subdivision as (d)(2)(A).</p> <p>Amended to renumber the subdivision as (d)(2)(B).</p>
---	---

_____ (3C) in multi-defendant cases, make a certified copy of the contents of the court file that shall be sealed under subdivision (d)(2)(B). Thereafter, all references to the petitioner shall be expunged from the original court file.

(fe) Costs. Petitioner shall bear all costs of certified copies unless petitioner is indigent.

Committee Notes

1984 Amendment. Substantially the same as the former rule. The statutory reference in (1) was changed to cite the current statute and terminology was changed accordingly. Subdivision (f) of the former rule was deleted because it dealt with substantive matters covered by section 943.058, Florida Statutes (1981).

2000 Amendment. Substantially the same as the former rule, but references to certificate of eligibility for obtaining nonjudicial criminal history records were added pursuant to *State v. D.H.W.*, 686 So. 2d 1331 (Fla. 1996).

20 Amendment. Subdivisions addressing human trafficking were moved to rule 3.693.

**RULE 3.693. PETITION TO SEAL OR EXPUNGE;
HUMAN TRAFFICKING**

Amended to renumber the subdivision as (d)(2)(C).

Amended to clarify the subdivision reference as (d)(2)(B).

Renumbers existing subdivision (f) as (e) to reflect the deletion of existing subdivision (d).

Creates a new committee note to indicate that the human trafficking subdivisions have moved to a new rule.

New Rule to address petitions to seal or expunge criminal history records pursuant to section 943.0583, Florida

(a) Requirements of Petition.

(1) A person who is a victim of human trafficking may petition for the expunction of a criminal history record pursuant to section 943.0583, Florida Statutes. The petition shall be in writing and filed with the clerk of court in any court in the circuit in which the petitioner was arrested. The petition need not be filed in the court where the petitioner’s criminal proceeding originally occurred. The petition must be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking. The petition to expunge is complete only when accompanied by:

(A) the petitioner’s sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court; and

(B) official documentation of the petitioner’s status as a victim of human trafficking, if any exists.

The petition to expunge need not be accompanied by a certificate of eligibility from the Florida Department of Law Enforcement. The completed petition, sworn statement, and any other official documentation of the petitioner’s status as a victim of human trafficking, shall be served on the prosecuting attorney and the arresting authority; however, it is not necessary to make any agency other than the state a party.

(b) State’s Response; Evidence. The prosecuting attorney and arresting agency may respond to the petition.

Statutes, “Human trafficking victim expunction.”

Subdivision (a) details the requirements of the petition.

Subdivision (a)(1) addresses sections 943.0583(2) and 934.0583(4), Florida Statutes

Subdivision (a)(1)(A) addresses section 943.0583(6)(a), Florida Statutes.

Subdivision (a)(1)(B) addresses section 943.0583(6)(b), Florida Statutes.

Subdivision (a)(1) addresses section 943.0583(7)(a), Florida Statutes.

Official documentation of the victim’s status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking but is not required for granting a petition under section 943.0583, Florida Statutes. A determination made without such official documentation must be made by a showing of clear and convincing evidence. Determination of the petition under section 943.0583, Florida Statutes, should be by a preponderance of the evidence.

(c) **Written Order.** If the petition is granted, the court shall enter its written order so stating and further setting forth the records and agencies or departments to which it is directed.

(d) **Clerk’s Duties.**

(1) On the receipt of an order sealing or expunging nonjudicial criminal history records, the clerk shall:

(A) furnish a certified copy thereof to each agency or department named therein except the court;

(B) certify copies of the order to the appropriate prosecuting attorney and the arresting agency; and

(C) certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(2) In regard to the official records of the court, including the court file of the cause, the clerk shall:

Subdivision (b) addresses section 943.0583(7)(a) and section 943.0583(5), Florida Statutes.

Subdivision (c) mirrors the existing language in Rule 3.692(c).

Subdivisions (d)(1)(A)–(d)(1)(C) addresses section 943.0583(7)(d), Florida Statutes.

(A) remove from the official records of the court, excepting the court file, all entries and records subject to the order, provided that, if it is not practical to remove the entries and records, the clerk shall make certified copies thereof and then expunge by appropriate means the original entries and records;

(B) seal the entries and records, or certified copies thereof, together with the court file and retain the same in a nonpublic index, subject to further order of the court (see *Johnson v. State*, 336 So. 2d 93 (Fla. 1976)); and

(C) in multi-defendant cases, make a certified copy of the contents of the court file that shall be sealed under subdivision (d)(2)(B). Thereafter, all references to the petitioner shall be expunged from the original court file.

(e) **Costs.** Petitioner shall bear all costs of certified copies unless petitioner is indigent.

Committee Notes

20 Amendment. Rule 3.693 was previously a part of rule 3.692.

**RULE 3.694. PETITION TO SEAL OR EXPUNGE;
LAWFUL SELF-DEFENSE
EXPUNCTION**

(a) Requirements of Petition. All relief sought by reason of section 943.0578, Florida Statutes, shall be by written petition, filed with the clerk. The petition must be accompanied

Subdivisions (d)(2)(A)–(d)(2)(C) mirror existing language in Rule 3.692(e).

Subdivision (e) mirrors language in existing Rule 3.692(f).

A new committee note indicates that the rule was once part of Rule 3.692.

New Rule to address petitions to seal or expunge criminal history records pursuant to section 943.0578 “Lawful

by:

(1) a valid certificate of eligibility for expunction issued by the Florida Department of Law Enforcement pursuant to this section; and

(2) the petitioner’s sworn statement attesting that the petitioner is eligible for such an expunction to the best of his or her knowledge or belief.

In judicial proceedings under this section, the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party.

(b) State’s Response. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(c) Written Order. If the petition is granted, the court shall enter its written order so stating and further setting forth the records and agencies or departments to which it is directed. Any request for expunging or sealing of a criminal history record may be denied at the sole discretion of the court. The court may not order a criminal justice agency to expunge or seal a criminal history record until the petitioner has applied for and received a certificate of eligibility.

(d) Clerk’s Duties.

(1) On the receipt of an order sealing or

self-defense expunction.”

Subdivision (a) details the requirements of the petition pursuant to section 943.0578, Florida Statutes, as created by section 47, Chapter 2019-167, Laws of Florida.

Subdivision (a)(1) addresses section 943.0578(2)(a), Florida Statutes, as created by section 47, Chapter 2019-167, Laws of Florida.

Subdivision (a)(2) addresses section 943.0578(2)(b), Florida Statutes, as created by section 47, Chapter 2019-167, Laws of Florida.

Section 943.0578 refers to subsections (5) and (6) of section 943.0585, Florida Statutes. The remainder of the subdivision addresses section 943.0585(5)(b), Florida Statutes, as amended by section 50, Chapter 2019-167, Laws of Florida.

Subdivision (b) addresses section 943.0585(5)(a), Florida Statutes, as referred to by section 943.0578(4), Florida Statutes, as created by section 47, Chapter 2019-167, Laws of Florida.

Subdivision (c) addresses section 943.0585(5)(b), Florida Statutes, as referred to by section 943.0578(4), Florida Statutes, as created by section 47, Chapter 2019-167, Laws of Florida.

expunging nonjudicial criminal history records, the clerk shall:

(A) furnish a certified copy thereof to each agency or department named therein except the court;

(B) certify copies of the order to the appropriate prosecuting attorney and the arresting agency; and

(C) certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(2) In regard to the official records of the court, including the court file of the cause, the clerk shall:

(A) remove from the official records of the court, excepting the court file, all entries and records subject to the order, provided that, if it is not practical to remove the entries and records, the clerk shall make certified copies thereof and then expunge by appropriate means the original entries and records;

(B) seal the entries and records, or certified copies thereof, together with the court file and retain the same in a nonpublic index, subject to further order of the court (see *Johnson v. State*, 336 So. 2d 93 (Fla. 1976)); and

(C) in multi-defendant cases, make a certified copy of the contents of the court file that shall be sealed under subdivision (d)(2)(B). Thereafter, all references to the petitioner shall be expunged from the original court file.

(e) **Costs.** Petitioner shall bear all costs of certified

New subdivisions (d)(1)(A)–(d)(1)(C) address section 943.0585(5)(b), Florida Statutes, as created by section 47, Chapter 2019-167, Laws of Florida.

Subdivisions (d)(2)(A)–(d)(2)(C) mirror existing language in Rule 3.692(e).

copies unless petitioner is indigent.

Committee Notes

20 Amendment. New rule to address section 943.0578, Florida Statutes.

Amendments to Forms are shown in Appendix B pursuant to *In Re: Guidelines for Rules Submissions*, No. AOSC06-14 (Fla. 2006).

Subdivision (e) mirrors language in existing 3.692(f).

A new committee note indicates that the rule was created to address section 943.0578, Florida Statutes.