

HOUSE RESEARCH

Bill Summary

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In addition to those instances provided for by statute, a court may expunge a criminal record based upon the court's own "inherent" authority. When a court issues an expungement order using its inherent authority, records related to the prosecution that are held within the judicial branch of government are sealed. Case law has established, however, that courts do not have the power to order the sealing of records held by an executive branch state agency if the records were not originally created as a result of a judicial proceeding.

This bill provides that, if a court makes an order based upon its own authority, any related records held by an agency must also be sealed. The agency is prohibited from disclosing the existence of, or opening, a sealed record unless required by law or court order. The agency is also bound by certain other limitations: the expunged record may be used for specific purposes provided by law, and if the expungement order is related to a charge supported by probable cause, DNA samples and records must be maintained.

The court administrator is required to notify any appropriate agencies about an expungement issued under the court's inherent authority.