

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE  
FLORIDA RULES OF CRIMINAL  
PROCEDURE—2018 REGULAR-  
CYCLE REPORT

SC18-118

MOTION FOR REHEARING AND CLARIFICATION

Sheila Ann Loizos, Chair of the Criminal Procedure Rules Committee (“Committee”), and Joshua E. Doyle, Executive Director of The Florida Bar, file this motion for rehearing and clarification.

The amendments proposed for Rule 3.691 (Post-Trial Release) have been approved by the full Committee and, as required by Florida Rule of Judicial Administration 2.140, reviewed by the Executive Committee of The Florida Bar’s Board of Governors. The Committee voted 32-0-1 to approve the amendments to Rule 3.691. The vote of the Executive Committee of the Board of Governors was 13-0 in favor.

**RULE 3.691. POST-TRIAL RELEASE**

Upon release of the Court’s opinion in this case, July 19, 2018, the Committee realized that the wording proposed for Rule 3.691 (Post-Trial Release) would accomplish the opposite of the Committee’s intent. The Committee proposes additional amendments to the first sentence to effectuate the Committee’s intent. Specifically, the Committee proposes deleting the “or” after “non-capital offense” and adding “not” before “prohibited under section 903.133, Florida Statutes.” As proposed, the sentence would read as follows:

(a) **When Authorized.** A defendant who has been adjudicated guilty of the commission of any non-capital offense for which bail is not prohibited under section 903.133, Florida Statutes, may be released, pending review of the conviction, at the discretion of either the trial or appellate court, applying the principles enunciated in *Younghans v. State* [ ].

**RULE 3.989. AFFIDAVIT; PETITION; AND ORDER TO EXPUNGE OR SEAL FORMS**

In its opinion dated July 19, 2018, the Court indicated that the Committee proposed amendments to:

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[ ] 3.989(a) (Affidavit, Petition, and Order to Expunge or Seal Forms; Affidavit in Support of Petition); 3.989(b) (Affidavit, Petition, and Order to Expunge or Seal Forms; Order to Expunge); 3.989(c) (Affidavit, Petition, and Order to Expunge or Seal Forms; Order to Seal); 3.989(d) (Affidavit, Petition, and Order to Expunge or Seal Forms; Petition to Expunge or Seal); 3.989(e) (Affidavit, Petition, and Order to Expunge or Seal Forms; Petition to Expunge; Human Trafficking Victim); and 3.989(g) (Affidavit, Petition, and Order to Expunge or Seal Forms; Order to Expunge; Human Trafficking Victim). (*See* Opinion at 2–3.)

Also in this opinion, the Court indicated that “[a]fter reviewing the Committee’s proposals and considering the comments filed and the Committee’s response thereto, we adopt the proposed amendments to rules 3.010, 3.025, 3.030, 3.131, 3.180, 3.190, 3.191, 3.203, 3.213, 3.217, 3.218, 3.219, 3.220, 3.240, 3.330, 3.470, 3.590, 3.600, 3.610, 3.691, 3.692, 3.704, 3.710, 3.770, 3.810, 3.850, 3.986, 3.9876, and 3.989.” (*See* Opinion at 3.)

The Committee asks for clarification as to whether its proposed amendments to Rule 3.989 (Affidavit; Petition; and Order to Expunge or Seal Forms) have been adopted by the Court as subdivision (f) “Affidavit in Support of Petition; Human Trafficking Victim” was not listed as one for which the Committee proposed amendments, but the rule as a whole was indicated as one that was amended and adopted.

The Committee did propose amendments to subdivision (f) as highlighted in Rehearing Appendix A-13. In its report, filed January 23, 2018, the Committee proposed the following:

In subdivision (f)2., the Committee proposes adding “, or is reported to have committed,” before “an offense.” In the same sentence, the Committee proposes adding “section” before and “Florida Statutes” after “775.084(1)(b)1.” Also in the same sentence, the Committee proposes adding “, or reported to have been committed,” after “which was committed.” (*See* Report at 22.)

In subdivision (e)2., the Committee incorrectly inserted a comma after “section” which is highlighted in Rehearing Appendix A–11. We ask that this comma be removed as it is unnecessary and adds confusion to the paragraph.

WHEREFORE, the Criminal Procedure Rules Committee respectfully requests that the Court further amend Rule 3.691 as detailed above and clarify the adoption of the proposed amendments to Rule 3.989 as outlined above.

Respectfully submitted on August 14, 2018.

/s/ Sheila Ann Loizos

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/s/ Joshua E. Doyle

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### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished by e-mail, via the Florida Courts E-filing Portal, on August 14, 2018, to:

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## **CERTIFICATE OF COMPLIANCE**

I certify that this motion was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Heather Savage Telfer

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## **RULE 3.691. POST-TRIAL RELEASE**

(a) **When Authorized.** ~~All persons~~ A defendant who ~~have~~has been adjudicated guilty of the commission of any non-capital offense ~~or~~ for which bail is not prohibited under section 903.133, Florida Statutes, not capital, may be released, pending review of the conviction, at the discretion of either the trial or appellate court, applying the principles enunciated in ~~Younghans v. State~~ Younghans v. State, 90 So.2d 308 (Fla. 1956), ~~provided that no person~~. No defendant may be admitted to bail on appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if ~~such person~~ the defendant has previously been convicted of a felony, the commission of which occurred prior to the commission of the subsequent felony, and the ~~person's~~ defendant's civil rights have not been restored or if other felony charges are pending against the ~~person~~ defendant and probable cause has been found that the ~~person~~ defendant has committed the felony or felonies at the time the request for bail is made.

(b) **Written Findings.** In any case in which the court has the discretion to release the defendant pending review of the conviction and, after the defendant's conviction, denies release, it shall state in writing its reasons for the denial.

(c) **Review of Denial.** An order by a trial court denying bail to a ~~person~~ defendant pursuant to the provisions of subdivision (a) may be reviewed by motion to the appellate court and the motion shall be advanced on the calendar of the appellate court for expeditious review.

(d) **Conditions of Release.** If the defendant is released after conviction and ~~on~~ pending appeal, the conditions shall be:

(1) the defendant will duly prosecute the appeal; and

(2) the defendant will surrender himself or herself in execution of the judgment or sentence on its being affirmed or modified or on the appeal being dismissed; or in case the judgment is reversed and the cause remanded for a new trial, the defendant will appear in the court to which the cause may be remanded for a new trial, that the defendant will appear in the court to which the cause may be remanded and submit to the orders and process thereof and will not depart the jurisdiction of the court without leave.

(e) **Approval of Bond.** The court shall approve the sufficiency and adequacy of the bond, its security, and sureties, prior to the release of the defendant. However, in no case may an original appearance bond be continued for an appeal.

### **Committee Notes**

**1977 Amendment.** Chapter 76-138, section 2, Laws of Florida, by appropriate vote, repealed the provisions of rule 3.691, insofar as they were inconsistent with the legislative act. This rule has been amended to include the provisions of Chapter 76-138, Laws of Florida.

**RULE 3.989. AFFIDAVIT; PETITION; AND ORDER TO EXPUNGE  
OR SEAL FORMS**

**(a) Affidavit in Support of Petition.**

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
 )  
Defendant/Petitioner )  
\_\_\_\_\_ )

**AFFIDAVIT**

State of Florida

County of \_\_\_\_\_

I, .....(name of defendant/petitioner)....., am the defendant/petitioner in the above-styled cause and I do hereby swear or affirm that:

1. I fully understand the meaning of all of the terms of this affidavit.
2. I have never been adjudicated guilty of a criminal offense or a comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes.
3. I was arrested on .....(date)....., by .....(arresting agency)....., and I have not been adjudicated guilty of, nor adjudicated delinquent for committing, any of the acts stemming from that arrest or the alleged criminal activity surrounding my arrest.
4. I am eligible for the relief requested, to the best of my knowledge and belief, and do not have any other petition to expunge or seal pending before any court.



5. I have never secured a prior records expunction or sealing ~~under any law~~ under section 943.0585 or 943.059, Florida Statutes, or under former section 893.14, 901.33, or 943.058, Florida Statutes, or the record is otherwise eligible for expunction because it has been sealed for at least 10 years.

6. (For use in expunction petitions only.) My record of arrest for this date has been sealed for at least 10 years; or an indictment, information, or other charging document was not filed against me for the above criminal transaction; or an indictment, information, or other charging document filed against me was dismissed by the prosecutor or the court.

---

Petitioner

Sworn to and subscribed before me on .....(date).....

---

NOTARY PUBLIC, or other person  
authorized to administer an oath

Printed, typed, or stamped  
commissioned name of Notary Public

Personally known ..... or produced identification .....

Type of identification produced .....

My commission expires:

**(b) Order to Expunge.**

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
 )  
Defendant/Petitioner )  
\_\_\_\_\_ )

**ORDER TO EXPUNGE UNDER  
SECTION 943.0585, FLORIDA STATUTES,  
AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.692**

THIS CAUSE having come on to be heard before me this date on a petition to expunge certain records of the petitioner's arrest on .....(date)....., by .....(arresting agency)....., for .....(charges)....., and the court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

1. The petitioner has never previously been adjudicated guilty of a criminal offense or a comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes.

2. The petitioner was not adjudicated guilty of nor adjudicated delinquent for committing any of the acts stemming from the arrest or criminal activity to which this expunction petition pertains.

3. The petitioner has not secured a prior records expunction or sealing under section 943.0585 or 943.059, Florida Statutes, or under former section 893.14, 901.33, or 943.058, Florida Statutes, or the record is otherwise eligible for expunction because it has been sealed for at least 10 years.

4. This record has either been sealed for at least 10 years; or no indictment, information, or other charging document was ever filed in this case against the petitioner; or an

indictment, information, or other charging document filed against the defendant was dismissed by the prosecutor or the court.

5. A Certificate of Eligibility issued by the Florida Department of Law Enforcement accompanied the petition for expunction of nonjudicial criminal history records. Whereupon it is

ORDERED AND ADJUDGED that the petition to expunge is granted. All court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this order to the (check one) ..... state attorney, ..... special prosecutor, ..... statewide prosecutor, .....(arresting agency)....., and the Sheriff of ..... County, who will comply with the procedures set forth in section 943.0585, Florida Statutes, and appropriate regulations of the Florida Department of Law Enforcement, and who will further forward a copy of this order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that .....(arresting agency)..... shall expunge all information concerning indicia of arrest or criminal history record information regarding the arrest or alleged criminal activity to which this petition pertains in accordance with the procedures set forth in section 943.0585, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the .....

DONE AND ORDERED in Chambers at ..... County, Florida, on .....(date).....

---

Circuit Court Judge

(c) **Order to Seal.**

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
 )  
Defendant/Petitioner )  
\_\_\_\_\_ )

**ORDER TO SEAL RECORDS UNDER SECTION 943.059,  
FLORIDA STATUTES, AND FLORIDA RULE OF  
CRIMINAL PROCEDURE 3.692**

THIS CAUSE having come on to be heard before me this date on petitioner's petition to seal records concerning the petitioner's arrest on .....(date)....., by the .....(arresting agency)....., and the court having heard argument of counsel and being otherwise advised in the premises, the court hereby finds:

1. The petitioner has never been previously adjudicated guilty of a criminal offense or comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes.

2. The petitioner was not adjudicated guilty of nor adjudicated delinquent for committing any of the acts stemming from the arrest or criminal activity to which the instant petition pertains.

3. The petitioner has not secured a prior records expunction or sealing under section 943.0585 or 943.059, Florida Statutes, or under former section 893.14, 901.33, or 943.058, Florida Statutes.

4. A Certificate of Eligibility issued by the Florida Department of Law Enforcement accompanied the instant petition for sealing nonjudicial criminal history records. Whereupon it is

ORDERED AND ADJUDGED that the petition to seal records is granted. All court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this order to the (check one) ..... state attorney, ..... special prosecutor, ..... statewide prosecutor, .....(arresting agency)....., and the ..... Sheriff of ..... County, who will comply with the procedures set forth in section 943.059, Florida Statutes, and appropriate regulations of the Florida Department of Law Enforcement, and who will further forward a copy of this order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that .....(arresting agency)..... shall seal all information concerning indicia of arrest or criminal history record information regarding the arrest or alleged criminal activity to which this petition pertains in accordance with the procedures set forth in section 943.059, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the .....

DONE AND ORDERED in Chambers at ..... County, Florida, on .....(date).....

---

Circuit Court Judge

**(d) Petition to Expunge or Seal.**

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
 )  
Defendant/Petitioner )  
\_\_\_\_\_ )

**PETITION TO EXPUNGE OR SEAL**

The petitioner, ....., by and through the undersigned attorney, petitions this honorable court, under Florida Rule of Criminal Procedure 3.692 and section ..... 943.0585, or ..... section 943.059, Florida Statutes, to .....expunge/seal..... all criminal history record information in the custody of any criminal justice agency and the official records of the court concerning the petitioner's arrest on .....(date)....., by .....(arresting agency)....., for .....(charges)....., and as grounds therefor shows:

1. On .....(date)....., the petitioner, ....., a .....(race/sex)....., whose date of birth is .....(date of birth)....., was arrested by .....(arresting agency)....., and charged with .....(charges).....

2. The petitioner has not been adjudicated guilty of nor adjudicated guilty of committing any of the acts stemming from this arrest or alleged criminal activity.

3. The petitioner has not been previously adjudicated guilty of a criminal offense or a comparable ordinance violation nor adjudicated delinquent for committing a felony or a misdemeanor specified in section 943.051(3)(b), Florida Statutes.

4. The petitioner has not secured a prior records expunction or sealing under section 943.0585; or 943.059, Florida Statutes, or under former section 943.058, Florida Statutes, former section 893.14, Florida Statutes, or former section 901.33, Florida Statutes, or any other law, rule, or authority.

5. (To be used only when requesting expunction.) The petitioner's record has been sealed under section 943.059, Florida Statutes, or under former section 943.058, ~~Florida Statutes, former section 893.14, Florida Statutes, or former section 901.33, Florida Statutes~~, for at least 10 years; or there has not been an indictment, information, or other charging document filed against the petitioner who is the subject of this criminal history record information; or an indictment, information, or other charging document filed against the petitioner who is the subject of this criminal history information was dismissed by the prosecutor or the court.

6. A Certificate of Eligibility for .....expunction/sealing..... of nonjudicial criminal history records issued by the Florida Department of Law Enforcement accompanies this petition.

WHEREFORE, the petitioner moves to .....expunge/seal..... any criminal history record information and any official court records regarding his/her arrest by .....(arresting agency)....., for .....(charges)....., on .....(date).....

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been served on .....(name of prosecuting authority)....., (check one) ..... State Attorney for the ..... Judicial Circuit, in and for ..... County, ..... Special Prosecutor, ..... Statewide Prosecutor}; .....(arresting agency).....; ..... (Sheriff of county in which defendant was arrested, if different); and the Florida Department of Law Enforcement, on .....(date).....

\_\_\_\_\_  
Name:

Address:

City/State:

Telephone Number:

E-mail Address:

Fla. Bar No.:

(e) **Petition to Expunge; Human Trafficking Victim.**

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
 )  
Defendant/Petitioner )  
\_\_\_\_\_ )

**PETITION TO EXPUNGE/HUMAN TRAFFICKING VICTIM**

The petitioner, ....., by and through the undersigned attorney, petitions this honorable court, under Florida Rule of Criminal Procedure 3.692 and section 943.0583, Florida Statutes, to expunge all criminal history record information in the custody of any criminal justice agency and the official records of the court concerning the petitioner's arrest and/or conviction on .....(date(s))....., by .....(arresting agency and/or prosecuting authority)....., for .....(charges and/or offenses)....., and as grounds therefor shows:

1. On .....(date(s))....., the petitioner, ....., a .....(race/sex)....., whose date of birth is .....(date of birth)....., was arrested by .....(arresting agency)....., and charged with .....(charges)..... or was convicted by .....(name of prosecuting authority)..... of .....(offenses).....

2. The petitioner has been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and has committed, or is reported to have committed, an offense, other than those offenses listed in section 775.084(1)(b)1, Florida Statutes, which was committed, or reported to have been committed, as a part of a human trafficking scheme of which he/she was the victim or at the direction of an operator of the scheme as evidenced by the attached official documentation of his/her status, or may be shown by clear and convincing evidence presented to the Court.

WHEREFORE, the petitioner moves to expunge any criminal history record information and any official court records regarding his/her arrest and/or conviction by .....(arresting agency and/or name of prosecuting authority)....., for .....(charges and/or offenses)....., on .....(date(s)).....



I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been served on .....(name of prosecuting authority)....., (check one) ..... State Attorney for the ..... Judicial Circuit, in and for ..... County, ..... Special Prosecutor, ..... Statewide Prosecutor; .....(arresting agency).....; ..... (Sheriff of county in which defendant was arrested, if different); and the Florida Department of Law Enforcement, on .....(date).....

\_\_\_\_\_  
Name:

Address:

City/State:

Telephone Number:

E-mail Address:

Fla. Bar No.:

Personally known ..... or produced identification .....

Type of identification produced .....

My commission expires:

**(f) Affidavit in Support of Petition; Human Trafficking Victim.**

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
 )  
Defendant/Petitioner. )  
\_\_\_\_\_ )

**AFFIDAVIT/HUMAN TRAFFICKING VICTIM**

State of Florida

County of \_\_\_\_\_

I, .....(name of defendant/petitioner)....., am the defendant/petitioner in the above-styled cause and I do hereby swear or affirm that:

1. I fully understand the meaning of all of the terms of this affidavit.

2. I have been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and have committed, or was reported to have committed, an offense, other than those offenses listed in section 775.084(1)(b)1, Florida Statutes, which was committed, or reported to have been committed, as a part of a human trafficking scheme of which I was the victim or at the direction of an operator of the scheme.

3. I was arrested and/or convicted on .....(date(s))....., by .....(arresting agency and/or name of prosecuting authority).....

4. I am eligible for the relief requested, to the best of my knowledge and belief, and .....(do or do not)..... have any other petition to expunge or seal pending before any court.

\_\_\_\_\_  
Petitioner

Sworn to and subscribed before me on .....(date).....

\_\_\_\_\_  
NOTARY PUBLIC, or other person  
authorized to administer an oath

Printed, typed, or stamped  
commissioned name of Notary Public

Personally known ..... or produced identification .....

Type of identification produced .....

My commission expires:

(g) **Order to Expunge; Human Trafficking Victim.**

In the Circuit Court of the  
\_\_\_\_\_ Judicial Circuit,  
in and for \_\_\_\_\_  
County, Florida

Case No.: \_\_\_\_\_  
Division \_\_\_\_\_

State of Florida, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
\_\_\_\_\_, )  
 )  
Defendant/Petitioner )  
\_\_\_\_\_ )

**ORDER TO EXPUNGE, HUMAN TRAFFICKING VICTIM,  
UNDER SECTION 943.0583, FLORIDA STATUTES,  
AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.692**

THIS CAUSE, having come on to be heard before me this date upon a petition to expunge certain records of the petitioner's arrest and/or conviction on .....(date(s))....., by .....(arresting agency and/or name of prosecuting authority)....., for .....(charges and/or offenses)....., and the court having heard argument of counsel and being otherwise fully advised in the premises, the court hereby finds the following:

The petitioner has been the victim of human trafficking, as discussed in section 787.06, Florida Statutes, and has committed, or is reported to have committed, an offense, other than those offenses listed in section 775.084(1)(b)1, Florida Statutes, which was committed, or reported to have been committed, as a part of a human trafficking scheme of which he/she was the victim, or at the direction of an operator of the scheme. A conviction expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

**Whereupon it is**

ORDERED AND ADJUDGED that the petition to expunge is granted. All court records pertaining to the above-styled case shall be sealed in accordance with the procedures set forth in Florida Rule of Criminal Procedure 3.692; and it is further

ORDERED AND ADJUDGED that the clerk of this court shall forward a certified copy of this order to the (check one) ..... state attorney, ..... special prosecutor, ..... statewide prosecutor, .....(arresting agency)....., and the Sheriff of ..... County, who will comply with the procedures set forth in section 943.0583, Florida Statutes, and appropriate regulations of the Florida Department of Law Enforcement, and who will further forward a copy of this order to any agency that their records reflect has received the instant criminal history record information; and it is further

ORDERED AND ADJUDGED that .....(arresting agency)..... shall expunge all information concerning indicia of arrest, conviction, or criminal history record information regarding the arrest, conviction, or alleged criminal activity to which this petition pertains in accordance with the procedures set forth in section 943.0583, Florida Statutes, and Florida Rule of Criminal Procedure 3.692.

All costs of certified copies involved herein are to be borne by the .....

DONE AND ORDERED in Chambers at ..... County, Florida, on .....(date).....

---

Circuit Court Judge

### **Committee Notes**

**1984 Adoption.** In order to have uniformity throughout the state, the committee proposes these forms for petition to expunge or seal, order to seal, and order to expunge and affidavit. These also should be a great asset to counsel and an invaluable asset to the clerks and FDLE, etc., who will be receiving orders in the future. The subcommittee working on these proposed forms has contacted law enforcement agencies, clerks, etc., for their input as to these proposed forms.

## RESPONSE APPENDIX B

Proposed Rule	Reason for Change
<p><b>RULE 3.691. POST-TRIAL RELEASE</b></p> <p>(a) <b>When Authorized.</b> <del>All persons</del> A defendant who <del>have</del>has been adjudicated guilty of the commission of any <u>non-capital offense</u> <del>or</del> for which bail is <u>not</u> prohibited under section 903.133, Florida Statutes, <del>not capital</del>, may be released, pending review of the conviction, at the discretion of either the trial or appellate court, applying the principles enunciated in <del>Younghans v. State</del><i>Younghans v. State</i>, 90 So. 2d 308 (Fla. 1956), <del>provided that no person.</del> <u>No defendant</u> may be admitted to bail on appeal from a conviction of a felony unless the defendant establishes that the appeal is taken in good faith, on grounds fairly debatable, and not frivolous. However, in no case shall bail be granted if <del>such person</del><u>the defendant</u> has previously been convicted of a felony, the commission of which occurred prior to the commission of the subsequent felony, and the <del>person's</del><u>defendant's</u> civil rights have not been restored or if other felony charges are pending against the <del>person</del><u>defendant</u> and probable cause has been found that the <del>person</del><u>defendant</u> has committed the felony or felonies at the time the request for bail is made.</p> <p>(b)–(e) [NO CHANGE]</p> <p><b>Committee Notes</b></p> <p>[NO CHANGE]</p>	<p>Subdivision (a) is further amended to delete “or” after “capital offense” and to add “not” before “prohibited” to make the sentence read correctly.</p>

Amendments to Rule 3.989 (Affidavit; Petition; and Order to Expunge or Seal Forms) are shown in “Rehearing Appendix A” pursuant to <i>In Re: Guidelines for Rules Submissions</i> , No. AOSC06-14 (Fla. 2006).	
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