

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 147 Expunging and Sealing Criminal History Records of Minors

SPONSOR(S): Latvala; Sprowls and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 943, F.S., in part, sets forth procedures for expunging and sealing criminal history records.

Section 943.0515, F.S., requires the automatic expunction of the criminal history records of specified juveniles at age 26 or 24. For a juvenile who is classified as a serious or habitual juvenile offender, or who has been committed to a juvenile correctional facility or juvenile prison, the Criminal Justice Information Program (CJIP) must retain his or her criminal history record until the age of 26, at which time it is automatically expunged unless other specified circumstances apply. For other juveniles, the Criminal Justice Information Program (CJIP) must retain their records until the age of 24, at which time the records are automatically expunged unless other specified circumstances apply.

For juveniles whose records are currently expunged at age 24, the bill amends s. 943.0515, F.S., to instead specify that the automatic expunction must occur five years after the date of the offense. The bill results in the possibility of expunging individual offenses on different dates rather than the entire juvenile record being expunged on the same date.

Juvenile prearrest and postarrest diversion programs (diversion programs) are nonjudicial alternatives used to keep less serious juvenile offenders from being processed through the traditional juvenile justice system. A diversion program is authorized to provide for the expunction of a juvenile's arrest record upon successful completion of the diversion program. To obtain such an expunction, a juvenile who has completed a diversion program must provide specified documentation to FDLE within a 12-month time frame in accordance with s. 943.0582, F.S.

The bill amends s. 943.0582, F.S., to eliminate the requirement that an application for diversion program expunction must be submitted within a 12-month time frame.

The bill will likely have both a positive and a negative fiscal impact on FDLE. See "Fiscal Impact on State Government," *infra*.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Automatic Expunction of Criminal History Records of Minors

Section 943.0515, F.S., requires the automatic expunction of the records of specified juveniles at age 24 or 26. For a juvenile who is classified as a serious or habitual juvenile offender, or who has been committed to a juvenile correctional facility or juvenile prison, the Criminal Justice Information Program (CJIP)¹ must retain his or her record until the age of 26, at which time the record is automatically expunged.² For all other juveniles, CJIP must retain the record until the juvenile reaches the age of 24, at which time the record is automatically expunged.³

A juvenile's record is prohibited from being automatically expunged if:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.^{4,5}

In these three instances, the person's record as a minor must be merged with and retained as part of his or her adult record.⁶

Under current law, FDLE expunges an eligible juvenile's entire criminal history record at the same time, at either age 24 or 26. Offenses which occurred at an earlier date would not be removed from a juvenile's record prior to the juvenile attaining the age of 24 or 26, whichever is applicable.

Effect of the Bill

The bill amends s. 943.0515, F.S., to require the automatic expunction of a juvenile's criminal history record concerning an individual offense five years after the date of the offense. As in current law, the criminal history record will not be expunged and will merge with the person's adult criminal history record if one of the three exceptions mentioned above applies.

The bill results in the possibility of expunging individual offenses on different dates rather than the entire juvenile record being expunged on the same date.⁷ Additionally, the record (or portion of a record) could be expunged while the juvenile is still a minor depending on the age the juvenile committed the offense.

Juvenile Prearrest and Postarrest Diversion Program Expunction

Juvenile Prearrest and Postarrest Diversion Program

Juvenile prearrest and postarrest diversion programs (diversion programs) are nonjudicial alternatives used to keep less serious juvenile offenders from being processed through the traditional juvenile justice system.⁸ These programs are intended to intervene at an early stage of delinquency, decrease

¹ Section 943.05, F.S., creates Criminal Justice Information Program (CJIP) within FDLE to act as the state's central criminal justice information repository, including the maintenance of a statewide automated biometric identification system. Identifying information of persons arrested and prosecuted in this state is sent to FDLE for inclusion in CJIP, which can then transmit this information between criminal justice agencies.

² s. 943.0515(1)(a), F.S.

³ s. 943.0515(1)(b), F.S.

⁴ s. 943.0515(2) and (3), F.S.

⁵ Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

⁶ *Id.*

⁷ Florida Department of Law Enforcement, Agency Analysis of 2016 HB 147, p. 2-3 (September 17, 2015).

⁸ "Probation and Community Intervention", DJJ 2011 Comprehensive Accountability Report,

<http://www.djj.state.fl.us/research/reports/car> (last visited on October 1, 2015).

subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.⁹

Section 985.125, F.S., authorizes a law enforcement agency or school district, in collaboration with the state attorney, to establish a diversion program for juveniles charged with criminal offenses. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for up to 90 days.¹⁰

A diversion program is authorized to provide for the expunction of a juvenile's arrest record upon successful completion of the diversion program.¹¹ Each diversion program must have an agreement among the establishing agencies to provide for such expunction.¹² Expunction of a criminal history record resulting from a diversion program is obtained in accordance with s. 943.0582, F.S.

Juvenile Diversion Program Expunction

Chapter 943, F.S., in part, sets forth procedures for expunging¹³ and sealing criminal history records.¹⁴ FDLE is required to expunge the nonjudicial arrest record of a juvenile who has successfully completed a diversion program if that juvenile:

- Submits a signed copy of FDLE's application for diversion program expunction;¹⁵
- Submits the application no later than 12 months after completion of diversion program;
- Submits an official written statement from the state attorney for the county in which the charges originated certifying that:
 - He or she has successfully completed that county's diversion program;
 - Participation in the program is based on an arrest for a nonviolent misdemeanor;¹⁶ and
 - He or she has not otherwise been charged by the state attorney with or found to have committed any criminal offense or comparable ordinance violation;
- Participated in a diversion program that expressly authorizes or permits such expunction;
- Participated in a diversion program based on an arrest for a nonviolent misdemeanor that is not considered an act of domestic violence as that term is defined in s. 741.28, F.S.;¹⁷ and
- Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable ordinance violation.¹⁸

⁹ *Id.*

¹⁰ s. 985.125(2), F.S. Additionally, if the juvenile fails to comply with the requirements of the program, the state attorney may notify Department of Highway Safety and Motor Vehicles in writing to suspend their driver's license for up to 90 days.

¹¹ s. 985.125(3), F.S.

¹² *Id.* Juveniles who successfully complete diversion programs that do not expressly authorize expunction pursuant to s. 943.0582, F.S., are not eligible for expunction under this section.

¹³ Section 943.045(16), F.S., defines "expunction of a criminal history record" to mean the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. The definitions provided for in s. 943.045, F.S., apply to ss. 943.045 through 943.08, F.S.

¹⁴ Section 943.045(6), F.S., defines "criminal history record" to mean any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(5), F.S., defines "criminal history information" to mean information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. Criminal history information does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

¹⁵ The application is required to be on the prescribed FDLE form and "signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying." s. 943.0582(3)(a), F.S.

¹⁶ Section 943.0582(2), F.S., defines "nonviolent misdemeanor" as including simple assault or battery when diversion expunction is approved in writing by the state attorney in the county in which arrest occurred. Under current law, a juvenile who enters and successfully completes a diversion program for any felony offense or a violent misdemeanor is not eligible for expunction.

¹⁷ An act of "domestic violence" is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. s. 741.28, F.S.

Section 943.0582(2)(a), F.S., defines “expunction” to have the same meaning and effect as in s. 943.0585, F.S.,¹⁹ except in two circumstances:

- FDLE may only make available an expunged juvenile diversion criminal record to:
 - Criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs;
 - When the record is sought as part of a criminal investigation; or
 - When the subject of the record is a candidate for employment with a criminal justice agency; and
- The records that are maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction must be sealed²⁰ instead of destroyed.

Effect of the Bill

The bill amends s. 943.0582(3)(b), F.S., to eliminate the requirement that an application for expunction relating to a juvenile’s completion of a diversion program must be submitted within a 12-month time frame.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0515, F.S., relating to retention of criminal history records of minors.

Section 2. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes the requirement that an application for diversion program expunction be submitted within 12 months of the date of completion. If this results in more people submitting the \$75 fee to FDLE to obtain a diversion program expunction, the bill may result in a positive fiscal impact on FDLE.

2. Expenditures:

The bill requires FDLE to retain juvenile criminal history records for a shorter period of time. However, it also requires FDLE to expunge records in an offense-by-offense manner that will require changes to the database that maintains such records. FDLE states that the bill will require 30 months to implement and will result in an estimated fiscal impact of \$700,000.²¹

¹⁸ s. 943.0582, F.S. It should be noted that a juvenile who obtains an expunction under this section is not prevented from petitioning for expunction or sealing of a later criminal history record under s. 943.0585, F.S. and 943.059, F.S., provided he or she is otherwise eligible.

¹⁹ Section 943.0585(4), F.S., provides that when a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE is required to retain expunged records. Records that have been expunged are confidential and exempt from the public records law and it is a first degree misdemeanor to divulge their existence. Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

²⁰ As the term is used in s. 943.059, F.S.

²¹ *Id.* at 4-5.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends the age at which a juvenile's criminal history record is expunged, but does not make necessary conforming changes to s. 790.23, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A