

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 147 Expunging and Sealing Criminal History Records of Minors
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; 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	12 Y, 0 N, As CS	Cox	White
2) Justice Appropriations Subcommittee	13 Y, 0 N, As CS	Smith	Lloyd
3) Judiciary Committee		Cox	Havlicak

SUMMARY ANALYSIS

Chapter 943, F.S., in part, sets forth procedures for expunging 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, CJIP must retain their records until the age of 24, at which time the records are automatically expunged unless other specified circumstances apply.

The bill requires all records related to minors who are not classified as serious or habitual juvenile offenders (non-serious juvenile offenders) to be automatically expunged when the minor reaches the age of 21, provided the specified exceptions do not apply. The bill also permits non-serious juvenile offenders to apply to the Florida Department of Law Enforcement (FDLE) to have their record expunged earlier than age 21. FDLE must expunge the juvenile criminal history record earlier than age 21 if:

- The minor has reached 18 years of age and has not been charged with or found to have committed a criminal offense in the 5-year period before the application; and
- The State Attorney for each circuit in which an offense specified in the criminal history record occurred has given approval.

The bill makes conforming changes to s. 790.23, F.S., which regulates the possession of weapons by felons and delinquents, to provide that the section does not apply to a non-serious juvenile offender whose criminal history record has been expunged under s. 943.0515, F.S.

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

Effect of the Bill

The bill requires all records related to minors who are not classified as serious or habitual juvenile offenders (non-serious juvenile offenders) to be automatically expunged when the minor reaches the age of 21, so long as one of the three above-mentioned exceptions does not apply. The automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders remains at age 26.

The bill also permits non-serious juvenile offenders to apply to the Florida Department of Law Enforcement (FDLE) to have their record expunged before the minor reaches 21 years of age. FDLE must expunge the juvenile criminal history record earlier than age 21 if:

- The minor has reached 18 years of age and has not been charged with or found to have committed a criminal offense in the 5-year period before the application; and
- The State Attorney for each circuit in which an offense specified in the criminal history record occurred has given approval.

A juvenile seeking to have his or her criminal history record expunged before age 21 must submit a:

- \$75 application fee;
- Full set of fingerprints taken by a law enforcement agency for identification purposes; and
- Sworn, written statement that he or she is no longer under court supervision and that he or she has not been charged with or found to have committed a criminal offense, in any jurisdiction of the state or within the United States, within the 5-year period before the application date.

The bill provides that a person who knowingly provides false information on the above-referenced sworn statement commits a third degree felony.⁷

¹ Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (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.*

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DATE: 1/11/2016

A person who is denied early expungement is still eligible to have their record expunged at age 21 if they meet the eligibility requirements.

The bill also makes conforming changes to s. 790.23, F.S., which regulates the possession of weapons by felons and delinquents, to provide that the section does not apply to a non-serious juvenile offender whose criminal history record has been expunged under s. 943.0515, F.S.

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 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 license, or refrain from applying for a driver 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 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:

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

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).

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 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 if 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.

- 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

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. Amends s. 790.23, F.S., relating to felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.

Section 4. Provides an effective date of July 1, 2016.

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.

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.

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 program completion. If this results in more people submitting the \$75 fee to FDLE to obtain a diversion program expunction of their juvenile arrest record, the bill would result in a positive indeterminate fiscal impact on FDLE.

2. Expenditures:

Implementation of the bill would reduce the period for automatic juvenile criminal record expungement from 24 years of age to 21 years of age. According to the FDLE, existing staff resources will be utilized to implement the required changes.²¹ The estimated time to develop and implement these changes is 1.5 months at an approximate cost of \$20,000, according to FDLE.²² The cost of implementation is insignificant and can be absorbed within existing resources.

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:

None.

²¹ Florida Department of Law Enforcement, *HB0147 Bill Analysis* (2016), (On file with the House Justice Appropriations Subcommittee)

²² *Id*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that the \$75 application fee for expungement also applies to early expungement;
- Requires an early expungement applicant to have a full set of fingerprints taken by a law enforcement agency for identification purposes;
- Requires the early expungement applicant to submit a sworn, written statement that he or she is no longer under court supervision and that he or she has not been charged with or found to have committed a criminal offense, in any jurisdiction of the state or within the United States, within the 5-year period before the application date;
- Provides that a person who knowingly provides false information on the above-referenced sworn statement commits a third degree felony; and
- Clarifies that a person who is denied early expungement is still eligible to have their record expunged at age 21 if he or she meets the eligibility requirements.

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.