

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 386 (780622)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senators Detert and Soto

SUBJECT: Expunction of Records of Minors

DATE: December 7, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 386 amends section 943.0515, Florida Statutes, to require all records maintained by the Florida Department of Law Enforcement (FDLE) related to minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison to be automatically expunged when the minor reaches the age of 21 years with certain exceptions. (Currently this automatic expunction occurs when the minor reaches the age of 24 years.)

The bill also amends s. 943.0582, F.S., by eliminating the time period required for an eligible minor to submit an application requesting the expunction of an arrest record after successfully completing a prearrest, postarrest, or teen court diversion program. (The current time period is no later than 12 months after successfully completing the program.)

The bill will require the FDLE to update its database at an estimated cost of \$20,000; existing staff resources will be used to implement the change.

This bill has an effective date of July 1, 2016.

II. Present Situation:

Automatic Expunction of Criminal History Records of Minors

Section 943.0515, F.S., requires the FDLE to automatically expunge the criminal history records of specified juveniles at age 24 or 26 years. For juveniles who are classified as serious or habitual juvenile offenders, or who have been committed to a juvenile correctional facility or juvenile prison, the FDLE must retain their record until the age of 26 years, at which time it is automatically expunged.¹ For all other juveniles, FDLE must retain the record until the juvenile reaches the age of 24 years, at which time it is automatically expunged.²

A juvenile's record cannot be 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 a 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.^{3,4}

In these three instances, the person's record as a minor must be merged with and retained as part of their adult record.⁵

Juvenile Diversion Expunction

Youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor are eligible to have their arrest expunged, providing they have no other past criminal history.⁶ A nonviolent misdemeanor includes simple assault or battery when the expunction process is approved in writing by the local state attorney. A domestic violence arrest is not eligible for expunction. Receiving a juvenile diversion expunction does not prohibit a youth from requesting a regular sealing or expunction under s. 943.0585 or s. 943.059, F.S., if he or she is otherwise eligible.⁷

The expunged arrest record is available to criminal justice agencies⁸ only under certain enumerated circumstances, such as when it is needed to determine eligibility for the diversion program, when a youth is seeking criminal justice employment, or when it is needed for a

¹ Section 943.0515(1)(a), F.S.

² Section 943.0515(1)(b), F.S.

³ Sections 943.0515(2) and (3), F.S.

⁴ Section 943.0435, F.S., defines a "sexual offender" and prescribes when a sexual offender is required to register with FDLE.

⁵ See *supra* note 3.

⁶ Section 943.0582, F.S.

⁷ *Id.*

⁸ Section 943.045(11), F.S., defines a criminal justice agency as follows: a court; the FDLE; the Department of Juvenile Justice (DJJ); the protective investigations component of the Department of Children and Families (DCF), which investigates the crimes of abuse and neglect; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

criminal investigation. Local criminal justice agency records are treated as if they have been sealed (only available to limited entities for limited purposes⁹).

The FDLE is required to expunge the nonjudicial arrest record of a successful participant in a prearrest, postarrest, or teen court diversion program if the youth does the following: submits a timely filed application signed by the parents or by the minor if he or she is of age by then; submits a statement by the state attorney that the youth has successfully completed a prearrest or postarrest diversion program that was limited to minors arrested for a nonviolent misdemeanor (excluding domestic violence) who have not otherwise been charged with or found to have committed any criminal offense; participates in a diversion program that allows an expunction to occur; and provides that he or she has not been charged with or found to have committed a prior criminal offense.¹⁰ The application must be submitted no later than 12 months after completion of the diversion program.

The FDLE is authorized to charge a \$75 processing fee for each juvenile diversion expunction request, but the executive director can waive the fee.¹¹

III. Effect of Proposed Changes:

Automatic Expunction of Criminal History Records of Minors

The bill amends s. 943.0515, F.S., to require all records maintained by the FDLE related to minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison to be automatically expunged when the minor reaches the age of 21 years, so long as one of the following exceptions does not apply:

- 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 a 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.¹²

The only change from current law is that the age for automatic expunction of records for these juveniles is lowered from 24 years of age to 21 years of age. The automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders or who have been committed to a juvenile correctional facility or juvenile prison remains at 26 years of age.

Application for Expunction of Criminal History Records Prior to Age 21

The bill also amends s. 943.0515, F.S., to provide that a minor who is eligible for automatic expunction of criminal history records at age 21 may apply for expunction of such records any

⁹ See s. 943.059(4), F.S.

¹⁰ Section 943.0582(3), F.S.

¹¹ Section 943.0582(4), F.S.

¹² See *supra* note 4.

time after reaching 18 years of age. In order to qualify for expunction prior to age 21, the minor must apply to the FDLE and must:

- Submit a full set of fingerprints for identity verification;
- Submit a \$75 processing fee;
- Have the approval of the state attorney for each circuit in which an offense specified in the criminal history record occurred; and
- Submit a sworn, written statement attesting that he or she has not been charged or found to have committed any criminal offense in any jurisdiction of the state or within the United States within five years prior to the application date. Thus, an applicant who applies for expunction at age eighteen would be eligible for expunction of offenses committed before he or she reached thirteen years of age. The sworn statement must also attest that the applicant is no longer under court supervision for the arrest or alleged criminal activity for which expunction is sought. The bill provides that knowingly submitting false information in the sworn statement is a third degree felony.

An unsuccessful request for early expunction of criminal history records will not affect the applicant's eligibility for automatic expunction of the records upon reaching 21 years of age.

Juvenile Diversion Expunction

The bill also amends s. 943.0582, F.S., by eliminating the current time period required for an eligible minor to submit an application requesting expunction of an arrest record after successfully completing a prearrest, postarrest, or teen court diversion program. (The statute currently requires a minor to submit an application no later than 12 months after successfully completing the program.)

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Eligible youth will have their arrest records automatically expunged earlier under the bill, resulting in a potentially positive economic benefit as they look for employment.

C. Government Sector Impact:

PCS/SB 386 will require the FDLE to reduce the time period for automatic juvenile record expungement from 24 years to 21 years of age. The department's estimated time to implement the change in its database is one and a half months at an estimated cost of \$20,000. According to the FDLE, existing staff resources will be used to implement the change.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0515 and 943.0582 of the Florida Statutes.

This bill reenacts section 985.125 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on December 3, 2015:

Added a provision allowing a minor to apply for expunction of his or her criminal record prior to reaching 21 years of age under certain circumstances.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹³ Florida Department of Law Enforcement, *2016 Bill Analysis for SB 386* (2016) (on file with the Senate Criminal Justice Committee).