

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME PREVENTION, CORRECTIONS & SAFETY
FINAL ANALYSIS**

BILL #: CS/HB 1425

RELATING TO: Law Enforcement

SPONSOR(S): Council For Healthy Communities, Representatives Bowen and Spratt

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY (HCC) YEAS 7 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 12 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
- (4)
- (5)

I. SUMMARY:

This Council Substitute expands the role of the Florida Violent Crime Council to include drug control and money laundering strategies. The Council Substitute revises the Violent Crime Council's name and membership provisions to reflect additional functions, provides for grants to law enforcement agencies, and provides for periodic performance reporting on council funded investigations.

The Council Substitute revises the name of the council's Violent Crime Investigative Emergency Account to include drug control strategy and revises provisions relating to use of emergency supplemental funds. The Council Substitute provides that FDLE must adopt rules and establish criteria for the disbursement of account funds, and establishes limits on the amounts that may be disbursed in a single investigation and to a single agency.

CS/HB 1425 prohibits a court from expunging or sealing a criminal history record of a person convicted of certain enumerated sexual offenses.

The Council Substitute authorizes the collection of biological specimens such as oral swabs for DNA testing purposes. The bill provides that blood withdrawal for DNA analysis may be performed by trained persons other than medical personnel, and the collection of other approved biological specimens may be performed by any person using collection kits and methods approved or accepted by FDLE. The Council Substitute clarifies that DNA analysis applies to convicted persons who have never been incarcerated and are on probation, community control, parole, conditional release, control release, or any other court-ordered supervision, and authorizes FDLE to accept biological specimens from persons other than those who have committed an enumerated offense.

This Council Substitute provides enhanced penalties for the interception of police radio communications to facilitate the commission of a crime or to avoid detection of criminal activity, and creates a first degree misdemeanor for divulging such information to a person known to be a suspect in a crime with the intent of aiding the suspect. CS/HB 1425 provides a presumption that a violation occurred if an individual possessed or used a police scanner or similar device during the commission of a crime.

CS/HB 1425 defines "actual cost" as it applies to the fees that FDLE may collect for the dissemination of criminal history records to the public.

The Council Substitute provides for the expunction of any nonjudicial record of the arrest of a minor who successfully completes a prearrest or postarrest diversion program for minors.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Violent Crime Council

Membership and Duties: Under the provisions of s. 943.031, F.S., the twelve-member Violent Crime Council within the Florida Department of Law Enforcement (FDLE) includes state and local representation and is charged with making recommendations regarding the development and implementation of violent crime initiatives. Six members of the council are standing members by virtue of their positions and six members are appointed by the Governor, consisting of two sheriffs, two chiefs of police, one medical examiner and one state attorney. Current law does not specifically provide for designates of governor-appointed members to participate on the council. Members of the council serve without compensation and are entitled to reimbursement for per diem and travel expenses.

Statutory duties of the Violent Crime Council include, in part, the following responsibilities:

- Establishing a program which provides grants to criminal justice agencies for violent crime prevention and investigative programs.
- Identifying methods to prevent violent crime.
- Enhancing criminal justice programs which address violent crime.
- Developing and promoting crime prevention services and educational programs, including enhanced victim and witness counseling services, and a rewards program for the apprehension and conviction of violent criminals.
- Creating a criminal justice research and behavioral science center to provide support to local law enforcement agencies.
- Advising the executive director of FDLE on the creation of regional violent crime investigation coordinating teams.

Violent Crime Emergency Account: The Violent Crime Emergency Account is established within the FDLE Operating Trust Fund under s. 943.042, F.S., and is used, in part, to provide emergency supplemental funds to state and local law enforcement agencies which are involved in complex and lengthy violent crime investigations. The Council is required to develop criteria for the disbursement of funds from the Violent Crime Emergency Account within FDLE's operating trust fund and the council must review and approve all requests for disbursement of funds from the account. FDLE rules must address procedures for law enforcement agencies to use when applying for funds, and the rules must also address guidelines which establish limits on the amount that may be disbursed on a single investigation. Current law does not provide a specific monetary figure for the maximum amount that may be disbursed under this section.

Victim Witness Protection Review Committee: Section 943.031(6), F.S., creates the Victim and Witness Protection Review Committee within the Florida Violent Crime Council and designates membership and duties, including developing criteria for disbursing funds to reimburse law enforcement agencies for costs associated with providing victim and witness protective or temporary relocation services.

Violent Crime Council Designation as a Criminal Justice Agency: Under 943.031(7)(b), F.S., the Florida Violent Crime Council is designated a "criminal justice agency" as provided in s. 119.011, F.S. This section further provides that only those portions of Violent Crime Council meetings in which matters related to active criminal investigations or intelligence are presented may be closed to the public. Records generated from these closed meetings are exempt from disclosure under the Public Records Law, s. 119.07(1), and s. 24(a), Article I of the Florida Constitution.

Sealed and Expunged Criminal History Records

Florida courts have jurisdiction over the maintenance, expunction and correction of judicial records containing state criminal history information. An adult or minor who complies with the provisions of ss. 943.0585 and 943.059, F.S., may seek a court order to have a criminal justice agency seal or expunge that person's criminal history record.

Any criminal history record ordered *expunged* by the court must be physically destroyed by a criminal justice agency having custody of it, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained in all cases. However, such record retained by FDLE is exempt from disclosure under the Public Records Law, s. 119.07(1), F.S., and s. 24(a), Article I, of the Florida Constitution. Once expunged, such record may not subsequently be disclosed without a court order.

A *sealed* criminal history record is also confidential and exempt from disclosure. Sealed records are available only to the person who is the subject of the record, the subject's attorney, criminal justice agencies, or specific entities where the person is seeking employment, admission, or license such as The Florida Bar, Department of Children & Family Services, or Office of Teacher Certification, Staff Development, and Professional Practices of the Department of Education - as provided in s. 943.059(4), F.S.

A criminal history record may **not** be expunged or sealed if it relates to the following offenses:

- Sexual battery, as defined in Chapter 794, F.S.
- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04, F.S.
- Communications fraud, as defined in s. 817.034, F.S.
- Sexual performance by a child, as defined in s. 827.071, F.S.
- Offenses by public officers and employers, as defined in Chapter 839, F.S.

- Narcotics trafficking, as defined in s. 893.135 F.S.
- Offenses designated as “dangerous crimes,”¹ as defined in s. 907.041, F.S.

A person who has had a criminal history record expunged or sealed may legally deny or fail to acknowledge the arrests that are the subject of the expunged or sealed record, unless the subject is seeking employment with the agencies provided under ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

A person is eligible to have a criminal history record *expunged* if they have no criminal convictions on their record. A record may be expunged if the charge was dismissed or nolle prosequied by the state attorney or was dismissed by the court -- provided that the charge is not one of the enumerated offenses listed above. A person is eligible to have a criminal history record *sealed* if they have no criminal convictions on their record. If adjudication of guilt was withheld, the person is eligible to have a record sealed, provided that the charge is not one of the enumerated offenses listed above.

DNA Collection by the Florida Department of Law Enforcement

Currently, under s. 943.325, F.S., a convicted felon is required to submit two blood specimens to a FDLE designated testing facility as directed by the department, if that person² is convicted of any offense or attempted offense specified as follows:

- Chapter 794 sexual battery;
- Chapter 800 lewdness and indecent exposure;
- Section 782.04 murder;
- Section 784.045 aggravated battery;
- Section 810.02 burglary;
- Section 812.133 carjacking;
- Section 812.135 home invasion robbery; and who is either:

1. Still incarcerated, or
2. Is no longer incarcerated but is within the confines of the legal state boundaries and is on probation, parole, community control, conditional release, control release, or any other court-ordered supervision.

Section 943.325, F.S., requires the court to include in the judgment of conviction an order stating that blood specimens are required to be drawn by the appropriate agency in a manner consistent with the section.

The section provides the mechanism to pay for the cost of drawing and testing the blood specimens. If the judgment of conviction places the person on probation, community control, or any other court-ordered supervision, the court shall order the person to submit to the drawing of the blood specimens as a condition of the supervision. If a convicted person is in custody, the drawing of blood must be performed prior to release. Under s. 943.325(10)(e), F.S., a state or local law enforcement or correctional agency may use reasonable force when necessary to require a person to submit to the withdrawal of blood pursuant to the provisions of this section.

¹A “dangerous crime,” as defined in s. 907.041 (4)(a) means the following: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult or aggravated abuse of an elderly person or disabled adult; hijacking; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741. 28 and; attempting or conspiring to commit any such crime, and home invasion robbery.

² A “person” includes both juveniles and adults committed to or under the supervision of the Department of Corrections, the Department of Juvenile Justice or committed to a county jail, s. 943.325(1)(a)2(b), F.S.

The Florida Legislature created the DNA Offender Database in 1989, and since that time, FDLE has entered samples collected from offenders convicted of the offenses specified under s. 943.325(1)(a), F.S. There are currently over 75,000 individual criminals whose DNA profiles have been compiled in the DNA database. FDLE collects and analyzes blood specimens from known criminals and then makes comparisons to DNA profiles that result from the testing of blood and other biological evidence collected from crime scenes. Through the use of the DNA Offender Database, these comparisons help to solve crimes by matching suspects and victims to questioned serological samples.

The method of DNA analysis that is now being used in the FDLE crime laboratory system and throughout the country is a technique known as STR or Short Tandem Repeats. This technology can be used for analyzing very small or degraded samples and gives very high discrimination probabilities (the ability to tell individuals apart). This new technology allows the DNA database to utilize samples other than blood, including buccal (oral) swabs, which are taken from the inside of a person's cheek.

Case law shows that both federal and state courts have concluded that statutes which authorize the collection of blood specimens to assist law enforcement is not penal in nature, Gilbert v. Peters, 55F.3d237, 238-239(7th Cir. 1995). In Sanders v. Coman, 864 F. Supp. 496, 500 (E.D.N.C. 1994), the court found that “. . . the DNA sample procedure, is a matter of institutional security and discipline. Therefore, the actual force used does not constitute cruel and unusual punishment simply because it caused pain to the inmates involved.” The Sanders court observed that, under the Eighth Amendment, correctional officers may not “use more force than is reasonably necessary under the circumstances.”

Interception of Police Communications

Section 843.16, F.S., makes it unlawful for any person, firm, or corporation to install in any motor vehicle or business establishment, except an emergency vehicle or crime watch vehicle, or a place established by municipal, county, state, or federal authority for governmental purposes, any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to police or law enforcement officers of a city or county or to the state or any of its agencies. Current law does not specifically address the interception of police radio communications for the purpose of furthering criminal activity.

Criminal History Information Fees

Section 943.053, F.S., addresses fees collected by the Florida Department of Law Enforcement (FDLE) for the dissemination of criminal history information. This section provides that criminal history information shall be available to criminal justice agencies for criminal justice purposes at no charge, and to other governmental agencies on an approximate-cost basis. Persons in the private sector may be provided criminal history information upon payment of a fee to FDLE. Current law states that such fees shall approximate the actual cost of producing the record information, but does not address whether the actual cost is computed on a fee-per-record basis or on the quantity of information requested.

Diversion Programs

In certain jurisdictions, juvenile offenders detained for relatively minor offenses are allowed to participate in diversion programs. These diversion programs provide supervision of the offenders and typically require the completion of conditions such as victim restitution, a letter of apology, and community service hours to satisfactorily complete the diversion program.

Most diversion programs limit eligibility to offenders who have never had a prior arrest. Juveniles are fingerprinted at a juvenile assessment center or other booking facility. The fingerprint is forwarded to FDLE and becomes part of the Computerized Criminal History (CCH) file, subject to the provisions of criminal history record retention under s. 943.0515, F.S.

A law enforcement agency or school district, in cooperation with the state attorney, is authorized under s. 985.3065, F.S., to establish a prearrest diversion program. This section also provides for the surrender of a minor's driver's license for a period of up to ninety days, and suspension of a driver's license for failing to comply with the requirements of a prearrest diversion program.

C. EFFECT OF PROPOSED CHANGES:

Violent Crime Council

Section 1:

This Council Substitute expands the functions of the Violent Crime Council to allow it to assume a role in promoting Florida's drug control strategies in addition to violent crime strategies. This section amends s. 943.031, F.S., to rename the Florida Violent Crime Council as the Florida Violent Crime and Drug Control Council, and provides that drug control efforts by state and local law enforcement agencies, including investigations of illicit money laundering activities, must also be addressed by the council.

The Council Substitute expands the council's membership to include the director of the Office of Drug Control within the Executive Office of the Governor, or a designate, and the Comptroller, or a designate as standing members of the council. It further amends the section to allow the appointment of certain designees, allows designees to vote on issues before the council, and allows designees to receive reimbursement for per diem and travel expenses.

This Council Substitute provides that the council may advise the executive director of the Department of Law Enforcement regarding the feasibility of establishing programs to provide grants to law enforcement agencies for drug control and illicit money laundering investigative efforts or task force efforts, that, as determined by the council, significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering effort or that otherwise significantly supports statewide strategies developed by the Statewide Drug Policy Advisory Council. In addition, the Council Substitute would allow the Violent Crime Council to advise the executive director on providing funding for multi-agency or statewide drug control or illicit money laundering investigative efforts which cannot be reasonably funded completely by alternative sources.

This Council Substitute deletes a current provision that allows the Violent Crime Council to advise the executive director on the creation of a criminal justice research and behavioral science center. In addition to identifying methods to prevent violent crime, this Council Substitute enables the Violent Crime Council to identify methods to enhance drug control or illicit money laundering investigative efforts that contribute to the goal of reducing drug-related crime.

The Council Substitute provides for the Violent Crime Council to receive periodic reports from regional violent crime investigation and statewide drug control strategy implementation coordinating teams reference violent crime trends or the statewide drug strategy. These reports must include the results of drug control and money laundering investigations that are partially funded by the council.

CS/HB 1425 provides for the council to maintain and use criteria for disbursing funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within FDLE's Operating Trust Fund or other appropriations. Further, the Council Substitute specifies that funds available from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the department's operating trust fund are earmarked for use to the extent that funds are not available from other appropriations. The purpose for which these funds are earmarked is not specified. The council must review and approve all requests for disbursement of funds from the account and from other appropriations provided to FDLE in the General Appropriations Act.

This Council Substitute amends s. 943.031(6), F.S., to allow the Victim and Witness Protection Review Committee within the Violent Crime Council to conduct meetings by teleconference or conference phone calls when a delay for reimbursement would adversely affect the requesting agency's ability to provide protection services.

Section 2:

Amends s. 943.17, F.S., to reflect the new name of the council as provided in Section 1 of the bill.

Section 3:

Amends s. 943.042, F.S., to change the name of the Violent Crime Emergency Account to the "Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account." The bill expands the use of funds from the account to include supplemental or matching funding to multiagency or statewide drug control or illicit money laundering investigative efforts that significantly contribute to the state's goal of reducing drug-related crime, that represent a significant money laundering investigative effort, or otherwise support statewide strategies established under s. 397.333, F.S.

The Council Substitute provides that the FDLE, in consultation with the council, must maintain rules which address guidelines establishing a **\$100,000 maximum limit** on the amount that may be disbursed on a single investigation and a **\$200,000 maximum limit on funds that may be provided to a single agency during the agency's fiscal year**. Current law does not set a specific dollar figure for the amount that may be disbursed on a single investigation or to a single agency.

This Council Substitute further amends s. 943.042, F.S., providing that FDLE shall adopt rules with regard to the eligibility for funding of drug control or illicit money laundering investigative and task force efforts and those rules shall address: criteria for funding eligibility; criteria for determining if the state's goals and strategies were achieved; limitations on the amount disbursed; procedures for applying for funds, including certain requirements necessary for matching funding; a method of accounting for funds spent; requirements for recipient agencies to report on the performance of investigative efforts, including arrests, prosecutions, property or currency seizures made, and the impact on criminal enterprises.

The Council Substitute provides a mechanism for the council to demand a full or partial return of any funds that are not used in a manner authorized by the council and provides for termination or limitation of future funding.

Sealed and Expunged Criminal History Records

Sections 4 and 5:

The Council Substitute expands the list of enumerated offenses that make a person ineligible to have his or her criminal record expunged or sealed. The Council Substitute amends ss. 943.0585 and 943.059, F.S., to provide that a person who has been found guilty of or pled guilty or nolo contendere to any violation enumerated in the following sections of the Florida Statutes, is not eligible for the court ordered expunction or sealing of a criminal history record:

- luring or enticing a child, as defined by s. 787.025, F.S
- procuring a person under the age of 18 for prostitution, as defined by s. 796.03, F.S.
- lewd or lascivious offenses against an elderly person or disabled adult, as defined by s. 825.1025, F.S.
- showing obscene material to a minor, as defined in s. 847.0133, F.S.
- computer pornography, as defined in s. 847.0135, F.S.
- selling or buying of minors, as defined in s. 847.0145, F.S.

Section 943.0585(2)(a), F.S., provides that, prior to petitioning the court to expunge a criminal history record, a person seeking to have a record expunged must obtain, and submit to the Florida Department of Law Enforcement, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record does not relate to violations of specific statutes. This Council Substitute expands this list of statutes to include the sections of Florida statutes listed above.

According to FDLE, the addition of certain sex offenses is consistent with public policy. Currently, sexual predators and offenders must register and communities must be notified of their offenses, therefore it is contradictory to give these offenders the opportunity to have their criminal history files sealed or expunged.

DNA Collection by the Florida Department of Law Enforcement

Section 6:

The Council Substitute amends s. 943.325, F.S., to expand the authority to collect blood samples for DNA analysis to include other biological specimens approved by the Department of Law Enforcement. CS/HB 1425 further clarifies that DNA analysis applies to convicted persons who have never been incarcerated yet are within the confines of the legal state boundaries and are on probation, community control, parole, conditional release, control release, or any other court-ordered supervision.

FDLE reports that buccal or oral swab samples can be obtained at less cost to the collecting agency, since they do not require the service of a phlebotomist to draw blood. These samples can be collected easily, quickly, and with minimal discomfort to the subject. The swabs are suitable for the DNA analysis and will also survive long term storage.

The Council Substitute amends s. 943.325(2), F.S., to provide that the withdrawal of blood for DNA analysis must be performed in a medically approved manner using a collection kit provided by, or accepted by, FDLE. It provides that the withdrawal of blood may be performed by or under the supervision of, in addition to medical personnel, other trained or competent personnel. Further provisions under this section stipulate that the collection of other approved biological specimens must be performed by a person using a collection kit that is provided by, or accepted by FDLE, in a manner approved by FDLE, as directed in the kit, or as otherwise found to be acceptable by the department.

The Council Substitute amends s. 943.325(3), F.S., providing that current requirements for the drawing of blood from a convicted person and the securing and transmitting of that sample to FDLE, shall also apply to other approved biological specimens.

CS/HB 1425 clarifies that FDLE may, in addition to the specimens required for submission under this section, receive and utilize other blood specimens or other approved biological specimens.

The provisions of this Council Substitute allow FDLE to store other approved biological specimen samples and to adopt rules prescribing the procedure for agencies to collect and submit those samples.

The Council Substitute provides that the court is required to include in the judgment of conviction an order stating that blood specimens or other approved biological specimens are required to be drawn by the appropriate agency in a manner consistent with the section.

This Council Substitute amends s. 943.325(10)(e), F.S., providing that a state or local law enforcement or correctional agency may use reasonable force when necessary to require a person to submit to the withdrawal of blood specimens or the collection of other approved biological specimens pursuant to the provisions of this section, and any withdrawal or collection shall be performed in a reasonable manner. In lieu of transporting the convicted person to a collection site, the Council Substitute authorizes agencies taking custody of a convicted person to collect the biological specimens at the location of the person, if it is done in a reasonable manner.

CS/HB 1425 provides an exemption from civil or criminal liability for persons who collect or assist in the collection of approved specimens other than blood who use an approved kit and collect the sample in a manner approved by FDLE.

Section 7:

This section amends s. 760.40, F.S., to conform to changes made to Chapter 943 regarding DNA.

Unlawful Use of Police Communications

Section 8:

CS/HB 1425 creates section 843.167, F.S., and provides that a person may not intercept any police radio communication by use of a scanner or other means for the purpose of using the communication to assist in the commission of a crime or to escape from or avoid detection, arrest, trial, conviction, or punishment in connection with the commission of such crime. Reclassified penalties are provided for the commission of a crime involving intercepted police communications by increasing the crime classification by one degree. There are no criminal sanctions for intercepting a police communication as a separate offense.

The Council Substitute provides that any person charged with a crime who possesses or uses a police scanner or similar device is presumed to have unlawfully intercepted a police communication if during the time the crime was committed, that person possessed or used a police scanner or similar device capable of receiving police radio transmissions.

A person who divulges the existence, contents, substance, purport, effect, or meaning of a police radio communication to any person who is known to be a suspect in the commission of a crime with the intent that the suspect may escape from or avoid detection, arrest, trial, conviction or punishment commits a first degree misdemeanor.

Criminal History Information Fees

Section 9:

CS/HB 1425 amends s. 943.053, F.S., and provides that the actual cost of producing a criminal history information record for dissemination to the private sector shall be computed on a per-record basis, regardless of the quantity or category of information requested. The determination of actual cost by FDLE shall take into account the total cost of creating, storing, maintaining, updating, retrieving, improving, and providing criminal history information in a centralized, automated database, including personnel, technology, and infrastructure expenses.

Diversion Programs

Section 10:

The Council Substitute creates s. 943.0582, F.S., and provides that FDLE may expunge any nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program as set forth in s. 985.3065, F.S. The term "expunction" has the same meaning and effect as set forth in s. 943.0585, F.S., which provides for the court-ordered expunction of criminal history records. The provisions of s. 943.0585(4)(a) relating to the effect of criminal history record expunction do not apply, except that expunged criminal history records must be made available to criminal justice agencies to determine eligibility for diversion programs; when the record is sought as part of a criminal investigation; or when the subject is a candidate for employment with a criminal justice agency. For all other purposes, a person may lawfully deny or fail to acknowledge the arrest or charge covered by an expunged record.

Records which are eligible for expunction pursuant to the section and are maintained by local criminal justice agencies in the arresting county must be sealed as the term is used in s. 943.059, F.S., which provides for the court-ordered sealing of criminal history records.

The term "nonviolent misdemeanor," as used in this section, includes simple assault or battery when prearrest or postarrest diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

CS/HB 1425 provides that FDLE may expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program if the minor:

- Submits an FDLE application for expunction with minor's parent or guardian signature or by minor if he/she is age of majority at time of application, within 6 months of completing the diversion program. The application must be accompanied by an official written statement from the state attorney of the arresting county certifying the successful completion of the county's diversion program and certifying that this program is strictly limited to minors arrested for a non-violent misdemeanor who have not been charged with or found to have committed any criminal offense or comparable ordinance violation.
- Participates in a diversion program that expressly authorizes or permits such expunction to occur and such participation in the program is not based on an arrest for an act of domestic violence.
- Has never been charged with or committed any criminal offense or comparable ordinance violation prior to filing the application for expunction.
- Submits a \$75 processing fee for each request for expunction. This fee is paid to FDLE and is placed in the department's Operating Trust Fund unless the fee is waived by the executive director.

The Council Substitute provides for the retroactive expunction of records of minors who have successfully completed diversion programs on or after July 1, 2000, provided that, in cases where program completion occurred before the effective date of this section, the expunction application is submitted by January 1, 2002. Sealing or expunction under this section does not preclude the minor from petitioning for expunction or sealing of a later criminal history record as provided in ss. 943.0585 and 943.059, F.S.

Section 11:

The Council Substitute amends s. 985.3065, F.S., to allow a law enforcement agency or school district, in cooperation with the state attorney, to establish a postarrest diversion program. Current law provides for the establishment of prearrest diversion programs under this section.

As part of a prearrest or postarrest diversion program, a child who allegedly committed a delinquent act may be required to surrender his or her driver's license for up to 90 days, and if the child does not comply with the requirements of the diversion program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for up to 90 days.

CS/HB 1425 allows the prearrest or postarrest diversion program, upon agreement of the agencies establishing the program, to provide for the expunction of the arrest record of a minor who successfully completes such a program.

Section 12:

Provides that the act will take effect July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

See Effects of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The following information has been provided by the Florida Department of Law Enforcement:

- (1) The provisions of the bill related to collection of DNA samples have a minimal fiscal impact that can be assumed within existing resources.
- (2) The Seal and Expunge provisions of the bill have no fiscal impact.
- (3) The provisions related to the transfer of Department of Community Affairs functions to the Department of Law Enforcement have no direct fiscal impact.
- (4) The department will administer provisions related to the expanded role of the Violent Crime Council within current resources, but that state funds are necessary to provide matching funds for drug control and money laundering investigations. The amount of state funds necessary is not specified.

The House version of the FY 2001-02 General Appropriations Act contains \$2,000,000 in recurring General Revenue to provide matching funds for drug control and money laundering investigations.

The FY 2000-01 General Appropriations Act and implementing bill contains the transfer of the Department of Community Affairs functions to the Department of Law Enforcement. The transfer is continued in the House versions of the FY 2001-02 General Appropriations Act and implementing bill.

There is no information on file from the Department of Corrections relating to any fiscal impact that the requirement for additional DNA samples might have on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Additional funds will be available that local governments may access to assist in major drug and money laundering investigations.

2. Expenditures:

Local governments that apply for and receive matching funds would be required to spend these funds for the purpose specified in the application and as directed by the council.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

A provision in Section 1 of the Council Substitute earmarks funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account for unspecified uses if funds are not otherwise available from other Legislative appropriations.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The Council Substitute does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The Council Substitute does not reduce the authority the counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The Council Substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Council Substitute provides for the Department of Law Enforcement to adopt rules to administer the provisions contained in this bill.

C. OTHER COMMENTS:

The expansion of the Violent Crime Council's role to include drug control efforts was a major recommendation of the Governor's February Statewide Drug Summit.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee and Council Amendments

On 4-3-01, the Committee on Crime Prevention, Corrections and Safety adopted three amendments which are traveling with the bill.

Amendment One: This amendment creates s. 943.0582, F.S., providing that FDLE may expunge any nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program as provided in s. 985.3065, F.S.

Amendment Two: This amendment provides for a law enforcement agency or school district, in cooperation with the state attorney, to establish *postarrest* diversion programs in addition to prearrest diversion programs.

Amendment Three: This amendment deletes provisions that apply to the Additional Court Cost Clearing Trust Fund and the transfer of certain functions from the Department of Community Affairs to the Department of Law Enforcement.

On April 11, 2001, the Criminal Justice Appropriations Committee adopted four amendments that are traveling with the bill as follows:

Amendment One: This amendment is a technical correction to the title.

Amendment Two: This amendment removes language from the bill which provides that funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation account within the department's Operating Trust Fund shall be earmarked for use (unspecified) if funds are not available from other appropriations.

Amendment Three: This amendment provides clarification and further direction to the department regarding factors to consider when determining the actual cost of providing criminal history information.

Amendment Four: This amendment provides enhanced penalties for intercepting police radio communications for the purpose of facilitating the commission of a crime or to avoid detection of criminal activity and creates a first degree misdemeanor for divulging such information for the purpose of helping a suspect avoid detection of criminal activity. It provides a presumption that a person who possessed or used a police scanner or other device during the commission of a crime has committed a violation.

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On April 17, 2001, the Council for Healthy Communities considered the bill and it was reported favorably as a Council Substitute.

Chamber Action:

On April 30, 2001, the House of Representatives passed CS/HB 1425, which is identical to CS/1st ENG/SB 1864. On May 1, 2001, the Senate passed CS/HB 1425, and on May 31, 2001, the bill was signed by the Governor and became law as Chapter 2001-127, Laws of Florida.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY (HCC):

Prepared by:

Staff Director:

Lynn Dodson

David De La Paz

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

Staff Director:

James P. DeBeaugrine

James P. DeBeaugrine

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

Lynn Dodson

Mary Pat Moore

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Lynn Dodson

David De La Paz