

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1013 Expunction

SPONSOR(S): Judiciary Committee; Criminal Justice Subcommittee and Steube

TIED BILLS: **IDEN./SIM. BILLS:** SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Cunningham
2) Judiciary Committee	15 Y, 0 N, As CS	Jones	Havlicak

SUMMARY ANALYSIS

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.

FDLE must issue a certificate of eligibility for expunction (certificate) if the criminal history record meets certain requirements. Currently, a person cannot obtain a certificate if their criminal history record resulted in a trial, unless the record had been sealed for a minimum of 10 years.

The bill removes the provisions prohibiting a person from obtaining a certificate if their criminal history record resulted in a trial. As a result, a person can obtain a certificate if their criminal history record resulted in a trial, regardless of whether the record had been sealed for a minimum of 10 years. Such persons must submit a written and certified statement from a state attorney or statewide prosecutor indicating that a judge or jury rendered a verdict of not guilty. The bill specifies that the records of a person adjudicated not guilty by reason of insanity are not eligible for expunction.

The bill requires FDLE to disclose an expunged criminal history record of a person who is found to be incompetent to stand trial to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm.

Section 943.0582(3), F.S., requires FDLE to expunge a nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if the minor meets the specified criteria.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies specified by the bill. The bill also allows a minor whose completion of the program occurred before July 1, 2014, to submit an application for prearrest or postarrest diversion expunction within 6 months after July 1, 2014.

The bill may have an impact on state revenues and expenditures. See Fiscal Section.

The bill is effective on July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Court-Ordered Expunction of Criminal History Records

Section 943.0585, F.S., sets forth procedures for expunging a criminal history record. When a criminal history record¹ is expunged, criminal justice agencies² other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.³ FDLE is required to retain expunged records.⁴ Records that have been expunged are confidential and exempt from the public records law,⁵ and it is a first degree misdemeanor⁶ to divulge their existence.⁷

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,⁸ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁹

In 1992, the Legislature amended s. 943.0585, F.S., to require a person petitioning the court for an expunction to first obtain a certificate of eligibility for expunction (certificate) from FDLE.¹⁰ In order to receive a certificate, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
 - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
 - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt; and
 - The criminal history record does not relate to a violation of specified offenses regardless of whether adjudication was withheld;¹¹

¹ Section 943.045(6), F.S., defines a “criminal history record” as any nonjudicial record maintained by a criminal justice agency containing criminal history information.

² Section 943.045(11), F.S., defines a “criminal justice agency” as: a court; the Florida Department of Law Enforcement; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families, 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.

³ Section 943.0585(4), F.S. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order

⁴ *Id.*

⁵ Section 943.0585(4)(c), F.S.

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Section 943.0585(4)(c), F.S., requires FDLE to disclose expunged criminal history records to specified entities for specified purposes.

⁸ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

⁹ Section 943.0585(4)(c), F.S.

¹⁰ Chapter 1992-73, L.O.F.

¹¹ These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record they wish to have expunged;
- Have never been adjudicated guilty or delinquent for committing a felony or misdemeanor specified in s. 943.051(3)(b), F.S.,¹² prior to the date of their application for the certificate;
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged;
- Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction;
- No longer be under any court supervision related to the disposition of the record they wish to have expunged; and
- Have previously obtained a court order sealing the record for a minimum of 10 years because adjudication was withheld or because all charges related to the record they wish to have expunged were not dismissed prior to trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.¹³

Once a petition to expunge is submitted, it is up to the court to decide whether the sealing or expunction is appropriate.¹⁴

Due to the requirements above, a person cannot obtain a certificate if their criminal history record resulted in a trial, unless the record had been sealed for a minimum of 10 years.¹⁵

Effect of the Bill

The bill removes the provisions prohibiting a person from obtaining a certificate if their criminal history record resulted in a trial. As a result, a person can obtain a certificate if their criminal history record resulted in a trial, regardless of whether the record had been sealed for a minimum of 10 years. Such persons must submit a written and certified statement from a state attorney or statewide prosecutor indicating that *a judge or jury rendered a verdict of not guilty*. The bill specifies that the records of a person adjudicated not guilty by reason of insanity are not eligible for expunction.

The bill provides that an expunged criminal history record of a person who is found to be incompetent to stand trial may be retained by FDLE and:

- Entered in state and national databases for use in determining eligibility to purchase or possess a firearm or to carry a concealed firearm; or
- Accessed or used by any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm, in the course of such agency's official duties.

The bill requires FDLE to disclose an expunged criminal history record of a person who is found to be incompetent to stand trial to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm.

Prearrest, Postarrest or Teen Court Diversion Program Expunction

Section 943.0582(2), F.S., defines "Expunction" to mean and have the same effect as s. 943.0585, F.S., (see above) except that:

¹² These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; negligent treatment of children, as defined in s. 827.05, F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

¹³ This does not apply when a plea was not entered or all charges related to the record they wish to have expunged were dismissed prior to trial. Section 943.0585(2), F.S.

¹⁴ Section 943.0585, F.S.

¹⁵ *Id.*

- The provisions of s. 943.0585(4)(a), F.S., do not apply, except that the criminal history record of a minor whose record is expunged pursuant to this section is made available only 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.
- Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section are sealed as the term is used in s. 943.059, F.S.

Prearrest, Postarrest or Teen Court Diversion Programs

Diversion programs are nonjudicial alternatives used to keep less serious juvenile offenders from being handled through the traditional juvenile justice system.¹⁶ 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.¹⁷

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. 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 no more than 90 days. If the minor fails to comply with the requirements of the 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 a period that may not exceed 90 days.¹⁸

The diversion program may, upon agreement of the establishing agencies, provide for the expunction of the nonjudicial arrest record of a minor who successfully completes such a program pursuant to s. 943.0582, F.S.¹⁹

Section 943.0582, F.S.

Section 943.0582(3), F.S., requires FDLE to expunge a nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if the minor:

- Submits an application for a prearrest or postarrest expunction, on a form prescribed by FDLE, 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.
- Submits the application for a prearrest or postarrest diversion expunction no later than 12 months after completion of the diversion program.
- Submits to FDLE, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying:
 - That he or she has successfully completed that county's prearrest or postarrest diversion program;
 - That participation in the program is was based on an arrest for a nonviolent misdemeanor; and
 - That he or she has not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28, F.S.²⁰

¹⁶ Probation 2010 Florida Comprehensive Accountability Report. Department of Juvenile Justice (on file with the Judiciary Committee).

¹⁷ *Id.*

¹⁸ Section 985.125(2), F.S.

¹⁹ Section 985.125(3), F.S.

- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.

Section 943.0582(2), F.S., defines “nonviolent misdemeanor” as simple assault or battery when a prearrest or postarrest diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

Expunction or sealing granted under this section does not prevent the minor who receives such relief from petitioning for the expunction or sealing of a later criminal history record as an adult as provided in ss. 943.0583, 943.0585, and 943.059, F.S., if the minor is otherwise eligible under those sections.²¹

Effect of the Bill

As noted above, minors with felony arrests are not currently eligible for a prearrest or postarrest diversion expunction.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program for a nonviolent misdemeanor or a felony offense that does not relate a violation of:

- Section 393.135, F.S., relating to sexual misconduct with an individual with a developmental disability who is in the Department of Children and Families (DCF) custody, who resides in a residential facility, or who is eligible to receive services from a family care program;
- Section 394.4593, F.S., relating to sexual misconduct with a mental health patient who is in DCF custody or who resides in a receiving or treatment facility;
- Section 787.025, F.S., relating to luring or enticing a child;
- Chapter 794, F.S., relating to sexual battery;
- Section 796.03, F.S., relating to procuring person under age of 18 for prostitution;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 810.14, F.S., relating to voyeurism;
- Section 817.034, F.S., relating to the Florida Communications Fraud Act;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Chapter 839, F.S., relating to offenses by public officers and employees;
- Section 847.0133, F.S., relating to prohibition of certain acts in connection with obscenity;
- Section 847.0135, F.S., relating to computer pornography, traveling to meet minor;
- Section 847.0145, F.S., relating to selling or buying of minors;
- Section 893.135, F.S., relating to drug trafficking, conspiracy to engage in drug trafficking;
- Section 916.1075, F.S., relating to sexual misconduct with a client who resides in a civil or forensic facility;
- A violation enumerated in s. 907.041, F.S.;²² or
- Any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S.,²³ without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.²⁴

²⁰ Section 741.28(2), F.S., defines “domestic violence” 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.

²¹ Section 943.0582(5), F.S.

²² Section 907.041(4)(a), F.S., provides the following list of offenses: 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; aircraft piracy; 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, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime.

The bill allows a minor with a nonviolent misdemeanor arrest for domestic violence to be eligible for a prearrest or postarrest diversion expunction.

The bill allows a minor whose completion of the program occurred before July 1, 2014, to submit an application for prearrest or postarrest diversion expunction within 6 months after July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 1. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 2. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FDLE is authorized to charge a \$75 processing fee for each request received for a prearrest or postarrest diversion expunction.

2. Expenditures:

There may be an increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in an increase in revenue. This could also create a workload increase.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

²³ Section 775.21, F.S., specifies the following offenses: (1) A capital, life, or first-degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction: ss. 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 847.0145, F.S. (selling or buying of minors). (2) Any felony violation, or attempt thereof, of: ss. 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), (g), (h), F.S. (human trafficking); s. 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.; s. 794.05, F.S. (unlawful activity with certain minors); s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); s.796.035, F.S. (selling or buying of minors into sex trafficking or prostitution); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 810.145, F.S. (video voyeurism); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person; s. 827.071, F.S. (sexual performance by a child);s. 847.0135(5), F.S. (computer pornography); s. 847.0145, F.S. (selling or buying of minors); s. 985.701(1), F.S. (sexual misconduct with a juvenile offender); or a violation of a similar law of another jurisdiction, and the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction.

²⁴ Section 943.0435, F.S., provides many of the same offenses listed in s. 775.21, F.S., and specifies these additional offenses: s. 847.0137, F.S. (transmission of pornography by electronic device or equipment), and s. 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment).

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:

The bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require FDLE to update its rules; however adequate rulemaking authority appears to exist.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2014, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the provisions prohibiting a person from obtaining a certificate if their criminal history record resulted in a trial. As a result, a person can obtain a certificate if their criminal history record resulted in a trial, regardless of whether the record had been sealed for a minimum of 10 years; and
- Clarified that an expunged criminal history record of a person who is adjudicated not guilty by reason of insanity or who is found to be incompetent to stand trial can be retained and disclosed in certain specified instances to specified entities.

On March 21, 2014, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Allow FDLE to expunge the nonjudicial arrest record of a minor who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies specified by the bill;
- Allow a minor with a nonviolent misdemeanor arrest for domestic violence to be eligible for a prearrest or postarrest diversion expunction;
- Allow a minor whose completion of the program occurred before July 1, 2014, to submit an application for prearrest or postarrest diversion expunction within 6 months after July 1, 2014;
- Take out the portion of the bill that required expunged information to be removed from publications; and
- Clarify that FDLE can only retain and disclose in certain specified instances to specified entities an expunged criminal history record of a person who is found to be incompetent to stand trial.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.