

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 334

INTRODUCER: Senator Joyner

SUBJECT: Criminal History Records of Minors

DATE: April 14, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	<b>Pre-meeting</b>
2.			CJ	
3.			RC	

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**I. Summary:**

SB 334 requires that a person's juvenile criminal history records be expunged when the person turns 18 years of age, unless the person, while a minor, was adjudicated as an adult for a forcible felony.

**II. Present Situation:**

**Criminal Justice Information Program**

The Florida Department of Law Enforcement is responsible for operating the Criminal Justice Information Program, which is the state's central criminal justice information repository.<sup>1</sup> The program is responsible for collecting, processing, storing, maintaining, and disseminating criminal justice information and records.

With respect to minors, the program maintains criminal case disposition reports that are submitted by clerks of court.<sup>2</sup> The program also maintains the fingerprints, palm prints, and facial images of minors who are charged with or found to have committed an offense that would be a felony if committed by an adult.<sup>3</sup> These records will also be maintained by the program for a minor who is found to have committed one of the following offenses at a misdemeanor level: assault, battery, carrying a concealed weapon or the open carrying of a weapon, unlawful use of destructive devices or bombs, neglect of a child, exposure of sexual organs, unlawful possession of a firearm, petit theft, cruelty to animals, arson, and unlawful possession or discharge of a weapon at a school or school event.<sup>4</sup>

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<sup>1</sup> Sections 20.201 and 943.051, F.S.

<sup>2</sup> Section 943.052(2), F.S.

<sup>3</sup> Section 943.051(3)(a) and 943.052(3)(b), F.S.

<sup>4</sup> Section 943.051(3)(b) and 943.052(3)(b), F.S.

## Expunction Juvenile Criminal History Records

Section 943.0515, F.S., defines when a person's juvenile criminal history records must be expunged. A person's juvenile records must be expunged on his or her 24th birthday if the person *was not* classified as a "serious or habitual juvenile offender" or committed to a juvenile correctional facility or juvenile prison.

A person's juvenile records must be expunged on his or her 26th birthday if the person *was* classified as a "serious or habitual juvenile offender" or committed to a juvenile correctional facility or juvenile prison. However, a person's juvenile records must be merged with his or her adult criminal records if the person was adjudicated as an adult for a forcible felony<sup>5</sup> or adjudicated delinquent for certain sexual offenses.

### *Serious or Habitual Juvenile Offender*

Section 943.0515, F.S., defining when a person's juvenile records must be expunged, may appear to be unclear because the term "serious or habitual juvenile offender" is not defined under current law. The term was defined in s. 985.47, F.S. (2011), which was repealed by the 2011 Legislature.<sup>6</sup> Under the former statute, judges were directed to determine whether a child was a serious or habitual juvenile offender. In general, a child who was at least 13 years of age at the time of disposition and was convicted of a felony or one of the following offenses would have been classified as a serious or habitual juvenile offender:

- Arson.
- Sexual battery.
- Robbery.
- Kidnapping.
- Aggravated child abuse.
- Aggravated assault.
- Aggravated stalking.
- Murder.
- Manslaughter.
- Unlawful throwing, placing or discharging of a destructive device or bomb.
- Armed burglary.
- Aggravated battery,
- Any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age.
- Carrying, displaying, using, threatening or attempting to use a weapon or firearm during the commission of a felony.

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<sup>5</sup> A forcible felony includes treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony that involves the use or threat of physical force or violence against another person. Section 776.08, F.S.

<sup>6</sup> See s. 4, ch. 2011-70, Laws of Fla.

### ***Juvenile Correctional Facility or Juvenile Prison***

According to s. 985.465, F.S., a juvenile correctional facility or juvenile prison is a secure residential commitment program that is designed to serve children from 13 to 19 years of age who have a designated length of stay of 18 to 36 months. The criteria for determining whether a child may be committed to a juvenile correctional facility or juvenile prison is almost identical to the criteria above which defined whether a child was a serious or habitual juvenile offender. However, in addition to the criteria for a serious or habitual juvenile offender, a child may be committed to a juvenile correctional facility or juvenile prison for carjacking, home-invasion robbery, and burglary with an assault or battery.

### **Expunged and Sealed Records**

Section 943.0515, F.S., provides for the automatic expunction of juvenile criminal history records under certain circumstances when a person turns 24 or 26 years of age. The statute does not explain the effect of the expunction. However, under another statute providing for the expunction of criminal records, s. 943.0585(4), F.S., explains that when a record is expunged it is physically destroyed or obliterated by all criminal justice agencies that have custody of the record. However, the record is retained by the Department of Law Enforcement. Expunged records in possession of the department are confidential and exempt from disclosure requirements under the public records laws and are not available to any person or entity without a court order.

Section 943.095, F.S., provides procedures for a person to petition to a court to seal a criminal history record. A sealed record is similar to an expunged record in that it becomes confidential and exempt from disclosure requirements.<sup>7</sup> However, a sealed record is available to criminal justice agencies for criminal justice purposes, which include conducting background checks for approval of firearms transfers, assisting judges in case-related decisionmaking, or examining a person's suitability for certain types of employment or licenses.

If a person's criminal history record has been sealed or expunged, in most circumstances, he or she may lawfully deny or fail to acknowledge the arrests covered by a sealed or expunged record.<sup>8</sup> However, a person must acknowledge his or her criminal history if he or she:

- Is a candidate for employment with a criminal justice agency.
- Is a defendant in a criminal prosecution.
- Is a candidate for admission to The Florida Bar.
- Is seeking employment, licensure, or a contract with a state agency in a sensitive position that requires the person to have direct contact with children, the disabled, or the elderly.
- Is seeking to be employed or licensed the Department of Education, a school, or a local government entity that licenses child care facilities.
- Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services.
- Is seeking to be appointed as a guardian in a guardianship proceeding.

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<sup>7</sup> Section 943.059(4), F.S.

<sup>8</sup> Sections 943.059(4)(a) and 943.585(4)(a), F.S.

- Is seeking to purchase a firearm or obtain a concealed weapons permit (only for those having a sealed record).

### III. Effect of Proposed Changes:

This bill requires that a person's juvenile criminal history records be expunged when the person turns 18 years of age, unless the person, while a minor, was adjudicated as an adult for a forcible felony. However, because of several technical drafting issues in the bill, some other effect may have been intended. See the Technical Deficiencies Section of this analysis for additional information.

The bill takes effect July 1, 2015.

### 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:

By requiring the expunction of a person's juvenile criminal history records when the person turns 18 years of age, the person may have more educational and employment opportunities. However, potential employers may believe that knowledge of a young adult's juvenile criminal history is an important factor in making employment decisions.

#### C. Government Sector Impact:

According to the Florida Department of Law Enforcement, this bill will require it to make programming changes to its Computerized Criminal History System. The effort will require 848 hours of programming at a cost of \$72,080.<sup>9</sup> Because of the amount of

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<sup>9</sup> Florida Department of Law Enforcement, *2015 FDLE Bill Analysis for SB 334* (Feb. 9, 2015) (on file with the Senate Committee on Judiciary)

programming required by the bill, the department recommends that the bill's effective date be March 1, 2016 or another date after the programming changes are completed.<sup>10</sup>

#### **VI. Technical Deficiencies:**

The bill has some structural drafting issues which suggests something other than the description in the Effect of Proposed Changes Section of this analysis may have been intended. First, existing law establishes tiered timeframes for the expunction of a person's juvenile records in separate paragraphs of s. 943.0515(1), F.S. These timeframes are based on the severity of a person's juvenile offenses, the more severe a person's juvenile criminal record, the longer the records are retained. The bill generally provides that a person's juvenile records are expunged at his or her 18th birthday, regardless of the severity of the offences. However, the tiered structure remains in the statute, but it is no longer necessary. Accordingly, the subparagraphs of s. 943.0515(1), F.S., should be consolidated into a single subsection.

The second technical issue relates to the records juveniles who have been committed to a juvenile correctional facility or juvenile prison. Under current law, a minor can be committed to a juvenile prison until age 19, but the bill provides for the expunction of juvenile records on a person's 18th birthday. Accordingly, the Legislature may wish to amend the bill to allow for a person's juvenile records to be maintained while he or she is in a juvenile correctional facility or juvenile prison.

The third technical issue in the bill relates to a requirement in existing s. 943.0515(2)(a), F.S., that a person's juvenile record be merged with his or her adult record if the person is charged with or convicted of a forcible felony after he or she turns 18 years of age. This circumstance could occur under current law if the charge or conviction for a forcible felony occurs before the person's 24th or 26th birthday when his or her juvenile records would otherwise be expunged. If as the bill provides a person's juvenile records are expunged on his or her 18th birthday, the condition requiring the merger of a person's juvenile and adult criminal records described in s. 943.0515(2)(a), F.S., could not occur. Thus, if the legislature intends to expunge a person's juvenile criminal history records on his or her 18th birthday, paragraph (2)(a) of s. 943.0515, F.S., should be repealed.

#### **VII. Related Issues:**

None.

#### **VIII. Statutes Affected:**

This bill substantially amends sections 943.0515, Florida Statutes.

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<sup>10</sup> *Id.*

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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