

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 Committee on Fiscal Policy

BILL: CS/SB 386

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senators Detert and Soto

SUBJECT: Expunction of Records of Minors

DATE: January 15, 2016 **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>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 386 amends s. 943.0515(1)(b), F.S., to require the Florida Department of Law Enforcement (FDLE) to retain the criminal history record for only two years after they turn 19 (until age 21), instead of five years (until age 24), for 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. The criminal history record is then automatically expunged.

The bill eliminates the requirement that an application for prearrest or postarrest diversion expunction must be submitted within 12 months after the minor completes the diversion program.

The bill also provides that a minor who is eligible for automatic expunction of criminal history records at age 21 may apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. In order to qualify for expunction prior to age 21, the minor must apply to the FDLE and meet certain criteria.

Section 790.23(2), F.S., provides an exception for a person who has been convicted of a felony and has had their civil rights and firearm authority restored to possess firearms. There is not an exception for persons who have had their criminal records expunged pursuant to s. 943.0515, F.S.

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 is effective July 1, 2016.

II. Present Situation:

Automatic Expunction of Criminal History Records of Minors

Section 943.0515, F.S., requires the FDLE to retain the criminal history record of a minor for the five years after they reach 19 (until age 24), and then the record is automatically expunged.¹ For minors 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 a minor's criminal history record for five years after they reach 21 (until age 26), and then the record is automatically expunged.²

A minor's record cannot be automatically expunged and must be merged with and retained as part of their adult record if:

- A person 18 years of age or older is charged with or convicted of a forcible felony³ 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., related to sexual offenders.^{4, 5}

Juvenile Diversion Expunction

A minor who successfully completes a prearrest or postarrest diversion program can have their nonjudicial record of an arrest for a nonviolent misdemeanor⁶ expunged by the FDLE.⁷ The FDLE is authorized to charge a \$75 processing fee for each prearrest or postarrest diversion program expunction request.⁸

The FDLE must expunge the nonjudicial arrest record of a minor if:

- An application for prearrest or postarrest diversion expunction is filed within 12 months after completion of the division program and is signed by the minor's parent, legal guardian or by the minor if he or she has reached the age of majority;

¹ Section 943.0515(1)(b), F.S.

² Section 943.0515(1)(a), F.S.

³ Section 776.08, F.S. defines a "forcible felony" to mean 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 which involves the use or threat of physical force or violence against any individual.

⁴ Sections 943.0515(2) and (3), F.S.

⁵ Section 943.0435(1)(a)1.d., F.S., defines a "sexual offender," in part, as a juvenile who was 14 years of age or older and has been adjudicated delinquent for committing, or attempting, or soliciting, or conspiring to commit, the offence of sexual battery, lewd or lascivious battery, lewd or lascivious molestation.

⁶ A nonviolent misdemeanor includes a simple assault or battery. Section 943.0582(2)(b), F.S.

⁷ Section 943.0582, F.S.

⁸ Section 943.0582(4), F.S.

- The application includes an official written statement from the state attorney where the arrest occurred certifying that the minor:
 - Successfully completed that county’s prearrest or postarrest diversion program;
 - Participated in the program because of an arrest for a nonviolent misdemeanor; and
 - Has not been charged with or found to have committed any criminal offense or comparable ordinance violation.
- The prearrest or postarrest program that he or she participated in expressly authorizes expunction and was for an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence.⁹
- Prior to filing the application for expunction, he or she has never been charged with or been found to have committed any criminal offense or comparable ordinance violation.¹⁰

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.¹¹

However, the expunged arrest record is available to criminal justice agencies¹² under certain circumstances. For example, to determine eligibility for a diversion program, when a minor is seeking criminal justice employment, or for a criminal investigation.¹³

Possession of Firearms

Section 790.23, F.S., makes it unlawful for a person who has been found to have committed a delinquent act in Florida or another state that would be a felony if committed by an adult and is under the age of 24 to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device.

Section 790.23(2), F.S., provides an exception for a person who has been convicted of a felony and has had their civil rights and firearm authority restored to possess firearms. There is not an exception for persons who have had their criminal records expunged pursuant to s. 943.0515, F.S.

III. Effect of Proposed Changes:

Automatic Expunction of Criminal History Records of Minors

The bill amends s. 943.0515(1)(b), F.S., to require the FDLE to retain the criminal history record for only two years after they turn 19 (until age 21), instead of five years (until age 24), for

⁹ Section 741.28, F.S., defines “domestic violence” to mean 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.

¹⁰ Section 943.0582(3), F.S.

¹¹ *Id.* at (5).

¹² Section 943.045(11), F.S., defines a “criminal justice agency” as a court; the FDLE; the Department of Juvenile Justice; the protective investigations component of the Department of Children and Families; 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.

¹³ Section 943.0582(2)(a)1., F.S.

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. The criminal history record is then automatically expunged.¹⁴

Application for Expunction of Criminal History Records Prior to Age 21

The bill provides that a minor who is eligible for automatic expunction of criminal history records at age 21 may apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. In order to qualify for expunction prior to age 21, the minor must apply to the FDLE and must:

- Submit a \$75 processing fee;
- Submit a full set of fingerprints for identity verification;
- 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:
 - Is no longer under court supervision applicable to the disposition of the arrest of alleged criminal activity to which the application to expunge pertains; and
 - Has not been charged with or found to have committed a criminal offense in any jurisdiction of the state or within the United States within five years prior to the application date.

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 age 21.

The bill provides that knowingly submitting false information on the sworn statement is a first degree misdemeanor.

Juvenile Diversion Expunction

The bill amends s. 943.0582, F.S., to eliminate the requirement that an application for prearrest or postarrest diversion expunction must be submitted within 12 months after the minor completes the diversion program.

The bill reenacts s. 985.125(3), F.S., to incorporate the changes made in the bill.

Possession of Firearms

The bill amends s. 790.23, F.S., to allow an individual whose criminal record has been expunged, pursuant to the bill, to possess firearms.

The bill is effective July 1, 2016.

¹⁴ Unless one of the exceptions in ss. 943.0515(2) and (3), F.S., apply, as discussed in the Present Situation.

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 minors 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:

The bill reduces the time period that the FDLE must retain the criminal history record for a minor to two years after they turn 19 (until age 21), instead of five years (until age 24), for 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. The implication of the bill requires the FDLE to make a change in its database which will take one and a half months, at an estimated cost of \$20,000. Existing staff resources will be used to implement the change.¹⁵

The bill also allows a minor eligible for automatic expunction of criminal history records at age 21 to apply for an expunction any time after reaching 18 but before reaching 21. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18. The bill provides that knowingly submitting false information on the sworn statement is a first degree misdemeanor but it is anticipated to have an insignificant fiscal impact.

VI. Technical Deficiencies:

None.

¹⁵ Florida Department of Law Enforcement, *2016 Bill Analysis for SB 386* (October 7, 2015) (on file with the Senate Criminal Justice Committee).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.23, 943.0515, and 946.0582.

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.)

CS by Fiscal Policy on January 14, 2016:

As recommended by the Appropriations Subcommittee on Criminal and Civil Justice, the committee substitute adds 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. The committee substitute also creates a first degree misdemeanor for knowingly submitting false information on the sworn statement.

- B. **Amendments:**

None.