

**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 Fiscal Policy

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BILL: SB 386

INTRODUCER: Senators Detert and Soto

SUBJECT: Expunction of Records of Minors

DATE: January 13, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Recommend: Fav/CS</b>
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

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 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.<sup>1</sup> 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.<sup>2</sup>

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 felony<sup>3</sup> 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.<sup>4, 5</sup>

### 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 misdemeanor<sup>6</sup> expunged by the FDLE.<sup>7</sup> The FDLE is authorized to charge a \$75 processing fee for each prearrest or postarrest diversion program expunction request.<sup>8</sup>

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 diversion 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;
- 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

<sup>1</sup> Section 943.0515(1)(b), F.S.

<sup>2</sup> Section 943.0515(1)(a), F.S.

<sup>3</sup> 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.

<sup>4</sup> Sections 943.0515(2) and (3), F.S.

<sup>5</sup> 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.

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

<sup>7</sup> Section 943.0582, F.S.

<sup>8</sup> Section 943.0582(4), F.S.

- 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.<sup>9</sup>
- 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.<sup>10</sup>

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.<sup>11</sup>

However, the expunged arrest record is available to criminal justice agencies<sup>12</sup> 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.<sup>13</sup>

### 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 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.<sup>14</sup>

#### **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. The bill is effective July 1, 2016.

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<sup>9</sup> 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.

<sup>10</sup> Section 943.0582(3), F.S.

<sup>11</sup> *Id.* at (5).

<sup>12</sup> 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.

<sup>13</sup> Section 943.0582(2)(a)1., F.S.

<sup>14</sup> 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.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 943.0515 and 943.0582.

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

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.)

**See PCS 780622 by Fiscal Policy (Recommended by Appropriations Subcommittee on Criminal and Civil Justice) on December 3, 2015.**

- 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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