

# SENATE STAFF ANALYSIS AND ECONOMIC 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: Judiciary Committee

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BILL: CS/SB 1844

INTRODUCER: Judiciary Committee and Senator Haridopolos

SUBJECT: Nonjudicial Arrest Record/Expunction

DATE: April 21, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Fav/1 amendment</b>
2.	Cibula	Maclure	JU	<b>Fav/CS</b>
3.				
4.				
5.				
6.				

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## I. Summary:

Under this bill, when a law enforcement agency or court determines that the agency has mistakenly arrested a person, the agency must apply to the Florida Department of Law Enforcement (FDLE) for an administrative expunction of that nonjudicial arrest record.

Alternatively, a person may apply to FDLE for an administrative expunction when an arrest is alleged to have been made by mistake. The bill provides that these applications to FDLE must be accompanied by an endorsement from the head of the arresting agency or the state attorney in the judicial circuit in which the arrest occurred. The bill also requires applications for administrative expunction to include an affidavit executed by the head of a law enforcement agency that an arrest was contrary to law or a mistake.

Finally, the bill provides that an application or endorsement is not admissible as evidence in any judicial or administrative proceeding, nor is either one to be construed as an admission of liability in connection with the arrest.

This bill substantially amends section 943.0581, Florida Statutes.

## II. Present Situation:

Existing statutes and administrative rules appear to assume that nonjudicial records of a mistaken arrest will be expunged. Section 943.0581, F.S., states:

Notwithstanding any law dealing generally with the preservation and destruction of public records, the [Department of Law Enforcement] may provide, by rule adopted pursuant to chapter 120, for the administrative expunction of any

nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.

Rule 11C-7.008(1), F.A.C., states: “Non-judicial records of arrest made contrary to law or by mistake will be administratively expunged by the Department.” The chief law enforcement officer of the arresting agency, however, must request the expunction of a particular record.<sup>1</sup> According to the Florida Department of Law Enforcement (FDLE), there were 144 administrative expungements in the last 12 months.

Section 943.0585, F.S., sets forth a procedure for court-ordered expunction of criminal history records, including arrest records.<sup>2</sup> As prerequisite to the expunction, the petitioner must obtain a certificate of eligibility for expunction from FDLE. The criteria for eligibility for a certificate of eligibility for expunction are described in s. 943.0585(2), F.S., which states:

Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.
2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction.
3. That the criminal history record does not relate to a violation of [certain crimes].

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<sup>1</sup> Rule 11C-7.008(3), F.A.C.

<sup>2</sup> The definitions of the terms “criminal history information” and “record” in s. 943.045, F.S., imply that an arrest record is a criminal history record under s. 943.0585, F.S. Section 943.045, F.S., states in part:

The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

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(4) “Criminal history information” means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as fingerprint records, if the information does not indicate involvement of the person in the criminal justice system.

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(7) “Record” means any and all documents, writings, computer memory, and microfilm, and any other form in which facts are memorialized, irrespective of whether such record is an official record, public record, or admissible record or is merely a copy thereof.

The distinction between the procedures for expunction of an arrest record in s. 943.0581, F.S., and s. 943.0585, F.S., appears to be that the former requires a determination of a mistaken arrest and the latter, a lack of sufficient evidence for prosecution.

Whether an expunction occurs under s. 943.0851, F.S., or s. 943.085, F.S., the effect is the same—a person with an expunged record may lawfully deny or fail to acknowledge, with some exceptions, the arrests covered by the expunged record.<sup>3</sup>

### **III. Effect of Proposed Changes:**

Under the bill, when a law enforcement agency or court determines that the agency has mistakenly arrested a person, the agency must apply to the Florida Department of Law Enforcement (FDLE) for an administrative expunction of that nonjudicial arrest record.

Alternatively, a person may apply to the FDLE for an administrative expunction when an arrest is alleged to have been made by mistake. The bill provides that these applications to FDLE must be accompanied by an endorsement from the head of the arresting agency or the state attorney in the judicial circuit in which the arrest occurred.

The bill requires applications for administrative expunction to include an affidavit executed by the head of a law enforcement agency that an arrest was contrary to law or a mistake. That affidavit must also include the date and time of the arrest, the name of the arresting officer, the name of the person arrested, and the crime or crimes charged. The bill, however, is not clear as to whether the affidavit must be submitted only with law enforcement initiated expunction requests.

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<sup>3</sup> Section 943.0585(4)(a), F.S., states:

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s. 985.407, or chapter 400; or
6. Is 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.

Further, the bill does not suggest why an affidavit or endorsement must accompany an expunction request based on a court order finding that a person was arrested contrary to law or by mistake.

This bill places a duty to initiate the process for administrative expunction on a law enforcement agency when a mistaken arrest is known to have been made. In contrast, existing Rule 11C-7.008, F.A.C., assumes law enforcement agencies will request administrative expunction of records of mistaken arrests. In either the bill or existing law, an admission of a mistaken arrest must be made in order to begin the process of administrative expunction. The bill, however, may allow the state attorney of the judicial circuit in which the arrest occurred, as an alternative to the arresting agency, to endorse an application for expunction of a record of a mistaken arrest.

The bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may make it less expensive for persons wrongly arrested to have their arrest record administratively expunged by the FDLE because the local arresting law enforcement agency will now have the responsibility to initiate and follow-through on this process.

C. Government Sector Impact:

According to the FDLE, the fiscal impact of the bill will be minimal.

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

The bill requires applications for administrative expunction to include an affidavit executed by the head of a law enforcement agency. The affidavit must state that an arrest was contrary to law

or a mistake. The bill, however, is not clear as to whether the affidavit must be submitted only with law enforcement initiated expunction requests. Additionally, expunction requests initiated by an individual must be endorsed by the head of the arresting agency or the state attorney. If an affidavit must accompany expunction requests initiated by individuals, the affidavit appears to be redundant with the endorsement. Further, the bill does not suggest why an affidavit must accompany an expunction request endorsed by a state attorney. Lastly, the bill does not suggest why an affidavit or endorsement must accompany an expunction request based on a court order finding that a person was arrested contrary to law or by mistake.

The Legislature may wish to revise the bill to provide that:

- No affidavit or endorsement is necessary for expunction requests based on a court order;
- No affidavit or endorsement by law enforcement is necessary for expunction requests endorsed by a state attorney; and
- Only law enforcement initiated expunction requests must include an affidavit.

Additionally, the Legislature may wish to consider whether all expunction requests not based on a court order should include an affidavit rather than an endorsement.

## **VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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

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