

**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 Criminal Justice Committee

BILL: SB 458

INTRODUCER: Senator Hill

SUBJECT: Administrative Expunction of Arrest Records

DATE: March 23, 2011

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill deletes the language making the decision of the arresting law enforcement agency to apply to the Florida Department of Law Enforcement (FDLE) for administrative expunction discretionary. It also changes the requirement that the application for administrative expunction initiated by the subject of the record (or the subject’s parents) must be supported by “documentation from the department stating that the arrest was contrary to law or by mistake.”

This bill substantially amends section 943.0581 of the Florida Statutes.

**II. Present Situation:**

The FDLE is authorized to provide by rule for the administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.<sup>1</sup> A law enforcement agency must apply to FDLE in the manner prescribed by rule for the administrative expunction of any nonjudicial record of any arrest of a minor or an adult who is subsequently determined by the agency, at its discretion, or by the final order of a court of competent jurisdiction, to have been arrested contrary to law or by mistake.

An adult or, in the case of a minor child, the parent or legal guardian of the minor child, may apply to FDLE in the manner prescribed by rule for the administrative expunction of any nonjudicial record of an arrest alleged to have been made contrary to law or by mistake, provided that the application is supported by the endorsement of the head of the arresting agency or the state attorney of the judicial circuit in which the arrest occurred.

<sup>1</sup> Section 943.0581, F.S.

An application for administrative expunction must be on the submitting agency's letterhead and be signed by the head of the submitting agency. The application must include the date and time of the arrest, the name of the person arrested, the offender-based tracking system number, and the crime or crimes charged. No application or endorsement made under s. 943.0581, F.S., is admissible as evidence in any judicial or administrative proceeding, nor is to be construed as an admission of liability in connection with an arrest.<sup>2</sup>

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

This bill deletes the language making the decision of the arresting law enforcement agency to apply to the FDLE for administrative expunction discretionary. It clarifies that the application for administrative expunction initiated by the law enforcement agency must be on the agency's letterhead and signed by the head of the submitting agency or by his or her designee.

It also changes the requirement that the application for administrative expunction initiated by the subject of the record (or the subject's parents) must be supported by "documentation from the department stating that the arrest was contrary to law or by mistake." (Currently, the statute requires an endorsement from the head of the arresting agency or the state attorney.)

### **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:**

The potential exists for a positive fiscal impact to the degree that the bill helps more people find jobs because they will no longer have a record for a mistaken arrest.

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<sup>2</sup> *Id.*

**C. Government Sector Impact:**

According to the FDLE, the department receives 275 cases per year.<sup>3</sup> It will need additional resources to adequately conduct investigations and trial-type hearings into the legitimacy of the arrests by the other law enforcement agencies. Specifically, it estimates the following fiscal impact:

	<b>FY 11 - 12</b>	<b>FY 12 - 13</b>	<b>FY 13 - 14</b>	
2 Positions -Senior Attorney and Criminal Justice Customer Service Specialist	\$116,488	\$116,488	\$116,488	Salary & Benefits
Standard Expense for 2 Positions	\$20,906	\$13,110	\$13,110	Expenses
Standard HR Services for 2 Positions	\$712	\$712	\$712	Human Resources Services
<b>TOTAL 2 Positions</b>	<b>\$138,106</b>	<b>\$130,310</b>	<b>\$130,310</b>	

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to the FDLE, this bill will put it in an awkward position of having to second-guess a local law enforcement agency’s initial decision as to whether the arrest was a mistake or contrary to law. It will also require the FDLE to investigate all situations in which there is an allegation of mistaken arrest.<sup>4</sup>

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial 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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<sup>3</sup> Florida Department of Law Enforcement, Bill Analysis for SB 458, on file with the Senate Criminal Justice Committee.

<sup>4</sup> *Id.*