

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 497 Juvenile Expunction
SPONSOR(S): Criminal Justice Subcommittee; Porth and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days.

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as defined in s. 741.28, F.S.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.
- Submits a \$75 processing fee and necessary paperwork to FDLE within 6 months after completing the program.

Currently a juvenile with a felony arrest is not eligible for a juvenile diversion expunction under s. 943.0582, F.S.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies specified by the bill. The bill provides a list of felony offenses that are ineligible for a juvenile diversion expunction.

The bill also allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

It appears the bill may have both a positive and negative fiscal impact on state government. See "fiscal section."

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Prearrest or Postarrest Diversion Programs

Juvenile diversion programs are nonjudicial alternatives used to keep less serious juvenile offenders from being handled through the traditional juvenile justice system.¹ These programs are intended to intervene at an early stage of delinquency, decrease subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.²

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days. If the juvenile fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for a period that may not exceed 90 days.³

The diversion program may, upon agreement of the establishing agencies, provide for the expunction of the nonjudicial arrest record of a juvenile who successfully completes such a program pursuant to s. 943.0582, F.S.⁴

Juvenile Diversion Expunction

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge⁵ a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Submits an application for a juvenile diversion expunction, on a form prescribed by FDLE, signed by the juvenile's parent or legal guardian, or by the juvenile if he or she has reached the age of majority at the time of applying.
- Submits the application for a juvenile diversion expunction no later than 6 months after completion of the diversion program.
- Submits to FDLE, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, and that participation in the program is strictly limited to juveniles arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28, F.S.⁶

¹ "Probation 2010 Florida Comprehensive Accountability Report. Department of Juvenile Justice.

² *Id.*

³ Section 985.125(2), F.S.

⁴ Section 985.125(3), F.S.

⁵ Section 943.0582(2), F.S., defines "Expunction" as the same meaning and effect as s. 943.0585, F.S., except that:

The provisions of s. 943.0585(4)(a), F.S., do not apply, except that the criminal history record of a juvenile whose record is expunged pursuant to this section is made available only to criminal justice agencies: for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section are sealed as the term is used in s. 943.059, F.S.

- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.

Section 943.0582(2), F.S., defines “nonviolent misdemeanor” as simple assault or battery when a juvenile diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

Expunction or sealing granted under this section does not prevent the juvenile who receives such relief from petitioning for the expunction or sealing of a later criminal history record as an adult as provided in ss. 943.0585 and 943.059, F.S., if the juvenile is otherwise eligible under those sections.⁷

Effect of the Bill

As noted above, juveniles with felony arrests are not currently eligible for a juvenile diversion expunction.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies directly related to a violation of:

- Section 393.135, F.S., relating to sexual misconduct with an individual with a developmental disability who is in the Department of Children and Families (DCF) custody, who resides in a residential facility, or who is eligible to receive services from a family care program;
- Section 394.4593, F.S., relating to sexual misconduct with a mental health patient who is in DCF custody or who resides in a receiving or treatment facility;
- Section 787.025, F.S., relating to luring or enticing a child;
- Chapter 794, F.S., relating to sexual battery;
- Section 796.03, F.S., relating to procuring person under age of 18 for prostitution;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 810.14, F.S., relating to voyeurism;
- Section 817.034, F.S., relating to the Florida Communications Fraud Act;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Chapter 839, F.S., relating to offenses by public officers and employees;
- Section 847.0133, F.S., relating to prohibition of certain acts in connection with obscenity;
- Section 847.0135, F.S., relating to computer pornography, traveling to meet minor;
- Section 847.0145, F.S., relating to selling or buying of minors;
- Section 893.135, F.S., relating to drug trafficking, conspiracy to engage in drug trafficking;
- Section 916.1075, F.S., relating to sexual misconduct with a client who resides in a civil or forensic facility;
- A violation enumerated in s. 907.041, F.S.;⁸ or
- Any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S.,⁹ without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.¹⁰

⁶ Section 741.28(2), F.S., defines “domestic violence” as “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.”

⁷ Section 943.0582(6), F.S.

⁸ Section 907.041(4)(a), F.S., provides the following list of offenses: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime.

The bill allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

The bill removes the link between the expunction criteria and the diversion programs to ensure that diversion programs are not limited to only excepting minors who have committed specific offenses.

The bill provides a July 1, 2013 deadline for a minor to submit an application for expunction if the minor completes a diversion program before July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FDLE is authorized to charge a \$75 processing fee for each request received for a juvenile diversion expunction.¹¹ FDLE reports there may be a slight increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in a minimal increase in revenue.¹²

2. Expenditures:

FDLE reports there may be a slight increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in a minimal increase in costs associated with workload.¹³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

⁹ Section 775.21, F.S., specifies the following offenses: (1) A capital, life, or first-degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction: ss. 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 847.0145, F.S. (selling or buying of minors). (2) Any felony violation, or attempt thereof, of: ss. 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.; s. 794.05, F.S. (unlawful activity with certain minors); s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); s.796.035, F.S. (selling or buying of minors into sex trafficking or prostitution); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person); s. 827.071, F.S. (sexual performance by a child);s. 847.0135(5), F.S. (computer pornography); s. 847.0145, F.S. (selling or buying of minors); s. 985.701(1), F.S. (sexual misconduct with a juvenile offender); and s. 847.0133, F.S. (protection of minors / obscenity).

¹⁰ Section 943.0435, F.S., provides many of the same offenses listed in s. 775.21, F.S., and specifies these additional offenses: s. 847.0137, F.S. (transmission of pornography by electronic device or equipment), and s. 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment).

¹¹ Section 943.0585(4), F.S. This fee may be waived by the executive director.

¹² Florida Department of Law Enforcement. 2012 Analysis of HB 497.

¹³ *Id.*

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A juvenile applying for an expunction under s. 943.0582, F.S., will be required to pay a \$75 processing fee to FDLE.¹⁴

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 943.0582, F.S., provides FDLE rulemaking authority pursuant to ch. 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Clarification may be needed on whether expunction eligibility is limited to a juvenile arrested for a single qualifying misdemeanor or a single qualifying felony, or whether multiple charges could be expunged if none "relate to a violation of" the specified offenses. As worded, it appears that eligibility would be limited to an arrest for a single charge.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes link between the expunction criteria and the diversion programs to ensure that diversion programs are not limited to only excepting minors who have committed specific offenses.
- Provides a July 1, 2013 deadline for a minor to submit an application for expunction if the minor completes a diversion program before July 1, 2012.
- Corrects the title to refer to FDLE as the agency with expunction power.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

¹⁴ *Supra* note 11.