

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/SB 940

INTRODUCER: Criminal Justice Committee and Senator Wise

SUBJECT: Juvenile Diversion Expunction

DATE: February 23, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Fav/CS
2.	Sneed	Sadberry	BJA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 940 will allow a youth who has been arrested for a felony, with numerous specified exceptions, to have his or her nonjudicial arrest record expunged upon successful completion of a prearrest, postarrest, or teen court diversion program. Currently, only nonviolent misdemeanor arrests, excluding those that qualify as an act of domestic violence, are eligible to be expunged. The bill also makes it possible for a youth who completes a prearrest or postarrest diversion program to now be able to get an expunction for a misdemeanor domestic violence arrest.

This bill substantially amends section 943.0582 of the Florida Statutes.

II. Present Situation:

Youth who successfully complete a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor are eligible to have their arrest expunged, providing they have no other past criminal history.¹ A nonviolent misdemeanor includes simple assault or battery when the expunction process is approved in writing by the local state attorney. A

¹ Section 943.0582, F.S.

domestic violence arrest is not eligible for expunction. 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.²

The expunged arrest record is available to law enforcement only under certain enumerated circumstances, such as when it is needed to determine eligibility for the diversion program, when a youth is seeking law enforcement employment, or when it is needed for a criminal justice investigation. Local law enforcement records are treated as if they have been sealed (only available to limited entities for limited purposes³).

The Florida Department of Law Enforcement (FDLE) is required to expunge the nonjudicial arrest record of a successful participant in a prearrest, postarrest, or teen court diversion program if the youth does the following: submits a timely filed application⁴ signed by the parents or by the minor if he or she is of age by then; submits a statement by the state attorney that the youth has successfully completed a prearrest or postarrest diversion program that was limited to minors arrested for a nonviolent misdemeanor (excluding domestic violence) who have not otherwise been charged with or found to have committed any criminal offense; participates in a diversion program that allows an expunction to occur; and provides that he or she has not been charged with or found to have committed a prior criminal offense.⁵ The application must be submitted no later than six months after completion of the diversion program.

The FDLE is authorized to charge a \$75 processing fee for each juvenile diversion expunction request, but the executive director can waive the fee.⁶

III. Effect of Proposed Changes:

CS/SB 940 allows a youth who has been arrested for a felony, with numerous specified exceptions, to have his or her nonjudicial arrest record expunged upon successful completion of a prearrest, postarrest, or teen court diversion program. Currently only nonviolent misdemeanor arrests, excluding those that qualify as an act of domestic violence, are eligible to be expunged under s. 943.0582, F.S.

The felony offenses that will not be eligible for expunction under the bill include the following offenses that are also prohibited from being sealed or expunged under the regular sealing and expunction statutes:⁷

- Sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients;
- Luring or enticing a child;
- Sexual battery;
- Procuring a person under 18 years for prostitution;

² *Id.*

³ See s. 943.059(4), F.S.

⁴ Within 6 months of completing the program.

⁵ Section 943.0582(3), F.S.

⁶ Section 943.0582(4), F.S.

⁷ Sections 943.0585 and 943.059, F.S.

- Lewd, lascivious, or indecent assault upon a child;
- Lewd or lascivious offenses committed on an elderly or disabled person;
- Voyeurism;
- Communications fraud;
- Sexual performance by a child;
- Unlawful distribution of obscene materials to a minor;
- Unlawful activities involving computer pornography;
- Selling or buying minors for the purpose of engaging in sex trafficking or prostitution, or sexually explicit conduct;
- Offenses by public officers and employees;
- Drug trafficking;
- Other dangerous crimes such as arson, aggravated assault or battery, illegal use of explosives, child abuse or aggravated child abuse, elderly or disabled abuse, aggravated elderly or disabled abuse, aircraft piracy, kidnapping, sexual battery, homicide, manslaughter, sexual activity with a child, robbery, home invasion robbery, carjacking, stalking and aggravated stalking, domestic violence, terrorism, manufacturing controlled substances, and burglary⁸; and
- Any violation specified as a predicate offense for sexual predator or sexual offender registration.⁹

The bill also deletes the provision prohibiting a misdemeanor domestic violence arrest from being expunged under this statute, making it possible for a youth who meets the statutory requirements to now be able to get an expunction for a misdemeanor domestic violence arrest.

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.

⁸ Section 907.041, F.S.

⁹ See ss. 775.21 and 943.0435, F.S.

B. Private Sector Impact:

Youth now eligible to have a felony arrest record expunged under the bill will be required to pay a \$75 processing fee, unless it is waived by the executive director of the FDLE.

C. Government Sector Impact:

There is no fiscal impact on the Department of Juvenile Justice. The FDLE expects an insignificant fiscal impact due to the low number of juveniles who will become eligible for diversion expunction under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 22, 2012:

Extends the time period for submitting an application from 6 to 12 months after completion of the juvenile diversion program.

B. Amendments:

None.