

**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 Criminal Justice

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BILL: SB 1316

INTRODUCER: Senator Soto

SUBJECT: Criminal History Records of Minors

DATE: March 27, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 1316 amends s. 943.0515, F.S., to require all records maintained by the Florida Department of Law Enforcement (FDLE) related to minors be automatically expunged when the minor reaches the age of 21 years and is no longer in the custody of the Department of Juvenile Justice (DJJ), with certain exceptions.

The bill also requires FDLE to automatically expunge the arrest record of a minor who successfully completes a prearrest or postarrest diversion program, without any action necessary by the minor.

The bill amends s. 985.04, F.S., by specifying that all juvenile proceedings are confidential and all records of juvenile delinquency proceedings must be sealed and kept confidential from the public. Confidential records may be released by court order if the party can show a legitimate interest in the records.

Under the bill, the name, photograph, address, and crime or arrest report of a child is not confidential and exempt from s. 119.07(1), F.S., solely because of the child's age if the child:

- Is found to have committed a forcible felony;
- Is found to have committed juvenile sexual abuse under s. 39.01; or
- Has pled guilty or nolo contendere to, or has been found to have committed a violation of ch. 794, ch. 796, ch. 800, s. 827.071, or s. 847.0133, F.S.

The bill deletes current provisions authorizing certain entities, including appropriate school personnel, to enter into interagency agreements to share confidential information about juvenile offenders. It also deletes provisions requiring notification to school superintendents and other school personnel when a child is charged with or alleged to have committed certain offenses.

## II. Present Situation:

### Automatic Expunction of Criminal History Records of Minors

Section 943.0515, F.S., requires the automatic expunction of the records of specified juveniles at age 24 or 26. For juveniles who are classified as serious or habitual juvenile offenders, or that have been committed to a juvenile correctional facility or juvenile prison, the FDLE must retain their record until the age of 26, at which time it is automatically expunged.<sup>1</sup> For all other juveniles, FDLE must retain the record until the juvenile reaches the age of 24, at which time it is automatically expunged.<sup>2</sup>

A juvenile's record is prohibited from being automatically expunged if:

- A person 18 years of age or older is charged with or convicted of a forcible felony 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.<sup>3,4</sup>

In these three instances, the person's record as a minor must be merged with and retained as part of their adult record.<sup>5</sup>

### Confidential Information of Juveniles

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system are confidential. There are several exceptions to this general provision of confidentiality. For example, s. 985.04(2), F.S., provides in part, that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system by indictment, judicial waiver, or direct file;
- Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

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

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

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

<sup>4</sup> Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

<sup>5</sup> *Id.*

## **Criminal Justice Information Program**

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within FDLE to act as the state's central criminal justice information<sup>6</sup> repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in CJIP.<sup>7</sup> This information can then be transmitted between criminal justice agencies.<sup>8</sup>

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to FDLE the fingerprints, palm prints, and facial images of:

- Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile who is charged with or found to have committed an offense, which would be a felony if committed by an adult; or
- A minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

## **Dissemination of Criminal History Information under Chapter 943, F.S.**

Criminal history information<sup>9</sup> compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.<sup>10</sup> With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 dollars per name submitted.<sup>11</sup>

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.<sup>12</sup> Additionally, the statute is silent as to the release of a juvenile's information which has been made confidential pursuant to s. 985.04, F.S.

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<sup>6</sup> Section 943.045(12), F.S., provides "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

<sup>7</sup> Section 943.052, F.S.

<sup>8</sup> Section 985.051, F.S.

<sup>9</sup> Section 943.045(5), F.S., defines "criminal history information" as 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 biometric records, if the information does not indicate involvement of the person in the criminal justice system.

<sup>10</sup> Section 943.053(3)(a), F.S.

<sup>11</sup> Section 943.053(30)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, DJJ, and the Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

<sup>12</sup> Section 943.053(3)(a), F.S.

## **G.G. v. FDLE**

In *G.G. v. FDLE*,<sup>13</sup> a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.’s attorney received G.G.’s criminal history information from FDLE, and discovered that it included information relating to the petit theft arrest.<sup>14</sup> G.G. filed suit, claiming that the petit theft information should be confidential and exempt under s. 985.04(1), F.S.<sup>15</sup> The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.<sup>16</sup>

On appeal, the First District Court of Appeal reversed the trial court’s decision and held that FDLE’s authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.<sup>17</sup>

## **FDLE – Release of Juvenile Information since G.G.**

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, FDLE is ensuring that only the above-described records are released. However, because of programming limitations<sup>18</sup> and incomplete reporting of juvenile disposition information,<sup>19</sup> FDLE reports that they are unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.<sup>20</sup> As such, FDLE is currently only releasing the following juvenile records to private entities and non-criminal justice agencies:

- Taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Treated as adults.<sup>21</sup>

<sup>13</sup> 97 So. 3d 268 (Fla. 1st DCA 2012).

<sup>14</sup> *Id.* at 269.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 273.

<sup>18</sup> FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, *2015 Bill Analysis for PCB CRJS 15-05/7103* (on file with the Senate Criminal Justice Committee).

<sup>19</sup> Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5%, while the adult rate is 72.2 %.) *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

### **Juvenile Diversion Expunction**

Juveniles 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.<sup>22</sup> A nonviolent misdemeanor includes simple assault or battery when the expunction process is approved in writing by the local state attorney. A domestic violence arrest is not eligible for expunction. Receiving a juvenile diversion expunction does not prohibit a juvenile 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>23</sup>

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 juvenile 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 purposes<sup>24</sup>).

The FDLE is required to expunge the nonjudicial arrest record of a successful participant in a prearrest, postarrest, or teen court diversion program if the juvenile does the following: submits a timely filed application<sup>25</sup> 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 juvenile 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.<sup>26</sup> 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.<sup>27</sup>

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

The bill amends s. 943.0515, F.S., to require all records maintained by FDLE related to minors be automatically expunged when the minor reaches the age of 21 years and is no longer in the custody of DJJ, so long as one of the following exceptions does not apply:

- A person 18 years of age or older is charged with or convicted of a forcible felony 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

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<sup>22</sup> Section 943.0582, F.S.

<sup>23</sup> *Id.*

<sup>24</sup> See s. 943.059(4), F.S.

<sup>25</sup> Within 6 months of completing the program.

<sup>26</sup> Section 943.0582(3), F.S.

<sup>27</sup> Section 943.0582(4), F.S.

- 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.<sup>28</sup>

The bill also requires FDLE to immediately expunge a record maintained by the juvenile court, juvenile probation officer, or law enforcement agency which is related to a dismissed case, a case in which the minor was ruled not involved, or a case in which charges were not substantiated, without any action necessary by the minor.

The bill also requires FDLE to automatically expunge the arrest record of a minor who successfully completes a prearrest or postarrest diversion program, without any action necessary by the minor.

The bill amends s. 985.04, F.S., by specifying that all juvenile proceedings are confidential and all records of juvenile delinquency proceedings must be sealed and kept confidential from the public. All information obtained under ch. 985, F.S., is confidential and may be released by court order, for good cause, and by the authorization of the individual who is the subject of the proceeding.

However, the name, photograph, address, and crime or arrest report of a child is not confidential and exempt from s. 119.07(1) solely because of the child's age if the child:

- Is found to have committed a forcible felony;
- Is found to have committed juvenile sexual abuse under s. 39.01; or
- Has pled guilty or nolo contendere to, or has been found to have committed a violation of ch. 794, ch. 796, ch. 800, s. 827.071, or s. 847.0133, F.S.

Under the bill, confidential records may be released by court order if the party can show a legitimate interest in the records. The court must find that the need for discovery outweighs the policy considerations favoring confidentiality of juvenile case files. The court may permit disclosure if the petitioner shows by a preponderance of the evidence that the record is necessary and has substantial relevance to the legitimate need of the petitioner.

If, after in camera review, the court determines that all or a portion of the case file may be disclosed, the court must make appropriate orders, specifying the information to be disclosed and the procedure for providing access to it. The court may also issue protective orders to accompany authorized disclosure or discovery of a juvenile case file.

The bill also deletes current provisions authorizing certain entities, including appropriate school personnel, to enter into interagency agreements to share confidential information about juvenile offenders. It deletes provisions requiring notification to school superintendents and other school personnel when a child is charged with a felony or alleged to have committed a delinquent act that would be a felony if committed by an adult, has been placed in a probation or commitment program for a felony offense, or is under the jurisdiction of the DJJ and has a known history of criminal sexual behavior with other juveniles, or has committed other specified sexual offenses.

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<sup>28</sup> Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

The effective date of the bill is July 1, 2015.

**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:

None.

C. Government Sector Impact:

FDLE will no longer be collecting the \$75 fee from juveniles who under current law must apply for an expunction when they successfully complete a diversion program under s. 943.0582, F.S. Additionally, FDLE will be required to update the CJIP program where criminal history information is stored to update the new age requirements for expunction of juvenile records under s. 943.0515, F.S. This may result in a negative fiscal impact on FDLE.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 943.0515, 943.0582, and 985.04.

This bill makes conforming and technical changes to the following sections of the Florida Statutes: 985.045, 985.11, 1006.08, 1012.797, and 985.125.

**IX. Additional Information:**

**A. Committee Substitute – Statement of 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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