

**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 488

INTRODUCER: Senator Detert

SUBJECT: Expunction of Criminal Records

DATE: March 20, 2015

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

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

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**I. Summary:**

SB 488 allows a person to immediately apply for a certificate of eligibility for a criminal history record expunction if at trial the judge or jury renders a not guilty verdict. (Currently if the trial results in an acquittal, the accused is required to have his or her record sealed for ten years before being eligible to apply for an expunction.) However, the bill prohibits the records of a person adjudicated not guilty by reason of insanity from being eligible for a record expunction. It also clarifies that if a record of a person found incompetent to stand trial is expunged, that does not prevent entry of the judgment or finding in state and national databases to determine eligibility to purchase or possess a firearm or carry a concealed firearm pursuant to state and federal law.

The bill also 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 are eligible to be expunged under the juvenile diversion expunction statute.)

**II. Present Situation:**

**Criminal History Expunction**

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The Florida Department of Law Enforcement (FDLE) can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency<sup>1</sup> other than the FDLE. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. The FDLE, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, criminal justice agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.<sup>2</sup>

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,<sup>3</sup> petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.<sup>4</sup>

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.<sup>5</sup>

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.<sup>6</sup> It is then up to the court to decide whether the sealing or expunction is appropriate.

To receive a certificate of eligibility, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
  - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
  - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt; and

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<sup>1</sup> Section 943.045(11), F.S., defines a criminal justice agency as follows: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families (DCF), which investigates the crimes of abuse and neglect; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

<sup>2</sup> These types of employment include: a criminal justice agency; the Florida Bar; working in a sensitive position involving direct contact with children, the developmentally disabled, or the elderly through the DCF, Division of Vocational Rehabilitation within the Department of Education (DOE), the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; or persons seeking to be employed or licensed by the DOE, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity licensing child care facilities; or a Florida seaport.

<sup>3</sup> *Id.*

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

<sup>5</sup> Section 943.0585(4)(c), F.S.

<sup>6</sup> Section 943.0585(2), F.S.

- The criminal history record does not relate to a violation of specified offenses regardless of whether adjudication was withheld<sup>7</sup>;
- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record desired to be expunged;
- Have not previously been adjudicated guilty of any offense or adjudicated delinquent for any felony or misdemeanor specified in s. 943.051(3)(b), F.S.<sup>8</sup>;
- Have never been adjudicated guilty or delinquent for any of the acts stemming from the arrest or alleged criminal activity of the record desired to be expunged;
- Have never had a prior sealing or expunction of a criminal history record (unless it is the required ten year sealing for the offense desired to be expunged); and
- No longer be under any court supervision related to the disposition of the record desired to be expunged.

In addition to the certificate, a petition to expunge a criminal history record must also include the petitioner's sworn statement that he or she:

- Has not previously been adjudicated guilty of any offense or adjudicated delinquent for any felony or misdemeanor offense specified in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have expunged;
- Has not obtained a prior sealing or expunction (unless it is the required ten year sealing for the offense desired to be expunged); and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.<sup>9</sup>

The statute also requires that the record be sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court, regardless of the outcome of the trial.<sup>10</sup> In other words, if the formal adjudication of guilt is withheld by the court, or the applicant is acquitted, the record must first be sealed for ten years. If the charges are dropped, the record can be immediately expunged.

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<sup>7</sup> These offenses include the following: 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; 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; and, 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, sexual activity with a child, terrorism, manufacturing controlled substances, kidnapping, murder, manslaughter, robbery, home invasion robbery, carjacking, stalking, domestic violence, burglary and any violation specified as a predicate offense for sexual predator or sexual offender registration.

<sup>8</sup> These misdemeanors include: assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; negligent treatment of children; assault or battery on a law enforcement officer, firefighter, or other specified officers; open carrying of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; arson; and unlawful possession or discharge of a weapon or firearm at a school- sponsored event or on school property.

<sup>8</sup> Section 943.0585(1)(b), F.S.

<sup>9</sup> Section 943.0585(1)(b), F.S.

<sup>10</sup> Section 943.0585(2)(h), F.S.

Any person knowingly providing false information on the sworn statement commits a felony of the third degree.<sup>11</sup>

### **Juvenile Diversion Expunction**

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.<sup>12</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 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.<sup>13</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 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 purposes<sup>14</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 youth does the following: submits a timely filed application<sup>15</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 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.<sup>16</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>17</sup>

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

### **Criminal History Expunction**

The bill allows a person to immediately apply for a certificate of eligibility for a criminal history record expunction if at trial the judge or jury renders a not guilty verdict. (Currently if the trial results in an acquittal, the accused is required to have his or her record sealed for ten years before being eligible to apply for an expunction.) Such person must submit to FDLE a certified written

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<sup>11</sup> Section 943.0585(1), F.S.

<sup>12</sup> Section 943.0582, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> See s. 943.059(4), F.S.

<sup>15</sup> Within 6 months of completing the program.

<sup>16</sup> Section 943.0582(3), F.S.

<sup>17</sup> Section 943.0582(4), F.S.

statement from the state attorney or statewide prosecutor indicating that the judge or jury rendered a not guilty verdict.

However, the bill prohibits the records of a person adjudicated not guilty by reason of insanity from being eligible for a record expunction under this new provision. It also clarifies that if a record of a person found incompetent to stand trial is expunged, that does not prevent entry of the judgment or finding in state and national databases to determine eligibility to purchase or possess a firearm or carry a concealed firearm pursuant to state and federal law. The bill also does not preclude the authorized governmental agency determining eligibility from accessing or using such judgment or finding.

### **Juvenile Diversion Expunction**

The bill 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 are eligible to be expunged under the juvenile diversion expunction statute.)

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:<sup>18</sup>

- 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;
- 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 burglary<sup>19</sup>; and

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<sup>18</sup> Sections 943.0585 and 943.059, F.S.

<sup>19</sup> Section 907.041, F.S.

- Any violation specified as a predicate offense for sexual predator or sexual offender registration.<sup>20</sup>

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.

Finally, if a minor completes a diversion program before the effective date of the bill, he or she has six months from the effective date to submit an expunction application.

The bill takes effect on 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:

According to the Office of the State Courts Administrators, any increase in the fiscal impact on the State Courts System resulting from the expanded eligibility for records expunction is expected to be absorbed within existing resources.

The FDLE anticipates minimal revenues from the potential increase in the number of people applying for certificates of eligibility.

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<sup>20</sup> See ss. 775.21 and 943.0435, F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 943.0582 and 943.0585.

It also reenacts the following sections of the Florida Statutes: 985.125, 943.059, 948.08, 948.16, 961.06, 985.345, 776.09.

**IX. 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.