

**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 966

INTRODUCER: Senator Perry

SUBJECT: Juvenile Diversion Expungement

DATE: March 1, 2019

REVISED: 03/04/19

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	<b>Favorable</b>
2.			JU	
3.			RC	

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**I. Summary:**

SB 966 permits a juvenile to have his or her nonjudicial arrest record expunged following the successful completion of a diversion program for any offense, including a felony. This is an expansion of current law, which restricts eligibility for this type of expunction to the arrest for a misdemeanor offense.

The bill also permits a juvenile who has successfully completed a diversion program for any offense, including a felony or subsequent misdemeanor, to lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record, subject to exceptions. This is also an expansion of current law, which restricts eligibility for such denial to a juvenile who has successfully completed a diversion program for a first-time misdemeanor only.

The Florida Department of Law Enforcement (FDLE) is expected to incur costs associated with the processing of additional applications submitted by newly-eligible applicants pursuant to the bill. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

## II. Present Situation:

### Juvenile Criminal History Records

In contrast to adult criminal history records,<sup>1</sup> which are generally accessible to the public, Florida law treats juvenile offender records that are in the jurisdiction of juvenile courts differently, making such records confidential and exempt from public disclosure.<sup>2</sup>

Such records that are confidential and exempt information may be disclosed only to:

- Authorized personnel of the court;
- The Department of Juvenile Justice (DJJ) and its designees;
- The Department of Corrections;
- The Florida Commission on Offender Review;
- Law enforcement agents;
- School superintendents and their designees;
- Any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile; and
- Others entitled under ch. 985, F.S., to receive that information, or upon order of the court.<sup>3</sup>

However, the following exceptions apply:

- The name, photograph, address, and crime or arrest report of a juvenile is not considered confidential and exempt if the juvenile has been:
  - Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
  - Charged with a violation of law which, if committed by an adult, would be a felony;
  - Found to have committed an offense which, if committed by an adult, would be a felony;
  - or
  - Transferred to adult court pursuant to part X of ch. 985, F.S.;
- A law enforcement agency may release a copy of the juvenile offense report to the victim of the offense;<sup>4</sup>
- A law enforcement agency must notify the superintendent of schools that a juvenile is alleged to have committed a delinquent act when a juvenile of any age is taken into custody for an offense that would have been a felony if committed by an adult, or a crime of violence;<sup>5</sup>
- Records maintained by the DJJ, including copies of records maintained by the court, which pertain to a juvenile found to have committed a delinquent act which, if committed by an

<sup>1</sup> “Criminal history record” means any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(6), F.S.

<sup>2</sup> Section 985.04(1)(a), F.S.

<sup>3</sup> Section 985.04(1)(b), F.S.

<sup>4</sup> Information gained by the victim pursuant to ch. 985, F.S., including the next of kin of a homicide victim, regarding any case handled in juvenile court, must not be revealed to any outside party, except as is reasonably necessary in pursuit of legal remedies. Section 985.04(3), F.S.

<sup>5</sup> When a juvenile of any age is formally charged by a state attorney with a felony or a delinquent act that would be a felony if committed by an adult, the state attorney must notify the superintendent of the juvenile’s school that the juvenile has been charged with such felony or delinquent act. The information obtained by the superintendent of schools must be released within 48 hours after receipt to appropriate school personnel, including the principal of the school of the juvenile and the director of transportation. The principal must immediately notify the juvenile’s classroom teachers, the juvenile’s assigned bus driver, and any other school personnel whose duties include direct supervision of the juvenile. Section 985.04(4)(b), F.S.

adult, would be a crime specified in s. 435.04, F.S., may not be destroyed for 25 years after the juvenile's final referral to the DJJ, except in cases of the death of the juvenile; and

- Records in the custody of the DJJ may be inspected only upon order of the Secretary or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper.<sup>6</sup>

In these instances, the criminal history information<sup>7</sup> of a juvenile will be available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S., for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.<sup>8</sup>

Records pertaining to juveniles committed to or supervised by the DJJ are retained until a juvenile reaches the age of 24 years or 26 years in the case of a serious or habitual delinquent child, and the destruction of such records are governed by ch. 943, F.S.<sup>9</sup>

### ***Juvenile Diversion Expungement***

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed<sup>10</sup> or expunged.<sup>11</sup> The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody of the record.<sup>12</sup> The following are authorized expungement processes for the criminal history record of a juvenile:

- Juvenile diversion;<sup>13</sup>
- Automatic juvenile;<sup>14</sup> and
- Early juvenile.<sup>15</sup>

<sup>6</sup> Section 985.04, F.S.

<sup>7</sup> "Criminal history information" means 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. Section 943.045(5), F.S.

<sup>8</sup> Section 943.053(3)(c)1.a.-d., F.S.

<sup>9</sup> Section 985.04(7)(b), F.S.

<sup>10</sup> "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

<sup>11</sup> Section 943.053(3)(b), F.S.

<sup>12</sup> Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

<sup>13</sup> Section 943.0582, F.S.

<sup>14</sup> Section 943.0515, F.S.

<sup>15</sup> Section 943.0515(1)(b)2., F.S.

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.<sup>16</sup> The term diversion has been broadly used over the years, but typically refers to the placement of an individual on a track that is less restrictive and affords more opportunities for rehabilitation and restoration. Whether it is a prearrest or postarrest diversion program, the goal of the program is to maximize the opportunity for success and minimize the likelihood of recidivism.<sup>17</sup>

A juvenile may have the opportunity to participate in either a prearrest or postarrest diversion program, and examples of such programs are Community Arbitration, Juvenile Alternative Services Program, Teen Court, Intensive Delinquency Diversion Services, Civil Citation, Boy and Girl Scouts, Boys and Girls Clubs, mentoring programs, and alternative schools.<sup>18</sup>

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer that confronted the juvenile at the time of the incident or the state attorney that has been referred the case. While participation in a diversion program may be restricted to misdemeanor offenses, there are some programs that enable a juvenile who has committed a felony to participate. In FY 2017-18, there were 5,159 juveniles who were referred to post arrest diversion programs for felony offenses.<sup>19</sup>

Section 943.0582, F.S., requires the FDLE to provide for the expunction of a nonjudicial arrest record of a juvenile who has successfully completed a diversion program for a misdemeanor offense. Completion of one of the following diversion programs would enable a juvenile to petition for the expunction of his or her nonjudicial record:

- Civil citation or similar prearrest diversion program;<sup>20</sup>
- Prearrest or postarrest diversion program;<sup>21</sup>
- Neighborhood restorative justice;<sup>22</sup>
- Community arbitration;<sup>23</sup> or
- A program to which a referral is made by a state attorney.<sup>24</sup>

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<sup>16</sup> Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last visited February 20, 2019).

<sup>17</sup> Center for Health & Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, pg. 6, (December 2013), available at [http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report\\_web.pdf](http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf) (last visited February 27, 2019).

<sup>18</sup> Florida Department of Juvenile Justice, *Probation & Community Intervention*, available at <http://www.djj.state.fl.us/services/probation> (last visited February 20, 2019).

<sup>19</sup> Florida Department of Juvenile Justice, *Delinquency Profile 2018, Statewide Diversion – Felony Arrests*, (September 19, 2018), available at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited February 26, 2019).

<sup>20</sup> Section 985.12, F.S.

<sup>21</sup> Section 985.125, F.S.

<sup>22</sup> Section 985.155, F.S.

<sup>23</sup> Section 985.16, F.S.

<sup>24</sup> Section 985.15, F.S. *See s. 943.0582(2)(a)*, F.S.

After completing an eligible diversion program, a juvenile seeking to have his or her nonjudicial arrest record expunged must submit the following to the FDLE:

- An application for diversion expunction, on a form prescribed by the 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; and
- 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 diversion program, that his or her participation in the program was based on an arrest for a misdemeanor, and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.<sup>25</sup>

Additionally, a juvenile seeking to have his or her nonjudicial record expunged must have never been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.<sup>26</sup> The expunction of a nonjudicial arrest record of a juvenile pursuant to s. 943.0582, F.S., does not prevent the juvenile from petitioning for the expunction or sealing of a later criminal history record, if otherwise eligible.<sup>27</sup>

If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.<sup>28</sup> Subsequently, the criminal history record of a juvenile whose record is expunged pursuant to s. 943.0582, F.S., will be made available only to criminal justice agencies for the purpose of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision under s. 985.15, F.S.<sup>29</sup>

A juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record pursuant to s. 943.0582, F.S., unless the inquiry is made by a criminal justice agency<sup>30</sup> for a specific purpose.<sup>31</sup>

### III. Effect of Proposed Changes:

The bill permits a juvenile to have his or her nonjudicial arrest record expunged following the successful completion of an enumerated diversion program for any offense, *including a felony*. This is an expansion of current law, which restricts eligibility for this type of expunction to the arrest for a *misdemeanor offense*.

<sup>25</sup> Section 943.0582(3)(a)-(b), F.S.

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

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

<sup>28</sup> Section 943.0582(3), F.S.

<sup>29</sup> Section 943.0582(2)(b)1.a.-c., F.S.

<sup>30</sup> “Criminal justice agency” means: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and 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. Section 942.045(11), F.S.

<sup>31</sup> Section 985.126(5), F.S. *Supra*, n. 29.

Additionally, the bill permits a juvenile who has successfully completed an enumerated diversion program for any offense, *including a felony or subsequent misdemeanor*, to lawfully deny or fail to acknowledge his or her participation in the program and an expunction of a nonjudicial arrest record, subject to exceptions.<sup>32</sup> This is an expansion of current law, which restricts eligibility for such denial to a juvenile who has successfully completed a diversion program for a *first-time misdemeanor only*.

The bill is effective July 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

In order to implement the bill, the FDLE will incur an estimated cost of \$25,050 to modify the Computerized Criminal History (CCH) program used in part to process applications for a juvenile diversion expungement. Additionally, the FDLE will likely

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<sup>32</sup> *Supra*, n 29.

incur costs associated with the processing of additional applications submitted by newly-eligible applicants.<sup>33</sup>

In 2017-18 there were 5,159 juveniles who were referred to post arrest diversion for felony offenses.<sup>34</sup> There are currently 14,102 juveniles with a criminal history record for a felony arrest in CCH that may qualify for participation in a diversion program and thus, would be eligible to a diversion expunction.<sup>35</sup> It is unknown the number of applications that will be submitted to the FDLE of those newly eligible. Therefore, the cost to the FDLE in processing the additional applications is indeterminate at this time.

**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 985.126.

**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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<sup>33</sup> Florida Department of Law Enforcement, *SB 966 Analysis*, (February 27, 2019) (on file with the Senate Criminal Justice Committee).

<sup>34</sup> *Supra*, n 19.

<sup>35</sup> Email from Ron Draa, Florida Department of Law Enforcement, (March 1, 2019) (on file with the Senate Criminal Justice Committee).