

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 565 Expunction of Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee, Watson, B. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 684

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

SUMMARY ANALYSIS

A criminal history record includes any nonjudicial record maintained by a criminal justice agency that contains criminal history information. When a criminal history record is expunged, the criminal justice agencies possessing the record must physically destroy or obliterate it, and a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.

A court, in its sole discretion, may order a criminal justice agency to expunge a person's criminal record if:

- The person has never had a record sealed or expunged previously, unless
 - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
 - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered;
- The person has never been adjudicated guilty as an adult for any offense or adjudicated delinquent as a juvenile for certain enumerated offenses; and
- The case he or she seeks to have expunged:
 - Either:
 - Was dismissed by a no action, *nolle prosequi*, or court dismissal; or
 - Resulted in a not guilty verdict or judgment of acquittal; and
 - Does not relate to one of several enumerated offenses.

Certain types of expunction such as juvenile diversion expunction, automatic juvenile expunction, and early juvenile expunction are not considered court-ordered expunction for the purposes of s. 943.0585, F.S., and are not subject to court-ordered expunction's one time limitation. As a result, a person who uses a court-ordered expunction to remove a juvenile offense from his or her criminal record will have used his or her one available expunction, even though he or she may have been eligible for an alternative expunction as a juvenile.

CS/HB 565 creates an exception to court-ordered expunction's one time eligibility limitation for a person seeking to expunge a criminal history record when he or she has received a prior expunction. The bill allows a subsequent expunction when:

- The prior expunction was granted for an offense that was committed when the person was a minor, provided he or she was not charged as an adult; and
- The record is otherwise eligible for expunction.

As a result, a person who receives a court-ordered expunction for a juvenile offense will be treated the same way as a person who received a juvenile diversion expunction, automatic juvenile expunction, or early juvenile expunction when seeking a subsequent court-ordered expunction.

The bill will likely have an indeterminate fiscal impact on state government due to an increased number of eligible records for expunction. The bill does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A criminal history record includes any nonjudicial record maintained by a criminal justice agency¹ that contains criminal history information.² Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, informations, other formal criminal charges, and criminal dispositions.³

Court-Ordered Expunction

An adult or juvenile may have his or her criminal history record expunged under certain circumstances.⁴ When a record is expunged, the criminal justice agencies possessing such record must physically destroy or obliterate it.⁵ FDLE maintains a copy of the record to evaluate subsequent requests for sealing or expunction, and to recreate the record in the event a court vacates the order to expunge.⁶ Once the record is expunged, a person may lawfully deny or fail to acknowledge the arrests covered by the expunged record, subject to exceptions.⁷

A court, in its sole discretion, may order a criminal justice agency to expunge a person's criminal history record if FDLE issues the person a certificate of eligibility for expunction.⁸ FDLE must issue a certificate of eligibility for court-ordered expunction to a person meeting all criteria.⁹ Generally, a person is eligible for expunction if:

- The person has never had a record sealed or expunged previously, unless;¹⁰
 - Expunction is sought of a criminal history record previously sealed for at least 10 years; and
 - The record was sealed because adjudication was withheld, or because a judgment of acquittal or verdict of not guilty was rendered;
- The person has never been adjudicated guilty as an adult for any offense;
- The person has never been adjudicated delinquent as a juvenile for one of the following offenses:¹¹
 - Assault;¹²
 - Battery;¹³
 - Assault on a law enforcement officer, a firefighter, or other specified officer;¹⁴
 - Carrying a concealed weapon;¹⁵
 - Open carrying of a weapon;¹⁶
 - Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property;¹⁷

¹ Criminal justice agencies include the court, the Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

² S. 943.045(6), F.S.

³ S. 943.045(5), F.S.

⁴ Ss. 943.0581, 943.0582, 943.0583, and 943.0585, F.S.

⁵ S. 943.045(16), F.S.

⁶ *Id.*

⁷ S. 943.0585(4), F.S.

⁸ S. 943.0585(1), F.S.

⁹ S. 943.0585(2), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² S. 784.011, F.S.

¹³ S. 784.03, F.S.

¹⁴ S. 784.07(2)(a), F.S.

¹⁵ S. 790.01(1), F.S.

¹⁶ S. 790.053, F.S.

¹⁷ S. 790.155, F.S.

- Unlawful use of destructive devices or bombs;¹⁸
- Unlawful possession of a firearm;¹⁹
- Exposure of sexual organs;²⁰
- Arson;²¹
- Petit theft;²²
- Neglect of a child;²³ or
- Cruelty to animals;²⁴ and
- The case he or she seeks to have expunged:
 - Either:
 - Was dismissed by a no action,²⁵ *nolle prosequi*,²⁶ or court dismissal;²⁷ or
 - Resulted in a not guilty verdict or judgment of acquittal,²⁸ and
 - Does not relate to one of the following offenses:²⁹
 - Sexual misconduct;³⁰
 - Illegal use of explosives;³¹
 - Terrorism;³²
 - Murder;³³
 - Manslaughter or homicide;³⁴
 - Assault³⁵ or battery³⁶ of one family or household member by another family or household member;³⁷
 - Aggravated assault;³⁸
 - Felony battery, domestic battery by strangulation, or aggravated battery;³⁹
 - Stalking or aggravated stalking;⁴⁰
 - Luring or enticing a child;⁴¹
 - Human trafficking;⁴²
 - Kidnapping or false imprisonment;⁴³
 - Sexual battery, unlawful sexual activity with a minor, or female genital mutilation;⁴⁴
 - Procuring a person under the age of 18 for prostitution;⁴⁵

¹⁸ S. 790.1615(1), F.S.

¹⁹ S. 790.22(5), F.S.

²⁰ S. 800.03, F.S.

²¹ S. 806.031(1), F.S.

²² S. 812.014(3), F.S.

²³ S. 827.03(1)(e), F.S.

²⁴ S. 828.12(1), F.S.

²⁵ A no action is the dismissal of the pending charges before an information or indictment has been filed. *Genden v. Fuller*, 648 So. 2d 1183, 1183 n. 1 (Fla. 1994).

²⁶ A *nolle prosequi* is the dismissal of a pending information or indictment. *Id.*

²⁷ The court may dismiss a case under certain circumstances, including on a defense motion to dismiss, under Fla. R. Crim. P. 3.90(c)(4), upon expiration of the speedy trial period under Fla. R. Crim. P. 3.191, or upon granting Stand Your Ground immunity under s. 776.032, F.S.

²⁸ The court may acquit a defendant if, at the close of evidence, it is of the opinion that the evidence is insufficient to warrant a conviction. Fla. R. Crim. P. 3.380(a).

²⁹ S. 943.0585(2)(a)3., F.S.

³⁰ Ss. 393.135, 394.4593, and 916.1075, F.S.

³¹ Ch. 552, F.S.

³² S. 775.30, F.S.

³³ Ss. 782.04, 782.065, and 782.09, F.S.

³⁴ Ss. 782.07, 782.071, and 782.072, F.S.

³⁵ S. 784.011, F.S.

³⁶ S. 784.03, F.S.

³⁷ S. 741.28(3), F.S.

³⁸ S. 784.021, F.S.

³⁹ Ss. 784.03, 784.041, and 784.045, F.S.

⁴⁰ S. 784.048, F.S.

⁴¹ S. 787.025, F.S.

⁴² S. 787.06, F.S.

⁴³ Ss. 787.01 and 787.02, F.S.

⁴⁴ Ch. 794, F.S.

⁴⁵ S. 796.03, F.S. (2013) (repealed by ch. 2014-160, §10, Laws of Fla.).

- Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;⁴⁶
- Arson;⁴⁷
- Burglary of a dwelling;⁴⁸
- Voyeurism or video voyeurism;⁴⁹
- Robbery or robbery by sudden snatching;⁵⁰
- Carjacking;⁵¹
- Home invasion robbery;⁵²
- A violation of the Florida Communications Fraud Act;⁵³
- Abuse or aggravated abuse of an elderly person or disabled adult;⁵⁴
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;⁵⁵
- Child abuse or aggravated child abuse;⁵⁶
- Sexual performance by a child;⁵⁷
- Offenses by public officers and employees;⁵⁸
- Certain acts in connection with obscenity;⁵⁹
- A violation of the Computer Pornography and Child Exploitation Prevention Act;⁶⁰
- Selling or buying of minors;⁶¹
- Aircraft piracy;⁶²
- Manufacturing a controlled substance;⁶³
- Drug trafficking;⁶⁴ or
- Any violation specified as a predicate offense for registration as a sexual predator⁶⁵ or sexual offender.⁶⁶

Juvenile Expunction

Juvenile Diversion Expunction

A juvenile who completes one of the following diversion programs may petition for juvenile diversion expunction:⁶⁷

- Civil citation or a similar prearrest diversion program;⁶⁸
- Prearrest or postarrest diversion program;⁶⁹

⁴⁶ S. 800.04, F.S.

⁴⁷ S. 806.01, F.S.

⁴⁸ S. 810.02, F.S.

⁴⁹ Ss. 810.14 and 810.145, F.S.

⁵⁰ Ss. 812.13 and 812.131, F.S.

⁵¹ S. 812.133, F.S.

⁵² S. 812.135, F.S.

⁵³ S. 817.034, F.S.

⁵⁴ S. 825.102, F.S.

⁵⁵ S. 825.1025, F.S.

⁵⁶ S. 827.03, F.S.

⁵⁷ S. 827.071, F.S.

⁵⁸ Ch. 839, F.S.

⁵⁹ S. 847.0133, F.S.

⁶⁰ S. 893.0135, F.S.

⁶¹ S. 847.0145, F.S.

⁶² S. 860.16, F.S.

⁶³ Ch. 893, F.S.

⁶⁴ S. 893.135, F.S.

⁶⁵ S. 775.21, F.S.

⁶⁶ S. 943.0535, F.S.

⁶⁷ S. 943.0582, F.S.

⁶⁸ The civil citation program offers early intervention, community counseling referrals, and other appropriate community resources to divert juvenile misdemeanor offenders from the Juvenile Justice System. The program works with other community partners in an effort to reduce juvenile crime and to provide services for at-risk youth. Nineteenth Judicial Circuit, *Civil Citation* (2019), <http://www.circuit19.org/programs-services/court-programs/juvenile/civil-citation> (last visited Feb. 4, 2020). S. 985.12, F.S.

⁶⁹ S. 985.125, F.S.

- Neighborhood restorative justice;⁷⁰
- Community arbitration;⁷¹ or
- A program to which a state attorney refers the juvenile.⁷²

Juvenile diversion expunction has the same effect as court-ordered expunction of criminal history records under s. 943.0585, F.S., except that:

- FDLE may make an expunged juvenile diversion criminal record available to:
 - Criminal justice agencies for the purpose of determining eligibility for diversion programs;
 - When the record is sought as part of a criminal investigation; or
 - When making a prosecutorial decision;⁷³ and
- Local criminal justice agencies in the county in which an arrest occurred must seal instead of destroy any relevant records.⁷⁴

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 the expunction of the nonjudicial arrest record, unless the inquiry is made by a criminal justice agency for the purpose of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision.⁷⁵

Automatic Juvenile Expunction

Florida law requires FDLE to automatically expunge a criminal history record of a juvenile who is not classified as a serious or habitual offender when he or she reaches the age of 21, unless:

- A person 18 years of age or older is charged with or convicted of a forcible felony⁷⁶ and the person's criminal history record as a minor has not yet been destroyed; or
- At any time, if a minor is adjudicated as an adult for a forcible felony.⁷⁷

Early Juvenile Expunction

A juvenile may apply to FDLE to have their record expunged before he or she reaches 21 years of age. FDLE must expunge the juvenile criminal history record before the applicant turns 21 years old if:

- The minor has reached 18 years of age and has not been charged with or found to have committed a criminal offense in the five-year period before the application; and
- The State Attorney for each circuit in which an offense specified in the criminal history record occurred has given approval.⁷⁸

Juvenile diversion expunction, automatic juvenile expunction, and early juvenile expunction are not considered court-ordered expunction for the purposes of s. 943.0585, F.S., and are not subject to court-ordered expunction's one time limitation. As a result, a person who uses a court-ordered expunction to remove a juvenile offense from his or her criminal record will have used his or her one available

⁷⁰ In neighborhood restorative justice programs, victims, the offender, and all others impacted by the crime discuss the impact, obligations, and actions needed to repair harm. Florida Restorative Justice Association, *Retributive Justice vs. Restorative Justice* (2014), <https://www.floridarestorativejustice.com/about-rj.html> (last visited Feb. 4, 2020). S. 985.155, F.S.

⁷¹ Community arbitration is a program where a juvenile who has committed a relatively minor offense can have his or her case resolved in an informal manner, and appear before a community arbitrator instead of a judge in juvenile court. Twentieth Judicial Circuit, *Juvenile Arbitration Program* (2014), <https://www.ca.cjis20.org/home/main/juvarb.asp> (last visited Feb. 4, 2020). S. 985.16, F.S.

⁷² S. 985.15, F.S. See s. 943.0582(2)(a), F.S.

⁷³ S. 943.0582(2)(b)1., F.S.

⁷⁴ S. 943.0582(2)(b)2., F.S.

⁷⁵ S. 985.126(5), F.S. S. 943.0582(2)(b)1.a.-c., F.S.

⁷⁶ "Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.

⁷⁷ S. 943.0515, F.S.

⁷⁸ S. 943.0515(1)(b)2, F.S.

expunction under current law, even though he or she may have been eligible for an alternative expunction as a juvenile.

Effect of Proposed Changes

CS/HB 565 creates an exception to court-ordered expunction's one time eligibility limitation for a person seeking to expunge a criminal history record when he or she has received a prior expunction. The bill allows a subsequent expunction when:

- The prior expunction was granted for an offense that was committed when the person was a minor, provided he or she was not charged as an adult; and
- The record is otherwise eligible for expunction.

As a result, a person who receives a court-ordered expunction for an offense committed when the person was a juvenile will be treated the same way as a person who received a juvenile diversion expunction, automatic juvenile expunction, or early juvenile expunction when seeking a subsequent court-ordered expunction.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill will likely have an indeterminate fiscal impact on state government. FDLE estimates that it will incur initial costs of \$600,734 and recurring costs of \$453,469 for seven full time employee positions to accommodate the increased workload required to implement the bill.⁷⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

⁷⁹ Florida Department of Law Enforcement, Agency Analysis of 2020 House Bill 565, p. 3 (Nov. 27, 2019).

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDLE has existing rulemaking authority to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Prohibited a subsequent expunction if the prior expunction was for an offense committed by a juvenile who was charged as an adult.
- Removed unnecessary language.

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