

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 93 Juvenile Diversion Program Expunction

SPONSOR(S): Smith, D. and others

TIED BILLS: HB 95 **IDEN./SIM. BILLS:** SB 274

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's

GOVERNOR'S ACTION: Vetoed

SUMMARY ANALYSIS

HB 93 passed the House on April 27, 2021, as SB 274.

Generally, when a law enforcement officer has probable cause to believe that a juvenile has committed a criminal offense, the officer may take the juvenile into custody or issue a notice to appear. Both taking a juvenile into custody and issuing of a notice to appear refer the matter to the clerk of court, where a juvenile delinquency case is generated. The creation of that case becomes part of the juvenile's offender record.

Diversion is a program designed to divert a juvenile from entering the juvenile justice system by placing him or her on a less restrictive track providing more opportunities for rehabilitation and restoration. The goal of diversion is to maximize the opportunity for success and minimize the likelihood of recidivism. Upon successful completion of a diversion program, the juvenile's charges are dismissed.

Section 943.0582, F.S., requires the Department of Law Enforcement (FDLE), upon receiving an application signed by a juvenile and certified by the state attorney, to expunge any nonjudicial arrest record of a juvenile who has successfully completed a diversion program for a misdemeanor offense. A juvenile whose nonjudicial arrest record is expunged may lawfully deny or fail to acknowledge his or her participation in a diversion program for a first-time misdemeanor and the expunction of the record, unless the inquiry is made by a criminal justice agency for the purpose of:

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

The bill requires FDLE to expunge a juvenile's nonjudicial arrest record for any offense for which he or she successfully completes a diversion program, rather than only a misdemeanor offense. A juvenile seeking to have his or her arrest record expunged must still submit certification from the state attorney that he or she meets the qualifications for expunction. The decision to refer a juvenile to a diversion program remains at the discretion of either the law enforcement officer who interacts with the juvenile at the time of the offense or the state attorney assigned to the case.

Under the bill, a juvenile who successfully completes a diversion program for any offense, rather than only a first-time misdemeanor, may lawfully deny or fail to acknowledge his or her participation in the diversion program and the expunction of a nonjudicial arrest record, except when the inquiry is made by a criminal justice agency for specified purposes.

The bill may have an indeterminate negative fiscal impact on state government due to required computer system modifications and additional workload generated for FDLE by increasing the number of applicants eligible for juvenile diversion expunction. However, FDLE will likely have sufficient resources to implement the provisions of the bill. See *Fiscal Analysis & Economic Impact Statement*.

The effective date of this bill was July 1, 2021; however, this bill was vetoed by the Governor on June 29, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Creation and Disposition of a Criminal Case

Generally, when a law enforcement officer has probable cause to believe that a juvenile has committed a criminal offense in Florida, the officer may take the juvenile into custody or issue a notice to appear.¹ Both taking a juvenile into custody and issuing a notice to appear refer the matter to the clerk of court, where a juvenile delinquency case is generated.

A juvenile delinquency case may be resolved in any of the following ways:

- The case may be dismissed by a:
 - No action or no information;²
 - *Nolle prosequi*;³ or
 - Court dismissal.⁴
- The juvenile may participate in pretrial diversion.⁵
- The juvenile may plead guilty or no contest to the charges.⁶
- The case may proceed to an adjudicatory hearing, at which the court may:
 - Adjudicate the juvenile delinquent;
 - Withhold adjudication of delinquency;⁷ or
 - Dismiss the case.

Juvenile Offender Records

In contrast to an adult criminal history record,⁸ which is generally accessible to the public, a juvenile offender record in the jurisdiction of a juvenile court is confidential and exempt from public disclosure.⁹

As such, a juvenile's offender record may only be disclosed to:

- Authorized court personnel;
- 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 assessing or treating a juvenile; or
- Any person authorized under ch. 985, F.S., to receive such information, or upon court order.¹⁰

¹ A notice to appear is a written order issued by a law enforcement officer, in lieu of taking a juvenile into custody or detaining the juvenile, to appear in a designated court or governmental office at a specified date and time. Fla. R. Juv. P. 8.045.

² A "no action" is a 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).

³ A *nolle prosequi* is the dismissal of a pending information or indictment. *Id.*

⁴ The court may dismiss a case under certain circumstances, including on a defense motion to dismiss under Fla. R. Juv. P. 8.085(a)(4), upon expiration of the speedy trial period under Fla. R. Juv. P. 8.090(d), or upon granting Stand Your Ground immunity under s. 776.032, F.S.

⁵ S. 985.12, F.S.

⁶ Fla. R. Juv. P. R. 8.070(b).

⁷ A withhold of adjudication allows a court to impose a sentence without imposing an adjudication of delinquency and the collateral consequences that accompany that adjudication. George E. Tragos and Peter A. Sartes, *Withhold of Adjudication: What Everyone Needs to Know*, Florida Bar Journal (Feb. 2008) <https://www.floridabar.org/the-florida-bar-journal/withhold-of-adjudication-what-everyone-needs-to-know/> (last visited Apr. 30, 2021). See also Fla. R. Juv. P. 8.110(g).

⁸ "Criminal history record" means any nonjudicial record maintained by a criminal justice agency containing criminal history information. S. 943.045(6), F.S.

⁹ S. 985.04(1)(a), F.S.

¹⁰ S. 985.04(1)(b), F.S.

Notwithstanding the confidential and exempt status of juvenile offender records:

- A juvenile's name, photograph, address, and crime or arrest report is not considered confidential and exempt if he or she is:
 - 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 under part X of ch. 985, F.S.;¹¹
- A law enforcement agency may release a copy of a juvenile offense report to the victim of the offense;¹²
- A law enforcement agency must notify the superintendent of schools that a juvenile is alleged to have committed a delinquent act when he or she is taken into custody for an offense that would have been a felony if committed by an adult, or a crime of violence;¹³
- Records maintained by DJJ, including copies of court records pertaining to a juvenile found to have committed a delinquent act which, if committed by an adult, would be a disqualifying crime in a level two background screening,¹⁴ may not be destroyed for 25 years after the juvenile's final referral to DJJ, except upon a juvenile's death;¹⁵ and
- Records in DJJ's custody may be inspected upon order of the Secretary or his or her authorized agent by persons with sufficient reason and under such conditions as the Secretary or his or her authorized agent deems proper.

Records pertaining to juveniles committed to or supervised by DJJ are retained until a juvenile reaches a certain age, depending on the type and severity of the offense.¹⁶

Juvenile Diversion Expunction

Diversion Programs

Diversion is a program designed to divert a juvenile from entering the juvenile justice system by placing him or her on a less restrictive track that affords more opportunities for rehabilitation and restoration.¹⁷ The goal of diversion is to maximize the opportunity for success and minimize the likelihood of recidivism.¹⁸

A juvenile may have the opportunity to participate in either a prearrest or postarrest diversion program. A prearrest diversion program is an intervention program that holds a juvenile accountable for his or her behavior, while avoiding a court proceeding or formal arrest record.¹⁹ A postarrest diversion program is

¹¹ S. 985.04(2)(a)1., F.S.

¹² 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. S. 985.04(3), F.S.

¹³ When a juvenile 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 he or she 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 juvenile's school and the director of transportation. The principal must immediately notify the juvenile's classroom teachers, assigned bus driver, and any other school personnel whose duties include directly supervising the juvenile. S. 985.04(4)(b), F.S.

¹⁴ S. 435.04, F.S.

¹⁵ S. 985.04(6)(a), F.S.

¹⁶ See Ss. 943.0515(2) and 985.04(7), F.S.

¹⁷ Florida Department of Juvenile Justice, *Glossary*, <http://www.djj.state.fl.us/youth-families/glossary> (last visited Apr. 30, 2021).

¹⁸ Center for Health & Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, pg. 6, (December 2013)

http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited Apr. 30, 2021).

¹⁹ Mark A. Greenwald, *Overview of Florida's Pre-Arrest and Post-Arrest Juvenile Diversion Programs and Applicable Laws*, Florida Department of Juvenile Justice (June 7, 2018) <http://www.fdle.state.fl.us/MSDHS/Meetings/June-Meeting-Documents/Presentations/June-7-930AM-DJJ-Greenwald-Diversion-Programs.aspx> (last visited Apr. 30, 2021).

a similar intervention program, but diverts a juvenile from further court proceedings after an arrest.²⁰ While prearrest diversion diverts a juvenile before an arrest record is ever created, in postarrest diversion, an arrest record is created and maintained pending the juvenile's participation in and completion of the diversion program. Upon successfully completing a postarrest diversion program, a juvenile's charges are dismissed.

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer who interacts with the juvenile at the time the offense is committed or the state attorney who is assigned the case. 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.²¹

Expunction

Generally, expunction is the court-ordered physical destruction or obliteration of a criminal history record or portion of a record by any criminal justice agency having custody of the record.²² A juvenile who completes one of the following diversion programs may petition for juvenile diversion expunction:²³

- Civil citation or a similar prearrest diversion program;²⁴
- Prearrest or postarrest diversion program;²⁵
- Neighborhood restorative justice;²⁶
- Community arbitration;²⁷ or
- A program to which a state attorney refers the juvenile.²⁸

FDLE is required to expunge a juvenile's nonjudicial arrest record after successfully completing a diversion program, if the juvenile:

- Submits an application for prearrest or postarrest diversion expunction;
- Participated in a diversion program based on the commission of a misdemeanor;
- Has not committed any other criminal offense or comparable ordinance violation;
- Participated in a diversion program that expressly allows for such expunction; and
- Submits certification from the state attorney that the juvenile meets the expunction qualifications.²⁹

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

²⁰ *Id.*

²¹ Florida Department of Juvenile Justice, *Probation & Community Intervention*, <http://www.djj.state.fl.us/services/probation> (last visited Apr. 30, 2021).

²² Criminal history records in FDLE's custody must be retained in all cases for purposes of evaluating subsequent requests by the same person for sealing or expunction or for purposes of recreating the record if a court vacates an order to expunge. S. 943.045(16), F.S.

²³ S. 943.0582, F.S.

²⁴ 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 Apr. 30, 2021). S. 985.12, F.S.

²⁵ S. 985.125, F.S.

²⁶ 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 Apr. 30, 2021). S. 985.155, F.S.

²⁷ 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 Apr. 30, 2021). S. 985.16, F.S.

²⁸ S. 985.15, F.S. See s. 943.0582(2)(a), F.S.

²⁹ S. 943.0582(3), F.S.

- When making a prosecutorial decision;³⁰ and
- Local criminal justice agencies in the county in which an arrest occurred must seal instead of destroy any relevant records.³¹

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, unless the inquiry is made by a criminal justice agency³² for the purpose of:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision.³³

As of January 2021, there were 26,903 minors with 64,343 juvenile felony arrest charges with or without a disposition which may qualify for juvenile diversion expunction.³⁴

Effect of the Bill

The bill amends s. 943.0582, F.S., to expand current law limiting a juvenile's authorization to seek expunction for only a misdemeanor offense, by authorizing a juvenile to seek, and requiring FDLE to grant, an expunction of any nonjudicial arrest record when he or she successfully completes a diversion program for such offense.

A juvenile seeking to have his or her arrest record expunged after successfully completing a diversion program must still submit certification from the state attorney that he or she meets the qualifications for expunction. The decision to refer a juvenile to a diversion program remains at the discretion of either the law enforcement officer who interacts with the juvenile at the time of the offense or the assistant state attorney who is assigned the case.

The bill also amends s. 985.126, F.S., by authorizing a juvenile to lawfully deny or fail to acknowledge his or her participation in a diversion program and the expunction of a nonjudicial arrest record when he or she successfully completes a diversion program for any offense, rather than only a first-time misdemeanor, except when the inquiry is made by a criminal justice agency for specified purposes.³⁵

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2021.

³⁰ S. 943.0582(2)(b)1., F.S.

³¹ S. 943.0582(2)(b)2., F.S.

³² "Criminal justice agency" means a court; FDLE; DJJ; the protective investigations component of the Department of Children and Families, investigating abuse or 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. S. 942.045(11), F.S.

³³ Ss. 985.126(5) and 943.0582(2)(b)1.a.-c., F.S.

³⁴ Florida Department of Law Enforcement, Agency Analysis of 2021 House Bill 93, p. 3 (Jan. 21, 2021).

³⁵ *Supra*, note 33.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There is no charge to an applicant for a juvenile diversion program expunction application; therefore, the bill will likely have an indeterminate negative fiscal impact on FDLE due to costs associated with processing an increased number of applications under the expanded eligibility for juvenile diversion expunction.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.