

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.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 342

INTRODUCER: Criminal Justice Committee and Senator Perry and others

SUBJECT: Juvenile Diversion Program Expunction

DATE: November 30, 2021 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 342 amends s. 943.0582, F.S., to permit a juvenile who completed a diversion program for misdemeanor and felony offenses, other than a forcible felony, to apply to have the nonjudicial arrest record expunged. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends s. 985.126, F.S., to permit a juvenile who completes a diversion program and who has been granted an expunction under s. 943.0582, F.S., to lawfully deny or fail to acknowledge his or her participation in the program and such expunction of the nonjudicial arrest record. This expands the current law, which only permits a juvenile who completes diversion for a first-time misdemeanor offense to lawfully deny or fail to acknowledge his or her participation in the program and the expunction.

This bill may have a negative fiscal impact on the Florida Department of Law Enforcement (FDLE). See Section V. Fiscal Impact Statement.

This bill is effective on July 1, 2022.

II. Present Situation:

Juvenile Criminal History Records

In contrast to adult criminal history records,¹ 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.²

Such records that contain 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.³

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;⁴
- 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;⁵

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

² Section 985.04(1)(a), F.S. Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.

³ Section 985.04(1)(b), F.S.

⁴ 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.

⁵ 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.

- 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 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.⁶

In these instances, the criminal history information⁷ 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 s. 943.0585(6), F.S., or s. 943.059(6), 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.⁸

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.⁹

Juvenile Diversion Program Expunction

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed¹⁰ or expunged.¹¹ 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.¹² The following are authorized expungement processes for the criminal history record of a juvenile:

- Juvenile diversion;¹³
- Automatic juvenile;¹⁴ and

⁶ Section 985.04, F.S.

⁷ "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.

⁸ Section 943.053(3)(c)1.a.-d., F.S.

⁹ Section 985.04(7)(b), F.S.

¹⁰ "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.

¹¹ Section 943.053(3)(b), F.S.

¹² 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.

¹³ Section 943.0582, F.S.

¹⁴ Section 943.0515, F.S.

- Early juvenile.¹⁵

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.¹⁶ 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.¹⁷

There are certain enumerated diversion programs eligible for diversion expunction under s. 943.0582, F.S. The following eligible programs are:

- Civil citation or similar pre-arrest diversion, *see* s. 985.12, F.S.
- Pre-arrest or post-arrest diversion programs, *see* s. 985.125, F.S.
- Neighborhood restorative justice programs, *see* s. 985.155, F.S.
- Community arbitration programs, *see* s. 985.16, F.S.
- Another program to which a referral is made by the state attorney, *see* s. 985.15, F.S.

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 Fiscal Year 2019-20, 2,770 juveniles were referred to diversion programs for felony offenses.¹⁸

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

- Submit an application for diversion expunction to the FDLE.
- Submit, 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 completed the diversion program;
 - The arrest was for a misdemeanor; and
 - He or she has not otherwise been charged by the state attorney with or have been found to have committed, any criminal offense or comparable ordinance violation.
- Have not, before the application for expunction, been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.¹⁹

¹⁵ Section 943.0515(1)(b)2., F.S.

¹⁶ Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last accessed October 21, 2021).

¹⁷ Center for Health & Justice at TASC, *A National Survey of Criminal Justice Diversion Programs and Initiatives*, pg. 6, (December 2013), available at https://www.centerforhealthandjustice.org/chjweb/tertiary_page.aspx?id=77&title=No-Entry:-A-National-Survey-of-Criminal-Justice-Diversion-Programs-and-Initiatives (last accessed October 21, 2021).

¹⁸ Florida Department of Juvenile Justice, *Delinquency Profile 2020, Statewide Diversion – Felony Youth*, available at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last accessed October 21, 2021).

¹⁹ Section 943.0582(3), F.S.

If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.²⁰

A criminal history record that is expunged under this section is only available to criminal justice agencies²¹ for the purpose of determining eligibility for diversion programs, a criminal investigation, or making a prosecutorial decision.²² Records maintained by local criminal justice agencies in the county where the arrest occurred that are eligible for expunction under this section must be sealed.²³ A record sealed under s. 943.059, F.S., is available only to specified persons or entities, including criminal justice agencies for their respective purposes and when the subject of the record is a candidate for employment with a criminal justice agency.²⁴ 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 one of the purposes stated above.²⁵

A juvenile who receives an expunction under this section is not prevented from petitioning for the expunction or sealing of a later criminal history record for human trafficking victim expunction,²⁶ court ordered expunction,²⁷ or court ordered sealing,²⁸ if the juvenile is otherwise eligible for relief under those sections.²⁹

Forcible Felonies

Section 776.08, F.S., provides that a forcible felony is:

- Treason;
- Murder;
- Manslaughter;
- Sexual battery;
- Carjacking;
- Home-invasion robbery;
- Robbery;
- Burglary;
- Arson;
- Kidnapping;
- Aggravated assault;

²⁰ Section 943.0582(3), F.S.

²¹ “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 943.045(11), F.S.

²² Section 943.0582(2)(b)1., F.S.

²³ Section 943.0582(2)(b)2., F.S.

²⁴ Section 943.059(6), F.S.

²⁵ Section 985.126(5), F.S.

²⁶ Section 943.0583, F.S.

²⁷ Section 943.0585, F.S.

²⁸ Section 943.059, F.S.

²⁹ Section 943.0582, F.S.

- 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.

III. Effect of Proposed Changes:

This bill amends s. 943.0582, F.S., to permit a juvenile who completed a diversion program for misdemeanor and felony offenses, other than a forcible felony, to apply to have the nonjudicial arrest record expunged. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends s. 985.126, F.S., to permit a juvenile who completes a diversion program and who has been granted an expunction under s. 943.0582, F.S., to lawfully deny or fail to acknowledge his or her participation in the program and such expunction of the nonjudicial arrest record. This expands the current law, which only permits a juvenile who completes diversion for a first-time misdemeanor offense to lawfully deny or fail to acknowledge his or her participation in the program and the expunction.

This bill is effective on July 1, 2022.

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:

The FDLE may see an increase in applications for diversion expunction from juveniles who have completed diversion for a permissible felony offense. The FDLE is requesting two positions (Criminal Justice Information Analyst I and II) totaling \$142,011 (\$132,921 recurring) to address the increased workload. Additionally, the FDLE estimates a \$24,050 nonrecurring cost to make modifications to existing IT systems.³⁰

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 Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on November 2, 2021:

The committee substitute clarifies that only a minor who has completed a diversion program and who has been granted an expunction under s. 943.0582, F.S., may lawfully deny participation in the diversion program and such expunction.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³⁰ Florida Department of Law Enforcement, *2022 Agency Analysis of SB 342* (October 27, 2021), at 3 (on file with the Senate Committee on Criminal Justice).