# Justice Appropriations Subcommittee

# Meeting Packet

**March 30, 2015**
**12:30 p.m. – 2:30 p.m.**
**Morris Hall**

**Steve Crisafulli**
**Speaker**

**Larry Metz**
**Chair**

# The Florida House of Representatives

APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

**Steve Crisafulli**
**Speaker**

**Larry Metz**
**Chair**

## MEETING AGENDA

Morris Hall
March 30, 2015

**I.** Meeting Called To Order

**II.** Opening Remarks by Chair

**III.** Consideration of the following bill(s):

CS/HB 99- Juvenile Civil Citations by Criminal Justice Subcommittee; Reps. Clark-Reed; Rouson

CS/HB 235 - Restitution for Juvenile Offenses by Health & Human Services Committee; Rep. Eagle

HB 7105 - Expunging and Sealing Criminal History Records by Criminal Justice Subcommittee; Rep. Latvala

**IV.** Closing Remarks

**V.** Meeting Adjourned

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 99 Juvenile Civil Citations
**SPONSOR(S):** Criminal Justice Subcommittee; Clarke-Reed; Rouson and others
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 928

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Criminal Justice Subcommittee | 10 Y, 3 N, As CS | Cox | Cunningham |
| 2) Justice Appropriations Subcommittee | | Schrader | Lloyd |
| 3) Judiciary Committee | | JSS | |

## SUMMARY ANALYSIS

Civil Citation Programs (CCPs) give law enforcement officers an alternative to arresting youth who have committed non-serious delinquent acts. Under a CCP, a LEO has discretion to issue a civil citation to a juvenile who admits to having committed a first-time misdemeanor, assess not more than 50 community service hours, and require participation in intervention services appropriate to any identified needs of the juvenile.

As of October 2014, CCPs were operational in 59 of Florida's 67 counties.

The bill amends s. 985.12, F.S., to:

- Authorize a law enforcement officer to issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Require the officer to issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents;
- Gives the officer discretion to arrest the juvenile if the officer makes written findings that doing so protects the public; and
- Authorize an officer to issue a civil citation for second or subsequent misdemeanors.

To the extent the bill prevents youth from being arrested and placed in detention at a Juvenile Assessment Center, the bill will result in a positive fiscal impact to local and state governments.

The bill is effective October 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Juvenile Justice Process**

The juvenile justice process usually starts when a law enforcement officer (LEO) arrests a youth[1] for a criminal offense.[2] Depending on the seriousness of the offense and the LEO's view of what is needed to appropriately address the offense, the LEO may:

- Deliver the youth to a Juvenile Assessment Center (JAC) for intake screening to further assess the youth's risk to the community and to determine if some type of detention is necessary;
- Call an "on call screener" to assess the youth's risk and determine if detention is necessary (this is done in localities where a JAC is not available);
- Release the youth to a parent or guardian and forward the charges to the local clerk of court and Department of Juvenile Justice (DJJ) Probation office; or
- Release the youth to parent or guardian with a direct referral to a diversion program.[3]

In lieu of arresting a youth, LEOs have the option of issuing certain youth a civil citation.

**Civil Citation Program**

The Civil Citation Program (CCP), created by s. 985.12, F.S., gives law enforcement an alternative to taking youth who have committed non-serious delinquent acts into custody while ensuring swift and appropriate consequences.[4] Under a CCP, a LEO may issue a civil citation to a juvenile who admits to having committed a first-time misdemeanor,[5] assess not more than 50 community service hours, and require participation in intervention services appropriate to identified needs of the juvenile.[6] The statute requires the LEO issuing the civil citation[7] to advise the child of his or her option to refuse the citation and instead be arrested and referred to a DJJ intake office.[8]

A child that elects to participate in the CCP must report to a community service performance monitor within seven working days after the date of issuance of the civil citation, and must complete the work assignment at a rate of not less than 5 hours per week.[9] Upon completion of the program, the agency operating the CCP must report the outcome to DJJ.[10]

If the youth fails to report timely for a work assignment, complete a work assignment, comply with assigned intervention services within the prescribed time, or commits a subsequent misdemeanor, the LEO must issue a report alleging the child has committed a delinquent act.[11] A juvenile probation

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[1] "Child" or "juvenile" or "youth" means any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. s. 985.03(7), F.S.,

[2] Florida Department of Juvenile Justice, Probation and Community Intervention. http://www.djj.state.fl.us/faqs/probation-community-intervention (last visited February 23, 2015).

[3] *Id.*

[4] s. 985.12(1), F.S.

[5] First time misdemeanor offenses are eligible for civil citation, with the exception of firearm, sexual offense, or gang related charges. Rule 63D-10.002(2)(a), F.A.C.

[6] Such services may include family counseling, urinalysis monitoring, and substance abuse and mental health treatment services. s. 985.12(1), F.S. Additional sanctions or services could include a letter of apology to the victim(s), restitution, school progress monitoring, and pre-vocational skill services. *Florida Civil Citation, Civil Citation FAQs*, http://www.djj.state.fl.us/partners/our-approach/florida-civil-citation (last visited on February 23, 2015).

[7] If the LEO issues a civil citation, a copy must be provided to the county sheriff, state attorney, the appropriate DJJ intake office or the community performance monitor designated by DJJ, the parents or guardian of the youth, and the victim. Section 985.12(1), F.S.

[8] The youth has the right to opt out of the CCP and be referred to a DJJ intake office at any time before completion of the work assignment. s. 985.12(6), F.S.

[9] s. 985.12(4), F.S.

[10] s. 985.12(1), F.S.

[11] s. 985.12(5), F.S.

officer must then process the original delinquent act as a referral to DJJ and refer the report to the state attorney for review.[12]

Currently, s. 985.12, F.S., requires CCPs or another similar diversion program[13] to be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency. The program may be operated by a law enforcement agency, DJJ, a JAC, a county or municipality, or an entity selected by a county or municipality.[14] As of October 2014, CCPs were operational in 59 of Florida's 67 counties.[15]

**Effect of the Bill**

As noted above, a LEO who makes contact with a juvenile who admits to having committed a misdemeanor has the option to issue a youth a civil citation, rather than arrest the youth and refer him or her to DJJ. Only second or subsequent misdemeanor offenses are eligible for the CCP.

The bill amends s. 985.12, F.S., to:

- Authorize a law enforcement officer to issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Require the officer to issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents;
- Gives the officer discretion to arrest the juvenile if the officer makes written findings that doing so protects the public; and
- Authorize an officer to issue a civil citation for second or subsequent misdemeanors.

The bill also reenacts ss. 943.051 and 985.11, F.S., for purposes of incorporating the changes made by the act to s. 985.12, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.12, F.S., relating to civil citation.

Section 2. Reenacts s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 3. Reenacts s. 985.11, F.S., relating to fingerprinting and photographing.

Section 4. Provides an effective date of October 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

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[12] *Id.*

[13] Diversion programs are non-judicial alternatives used to keep youth who have committed a delinquent act from being handled through the traditional juvenile justice system. Diversion programs may be pre-arrest or post-arrest programs and are established by law enforcement agencies or school districts in cooperation with state attorneys. *See* s. 985.125, F.S., and *DJJ Youth and Families, Glossary*, http://www.djj.state.fl.us/youth-families/glossary (last visited February 23, 2015).

[14] s. 985.12(1), F.S.

[15] Polk, Taylor, and Bradford counties are in the process of developing a CCP. Sarasota, Hardee, Gulf, Calhoun, and Washington counties do not have CCPs. Florida Department of Juvenile Justice, Probation and Community Intervention. http://www.djj.state.fl.us/faqs/probation-community-intervention (last visited February 23, 2015).

2. Expenditures:

   To the extent the bill prevents youth from being arrested and placed in detention at a JAC, the bill will result in a positive fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   To the extent the bill prevents youth from being arrested and placed in detention at a JAC, the bill will result in a positive fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2015, the Criminal Justice Subcommittee a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorizes a law enforcement officer to issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Requires the officer to issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents;
- Gives the officer discretion to arrest the juvenile if the officer makes written findings that doing so protects the public; and
- Authorizes an officer to issue a civil citation for second or subsequent misdemeanors.

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

A bill to be entitled

An act relating to juvenile civil citations; amending s. 985.12, F.S.; authorizing a law enforcement officer to issue a warning to a juvenile who admits having committed a misdemeanor or to inform the juvenile's parent or guardian of the juvenile's infraction; requiring a law enforcement officer who does not exercise certain options to issue a civil citation or require participation in a similar diversion program under certain circumstances; providing that repeat misdemeanor offenders may participate in the civil citation program or other similar diversion program under certain circumstances; providing that, in exceptional situations, a law enforcement officer may arrest a first-time misdemeanor offender in the interest of protecting public safety; requiring certain written documentation if such arrest is made; reenacting ss. 943.051(3)(b) and 985.11(1)(b), F.S., relating to the issuance of a civil citation and the issuance of a civil citation or other similar diversion program, respectively, to incorporate the amendments made by the act to s. 985.12, F.S., in references thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 985.12, Florida Statutes, is amended to read:

985.12 Civil citation.—

(1) There is established a juvenile civil citation process for the purpose of providing an efficient and innovative alternative to custody by the department ~~of Juvenile Justice~~ for children who commit nonserious delinquent acts and to ensure swift and appropriate consequences. The department shall encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state. The civil citation program or similar diversion program shall be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved. The program may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, the county or municipality, or another ~~some other~~ entity selected by the county or municipality. An entity operating the civil citation program or similar diversion program must do so in consultation and agreement with the state attorney and local law enforcement agencies. Under such a juvenile civil citation program or similar diversion program, a ~~any~~ law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, may choose to issue a simple warning or inform the juvenile's parent or guardian of the juvenile's infraction or

shall issue a civil citation or require participation in a similar diversion program, and assess up to ~~not more than~~ 50 community service hours, and require participation in intervention services as indicated by an assessment of the needs of the juvenile, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services. A copy of each citation issued under this section shall be provided to the department, and the department shall enter appropriate information into the juvenile offender information system. Use of the civil citation program or similar diversion program is not limited to first-time misdemeanor offenses and may be used in a second or subsequent misdemeanor offense. In exceptional situations, a local law enforcement officer may arrest a juvenile for a misdemeanor if he or she provides written documentation as to why an arrest was warranted to protect public safety. ~~Only first-time misdemeanor offenders are eligible for the civil citation or similar diversion program.~~ At the conclusion of a juvenile's civil citation program or similar diversion program, the agency operating the program shall report the outcome to the department. The issuance of a civil citation is not considered a referral to the department.

Section 2. For the purpose of incorporating the amendment made by this act to section 985.12, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 943.051, Florida Statutes, is reenacted to read:

943.051 Criminal justice information; collection and storage; fingerprinting.—

(3)

(b) A minor who is charged with or found to have committed the following offenses shall be fingerprinted and the fingerprints shall be submitted electronically to the department, unless the minor is issued a civil citation pursuant to s. 985.12:

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).

10. Petit theft, as defined in s. 812.014(3).

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or

firearm at a school-sponsored event or on school property, as provided in s. 790.115.

Section 3. For the purpose of incorporating the amendment made by this act to section 985.12, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is reenacted to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.

2. Battery, as defined in s. 784.03.

3. Carrying a concealed weapon, as defined in s. 790.01(1).

4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).

5. Neglect of a child, as defined in s. 827.03(1)(e).

6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).

7. Open carrying of a weapon, as defined in s. 790.053.

8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s.

790.22(5).

10. Petit theft, as defined in s. 812.014.

11. Cruelty to animals, as defined in s. 828.12(1).

12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).

13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be

open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 4. This act shall take effect October 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

| | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Clarke-Reed offered the following:

**Amendment (with title amendment)**

Remove lines 30-71 and insert:

(1) There is established a juvenile civil citation process for the purpose of providing an efficient and innovative alternative to custody by the Department of Juvenile Justice for children who commit nonserious delinquent acts and to ensure swift and appropriate consequences. The department shall encourage and assist in the implementation and improvement of civil citation programs or other similar diversion programs around the state. The civil citation or similar diversion program shall be established at the local level with the concurrence of the chief judge of the circuit, state attorney,

public defender, and the head of each local law enforcement agency involved. The program may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, the county or municipality, or another ~~some other~~ entity selected by the county or municipality. An entity operating the civil citation or similar diversion program must do so in consultation and agreement with the state attorney and local law enforcement agencies. Under such a juvenile civil citation or similar diversion program, a ~~any~~ law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor, may choose to issue a simple warning or inform the child's guardian or parent of the child's infraction, or may issue a civil citation or require participation in a similar diversion program, and assess up to ~~not more than~~ 50 community service hours, and require participation in intervention services as indicated by an assessment of the needs of the juvenile, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services. A copy of each citation issued under this section shall be provided to the department, and the department shall enter appropriate information into the juvenile offender information system. Use of the civil citation or similar diversion program is not limited to first-time misdemeanors and may be used in a second or subsequent misdemeanor. If an arrest is made, a law enforcement officer must provide written

documentation as to why an arrest was warranted. ~~Only first-time misdemeanor offenders are eligible for the civil citation or similar diversion program.~~ At the conclusion of a juvenile's civil citation program or similar diversion program, the agency operating the

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**T I T L E A M E N D M E N T**

Remove lines 5-22 and insert:

committed a misdemeanor or to inform the child's parent or guardian of the child's infraction; allowing a law enforcement officer who does not exercise one of these options to issue a civil citation or require participation in a similar diversion program; requiring a law enforcement officer to provide written documentation in certain circumstances; providing that repeat misdemeanor offenders may participate in the civil citation program or a similar diversion program under certain circumstances; reenacting ss. 943.051(3)(b) and 985.11(1)(b), F.S., relating to the issuance of a civil citation, and the issuance of a civil citation or similar diversion program, respectively, to incorporate the amendments made to s. 985.12, F.S., in

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 235 Restitution
**SPONSOR(S):** Health & Human Services Committee; Eagle
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 312

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Criminal Justice Subcommittee | 13 Y, 0 N | Cox | Cunningham |
| 2) Health & Human Services Committee | 15 Y, 2 N, As CS | Guzzo | Calamas |
| 3) Justice Appropriations Subcommittee | | Schrader | Lloyd |
| 4) Judiciary Committee | | JSS | |

### SUMMARY ANALYSIS

Section 985.437, F.S., authorizes a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for any damage or loss caused by the child's offense in a reasonable amount or manner. Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service. A parent or guardian may be absolved of liability for restitution in their child's criminal case if the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

The bill amends s. 985.437, F.S., to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution in cases where court has determined that restitution is appropriate. The bill further amends s. 985.437, F.S., to:

- Authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment;
- Absolve a parent or guardian of any liability for restitution if, after a hearing:
  - The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
  - If the victim entitled to the restitution is that child's parent or guardian;
- Authorize the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility; and
- Specify that the Department of Children and Families, a foster parent, the community-based care lead agency supervising the placement of a child while under contract with the department, a residential child-caring agency, or a family foster home is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

The bill would not necessarily increase the number of cases where restitution is ordered, but would likely increase the amounts recovered for victims where restitution was ordered. It cannot be determined how judicial or court workload will be impacted. Restitution cannot be ordered without a restitution hearing that determines the amount of restitution owed and the ability to pay. Restitution issues can be heard as part of the disposition hearing if the parties are noticed. However, the decision whether or not to impose restitution remains discretionary with the court.

The bill provides an effective date of July 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Restitution in Juvenile Criminal Cases

Currently, s. 985.437, F.S., authorizes, but does not require, a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for *any* damage[1] or loss caused by the child's offense[2] in a reasonable amount or manner.[3] Similarly, s. 985.35, F.S., authorizes the court to place a child found to have committed a violation of law in a probation program.[4] The probation program may include restitution in money or in kind.[5] The court determines the amount or manner of restitution that is reasonable.[6]

To enter an order of restitution, a trial court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.[7] A restitution hearing is not required if the child previously entered into an agreement to pay[8] or has waived his or her right to attend a restitution hearing.[9] When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the parent or guardian could reasonably be expected to pay.[10]

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or by performing community service.[11] However, a parent or guardian may be absolved of any liability for restitution if, after a hearing, the court finds that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."[12]

The clerk of the circuit court receives and dispenses restitution payments, and must notify the court if restitution is not made. The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.[13]

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[1] "Any damage" has been interpreted by Florida's courts to include damage for pain and suffering. *C.W. v. State*, 655 So.2d 87 (Fla. 1995).
[2] The damage or loss must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2d DCA 2009).
[3] If restitution is ordered, it becomes a condition of probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program. Section 985.437(1), F.S.
[4] Section 985.35(4) and (5), F.S.
[5] Section 985.35(4)(a), F.S.
[6] Section 985.437(2), F.S.
[7] *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.
[8] *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).
[9] *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).
[10] Section 985.437(2), F.S.
[11] Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child, without the court providing the parent with meaningful notice and an opportunity to be heard, or without making a determination of the parents' ability to do so. *See S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999); *A.T. v. State*, 706 So.2d 109 (Fla. 2d DCA 1998); and *M.H. v. State*, 698 So.2d 395 (Fla. 4th DCA 1997).
[12] Section 985.437(4), F.S.
[13] Section 985.437(5), F.S.

Court's Powers over a Juvenile Offender's Parent or Guardian

Section 985.513, F.S., authorizes, but does not require, a court that has jurisdiction over a child that has been adjudicated delinquent to order the parents or guardians of such child to perform community service and participate in family counseling. The statute also authorizes the court to:

- Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense; and
- Require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437, F.S.[14]

Current law does not specifically exempt the Department of Children and Families (DCF), a foster parent, or a community-based care organization supervising a dependent child from paying restitution when a court requires the child's parent or legal guardian to be responsible for restitution ordered against the child.

Failing to Pay Restitution Order

Section 985.0301(h), F.S., states that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. Section 775.089, F.S., provides that a restitution order may be enforced in the same manner as a judgment in a civil lien. Thus, if a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the parent or child's real property.[15] The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.[16]

**Effect of Proposed Changes**

The bill amends s. 985.437, F.S., to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution in cases where court has determined that restitution is appropriate. The bill further amends s. 985.437, F.S., to authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment. The payment plan must reflect the ability of a child and the child's parent or legal guardian to pay the restitution amount.

The bill absolves a parent or guardian of any liability for restitution if, after a hearing:

- The court finds that it is the child's first referral *and* the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; *or*
- The victim entitled to the restitution is the child's parent or guardian.

The bill authorizes the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility.

The bill specifies certain individuals, agencies, and facilities that are not considered guardians responsible for restitution for the delinquent acts of a child who is found to be dependent, including:

- DCF;
- A foster parent;
- A community-based care lead agency supervising the placement of the child pursuant to a contract with DCF;
- A residential child-caring agency; and

[14] Section 985.513(1)(b), F.S.
[15] Section 775.089(5), F.S.
[16] Section 985.045, F.S., also states that this is allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

- A family foster home.

As a result, a victim may incur the costs associated with a delinquent act committed by a child under the care of any of the non-responsible parties provided above.

The bill makes conforming changes to s. 985.35, F.S., and amends s. 985.513, F.S., to remove duplicative language relating to the court's authority to order a parent or guardian to be responsible for the child's restitution.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 985.35, F.S., relating to adjudicatory hearings; withheld adjudications; orders of adjudication.
**Section 2:** Amends s. 985.437, F.S., relating to restitution.
**Section 3:** Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.
**Section 4:** Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill amends s. 985.437, F.S., to require, rather than authorize, the court to order a child and the child's parent or legal guardian to pay restitution in cases where court has determined that restitution is appropriate. The bill would not necessarily increase the number of cases where restitution is ordered, but would likely increase the amounts recovered for victims where restitution was ordered. It cannot be determined how judicial or court workload will be impacted. Restitution cannot be ordered without a restitution hearing that determines the amount of restitution owed and the ability to pay. Restitution issues can be heard as part of the disposition hearing if the parties are noticed. However, the decision whether or not to impose restitution remains discretionary with the court.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any fiscal impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents and legal guardians of children that have been adjudicated delinquent will be liable for restitution in money or in kind for damages caused by the child's offense. Therefore, a victim of a child's offense may be more likely to receive restitution.

A victim may incur the costs associated with a delinquent act committed by a child under the care of any of the non-responsible parties provided in the bill.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2015, the Health and Human Services Committee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Authorized the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility.
- Provided that residential child-caring agencies and family foster homes are not considered guardians responsible for restitution for the delinquent acts of dependent children.

The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.

A bill to be entitled

An act relating to restitution for juvenile offenses; amending s. 985.35, F.S.; conforming provisions to changes made by the act; amending s. 985.437, F.S.; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; providing for payment plans in certain circumstances; authorizing the parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility; specifying that the Department of Children and Families, foster parents, specified facilities, and specified agencies contracted with the department are not guardians for purposes of restitution; amending s. 985.513, F.S.; removing duplicative provisions authorizing the court to require a parent or guardian to be responsible for any restitution ordered against the child; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

(4) If the court finds that the child named in the petition has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.

(a) Upon withholding adjudication of delinquency, the court may place the child in a probation program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind to be made by the child and the child's parent or guardian as provided in s. 985.437, community service, a curfew, urine monitoring, revocation or suspension of the driver license of the child, or other nonresidential punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation in substance abuse treatment, or school or other educational program attendance.

Section 2. Subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (7), subsections (1), (2), and (4) are amended, and new subsections (5) and (6) are added to that section, to read:

985.437 Restitution.—

(1) Regardless of whether adjudication is imposed or

withheld, the court that has jurisdiction over a ~~an adjudicated delinquent~~ child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, order the child and the child's parent or guardian to make restitution in the manner provided in this section. This order shall be part of the child's probation program to be implemented by the department or, in the case of a committed child, as part of the community-based sanctions ordered by the court at the disposition hearing or before the child's release from commitment.

(2) If the court orders restitution, the court shall ~~may~~ order the child and the child's parent or guardian to make restitution in money, through a promissory note ~~cosigned by the child's parent or guardian~~, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. If the child and the child's parent or guardian are unable to pay the restitution in one lump-sum payment, the court may set up a payment plan that reflects their ability to pay the restitution amount.

(4) The parent or guardian may be absolved of liability for restitution under this section if:

(a) After a hearing, the court finds that it is the child's first referral to the delinquency system and ~~A finding~~

~~by the court, after a hearing,~~ that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or

(b) The victim entitled to restitution as a result of damage or loss caused by the child's offense is that child's ~~absolves the~~ parent or guardian ~~of liability for restitution under this section~~.

(5) The court may only order restitution to be paid by the parents or guardians who have current custody of and parental responsibility for the child.

(6) For purposes of this section, the Department of Children and Families, a foster parent with whom the child is placed, the community-based care lead agency supervising the placement of the child pursuant to a contract with the Department of Children and Families, or a facility registered under s. 409.176 is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent as defined in s. 39.01(15).

Section 3. Subsection (1) of section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, ~~:~~

~~(a)~~ order the child's parent or guardian, together with the child, to render community service in a public service program or to participate in a community work project. In addition to the sanctions imposed on the child, the court may order the child's parent or guardian to perform community service if the court finds that the parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.

~~(b) Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court may also require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437. The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in s. 985.437.~~ The court may retain jurisdiction, as provided under s. 985.0301, over the child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or the court orders otherwise.

Section 4. This act shall take effect July 1, 2015.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7105 PCB CRJS 15-05 Expunging and Sealing Criminal History Records
**SPONSOR(S):** Criminal Justice Subcommittee, Latvala
**TIED BILLS:** HB 7107 **IDEN./SIM. BILLS:** CS/SB 488

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Criminal Justice Subcommittee | 13 Y, 0 N | Cox | Cunningham |
| 1) Justice Appropriations Subcommittee | | McAuliffe | Lloyd |
| 2) Judiciary Committee | | | |

## SUMMARY ANALYSIS

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records. Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record.

When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record. Only FDLE may retain expunged records. When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities. Expunged and sealed records are confidential and exempt from public records, and it is a first degree misdemeanor to divulge their existence.

Persons who have had their record expunged or sealed may lawfully deny or fail to acknowledge arrests in the record, except when applying for certain types of employment, petitioning the court for an expunge or seal, or when they are a defendant in a criminal prosecution.

Currently, a person may only expunge or seal one record, may not expunge or seal any record that resulted in a conviction, and may not expunge or seal a record if he or she has previous convictions. Additionally, only the court can order a record to be expunged or sealed. The bill makes substantial changes to Florida's expunge and seal laws by creating nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

The bill permits a person to obtain:

- An unlimited number of "nonjudicial expunctions" for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered expunction or "nonjudicial sealing" of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- One "nonjudicial sealing" of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

The bill also amends s. 943.0515, F.S., to require all records related to minors that are not classified as serious or habitual juvenile offenders to be automatically expunged when the minor reaches the age of 21 (this currently occurs when the minor reaches age 24).

The bill will likely have both a positive and a negative fiscal impact on FDLE. See fiscal section.

The bill is effective October 1, 2015.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Sealing and Expunging Criminal History Records**

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.[1] Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order.[2] FDLE is required to retain expunged records.[3]

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, judges in the state courts system for the purpose of assisting them in their case-related decision-making responsibilities, and certain other specified agencies for their respective licensing and employment purposes.[4]

Records that have been sealed or expunged are confidential and exempt from the public records law.[5] It is a first degree misdemeanor[6] to divulge their existence.[7]

Persons who have had their criminal history records expunged or sealed may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,[8] petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.[9]

Process for Expunging or Sealing a Record

The processes for expunging and sealing criminal history records are very similar. Every person seeking to expunge or seal a record must obtain a certificate of eligibility[10] from FDLE and then subsequently petition a court to expunge or seal the record. To obtain the certificate from FDLE, a person must:

- Pay a $75 processing fee;
- Submit a certified copy of the disposition of the record they wish to have expunged or sealed;
- Prior to the date of the application for the certificate, have never been adjudicated guilty or delinquent of:
  - A criminal offense;
  - Comparable ordinance violation; or

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[1] s. 943.0585(4), F.S.
[2] *Id.*
[3] *Id.*
[4] s. 943.059(4), F.S.
[5] ss. 943.059(4)(c) and 943.0585(4)(c), F.S.
[6] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.
[7] Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.
[8] These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, 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; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.
[9] ss. 943.0585(4)(a) and 943.059(4)(a), F.S.
[10] A certificate of eligibility for expunction or sealing is valid for 12 months after the date stamped on the certificate. If the certificate expires then a person must reapply for a new certificate of eligibility. The new certificate of eligibility must be based on the status of the applicant and the law in effect at the time of the reapplication. ss. 943.0585(2) and 943.059(2), F.S.

- A felony or misdemeanor specified in s. 943.051(3)(b), F.S.;[11]
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record sought to be expunged or sealed;
- Have never had a prior sealing or expunction of criminal history record under ss. 943.0585 or 943.059, F.S., or former ss. 893.14, 901.33, or 943.058, F.S.;[12] and
- No longer be under any court supervision related to the disposition of the record they wish to have expunged.[13]

Additionally, a person seeking an expunction must submit a written, certified statement from the appropriate state attorney or statewide prosecutor indicating the following:

- That an indictment, information, or other charging document was:
  - Not filed or issued in the case;
  - Dismissed or nolle prosequi by the state attorney or statewide prosecutor, if filed or issued in the case; or
  - Dismissed by a court of competent jurisdiction, if filed or issued in the case;
- That none of the charges related to the arrest or alleged criminal activity that the petition to expunge pertains to resulted in a trial; and
- The record does not relate to a specified violation of law known as a "list offense."[14,15]

After receiving a person's application for a certificate of eligiblity, FDLE conducts a record check through the Florida Crime Information Center, the National Crime Information Center, local court databases, and the Florida Department of Highway Safety and Motor vehicles to determine the

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[11] These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; neglect of a child, as defined in s. 827.03(1)(e), F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

[12] This provision does not prevent a person from obtaining an expunction for a record previously sealed for 10 years and the record is otherwise eligible for expunction. Section 943.0585(2)(h), F.S., provides that a record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.

[13] ss. 943.0585(2) and 943.059(2), F.S.

[14] s. 943.0585(2)(a), F.S.

[15] The "list offenses" include: sexual misconduct against a covered person, as defined in s. 393.135, F.S.; sexual misconduct against a patient, as defined in s. 394.4593, F.S.; luring or enticing a child, as defined in s. 787.025, F.S.; sexual battery offense, as defined in ch. 794; procuring person under age of 18 for prostitution, as defined in former s. 796.03, F.S.; lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04, F.S.; voyeurism, as defined in s. 810.14, F.S.; lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person, as defined in s. 825.1025, F.S.; sexual performance by a child, as defined in s. 827.071, F.S.; protection of minors/prohibition of certain acts in connection with obscenity, as defined in s. 847.0133, F.S.; computer pornography, as defined in s. 847.0135, F.S.; selling or buying minors, as defined in s. 847.0145, F.S.; sexual misconduct of a mentally deficient or mentally ill defendant, as defined in s. 916.1075, F.S.; any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S., without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.; violations of the Florida Communications Act, as defined in s. 817.034, F.S.; offenses by public officers and employees, as defined in ch. 839, F.S.; drug trafficking, as defined in s. 893.135, F.S.; and enumerated offenses included in s. 907.041, F.S. Additionally, the enumerated offenses included in s. 907.041, F.S., are: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime. The list offenses preclude a person from obtaining an expunction or sealing if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or pled nolo contendere to committing, the offense as a delinquent act, regardless of whether adjudication was withheld.

person's eligibility to have the record expunged or sealed.[16] FDLE reports that the process is completed within 90 days and each applicant either receives a certificate of eligibility or a denial letter.[17]

Once a person has received a certificate of eligibility from FDLE, they must file a petition to expunge or seal the record with the court.[18] In addition to the certificate of eligibility, a petition to expunge or seal a record must also include the petitioner's sworn statement[19] that he or she:

- Has not previously been adjudicated guilty of any offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or misdemeanor specified in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for committing any of the acts he or she is currently trying to have expunged or sealed;
- Has not obtained a prior expunction or sealing;[20] and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before any court.[21]

It is up to the court to decide whether the expunction or sealing is appropriate.[22] Generally, the court will grant the expunction or sealing if the state attorney does not object at a hearing.[23] The court is only authorized to order the expunction or sealing of a record that pertains to one arrest or one incident of alleged criminal activity.[24] However, the court may order the expunction or sealing of a record pertaining to more than one arrest if such additional arrests directly relate to the original arrest.[25]

Eligibility of a Record to be Expunged v. Sealed

A person may seek an expunction immediately, provided the person is no longer subject to court supervision, if none of the charges related to the arrest or alleged criminal activity resulted in a trial and:

- An indictment, information, or other charging document was not filed or issued in the case (no-information);[26]
- An indictment, information, or other charging document was filed or issued in the case, but it was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction (dismissal);[27] or
- An indictment, information, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to the provisions related to justifiable use of force in ch. 776, F.S.[28] (dismissal based on lawful self-defense exception).[29]

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[16] OPPAGA Report, at pg. 14.
[17] *Id.*
[18] There is an additional filing fee associated with filing a petition to expunge or seal. The fee varies by circuit, but is a minimum of $42. OPPAGA Report at pg. 4.
[19] It is a third degree felony to knowingly provide false information on this sworn statement. ss. 943.0585(1)(b) and 943.059(1)(b), F.S. A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. ss. 775.082 and 775.083, F.S.
[20] Unless the prior sealing was in accordance with s. 985.0585(2)(h), F.S.
[21] ss. 943.059(1)(b) and 943.0585(1)(b), F.S. Any person knowingly providing false information on the sworn statement commits a third degree felony.
[22] ss. 943.0585(1) and 943.059(1), F.S.
[23] OPPAGA Report at pg. 4.
[24] ss. 943.0585(1) and 943.059(1), F.S.
[25] *Id.* The court must articulate in writing its intention to expunge or seal a record pertaining to multiple arrests and a criminal justice agency may not expunge or seal multiple records without such written documentation. The court is also permitted to expunge or seal only a portion of a record.
[26] *See* ss. 943.0585(2), F.S.
[27] *Id.*
[28] s. 943.0585(5), F.S. The lawful self-defense exception requires a person obtain a certificate of eligibility from FDLE and file a petition for expunction with the court just as required with other petitions to expunge, but the information the person must provide to obtain an expunction based on the lawful self-defense exception is slightly different.
[29] *See* ss. 943.0585(2), F.S

If a person proceeded to trial, received a not-guilty verdict, or received a withhold of adjudication[30] for any of the charges to which the petition pertains, an order to seal the record must be obtained first and then the record becomes eligible for expunction after it has been sealed for ten years.[31]

A person is not currently eligible to have a record expunged or sealed if the person was convicted for any of the charges to which the petition to expunge or seal pertains. Additionally, a person who has a previous unrelated conviction is ineligible to have a record expunged or sealed. Lastly, as stated above, a court may not expunge or seal a record that relates to any of the list offenses where the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or pled nolo contendere to committing, the offense as a delinquent act.[32]

**Effect of the Bill**

The bill creates nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

The bill permits a person to obtain:

- An unlimited number of "nonjudicial expunctions" for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered expunction or "nonjudicial sealing" of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- One "nonjudicial sealing" of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

Nonjudicial Expunction

The bill creates s. 943.0584, F.S., requiring specified records to be expunged without petitioning the court. The bill requires FDLE to approve the nonjudicial expunction of an unlimited number of criminal history records of a minor or adult relating to cases where a:

- No-Information was issued;
- Dismissal was issued by the state attorney or statewide prosecutor, or by a court of competent jurisdiction;
- Dismissal was granted by the state attorney or court based on the lawful self-defense exception; or
- Not-guilty verdict was rendered subsequent to a trial or adjudicatory hearing.

It should be noted that a person may not obtain a nonjudicial expunction unless all charges stemming from the arrest or alleged criminal activity to which the application for expunction pertains were not filed or issued, dismissed or discharged, or resulted in an acquittal.

Additionally, a record may not be approved for nonjudicial expunction if the:

- Case was dismissed pursuant to ss. 916.145 or 985.19, F.S., as a result of the person never being restored to competency; or

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[30] When a defendant is found guilty after a trial or pleads guilty or nolo contendere, a judge is permitted to withhold the judgment of guilt for the offense. This is known as a withhold of adjudication. Section 948.01(2), F.S., provides that if it appears to a judge that a defendant is "not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by the law", the judge may withhold the adjudication of guilt and place the defendant on probation. In Florida, a felony conviction impacts a person's civil rights such as the right to vote and to possess a firearm. However, if adjudication of guilt is withheld, these rights are not suspended. Fla. Const. art. VI, s.4; s. 97.041, F.S.; and *See Snyder v. State*, 673 So.2d 9 (Fla. 1996).

[31] s. 943.0585(2)(h), F.S.

[32] This restriction is without regard to whether adjudication was withheld on any of the listed offenses. ss. 943.0585(1) and 943.059(1), F.S.

- Verdict at trial was not-guilty by reason of insanity.

The bill removes the current requirement that a record related to a not-guilty verdict be sealed for ten years prior to such record being eligible for expunction.

The bill does not alter current law as it relates to obtaining an expunction when the dismissal was based on the lawful self-defense exception, but moves this from a court-ordered process to the newly-created nonjudicial expunction process.

To apply for nonjudicial expunction under s. 943.0584, F.S., the bill requires a person to include:

- A written, certified statement from the appropriate state attorney or statewide prosecutor indicating that the criminal history record sought to be expunged is eligible; or
- If applicable, a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that the dismissal was based on the lawful self-defense exception;
- A $75 processing fee to FDLE for placement in the FDLE Operating Trust Fund, unless such fee is waived by the executive director;
- A certified copy of the disposition of the charge to which the application to expunge pertains; and
- A full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification.

An applicant seeking the nonjudicial expunction of multiple eligible records only needs to submit one application and one fee to FDLE. Upon receiving a complete application, FDLE must approve the nonjudicial expunction of all records pertaining to the applicant that are eligible for the nonjudicial expunction.

Upon approval of a nonjudicial expunction, FDLE must serve a certified copy of form approving the nonjudicial expunction to the state attorney or statewide prosecutor, the arresting agency, the clerk of the court, and the Federal Bureau of Investigation (FBI). The arresting agency must forward the approval form to any other agency that they disseminated the criminal history record information to which the form pertains. Lastly, the clerk of the court must forward a copy of the form to any other agency which the records of the court reflect has received the criminal history record from the court.

The bill provides that records that are approved for nonjudicial expunction pursuant to s. 943.0584, F.S., must have the same effect and be disclosed in the same manner as current law requires for records expunged pursuant to a court-order under s. 943.0585, F.S. (i.e., that the record must be destroyed by all parties except for FDLE, a person may not lawfully deny the existence of the record to specified parties, etc.).

The bill provides FDLE with authority to adopt a rule pursuant to ch. 120, F.S., for the nonjudicial expunction of any criminal history record of a minor or an adult described in this section.

Court-Ordered Expunction

Codified in s. 985.0585, F.S., the bill leaves the general process of court-ordered expunction intact. However, the bill limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication. A person must still obtain a certificate of eligibility from FDLE and petition the court to expunge the record. The bill does not alter current law as it relates to the processing of an order to expunge, how the record is treated once an order to expunge is granted, or the persons that have access to a record that has been expunged.

The bill amends s. 943.0585, F.S., to permit one record related to a withhold of adjudication to be expunged. A person no longer is required to first seal the withhold of adjudication for ten years to be eligible for an expunction. However, a court is prohibited from expunging a record pertaining to a withhold of adjudication if:

- The person seeking the expunction or sealing has, at any time prior to the date of filing the certificate of eligibility, been adjudicated guilty for a felony offense or adjudicated delinquent for an offense which, if committed by an adult, would be a felony; or
- The record relates to a list offense where the person was convicted of, adjudicated delinquent of, or pled nolo contendere to the offense, regardless of whether adjudication was withheld.

To obtain a certificate of eligibility from FDLE, a person seeking to expunge a record pertaining to a withhold of adjudication must submit the above-described information required under current law for a court-ordered expunction and meet two additional requirements, including:

- That the person has not been arrested for or charged with a criminal offense, in any jurisdiction of the state or within the United States, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to expunge pertains to the date of the application for the certificate of eligibility;[33] and
- Submit a full set of fingerprints taken by a law enforcement agency for purposes of identity verification.

The bill retains current law regarding the length of time the certificate of eligibility is valid and the reapplication process.

The bill requires the petition to expunge or seal for such records to include:

- A valid certificate of eligibility for sealing issued by FDLE; and
- The petitioner's sworn statement[34] attesting that:
  - The criminal history record sought to be sealed is related to an eligible offense;
  - The petitioner is eligible for the expunction; and
  - The petitioner has not been charged with a criminal offense, in any jurisdiction of the state or a foreign jurisdiction, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to expunge pertains to the date of the application for the certificate of eligibility. This period of time must be no less than one year in length.

The bill also retains the requirement that a court only expunge a record pertaining to one arrest or one incident of alleged criminal activity, unless the court finds that the additional arrests are directly related to the original arrest and provides written documentation of the intent to expunge such additional arrests.

Nonjudicial Sealing

The bill amends s. 943.059, F.S., requiring specified records to be sealed without petitioning the court. A person may apply to FDLE for the nonjudicial sealing of one criminal history record of a minor or adult relating to cases where a person:

- Received a withhold of adjudication from the court; or
- Was convicted of a "nonviolent misdemeanor."

The bill defines "nonviolent misdemeanor" to include misdemeanor violations of the following offenses:

- Misrepresent or misstate one's age or the age of any other person to induce another to sell, serve, etc. alcoholic beverages to a minor, or for any person under 21 years of age to purchase or attempt to purchase alcoholic beverages;
- Possession of alcohol by a minor;
- Make or cause a false fire alarm;
- Criminal mischief;
- Trespass in structure or conveyance;

[33] This provision is required to be no less than one year in length.

[34] The bill retains the criminal penalty for knowingly providing false information on this sworn statement to the court. Current law makes it a third degree felony to knowingly provide false information on this sworn statement. s. 943.0585(1)(b), F.S.

- Trespass on property other than structure or conveyance;
- Willful removal, destruction, etc. of a posted notice intended to legally enclose property;
- Unauthorized placement of signs upon land or trees adjacent to public highways;
- Breaking or injuring another property owner's fences;
- Cave vandalism and other related offenses;
- Petit Theft;
- Nuisances;
- Building bonfires within specified distance to a home or building;
- Disorderly intoxication;
- Open house parties;
- Unlawful assemblies;
- Delivery of 20 grams or less of cannabis;
- Possession of 20 grams or less of cannabis;
- Possession of drug paraphernalia; or
- Any offense found in chs. 316-324, F.S., unless the violation of such offense directly caused serious bodily injury or death to a person.

A criminal history record may not be approved for nonjudicial sealing if the:

- Person seeking the sealing has, at any time prior to the date of the application for nonjudicial sealing, been adjudicated guilty or delinquent for a felony; or
- Record relates to a list offense, regardless of whether the court withheld adjudication.

The bill authorizes FDLE to approve the nonjudicial sealing under s. 943.059, F.S., of a record related to one arrest or one incident of alleged criminal activity, unless the state attorney or statewide prosecutor provides supporting documentation that additional arrests are directly related to the arrest sought to be sealed. If FDLE approves the sealing of such additional arrests, the approval form must express the intent to do so. The bill provides the applicant the right to appeal to the circuit court if the state attorney or statewide prosecutors denies that the additional arrests are directly related.

To apply for a nonjudicial sealing under s. 943.059, F.S., the bill requires a person to include:

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be sealed is eligible;
- If applicable, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that any additional arrests the applicant seeks to seal are directly related to the original arrest;
- A $75 processing fee to FDLE for placement in the FDLE Operating Trust Fund, unless such fee is waived by the executive director;
- A certified copy of the disposition of the charge to which the application to seal pertains;
- A full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification; and
- A sworn, written statement[35] from the person seeking the sealing that he or she:
    - Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the application to seal pertains;
    - Has never secured a prior sealing or expunction of a criminal history record under ss. 943.0585 or 943.059, F.S., or former ss. 893.14, 901.33, or 943.058, F.S.; and
    - Has not been arrested for or charged with a criminal offense, in any jurisdiction of the state or within the United States, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to expunge pertains to the date of the application for the certificate of eligibility.[36]

[35] The bill provides it is a third degree felony for a person to knowingly provide false information on this sworn statement.
[36] This period of time must be no less than one year in length.

Upon approval of a nonjudicial sealing, FDLE must forward a certified copy of the form approving the nonjudicial sealing to the state attorney or statewide prosecutor, the arresting agency, the clerk of the court, and the FBI. The arresting agency must forward the approval form to any other agency that they disseminated the criminal history record information to which the form pertains. Lastly, the clerk of the court must forward a copy of the form to any other agency which the records of the court reflect has received the criminal history record from the court.

The bill does not alter current law as it relates to how the record is treated once an order to seal is granted, or the persons that have access to the record that has been sealed (i.e. that the record continues to be maintained by FDLE and other criminal justice agencies, specified persons can access the sealed record, and the list of entities to which the person may not lawfully deny the existence of the sealed record).

It should be noted that a person whose record related to a withhold of adjudication is nonjudicially sealed under s. 943.059, F.S., is not barred from subsequently obtaining a court-ordered expunction of that same record.

The bill provides FDLE with authority to adopt a rule pursuant to ch. 120, F.S., for the nonjudicial sealing of any criminal history record of a minor or an adult described in this section.

**Automatic Expunction of Criminal History Records of Minors**

Section 943.0515, F.S., requires the automatic expunction of the records of specified juveniles at age 24 or 26. For juveniles who are classified as serious or habitual juvenile offenders, or that have been committed to a juvenile correctional facility or juvenile prison, the Criminal Justice Information Program (CJIP)[37] must retain their record until the age of 26, at which time it is automatically expunged.[38] For all other juveniles, CJIP must retain the record until the juvenile reaches the age of 24, at which time it is automatically expunged.[39]

A juvenile's record is prohibited from being automatically expunged if:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.[40,41]

In these three instances, the person's record as a minor must be merged with and retained as part of their adult record.[42]

Effect of the Bill

The bill amends s. 943.0515, F.S., to require all records related to minors that are not classified as serious or habitual juvenile offenders to be automatically expunged when the minor reaches the age of 21, so long as one of the three above-mentioned exceptions does not apply. The automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders remains at age 26.

Lastly, the bill makes citation conforming changes to ss. 776.09, 790.23, 943.0582, 948.08, 948.16, 961.06, 985.04, 985.045, and 985.345, F.S.

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[37] Section 943.05, F.S., creates CJIP within FDLE to act as the state's central criminal justice information repository, including the maintenance of a statewide automated biometric identification system. Identifying information of persons arrested and prosecuted in this state is sent to FDLE for inclusion in CJIP, which can then transmit this information between criminal justice agencies.

[38] s. 943.0515(1)(a), F.S.

[39] s. 943.0515(1)(b), F.S.

[40] s. 943.0515(2) and (3), F.S.

[41] Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

[42] *Id.*

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0515, F.S., relating to retention of criminal history records of minors.

Section 2. Creates s. 943.0584, F.S., relating to nonjudicial expunction of criminal history records.

Section 3. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 4. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 5. Amends s. 776.09, F.S., relating to retention of records pertaining to persons found to be acting in lawful self-defense; expunction of criminal history records.

Section 6. Amends s. 790.23, F.S., relating to felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.

Section 7. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 8. Amends s. 948.08, F.S., relating to pretrial intervention program.

Section 9. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program.

Section 10. Amends s. 961.06, F.S., relating to compensation for wrongful incarceration.

Section 11. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 12. Amends s. 985.045, F.S., relating to court records.

Section 13. Amends s. 985.345, F.S., relating to delinquency pretrial intervention program.

Section 14. Provides an effective date of October 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill expands the expunction and sealing process by making more offenses eligible for expunction and sealing. The bill also increases the number of times a person may have a record expunged or sealed. To the extent that this results in more people submitting the $75 fee to FDLE to obtain a certificate of eligibility, the bill may result in a positive fiscal impact on FDLE.

2. Expenditures:

   The bill creates nonjudicial processes for expunction and sealing. FDLE will have to train staff on how to conduct these programs in accordance with the provision of the bill. Additionally, the expansion of the expunction and sealing laws will likely result in an increased workload to FDLE as it will require staff to process more applications for certificates of eligibility. To the extent that expanding these provisions results in an increased workload, the bill will likely result in a negative fiscal impact on FDLE.

FDLE will also be required to update the CJIP program where criminal history information is stored to update the new age requirements for expunction of juvenile records under s. 943.0515, F.S. This will likely result in a negative fiscal impact on FDLE.

By creating the nonjudicial expunction and sealing processes, courts will no longer need to conduct hearings to determine if it is appropriate to grant a petition. To the extent that the bill results in the courts conducting less hearings, the decreased workload will likely result in a positive fiscal impact on the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FDLE to create rules related to the newly-created nonjudicial expunction and sealing processes. The bill provides the necessary authority to FDLE to create such rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to expunging and sealing criminal history records; amending s. 943.0515, F.S.; providing for the nonjudicial expunction of criminal history records at age 21 years for minors who are not serious or habitual juvenile offenders; creating s. 943.0584, F.S.; establishing a nonjudicial expunction process within the Department of Law Enforcement for specified criminal history records; specifying types of records eligible for the process; providing exceptions to eligibility; establishing an application process and requiring specified documentation be submitted; requiring sworn statement from petitioner; providing a criminal penalty for perjury on such sworn statement; specifying how the nonjudicial expunction must be processed; providing that an expunction under this section has the same effect as a record expunged under s. 943.0585, F.S.; amending s. 943.0585, F.S.; providing jurisdiction of the courts over expunction procedures; specifying types of records that are eligible for court-ordered expunction; providing limitations upon when a court may expunge such specified records; requiring specified documentation be submitted to the Department of Law Enforcement when seeking a certificate of eligibility for court-ordered expunction; specifying documentation that must be

submitted to the court for a petition to expunge; requiring sworn statement from petitioner; providing a criminal penalty for perjury on such sworn statement; providing guidelines for the processing of an order to expunge; providing the effect of the order to expunge on the criminal history record; specifying exceptions to the confidential and exempt status of an expunged criminal history record; requiring criminal justice agencies to destroy copies of records that have been expunged; specifying that no right to expunction is created; amending s. 943.059, F.S.; establishing a nonjudicial process within the Department of Law Enforcement for sealing of specified records; specifying records that are eligible for the process; providing exceptions to eligibility; establishing an application process and requiring specified documentation be submitted; requiring a sworn statement from petitioner; providing a criminal penalty for perjury on such sworn statement; specifying how the nonjudicial sealing must be processed; providing for the effect of a record that has been sealed under this section; amending ss. 776.09, 790.23, 943.0582, 948.08, 948.16, 961.06, 985.04, 985.045, and 985.345, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (1) of section 943.0515, Florida Statutes, is amended to read:

943.0515 Retention of criminal history records of minors.—

(1)

(b) If the minor is not classified as a serious or habitual juvenile offender or committed to a juvenile correctional facility or juvenile prison under chapter 985, the program shall retain the minor's criminal history record for 2 ~~5~~ years after the date the minor reaches 19 years of age, at which time the record shall be expunged unless it meets the criteria of paragraph (2)(a) or paragraph (2)(b).

Section 2. Section 943.0584, Florida Statutes, is created to read:

943.0584 Nonjudicial expunction of criminal history records.—

(1) NONJUDICIAL EXPUNCTION.—Notwithstanding any law dealing generally with the preservation and destruction of public records, the department may adopt a rule pursuant to chapter 120 for the nonjudicial expunction of any criminal history record of a minor or an adult described in this section.

(2) ELIGIBILITY.—

(a) The department must approve the nonjudicial expunction of a criminal history record where:

1. An indictment, information, or other charging document was not filed or issued in the case.

2.a. Except as provided in sub-subparagraph b., an indictment, information, or other charging document was filed or issued in the case, but was subsequently dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed or discharged by a court of competent jurisdiction.

b. A person may not obtain an expunction under this paragraph for a dismissal pursuant to s. 916.145 or s. 985.19.

3. An information, indictment, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to the provisions related to justifiable use of force in chapter 776.

4.a. Except as provided in sub-subparagraph b., a not guilty verdict was rendered subsequent to a trial or adjudicatory hearing.

b. A person may not obtain an expunction under this paragraph for a verdict of not guilty by reason of insanity.

(b) A person may not obtain a nonjudicial expunction under this section unless all charges stemming from the arrest or alleged criminal activity to which the application for expunction pertains were not filed or issued, dismissed, or discharged, or resulted in an acquittal, as provided herein.

(3) LIMITATIONS.—There is no limitation on the number of times that a person may obtain a nonjudicial expunction for a

criminal history record described in paragraph (2)(a). An applicant seeking to have multiple records expunged need only submit one application to the department under this section. The department must approve the nonjudicial expunction of all records pertaining to the applicant that are eligible for expunction under this section.

(4) APPLICATION FOR NONJUDICIAL EXPUNCTION.—An adult or, in the case of a minor child, the parent or legal guardian of the minor child, seeking to expunge a criminal history record under this section shall apply to the department in the manner prescribed by rule. An application for a nonjudicial expunction shall include a:

(a)1. Written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be expunged is eligible under this section; or

2. For expunction of a record described in subparagraph (2)(a)3., a written, certified statement from the appropriate state attorney or statewide prosecutor which states that an information, indictment, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to the provisions related to justifiable use of force in chapter 776.

(b) Processing fee of $75 to the department for placement in the Department of Law Enforcement Operating Trust Fund,

unless such fee is waived by the executive director.

(c) Certified copy of the disposition of the charge to which the application to expunge pertains.

(d) Full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification.

(5) PROCESSING OF A NONJUDICIAL EXPUNCTION.—If the department approves an application for nonjudicial expunction, a certified copy of the form approving the nonjudicial expunction shall be forwarded to the appropriate state attorney or the statewide prosecutor, the arresting agency, and the clerk of the court. The arresting agency is responsible for forwarding the form approving the nonjudicial expunction to any other agency to which the arresting agency disseminated the criminal history record information to which the form pertains. The department shall forward the form approving the nonjudicial expunction to the Federal Bureau of Investigation. The clerk of the court shall forward a copy of the form to any other agency that the records of the court reflect has received the criminal history record from the court.

(6) EFFECT OF NONJUDICIAL EXPUNCTION.—A confidential and exempt criminal history record expunged under this section shall have the same effect, and such record may be disclosed by the department in the same manner, as a record expunged under s. 943.0585.

(7) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this

section constitutes a general reference under the doctrine of incorporation by reference.

Section 3. Section 943.0585, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 943.0585, F.S., for present text.)

943.0585 Court-ordered expunction of criminal history records.—

(1) JURISDICTION.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. A court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section.

(2) ELIGIBILITY.—

(a)1. Except as provided in paragraph (b), a court may order the expunction of a criminal history record where the person was found guilty of or found to have committed, or pled guilty or pled nolo contendere to an offense; and

2. None of the charges stemming from the arrest or alleged criminal activity to which the petition to expunge pertains resulted in an adjudication of guilt or delinquency.

(b) A court may not order the expunction of a criminal

history record if:

1. The person has, at any time before the date on which the application for a certificate of eligibility is filed, been adjudicated guilty for a felony offense or adjudicated delinquent for an offense that would be a felony if committed by an adult; or

2. The record relates to a serious offense in which the person was found guilty of or adjudicated delinquent of, or pled guilty or pled nolo contendere to the offense, regardless of whether adjudication was withheld. For purposes of this subparagraph, the term "serious offense" means a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435.

(3) LIMITATIONS.—A court may only order the expunction of one criminal history record described in paragraph (2)(a). A person seeking an expunction under this section is not barred from relief if the same criminal history record has previously been approved for a nonjudicial sealing pursuant to s. 943.059. The record expunged must pertain to one arrest or one incident

of alleged criminal activity. However, the court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest or one incident of alleged criminal activity if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge a record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This subsection does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest.

(4) CERTIFICATE OF ELIGIBILITY FOR COURT-ORDERED EXPUNCTION.—

(a) A person seeking to expunge a criminal history record under this section shall apply to the department for a certificate of eligibility for expunction before petitioning the court for expunction. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

1. Has obtained and submitted to the department a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be expunged is eligible under subsection (2).

2. Remits a $75 processing fee to the department for

placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

3. Has submitted to the department a certified copy of the disposition of the charge to which the petition to expunge pertains.

4. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former 901.33, or former 943.058, unless expunction is sought of a criminal history record that had been previously sealed under former paragraph (2)(h) and the record is otherwise eligible for expunction.

5. Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the petition to expunge pertains.

6. Has not been arrested for or charged with a criminal offense, in any jurisdiction of the state or within the United States, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to expunge pertains to the date of the application for the certificate of eligibility. This period of time must be no less than 1 year.

7. Has submitted a full set of fingerprints taken by a law enforcement agency for purposes of identity verification.

(b) A certificate of eligibility for expunction is valid for 12 months after the date that the certificate is issued by the department. After that time, the petitioner must reapply to

the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application.

(c) The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction.

(5) PETITION FOR COURT-ORDERED EXPUNCTION.—

(a) The court shall not order a criminal justice agency to expunge a criminal history record under this section until the person seeking to expunge the record has applied for and received a certificate of eligibility for expunction pursuant to subsection (4). Each petition to a court to expunge a criminal history record is complete only when accompanied by:

1. A valid certificate of eligibility for expunction issued by the department pursuant to subsection (4).

2. The petitioner's sworn statement attesting that:

a. The criminal history record sought to be expunged is eligible under subsection (2).

b. The petitioner is eligible for the expunction under subsection (3).

c. He or she has not been arrested for or charged with a criminal offense, in any jurisdiction of the state or within the United States, from the date that the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to expunge

pertains to the date of the application for the certificate of eligibility. This period of time must be no less than 1 year.

(b) A person who knowingly provides false information on the sworn statement required by subparagraph (a)2. commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) PROCESSING OF COURT-ORDERED EXPUNCTION.—

(a) In judicial proceedings under this section, a copy of the completed petition to expunge shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to expunge.

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

(c) The department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days after receiving the order to correct the record and petition the court to void the order. A cause of action, including contempt of court, does not arise against a criminal justice agency for failure to comply with an order to expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(7) EFFECT OF EXPUNCTION.—

(a) Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases.

(b) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including s. 943.0584, former s. 893.14,

former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently seeks relief under this section, s. 943.0583, or s. 943.059;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, 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 to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services; or

8. Is seeking to be appointed as a guardian pursuant to s. 744.3125.

(c) Subject to the exceptions in paragraph (b), a person who has been granted an expunction under this section, s. 943.0584, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge an expunged criminal history record.

(d) Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom.

(8) STATUTORY REFERENCES.—Any reference to any other chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

(9) NO RIGHT TO EXPUNCTION.—This section does not confer a right to the expunction of a criminal history record, and a request for expunction of a criminal history record may be denied at the sole discretion of the court.

Section 4. Section 943.059, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 943.059, F.S., for present text.)

943.059 Nonjudicial sealing of criminal history records.—

(1) NONJUDICIAL SEALING.—Notwithstanding any law dealing generally with the preservation and destruction of public records, the department may adopt a rule pursuant to chapter 120 for the nonjudicial sealing of any criminal history record of a minor or an adult described in this section.

(2) ELIGIBILITY.—

(a) Except as provided in paragraph (b), the department must approve the nonjudicial sealing of a criminal history record where:

1.a. The person was found guilty of, found to have committed, pled guilty to, or pled nolo contendere to an offense.

b. None of the charges stemming from the arrest or alleged criminal activity to which the application for nonjudicial sealing pertains resulted in an adjudication of guilt or delinquency; or

2. The person was adjudicated guilty or adjudicated delinquent for a nonviolent misdemeanor. For purposes of this subparagraph, the term "nonviolent misdemeanor" means a misdemeanor violation of:

a. Section 562.11(2), s. 562.111, s. 806.101, s. 806.13, s. 810.08, s. 810.09, s. 810.10, s. 810.11, s. 810.115, s. 810.13, s. 812.014(3)(a), s. 823.01, s. 823.02, s. 856.011, s. 856.015, s. 870.02, s. 893.13(3), s. 893.13(6)(b), or s. 893.147(1), in which the petitioner was adjudicated guilty or

adjudicated delinquent; or

b. An offense found in chapters 316-324 for which the petitioner was adjudicated guilty or adjudicated delinquent, unless the violation of such offense directly caused serious bodily injury or death to a person.

(b) A criminal history record may not be approved for a nonjudicial sealing pursuant to this section if:

1. The person seeking the sealing has, at any time before the date on which the application for nonjudicial sealing is filed, been adjudicated guilty for a felony offense or adjudicated delinquent for an offense which would be a felony if committed by an adult; or

2. The record relates to a serious offense in which the person was found guilty of or adjudicated delinquent of, or pled guilty or pled nolo contendere to the offense, regardless of whether adjudication was withheld. For purposes of this subparagraph, the term "serious offense" means a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435.

(3) LIMITATIONS.—The department may only approve the sealing of one criminal history record described in paragraph (2)(a). Each record sealed must pertain to one arrest or one incident of alleged criminal activity. However, if the department receives supporting documentation as described in paragraph (4)(b) stating that additional arrests are directly related to the arrest sought to be expunged, the department must approve the sealing of a criminal history record pertaining to the additional arrests. If the department approves the sealing of records pertaining to such additional arrests, such intent must be specified in the approval form. A criminal justice agency may not seal any record pertaining to such additional arrests if the department has not approved sealing records pertaining to more than one arrest.

(4) APPLICATION FOR NONJUDICIAL SEALING.—An adult or, in the case of a minor child, the parent or legal guardian of the minor child, seeking to seal a criminal history record under this section shall apply to the department in the manner prescribed by rule. An application for nonjudicial sealing shall include a:

(a) Written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be sealed is eligible under subsection (2).

(b) Written, certified statement from the appropriate state attorney or statewide prosecutor that indicates any

additional arrests the applicant seeks to seal are directly related to the original arrest, if applicable. If the state attorney or statewide prosecutor does not confirm that the additional arrests are directly related, the person applying for the sealing has the right to appeal this decision to the circuit court.

(c) A processing fee of $75 to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless the fee is waived by the executive director.

(d) Certified copy of the disposition of the charge to which the application to seal pertains.

(e) Full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification.

(f) Sworn, written statement from the person seeking the sealing that he or she:

1. Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the application to seal pertains.

2. Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.0585, former s. 893.14, former 901.33, or former 943.058.

3. Has not been arrested for or charged with a criminal offense, in any jurisdiction of the state or within the United States, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the application for nonjudicial sealing

pertains to the date of the application for the nonjudicial sealing. This period of time must be no less than 1 year.

(g) A person who knowingly provides false information on the sworn statement required by paragraph (f) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) PROCESSING OF NONJUDICIAL SEALING.—

(a) If the department approves an application for a nonjudicial sealing, a certified copy of the form approving the nonjudicial sealing shall be forwarded to the appropriate state attorney or the statewide prosecutor, the arresting agency, and the clerk of the court. The arresting agency is responsible for forwarding the form approving the nonjudicial sealing to any other agency to which the arresting agency disseminated the criminal history record information to which the form pertains. The department shall forward the form approving the nonjudicial sealing to the Federal Bureau of Investigation. The clerk of the court shall forward a copy of the form to any other agency that the records of the court reflect has received the criminal history record from the court.

(b) The nonjudicial sealing of a criminal history record pursuant to this section does not require that such record be surrendered to the court, and such record shall continue to be maintained by the department and other criminal justice agencies.

(7) EFFECT OF SEALING.—

(a) The person who is the subject of a criminal history record that is sealed under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently seeks relief under this section, s. 943.0583, s. 943.0584, or s. 943.0585;

4. Is a candidate for admission to The Florida Bar;

5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, 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 to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law;

8. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services;

9. Is seeking to be appointed as a guardian pursuant to s. 744.3125; or

10. Is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. This subparagraph applies only in the determination of an applicant's eligibility under s. 790.06.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge a sealed criminal history record.

(c) Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom.

(8) STATUTORY REFERENCES.—Any reference to any other

chapter, section, or subdivision of the Florida Statutes in this section constitutes a general reference under the doctrine of incorporation by reference.

Section 5. Subsection (3) of section 776.09, Florida Statutes, is amended to read:

776.09 Retention of records pertaining to persons found to be acting in lawful self-defense; expunction of criminal history records.—

(3) Under either condition described in subsection (1) or subsection (2), the person accused may apply for the nonjudicial expunction of ~~a certificate of eligibility to expunge~~ the associated criminal history record, pursuant to s. 943.0584(2)(a)3. ~~943.0585(5)~~, notwithstanding the eligibility requirements prescribed in s. 943.0584(2) and (4)(a)2 ~~943.0585(1)(b) or (2)~~.

Section 6. Paragraphs (b) and (d) of subsection (1) of section 790.23, Florida Statutes, are amended to read:

790.23 Felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.—

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

(b)1. Found, in the courts of this state, to have committed a delinquent act that would be a felony if committed

by an adult, such person meets the description of s. 943.0515(1)(a), and such person is under 24 years of age; or

2. Found, in the courts of this state, to have committed a delinquent act that would be a felony if committed by an adult, such person meets the description of s. 943.0515(1)(b), and such person is under 21 years of age;

(d)1. Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year, such person meets the description of s. 943.0515(1)(a), and such person is under 24 years of age; ~~or~~

2. Found to have committed a delinquent act in another state, territory, or country that would be a felony if committed by an adult and which was punishable by imprisonment for a term exceeding 1 year, such person meets the description of s. 943.0515(1)(b), and such person is under 21 years of age; or

Section 7. Section 943.0582, Florida Statutes, is amended to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(1) Notwithstanding any law dealing generally with the preservation and destruction of public records, the department may provide, by rule adopted pursuant to chapter 120, for the expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors as authorized by s. 985.125.

(2)(a) As used in this section, the term "expunction" has the same meaning ascribed in and effect as ss. 943.0584 and ~~s.~~ 943.0585, except that:

1. The provisions of s. 943.0585(7)(b) ~~943.0585(4)(a)~~ do not apply, except that the criminal history record of a person whose record is expunged pursuant to this section shall be made available only to criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. For all other purposes, a person whose record is expunged under this section may lawfully deny or fail to acknowledge the arrest and the charge covered by the expunged record.

2. Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section shall be sealed as the term is used in s. 943.059.

(b) As used in this section, the term "nonviolent misdemeanor" includes simple assault or battery when prearrest or postarrest diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

(3) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if that minor:

(a) Submits an application for prearrest or postarrest

diversion expunction, on a form prescribed by the department, signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying.

(b) Submits the application for prearrest or postarrest diversion expunction no later than 12 months after completion of the diversion program.

(c) Submits to the department, 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 prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent 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.

(d) Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.

(e) Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28.

(f) Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable

ordinance violation.

(4) The department may ~~is authorized to~~ charge a $75 processing fee for each request received for prearrest or postarrest diversion program expunction, for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(5) Expunction or sealing granted under this section does not prevent the minor who receives such relief from seeking ~~petitioning for~~ the expunction or sealing of a later criminal history record as provided for in ss. 943.0583, 943.0584, 943.0585, and 943.059, if the minor is otherwise eligible under those sections.

Section 8. Paragraph (b) of subsection (6) and paragraph (b) of subsection (7) of section 948.08, Florida Statutes, are amended to read:

948.08 Pretrial intervention program.—

(6)

(b) While enrolled in a pretrial intervention program authorized by this subsection, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or

serving a period of incarceration within the time limits established for contempt of court. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. Any person whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0584 ~~943.0585~~.

(7)

(b) While enrolled in a pretrial intervention program authorized by this subsection, the participant shall be subject to a coordinated strategy developed by a veterans' treatment intervention team. The coordinated strategy should be modeled after the therapeutic jurisprudence principles and key components in s. 397.334(4), with treatment specific to the needs of servicemembers and veterans. The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but need not be limited to, placement in a treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial veterans' treatment intervention program or other

pretrial intervention program. Any person whose charges are dismissed after successful completion of the pretrial veterans' treatment intervention program, if otherwise eligible, may have his or her arrest record of the dismissed charges expunged under s. 943.0584 ~~943.0585~~.

Section 9. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 948.16, Florida Statutes, are amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program.—

(1)

(b) While enrolled in a pretrial intervention program authorized by this section, the participant is subject to a coordinated strategy developed by a drug court team under s. 397.334(4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a pretrial treatment-based drug court program or other pretrial intervention program. Any person whose

charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0584 ~~943.0585~~.

(2)

(b) While enrolled in a pretrial intervention program authorized by this section, the participant shall be subject to a coordinated strategy developed by a veterans' treatment intervention team. The coordinated strategy should be modeled after the therapeutic jurisprudence principles and key components in s. 397.334(4), with treatment specific to the needs of veterans and servicemembers. The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but need not be limited to, placement in a treatment program offered by a licensed service provider or in a jail-based treatment program or serving a period of incarceration within the time limits established for contempt of court. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a misdemeanor pretrial veterans' treatment intervention program or other pretrial intervention program. Any person whose charges are dismissed after successful completion of the misdemeanor pretrial veterans' treatment intervention program, if otherwise eligible, may have his or her arrest record of the dismissed charges expunged under s. 943.0584 ~~943.0585~~.

Section 10. Paragraph (e) of subsection (1) of section 961.06, Florida Statutes, is amended to read:

961.06 Compensation for wrongful incarceration.—

(1) Except as otherwise provided in this act and subject to the limitations and procedures prescribed in this section, a person who is found to be entitled to compensation under the provisions of this act is entitled to:

(e) Notwithstanding any provision to the contrary in s. 943.0583, 943.0584, or s. 943.0585, immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. The Department of Legal Affairs and the Department of Law Enforcement shall, upon a determination that a claimant is entitled to compensation, immediately take all action necessary to administratively expunge the claimant's criminal record arising from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. All fees for this process shall be waived.

The total compensation awarded under paragraphs (a), (c), and (d) may not exceed $2 million. No further award for attorney's fees, lobbying fees, costs, or other similar expenses shall be made by the state.

Section 11. Paragraph (b) of subsection (7) of section 985.04, Florida Statutes, is amended to read:

985.04 Oaths; records; confidential information.—

(7)

(b) The destruction of records pertaining to children committed to or supervised by the department pursuant to a court order, which records are retained until a child reaches the age of 21 ~~24~~ years or until a serious or habitual delinquent child reaches the age of 26 years, shall be subject to chapter 943.

Section 12. Subsection (1) of section 985.045, Florida Statutes, is amended to read:

985.045 Court records.—

(1) The clerk of the court shall make and keep records of all cases brought before it under this chapter. The court shall preserve the records pertaining to a child charged with committing a delinquent act or violation of law until the child reaches 21 ~~24~~ years of age or reaches 26 years of age if he or she is a serious or habitual delinquent child, until 5 years after the last entry was made, or until 3 years after the death of the child, whichever is earlier, and may then destroy them, except that records made of traffic offenses in which there is no allegation of delinquency may be destroyed as soon as this can be reasonably accomplished. The court shall make official records of all petitions and orders filed in a case arising under this chapter and of any other pleadings, certificates, proofs of publication, summonses, warrants, and writs that are filed pursuant to the case.

Section 13. Subsection (2) of section 985.345, Florida Statutes, is amended to read:

985.345 Delinquency pretrial intervention program.—

(2) While enrolled in a delinquency pretrial intervention program authorized by this section, a child is subject to a coordinated strategy developed by a drug court team under s. 397.334(4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the child for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or serving a period of secure detention under this chapter. The coordinated strategy must be provided in writing to the child before the child agrees to enter the pretrial treatment-based drug court program or other pretrial intervention program. Any child whose charges are dismissed after successful completion of the treatment-based drug court program, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0584 ~~943.0585~~.

Section 14. This act shall take effect October 1, 2015.