

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 969 Non Judicial Arrest Records
SPONSOR(S): Dean
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice (Sub)	6 Y, 0 N	Cole	De La Paz
2) Public Safety & Crime Prevention			
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 969 requires that the local law enforcement agency that wrongly arrests a juvenile or adult to apply to the Florida Department of Law Enforcement (FDLE) for an administrative expunction of that non-judicial arrest record, if the agency, at its discretion, or a court determines that the arrest was the result of a mistake or that the arrest was unlawful.

The bill also allows an adult or the parent or legal guardian of a minor child to directly apply to FDLE for an administrative expunction of a nonjudicial arrest record under these same circumstances, if the application is accompanied by an endorsement from the head of the arresting agency or the state attorney in the judicial circuit in which the arrest occurred.

Finally, the bill provides that an application or endorsement is not admissible as evidence in any judicial or administrative proceeding, nor is either one to be construed as an admission of liability in connection with the arrest.

There does not appear to be any fiscal impact to this bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0969a.ps.doc
DATE: April 1, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The definition of "criminal history record" in s. 943.045, F.S., includes notations of arrests, detentions, indictments, information's, or other formal criminal charges and dispositions. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records.

FDLE is authorized to administratively expunge non-judicial records¹ of arrest (adult and juvenile) that are made contrary to law or by mistake under s. 943.0581, F.S. Currently, a person wanting his or her arrest record administratively expunged may not apply directly to FDLE. Instead, a person wrongly arrested must have the local arresting law enforcement agency or the state attorney's office send written documentation to FDLE requesting that the department administratively expunge the arrest record. FDLE advises it usually receives administrative expunction requests from state attorneys and not the law enforcement agency. Under FDLE policy, the test for an administrative expunction is whether an arrest should have been made at all. The state attorney should be in as good a position as the arresting authority to make this decision.

Section 943.0585(1), F.S. outlines the circumstances in which a criminal history may be expunged by a court. Each petition to a court to expunge a criminal history record is complete only when accompanied by:

- (a) A certificate of eligibility for expunction issued by the department pursuant to subsection (2).
- (b) The petitioner's sworn statement attesting that the petitioner:
 1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b), F.S..
 2. Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.
 3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, F.S. or from any jurisdiction outside the state.
 4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Specifically, Rule 11C-7.008 of the Florida Administrative Code requires the chief law enforcement officer of the arresting agency to provide the administrative expunction request in writing, on agency letterhead, and it must be signed by the officer or his authorized designee. The process can be expensive (many times an attorney must be hired) and the burden is on the person who is wrongly arrested to get his or her record

¹ Arrest records maintained by executive branch agencies.

administratively expunged. According to FDLE, there were 147 administrative expungements in the last twelve months.

House Bill 969 would require the local law enforcement agency that wrongly arrests a juvenile or adult to apply to FDLE for an administrative expunction of the non-judicial arrest record, if the agency, at its discretion, or a court, determines the arrest is a mistake or that it is unlawful. The bill does not require any type of sworn affidavit from the chief law enforcement officer as to why the agency is asking for the expunction. Since the application for expunction would be reviewed by FDLE, including verifying the disposition with the relevant state attorney's office and the repercussions for making a false official request for an administrative expunction, FDLE feels there are sufficient safeguards in place to insure only legitimate applications would be approved. FDLE representatives know of no instances of fraud or abuse in the administrative expunction process.

The bill would also allow an adult or the parent or legal guardian of a minor child to apply to FDLE for an administrative expunction under these same circumstances, if the application is accompanied by an endorsement from the head of the arresting agency or the state attorney in the judicial circuit in which the arrest occurred.

In either case, the bill would provide that an application or endorsement is not admissible as evidence in any judicial or administrative proceeding, nor is either one to be construed as an admission of liability in connection with the arrest.

These changes will make it easier and less expensive for a person wrongly arrested to have his or her arrest record administratively expunged by FDLE by requiring the local arresting law enforcement agency to apply for the expunction (instead of the person wrongly arrested). The bill allows the person to apply directly to FDLE for an administrative expunction. Nothing in this bill prevents a petitioner from seeking a judicial expunction, or changes the procedures set forth for such an expunction in s. 943.0585, F.S., in any way.

C. SECTION DIRECTORY:

Section 1: Amends s. 943.0581, F.S. relating to the administrative expunction of non-judicial arrest records.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill should make it less expensive for persons wrongly arrested to have their arrest record administratively expunged by FDLE because the local arresting law enforcement agency will now have the responsibility to initiate and follow-through on this process.

D. FISCAL COMMENTS:

According to the FDLE, the bill should not have a fiscal impact on the department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rule making authority is necessary to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES