

1 A bill to be entitled

2 An act relating to court-ordered expunction of
3 criminal history records; amending s. 943.0585, F.S.;
4 revising the information that must be provided in the
5 written statement from the state attorney or statewide
6 prosecutor in order for a person to be eligible for a
7 criminal history record expunction; revising when a
8 certificate of eligibility for expunction shall be
9 issued; authorizing the Department of Law Enforcement
10 to enter certain expunged records in specified
11 databases; requiring the Department of Law Enforcement
12 to disclose certain expunged records to specified
13 governmental entities; requiring a person or entity
14 that publishes, displays, or disseminates information
15 regarding an arrest that has been expunged to remove
16 such information under certain circumstances;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Paragraphs (a) and (h) of subsection (2) and
22 subsection (4) of section 943.0585, Florida Statutes, are
23 amended to read:

24 943.0585 Court-ordered expunction of criminal history
25 records.—The courts of this state have jurisdiction over their
26 own procedures, including the maintenance, expunction, and

27 correction of judicial records containing criminal history
28 information to the extent such procedures are not inconsistent
29 with the conditions, responsibilities, and duties established by
30 this section. Any court of competent jurisdiction may order a
31 criminal justice agency to expunge the criminal history record
32 of a minor or an adult who complies with the requirements of
33 this section. The court shall not order a criminal justice
34 agency to expunge a criminal history record until the person
35 seeking to expunge a criminal history record has applied for and
36 received a certificate of eligibility for expunction pursuant to
37 subsection (2). A criminal history record that relates to a
38 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
39 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
40 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
41 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
42 any violation specified as a predicate offense for registration
43 as a sexual predator pursuant to s. 775.21, without regard to
44 whether that offense alone is sufficient to require such
45 registration, or for registration as a sexual offender pursuant
46 to s. 943.0435, may not be expunged, without regard to whether
47 adjudication was withheld, if the defendant was found guilty of
48 or pled guilty or nolo contendere to the offense, or if the
49 defendant, as a minor, was found to have committed, or pled
50 guilty or nolo contendere to committing, the offense as a
51 delinquent act. The court may only order expunction of a
52 criminal history record pertaining to one arrest or one incident

53 of alleged criminal activity, except as provided in this
54 section. The court may, at its sole discretion, order the
55 expunction of a criminal history record pertaining to more than
56 one arrest if the additional arrests directly relate to the
57 original arrest. If the court intends to order the expunction of
58 records pertaining to such additional arrests, such intent must
59 be specified in the order. A criminal justice agency may not
60 expunge any record pertaining to such additional arrests if the
61 order to expunge does not articulate the intention of the court
62 to expunge a record pertaining to more than one arrest. This
63 section does not prevent the court from ordering the expunction
64 of only a portion of a criminal history record pertaining to one
65 arrest or one incident of alleged criminal activity.

66 Notwithstanding any law to the contrary, a criminal justice
67 agency may comply with laws, court orders, and official requests
68 of other jurisdictions relating to expunction, correction, or
69 confidential handling of criminal history records or information
70 derived therefrom. This section does not confer any right to the
71 expunction of any criminal history record, and any request for
72 expunction of a criminal history record may be denied at the
73 sole discretion of the court.

74 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
75 petitioning the court to expunge a criminal history record, a
76 person seeking to expunge a criminal history record shall apply
77 to the department for a certificate of eligibility for
78 expunction. The department shall, by rule adopted pursuant to

79 chapter 120, establish procedures pertaining to the application
 80 for and issuance of certificates of eligibility for expunction.
 81 A certificate of eligibility for expunction is valid for 12
 82 months after the date stamped on the certificate when issued by
 83 the department. After that time, the petitioner must reapply to
 84 the department for a new certificate of eligibility. Eligibility
 85 for a renewed certification of eligibility must be based on the
 86 status of the applicant and the law in effect at the time of the
 87 renewal application. The department shall issue a certificate of
 88 eligibility for expunction to a person who is the subject of a
 89 criminal history record if that person:

90 (a) Has obtained, and submitted to the department, a
 91 written, certified statement from the appropriate state attorney
 92 or statewide prosecutor which indicates:

93 1. That an indictment, information, or other charging
 94 document was not filed or issued in the case.

95 2. That an indictment, information, or other charging
 96 document, if filed or issued in the case, was dismissed or nolle
 97 prosequed ~~prosequi~~ by the state attorney or statewide
 98 prosecutor, ~~or was dismissed by a court of competent~~
 99 jurisdiction, or a judge or jury rendered a verdict of not
 100 guilty. The records of a person adjudicated not guilty by reason
 101 of insanity are not eligible for expunction under this section
 102 ~~and that none of the charges related to the arrest or alleged~~
 103 ~~criminal activity to which the petition to expunge pertains~~
 104 ~~resulted in a trial, without regard to whether the outcome of~~

105 ~~the trial was other than an adjudication of guilt.~~

106 3. That the criminal history record does not relate to a
 107 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 108 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 109 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 110 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 111 any violation specified as a predicate offense for registration
 112 as a sexual predator pursuant to s. 775.21, without regard to
 113 whether that offense alone is sufficient to require such
 114 registration, or for registration as a sexual offender pursuant
 115 to s. 943.0435, where the defendant was found guilty of, or pled
 116 guilty or nolo contendere to any such offense, or that the
 117 defendant, as a minor, was found to have committed, or pled
 118 guilty or nolo contendere to committing, such an offense as a
 119 delinquent act, without regard to whether adjudication was
 120 withheld.

121 (h) Has previously obtained a court order sealing the
 122 record under this section, former s. 893.14, former s. 901.33,
 123 or former s. 943.058 for a minimum of 10 years because
 124 adjudication was withheld ~~or because all charges related to the~~
 125 ~~arrest or alleged criminal activity to which the petition to~~
 126 ~~expunge pertains were not dismissed prior to trial, without~~
 127 ~~regard to whether the outcome of the trial was other than an~~
 128 ~~adjudication of guilt.~~ The requirement for the record to have
 129 previously been sealed for a minimum of 10 years does not apply
 130 when a plea was not entered, when ~~or~~ all charges related to the

131 arrest or alleged criminal activity to which the petition to
132 expunge pertains were dismissed prior to trial, or when a judge
133 or jury rendered a verdict of not guilty. The records of a
134 person adjudicated not guilty by reason of insanity are not
135 eligible for expunction under this section.

136 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
137 criminal history record of a minor or an adult which is ordered
138 expunged by a court of competent jurisdiction pursuant to this
139 section must be physically destroyed or obliterated by any
140 criminal justice agency having custody of such record; except
141 that any criminal history record in the custody of the
142 department must be retained in all cases. A criminal history
143 record ordered expunged that is retained by the department is
144 confidential and exempt from the provisions of s. 119.07(1) and
145 s. 24(a), Art. I of the State Constitution and not available to
146 any person or entity except upon order of a court of competent
147 jurisdiction. A criminal justice agency may retain a notation
148 indicating compliance with an order to expunge. If a person is
149 adjudicated not guilty by reason of insanity or is found to be
150 incompetent to stand trial, the expunction of the criminal
151 history record shall not prevent entry of the judgment or
152 finding in state and national databases for use in determining
153 eligibility to purchase or possess a firearm or to carry a
154 concealed firearm, as authorized in s. 790.065(2)(a)4.c. and 18
155 U.S.C. s. 922(t), nor shall it prevent a governmental agency
156 that is authorized by state or federal law to determine

157 eligibility to purchase or possess a firearm or to carry a
158 concealed firearm from accessing or using the record of the
159 judgment or finding in the course of such agency's official
160 duties.

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

- 167 1. Is a candidate for employment with a criminal justice
168 agency;
- 169 2. Is a defendant in a criminal prosecution;
- 170 3. Concurrently or subsequently petitions for relief under
171 this section, s. 943.0583, or s. 943.059;
- 172 4. Is a candidate for admission to The Florida Bar;
- 173 5. Is seeking to be employed or licensed by or to contract
174 with the Department of Children and Families, the Division of
175 Vocational Rehabilitation within the Department of Education,
176 the Agency for Health Care Administration, the Agency for
177 Persons with Disabilities, the Department of Health, the
178 Department of Elderly Affairs, or the Department of Juvenile
179 Justice or to be employed or used by such contractor or licensee
180 in a sensitive position having direct contact with children, the
181 disabled, or the elderly; or
- 182 6. Is seeking to be employed or licensed by the Department

183 of Education, any district school board, any university
184 laboratory school, any charter school, any private or parochial
185 school, or any local governmental entity that licenses child
186 care facilities.

187 (b) Subject to the exceptions in paragraph (a), a person
188 who has been granted an expunction under this section, former s.
189 893.14, former s. 901.33, or former s. 943.058 may not be held
190 under any provision of law of this state to commit perjury or to
191 be otherwise liable for giving a false statement by reason of
192 such person's failure to recite or acknowledge an expunged
193 criminal history record.

194 (c) Information relating to the existence of an expunged
195 criminal history record which is provided in accordance with
196 paragraph (a) is confidential and exempt from the provisions of
197 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
198 except that the department shall disclose the existence of a
199 criminal history record ordered expunged to the entities set
200 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
201 respective licensing, access authorization, and employment
202 purposes, ~~and~~ to criminal justice agencies for their respective
203 criminal justice purposes, and with respect to a governmental
204 agency that is authorized by state or federal law to determine
205 eligibility to purchase or possess a firearm or to carry a
206 concealed firearm, the department shall disclose the record of
207 an adjudication of not guilty by reason of insanity or a finding
208 of incompetence to stand trial for use in the course of such

209 agency's official duties. It is unlawful for any employee of an
210 entity set forth in subparagraph (a)1., subparagraph (a)4.,
211 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
212 disclose information relating to the existence of an expunged
213 criminal history record of a person seeking employment, access
214 authorization, or licensure with such entity or contractor,
215 except to the person to whom the criminal history record relates
216 or to persons having direct responsibility for employment,
217 access authorization, or licensure decisions. Any person who
218 violates this paragraph commits a misdemeanor of the first
219 degree, punishable as provided in s. 775.082 or s. 775.083.

220 (d) A person or entity that publishes, displays, or in any
221 way disseminates information regarding an arrest that has been
222 expunged shall remove such information from any publication,
223 Internet posting, or credit report upon receipt of a certified
224 copy of an order granting a petition to expunge without further
225 notice or cost to the individual who is the subject of the
226 order.

227 Section 2. This act shall take effect July 1, 2014.