

By Senator Steube

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1                   A bill to be entitled  
2           An act relating to expunction of criminal history  
3           records; amending s. 943.0585, F.S.; revising the  
4           eligibility requirements for expunction of criminal  
5           history records to include instances in which a  
6           verdict of not guilty is rendered; requiring a person  
7           or entity, within a specified timeframe, to remove an  
8           expunged criminal history record under certain  
9           circumstances; authorizing a civil action for  
10          injunction under certain circumstances; authorizing a  
11          court to impose a civil penalty and award attorney  
12          fees and court costs; providing applicability;  
13          providing criminal penalties; requiring a court to  
14          order the suspension of an Internet protocol (IP)  
15          address under certain circumstances; defining the term  
16          "conviction"; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20           Section 1. Section 943.0585, Florida Statutes, is amended  
21 to read:

22           943.0585 Court-ordered expunction of criminal history  
23 records.—The courts of this state have jurisdiction over their  
24 own procedures, including the maintenance, expunction, and  
25 correction of judicial records containing criminal history  
26 information to the extent such procedures are not inconsistent  
27 with the conditions, responsibilities, and duties established by  
28 this section. Any court of competent jurisdiction may order a  
29 criminal justice agency to expunge the criminal history record  
30 of a minor or an adult who complies with the requirements of  
31 this section. The court shall not order a criminal justice  
32 agency to expunge a criminal history record until the person

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33 seeking to expunge a criminal history record has applied for and  
34 received a certificate of eligibility for expunction pursuant to  
35 subsection (2) or subsection (5). A criminal history record that  
36 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,  
37 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,  
38 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
39 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in  
40 s. 907.041, or any violation specified as a predicate offense  
41 for registration as a sexual predator pursuant to s. 775.21,  
42 without regard to whether that offense alone is sufficient to  
43 require such registration, or for registration as a sexual  
44 offender pursuant to s. 943.0435, may not be expunged, without  
45 regard to whether adjudication was withheld, if the defendant  
46 was found guilty of or pled guilty or nolo contendere to the  
47 offense, or if the defendant, as a minor, was found to have  
48 committed, or pled guilty or nolo contendere to committing, the  
49 offense as a delinquent act. The court may only order expunction  
50 of a criminal history record pertaining to one arrest or one  
51 incident of alleged criminal activity, except as provided in  
52 this section. The court may, at its sole discretion, order the  
53 expunction of a criminal history record pertaining to more than  
54 one arrest if the additional arrests directly relate to the  
55 original arrest. If the court intends to order the expunction of  
56 records pertaining to such additional arrests, such intent must  
57 be specified in the order. A criminal justice agency may not  
58 expunge any record pertaining to such additional arrests if the  
59 order to expunge does not articulate the intention of the court  
60 to expunge a record pertaining to more than one arrest. This  
61 section does not prevent the court from ordering the expunction

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62 of only a portion of a criminal history record pertaining to one  
63 arrest or one incident of alleged criminal activity.

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

72 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each  
73 petition to a court to expunge a criminal history record is  
74 complete only when accompanied by:

75 (a) A valid certificate of eligibility for expunction  
76 issued by the department pursuant to subsection (2).

77 (b) The petitioner's sworn statement attesting that the  
78 petitioner:

79 1. Has never, prior to the date on which the petition is  
80 filed, been adjudicated guilty of a criminal offense or  
81 comparable ordinance violation, or been adjudicated delinquent  
82 for committing any felony or a misdemeanor specified in s.  
83 943.051(3)(b).

84 2. Has not been adjudicated guilty of, or adjudicated  
85 delinquent for committing, any of the acts stemming from the  
86 arrest or alleged criminal activity to which the petition  
87 pertains.

88 3.a. Has never secured a prior sealing or expunction of a  
89 criminal history record under this section, s. 943.059, former  
90 s. 893.14, former s. 901.33, or former s. 943.058, unless

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91 expunction is sought of a criminal history record previously  
92 sealed for 10 years pursuant to paragraph (2) (h) and the record  
93 is otherwise eligible for expunction; or

94 b. Is seeking to expunge a criminal history record  
95 associated with a not guilty verdict.

96 4. Is eligible for such an expunction to the best of his or  
97 her knowledge or belief and does not have any other petition to  
98 expunge or any petition to seal pending before any court.

99

100 Any person who knowingly provides false information on such  
101 sworn statement to the court commits a felony of the third  
102 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
103 775.084.

104 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
105 petitioning the court to expunge a criminal history record, a  
106 person seeking to expunge a criminal history record shall apply  
107 to the department for a certificate of eligibility for  
108 expunction. The department shall, by rule adopted pursuant to  
109 chapter 120, establish procedures pertaining to the application  
110 for and issuance of certificates of eligibility for expunction.  
111 A certificate of eligibility for expunction is valid for 12  
112 months after the date stamped on the certificate when issued by  
113 the department. After that time, the petitioner must reapply to  
114 the department for a new certificate of eligibility. Eligibility  
115 for a renewed certification of eligibility must be based on the  
116 status of the applicant and the law in effect at the time of the  
117 renewal application. The department shall issue a certificate of  
118 eligibility for expunction to a person who is the subject of a  
119 criminal history record if that person:

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

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

125 2. That an indictment, information, or other charging  
126 document, if filed or issued in the case, was dismissed or nolle  
127 prosequi by the state attorney or statewide prosecutor, or was  
128 dismissed by a court of competent jurisdiction, or that a  
129 verdict of not guilty was rendered by a judge or jury ~~and that~~  
130 ~~none of the charges related to the arrest or alleged criminal~~  
131 ~~activity to which the petition to expunge pertains resulted in a~~  
132 ~~trial, without regard to whether the outcome of the trial was~~  
133 ~~other than an adjudication of guilt.~~

134 3. That the criminal history record does not relate to a  
135 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
136 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,  
137 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,  
138 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,  
139 or any violation specified as a predicate offense for  
140 registration as a sexual predator pursuant to s. 775.21, without  
141 regard to whether that offense alone is sufficient to require  
142 such registration, or for registration as a sexual offender  
143 pursuant to s. 943.0435, where the defendant was found guilty  
144 of, or pled guilty or nolo contendere to any such offense, or  
145 that the defendant, as a minor, was found to have committed, or  
146 pled guilty or nolo contendere to committing, such an offense as  
147 a delinquent act, without regard to whether adjudication was  
148 withheld.

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149 (b) Remits a \$75 processing fee to the department for  
150 placement in the Department of Law Enforcement Operating Trust  
151 Fund, unless such fee is waived by the executive director.

152 (c) Has submitted to the department a certified copy of the  
153 disposition of the charge to which the petition to expunge  
154 pertains.

155 (d) Has never, prior to the date on which the application  
156 for a certificate of eligibility is filed, been adjudicated  
157 guilty of a criminal offense or comparable ordinance violation,  
158 or been adjudicated delinquent for committing any felony or a  
159 misdemeanor specified in s. 943.051(3)(b).

160 (e) Has not been adjudicated guilty of, or adjudicated  
161 delinquent for committing, any of the acts stemming from the  
162 arrest or alleged criminal activity to which the petition to  
163 expunge pertains.

164 (f)1. Has never secured a prior sealing or expunction of a  
165 criminal history record under this section, s. 943.059, former  
166 s. 893.14, former s. 901.33, or former s. 943.058, unless  
167 expunction is sought of a criminal history record previously  
168 sealed for 10 years pursuant to paragraph (h) and the record is  
169 otherwise eligible for expunction; or

170 2. Is seeking to expunge a criminal history record  
171 associated with a not guilty verdict.

172 (g) Is no longer under court supervision applicable to the  
173 disposition of the arrest or alleged criminal activity to which  
174 the petition to expunge pertains.

175 (h) Has previously obtained a court order sealing the  
176 record under this section, former s. 893.14, former s. 901.33,  
177 or former s. 943.058 for a minimum of 10 years because

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178 adjudication was withheld or because all charges related to the  
179 arrest or alleged criminal activity to which the petition to  
180 expunge pertains were not dismissed prior to trial, without  
181 regard to whether the outcome of the trial was other than an  
182 adjudication of guilt. The requirement for the record to have  
183 previously been sealed for a minimum of 10 years does not apply  
184 when a plea was not entered or all charges related to the arrest  
185 or alleged criminal activity to which the petition to expunge  
186 pertains were dismissed prior to trial.

187 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

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

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

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207 (c) For an order to expunge entered by a court prior to  
208 July 1, 1992, the department shall notify the appropriate state  
209 attorney or statewide prosecutor of an order to expunge which is  
210 contrary to law because the person who is the subject of the  
211 record has previously been convicted of a crime or comparable  
212 ordinance violation or has had a prior criminal history record  
213 sealed or expunged. Upon receipt of such notice, the appropriate  
214 state attorney or statewide prosecutor shall take action, within  
215 60 days, to correct the record and petition the court to void  
216 the order to expunge. The department shall seal the record until  
217 such time as the order is voided by the court.

218 (d) On or after July 1, 1992, the department or any other  
219 criminal justice agency is not required to act on an order to  
220 expunge entered by a court when such order does not comply with  
221 the requirements of this section. Upon receipt of such an order,  
222 the department must notify the issuing court, the appropriate  
223 state attorney or statewide prosecutor, the petitioner or the  
224 petitioner's attorney, and the arresting agency of the reason  
225 for noncompliance. The appropriate state attorney or statewide  
226 prosecutor shall take action within 60 days to correct the  
227 record and petition the court to void the order. No cause of  
228 action, including contempt of court, shall arise against any  
229 criminal justice agency for failure to comply with an order to  
230 expunge when the petitioner for such order failed to obtain the  
231 certificate of eligibility as required by this section or such  
232 order does not otherwise comply with the requirements of this  
233 section.

234 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
235 criminal history record of a minor or an adult which is ordered

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236 expunged by a court of competent jurisdiction pursuant to this  
237 section must be physically destroyed or obliterated by any  
238 criminal justice agency having custody of such record; except  
239 that any criminal history record in the custody of the  
240 department must be retained in all cases. A criminal history  
241 record ordered expunged that is retained by the department is  
242 confidential and exempt from the provisions of s. 119.07(1) and  
243 s. 24(a), Art. I of the State Constitution and not available to  
244 any person or entity except upon order of a court of competent  
245 jurisdiction. A criminal justice agency may retain a notation  
246 indicating compliance with an order to expunge.

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

- 253 1. Is a candidate for employment with a criminal justice  
254 agency;
- 255 2. Is a defendant in a criminal prosecution;
- 256 3. Concurrently or subsequently petitions for relief under  
257 this section, s. 943.0583, or s. 943.059;
- 258 4. Is a candidate for admission to The Florida Bar;
- 259 5. Is seeking to be employed or licensed by or to contract  
260 with the Department of Children and Families, the Division of  
261 Vocational Rehabilitation within the Department of Education,  
262 the Agency for Health Care Administration, the Agency for  
263 Persons with Disabilities, the Department of Health, the  
264 Department of Elderly Affairs, or the Department of Juvenile

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265 Justice or to be employed or used by such contractor or licensee  
266 in a sensitive position having direct contact with children, the  
267 disabled, or the elderly;

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

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

276 8. Is seeking to be appointed as a guardian pursuant to s.  
277 744.3125.

278 (b) Subject to the exceptions in paragraph (a), a person  
279 who has been granted an expunction under this section, former s.  
280 893.14, former s. 901.33, or former s. 943.058 may not be held  
281 under any provision of law of this state to commit perjury or to  
282 be otherwise liable for giving a false statement by reason of  
283 such person's failure to recite or acknowledge an expunged  
284 criminal history record.

285 (c) Information relating to the existence of an expunged  
286 criminal history record which is provided in accordance with  
287 paragraph (a) is confidential and exempt from the provisions of  
288 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
289 except that the department shall disclose the existence of a  
290 criminal history record ordered expunged to the entities set  
291 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their  
292 respective licensing, access authorization, and employment  
293 purposes, and to criminal justice agencies for their respective

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294 criminal justice purposes. It is unlawful for any employee of an  
295 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
296 subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or  
297 subparagraph (a)8. to disclose information relating to the  
298 existence of an expunged criminal history record of a person  
299 seeking employment, access authorization, or licensure with such  
300 entity or contractor, except to the person to whom the criminal  
301 history record relates or to persons having direct  
302 responsibility for employment, access authorization, or  
303 licensure decisions. Any person who violates this paragraph  
304 commits a misdemeanor of the first degree, punishable as  
305 provided in s. 775.082 or s. 775.083.

306 (d)1. Any person or entity who publishes, displays, or in  
307 any way disseminates information or an image of a person whose  
308 criminal history record has been expunged, upon receipt of a  
309 certified copy of an order granting a petition to expunge, shall  
310 remove such information or image without further notice or cost  
311 to the person who is the subject of the petition within 14  
312 calendar days after receipt of the certified copy of the order  
313 of expunction. A person who has had his or her criminal history  
314 record expunged may bring a civil action to enjoin further  
315 publication, display, or dissemination if such criminal history  
316 record is not removed within 14 days after receipt of the  
317 certified copy of the order of expunction. A court may impose a  
318 civil penalty of \$500 per day for noncompliance with an order of  
319 injunction and shall award reasonable attorney fees and court  
320 costs related to the issuance of the order. This paragraph does  
321 not apply to a state, regional, county, or municipal  
322 governmental entity.

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323       2. Any person or entity who publishes, displays, or in any  
324 way disseminates information or an image of a person whose  
325 criminal history record has been expunged, upon receipt of a  
326 certified copy of an order granting a petition to expunge, who  
327 fails to remove such information or image within 14 calendar  
328 days after receipt of the certified copy of the order of  
329 expunction and who has previously been fined for noncompliance  
330 with an order of injunction pursuant to subparagraph 1. commits  
331 a misdemeanor of the second degree, punishable as provided in s.  
332 775.082 or s. 775.083. A person who commits a third or  
333 subsequent violation commits a misdemeanor of the first degree,  
334 punishable as provided in s. 775.082 or s. 775.083.

335       3. If a person is convicted under subparagraph 2., a court  
336 shall order the suspension of any Internet protocol (IP) address  
337 carrying the publication for a period of no less than 1 year  
338 from the date of conviction. As used in this subparagraph, the  
339 term "conviction" means a finding of guilt or the acceptance of  
340 a plea of guilty or nolo contendere, regardless of whether  
341 adjudication is withheld.

342       (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the  
343 eligibility requirements prescribed in paragraph (1)(b) and  
344 subsection (2), the department shall issue a certificate of  
345 eligibility for expunction under this subsection to a person who  
346 is the subject of a criminal history record if that person:

347       (a) Has obtained, and submitted to the department, on a  
348 form provided by the department, a written, certified statement  
349 from the appropriate state attorney or statewide prosecutor  
350 which states whether an information, indictment, or other  
351 charging document was not filed or was dismissed by the state

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352 attorney, or dismissed by the court, because it was found that  
353 the person acted in lawful self-defense pursuant to the  
354 provisions related to justifiable use of force in chapter 776.

355 (b) Each petition to a court to expunge a criminal history  
356 record pursuant to this subsection is complete only when  
357 accompanied by:

358 1. A valid certificate of eligibility for expunction issued  
359 by the department pursuant to this subsection.

360 2. The petitioner's sworn statement attesting that the  
361 petitioner is eligible for such an expunction to the best of his  
362 or her knowledge or belief.

363  
364 Any person who knowingly provides false information on such  
365 sworn statement to the court commits a felony of the third  
366 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
367 775.084.

368 (c) This subsection does not confer any right to the  
369 expunction of a criminal history record, and any request for  
370 expunction of a criminal history record may be denied at the  
371 discretion of the court.

372 (d) Subsections (3) and (4) shall apply to expunction  
373 ordered under this subsection.

374 (e) The department shall, by rule adopted pursuant to  
375 chapter 120, establish procedures pertaining to the application  
376 for and issuance of certificates of eligibility for expunction  
377 under this subsection.

378 (6) STATUTORY REFERENCES.—Any reference to any other  
379 chapter, section, or subdivision of the Florida Statutes in this  
380 section constitutes a general reference under the doctrine of

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381 incorporation by reference.

382 Section 2. This act shall take effect July 1, 2017.