

By Senator Rich

34-921A-06

1 A bill to be entitled
2 An act relating to the sealing of criminal
3 records; amending s. 943.059, F.S.; providing
4 that a prohibition against sealing the criminal
5 history record of certain offenses does not
6 apply if a charging document is not filed, if
7 the case is dismissed, if a nolle prosequere is
8 entered in the case, or if the defendant is
9 acquitted or found not guilty; providing an
10 effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 943.059, Florida Statutes, is
15 amended to read:

16 943.059 Court-ordered sealing of criminal history
17 records.--The courts of this state shall continue to have
18 jurisdiction over their own procedures, including the
19 maintenance, sealing, and correction of judicial records
20 containing criminal history information to the extent the ~~such~~
21 procedures are not inconsistent with the conditions,
22 responsibilities, and duties established by this section. Any
23 court of competent jurisdiction may order a criminal justice
24 agency to seal the criminal history record of a minor or an
25 adult who complies with the requirements of this section. The
26 court shall not order a criminal justice agency to seal a
27 criminal history record until the person seeking to seal a
28 criminal history record has applied for and received a
29 certificate of eligibility for sealing pursuant to subsection
30 ~~(3)(2)~~.

1 (1) PROHIBITION ON SEALING CERTAIN RECORDS.--A criminal
2 history record that relates to a violation of s. 393.135, s.
3 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
4 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.
5 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation
6 enumerated in s. 907.041 may not be sealed, ~~without regard to~~
7 ~~whether adjudication was withheld,~~ if the defendant was found
8 guilty of or pled guilty or nolo contendere to the offense, or
9 if the defendant, as a minor, was found to have committed or
10 pled guilty or nolo contendere to committing the offense as a
11 delinquent act, even if the adjudication was withheld. The
12 prohibition applies only to cases in which the defendant,
13 including a minor, was found guilty of or pled guilty or nolo
14 contendere to the offense. In all other cases involving the
15 offenses enumerated in this subsection, if an indictment,
16 information, or other charging document was not filed or
17 issued, the criminal history record may be sealed. If a
18 charging document was filed or issued in the case, the
19 criminal history record may be sealed if the case was
20 dismissed or nolle prosequi by the state attorney or statewide
21 prosecutor, if the case was dismissed by a court of competent
22 jurisdiction, or if the defendant was acquitted or found not
23 guilty. The court may only order sealing of a criminal history
24 record pertaining to one arrest or one incident of alleged
25 criminal activity, except as provided in this section. The
26 court may, at its sole discretion, order the sealing of a
27 criminal history record pertaining to more than one arrest if
28 the additional arrests directly relate to the original arrest.
29 If the court intends to order the sealing of records
30 pertaining to ~~the such~~ additional arrests, ~~the such~~ intent
31 must be specified in the order. A criminal justice agency may

1 not seal any record pertaining to ~~the~~ such additional arrests
2 if the order to seal does not articulate the intention of the
3 court to seal records pertaining to more than one arrest. This
4 section does not prevent the court from ordering the sealing
5 of only a portion of a criminal history record pertaining to
6 one arrest or one incident of alleged criminal activity.
7 Notwithstanding any law to the contrary, a criminal justice
8 agency may comply with laws, court orders, and official
9 requests of other jurisdictions relating to sealing,
10 correction, or confidential handling of criminal history
11 records or information derived therefrom. This section does
12 not confer any right to the sealing of any criminal history
13 record, and any request for sealing a criminal history record
14 may be denied at the sole discretion of the court.

15 (2)~~(1)~~ PETITION TO SEAL A CRIMINAL HISTORY
16 RECORD.--Each petition to a court to seal a criminal history
17 record is complete only when accompanied by:

18 (a) A certificate of eligibility for sealing issued by
19 the department pursuant to subsection (3)~~(2)~~.

20 (b) The petitioner's sworn statement attesting that
21 the petitioner:

22 1. Has never, prior to the date on which the petition
23 is filed, been adjudicated guilty of a criminal offense or
24 comparable ordinance violation or adjudicated delinquent for
25 committing a felony or a misdemeanor specified in s.
26 943.051(3)(b).

27 2. Has not been adjudicated guilty of or adjudicated
28 delinquent for committing any of the acts stemming from the
29 arrest or alleged criminal activity to which the petition to
30 seal pertains.
31

1 3. Except as otherwise provided in this section, has
2 never secured a prior sealing or expunction of a criminal
3 history record under this section, former s. 893.14, former s.
4 901.33, former s. 943.058, or from any jurisdiction outside
5 the state.

6 4. Is eligible for such a sealing to the best of his
7 or her knowledge or belief and does not have any other
8 petition to seal or any petition to expunge pending before any
9 court.

10
11 Any person who knowingly provides false information on the
12 ~~such~~ sworn statement to the court commits a felony of the
13 third degree, punishable as provided in s. 775.082, s.
14 775.083, or s. 775.084.

15 ~~(3)(2)~~ CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior
16 to petitioning the court to seal a criminal history record, a
17 person seeking to seal a criminal history record shall apply
18 to the department for a certificate of eligibility for
19 sealing. The department shall, by rule adopted pursuant to
20 chapter 120, establish procedures pertaining to the
21 application for and issuance of certificates of eligibility
22 for sealing. The department shall issue a certificate of
23 eligibility for sealing to a person who is the subject of a
24 criminal history record provided that the ~~such~~ person:

25 (a) Has submitted to the department a certified copy
26 of the disposition of the charge to which the petition to seal
27 pertains.

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

31

1 (c) Has never, prior to the date on which the
2 application for a certificate of eligibility is filed, been
3 adjudicated guilty of a criminal offense or comparable
4 ordinance violation or adjudicated delinquent for committing a
5 felony or a misdemeanor specified in s. 943.051(3)(b).

6 (d) Has not been adjudicated guilty of or adjudicated
7 delinquent for committing any of the acts stemming from the
8 arrest or alleged criminal activity to which the petition to
9 seal pertains.

10 (e) Has never secured a prior sealing or expunction of
11 a criminal history record under this section, former s.
12 893.14, former s. 901.33, or former s. 943.058 involving an
13 offense for which the defendant has been found guilty or pled
14 guilty or nolo contendere.

15 (f) Is no longer under court supervision applicable to
16 the disposition of the arrest or alleged criminal activity to
17 which the petition to seal pertains.

18 ~~(4)(3)~~ PROCESSING OF A PETITION OR ORDER TO SEAL.--

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

27 (b) If relief is granted by the court, the clerk of
28 the court shall certify copies of the order to the appropriate
29 state attorney or the statewide prosecutor and to the
30 arresting agency. The arresting agency is responsible for
31 forwarding the order to any other agency to which the

1 | arresting agency disseminated the criminal history record
2 | information to which the order pertains. The department shall
3 | forward the order to seal to the Federal Bureau of
4 | Investigation. The clerk of the court shall certify a copy of
5 | the order to any other agency which the records of the court
6 | reflect has received the criminal history record from the
7 | court.

8 | (c) For an order to seal entered by a court prior to
9 | July 1, 1992, the department shall notify the appropriate
10 | state attorney or statewide prosecutor of any order to seal
11 | which is contrary to law because the person who is the subject
12 | of the record has previously been convicted of a crime or
13 | comparable ordinance violation or has had a prior criminal
14 | history record sealed or expunged. Upon receipt of the ~~such~~
15 | notice, the appropriate state attorney or statewide prosecutor
16 | shall take action, within 60 days, to correct the record and
17 | petition the court to void the order to seal. The department
18 | shall seal the record until such time as the order is voided
19 | by the court.

20 | (d) On or after July 1, 1992, the department or any
21 | other criminal justice agency is not required to act on an
22 | order to seal entered by a court when the ~~such~~ order does not
23 | comply with the requirements of this section. Upon receipt of
24 | ~~such~~ an order, the department must notify the issuing court,
25 | the appropriate state attorney or statewide prosecutor, the
26 | petitioner or the petitioner's attorney, and the arresting
27 | agency of the reason for noncompliance. The appropriate state
28 | attorney or statewide prosecutor shall take action within 60
29 | days to correct the record and petition the court to void the
30 | order. No cause of action, including contempt of court, shall
31 | arise against any criminal justice agency for failure to

1 | comply with an order to seal when the petitioner for the ~~such~~
2 | order failed to obtain the certificate of eligibility as
3 | required by this section or when the ~~such~~ order does not
4 | comply with the requirements of this section.

5 | (e) An order sealing a criminal history record
6 | pursuant to this section does not require that the ~~such~~ record
7 | be surrendered to the court, and the ~~such~~ record shall
8 | continue to be maintained by the department and other criminal
9 | justice agencies.

10 | ~~(5)(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
11 | criminal history record of a minor or an adult which is
12 | ordered sealed by a court of competent jurisdiction pursuant
13 | to this section is confidential and exempt from the provisions
14 | of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
15 | and is available only to the person who is the subject of the
16 | record, to the subject's attorney, to criminal justice
17 | agencies for their respective criminal justice purposes, or to
18 | those entities set forth in subparagraphs (a)1., 4., 5., and
19 | 6. for their respective licensing and employment purposes.

20 | (a) The subject of a criminal history record sealed
21 | under this section or under other provisions of law, including
22 | former s. 893.14, former s. 901.33, and former s. 943.058, may
23 | lawfully deny or fail to acknowledge the arrests covered by
24 | the sealed record, except when the subject of the record:

- 25 | 1. Is a candidate for employment with a criminal
26 | justice agency;
27 | 2. Is a defendant in a criminal prosecution;
28 | 3. Concurrently or subsequently petitions for relief
29 | under this section or s. 943.0585;
30 | 4. Is a candidate for admission to The Florida Bar;
31 |

1 5. Is seeking to be employed or licensed by or to
2 contract with the Department of Children and Family Services
3 or the Department of Juvenile Justice or to be employed or
4 used by the ~~such~~ contractor or licensee in a sensitive
5 position having direct contact with children, the
6 developmentally disabled, the aged, or the elderly as provided
7 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
8 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
9 415.103, s. 916.106(10) and (13), s. 985.407, or chapter 400;
10 or

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

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

23 (c) Information relating to the existence of a sealed
24 criminal record provided in accordance with the provisions of
25 paragraph (a) is confidential and exempt from the provisions
26 of s. 119.07(1) and s. 24(a), Art. I of the State
27 Constitution, except that the department shall disclose the
28 sealed criminal history record to the entities set forth in
29 subparagraphs (a)1., 4., 5., and 6. for their respective
30 licensing and employment purposes. It is unlawful for any
31 employee of an entity set forth in subparagraph (a)1.,

1 | subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
2 | to disclose information relating to the existence of a sealed
3 | criminal history record of a person seeking employment or
4 | licensure with the ~~such~~ entity or contractor, except to the
5 | person to whom the criminal history record relates or to
6 | persons having direct responsibility for employment or
7 | licensure decisions. Any person who violates the provisions of
8 | this paragraph commits a misdemeanor of the first degree,
9 | punishable as provided in s. 775.082 or s. 775.083.

10 | ~~(6)(5)~~ STATUTORY REFERENCES.--Any reference to any
11 | other chapter, section, or subdivision of the Florida Statutes
12 | in this section constitutes a general reference under the
13 | doctrine of incorporation by reference.

14 | Section 2. This act shall take effect upon becoming a
15 | law.

16 | *****
17 | *****

18 | SENATE SUMMARY

19 | Provides that a prohibition against sealing the criminal
20 | history record of certain offenses does not apply if a
21 | charging document is not filed, if the case is dismissed,
22 | if a nolle prosequere is entered in the case, or if the
23 | defendant is acquitted or found not guilty.
24 |
25 |
26 |
27 |
28 |
29 |
30 |
31 |