

1 A bill to be entitled
 2 An act relating to expunging criminal history records;
 3 creating s. 943.0595, F.S.; permitting automatic
 4 expunction of criminal history records in specified
 5 circumstances; providing procedures; providing for effect
 6 of expunction; providing for treatment of certain
 7 statutory cross-references; amending ss. 943.0582,
 8 943.0585, 943.059, 948.08, 948.16, and 985.345, F.S.;
 9 conforming provisions; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 943.0595, Florida Statutes, is created
 14 to read:

15 943.0595 Automatic qualification for expunction of
 16 criminal history record if no finding of guilt.--

17 (1) QUALIFICATION.--

18 (a) Notwithstanding any law dealing generally with the
 19 preservation and destruction of public records, a criminal
 20 history record relating to a person who has not been found
 21 guilty of, or not pled guilty or nolo contendere to, an offense
 22 automatically qualifies for expunction. The record shall be
 23 expunged if:

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

26 2. An indictment, information, or other charging document
 27 was filed or issued in the case and was dismissed or nolle
 28 prosequi by the state attorney or statewide prosecutor;

29 3. Was dismissed by a court of competent jurisdiction; or
 30 4. The person was found not guilty or acquitted by a judge
 31 or jury.

32 (b) If the person was adjudicated guilty of or adjudicated
 33 delinquent for committing any of the acts stemming from the
 34 arrest or alleged criminal activity or delinquent act, the
 35 record does not qualify for automatic expunction.

36 (2) PETITION.--Each petition to a court to expunge a
 37 criminal history record is complete only when accompanied by a
 38 certified copy of the disposition of the offenses sought to be
 39 sealed.

40 (3) PROCESSING OF PETITION.--

41 (a) A certificate of eligibility for expunction from the
 42 department shall not be required under this section.

43 (b) Any court of competent jurisdiction may order a
 44 criminal justice agency to expunge the criminal history record
 45 of a minor or an adult whose record qualifies for automatic
 46 expunction under this section.

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

55 (d) Notwithstanding ss. 943.0585 and 943.059 and any other
 56 provision of law, the court may order expunction of a criminal

HB 1389

2008

57 history record pertaining to more than one arrest or one
58 incident of alleged criminal activity if the person has not been
59 adjudicated guilty of or adjudicated delinquent for committing
60 any of the acts stemming from the arrest or alleged criminal
61 activity or delinquent act to which the petition to expunge
62 pertains.

63 (e) If relief is granted by the court, the clerk of the
64 court shall certify copies of the order to the appropriate state
65 attorney or the statewide prosecutor, to the county, and to the
66 arresting agency. The arresting agency is responsible for
67 forwarding the order to any other agency to which the arresting
68 agency disseminated the criminal history record information to
69 which the order pertains. The department shall forward the order
70 to expunge to the Federal Bureau of Investigation. The clerk of
71 the court shall certify a copy of the order to any other agency
72 that court records indicate has received the criminal history
73 record from the court. The county is responsible for forwarding
74 the order to any agency, organization, or company to which the
75 county disseminated the criminal history information to which
76 the order pertains.

77 (f) The department or any other criminal justice agency is
78 not required to act on an order to expunge entered by a court
79 when such order does not comply with the requirements of this
80 section. Upon receipt of such an order, the department must
81 notify the issuing court, the appropriate state attorney or the
82 statewide prosecutor, the petitioner or the petitioner's
83 attorney, and the arresting agency within 5 business days after
84 determining that the department or the agency cannot comply with

85 the court order. The appropriate state attorney or the statewide
 86 prosecutor shall take action within 60 days to correct the
 87 record and petition the court to void the order. No cause of
 88 action, including contempt of court, shall arise against any
 89 criminal justice agency for failure to comply with an order to
 90 expunge when such order does not comply with the requirements of
 91 this section.

92 (g) An order expunging a criminal history record pursuant
 93 to this section does not require that such record be surrendered
 94 to the court, and such record shall continue to be maintained by
 95 the department and other criminal justice agencies.

96 (4) SECTION NOT EXCLUSIVE.--Expunction granted under this
 97 section does not prevent the person who receives such relief
 98 from petitioning for the expunction or sealing of a criminal
 99 history record as provided for in ss. 943.0585 and 943.059 if
 100 the person is otherwise eligible under those sections.

101 (5) STATUTORY REFERENCES.--Any reference to any other
 102 chapter, section, or subdivision of the Florida Statutes in this
 103 section constitutes a general reference under the doctrine of
 104 incorporation by reference.

105 Section 2. Subsection (6) of section 943.0582, Florida
 106 Statutes, is amended to read:

107 943.0582 Prearrest, postarrest, or teen court diversion
 108 program expunction.--

109 (6) Expunction or sealing granted under this section does
 110 not prevent the minor who receives such relief from petitioning
 111 for the expunction or sealing of a later criminal history record

HB 1389

2008

112 as provided for in ss. 943.0585, ~~and~~ 943.059, and 943.0595 if
113 the minor is otherwise eligible under those sections.

114 Section 3. Paragraph (a) of subsection (4) of section
115 943.0585, Florida Statutes, is amended to read:

116 943.0585 Court-ordered expunction of criminal history
117 records.--The courts of this state have jurisdiction over their
118 own procedures, including the maintenance, expunction, and
119 correction of judicial records containing criminal history
120 information to the extent such procedures are not inconsistent
121 with the conditions, responsibilities, and duties established by
122 this section. Any court of competent jurisdiction may order a
123 criminal justice agency to expunge the criminal history record
124 of a minor or an adult who complies with the requirements of
125 this section. The court shall not order a criminal justice
126 agency to expunge a criminal history record until the person
127 seeking to expunge a criminal history record has applied for and
128 received a certificate of eligibility for expunction pursuant to
129 subsection (2). A criminal history record that relates to a
130 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
131 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
132 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
133 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
134 any violation specified as a predicate offense for registration
135 as a sexual predator pursuant to s. 775.21, without regard to
136 whether that offense alone is sufficient to require such
137 registration, or for registration as a sexual offender pursuant
138 to s. 943.0435, may not be expunged, without regard to whether
139 adjudication was withheld, if the defendant was found guilty of

140 or pled guilty or nolo contendere to the offense, or if the
 141 defendant, as a minor, was found to have committed, or pled
 142 guilty or nolo contendere to committing, the offense as a
 143 delinquent act. The court may only order expunction of a
 144 criminal history record pertaining to one arrest or one incident
 145 of alleged criminal activity, except as provided in this
 146 section. The court may, at its sole discretion, order the
 147 expunction of a criminal history record pertaining to more than
 148 one arrest if the additional arrests directly relate to the
 149 original arrest. If the court intends to order the expunction of
 150 records pertaining to such additional arrests, such intent must
 151 be specified in the order. A criminal justice agency may not
 152 expunge any record pertaining to such additional arrests if the
 153 order to expunge does not articulate the intention of the court
 154 to expunge a record pertaining to more than one arrest. This
 155 section does not prevent the court from ordering the expunction
 156 of only a portion of a criminal history record pertaining to one
 157 arrest or one incident of alleged criminal activity.
 158 Notwithstanding any law to the contrary, a criminal justice
 159 agency may comply with laws, court orders, and official requests
 160 of other jurisdictions relating to expunction, correction, or
 161 confidential handling of criminal history records or information
 162 derived therefrom. This section does not confer any right to the
 163 expunction of any criminal history record, and any request for
 164 expunction of a criminal history record may be denied at the
 165 sole discretion of the court.

166 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
 167 criminal history record of a minor or an adult which is ordered

168 expunged by a court of competent jurisdiction pursuant to this
 169 section must be physically destroyed or obliterated by any
 170 criminal justice agency having custody of such record; except
 171 that any criminal history record in the custody of the
 172 department must be retained in all cases. A criminal history
 173 record ordered expunged that is retained by the department is
 174 confidential and exempt from the provisions of s. 119.07(1) and
 175 s. 24(a), Art. I of the State Constitution and not available to
 176 any person or entity except upon order of a court of competent
 177 jurisdiction. A criminal justice agency may retain a notation
 178 indicating compliance with an order to expunge.

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

- 185 1. Is a candidate for employment with a criminal justice
 186 agency;
- 187 2. Is a defendant in a criminal prosecution;
- 188 3. Concurrently or subsequently petitions for relief under
 189 this section, ~~or~~ s. 943.059, or s. 943.0595;
- 190 4. Is a candidate for admission to The Florida Bar;
- 191 5. Is seeking to be employed or licensed by or to contract
 192 with the Department of Children and Family Services or the
 193 Department of Juvenile Justice or to be employed or used by such
 194 contractor or licensee in a sensitive position having direct
 195 contact with children, the developmentally disabled, the aged,

196 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 197 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 198 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter
 199 400, or chapter 429;

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

205 7. Is seeking authorization from a Florida seaport
 206 identified in s. 311.09 for employment within or access to one
 207 or more of such seaports pursuant to s. 311.12 or s. 311.125.

208 Section 4. Paragraph (a) of subsection (4) of section
 209 943.059, Florida Statutes, is amended to read:

210 943.059 Court-ordered sealing of criminal history
 211 records.--The courts of this state shall continue to have
 212 jurisdiction over their own procedures, including the
 213 maintenance, sealing, and correction of judicial records
 214 containing criminal history information to the extent such
 215 procedures are not inconsistent with the conditions,
 216 responsibilities, and duties established by this section. Any
 217 court of competent jurisdiction may order a criminal justice
 218 agency to seal the criminal history record of a minor or an
 219 adult who complies with the requirements of this section. The
 220 court shall not order a criminal justice agency to seal a
 221 criminal history record until the person seeking to seal a
 222 criminal history record has applied for and received a
 223 certificate of eligibility for sealing pursuant to subsection

224 (2). A criminal history record that relates to a violation of s.
 225 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 226 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 227 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 228 916.1075, a violation enumerated in s. 907.041, or any violation
 229 specified as a predicate offense for registration as a sexual
 230 predator pursuant to s. 775.21, without regard to whether that
 231 offense alone is sufficient to require such registration, or for
 232 registration as a sexual offender pursuant to s. 943.0435, may
 233 not be sealed, without regard to whether adjudication was
 234 withheld, if the defendant was found guilty of or pled guilty or
 235 nolo contendere to the offense, or if the defendant, as a minor,
 236 was found to have committed or pled guilty or nolo contendere to
 237 committing the offense as a delinquent act. The court may only
 238 order sealing of a criminal history record pertaining to one
 239 arrest or one incident of alleged criminal activity, except as
 240 provided in this section. The court may, at its sole discretion,
 241 order the sealing of a criminal history record pertaining to
 242 more than one arrest if the additional arrests directly relate
 243 to the original arrest. If the court intends to order the
 244 sealing of records pertaining to such additional arrests, such
 245 intent must be specified in the order. A criminal justice agency
 246 may not seal any record pertaining to such additional arrests if
 247 the order to seal does not articulate the intention of the court
 248 to seal records pertaining to more than one arrest. This section
 249 does not prevent the court from ordering the sealing of only a
 250 portion of a criminal history record pertaining to one arrest or
 251 one incident of alleged criminal activity. Notwithstanding any

252 law to the contrary, a criminal justice agency may comply with
 253 laws, court orders, and official requests of other jurisdictions
 254 relating to sealing, correction, or confidential handling of
 255 criminal history records or information derived therefrom. This
 256 section does not confer any right to the sealing of any criminal
 257 history record, and any request for sealing a criminal history
 258 record may be denied at the sole discretion of the court.

259 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
 260 history record of a minor or an adult which is ordered sealed by
 261 a court of competent jurisdiction pursuant to this section is
 262 confidential and exempt from the provisions of s. 119.07(1) and
 263 s. 24(a), Art. I of the State Constitution and is available only
 264 to the person who is the subject of the record, to the subject's
 265 attorney, to criminal justice agencies for their respective
 266 criminal justice purposes, which include conducting a criminal
 267 history background check for approval of firearms purchases or
 268 transfers as authorized by state or federal law, or to those
 269 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8.
 270 for their respective licensing, access authorization, and
 271 employment purposes.

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

- 277 1. Is a candidate for employment with a criminal justice
- 278 agency;
- 279 2. Is a defendant in a criminal prosecution;

280 3. Concurrently or subsequently petitions for relief under
 281 this section, ~~or~~ s. 943.0585, or s. 943.0595;

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

283 5. Is seeking to be employed or licensed by or to contract
 284 with the Department of Children and Family Services or the
 285 Department of Juvenile Justice or to be employed or used by such
 286 contractor or licensee in a sensitive position having direct
 287 contact with children, the developmentally disabled, the aged,
 288 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 289 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 290 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.
 291 985.644, chapter 400, or chapter 429;

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

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

301 8. Is seeking authorization from a Florida seaport
 302 identified in s. 311.09 for employment within or access to one
 303 or more of such seaports pursuant to s. 311.12 or s. 311.125.

304 Section 5. Paragraph (b) of subsection (6) of section
 305 948.08, Florida Statutes, is amended to read:

306 948.08 Pretrial intervention program.--

307 (6)

308 (b) While enrolled in a pretrial intervention program
 309 authorized by this subsection, the participant is subject to a
 310 coordinated strategy developed by a drug court team under s.
 311 397.334(3). The coordinated strategy may include a protocol of
 312 sanctions that may be imposed upon the participant for
 313 noncompliance with program rules. The protocol of sanctions may
 314 include, but is not limited to, placement in a substance abuse
 315 treatment program offered by a licensed service provider as
 316 defined in s. 397.311 or in a jail-based treatment program or
 317 serving a period of incarceration within the time limits
 318 established for contempt of court. The coordinated strategy must
 319 be provided in writing to the participant before the participant
 320 agrees to enter into a pretrial treatment-based drug court
 321 program or other pretrial intervention program. Any person whose
 322 charges are dismissed after successful completion of the
 323 treatment-based drug court program, if otherwise eligible, may
 324 have his or her arrest record and plea of nolo contendere to the
 325 dismissed charges expunged under s. 943.0585 or s. 943.0595.

326 Section 6. Paragraph (b) of subsection (1) of section
 327 948.16, Florida Statutes, is amended to read:

328 948.16 Misdemeanor pretrial substance abuse education and
 329 treatment intervention program.--

330 (1)

331 (b) While enrolled in a pretrial intervention program
 332 authorized by this section, the participant is subject to a
 333 coordinated strategy developed by a drug court team under s.
 334 397.334(3). The coordinated strategy may include a protocol of
 335 sanctions that may be imposed upon the participant for

336 noncompliance with program rules. The protocol of sanctions may
337 include, but is not limited to, placement in a substance abuse
338 treatment program offered by a licensed service provider as
339 defined in s. 397.311 or in a jail-based treatment program or
340 serving a period of incarceration within the time limits
341 established for contempt of court. The coordinated strategy must
342 be provided in writing to the participant before the participant
343 agrees to enter into a pretrial treatment-based drug court
344 program or other pretrial intervention program. Any person whose
345 charges are dismissed after successful completion of the
346 treatment-based drug court program, if otherwise eligible, may
347 have his or her arrest record and plea of nolo contendere to the
348 dismissed charges expunged under s. 943.0585 or s. 943.0595.

349 Section 7. Subsection (2) of section 985.345, Florida
350 Statutes, is amended to read:

351 985.345 Delinquency pretrial intervention program.--

352 (2) While enrolled in a delinquency pretrial intervention
353 program authorized by this section, a child is subject to a
354 coordinated strategy developed by a drug court team under s.
355 397.334(3). The coordinated strategy may include a protocol of
356 sanctions that may be imposed upon the child for noncompliance
357 with program rules. The protocol of sanctions may include, but
358 is not limited to, placement in a substance abuse treatment
359 program offered by a licensed service provider as defined in s.
360 397.311 or serving a period of secure detention under this
361 chapter. The coordinated strategy must be provided in writing to
362 the child before the child agrees to enter the pretrial
363 treatment-based drug court program or other pretrial

HB 1389

2008

364 intervention program. Any child whose charges are dismissed
365 after successful completion of the treatment-based drug court
366 program, if otherwise eligible, may have his or her arrest
367 record and plea of nolo contendere to the dismissed charges
368 expunged under s. 943.0585 or s. 943.0595.

369 Section 8. This act shall take effect July 1, 2008.