



571362

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: WD	.	
3/25/2008	.	
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1 The Committee on Criminal Justice (Wilson) recommended the  
 2 following **amendment**:

**Senate Amendment (with title amendment)**

5 Between line(s) 68 and 69,  
6 insert:

8 Section 2. Section 943.0595, Florida Statutes, is created  
9 to read:

10 943.0595 Automatic qualification for expunction of  
11 criminal history record if no finding of guilt.--

12 (1) QUALIFICATION.--

13 (a) Notwithstanding any law dealing generally with the  
14 preservation and destruction of public records, a criminal  
15 history record relating to a person who has not been found



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16 guilty of, or not pled guilty or nolo contendere to, an offense  
17 automatically qualifies for expunction. The record shall be  
18 expunged if:

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

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

24 3. An indictment was dismissed by a court of competent  
25 jurisdiction; or

26 4. The person was found not guilty or acquitted by a judge  
27 or jury.

28 (b) If the person was adjudicated guilty of or adjudicated  
29 delinquent for committing any of the acts stemming from the  
30 arrest or alleged criminal activity or delinquent act, the  
31 record does not qualify for automatic expunction.

32 (2) PETITION.--Each petition to a court to expunge a  
33 criminal history record is complete only when accompanied by a  
34 certified copy of the disposition of the offenses sought to be  
35 sealed.

36 (3) PROCESSING OF PETITION.--

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

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

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

51        (d) Notwithstanding ss. 943.0585 and 943.059 and any other  
52 provision of law, the court may order expunction of a criminal  
53 history record pertaining to more than one arrest or one  
54 incident of alleged criminal activity if the person has not been  
55 adjudicated guilty of or adjudicated delinquent for committing  
56 any of the acts stemming from the arrest or alleged criminal  
57 activity or delinquent act to which the petition to expunge  
58 pertains.

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

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71 county disseminated the criminal history information to which  
72 the order pertains.

73 (f) The department or any other criminal justice agency is  
74 not required to act on an order to expunge entered by a court  
75 when such order does not comply with the requirements of this  
76 section. Upon receipt of such an order, the department must  
77 notify the issuing court, the appropriate state attorney or the  
78 statewide prosecutor, the petitioner or the petitioner's  
79 attorney, and the arresting agency within 5 business days after  
80 determining that the department or the agency cannot comply with  
81 the court order. The appropriate state attorney or the statewide  
82 prosecutor shall take action within 60 days to correct the  
83 record and petition the court to void the order. No cause of  
84 action, including contempt of court, shall arise against any  
85 criminal justice agency for failure to comply with an order to  
86 expunge when such order does not comply with the requirements of  
87 this section.

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

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

97 (5) STATUTORY REFERENCES.--Any reference to any other  
98 chapter, section, or subdivision of the Florida Statutes in this

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99 section constitutes a general reference under the doctrine of  
100 incorporation by reference.

101 Section 3. Subsection (6) of section 943.0582, Florida  
102 Statutes, is amended to read:

103 943.0582 Prearrest, postarrest, or teen court diversion  
104 program expunction.--

105 (6) Expunction or sealing granted under this section does  
106 not prevent the minor who receives such relief from petitioning  
107 for the expunction or sealing of a later criminal history record  
108 as provided for in ss. 943.0585, ~~and~~ 943.059, and 943.0595 if  
109 the minor is otherwise eligible under those sections.

110 Section 4. Paragraph (a) of subsection (4) of section  
111 943.0585, Florida Statutes, is amended to read:

112 943.0585 Court-ordered expunction of criminal history  
113 records.--The courts of this state have jurisdiction over their  
114 own procedures, including the maintenance, expunction, and  
115 correction of judicial records containing criminal history  
116 information to the extent such procedures are not inconsistent  
117 with the conditions, responsibilities, and duties established by  
118 this section. Any court of competent jurisdiction may order a  
119 criminal justice agency to expunge the criminal history record  
120 of a minor or an adult who complies with the requirements of  
121 this section. The court shall not order a criminal justice  
122 agency to expunge a criminal history record until the person  
123 seeking to expunge a criminal history record has applied for and  
124 received a certificate of eligibility for expunction pursuant to  
125 subsection (2). A criminal history record that relates to a  
126 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,

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127 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
128 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
129 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
130 any violation specified as a predicate offense for registration  
131 as a sexual predator pursuant to s. 775.21, without regard to  
132 whether that offense alone is sufficient to require such  
133 registration, or for registration as a sexual offender pursuant  
134 to s. 943.0435, may not be expunged, without regard to whether  
135 adjudication was withheld, if the defendant was found guilty of  
136 or pled guilty or nolo contendere to the offense, or if the  
137 defendant, as a minor, was found to have committed, or pled  
138 guilty or nolo contendere to committing, the offense as a  
139 delinquent act. The court may only order expunction of a  
140 criminal history record pertaining to one arrest or one incident  
141 of alleged criminal activity, except as provided in this  
142 section. The court may, at its sole discretion, order the  
143 expunction of a criminal history record pertaining to more than  
144 one arrest if the additional arrests directly relate to the  
145 original arrest. If the court intends to order the expunction of  
146 records pertaining to such additional arrests, such intent must  
147 be specified in the order. A criminal justice agency may not  
148 expunge any record pertaining to such additional arrests if the  
149 order to expunge does not articulate the intention of the court  
150 to expunge a record pertaining to more than one arrest. This  
151 section does not prevent the court from ordering the expunction  
152 of only a portion of a criminal history record pertaining to one  
153 arrest or one incident of alleged criminal activity.  
154 Notwithstanding any law to the contrary, a criminal justice

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155 agency may comply with laws, court orders, and official requests  
156 of other jurisdictions relating to expunction, correction, or  
157 confidential handling of criminal history records or information  
158 derived therefrom. This section does not confer any right to the  
159 expunction of any criminal history record, and any request for  
160 expunction of a criminal history record may be denied at the  
161 sole discretion of the court.

162 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
163 criminal history record of a minor or an adult which is ordered  
164 expunged by a court of competent jurisdiction pursuant to this  
165 section must be physically destroyed or obliterated by any  
166 criminal justice agency having custody of such record; except  
167 that any criminal history record in the custody of the  
168 department must be retained in all cases. A criminal history  
169 record ordered expunged that is retained by the department is  
170 confidential and exempt from the provisions of s. 119.07(1) and  
171 s. 24(a), Art. I of the State Constitution and not available to  
172 any person or entity except upon order of a court of competent  
173 jurisdiction. A criminal justice agency may retain a notation  
174 indicating compliance with an order to expunge.

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

181 1. Is a candidate for employment with a criminal justice  
182 agency;

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- 183           2. Is a defendant in a criminal prosecution;
- 184           3. Concurrently or subsequently petitions for relief under  
185 this section, ~~or~~ s. 943.059, or s. 943.0595;
- 186           4. Is a candidate for admission to The Florida Bar;
- 187           5. Is seeking to be employed or licensed by or to contract  
188 with the Department of Children and Family Services or the  
189 Department of Juvenile Justice or to be employed or used by such  
190 contractor or licensee in a sensitive position having direct  
191 contact with children, the developmentally disabled, the aged,  
192 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
193 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
194 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter  
195 400, or chapter 429;
- 196           6. Is seeking to be employed or licensed by the Department  
197 of Education, any district school board, any university  
198 laboratory school, any charter school, any private or parochial  
199 school, or any local governmental entity that licenses child  
200 care facilities; or
- 201           7. Is seeking authorization from a Florida seaport  
202 identified in s. 311.09 for employment within or access to one  
203 or more of such seaports pursuant to s. 311.12 or s. 311.125.
- 204           Section 5. Paragraph (a) of subsection (4) of section  
205 943.059, Florida Statutes, is amended to read:
- 206           943.059 Court-ordered sealing of criminal history  
207 records.--The courts of this state shall continue to have  
208 jurisdiction over their own procedures, including the  
209 maintenance, sealing, and correction of judicial records  
210 containing criminal history information to the extent such



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211 procedures are not inconsistent with the conditions,  
212 responsibilities, and duties established by this section. Any  
213 court of competent jurisdiction may order a criminal justice  
214 agency to seal the criminal history record of a minor or an  
215 adult who complies with the requirements of this section. The  
216 court shall not order a criminal justice agency to seal a  
217 criminal history record until the person seeking to seal a  
218 criminal history record has applied for and received a  
219 certificate of eligibility for sealing pursuant to subsection  
220 (2). A criminal history record that relates to a violation of s.  
221 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
222 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
223 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
224 916.1075, a violation enumerated in s. 907.041, or any violation  
225 specified as a predicate offense for registration as a sexual  
226 predator pursuant to s. 775.21, without regard to whether that  
227 offense alone is sufficient to require such registration, or for  
228 registration as a sexual offender pursuant to s. 943.0435, may  
229 not be sealed, without regard to whether adjudication was  
230 withheld, if the defendant was found guilty of or pled guilty or  
231 nolo contendere to the offense, or if the defendant, as a minor,  
232 was found to have committed or pled guilty or nolo contendere to  
233 committing the offense as a delinquent act. The court may only  
234 order sealing of a criminal history record pertaining to one  
235 arrest or one incident of alleged criminal activity, except as  
236 provided in this section. The court may, at its sole discretion,  
237 order the sealing of a criminal history record pertaining to  
238 more than one arrest if the additional arrests directly relate

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239 to the original arrest. If the court intends to order the  
240 sealing of records pertaining to such additional arrests, such  
241 intent must be specified in the order. A criminal justice agency  
242 may not seal any record pertaining to such additional arrests if  
243 the order to seal does not articulate the intention of the court  
244 to seal records pertaining to more than one arrest. This section  
245 does not prevent the court from ordering the sealing of only a  
246 portion of a criminal history record pertaining to one arrest or  
247 one incident of alleged criminal activity. Notwithstanding any  
248 law to the contrary, a criminal justice agency may comply with  
249 laws, court orders, and official requests of other jurisdictions  
250 relating to sealing, correction, or confidential handling of  
251 criminal history records or information derived therefrom. This  
252 section does not confer any right to the sealing of any criminal  
253 history record, and any request for sealing a criminal history  
254 record may be denied at the sole discretion of the court.

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



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266 for their respective licensing, access authorization, and  
267 employment purposes.

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

273 1. Is a candidate for employment with a criminal justice  
274 agency;

275 2. Is a defendant in a criminal prosecution;

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

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

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

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

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293           7. Is attempting to purchase a firearm from a licensed  
294 importer, licensed manufacturer, or licensed dealer and is  
295 subject to a criminal history background check under state or  
296 federal law; or

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

300           Section 6. Paragraph (b) of subsection (6) of section  
301 948.08, Florida Statutes, is amended to read:

302           948.08 Pretrial intervention program.--

303           (6)

304           (b) While enrolled in a pretrial intervention program  
305 authorized by this subsection, the participant is subject to a  
306 coordinated strategy developed by a drug court team under s.  
307 397.334(3). The coordinated strategy may include a protocol of  
308 sanctions that may be imposed upon the participant for  
309 noncompliance with program rules. The protocol of sanctions may  
310 include, but is not limited to, placement in a substance abuse  
311 treatment program offered by a licensed service provider as  
312 defined in s. 397.311 or in a jail-based treatment program or  
313 serving a period of incarceration within the time limits  
314 established for contempt of court. The coordinated strategy must  
315 be provided in writing to the participant before the participant  
316 agrees to enter into a pretrial treatment-based drug court  
317 program or other pretrial intervention program. Any person whose  
318 charges are dismissed after successful completion of the  
319 treatment-based drug court program, if otherwise eligible, may

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320 have his or her arrest record and plea of nolo contendere to the  
321 dismissed charges expunged under s. 943.0585 or s. 943.0595.

322 Section 7. Paragraph (b) of subsection (1) of section  
323 948.16, Florida Statutes, is amended to read:

324 948.16 Misdemeanor pretrial substance abuse education and  
325 treatment intervention program.--

326 (1)

327 (b) While enrolled in a pretrial intervention program  
328 authorized by this section, the participant is subject to a  
329 coordinated strategy developed by a drug court team under s.  
330 397.334(3). The coordinated strategy may include a protocol of  
331 sanctions that may be imposed upon the participant for  
332 noncompliance with program rules. The protocol of sanctions may  
333 include, but is not limited to, placement in a substance abuse  
334 treatment program offered by a licensed service provider as  
335 defined in s. 397.311 or in a jail-based treatment program or  
336 serving a period of incarceration within the time limits  
337 established for contempt of court. The coordinated strategy must  
338 be provided in writing to the participant before the participant  
339 agrees to enter into a pretrial treatment-based drug court  
340 program or other pretrial intervention program. Any person whose  
341 charges are dismissed after successful completion of the  
342 treatment-based drug court program, if otherwise eligible, may  
343 have his or her arrest record and plea of nolo contendere to the  
344 dismissed charges expunged under s. 943.0585 or s. 943.0595.

345 Section 8. Subsection (2) of section 985.345, Florida  
346 Statutes, is amended to read:

347 985.345 Delinquency pretrial intervention program.--



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348 (2) While enrolled in a delinquency pretrial intervention  
 349 program authorized by this section, a child is subject to a  
 350 coordinated strategy developed by a drug court team under s.  
 351 397.334(3). The coordinated strategy may include a protocol of  
 352 sanctions that may be imposed upon the child for noncompliance  
 353 with program rules. The protocol of sanctions may include, but  
 354 is not limited to, placement in a substance abuse treatment  
 355 program offered by a licensed service provider as defined in s.  
 356 397.311 or serving a period of secure detention under this  
 357 chapter. The coordinated strategy must be provided in writing to  
 358 the child before the child agrees to enter the pretrial  
 359 treatment-based drug court program or other pretrial  
 360 intervention program. Any child whose charges are dismissed  
 361 after successful completion of the treatment-based drug court  
 362 program, if otherwise eligible, may have his or her arrest  
 363 record and plea of nolo contendere to the dismissed charges  
 364 expunged under s. 943.0585 or s. 943.0595.

365  
 366 ===== T I T L E A M E N D M E N T =====

367 And the title is amended as follows:

368 Delete line(s) 2-11

369 and insert:

370  
 371 An act relating to criminal justice; amending s. 112.011,  
 372 F.S.; providing that a person may not be disqualified from  
 373 receiving a license, permit, or certificate or from  
 374 obtaining public employment on the grounds that the  
 375 person's civil rights have not been restored; providing

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376 | that a person is not required to secure the restoration of  
377 | his or her civil rights or prove that his or her civil  
378 | rights have been restored in order to receive a license,  
379 | permit, or certificate or to obtain public  
380 | employment; creating s. 943.0595, F.S.; permitting  
381 | automatic expunction of criminal history records in  
382 | specified circumstances; providing procedures; providing  
383 | for effect of expunction; providing for treatment of  
384 | certain statutory cross-references; amending ss. 943.0582,  
385 | 943.0585, 943.059, 948.08, 948.16, and 985.345, F.S.;  
386 | conforming provisions; providing an effective date.