

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, 961.06, and 985.345,  
 9       F.S.; 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

HB 575

2009

28 prosecui by the state attorney or statewide prosecutor or was  
29 dismissed by a court of competent jurisdiction; or

30 3. 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.

HB 575

2009

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

HB 575

2009

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

HB 575

2009

111 for the expunction or sealing of a later criminal history record  
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

HB 575

2009

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.

HB 575

2009

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, the Agency  
193 for Health Care Administration, the Agency for Persons with

194 Disabilities, or the Department of Juvenile Justice or to be  
 195 employed or used by such contractor or licensee in a sensitive  
 196 position having direct contact with children, the  
 197 developmentally disabled, the aged, or the elderly as provided  
 198 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
 199 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),  
 200 chapter 916, s. 985.644, chapter 400, or chapter 429;

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

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

209 Section 4. Paragraph (a) of subsection (4) of section  
 210 943.059, Florida Statutes, is amended to read:

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



HB 575

2009

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

HB 575

2009

250 does not prevent the court from ordering the sealing of only a  
251 portion of a criminal history record pertaining to one arrest or  
252 one incident of alleged criminal activity. Notwithstanding any  
253 law to the contrary, a criminal justice agency may comply with  
254 laws, court orders, and official requests of other jurisdictions  
255 relating to sealing, correction, or confidential handling of  
256 criminal history records or information derived therefrom. This  
257 section does not confer any right to the sealing of any criminal  
258 history record, and any request for sealing a criminal history  
259 record may be denied at the sole discretion of the court.

260 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
261 history record of a minor or an adult which is ordered sealed by  
262 a court of competent jurisdiction pursuant to this section is  
263 confidential and exempt from the provisions of s. 119.07(1) and  
264 s. 24(a), Art. I of the State Constitution and is available only  
265 to the person who is the subject of the record, to the subject's  
266 attorney, to criminal justice agencies for their respective  
267 criminal justice purposes, which include conducting a criminal  
268 history background check for approval of firearms purchases or  
269 transfers as authorized by state or federal law, to judges in  
270 the state courts system for the purpose of assisting them in  
271 their case-related decisionmaking responsibilities, as set forth  
272 in s. 943.053(5), or to those entities set forth in  
273 subparagraphs (a)1., 4., 5., 6., and 8. for their respective  
274 licensing, access authorization, and employment purposes.

275 (a) The subject of a criminal history record sealed under  
276 this section or under other provisions of law, including former  
277 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully

278 deny or fail to acknowledge the arrests covered by the sealed  
 279 record, except when the subject of the record:

- 280 1. Is a candidate for employment with a criminal justice  
 281 agency;
- 282 2. Is a defendant in a criminal prosecution;
- 283 3. Concurrently or subsequently petitions for relief under  
 284 this section, ~~or~~ s. 943.0585, or s. 943.0595;
- 285 4. Is a candidate for admission to The Florida Bar;
- 286 5. Is seeking to be employed or licensed by or to contract  
 287 with the Department of Children and Family Services, the Agency  
 288 for Health Care Administration, the Agency for Persons with  
 289 Disabilities, or the Department of Juvenile Justice or to be  
 290 employed or used by such contractor or licensee in a sensitive  
 291 position having direct contact with children, the  
 292 developmentally disabled, the aged, or the elderly as provided  
 293 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
 294 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
 295 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;
- 296 6. Is seeking to be employed or licensed by the Department  
 297 of Education, any district school board, any university  
 298 laboratory school, any charter school, any private or parochial  
 299 school, or any local governmental entity that licenses child  
 300 care facilities;
- 301 7. Is attempting to purchase a firearm from a licensed  
 302 importer, licensed manufacturer, or licensed dealer and is  
 303 subject to a criminal history background check under state or  
 304 federal law; or

HB 575

2009

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

308 Section 5. Paragraph (b) of subsection (6) of section  
309 948.08, Florida Statutes, is amended to read:

310 948.08 Pretrial intervention program.--

311 (6)

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

330 Section 6. Paragraph (b) of subsection (1) of section  
331 948.16, Florida Statutes, is amended to read:

332 948.16 Misdemeanor pretrial substance abuse education and  
 333 treatment intervention program.--

334 (1)

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

353 Section 7. Paragraph (e) of subsection (1) of section  
 354 961.06, Florida Statutes, is amended to read:

355 961.06 Compensation for wrongful incarceration.--

356 (1) Except as otherwise provided in this act and subject  
 357 to the limitations and procedures prescribed in this section, a  
 358 person who is found to be entitled to compensation under the  
 359 provisions of this act is entitled to:

HB 575

2009

360 (e) Notwithstanding any provision to the contrary in s.  
361 943.0585 or s. 943.0595, immediate administrative expunction of  
362 the person's criminal record resulting from his or her wrongful  
363 arrest, wrongful conviction, and wrongful incarceration. The  
364 Department of Legal Affairs and the Department of Law  
365 Enforcement shall, upon a determination that a claimant is  
366 entitled to compensation, immediately take all action necessary  
367 to administratively expunge the claimant's criminal record  
368 arising from his or her wrongful arrest, wrongful conviction,  
369 and wrongful incarceration. All fees for this process shall be  
370 waived.

371  
372 The total compensation awarded under paragraphs (a), (c), and  
373 (d) may not exceed \$2 million. No further award for attorney's  
374 fees, lobbying fees, costs, or other similar expenses shall be  
375 made by the state.

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

378 985.345 Delinquency pretrial intervention program.--

379 (2) While enrolled in a delinquency pretrial intervention  
380 program authorized by this section, a child is subject to a  
381 coordinated strategy developed by a drug court team under s.  
382 397.334(3). The coordinated strategy may include a protocol of  
383 sanctions that may be imposed upon the child for noncompliance  
384 with program rules. The protocol of sanctions may include, but  
385 is not limited to, placement in a substance abuse treatment  
386 program offered by a licensed service provider as defined in s.  
387 397.311 or serving a period of secure detention under this

HB 575

2009

388 | chapter. The coordinated strategy must be provided in writing to  
389 | the child before the child agrees to enter the pretrial  
390 | treatment-based drug court program or other pretrial  
391 | intervention program. Any child whose charges are dismissed  
392 | after successful completion of the treatment-based drug court  
393 | program, if otherwise eligible, may have his or her arrest  
394 | record and plea of nolo contendere to the dismissed charges  
395 | expunged under s. 943.0585 or s. 943.0595.

396 |       Section 9. This act shall take effect July 1, 2009.