

By Senator Smith

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1 A bill to be entitled
 2 An act relating to expunging criminal history records;
 3 creating s. 943.0595, F.S.; providing for the
 4 automatic expunction of criminal history records in
 5 specified circumstances; providing procedures to
 6 expunge a criminal history record; providing for the
 7 effect of expunction; providing that expunction
 8 granted under this section does not prevent a person
 9 who receives such relief from petitioning for the
 10 expunction or sealing of a criminal history record
 11 under other provisions of law; providing for treatment
 12 of certain statutory cross-references; amending ss.
 13 943.0582, 943.0585, 943.059, 948.08, 948.16, 961.06,
 14 and 985.345, F.S.; conforming provisions to changes
 15 made by the act; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 943.0595, Florida Statutes, is created
 20 to read:

21 943.0595 Automatic qualification for expunction of criminal
 22 history record if no finding of guilt.—

23 (1) QUALIFICATION.—

24 (a) Notwithstanding any law dealing generally with the
 25 preservation and destruction of public records, a criminal
 26 history record relating to a person who has not been found
 27 guilty of, or not pled guilty or nolo contendere to, an offense
 28 automatically qualifies for expunction. The record must be
 29 expunged if:

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

32 2. An indictment, information, or other charging document
33 was filed or issued in the case and was dismissed or nolle
34 prosequi by the state attorney or statewide prosecutor or was
35 dismissed by a court of competent jurisdiction; or

36 3. The person was found not guilty or acquitted by a judge
37 or jury.

38 (b) If the person was adjudicated guilty of or adjudicated
39 delinquent for committing any of the acts stemming from the
40 arrest or alleged criminal activity or delinquent act, the
41 record does not qualify for automatic expunction.

42 (2) PETITION.—Each petition to a court to expunge a
43 criminal history record is complete only when accompanied by a
44 certified copy of the disposition of the offenses sought to be
45 sealed.

46 (3) PROCESSING OF PETITION.—

47 (a) A certificate of eligibility for expunction from the
48 department may not be required under this section.

49 (b) A court of competent jurisdiction may order a criminal
50 justice agency to expunge the criminal history record of a minor
51 or an adult whose record qualifies for automatic expunction
52 under this section.

53 (c) In a judicial proceeding under this section, a copy of
54 the completed petition to expunge shall be served upon the
55 appropriate state attorney or the statewide prosecutor and upon
56 the arresting agency; however, it is not necessary to make any
57 agency other than the state a party. The appropriate state
58 attorney or the statewide prosecutor and the arresting agency

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59 may respond to the court regarding the completed petition to
60 expunge.

61 (d) Notwithstanding ss. 943.0585 and 943.059 and any other
62 law, the court may order expunction of a criminal history record
63 pertaining to more than one arrest or one incident of alleged
64 criminal activity if the person has not been adjudicated guilty
65 of or adjudicated delinquent for committing any of the acts
66 stemming from the arrest or alleged criminal activity or
67 delinquent act to which the petition to expunge pertains.

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

82 (f) The department or any other criminal justice agency is
83 not required to act on an order to expunge entered by a court
84 when the order does not comply with the requirements of this
85 section. Upon receipt of such an order, the department must
86 notify the issuing court, the appropriate state attorney or the
87 statewide prosecutor, the petitioner or the petitioner's

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88 attorney, and the arresting agency within 5 business days after
89 determining that the department or the agency cannot comply with
90 the court order. The appropriate state attorney or the statewide
91 prosecutor shall take action within 60 days to correct the
92 record and petition the court to void the order. A cause of
93 action, including contempt of court, may not arise against any
94 criminal justice agency for failing to comply with an order to
95 expunge when the order does not comply with the requirements of
96 this section.

97 (g) An order expunging a criminal history record pursuant
98 to this section does not require that the record be surrendered
99 to the court and the record shall continue to be maintained by
100 the department and other criminal justice agencies.

101 (4) SECTION NOT EXCLUSIVE.—Expunction granted under this
102 section does not prevent the person who receives such relief
103 from petitioning for the expunction or sealing of a criminal
104 history record as provided for in ss. 943.0585 and 943.059 if
105 the person is otherwise eligible under those sections.

106 (5) STATUTORY REFERENCES.—Any reference to any other
107 chapter, section, or subdivision of the Florida Statutes in this
108 section constitutes a general reference under the doctrine of
109 incorporation by reference.

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

112 943.0582 Prearrest, postarrest, or teen court diversion
113 program expunction.—

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

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

119 Section 3. Paragraph (a) of subsection (4) of section
120 943.0585, Florida Statutes, is amended to read:

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

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146 defendant, as a minor, was found to have committed, or pled
147 guilty or nolo contendere to committing, the offense as a
148 delinquent act. The court may only order expunction of a
149 criminal history record pertaining to one arrest or one incident
150 of alleged criminal activity, except as provided in this
151 section. The court may, at its sole discretion, order the
152 expunction of a criminal history record pertaining to more than
153 one arrest if the additional arrests directly relate to the
154 original arrest. If the court intends to order the expunction of
155 records pertaining to such additional arrests, such intent must
156 be specified in the order. A criminal justice agency may not
157 expunge any record pertaining to such additional arrests if the
158 order to expunge does not articulate the intention of the court
159 to expunge a record pertaining to more than one arrest. This
160 section does not prevent the court from ordering the expunction
161 of only a portion of a criminal history record pertaining to one
162 arrest or one incident of alleged criminal activity.

163 Notwithstanding any law to the contrary, a criminal justice
164 agency may comply with laws, court orders, and official requests
165 of other jurisdictions relating to expunction, correction, or
166 confidential handling of criminal history records or information
167 derived therefrom. This section does not confer any right to the
168 expunction of any criminal history record, and any request for
169 expunction of a criminal history record may be denied at the
170 sole discretion of the court.

171 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
172 criminal history record of a minor or an adult which is ordered
173 expunged by a court of competent jurisdiction pursuant to this
174 section must be physically destroyed or obliterated by any

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175 criminal justice agency having custody of such record; except
176 that any criminal history record in the custody of the
177 department must be retained in all cases. A criminal history
178 record ordered expunged that is retained by the department is
179 confidential and exempt from the provisions of s. 119.07(1) and
180 s. 24(a), Art. I of the State Constitution and not available to
181 any person or entity except upon order of a court of competent
182 jurisdiction. A criminal justice agency may retain a notation
183 indicating compliance with an order to expunge.

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

- 190 1. Is a candidate for employment with a criminal justice
191 agency;
- 192 2. Is a defendant in a criminal prosecution;
- 193 3. Concurrently or subsequently petitions for relief under
194 this section, ~~or~~ s. 943.059, or s. 943.0595;
- 195 4. Is a candidate for admission to The Florida Bar;
- 196 5. Is seeking to be employed or licensed by or to contract
197 with the Department of Children and Family Services, the Agency
198 for Health Care Administration, the Agency for Persons with
199 Disabilities, or the Department of Juvenile Justice or to be
200 employed or used by such contractor or licensee in a sensitive
201 position having direct contact with children, the
202 developmentally disabled, the aged, or the elderly as provided
203 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.

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204 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),
205 chapter 916, s. 985.644, chapter 400, or chapter 429;

206 6. Is seeking to be employed or licensed by the Department
207 of Education, any district school board, any university
208 laboratory school, any charter school, any private or parochial
209 school, or any local governmental entity that licenses child
210 care facilities; or

211 7. Is seeking authorization from a seaport listed in s.
212 311.09 for employment within or access to one or more of such
213 seaports pursuant to s. 311.12.

214 Section 4. Paragraph (a) of subsection (4) of section
215 943.059, Florida Statutes, is amended to read:

216 943.059 Court-ordered sealing of criminal history records.—
217 The courts of this state shall continue to have jurisdiction
218 over their own procedures, including the maintenance, sealing,
219 and correction of judicial records containing criminal history
220 information to the extent such procedures are not inconsistent
221 with the conditions, responsibilities, and duties established by
222 this section. Any court of competent jurisdiction may order a
223 criminal justice agency to seal the criminal history record of a
224 minor or an adult who complies with the requirements of this
225 section. The court shall not order a criminal justice agency to
226 seal a criminal history record until the person seeking to seal
227 a criminal history record has applied for and received a
228 certificate of eligibility for sealing pursuant to subsection
229 (2). A criminal history record that relates to a violation of s.
230 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
231 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
232 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.

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233 916.1075, a violation enumerated in s. 907.041, or any violation
234 specified as a predicate offense for registration as a sexual
235 predator pursuant to s. 775.21, without regard to whether that
236 offense alone is sufficient to require such registration, or for
237 registration as a sexual offender pursuant to s. 943.0435, may
238 not be sealed, without regard to whether adjudication was
239 withheld, if the defendant was found guilty of or pled guilty or
240 nolo contendere to the offense, or if the defendant, as a minor,
241 was found to have committed or pled guilty or nolo contendere to
242 committing the offense as a delinquent act. The court may only
243 order sealing of a criminal history record pertaining to one
244 arrest or one incident of alleged criminal activity, except as
245 provided in this section. The court may, at its sole discretion,
246 order the sealing of a criminal history record pertaining to
247 more than one arrest if the additional arrests directly relate
248 to the original arrest. If the court intends to order the
249 sealing of records pertaining to such additional arrests, such
250 intent must be specified in the order. A criminal justice agency
251 may not seal any record pertaining to such additional arrests if
252 the order to seal does not articulate the intention of the court
253 to seal records pertaining to more than one arrest. This section
254 does not prevent the court from ordering the sealing of only a
255 portion of a criminal history record pertaining to one arrest or
256 one incident of alleged criminal activity. Notwithstanding any
257 law to the contrary, a criminal justice agency may comply with
258 laws, court orders, and official requests of other jurisdictions
259 relating to sealing, correction, or confidential handling of
260 criminal history records or information derived therefrom. This
261 section does not confer any right to the sealing of any criminal

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262 history record, and any request for sealing a criminal history
263 record may be denied at the sole discretion of the court.

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

279 (a) The subject of a criminal history record sealed under
280 this section or under other provisions of law, including former
281 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
282 deny or fail to acknowledge the arrests covered by the sealed
283 record, except when the subject of the record:

- 284 1. Is a candidate for employment with a criminal justice
285 agency;
- 286 2. Is a defendant in a criminal prosecution;
- 287 3. Concurrently or subsequently petitions for relief under
288 this section, ~~or~~ s. 943.0585, or s. 943.0595;
- 289 4. Is a candidate for admission to The Florida Bar;
- 290 5. Is seeking to be employed or licensed by or to contract

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291 with the Department of Children and Family Services, the Agency
292 for Health Care Administration, the Agency for Persons with
293 Disabilities, or the Department of Juvenile Justice or to be
294 employed or used by such contractor or licensee in a sensitive
295 position having direct contact with children, the
296 developmentally disabled, the aged, or the elderly as provided
297 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
298 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
299 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

300 6. Is seeking to be employed or licensed by the Department
301 of Education, any district school board, any university
302 laboratory school, any charter school, any private or parochial
303 school, or any local governmental entity that licenses child
304 care facilities;

305 7. Is attempting to purchase a firearm from a licensed
306 importer, licensed manufacturer, or licensed dealer and is
307 subject to a criminal history check under state or federal law;
308 or

309 8. Is seeking authorization from a Florida seaport
310 identified in s. 311.09 for employment within or access to one
311 or more of such seaports pursuant to s. 311.12.

312 Section 5. Paragraph (b) of subsection (6) of section
313 948.08, Florida Statutes, is amended to read:

314 948.08 Pretrial intervention program.—

315 (6)

316 (b) While enrolled in a pretrial intervention program
317 authorized by this subsection, the participant is subject to a
318 coordinated strategy developed by a drug court team under s.
319 397.334(4). The coordinated strategy may include a protocol of

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

334 Section 6. Paragraph (b) of subsection (1) of section
335 948.16, Florida Statutes, is amended to read:

336 948.16 Misdemeanor pretrial substance abuse education and
337 treatment intervention program.—

338 (1)

339 (b) While enrolled in a pretrial intervention program
340 authorized by this section, the participant is subject to a
341 coordinated strategy developed by a drug court team under s.
342 397.334(4). The coordinated strategy may include a protocol of
343 sanctions that may be imposed upon the participant for
344 noncompliance with program rules. The protocol of sanctions may
345 include, but is not limited to, placement in a substance abuse
346 treatment program offered by a licensed service provider as
347 defined in s. 397.311 or in a jail-based treatment program or
348 serving a period of incarceration within the time limits

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349 established for contempt of court. The coordinated strategy must
350 be provided in writing to the participant before the participant
351 agrees to enter into a pretrial treatment-based drug court
352 program or other pretrial intervention program. Any person whose
353 charges are dismissed after successful completion of the
354 treatment-based drug court program, if otherwise eligible, may
355 have his or her arrest record and plea of nolo contendere to the
356 dismissed charges expunged under s. 943.0585 or s. 943.0595.

357 Section 7. Subsection (1) of section 961.06, Florida
358 Statutes, is amended to read:

359 961.06 Compensation for wrongful incarceration.—

360 (1) Except as otherwise provided in this act and subject to
361 the limitations and procedures prescribed in this section, a
362 person who is found to be entitled to compensation under the
363 provisions of this act is entitled to:

364 (a) Monetary compensation for wrongful incarceration, which
365 shall be calculated at a rate of \$50,000 for each year of
366 wrongful incarceration, prorated as necessary to account for a
367 portion of a year. For persons found to be wrongfully
368 incarcerated after December 31, 2008, the Chief Financial
369 Officer may adjust the annual rate of compensation for inflation
370 using the change in the December-to-December "Consumer Price
371 Index for All Urban Consumers" of the Bureau of Labor Statistics
372 of the Department of Labor;

373 (b) A waiver of tuition and fees for up to 120 hours of
374 instruction at any career center established under s. 1001.44,
375 any community college as defined in s. 1000.21(3), or any state
376 university as defined in s. 1000.21(6), if the wrongfully
377 incarcerated person meets and maintains the regular admission

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378 requirements of such career center, community college, or state
379 university; remains registered at such educational institution;
380 and makes satisfactory academic progress as defined by the
381 educational institution in which the claimant is enrolled;

382 (c) The amount of any fine, penalty, or court costs imposed
383 and paid by the wrongfully incarcerated person;

384 (d) The amount of any reasonable attorney's fees and
385 expenses incurred and paid by the wrongfully incarcerated person
386 in connection with all criminal proceedings and appeals
387 regarding the wrongful conviction, to be calculated by the
388 department based upon the supporting documentation submitted as
389 specified in s. 961.05; and

390 (e) Notwithstanding any provision to the contrary in s.
391 943.0585 or s. 943.0595, immediate administrative expunction of
392 the person's criminal record resulting from his or her wrongful
393 arrest, wrongful conviction, and wrongful incarceration. The
394 Department of Legal Affairs and the Department of Law
395 Enforcement shall, upon a determination that a claimant is
396 entitled to compensation, immediately take all action necessary
397 to administratively expunge the claimant's criminal record
398 arising from his or her wrongful arrest, wrongful conviction,
399 and wrongful incarceration. All fees for this process shall be
400 waived.

401
402 The total compensation awarded under paragraphs (a), (c), and
403 (d) may not exceed \$2 million. No further award for attorney's
404 fees, lobbying fees, costs, or other similar expenses shall be
405 made by the state.

406 Section 8. Subsection (2) of section 985.345, Florida

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407 Statutes, is amended to read:

408 985.345 Delinquency pretrial intervention program.—

409 (2) While enrolled in a delinquency pretrial intervention
410 program authorized by this section, a child is subject to a
411 coordinated strategy developed by a drug court team under s.
412 397.334(4). The coordinated strategy may include a protocol of
413 sanctions that may be imposed upon the child for noncompliance
414 with program rules. The protocol of sanctions may include, but
415 is not limited to, placement in a substance abuse treatment
416 program offered by a licensed service provider as defined in s.
417 397.311 or serving a period of secure detention under this
418 chapter. The coordinated strategy must be provided in writing to
419 the child before the child agrees to enter the pretrial
420 treatment-based drug court program or other pretrial
421 intervention program. Any child whose charges are dismissed
422 after successful completion of the treatment-based drug court
423 program, if otherwise eligible, may have his or her arrest
424 record and plea of nolo contendere to the dismissed charges
425 expunged under s. 943.0585 or s. 943.0595.

426 Section 9. This act shall take effect July 1, 2010.