

By Senator Smith

29-01038-11

20111402

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:

29-01038-11

20111402

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

29-01038-11

20111402

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

29-01038-11

20111402

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

29-01038-11

20111402

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

29-01038-11

20111402

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

29-01038-11

20111402

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.

29-01038-11

20111402

204 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),  
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.



29-01038-11

20111402

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

29-01038-11

20111402

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

29-01038-11

20111402

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(5), 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

29-01038-11

20111402

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

29-01038-11

20111402

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

29-01038-11

20111402

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

29-01038-11

20111402

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, 2011.