

By Senator Diaz de la Portilla

36-01174-11

20111834\_\_

1                   A bill to be entitled  
2           An act relating to expunction of criminal history  
3           records; amending s. 943.0585, F.S.; allowing a  
4           candidate for admission to The Florida Bar to lawfully  
5           deny or fail to acknowledge arrests covered by an  
6           expunged record; conforming cross-references;  
7           providing an effective date.  
8

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

11           Section 1. Paragraphs (a) and (c) of subsection (4) of  
12           section 943.0585, Florida Statutes, are amended to read:

13           943.0585 Court-ordered expunction of criminal history  
14           records.—The courts of this state have jurisdiction over their  
15           own procedures, including the maintenance, expunction, and  
16           correction of judicial records containing criminal history  
17           information to the extent such procedures are not inconsistent  
18           with the conditions, responsibilities, and duties established by  
19           this section. Any court of competent jurisdiction may order a  
20           criminal justice agency to expunge the criminal history record  
21           of a minor or an adult who complies with the requirements of  
22           this section. The court shall not order a criminal justice  
23           agency to expunge a criminal history record until the person  
24           seeking to expunge a criminal history record has applied for and  
25           received a certificate of eligibility for expunction pursuant to  
26           subsection (2). A criminal history record that relates to a  
27           violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
28           s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
29           827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.

36-01174-11

20111834

30 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
31 any violation specified as a predicate offense for registration  
32 as a sexual predator pursuant to s. 775.21, without regard to  
33 whether that offense alone is sufficient to require such  
34 registration, or for registration as a sexual offender pursuant  
35 to s. 943.0435, may not be expunged, without regard to whether  
36 adjudication was withheld, if the defendant was found guilty of  
37 or pled guilty or nolo contendere to the offense, or if the  
38 defendant, as a minor, was found to have committed, or pled  
39 guilty or nolo contendere to committing, the offense as a  
40 delinquent act. The court may only order expunction of a  
41 criminal history record pertaining to one arrest or one incident  
42 of alleged criminal activity, except as provided in this  
43 section. The court may, at its sole discretion, order the  
44 expunction of a criminal history record pertaining to more than  
45 one arrest if the additional arrests directly relate to the  
46 original arrest. If the court intends to order the expunction of  
47 records pertaining to such additional arrests, such intent must  
48 be specified in the order. A criminal justice agency may not  
49 expunge any record pertaining to such additional arrests if the  
50 order to expunge does not articulate the intention of the court  
51 to expunge a record pertaining to more than one arrest. This  
52 section does not prevent the court from ordering the expunction  
53 of only a portion of a criminal history record pertaining to one  
54 arrest or one incident of alleged criminal activity.  
55 Notwithstanding any law to the contrary, a criminal justice  
56 agency may comply with laws, court orders, and official requests  
57 of other jurisdictions relating to expunction, correction, or  
58 confidential handling of criminal history records or information

36-01174-11

20111834\_\_

59 derived therefrom. This section does not confer any right to the  
60 expunction of any criminal history record, and any request for  
61 expunction of a criminal history record may be denied at the  
62 sole discretion of the court.

63 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
64 criminal history record of a minor or an adult which is ordered  
65 expunged by a court of competent jurisdiction pursuant to this  
66 section must be physically destroyed or obliterated by any  
67 criminal justice agency having custody of such record; except  
68 that any criminal history record in the custody of the  
69 department must be retained in all cases. A criminal history  
70 record ordered expunged that is retained by the department is  
71 confidential and exempt from the provisions of s. 119.07(1) and  
72 s. 24(a), Art. I of the State Constitution and not available to  
73 any person or entity except upon order of a court of competent  
74 jurisdiction. A criminal justice agency may retain a notation  
75 indicating compliance with an order to expunge.

76 (a) The person who is the subject of a criminal history  
77 record that is expunged under this section or under other  
78 provisions of law, including former s. 893.14, former s. 901.33,  
79 and former s. 943.058, may lawfully deny or fail to acknowledge  
80 the arrests covered by the expunged record, except when the  
81 subject of the record:

- 82 1. Is a candidate for employment with a criminal justice  
83 agency;
- 84 2. Is a defendant in a criminal prosecution;
- 85 3. Concurrently or subsequently petitions for relief under  
86 this section or s. 943.059;
- 87 ~~4. Is a candidate for admission to The Florida Bar;~~

36-01174-11

20111834\_\_

88        ~~4.5.~~ Is seeking to be employed or licensed by or to  
89 contract with the Department of Children and Family Services,  
90 the Agency for Health Care Administration, the Agency for  
91 Persons with Disabilities, or the Department of Juvenile Justice  
92 or to be employed or used by such contractor or licensee in a  
93 sensitive position having direct contact with children, the  
94 developmentally disabled, the aged, or the elderly as provided  
95 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
96 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),  
97 chapter 916, s. 985.644, chapter 400, or chapter 429;

98        ~~5.6.~~ Is seeking to be employed or licensed by the  
99 Department of Education, any district school board, any  
100 university laboratory school, any charter school, any private or  
101 parochial school, or any local governmental entity that licenses  
102 child care facilities; or

103        ~~6.7.~~ Is seeking authorization from a seaport listed in s.  
104 311.09 for employment within or access to one or more of such  
105 seaports pursuant to s. 311.12.

106        (c) Information relating to the existence of an expunged  
107 criminal history record which is provided in accordance with  
108 paragraph (a) is confidential and exempt from the provisions of  
109 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
110 except that the department shall disclose the existence of a  
111 criminal history record ordered expunged to the entities set  
112 forth in subparagraphs (a)1., 4., 5., and 6.~~and 7.~~ for their  
113 respective licensing, access authorization, and employment  
114 purposes, and to criminal justice agencies for their respective  
115 criminal justice purposes. It is unlawful for any employee of an  
116 entity set forth in subparagraph (a)1., subparagraph (a)4.,

36-01174-11

20111834\_\_

117 subparagraph (a)5., or subparagraph (a)6., ~~or subparagraph (a)7.~~  
118 to disclose information relating to the existence of an expunged  
119 criminal history record of a person seeking employment, access  
120 authorization, or licensure with such entity or contractor,  
121 except to the person to whom the criminal history record relates  
122 or to persons having direct responsibility for employment,  
123 access authorization, or licensure decisions. Any person who  
124 violates this paragraph commits a misdemeanor of the first  
125 degree, punishable as provided in s. 775.082 or s. 775.083.

126 Section 2. This act shall take effect July 1, 2011.