

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

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 8 Be It Enacted by the Legislature of the State of Florida:

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

12 943.0585 Court-ordered expunction of criminal history
 13 records.—The courts of this state have jurisdiction over their
 14 own procedures, including the maintenance, expunction, and
 15 correction of judicial records containing criminal history
 16 information to the extent such procedures are not inconsistent
 17 with the conditions, responsibilities, and duties established by
 18 this section. Any court of competent jurisdiction may order a
 19 criminal justice agency to expunge the criminal history record
 20 of a minor or an adult who complies with the requirements of
 21 this section. The court shall not order a criminal justice
 22 agency to expunge a criminal history record until the person
 23 seeking to expunge a criminal history record has applied for and
 24 received a certificate of eligibility for expunction pursuant to
 25 subsection (2). A criminal history record that relates to a
 26 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 27 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 28 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.

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29 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
30 | any violation specified as a predicate offense for registration
31 | as a sexual predator pursuant to s. 775.21, without regard to
32 | whether that offense alone is sufficient to require such
33 | registration, or for registration as a sexual offender pursuant
34 | to s. 943.0435, may not be expunged, without regard to whether
35 | adjudication was withheld, if the defendant was found guilty of
36 | or pled guilty or nolo contendere to the offense, or if the
37 | defendant, as a minor, was found to have committed, or pled
38 | guilty or nolo contendere to committing, the offense as a
39 | delinquent act. The court may only order expunction of a
40 | criminal history record pertaining to one arrest or one incident
41 | of alleged criminal activity, except as provided in this
42 | section. The court may, at its sole discretion, order the
43 | expunction of a criminal history record pertaining to more than
44 | one arrest if the additional arrests directly relate to the
45 | original arrest. If the court intends to order the expunction of
46 | records pertaining to such additional arrests, such intent must
47 | be specified in the order. A criminal justice agency may not
48 | expunge any record pertaining to such additional arrests if the
49 | order to expunge does not articulate the intention of the court
50 | to expunge a record pertaining to more than one arrest. This
51 | section does not prevent the court from ordering the expunction
52 | of only a portion of a criminal history record pertaining to one
53 | arrest or one incident of alleged criminal activity.
54 | Notwithstanding any law to the contrary, a criminal justice
55 | agency may comply with laws, court orders, and official requests
56 | of other jurisdictions relating to expunction, correction, or

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

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

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

- 81 1. Is a candidate for employment with a criminal justice
82 agency;
- 83 2. Is a defendant in a criminal prosecution;
- 84 3. Concurrently or subsequently petitions for relief under

85 | this section or s. 943.059;

86 | ~~4. Is a candidate for admission to The Florida Bar;~~

87 | 4.5. Is seeking to be employed or licensed by or to
 88 | contract with the Department of Children and Family Services,
 89 | the Agency for Health Care Administration, the Agency for
 90 | Persons with Disabilities, or the Department of Juvenile Justice
 91 | or to be employed or used by such contractor or licensee in a
 92 | sensitive position having direct contact with children, the
 93 | developmentally disabled, the aged, or the elderly as provided
 94 | in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 95 | 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),
 96 | chapter 916, s. 985.644, chapter 400, or chapter 429;

97 | 5.6. Is seeking to be employed or licensed by the
 98 | Department of Education, any district school board, any
 99 | university laboratory school, any charter school, any private or
 100 | parochial school, or any local governmental entity that licenses
 101 | child care facilities; or

102 | 6.7. Is seeking authorization from a seaport listed in s.
 103 | 311.09 for employment within or access to one or more of such
 104 | seaports pursuant to s. 311.12.

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

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113 | purposes, and to criminal justice agencies for their respective
114 | criminal justice purposes. It is unlawful for any employee of an
115 | entity set forth in subparagraph (a)1., subparagraph (a)4.,
116 | subparagraph (a)5., or subparagraph (a)6., ~~or subparagraph (a)7.~~
117 | to disclose information relating to the existence of an expunged
118 | criminal history record of a person seeking employment, access
119 | authorization, or licensure with such entity or contractor,
120 | except to the person to whom the criminal history record relates
121 | or to persons having direct responsibility for employment,
122 | access authorization, or licensure decisions. Any person who
123 | violates this paragraph commits a misdemeanor of the first
124 | degree, punishable as provided in s. 775.082 or s. 775.083.

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