

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

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.

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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 and to the arresting
66 agency. The arresting agency is responsible for forwarding the
67 order to any other agency to which the arresting agency
68 disseminated the criminal history record information to which
69 the order pertains. The department shall forward the order to
70 expunge to the Federal Bureau of Investigation. The clerk of the
71 court shall certify a copy of the order to any other agency that
72 court records indicate has received the criminal history record
73 from the court. The clerk of court is responsible for forwarding
74 the order to any agency, organization, or company to which the
75 clerk of court disseminated the criminal history information to
76 which 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

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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

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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

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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.

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

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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(5),
 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 seaport listed in s.
 207 311.09 for employment within or access to one or more of such
 208 seaports pursuant to s. 311.12.

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
 222 criminal history record until the person seeking to seal a

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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
250 does not prevent the court from ordering the sealing of only a

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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

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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(5), 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 check under state or federal law;
 304 | or
 305 | 8. Is seeking authorization from a Florida seaport
 306 | identified in s. 311.09 for employment within or access to one

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307 or more of such seaports pursuant to s. 311.12.

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(4). 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(4). 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:

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

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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(4). 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
 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

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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, 2011.