

By Senator Joyner

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1                   A bill to be entitled  
2           An act relating to expunging records of civil rights  
3           convictions; creating s. 943.05856, F.S.; authorizing  
4           a person who is convicted of violating a certain state  
5           statute or local governmental ordinance to apply for  
6           expunction of the criminal history record of that  
7           conviction; specifying the requirements for the  
8           petition for expunction; requiring that the Department  
9           of Law Enforcement establish by rule procedures  
10          pertaining to the application for and issuance of  
11          certificates of eligibility for expunction; providing  
12          for the eligibility period of the certificate of  
13          eligibility; requiring that the department issue a  
14          certificate of eligibility for expunction to a person  
15          who has fulfilled specific requirements; providing for  
16          a processing fee for the certificate application;  
17          providing procedures for judicial proceedings to grant  
18          an expunction; requiring that the court serve the  
19          appropriate state attorney or statewide prosecutor and  
20          the arresting agency with a copy of the completed  
21          petition to expunge the record of the civil rights  
22          conviction; authorizing the state attorney or  
23          statewide prosecutor and arresting agency to respond  
24          regarding the petition to expunge; requiring that the  
25          clerk of the court certify copies of the expunction  
26          order to the appropriate state attorney or the  
27          statewide prosecutor and the arresting agency, if  
28          relief is granted by the court; requiring that the  
29          arresting agency forward the order to any other agency

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30 to which the arresting agency disseminated the  
31 conviction record information to which the order  
32 pertains; requiring that the department forward the  
33 expunction order to the Federal Bureau of  
34 Investigation; providing that a criminal justice  
35 agency is not required to act on an expunction order  
36 under certain circumstances; requiring that the  
37 department notify the issuing court, the appropriate  
38 state attorney or statewide prosecutor, the petitioner  
39 or petitioner's attorney, and the arresting agency if  
40 an order does not comply with the act; requiring that  
41 the state attorney or statewide prosecutor correct the  
42 record and petition the court to void an order under  
43 certain circumstances; providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Section 943.05856, Florida Statutes, is created  
48 to read:

49 943.05856 Court-ordered expunction of records of civil  
50 rights convictions.-

51 (1) Notwithstanding s. 943.0585, a person convicted of  
52 violating a state statute or local governmental ordinance that  
53 had as its purpose to maintain racial segregation or racial  
54 discrimination may apply for expunction of the criminal history  
55 record of that conviction.

56 (2) Each petition to a court to expunge the record of a  
57 civil rights conviction is complete only when accompanied by:

58 (a) A valid certificate of eligibility for expunction

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59 issued by the department.

60 (b) The petitioner's sworn statement attesting that the  
61 petitioner:

62 1. Has never secured a prior expunction of the record of  
63 the civil rights conviction.

64 2. Is eligible for such an expunction to the best of his or  
65 her knowledge or belief and does not have any other petition to  
66 expunge pending before the department.

67  
68 A person who knowingly provides false information on the sworn  
69 statement to the court commits a felony of the third degree,  
70 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

71 (3) (a) Before a person may petition the court to expunge  
72 the record of a civil rights conviction, the person must apply  
73 to the department for a certificate of eligibility for  
74 expunction. The department shall by rule establish procedures  
75 pertaining to the application for and issuance of certificates  
76 of eligibility for expunction.

77 (b) A certificate of eligibility for expunction is valid  
78 for 12 months after the date stamped on the certificate when  
79 issued by the department. After that time, the petitioner must  
80 reapply to the department for a new certificate of eligibility.  
81 Eligibility for a renewed certification of eligibility must be  
82 based on the status of the applicant and the law in effect at  
83 the time of the renewal application.

84 (c) The department shall issue a certificate of eligibility  
85 for expunction to a person who is the subject of a civil rights  
86 conviction if that person:

87 1. Submits to the department, a written, certified

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88 statement from the appropriate state attorney or statewide  
89 prosecutor which indicates whether:

90 a. An indictment, information, or other charging document  
91 was filed or issued in the case.

92 b. An indictment, information, or other charging document,  
93 if filed or issued in the case, was dismissed or nolle prossed  
94 by the state attorney or statewide prosecutor, or was dismissed  
95 by a court, and that none of the charges related to the arrest  
96 or alleged civil rights conviction to which the petition to  
97 expunge pertains resulted in a trial, without regard to whether  
98 the outcome of the trial was other than an adjudication of  
99 guilt.

100 2. Submits to the department a certified copy of the  
101 disposition of the charge to which the petition to expunge  
102 pertains.

103 3. Remits a \$75 processing fee to the department for  
104 placement in the Department of Law Enforcement Operating Trust  
105 Fund, unless such fee is waived by the executive director.

106 4. Has never secured a prior expunction of the record of  
107 the civil rights conviction, unless expunction is sought of a  
108 record previously sealed for 10 years and the record is  
109 otherwise eligible for expunction.

110 5. Has previously obtained a court order sealing the record  
111 under s. 943.059 for a minimum of 10 years because adjudication  
112 was withheld or because all charges related to the arrest or  
113 alleged criminal activity to which the petition to expunge  
114 pertains were not dismissed before trial, without regard to  
115 whether the outcome of the trial was other than an adjudication  
116 of guilt. The requirement for the record to have previously been

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117 sealed for a minimum of 10 years does not apply if a plea was  
118 not entered or all charges related to the arrest or alleged  
119 criminal activity to which the petition to expunge pertains were  
120 dismissed before trial.

121 (4) (a) In a proceeding under this section, a copy of the  
122 completed petition to a court to expunge a record shall be  
123 served upon the appropriate state attorney or the statewide  
124 prosecutor and upon the arresting agency; however, it is not  
125 necessary to make any agency other than the state a party. The  
126 appropriate state attorney or the statewide prosecutor and the  
127 arresting agency may respond regarding the completed petition to  
128 expunge.

129 (b) If relief is granted by the court, the clerk of the  
130 court shall certify copies of the expunction order to the  
131 appropriate state attorney or the statewide prosecutor and the  
132 arresting agency. The arresting agency shall forward the  
133 expunction order to any other agency to which the arresting  
134 agency disseminated the civil rights conviction information to  
135 which the order pertains. The department shall forward the  
136 expunction order to the Federal Bureau of Investigation. The  
137 clerk of the court shall certify a copy of the expunction order  
138 to any other agency that the records of the court reflect has  
139 received a record of the civil rights conviction from the court.

140 (c) A criminal justice agency is not required to act on an  
141 order to expunge entered by the court if the order does not  
142 comply with the requirements of this section. Upon receipt of an  
143 order that does not comply with the requirements of this  
144 section, the department shall notify the issuing court, the  
145 appropriate state attorney or statewide prosecutor, the

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146 petitioner or the petitioner's attorney, and the arresting  
147 agency of the reason for which the department determines that  
148 the order has not complied with this section. The appropriate  
149 state attorney or statewide prosecutor shall take action within  
150 60 days to correct the record and petition the court to void the  
151 order. A cause of action, including contempt of court, does not  
152 arise against any criminal justice agency for failing to comply  
153 with an order to expunge if the petitioner for the order failed  
154 to obtain the certificate of eligibility as required by law or  
155 if the order does not otherwise comply with the requirements of  
156 this section.

157 Section 2. This act shall take effect July 1, 2012.