

By Senator Joyner

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 943.05856, F.S.; requiring each criminal justice
4 agency having custody of a criminal history record of
5 a civil rights conviction which is ordered expunged to
6 destroy or obliterate that record; requiring that the
7 Department of Law Enforcement retain a copy of the
8 record; providing that the record is confidential and
9 exempt from the public records law; authorizing the
10 person who is the subject of a civil rights conviction
11 to lawfully deny or fail to acknowledge the arrest and
12 conviction covered by the expunged record; providing
13 exceptions to the confidentiality of an expunged
14 record of a civil rights conviction; providing that a
15 person who has an expunged record of a civil rights
16 conviction does not commit perjury and is not
17 otherwise liable for failing to acknowledge an
18 expunged record; providing criminal penalties for
19 wrongful disclosure of an expunged record of a civil
20 rights conviction; providing for future legislative
21 review and repeal of the exemption under the Open
22 Government Sunset Review Act; providing a statement of
23 public necessity; providing a contingent effective
24 date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (5) is added to section 943.05856,
29 Florida Statutes, as created by SB _____, to read:

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30 943.05856 Court-ordered expunction of records of civil
31 rights convictions.-

32 (5) (a) Except as provided in paragraph (b), the criminal
33 history record of a civil rights conviction which is ordered
34 expunged by a court pursuant to this section must be physically
35 destroyed or obliterated by each criminal justice agency that
36 has custody of the record.

37 (b) The department shall retain a copy of each record of a
38 civil rights conviction which is ordered expunged by a court.
39 The record of each civil rights conviction which is ordered
40 expunged but which is retained by the department is confidential
41 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
42 Constitution and may not be made available to any person or
43 entity except upon a court order. A criminal justice agency may
44 retain a notation indicating compliance with an order to
45 expunge.

46 (c) The person who is the subject of the record of a civil
47 rights conviction which is expunged under this section or under
48 other provisions of law may lawfully deny or fail to acknowledge
49 the arrests covered by the expunged record, except if the person
50 is:

- 51 1. A candidate for employment with a criminal justice
52 agency;
- 53 2. A defendant in a criminal prosecution;
- 54 3. A candidate for admission to The Florida Bar;
- 55 4. Seeking to be employed or licensed by or to contract
56 with the Department of Children and Family Services, the Agency
57 for Health Care Administration, the Agency for Persons with
58 Disabilities, or the Department of Juvenile Justice, or seeking

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59 to be employed by a licensee or contractor of any such agency,
60 in a sensitive position having direct contact with children, the
61 developmentally disabled, vulnerable adults, or the elderly as
62 provided in s. 110.1127(3), s. 394.4572(1), s. 397.451, s.
63 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.
64 985.644, chapter 400, chapter 429, or chapter 916;

65 5. Seeking to be employed or licensed by the Department of
66 Education, a district school board, a university laboratory
67 school, a charter school, a private or parochial school, or a
68 local governmental entity that licenses child care facilities;
69 or

70 6. Seeking authorization from a seaport listed in s. 311.09
71 for employment within or access to one or more of such seaports
72 pursuant to s. 311.12.

73 (d) Subject to the exceptions in paragraph (c), a person
74 who has been granted an expunction under this section may not be
75 held under any law of this state to commit perjury or to be
76 otherwise liable for giving a false statement by reason of the
77 person's failure to recite or acknowledge an expunged record of
78 a civil rights conviction.

79 (e) A person who violates this subsection commits a
80 misdemeanor of the first degree, punishable as provided in s.
81 775.082 or s. 775.083.

82 (f) This subsection is subject to the Open Government
83 Sunset Review Act in accordance with s. 119.15, and shall stand
84 repealed on October 2, 2017, unless reviewed and saved from
85 repeal through reenactment by the Legislature.

86 Section 2. The Legislature finds that it is a public
87 necessity that the criminal history record of a civil rights

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88 conviction expunged by court order be confidential and exempt
89 from the provisions of s. 119.07(1), Florida Statutes, and s.
90 24(a), Article I of the State Constitution. The very purpose of
91 expunging criminal history records is to secure those records
92 from public examination. The Legislature finds that it is
93 particularly relevant in this instance when the criminal
94 violations for which the petitioners seek expunction are felony
95 and misdemeanor offenses that were used to maintain racial
96 segregation or racial discrimination. Persons thus convicted of
97 such offenses deserve to have their convictions be made
98 confidential and exempt from public disclosure. Accordingly, the
99 Legislature finds that any harm to the petitioners by allowing
100 public access to the discredited convictions substantially
101 outweighs any minimal public benefit derived from disclosure to
102 the public.

103 Section 3. This act shall take effect on the same date that
104 SB ____ or similar legislation takes effect, if such legislation
105 is enacted in the same legislative session, or an extension
106 thereof, and becomes law.