

By Senator Siplin

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1 A bill to be entitled
2 An act relating to sealing and destroying certain
3 criminal records; creating a procedure by which a
4 person may seek a court order to seal and destroy an
5 arrest record if the person is determined to be
6 factually innocent of any charge arising out of the
7 arrest; requiring that the appropriate law enforcement
8 agency seal and destroy the arrest record under
9 certain circumstances; requiring that the appropriate
10 law enforcement agency notify the Department of Law
11 Enforcement and other law enforcement agencies that
12 participated in the arrest of the sealing and
13 destroying of the arrest record; requiring that such
14 agencies seal and destroy the arrest record; requiring
15 that the appropriate law enforcement agency and the
16 Department of Law Enforcement notify any local, state,
17 or federal agency or any person or entity of the
18 destruction of the arrest record; requiring that such
19 agencies destroy the arrest record; providing that a
20 petition to destroy an arrest record is deemed denied
21 if the appropriate law enforcement agency or state
22 attorney rejects it or does not respond within certain
23 period after receipt of the petition; requiring that a
24 petition for relief be heard within a certain time;
25 providing for the burden of persuasion in a hearing to
26 determine the factual innocence of a person;
27 prohibiting the court from issuing a finding of
28 factual innocence or an order to seal and destroy an
29 arrest record unless a specified requirement is

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30 fulfilled; requiring that the appropriate court order
31 the law enforcement agency having jurisdiction over
32 the offense, the Department of Law Enforcement, and
33 any law enforcement agency involved in the arrest to
34 seal and destroy the arrest record under certain
35 circumstances; requiring that the court order the
36 appropriate law enforcement agency and the Department
37 of Law Enforcement to notify any agency, person, or
38 entity in possession of the arrest record of the order
39 to seal and destroy the arrest record; authorizing the
40 court, under certain circumstances, to grant relief to
41 a petitioner in a case in which an accusatory pleading
42 has been filed; authorizing a person, under certain
43 circumstances, to file for relief if there is no
44 conviction; requiring that the law enforcement agency
45 having jurisdiction over the offense from which the
46 arrest arose issue a written declaration to the person
47 arrested stating that it is the determination of the
48 law enforcement agency that the person arrested is
49 factually innocent of the charges for which the person
50 was arrested; requiring that the Department of Law
51 Enforcement furnish forms to be used by persons
52 applying for the destruction of their arrest records
53 or for the written declaration that they are factually
54 innocent; requiring that any remaining records in the
55 possession of the law enforcement agency bear the
56 notation "exonerated" whenever a reference is made to
57 the person arrested; prescribing a method by which the
58 arrest records must be permanently obliterated;

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59 prohibiting an arrest record from being destroyed if
60 the person arrested or a codefendant has filed a civil
61 action against the officer or law enforcement agency
62 that made the arrest or instituted the prosecution;
63 authorizing the court to open a sealed record in a
64 civil procedure under certain circumstances; limiting
65 the persons who have access to the sealed arrest
66 records; providing a time schedule during which a
67 petition for relief may be filed; providing an
68 effective date.

69
70 Be It Enacted by the Legislature of the State of Florida:

71
72 Section 1. Sealing and destroying certain criminal
73 records.—

74 (1) (a) In a situation in which a person has been arrested
75 but no accusatory pleading has been filed, the person arrested
76 may petition the law enforcement agency having jurisdiction over
77 the offense to destroy his or her arrest record. A copy of the
78 petition shall be served upon the state attorney of the circuit
79 having jurisdiction over the offense.

80 (b) The law enforcement agency, upon a determination that
81 the person arrested is factually innocent, with the concurrence
82 of the state attorney, shall seal the arrest record and the
83 petition for relief under this section for 3 years following the
84 date of the arrest. Thereafter, the law enforcement agency shall
85 destroy the arrest record and the petition.

86 (c) The law enforcement agency having jurisdiction over the
87 offense shall notify the Department of Law Enforcement and any

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88 law enforcement agency that arrested the petitioner or
89 participated in the arrest of the petitioner of the offense for
90 which the petitioner has been found factually innocent under
91 this section of the sealing and destroying of the arrest record.
92 The Department of Law Enforcement and any law enforcement agency
93 so notified shall immediately seal the arrest record and the
94 notice of sealing for 3 years following the date of the arrest.
95 Thereafter, any law enforcement agency that has been notified
96 shall destroy the arrest record and the notice of sealing.

97 (d) The law enforcement agency having jurisdiction over the
98 case and the Department of Law Enforcement shall notify any
99 local, state, or federal agency or any person or entity having
100 possession of the arrest record of the destruction of such
101 record. Each agency, person, or entity receiving the notice
102 shall immediately destroy its arrest record and the notice,
103 unless otherwise provided in this section.

104 (2) (a) If the law enforcement agency having jurisdiction
105 over the offense or the state attorney rejects the petitioner's
106 claim of factual innocence, or does not respond to the petition
107 within 60 days after receiving the petition, the petition is
108 deemed denied and shall be set for a hearing. The petition shall
109 be heard in the circuit court having jurisdiction over the
110 criminal offense that is the basis for the arrest. The matter
111 shall be heard within 30 days after the petition is rejected or
112 it is deemed denied. The state attorney and the law enforcement
113 agency may present evidence to the court at the hearing.

114 (b) Any claim of factual innocence made pursuant to this
115 section may be heard and determined upon an affidavit, a police
116 report, or any other evidence submitted by the parties which is

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117 material, relevant, and reliable.

118 (c) In a hearing to determine the factual innocence of a
119 party, the initial burden of persuasion rests with the person
120 claiming his or her innocence to show that no reasonable cause
121 exists to believe that the person arrested committed the offense
122 for which the arrest was made. If the court finds that no
123 reasonable cause exists to believe that the petitioner committed
124 the offense, the burden of persuasion shifts to the state
125 attorney and law enforcement agency to show that a reasonable
126 cause exists to believe that the petitioner committed the
127 offense for which the arrest was made.

128 (d) The court may not issue a finding of factual innocence
129 or an order to seal and destroy an arrest record unless the
130 court finds that no reasonable cause exists to believe that the
131 person arrested committed the offense for which the arrest was
132 made.

133 (e)1. If the court finds the person arrested to be
134 factually innocent of the charges for which the arrest was made,
135 the court shall order the law enforcement agency having
136 jurisdiction over the offense, the Department of Law
137 Enforcement, and any law enforcement agency that arrested the
138 petitioner or participated in the arrest of the petitioner to
139 seal the arrest record for 3 years following the date of the
140 arrest. After the 3-year period, each law enforcement agency
141 shall destroy the arrest record and the court order to seal and
142 destroy the record.

143 2. The court shall also order the law enforcement agency
144 having jurisdiction over the offense and the Department of Law
145 Enforcement to notify each local or state agency, person, or

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146 entity in possession of the petitioner's arrest record of the
147 court order to seal and destroy the record. Each such agency,
148 person, or entity shall immediately destroy its arrest record.
149 The court shall give the petitioner a copy of any court order
150 concerning the destruction of the arrest record.

151 (3) In a case in which a person has been arrested and an
152 accusatory pleading has been filed but no hearing has been held,
153 the court may, with the concurrence of the state attorney, grant
154 the relief as provided in subsection (2) at the time of the
155 dismissal of the accusatory pleading hearing.

156 (4) In a case in which a person has been arrested and an
157 accusatory pleading has been filed but no conviction has
158 occurred, the defendant may, at any time after the court
159 dismisses the charges, petition the court for an order finding
160 the petitioner factually innocent of the charges for which the
161 arrest was made. A copy of the petition shall be served on the
162 state attorney of the circuit in which the accusatory pleading
163 was filed at least 10 days before the hearing on the
164 petitioner's claim of factual innocence. The state attorney may
165 present evidence to the court at the hearing. The hearing shall
166 be conducted as provided in subsection (2). If the court finds
167 the petitioner to be factually innocent of the charges for which
168 the arrest was made, the court shall grant the relief as
169 provided in subsection (2).

170 (5) If a person is acquitted of a charge and it appears to
171 the court that the person was factually innocent of the charge,
172 the court shall grant the relief as provided in subsection (2).
173 Thereafter, the arrest shall be deemed not to have occurred, and
174 the person may accordingly answer any question relating to its

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175 occurrence.

176 (6) In a case in which a person who has been arrested is
177 granted relief pursuant to subsection (1), subsection (2),
178 subsection (3), subsection (4), or subsection (5), the law
179 enforcement agency having jurisdiction over the offense shall
180 issue a written declaration to the person arrested stating that
181 the agency has determined that the person is factually innocent
182 of the charges for which the person was arrested and that the
183 person is exonerated of all charges. Thereafter, the arrest
184 shall be deemed not to have occurred, and the person may
185 accordingly answer any question relating to its occurrence.

186 (7) The Department of Law Enforcement shall furnish forms
187 to be used by persons who apply for the destruction of their
188 arrest records or for the written declaration that the persons
189 are factually innocent.

190 (8) Documentation of an arrest record contained in a police
191 investigative report must bear the notation "Exonerated"
192 whenever reference is made to the person arrested. The person
193 arrested shall be notified in writing by the law enforcement
194 agency of the sealing and destroying of the arrest record
195 pursuant to this section.

196 (9) A finding that a person arrested is factually innocent
197 pursuant to subsection (1), subsection (2), subsection (3),
198 subsection (4), or subsection (5) is not admissible as evidence
199 in any action.

200 (10) The destruction of an arrest record pursuant to
201 subsection (1), subsection (2), subsection (3), subsection (4),
202 or subsection (5) shall be accomplished by permanent
203 obliteration of all entries or notations upon the record

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204 pertaining to the arrest, and the record shall be prepared again
205 so that it appears that the arrest never occurred. However, if
206 the only entries on the record pertain to the arrest and if the
207 record can be destroyed without affecting other records, the
208 document constituting the record shall be physically destroyed.

209 (11) (a) A record may not be destroyed pursuant to
210 subsection (1), subsection (2), subsection (3), subsection (4),
211 or subsection (5) if the person arrested or a codefendant has
212 filed a civil action against the officer or law enforcement
213 agency that made the arrest or instituted the prosecution, and
214 if the agency that is the custodian of the record has received a
215 certified copy of the complaint in the civil action, until the
216 civil action has been resolved.

217 (b) A record sealed pursuant to this section by the court
218 in a civil action, upon a showing of good cause, may be opened
219 and submitted into evidence. The record is confidential and is
220 available for inspection only by the court, jury, parties,
221 counsel for the parties, and any other person authorized by the
222 court. Immediately following the final resolution of the civil
223 action, a record that is subject to subsection (1), subsection
224 (2), subsection (3), subsection (4), or subsection (5) shall be
225 sealed and destroyed pursuant to subsection (1), subsection (2),
226 subsection (3), subsection (4), or subsection (5).

227 (12) A petition for relief under this section may be filed
228 up to 2 years following the date of the arrest or the filing of
229 the accusatory pleading, whichever occurs later. On or before
230 January 1, 2013, a petitioner may file for relief under this
231 section for an arrest that occurred or an accusatory pleading
232 that was filed no later than January 1, 2007. A time restriction

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233 on filing for relief under this section may be waived upon a
234 showing of good cause by the petitioner and in the absence of
235 prejudice.

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