



908198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (c), (e), and (f) of subsection (3)
and subsection (5) of section 943.0582, Florida Statutes, are
amended to read:

943.0582 Prearrest, postarrest, or teen court diversion
program expunction.—

(3) The department shall expunge the nonjudicial arrest



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11 record of a minor who has successfully completed a prearrest or
12 postarrest diversion program if that minor:

13 (c) Submits to the department, with the application, an
14 official written statement from the state attorney for the
15 county in which the arrest occurred certifying that he or she
16 has successfully completed that county's prearrest or postarrest
17 diversion program, that his or her participation in the program
18 was based on an arrest for a nonviolent misdemeanor, or for a
19 felony that does not relate to a violation of s. 393.135, s.
20 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
21 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
22 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a
23 violation enumerated in s. 907.041, or any violation specified
24 as a predicate offense for registration as a sexual predator
25 pursuant to s. 775.21, without regard to whether that offense
26 alone is sufficient to require such registration, or for
27 registration as a sexual offender pursuant to s. 943.0435, and
28 that he or she has not otherwise been charged with or found to
29 have committed any criminal offense or comparable ordinance
30 violation.

31 ~~(e) Participated in a prearrest or postarrest diversion~~
32 ~~program based on an arrest for a nonviolent misdemeanor that~~
33 ~~would not qualify as an act of domestic violence as that term is~~
34 ~~defined in s. 741.28.~~

35 (e)-(f) Has never, prior to filing the application for
36 expunction, been charged with or been found to have committed
37 any criminal offense or comparable ordinance violation.

38 (5) In the case of a minor whose completion of the program
39 occurred before the effective date of this section, the



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40 application for prearrest or postarrest diversion expunction
41 must be submitted within 6 months after the effective date of
42 this section.

43 (6)~~(5)~~ Expunction or sealing granted under this section
44 does not prevent the minor who receives such relief from
45 petitioning for the expunction or sealing of a later criminal
46 history record as provided for in ss. 943.0583, 943.0585, and
47 943.059, if the minor is otherwise eligible under those
48 sections.

49 Section 2. Paragraphs (a) and (h) of subsection (2) and
50 subsection (4) of section 943.0585, Florida Statutes, are
51 amended to read:

52 943.0585 Court-ordered expunction of criminal history
53 records.—The courts of this state have jurisdiction over their
54 own procedures, including the maintenance, expunction, and
55 correction of judicial records containing criminal history
56 information to the extent such procedures are not inconsistent
57 with the conditions, responsibilities, and duties established by
58 this section. Any court of competent jurisdiction may order a
59 criminal justice agency to expunge the criminal history record
60 of a minor or an adult who complies with the requirements of
61 this section. The court shall not order a criminal justice
62 agency to expunge a criminal history record until the person
63 seeking to expunge a criminal history record has applied for and
64 received a certificate of eligibility for expunction pursuant to
65 subsection (2). A criminal history record that relates to a
66 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
67 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
68 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.



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69 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
70 any violation specified as a predicate offense for registration
71 as a sexual predator pursuant to s. 775.21, without regard to
72 whether that offense alone is sufficient to require such
73 registration, or for registration as a sexual offender pursuant
74 to s. 943.0435, may not be expunged, without regard to whether
75 adjudication was withheld, if the defendant was found guilty of
76 or pled guilty or nolo contendere to the offense, or if the
77 defendant, as a minor, was found to have committed, or pled
78 guilty or nolo contendere to committing, the offense as a
79 delinquent act. The court may only order expunction of a
80 criminal history record pertaining to one arrest or one incident
81 of alleged criminal activity, except as provided in this
82 section. The court may, at its sole discretion, order the
83 expunction of a criminal history record pertaining to more than
84 one arrest if the additional arrests directly relate to the
85 original arrest. If the court intends to order the expunction of
86 records pertaining to such additional arrests, such intent must
87 be specified in the order. A criminal justice agency may not
88 expunge any record pertaining to such additional arrests if the
89 order to expunge does not articulate the intention of the court
90 to expunge a record pertaining to more than one arrest. This
91 section does not prevent the court from ordering the expunction
92 of only a portion of a criminal history record pertaining to one
93 arrest or one incident of alleged criminal activity.
94 Notwithstanding any law to the contrary, a criminal justice
95 agency may comply with laws, court orders, and official requests
96 of other jurisdictions relating to expunction, correction, or
97 confidential handling of criminal history records or information



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98 derived therefrom. This section does not confer any right to the
99 expunction of any criminal history record, and any request for
100 expunction of a criminal history record may be denied at the
101 sole discretion of the court.

102 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
103 petitioning the court to expunge a criminal history record, a
104 person seeking to expunge a criminal history record shall apply
105 to the department for a certificate of eligibility for
106 expunction. The department shall, by rule adopted pursuant to
107 chapter 120, establish procedures pertaining to the application
108 for and issuance of certificates of eligibility for expunction.
109 A certificate of eligibility for expunction is valid for 12
110 months after the date stamped on the certificate when issued by
111 the department. After that time, the petitioner must reapply to
112 the department for a new certificate of eligibility. Eligibility
113 for a renewed certification of eligibility must be based on the
114 status of the applicant and the law in effect at the time of the
115 renewal application. The department shall issue a certificate of
116 eligibility for expunction to a person who is the subject of a
117 criminal history record if that person:

118 (a) Has obtained, and submitted to the department, a
119 written, certified statement from the appropriate state attorney
120 or statewide prosecutor which indicates:

121 1. That an indictment, information, or other charging
122 document was not filed or issued in the case.

123 2. That an indictment, information, or other charging
124 document, if filed or issued in the case, was dismissed or nolle
125 prossed ~~prosequi~~ by the state attorney or statewide prosecutor,
126 or was dismissed by a court of competent jurisdiction, or a



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127 judge or jury rendered a verdict of not guilty. The records of a
128 person adjudicated not guilty by reason of insanity are not
129 eligible for expunction under this section and that none of the
130 charges related to the arrest or alleged criminal activity to
131 which the petition to expunge pertains resulted in a trial,
132 without regard to whether the outcome of the trial was other
133 than an adjudication of guilt.

134 3. That the criminal history record does not relate to a
135 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
136 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
137 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
138 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
139 any violation specified as a predicate offense for registration
140 as a sexual predator pursuant to s. 775.21, without regard to
141 whether that offense alone is sufficient to require such
142 registration, or for registration as a sexual offender pursuant
143 to s. 943.0435, where the defendant was found guilty of, or pled
144 guilty or nolo contendere to any such offense, or that the
145 defendant, as a minor, was found to have committed, or pled
146 guilty or nolo contendere to committing, such an offense as a
147 delinquent act, without regard to whether adjudication was
148 withheld.

149 (h) Has previously obtained a court order sealing the
150 record under this section, former s. 893.14, former s. 901.33,
151 or former s. 943.058 for a minimum of 10 years because
152 adjudication was withheld ~~or because all charges related to the~~
153 ~~arrest or alleged criminal activity to which the petition to~~
154 ~~expunge pertains were not dismissed prior to trial, without~~
155 ~~regard to whether the outcome of the trial was other than an~~



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156 ~~adjudication of guilt.~~ The requirement for the record to have
157 previously been sealed for a minimum of 10 years does not apply
158 when a plea was not entered, when or all charges related to the
159 arrest or alleged criminal activity to which the petition to
160 expunge pertains were dismissed prior to trial, or when a judge
161 or jury rendered a verdict of not guilty. The records of a
162 person adjudicated not guilty by reason of insanity are not
163 eligible for expunction under this section.

164 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
165 criminal history record of a minor or an adult which is ordered
166 expunged by a court of competent jurisdiction pursuant to this
167 section must be physically destroyed or obliterated by any
168 criminal justice agency having custody of such record; except
169 that any criminal history record in the custody of the
170 department must be retained in all cases. A criminal history
171 record ordered expunged that is retained by the department is
172 confidential and exempt from the provisions of s. 119.07(1) and
173 s. 24(a), Art. I of the State Constitution and not available to
174 any person or entity except upon order of a court of competent
175 jurisdiction. A criminal justice agency may retain a notation
176 indicating compliance with an order to expunge. If a person is
177 found to be incompetent to stand trial, the expunction of the
178 criminal history record shall not prevent entry of the judgment
179 or finding in state and national databases for use in
180 determining eligibility to purchase or possess a firearm or to
181 carry a concealed firearm, as authorized in s. 790.065(2)(a)4.c.
182 and 18 U.S.C. s. 922(t), nor shall it prevent a governmental
183 agency that is authorized by state or federal law to determine
184 eligibility to purchase or possess a firearm or to carry a



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185 concealed firearm from accessing or using the record of the
186 judgment or finding in the course of such agency's official
187 duties.

188 (a) The person who is the subject of a criminal history
189 record that is expunged under this section or under other
190 provisions of law, including former s. 893.14, former s. 901.33,
191 and former s. 943.058, may lawfully deny or fail to acknowledge
192 the arrests covered by the expunged record, except when the
193 subject of the record:

- 194 1. Is a candidate for employment with a criminal justice
195 agency;
- 196 2. Is a defendant in a criminal prosecution;
- 197 3. Concurrently or subsequently petitions for relief under
198 this section, s. 943.0583, or s. 943.059;
- 199 4. Is a candidate for admission to The Florida Bar;
- 200 5. Is seeking to be employed or licensed by or to contract
201 with the Department of Children and Families, the Division of
202 Vocational Rehabilitation within the Department of Education,
203 the Agency for Health Care Administration, the Agency for
204 Persons with Disabilities, the Department of Health, the
205 Department of Elderly Affairs, or the Department of Juvenile
206 Justice or to be employed or used by such contractor or licensee
207 in a sensitive position having direct contact with children, the
208 disabled, or the elderly; or
- 209 6. Is seeking to be employed or licensed by the Department
210 of Education, any district school board, any university
211 laboratory school, any charter school, any private or parochial
212 school, or any local governmental entity that licenses child
213 care facilities.



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214 (b) Subject to the exceptions in paragraph (a), a person
215 who has been granted an expunction under this section, former s.
216 893.14, former s. 901.33, or former s. 943.058 may not be held
217 under any provision of law of this state to commit perjury or to
218 be otherwise liable for giving a false statement by reason of
219 such person's failure to recite or acknowledge an expunged
220 criminal history record.

221 (c) Information relating to the existence of an expunged
222 criminal history record which is provided in accordance with
223 paragraph (a) is confidential and exempt from the provisions of
224 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
225 except that the department shall disclose the existence of a
226 criminal history record ordered expunged to the entities set
227 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
228 respective licensing, access authorization, and employment
229 purposes, ~~and~~ to criminal justice agencies for their respective
230 criminal justice purposes, and with respect to a governmental
231 agency that is authorized by state or federal law to determine
232 eligibility to purchase or possess a firearm or to carry a
233 concealed firearm, the department shall disclose the record of a
234 finding of incompetence to stand trial for use in the course of
235 such agency's official duties. It is unlawful for any employee
236 of an entity set forth in subparagraph (a)1., subparagraph
237 (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph
238 (a)7. to disclose information relating to the existence of an
239 expunged criminal history record of a person seeking employment,
240 access authorization, or licensure with such entity or
241 contractor, except to the person to whom the criminal history
242 record relates or to persons having direct responsibility for



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243 employment, access authorization, or licensure decisions. Any
244 person who violates this paragraph commits a misdemeanor of the
245 first degree, punishable as provided in s. 775.082 or s.
246 775.083.

247 Section 3. This act shall take effect July 1, 2014.

248
249 ===== T I T L E A M E N D M E N T =====

250 And the title is amended as follows:

251 Delete everything before the enacting clause
252 and insert:

253 A bill to be entitled
254 An act relating to expunction; amending s. 943.0582,
255 F.S.; allowing minors who have certain felony arrests
256 to have the Department of Law Enforcement expunge
257 their nonjudicial arrest record upon successful
258 completion of a prearrest or postarrest diversion
259 program; extending the application submission date for
260 minors who completed the program before a certain
261 date; amending s. 943.0585, F.S.; revising the
262 information that must be provided in the written
263 statement from the state attorney or statewide
264 prosecutor in order for a person to be eligible for a
265 criminal history record expunction; revising when a
266 certificate of eligibility for expunction shall be
267 issued; authorizing the Department of Law Enforcement
268 to enter certain expunged records in specified
269 databases; requiring the Department of Law Enforcement
270 to disclose certain expunged records to specified
271 governmental entities; providing an effective date.