

By the Committee on Criminal Justice; and Senator Detert

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1 A bill to be entitled
2 An act relating to expunction; amending s. 943.0582,
3 F.S.; allowing minors who have certain felony arrests
4 to have the Department of Law Enforcement expunge
5 their nonjudicial arrest record upon successful
6 completion of a prearrest or postarrest diversion
7 program; extending the application submission date for
8 minors who completed the program before a certain
9 date; amending s. 943.0585, F.S.; revising the
10 information that must be provided in the written
11 statement from the state attorney or statewide
12 prosecutor in order for a person to be eligible for a
13 criminal history record expunction; revising when a
14 certificate of eligibility for expunction shall be
15 issued; authorizing the department to enter certain
16 expunged records in specified databases; requiring the
17 department to disclose certain expunged records to
18 specified governmental entities; providing an
19 effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraphs (c), (e), and (f) of subsection (3)
24 of section 943.0582, Florida Statutes, are amended, present
25 subsection (5) of that section is redesignated as subsection
26 (6), and a new subsection (5) is added to that section, to read:
27 943.0582 Prearrest, postarrest, or teen court diversion
28 program expunction.—

29 (3) The department shall expunge the nonjudicial arrest

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

32 (c) Submits to the department, with the application, an
33 official written statement from the state attorney for the
34 county in which the arrest occurred certifying that he or she
35 has successfully completed that county's prearrest or postarrest
36 diversion program, that his or her participation in the program
37 was based on an arrest for a nonviolent misdemeanor, or for a
38 felony that does not relate to a violation of s. 393.135, s.
39 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
40 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
41 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a
42 violation enumerated in s. 907.041, or any violation specified
43 as a predicate offense for registration as a sexual predator
44 pursuant to s. 775.21, without regard to whether that offense
45 alone is sufficient to require such registration, or for
46 registration as a sexual offender pursuant to s. 943.0435, and
47 that he or she has not otherwise been charged with or found to
48 have committed any criminal offense or comparable ordinance
49 violation.

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

54 (e) ~~(f)~~ Has never, prior to filing the application for
55 expunction, been charged with or been found to have committed
56 any criminal offense or comparable ordinance violation.

57 (5) In the case of a minor whose completion of the program
58 occurred before July 1, 2014, the application for prearrest or

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59 postarrest diversion expunction must be submitted within 6
60 months after July 1, 2014.

61 (6)~~(5)~~ Expunction or sealing granted under this section
62 does not prevent the minor who receives such relief from
63 petitioning for the expunction or sealing of a later criminal
64 history record as provided for in ss. 943.0583, 943.0585, and
65 943.059, if the minor is otherwise eligible under those
66 sections.

67 Section 2. Paragraphs (a) and (h) of subsection (2) and
68 subsection (4) of section 943.0585, Florida Statutes, are
69 amended to read:

70 943.0585 Court-ordered expunction of criminal history
71 records.—The courts of this state have jurisdiction over their
72 own procedures, including the maintenance, expunction, and
73 correction of judicial records containing criminal history
74 information to the extent such procedures are not inconsistent
75 with the conditions, responsibilities, and duties established by
76 this section. Any court of competent jurisdiction may order a
77 criminal justice agency to expunge the criminal history record
78 of a minor or an adult who complies with the requirements of
79 this section. The court shall not order a criminal justice
80 agency to expunge a criminal history record until the person
81 seeking to expunge a criminal history record has applied for and
82 received a certificate of eligibility for expunction pursuant to
83 subsection (2). A criminal history record that relates to a
84 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
85 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
86 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
87 893.135, s. 916.1075, a violation enumerated in s. 907.041, or

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88 any violation specified as a predicate offense for registration
89 as a sexual predator pursuant to s. 775.21, without regard to
90 whether that offense alone is sufficient to require such
91 registration, or for registration as a sexual offender pursuant
92 to s. 943.0435, may not be expunged, without regard to whether
93 adjudication was withheld, if the defendant was found guilty of
94 or pled guilty or nolo contendere to the offense, or if the
95 defendant, as a minor, was found to have committed, or pled
96 guilty or nolo contendere to committing, the offense as a
97 delinquent act. The court may only order expunction of a
98 criminal history record pertaining to one arrest or one incident
99 of alleged criminal activity, except as provided in this
100 section. The court may, at its sole discretion, order the
101 expunction of a criminal history record pertaining to more than
102 one arrest if the additional arrests directly relate to the
103 original arrest. If the court intends to order the expunction of
104 records pertaining to such additional arrests, such intent must
105 be specified in the order. A criminal justice agency may not
106 expunge any record pertaining to such additional arrests if the
107 order to expunge does not articulate the intention of the court
108 to expunge a record pertaining to more than one arrest. This
109 section does not prevent the court from ordering the expunction
110 of only a portion of a criminal history record pertaining to one
111 arrest or one incident of alleged criminal activity.
112 Notwithstanding any law to the contrary, a criminal justice
113 agency may comply with laws, court orders, and official requests
114 of other jurisdictions relating to expunction, correction, or
115 confidential handling of criminal history records or information
116 derived therefrom. This section does not confer any right to the

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117 expunction of any criminal history record, and any request for
118 expunction of a criminal history record may be denied at the
119 sole discretion of the court.

120 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
121 petitioning the court to expunge a criminal history record, a
122 person seeking to expunge a criminal history record shall apply
123 to the department for a certificate of eligibility for
124 expunction. The department shall, by rule adopted pursuant to
125 chapter 120, establish procedures pertaining to the application
126 for and issuance of certificates of eligibility for expunction.
127 A certificate of eligibility for expunction is valid for 12
128 months after the date stamped on the certificate when issued by
129 the department. After that time, the petitioner must reapply to
130 the department for a new certificate of eligibility. Eligibility
131 for a renewed certification of eligibility must be based on the
132 status of the applicant and the law in effect at the time of the
133 renewal application. The department shall issue a certificate of
134 eligibility for expunction to a person who is the subject of a
135 criminal history record if that person:

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

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

141 2. That an indictment, information, or other charging
142 document, if filed or issued in the case, was dismissed or nolle
143 prossed ~~prosequi~~ by the state attorney or statewide prosecutor,
144 or was dismissed by a court of competent jurisdiction, or a
145 judge or jury rendered a verdict of not guilty. The records of a

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146 person adjudicated not guilty by reason of insanity are not
147 eligible for expunction under this section ~~and that none of the~~
148 ~~charges related to the arrest or alleged criminal activity to~~
149 ~~which the petition to expunge pertains resulted in a trial,~~
150 ~~without regard to whether the outcome of the trial was other~~
151 ~~than an adjudication of guilt.~~

152 3. That the criminal history record does not relate to a
153 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
154 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
155 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
156 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
157 any violation specified as a predicate offense for registration
158 as a sexual predator pursuant to s. 775.21, without regard to
159 whether that offense alone is sufficient to require such
160 registration, or for registration as a sexual offender pursuant
161 to s. 943.0435, where the defendant was found guilty of, or pled
162 guilty or nolo contendere to any such offense, or that the
163 defendant, as a minor, was found to have committed, or pled
164 guilty or nolo contendere to committing, such an offense as a
165 delinquent act, without regard to whether adjudication was
166 withheld.

167 (h) Has previously obtained a court order sealing the
168 record under this section, former s. 893.14, former s. 901.33,
169 or former s. 943.058 for a minimum of 10 years because
170 adjudication was withheld ~~or because all charges related to the~~
171 ~~arrest or alleged criminal activity to which the petition to~~
172 ~~expunge pertains were not dismissed prior to trial, without~~
173 ~~regard to whether the outcome of the trial was other than an~~
174 ~~adjudication of guilt.~~ The requirement for the record to have

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175 previously been sealed for a minimum of 10 years does not apply
176 when a plea was not entered, when ~~or~~ all charges related to the
177 arrest or alleged criminal activity to which the petition to
178 expunge pertains were dismissed prior to trial, or when a judge
179 or jury rendered a verdict of not guilty. The records of a
180 person adjudicated not guilty by reason of insanity are not
181 eligible for expunction under this section.

182 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
183 criminal history record of a minor or an adult which is ordered
184 expunged by a court of competent jurisdiction pursuant to this
185 section must be physically destroyed or obliterated by any
186 criminal justice agency having custody of such record; except
187 that any criminal history record in the custody of the
188 department must be retained in all cases. A criminal history
189 record ordered expunged that is retained by the department is
190 confidential and exempt from the provisions of s. 119.07(1) and
191 s. 24(a), Art. I of the State Constitution and not available to
192 any person or entity except upon order of a court of competent
193 jurisdiction. A criminal justice agency may retain a notation
194 indicating compliance with an order to expunge. If a person is
195 found to be incompetent to stand trial, the expunction of the
196 criminal history record shall not prevent entry of the judgment
197 or finding in state and national databases for use in
198 determining eligibility to purchase or possess a firearm or to
199 carry a concealed firearm, as authorized in s. 790.065(2)(a)4.c.
200 and 18 U.S.C. s. 922(t), nor shall it prevent a governmental
201 agency that is authorized by state or federal law to determine
202 eligibility to purchase or possess a firearm or to carry a
203 concealed firearm from accessing or using the record of the

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204 judgment or finding in the course of such agency's official
205 duties.

206 (a) The person who is the subject of a criminal history
207 record that is expunged under this section or under other
208 provisions of law, including former s. 893.14, former s. 901.33,
209 and former s. 943.058, may lawfully deny or fail to acknowledge
210 the arrests covered by the expunged record, except when the
211 subject of the record:

212 1. Is a candidate for employment with a criminal justice
213 agency;

214 2. Is a defendant in a criminal prosecution;

215 3. Concurrently or subsequently petitions for relief under
216 this section, s. 943.0583, or s. 943.059;

217 4. Is a candidate for admission to The Florida Bar;

218 5. Is seeking to be employed or licensed by or to contract
219 with the Department of Children and Families, the Division of
220 Vocational Rehabilitation within the Department of Education,
221 the Agency for Health Care Administration, the Agency for
222 Persons with Disabilities, the Department of Health, the
223 Department of Elderly Affairs, or the Department of Juvenile
224 Justice or to be employed or used by such contractor or licensee
225 in a sensitive position having direct contact with children, the
226 disabled, or the elderly; or

227 6. Is seeking to be employed or licensed by the Department
228 of Education, any district school board, any university
229 laboratory school, any charter school, any private or parochial
230 school, or any local governmental entity that licenses child
231 care facilities.

232 (b) Subject to the exceptions in paragraph (a), a person

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233 who has been granted an expunction under this section, former s.
234 893.14, former s. 901.33, or former s. 943.058 may not be held
235 under any provision of law of this state to commit perjury or to
236 be otherwise liable for giving a false statement by reason of
237 such person's failure to recite or acknowledge an expunged
238 criminal history record.

239 (c) Information relating to the existence of an expunged
240 criminal history record which is provided in accordance with
241 paragraph (a) is confidential and exempt from the provisions of
242 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
243 except that the department shall disclose the existence of a
244 criminal history record ordered expunged to the entities set
245 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
246 respective licensing, access authorization, and employment
247 purposes, ~~and~~ to criminal justice agencies for their respective
248 criminal justice purposes, and with respect to a governmental
249 agency that is authorized by state or federal law to determine
250 eligibility to purchase or possess a firearm or to carry a
251 concealed firearm, the department shall disclose the record of a
252 finding of incompetence to stand trial for use in the course of
253 such agency's official duties. It is unlawful for any employee
254 of an entity set forth in subparagraph (a)1., subparagraph
255 (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph
256 (a)7. to disclose information relating to the existence of an
257 expunged criminal history record of a person seeking employment,
258 access authorization, or licensure with such entity or
259 contractor, except to the person to whom the criminal history
260 record relates or to persons having direct responsibility for
261 employment, access authorization, or licensure decisions. Any

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262 person who violates this paragraph commits a misdemeanor of the
263 first degree, punishable as provided in s. 775.082 or s.
264 775.083.

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