

By Senator Braynon

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1 A bill to be entitled
2 An act relating to expunction of criminal history
3 records; creating s. 943.0595, F.S.; requiring
4 automatic expunction of certain criminal history
5 records upon restoration of civil rights; providing
6 exceptions; providing procedures; providing for effect
7 of expunction; providing for treatment of certain
8 statutory cross-references; amending ss. 943.0582,
9 943.0585, and 943.059, F.S.; conforming provisions to
10 changes made by the act; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 943.0595, Florida Statutes, is created
15 to read:

16 943.0595 Automatic expunction of criminal history record on
17 restoration of civil rights; exceptions.—

18 (1) QUALIFICATION.—

19 (a) Notwithstanding any law dealing generally with the
20 preservation and destruction of public records, a criminal
21 history record of a person who has had his or her civil rights
22 restored under chapter 940 shall automatically be expunged upon
23 the restoration of the person's civil rights, unless the person
24 was convicted of an offense listed in paragraph (b).

25 (b) The expunction under this section is not available to a
26 person who is:

27 1. Classified as a violent career criminal, habitual felony
28 offender, habitual violent felony offender, or three-time
29 violent felony offender under s. 775.084.

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30 2. Subject to registration as a sexual predator under s.
31 775.21.

32 3. Subject to registration as a sexual offender under s.
33 943.0435.

34 (2) PROCESSING.—Upon the restoration of an offender’s civil
35 rights, the Commission on Offender Review shall immediately
36 inform the department of the restoration. The department shall
37 have 30 days after its receipt of the notification to determine
38 whether the offender is eligible for expunction under subsection
39 (1). If the offender is eligible for expunction, the department
40 shall immediately expunge the offender’s criminal history
41 records. The department must, within 10 days after making the
42 determination, inform the offender of the expunction or the
43 reasons for its determination that the offender is ineligible
44 for expunction.

45 (3) EFFECT OF EXPUNCTION.—A criminal history record
46 expunged pursuant to this section must be physically destroyed
47 or obliterated by a criminal justice agency having custody of
48 the record. However, a criminal history record in the custody of
49 the department must be retained in all cases. A criminal justice
50 agency may retain a notation indicating compliance with an
51 expunction.

52 (a) The person who is the subject of a criminal history
53 record that is expunged under this section may lawfully deny or
54 fail to acknowledge the arrests covered by the expunged record,
55 except when the person:

56 1. Is a candidate for employment with a criminal justice
57 agency;

58 2. Is a defendant in a criminal prosecution;

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59 3. Concurrently or subsequently petitions for relief under
60 this section, s. 943.0583, s. 943.0585, or s. 943.059;

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

62 5. Is seeking to be employed or licensed by or to contract
63 with the Department of Children and Families, the Division of
64 Vocational Rehabilitation within the Department of Education,
65 the Agency for Health Care Administration, the Agency for
66 Persons with Disabilities, the Department of Health, the
67 Department of Elderly Affairs, or the Department of Juvenile
68 Justice or to be employed or used by such a contractor or
69 licensee in a sensitive position having direct contact with
70 children, the disabled, or the elderly;

71 6. Is seeking to be employed or licensed by the Department
72 of Education or a district school board, university laboratory
73 school, charter school, private or parochial school, or local
74 governmental entity that licenses child care facilities;

75 7. Is seeking to be licensed by the Division of Insurance
76 Agent and Agency Services within the Department of Financial
77 Services; or

78 8. Is seeking to be appointed as a guardian pursuant to s.
79 744.3125.

80 (b) Subject to the exceptions in paragraph (a), a person
81 whose record has been expunged under this section may not be
82 held under any provision of law of this state to commit perjury
83 or to be otherwise liable for giving a false statement by reason
84 of such person's failure to recite or acknowledge an expunged
85 criminal history record.

86 (4) SECTION NOT EXCLUSIVE.—Expunction granted under this
87 section does not prevent the person who receives such relief

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88 from petitioning for the expunction or sealing of a criminal
89 history record under ss. 943.0583, 943.0585, or 943.059 if the
90 person is otherwise eligible under those sections.

91 (5) STATUTORY REFERENCES.—Any reference to any other
92 chapter, section, or subdivision of the Florida Statutes in this
93 section constitutes a general reference under the doctrine of
94 incorporation by reference.

95 Section 2. Subsection (5) of section 943.0582, Florida
96 Statutes, is amended to read:

97 943.0582 Prearrest, postarrest, or teen court diversion
98 program expunction.—

99 (5) Expunction or sealing granted under this section does
100 not prevent the minor who receives such relief from petitioning
101 for the expunction or sealing of a later criminal history record
102 as provided for in ss. 943.0583, 943.0585, ~~and~~ 943.059, and
103 943.0595 if the minor is otherwise eligible under those
104 sections.

105 Section 3. Paragraph (b) of subsection (1), paragraph (f)
106 of subsection (2), and paragraph (a) of subsection (4) of
107 section 943.0585, Florida Statutes, are amended to read:

108 943.0585 Court-ordered expunction of criminal history
109 records.—The courts of this state have jurisdiction over their
110 own procedures, including the maintenance, expunction, and
111 correction of judicial records containing criminal history
112 information to the extent such procedures are not inconsistent
113 with the conditions, responsibilities, and duties established by
114 this section. Any court of competent jurisdiction may order a
115 criminal justice agency to expunge the criminal history record
116 of a minor or an adult who complies with the requirements of

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117 this section. The court shall not order a criminal justice
118 agency to expunge a criminal history record until the person
119 seeking to expunge a criminal history record has applied for and
120 received a certificate of eligibility for expunction pursuant to
121 subsection (2) or subsection (5). A criminal history record that
122 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
123 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
124 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
125 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
126 s. 907.041, or any violation specified as a predicate offense
127 for registration as a sexual predator pursuant to s. 775.21,
128 without regard to whether that offense alone is sufficient to
129 require such registration, or for registration as a sexual
130 offender pursuant to s. 943.0435, may not be expunged, without
131 regard to whether adjudication was withheld, if the defendant
132 was found guilty of or pled guilty or nolo contendere to the
133 offense, or if the defendant, as a minor, was found to have
134 committed, or pled guilty or nolo contendere to committing, the
135 offense as a delinquent act. The court may only order expunction
136 of a criminal history record pertaining to one arrest or one
137 incident of alleged criminal activity, except as provided in
138 this section. The court may, at its sole discretion, order the
139 expunction of a criminal history record pertaining to more than
140 one arrest if the additional arrests directly relate to the
141 original arrest. If the court intends to order the expunction of
142 records pertaining to such additional arrests, such intent must
143 be specified in the order. A criminal justice agency may not
144 expunge any record pertaining to such additional arrests if the
145 order to expunge does not articulate the intention of the court

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146 to expunge a record pertaining to more than one arrest. This
147 section does not prevent the court from ordering the expunction
148 of only a portion of a criminal history record pertaining to one
149 arrest or one incident of alleged criminal activity.

150 Notwithstanding any law to the contrary, a criminal justice
151 agency may comply with laws, court orders, and official requests
152 of other jurisdictions relating to expunction, correction, or
153 confidential handling of criminal history records or information
154 derived therefrom. This section does not confer any right to the
155 expunction of any criminal history record, and any request for
156 expunction of a criminal history record may be denied at the
157 sole discretion of the court.

158 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
159 petition to a court to expunge a criminal history record is
160 complete only when accompanied by:

161 (b) The petitioner's sworn statement attesting that the
162 petitioner:

163 1. Has never, prior to the date on which the petition is
164 filed, been adjudicated guilty of a criminal offense or
165 comparable ordinance violation, or been adjudicated delinquent
166 for committing any felony or a misdemeanor specified in s.
167 943.051(3)(b).

168 2. Has not been adjudicated guilty of, or adjudicated
169 delinquent for committing, any of the acts stemming from the
170 arrest or alleged criminal activity to which the petition
171 pertains.

172 3. Has never secured a prior sealing or expunction of a
173 criminal history record under this section, s. 943.059, s.
174 943.0595, former s. 893.14, former s. 901.33, or former s.

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175 943.058, unless expunction is sought of a criminal history
176 record previously sealed for 10 years pursuant to paragraph
177 (2) (h) and the record is otherwise eligible for expunction.

178 4. Is eligible for such an expunction to the best of his or
179 her knowledge or belief and does not have any other petition to
180 expunge or any petition to seal pending before any court.

181
182 Any person who knowingly provides false information on such
183 sworn statement to the court commits a felony of the third
184 degree, punishable as provided in s. 775.082, s. 775.083, or s.
185 775.084.

186 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
187 petitioning the court to expunge a criminal history record, a
188 person seeking to expunge a criminal history record shall apply
189 to the department for a certificate of eligibility for
190 expunction. The department shall, by rule adopted pursuant to
191 chapter 120, establish procedures pertaining to the application
192 for and issuance of certificates of eligibility for expunction.
193 A certificate of eligibility for expunction is valid for 12
194 months after the date stamped on the certificate when issued by
195 the department. After that time, the petitioner must reapply to
196 the department for a new certificate of eligibility. Eligibility
197 for a renewed certification of eligibility must be based on the
198 status of the applicant and the law in effect at the time of the
199 renewal application. The department shall issue a certificate of
200 eligibility for expunction to a person who is the subject of a
201 criminal history record if that person:

202 (f) Has never secured a prior sealing or expunction of a
203 criminal history record under this section, s. 943.059, s.

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204 943.0595, former s. 893.14, former s. 901.33, or former s.
205 943.058, unless expunction is sought of a criminal history
206 record previously sealed for 10 years pursuant to paragraph (h)
207 and the record is otherwise eligible for expunction.

208 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
209 criminal history record of a minor or an adult which is ordered
210 expunged by a court of competent jurisdiction pursuant to this
211 section must be physically destroyed or obliterated by any
212 criminal justice agency having custody of such record; except
213 that any criminal history record in the custody of the
214 department must be retained in all cases. A criminal history
215 record ordered expunged that is retained by the department is
216 confidential and exempt from the provisions of s. 119.07(1) and
217 s. 24(a), Art. I of the State Constitution and not available to
218 any person or entity except upon order of a court of competent
219 jurisdiction. A criminal justice agency may retain a notation
220 indicating compliance with an order to expunge.

221 (a) The person who is the subject of a criminal history
222 record that is expunged under this section or under other
223 provisions of law, including former s. 893.14, former s. 901.33,
224 and former s. 943.058, may lawfully deny or fail to acknowledge
225 the arrests covered by the expunged record, except when the
226 subject of the record:

- 227 1. Is a candidate for employment with a criminal justice
228 agency;
- 229 2. Is a defendant in a criminal prosecution;
- 230 3. Concurrently or subsequently petitions for relief under
231 this section, s. 943.0583, ~~or~~ s. 943.059, or s. 943.0595;
- 232 4. Is a candidate for admission to The Florida Bar;

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233 5. Is seeking to be employed or licensed by or to contract
234 with the Department of Children and Families, the Division of
235 Vocational Rehabilitation within the Department of Education,
236 the Agency for Health Care Administration, the Agency for
237 Persons with Disabilities, the Department of Health, the
238 Department of Elderly Affairs, or the Department of Juvenile
239 Justice or to be employed or used by such contractor or licensee
240 in a sensitive position having direct contact with children, the
241 disabled, or the elderly;

242 6. Is seeking to be employed or licensed by the Department
243 of Education, any district school board, any university
244 laboratory school, any charter school, any private or parochial
245 school, or any local governmental entity that licenses child
246 care facilities;

247 7. Is seeking to be licensed by the Division of Insurance
248 Agent and Agency Services within the Department of Financial
249 Services; or

250 8. Is seeking to be appointed as a guardian pursuant to s.
251 744.3125.

252 Section 4. Paragraph (b) of subsection (1), paragraph (e)
253 of subsection (2), and paragraph (a) of subsection (4) of
254 section 943.059, Florida Statutes, are amended to read:

255 943.059 Court-ordered sealing of criminal history records.—
256 The courts of this state shall continue to have jurisdiction
257 over their own procedures, including the maintenance, sealing,
258 and correction of judicial records containing criminal history
259 information to the extent such procedures are not inconsistent
260 with the conditions, responsibilities, and duties established by
261 this section. Any court of competent jurisdiction may order a

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262 criminal justice agency to seal the criminal history record of a
263 minor or an adult who complies with the requirements of this
264 section. The court shall not order a criminal justice agency to
265 seal a criminal history record until the person seeking to seal
266 a criminal history record has applied for and received a
267 certificate of eligibility for sealing pursuant to subsection
268 (2). A criminal history record that relates to a violation of s.
269 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
270 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
271 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
272 s. 916.1075, a violation enumerated in s. 907.041, or any
273 violation specified as a predicate offense for registration as a
274 sexual predator pursuant to s. 775.21, without regard to whether
275 that offense alone is sufficient to require such registration,
276 or for registration as a sexual offender pursuant to s.
277 943.0435, may not be sealed, without regard to whether
278 adjudication was withheld, if the defendant was found guilty of
279 or pled guilty or nolo contendere to the offense, or if the
280 defendant, as a minor, was found to have committed or pled
281 guilty or nolo contendere to committing the offense as a
282 delinquent act. The court may only order sealing of a criminal
283 history record pertaining to one arrest or one incident of
284 alleged criminal activity, except as provided in this section.
285 The court may, at its sole discretion, order the sealing of a
286 criminal history record pertaining to more than one arrest if
287 the additional arrests directly relate to the original arrest.
288 If the court intends to order the sealing of records pertaining
289 to such additional arrests, such intent must be specified in the
290 order. A criminal justice agency may not seal any record

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291 pertaining to such additional arrests if the order to seal does
292 not articulate the intention of the court to seal records
293 pertaining to more than one arrest. This section does not
294 prevent the court from ordering the sealing of only a portion of
295 a criminal history record pertaining to one arrest or one
296 incident of alleged criminal activity. Notwithstanding any law
297 to the contrary, a criminal justice agency may comply with laws,
298 court orders, and official requests of other jurisdictions
299 relating to sealing, correction, or confidential handling of
300 criminal history records or information derived therefrom. This
301 section does not confer any right to the sealing of any criminal
302 history record, and any request for sealing a criminal history
303 record may be denied at the sole discretion of the court.

304 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
305 petition to a court to seal a criminal history record is
306 complete only when accompanied by:

307 (b) The petitioner's sworn statement attesting that the
308 petitioner:

309 1. Has never, prior to the date on which the petition is
310 filed, been adjudicated guilty of a criminal offense or
311 comparable ordinance violation, or been adjudicated delinquent
312 for committing any felony or a misdemeanor specified in s.
313 943.051(3)(b).

314 2. Has not been adjudicated guilty of or adjudicated
315 delinquent for committing any of the acts stemming from the
316 arrest or alleged criminal activity to which the petition to
317 seal pertains.

318 3. Has never secured a prior sealing or expunction of a
319 criminal history record under this section, s. 943.0585, s.

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320 943.0595, former s. 893.14, former s. 901.33, or former s.
321 943.058.

322 4. Is eligible for such a sealing to the best of his or her
323 knowledge or belief and does not have any other petition to seal
324 or any petition to expunge pending before any court.

325
326 Any person who knowingly provides false information on such
327 sworn statement to the court commits a felony of the third
328 degree, punishable as provided in s. 775.082, s. 775.083, or s.
329 775.084.

330 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
331 petitioning the court to seal a criminal history record, a
332 person seeking to seal a criminal history record shall apply to
333 the department for a certificate of eligibility for sealing. The
334 department shall, by rule adopted pursuant to chapter 120,
335 establish procedures pertaining to the application for and
336 issuance of certificates of eligibility for sealing. A
337 certificate of eligibility for sealing is valid for 12 months
338 after the date stamped on the certificate when issued by the
339 department. After that time, the petitioner must reapply to the
340 department for a new certificate of eligibility. Eligibility for
341 a renewed certification of eligibility must be based on the
342 status of the applicant and the law in effect at the time of the
343 renewal application. The department shall issue a certificate of
344 eligibility for sealing to a person who is the subject of a
345 criminal history record provided that such person:

346 (e) Has never secured a prior sealing or expunction of a
347 criminal history record under this section, s. 943.0585, s.
348 943.0595, former s. 893.14, former s. 901.33, or former s.

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349 943.058.

350 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
351 history record of a minor or an adult which is ordered sealed by
352 a court pursuant to this section is confidential and exempt from
353 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
354 Constitution and is available only to the person who is the
355 subject of the record, to the subject's attorney, to criminal
356 justice agencies for their respective criminal justice purposes,
357 which include conducting a criminal history background check for
358 approval of firearms purchases or transfers as authorized by
359 state or federal law, to judges in the state courts system for
360 the purpose of assisting them in their case-related
361 decisionmaking responsibilities, as set forth in s. 943.053(5),
362 or to those entities set forth in subparagraphs (a)1., 4., 5.,
363 6., 8., 9., and 10. for their respective licensing, access
364 authorization, and employment purposes.

365 (a) The subject of a criminal history record sealed under
366 this section or under other provisions of law, including former
367 s. 893.14, former s. 901.33, ~~and~~ former s. 943.058, and s.
368 943.0595 may lawfully deny or fail to acknowledge the arrests
369 covered by the sealed record, except when the subject of the
370 record:

- 371 1. Is a candidate for employment with a criminal justice
372 agency;
- 373 2. Is a defendant in a criminal prosecution;
- 374 3. Concurrently or subsequently petitions for relief under
375 this section, s. 943.0583, or s. 943.0585;
- 376 4. Is a candidate for admission to The Florida Bar;
- 377 5. Is seeking to be employed or licensed by or to contract

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378 with the Department of Children and Families, the Division of
379 Vocational Rehabilitation within the Department of Education,
380 the Agency for Health Care Administration, the Agency for
381 Persons with Disabilities, the Department of Health, the
382 Department of Elderly Affairs, or the Department of Juvenile
383 Justice or to be employed or used by such contractor or licensee
384 in a sensitive position having direct contact with children, the
385 disabled, or the elderly;

386 6. Is seeking to be employed or licensed by the Department
387 of Education, a district school board, a university laboratory
388 school, a charter school, a private or parochial school, or a
389 local governmental entity that licenses child care facilities;

390 7. Is attempting to purchase a firearm from a licensed
391 importer, licensed manufacturer, or licensed dealer and is
392 subject to a criminal history check under state or federal law;

393 8. Is seeking to be licensed by the Division of Insurance
394 Agent and Agency Services within the Department of Financial
395 Services;

396 9. Is seeking to be appointed as a guardian pursuant to s.
397 744.3125; or

398 10. Is seeking to be licensed by the Bureau of License
399 Issuance of the Division of Licensing within the Department of
400 Agriculture and Consumer Services to carry a concealed weapon or
401 concealed firearm. This subparagraph applies only in the
402 determination of an applicant's eligibility under s. 790.06.

403 Section 5. This act shall take effect October 1, 2015.