

By Senator Detert

28-00564-15

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1 A bill to be entitled
2 An act relating to the expunction of criminal records;
3 amending s. 943.0582, F.S.; requiring the Department
4 of Law Enforcement to expunge a minor's nonjudicial
5 arrest record upon successful completion of a
6 prearrest or postarrest diversion program; extending
7 the application submission date for minors who
8 completed the program before a certain date; amending
9 s. 943.0585, F.S.; revising the information that must
10 be provided in the written statement from the state
11 attorney or statewide prosecutor in order for a person
12 to be eligible for a criminal history record
13 expunction; revising the criteria for obtaining a
14 certificate of eligibility for expunction; authorizing
15 the department to enter certain expunged records in
16 specified databases; requiring the department to
17 disclose certain expunged records to specified
18 governmental entities; reenacting s. 985.125(3), F.S.,
19 to incorporate the amendment made to s. 943.0582,
20 F.S., in a reference thereto; reenacting ss.
21 943.0582(2)(a) and (5), 943.0585(1)(a) and (5),
22 943.059(1)(b), (2)(e), and (4)(a), 948.08(6)(b) and
23 (7)(b), 948.16(1)(b) and (2)(b), 961.06(1),
24 985.345(2), and 776.09(3), F.S., to incorporate the
25 amendment made to s. 943.0585, F.S., in references
26 thereto; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Paragraphs (c), (e), and (f) of subsection (3)
31 of section 943.0582, Florida Statutes, are amended, present
32 subsection (5) of that section is redesignated as subsection
33 (6), and a new subsection (5) is added to that section, to read:
34 943.0582 Prearrest, postarrest, or teen court diversion
35 program expunction.—

36 (3) The department shall expunge the nonjudicial arrest
37 record of a minor who has successfully completed a prearrest or
38 postarrest diversion program if that minor:

39 (c) Submits to the department, with the application, an
40 official written statement from the state attorney for the
41 county in which the arrest occurred certifying that he or she
42 has successfully completed that county's prearrest or postarrest
43 diversion program;7 that his or her participation in the program
44 was based on an arrest for a nonviolent misdemeanor or for a
45 felony that does not relate to a violation of s. 393.135, s.
46 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04,
47 s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
48 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a
49 violation enumerated in s. 907.041, or any violation specified
50 as a predicate offense for registration as a sexual predator
51 pursuant to s. 775.21, without regard to whether that offense,
52 alone, is sufficient to require such registration, or for
53 registration as a sexual offender pursuant to s. 943.0435;7 and
54 that he or she has not otherwise been charged by the state
55 attorney with or found to have committed any criminal offense or
56 comparable ordinance violation.

57 ~~(c) Participated in a prearrest or postarrest diversion~~
58 ~~program based on an arrest for a nonviolent misdemeanor that~~

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59 ~~would not qualify as an act of domestic violence as that term is~~
60 ~~defined in s. 741.28.~~

61 (e)~~(f)~~ Has never, prior to filing the application for
62 expunction, been charged by the state attorney with or been
63 found to have committed any criminal offense or comparable
64 ordinance violation.

65 (5) In the case of a minor whose completion of the program
66 occurred before July 1, 2015, the application for prearrest or
67 postarrest diversion expunction must be submitted within 6
68 months after July 1, 2015.

69 (6)~~(5)~~ Expunction or sealing granted under this section
70 does not prevent the minor who receives such relief from
71 petitioning for the expunction or sealing of a later criminal
72 history record as provided for in ss. 943.0583, 943.0585, and
73 943.059, if the minor is otherwise eligible under those
74 sections.

75 Section 2. Paragraphs (a) and (h) of subsection (2) and
76 subsection (4) of section 943.0585, Florida Statutes, are
77 amended to read:

78 943.0585 Court-ordered expunction of criminal history
79 records.—The courts of this state have jurisdiction over their
80 own procedures, including the maintenance, expunction, and
81 correction of judicial records containing criminal history
82 information to the extent such procedures are not inconsistent
83 with the conditions, responsibilities, and duties established by
84 this section. Any court of competent jurisdiction may order a
85 criminal justice agency to expunge the criminal history record
86 of a minor or an adult who complies with the requirements of
87 this section. The court shall not order a criminal justice

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88 agency to expunge a criminal history record until the person
89 seeking to expunge a criminal history record has applied for and
90 received a certificate of eligibility for expunction pursuant to
91 subsection (2) or subsection (5). A criminal history record that
92 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
93 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
94 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
95 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
96 s. 907.041, or any violation specified as a predicate offense
97 for registration as a sexual predator pursuant to s. 775.21,
98 without regard to whether that offense alone is sufficient to
99 require such registration, or for registration as a sexual
100 offender pursuant to s. 943.0435, may not be expunged, without
101 regard to whether adjudication was withheld, if the defendant
102 was found guilty of or pled guilty or nolo contendere to the
103 offense, or if the defendant, as a minor, was found to have
104 committed, or pled guilty or nolo contendere to committing, the
105 offense as a delinquent act. The court may only order expunction
106 of a criminal history record pertaining to one arrest or one
107 incident of alleged criminal activity, except as provided in
108 this section. The court may, at its sole discretion, order the
109 expunction of a criminal history record pertaining to more than
110 one arrest if the additional arrests directly relate to the
111 original arrest. If the court intends to order the expunction of
112 records pertaining to such additional arrests, such intent must
113 be specified in the order. A criminal justice agency may not
114 expunge any record pertaining to such additional arrests if the
115 order to expunge does not articulate the intention of the court
116 to expunge a record pertaining to more than one arrest. This

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117 section does not prevent the court from ordering the expunction
118 of only a portion of a criminal history record pertaining to one
119 arrest or one incident of alleged criminal activity.

120 Notwithstanding any law to the contrary, a criminal justice
121 agency may comply with laws, court orders, and official requests
122 of other jurisdictions relating to expunction, correction, or
123 confidential handling of criminal history records or information
124 derived therefrom. This section does not confer any right to the
125 expunction of any criminal history record, and any request for
126 expunction of a criminal history record may be denied at the
127 sole discretion of the court.

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

144 (a) Has obtained, and submitted to the department, a
145 written, certified statement from the appropriate state attorney

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146 or statewide prosecutor which indicates:

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

149 2. That an indictment, information, or other charging
150 document, if filed or issued in the case, was dismissed or nolle
151 prossed ~~prosequi~~ by the state attorney or statewide prosecutor,
152 or was dismissed by a court of competent jurisdiction, or that a
153 judge or jury rendered a verdict of not guilty. The records of a
154 person adjudicated not guilty by reason of insanity are not
155 eligible for expunction under this section ~~and that none of the~~
156 ~~charges related to the arrest or alleged criminal activity to~~
157 ~~which the petition to expunge pertains resulted in a trial,~~
158 ~~without regard to whether the outcome of the trial was other~~
159 ~~than an adjudication of guilt.~~

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

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175 (h) Has previously obtained a court order sealing the
176 record under this section, former s. 893.14, former s. 901.33,
177 or former s. 943.058 for a minimum of 10 years because
178 adjudication was withheld ~~or because all charges related to the~~
179 ~~arrest or alleged criminal activity to which the petition to~~
180 ~~expunge pertains were not dismissed prior to trial, without~~
181 ~~regard to whether the outcome of the trial was other than an~~
182 ~~adjudication of guilt.~~ The requirement for the record to have
183 previously been sealed for a minimum of 10 years does not apply
184 when a plea was not entered, when ~~or~~ all charges related to the
185 arrest or alleged criminal activity to which the petition to
186 expunge pertains were dismissed prior to trial, or when a judge
187 or jury rendered a verdict of not guilty. The records of a
188 person adjudicated not guilty by reason of insanity are not
189 eligible for expunction under this section.

190 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
191 criminal history record of a minor or an adult which is ordered
192 expunged by a court of competent jurisdiction pursuant to this
193 section must be physically destroyed or obliterated by any
194 criminal justice agency having custody of such record; except
195 that any criminal history record in the custody of the
196 department must be retained in all cases. A criminal history
197 record ordered expunged that is retained by the department is
198 confidential and exempt from the provisions of s. 119.07(1) and
199 s. 24(a), Art. I of the State Constitution and not available to
200 any person or entity except upon order of a court of competent
201 jurisdiction. A criminal justice agency may retain a notation
202 indicating compliance with an order to expunge. If a person is
203 found to be incompetent to stand trial, the expunction of the

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204 criminal history record does not prevent entry of the judgment
205 or finding in state and national databases for use in
206 determining eligibility to purchase or possess a firearm or to
207 carry a concealed firearm, as authorized in s. 790.065(2)(a)4.c.
208 and 18 U.S.C. s. 922(t), and does not prevent a governmental
209 agency that is authorized by state or federal law to determine
210 eligibility to purchase or possess a firearm or to carry a
211 concealed firearm from accessing or using the record of the
212 judgment or finding in the course of such agency's official
213 duties.

214 (a) The person who is the subject of a criminal history
215 record that is expunged under this section or under other
216 provisions of law, including former s. 893.14, former s. 901.33,
217 and former s. 943.058, may lawfully deny or fail to acknowledge
218 the arrests covered by the expunged record, except when the
219 subject of the record:

- 220 1. Is a candidate for employment with a criminal justice
221 agency;
- 222 2. Is a defendant in a criminal prosecution;
- 223 3. Concurrently or subsequently petitions for relief under
224 this section, s. 943.0583, or s. 943.059;
- 225 4. Is a candidate for admission to The Florida Bar;
- 226 5. Is seeking to be employed or licensed by or to contract
227 with the Department of Children and Families, the Division of
228 Vocational Rehabilitation within the Department of Education,
229 the Agency for Health Care Administration, the Agency for
230 Persons with Disabilities, the Department of Health, the
231 Department of Elderly Affairs, or the Department of Juvenile
232 Justice or to be employed or used by such contractor or licensee

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233 in a sensitive position having direct contact with children, the
234 disabled, or the elderly;

235 6. Is seeking to be employed or licensed by the Department
236 of Education, any district school board, any university
237 laboratory school, any charter school, any private or parochial
238 school, or any local governmental entity that licenses child
239 care facilities;

240 7. Is seeking to be licensed by the Division of Insurance
241 Agent and Agency Services within the Department of Financial
242 Services; or

243 8. Is seeking to be appointed as a guardian pursuant to s.
244 744.3125.

245 (b) Subject to the exceptions in paragraph (a), a person
246 who has been granted an expunction under this section, former s.
247 893.14, former s. 901.33, or former s. 943.058 may not be held
248 under any provision of law of this state to commit perjury or to
249 be otherwise liable for giving a false statement by reason of
250 such person's failure to recite or acknowledge an expunged
251 criminal history record.

252 (c) Information relating to the existence of an expunged
253 criminal history record which is provided in accordance with
254 paragraph (a) is confidential and exempt from ~~the provisions of~~
255 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
256 except that the department shall disclose the existence of a
257 criminal history record ordered expunged to the entities set
258 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their
259 respective licensing, access authorization, and employment
260 purposes, ~~and~~ to criminal justice agencies for their respective
261 criminal justice purposes, and, with respect to a governmental

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262 agency that is authorized by state or federal law to determine
263 eligibility to purchase or possess a firearm or to carry a
264 concealed firearm, the department shall disclose the record of a
265 finding of incompetence to stand trial for use in the course of
266 such agency's official duties. It is unlawful for any employee
267 of an entity set forth in subparagraph (a)1., subparagraph
268 (a)4., subparagraph (a)5., subparagraph (a)6., subparagraph
269 (a)7., or subparagraph (a)8. to disclose information relating to
270 the existence of an expunged criminal history record of a person
271 seeking employment, access authorization, or licensure with such
272 entity or contractor, except to the person to whom the criminal
273 history record relates or to persons having direct
274 responsibility for employment, access authorization, or
275 licensure decisions. Any person who violates this paragraph
276 commits a misdemeanor of the first degree, punishable as
277 provided in s. 775.082 or s. 775.083.

278 Section 3. Subsection (3) of s. 985.125, Florida Statutes,
279 is reenacted for the purpose of incorporating the amendments
280 made by this act to s. 943.0582, Florida Statutes, in a
281 reference thereto.

282 Section 4. Paragraph (a) of subsection (2) and subsection
283 (5) of s. 943.0582, paragraph (a) of subsection (1) and
284 subsection (5) of s. 943.0585, paragraph (b) of subsection (1),
285 paragraph (e) of subsection (2), and paragraph (a) of subsection
286 (4) of s. 943.059, paragraph (b) of subsection (6) and paragraph
287 (b) of subsection (7) of s. 948.08, paragraph (b) of subsection
288 (1) and paragraph (b) of subsection (2) of s. 948.16, subsection
289 (1) of s. 961.06, subsection (2) of s. 985.345, and subsection
290 (3) of s. 776.09, Florida Statutes, are reenacted for the

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291 purpose of incorporating the amendments made to s. 943.0585,
292 Florida Statutes, in references thereto.

293 Section 5. This act shall take effect July 1, 2015.