

By Senator Smith

31-00182-16

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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.; providing for the
4 automatic expunction of criminal history records in
5 specified circumstances; providing a process for
6 expunction of a criminal history record; providing
7 that expunction granted under the act does not prevent
8 a person who receives such relief from petitioning for
9 the expunction or sealing of a criminal history record
10 under other provisions of law; providing for the
11 treatment of general references in the act under the
12 doctrine of incorporation by reference; amending s.
13 943.0582, F.S.; conforming a provision to changes made
14 by the act; providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Section 943.0595, Florida Statutes, is created
19 to read:

20 943.0595 Automatic qualification for expunction of criminal
21 history record if no finding of guilt.-

22 (1) QUALIFICATION.-

23 (a) Notwithstanding any law dealing with the preservation
24 and destruction of public records, a criminal history record
25 relating to a person who has not been found guilty of, or has
26 not pled guilty or nolo contendere to, an offense automatically
27 qualifies for expunction. The record must be expunged if:

28 1. An indictment, information, or other charging document
29 was not filed or issued in the case;

31-00182-16

2016276__

30 2. An indictment, information, or other charging document
31 was filed or issued in the case and was dismissed or nolle
32 prosequi by the state attorney or statewide prosecutor or
33 dismissed by a court of competent jurisdiction; or

34 3. The person was found not guilty or acquitted by a judge
35 or jury.

36 (b) If the person was adjudicated guilty of or adjudicated
37 delinquent for committing any of the acts stemming from the
38 arrest or alleged criminal activity or delinquent act, the
39 record does not qualify for automatic expunction.

40 (2) PETITION.—Each petition to a court to expunge a
41 criminal history record is complete only when accompanied by a
42 certified copy of the disposition of the offenses sought to be
43 sealed.

44 (3) PROCESS.—

45 (a) A certificate of eligibility for expunction from the
46 department is not required under this section.

47 (b) A court of competent jurisdiction may order a criminal
48 justice agency to expunge the criminal history record of a minor
49 or an adult whose record qualifies for automatic expunction
50 under this section.

51 (c) In a judicial proceeding under this section, a copy of
52 the completed petition to expunge shall be served upon the
53 appropriate state attorney or the statewide prosecutor and upon
54 the arresting agency. It is not necessary to make any agency
55 other than the state a party. The appropriate state attorney or
56 the statewide prosecutor and the arresting agency may respond to
57 the court regarding the completed petition to expunge.

58 (d) Notwithstanding ss. 943.0585 and 943.059 and any other

31-00182-16

2016276__

59 law, the court may order expunction of a criminal history record
60 pertaining to more than one arrest or one incident of alleged
61 criminal activity if the person has not been adjudicated guilty
62 of or adjudicated delinquent for committing any of the acts
63 stemming from the arrest or alleged criminal activity or
64 delinquent act to which the petition to expunge pertains.

65 (e) If relief is granted by the court, the clerk of the
66 court shall certify copies of the order to the appropriate state
67 attorney or the statewide prosecutor, to the county, and to the
68 arresting agency. The arresting agency shall forward the order
69 to any other agency to which the arresting agency disseminated
70 the criminal history record information to which the order
71 pertains. The department shall forward the order to expunge to
72 the Federal Bureau of Investigation. The clerk of the court
73 shall certify a copy of the order to any other agency that court
74 records indicate has received the criminal history record from
75 the court. The county shall forward the order to any agency,
76 organization, or company to which the county disseminated the
77 criminal history information to which the order pertains.

78 (f) The department or any other criminal justice agency is
79 required to not act on an order to expunge entered by a court
80 when the order does not comply with the requirements of this
81 section. Upon receipt of such an order, the department shall
82 notify the issuing court, the appropriate state attorney or the
83 statewide prosecutor, the petitioner or the petitioner's
84 attorney, and the arresting agency within 5 business days after
85 determining that the department or the agency cannot comply with
86 the court order. The appropriate state attorney or the statewide
87 prosecutor shall take action within 60 days to correct the

31-00182-16

2016276__

88 record and petition the court to void the order. A cause of
89 action, including contempt of court, may not arise against any
90 criminal justice agency for failing to comply with an order to
91 expunge when the order does not comply with the requirements of
92 this section.

93 (g) An order expunging a criminal history record pursuant
94 to this section does not require that the record be surrendered
95 to the court, and the record shall continue to be maintained by
96 the department and other criminal justice agencies.

97 (4) SECTION NOT EXCLUSIVE.—Expunction granted under this
98 section does not prevent the person who receives such relief
99 from petitioning for the expunction or sealing of a criminal
100 history record as provided for in ss. 943.0585 and 943.059 if
101 the person is otherwise eligible under those sections.

102 (5) STATUTORY REFERENCES.—Any reference to any other
103 chapter, section, or subdivision of the Florida Statutes in this
104 section constitutes a general reference under the doctrine of
105 incorporation by reference.

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

108 943.0582 Prearrest, postarrest, or teen court diversion
109 program expunction.—

110 (5) Expunction or sealing granted under this section does
111 not prevent the minor who receives such relief from petitioning
112 for the expunction or sealing of a later criminal history record
113 as provided for in ss. 943.0583, 943.0585, ~~and~~ 943.059, and
114 943.0595, if the minor is otherwise eligible under those
115 sections.

116 Section 3. This act shall take effect July 1, 2016.