

By the Committee on Judiciary; and Senator Steube

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1                   A bill to be entitled  
2           An act relating to criminal history records;  
3           prohibiting a person or entity engaged in publishing  
4           or disseminating arrest booking photographs from  
5           soliciting or accepting a fee or other payment to  
6           remove, correct, or modify such photograph; requiring  
7           a person or entity, within a specified timeframe, to  
8           remove an arrest booking photograph after receipt of a  
9           written request; authorizing a person to bring a civil  
10          action to enjoin such publishing of a photograph;  
11          authorizing a court to impose a civil penalty and  
12          award attorney fees and court costs; providing  
13          applicability; amending s. 943.0585, F.S.; revising  
14          the eligibility requirements for expunction of  
15          criminal history records to include instances in which  
16          a judgment of acquittal or a verdict of not guilty is  
17          rendered; providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21           Section 1. (1) Any person or entity engaged in the business  
22 of publishing or otherwise disseminating arrest booking  
23 photographs of persons who have previously been arrested through  
24 a publicly accessible print or electronic medium may not solicit  
25 or accept a fee or other form of payment to remove, correct, or  
26 modify such photographs.

27           (2) Upon receipt of a written request from a person whose  
28 booking photograph is published or otherwise disseminated, or  
29 his or her legal representative, the person or entity who  
30 published or otherwise disseminated the photograph shall remove  
31 the photograph without charge within 10 calendar days after  
32 receiving the request for removal.

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33       (3) The person whose arrest booking photograph was  
34 published or otherwise disseminated in the publication or  
35 electronic medium may bring a civil action to enjoin the  
36 continued publication or dissemination of the photograph if the  
37 photograph is not removed within 10 calendar days after receipt  
38 of the written request for removal. In addition to the remedies  
39 set forth in this subsection, the court may impose a civil  
40 penalty of \$1,000 per day for noncompliance with an injunction  
41 and shall award reasonable attorney fees and court costs related  
42 to the issuance of the injunction.

43       (4) Refusal to remove an arrest booking photograph after  
44 written request has been made constitutes an unfair or deceptive  
45 trade practice in accordance with part II of chapter 501.

46       (5) This section does not apply to any person or entity  
47 that publishes or disseminates information relating to arrests  
48 unless the person or entity solicits or accepts payment to  
49 remove the information.

50       Section 2. Section 943.0585, Florida Statutes, is amended  
51 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

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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) or subsection (5). A criminal history record that  
66 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,  
67 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,  
68 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
69 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in  
70 s. 907.041, or any violation specified as a predicate offense  
71 for registration as a sexual predator pursuant to s. 775.21,  
72 without regard to whether that offense alone is sufficient to  
73 require such registration, or for registration as a sexual  
74 offender pursuant to s. 943.0435, may not be expunged, without  
75 regard to whether adjudication was withheld, if the defendant  
76 was found guilty of or pled guilty or nolo contendere to the  
77 offense, or if the defendant, as a minor, was found to have  
78 committed, or pled guilty or nolo contendere to committing, the  
79 offense as a delinquent act. The court may only order expunction  
80 of a criminal history record pertaining to one arrest or one  
81 incident of alleged criminal activity, except as provided in  
82 this 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

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

105 (a) A valid certificate of eligibility for expunction  
106 issued by the department pursuant to subsection (2).

107 (b) The petitioner's sworn statement attesting that the  
108 petitioner:

109 1. Has never, prior to the date on which the petition is  
110 filed, been adjudicated guilty of a criminal offense or  
111 comparable ordinance violation, or been adjudicated delinquent  
112 for committing any felony or a misdemeanor specified in s.  
113 943.051(3)(b).

114 2. Has not been adjudicated guilty of, or adjudicated  
115 delinquent for committing, any of the acts stemming from the  
116 arrest or alleged criminal activity to which the petition  
117 pertains.

118 3.a. Has never secured a prior sealing or expunction of a  
119 criminal history record under this section, s. 943.059, former

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120 s. 893.14, former s. 901.33, or former s. 943.058, unless  
121 expunction is sought of a criminal history record previously  
122 sealed for 10 years pursuant to paragraph (2) (h) and the record  
123 is otherwise eligible for expunction; or

124 b. Is seeking to expunge a criminal history record  
125 associated with a judgment of acquittal or a not guilty verdict.

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

129

130 Any person who knowingly provides false information on such  
131 sworn statement to the court commits a felony of the third  
132 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
133 775.084.

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

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149 criminal history record if that person:

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

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

155 2. That an indictment, information, or other charging  
156 document, if filed or issued in the case, was dismissed or nolle  
157 prosequi by the state attorney or statewide prosecutor, or was  
158 dismissed by a court of competent jurisdiction, that a judgment  
159 of acquittal was rendered by a judge, or that a verdict of not  
160 guilty was rendered by a judge or jury ~~and that none of the~~  
161 ~~charges related to the arrest or alleged criminal activity to~~  
162 ~~which the petition to expunge pertains resulted in a trial,~~  
163 ~~without regard to whether the outcome of the trial was other~~  
164 ~~than an adjudication of guilt.~~

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

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178 a delinquent act, without regard to whether adjudication was  
179 withheld.

180 (b) Remits a \$75 processing fee to the department for  
181 placement in the Department of Law Enforcement Operating Trust  
182 Fund, unless such fee is waived by the executive director.

183 (c) Has submitted to the department a certified copy of the  
184 disposition of the charge to which the petition to expunge  
185 pertains.

186 (d) Has never, prior to the date on which the application  
187 for a certificate of eligibility is filed, been adjudicated  
188 guilty of a criminal offense or comparable ordinance violation,  
189 or been adjudicated delinquent for committing any felony or a  
190 misdemeanor specified in s. 943.051(3)(b).

191 (e) Has not been adjudicated guilty of, or adjudicated  
192 delinquent for committing, any of the acts stemming from the  
193 arrest or alleged criminal activity to which the petition to  
194 expunge pertains.

195 (f)1. Has never secured a prior sealing or expunction of a  
196 criminal history record under this section, s. 943.059, former  
197 s. 893.14, former s. 901.33, or former s. 943.058, unless  
198 expunction is sought of a criminal history record previously  
199 sealed for 10 years pursuant to paragraph (h) and the record is  
200 otherwise eligible for expunction; or

201 2. Is seeking to expunge a criminal history record  
202 associated with a judgment of acquittal or a not guilty verdict.

203 (g) Is no longer under court supervision applicable to the  
204 disposition of the arrest or alleged criminal activity to which  
205 the petition to expunge pertains.

206 (h) Has previously obtained a court order sealing the

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207 record under this section, former s. 893.14, former s. 901.33,  
208 or former s. 943.058 for a minimum of 10 years because  
209 adjudication was withheld or because all charges related to the  
210 arrest or alleged criminal activity to which the petition to  
211 expunge pertains were not dismissed prior to trial, without  
212 regard to whether the outcome of the trial was other than an  
213 adjudication of guilt. The requirement for the record to have  
214 previously been sealed for a minimum of 10 years does not apply  
215 when a plea was not entered or all charges related to the arrest  
216 or alleged criminal activity to which the petition to expunge  
217 pertains were dismissed prior to trial.

218 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

219 (a) In judicial proceedings under this section, a copy of  
220 the completed petition to expunge shall be served upon the  
221 appropriate state attorney or the statewide prosecutor and upon  
222 the arresting agency; however, it is not necessary to make any  
223 agency other than the state a party. The appropriate state  
224 attorney or the statewide prosecutor and the arresting agency  
225 may respond to the court regarding the completed petition to  
226 expunge.

227 (b) If relief is granted by the court, the clerk of the  
228 court shall certify copies of the order to the appropriate state  
229 attorney or the statewide prosecutor and the arresting agency.  
230 The arresting agency is responsible for forwarding the order to  
231 any other agency to which the arresting agency disseminated the  
232 criminal history record information to which the order pertains.  
233 The department shall forward the order to expunge to the Federal  
234 Bureau of Investigation. The clerk of the court shall certify a  
235 copy of the order to any other agency which the records of the



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236 court reflect has received the criminal history record from the  
237 court.

238 (c) For an order to expunge entered by a court prior to  
239 July 1, 1992, the department shall notify the appropriate state  
240 attorney or statewide prosecutor of an order to expunge which is  
241 contrary to law because the person who is the subject of the  
242 record has previously been convicted of a crime or comparable  
243 ordinance violation or has had a prior criminal history record  
244 sealed or expunged. Upon receipt of such notice, the appropriate  
245 state attorney or statewide prosecutor shall take action, within  
246 60 days, to correct the record and petition the court to void  
247 the order to expunge. The department shall seal the record until  
248 such time as the order is voided by the court.

249 (d) On or after July 1, 1992, the department or any other  
250 criminal justice agency is not required to act on an order to  
251 expunge entered by a court when such order does not comply with  
252 the requirements of this section. Upon receipt of such an order,  
253 the department must notify the issuing court, the appropriate  
254 state attorney or statewide prosecutor, the petitioner or the  
255 petitioner's attorney, and the arresting agency of the reason  
256 for noncompliance. The appropriate state attorney or statewide  
257 prosecutor shall take action within 60 days to correct the  
258 record and petition the court to void the order. No cause of  
259 action, including contempt of court, shall arise against any  
260 criminal justice agency for failure to comply with an order to  
261 expunge when the petitioner for such order failed to obtain the  
262 certificate of eligibility as required by this section or such  
263 order does not otherwise comply with the requirements of this  
264 section.

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265 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
266 criminal history record of a minor or an adult which is ordered  
267 expunged by a court of competent jurisdiction pursuant to this  
268 section must be physically destroyed or obliterated by any  
269 criminal justice agency having custody of such record; except  
270 that any criminal history record in the custody of the  
271 department must be retained in all cases. A criminal history  
272 record ordered expunged that is retained by the department is  
273 confidential and exempt from the provisions of s. 119.07(1) and  
274 s. 24(a), Art. I of the State Constitution and not available to  
275 any person or entity except upon order of a court of competent  
276 jurisdiction. A criminal justice agency may retain a notation  
277 indicating compliance with an order to expunge.

278 (a) The person who is the subject of a criminal history  
279 record that is expunged under this section or under other  
280 provisions of law, including former s. 893.14, former s. 901.33,  
281 and former s. 943.058, may lawfully deny or fail to acknowledge  
282 the arrests covered by the expunged record, except when the  
283 subject of the record:

- 284 1. Is a candidate for employment with a criminal justice  
285 agency;
- 286 2. Is a defendant in a criminal prosecution;
- 287 3. Concurrently or subsequently petitions for relief under  
288 this section, s. 943.0583, or s. 943.059;
- 289 4. Is a candidate for admission to The Florida Bar;
- 290 5. Is seeking to be employed or licensed by or to contract  
291 with the Department of Children and Families, the Division of  
292 Vocational Rehabilitation within the Department of Education,  
293 the Agency for Health Care Administration, the Agency for

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294 Persons with Disabilities, the Department of Health, the  
295 Department of Elderly Affairs, or the Department of Juvenile  
296 Justice or to be employed or used by such contractor or licensee  
297 in a sensitive position having direct contact with children, the  
298 disabled, or the elderly;

299 6. Is seeking to be employed or licensed by the Department  
300 of Education, any district school board, any university  
301 laboratory school, any charter school, any private or parochial  
302 school, or any local governmental entity that licenses child  
303 care facilities;

304 7. Is seeking to be licensed by the Division of Insurance  
305 Agent and Agency Services within the Department of Financial  
306 Services; or

307 8. Is seeking to be appointed as a guardian pursuant to s.  
308 744.3125.

309 (b) Subject to the exceptions in paragraph (a), a person  
310 who has been granted an expunction under this section, former s.  
311 893.14, former s. 901.33, or former s. 943.058 may not be held  
312 under any provision of law of this state to commit perjury or to  
313 be otherwise liable for giving a false statement by reason of  
314 such person's failure to recite or acknowledge an expunged  
315 criminal history record.

316 (c) Information relating to the existence of an expunged  
317 criminal history record which is provided in accordance with  
318 paragraph (a) is confidential and exempt from the provisions of  
319 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
320 except that the department shall disclose the existence of a  
321 criminal history record ordered expunged to the entities set  
322 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their

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323 respective licensing, access authorization, and employment  
324 purposes, and to criminal justice agencies for their respective  
325 criminal justice purposes. It is unlawful for any employee of an  
326 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
327 subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or  
328 subparagraph (a)8. to disclose information relating to the  
329 existence of an expunged criminal history record of a person  
330 seeking employment, access authorization, or licensure with such  
331 entity or contractor, except to the person to whom the criminal  
332 history record relates or to persons having direct  
333 responsibility for employment, access authorization, or  
334 licensure decisions. Any person who violates this paragraph  
335 commits a misdemeanor of the first degree, punishable as  
336 provided in s. 775.082 or s. 775.083.

337 (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the  
338 eligibility requirements prescribed in paragraph (1)(b) and  
339 subsection (2), the department shall issue a certificate of  
340 eligibility for expunction under this subsection to a person who  
341 is the subject of a criminal history record if that person:

342 (a) Has obtained, and submitted to the department, on a  
343 form provided by the department, a written, certified statement  
344 from the appropriate state attorney or statewide prosecutor  
345 which states whether an information, indictment, or other  
346 charging document was not filed or was dismissed by the state  
347 attorney, or dismissed by the court, because it was found that  
348 the person acted in lawful self-defense pursuant to the  
349 provisions related to justifiable use of force in chapter 776.

350 (b) Each petition to a court to expunge a criminal history  
351 record pursuant to this subsection is complete only when

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352 accompanied by:

353 1. A valid certificate of eligibility for expunction issued  
354 by the department pursuant to this subsection.

355 2. The petitioner's sworn statement attesting that the  
356 petitioner is eligible for such an expunction to the best of his  
357 or her knowledge or belief.

358

359 Any person who knowingly provides false information on such  
360 sworn statement to the court commits a felony of the third  
361 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
362 775.084.

363 (c) This subsection does not confer any right to the  
364 expunction of a criminal history record, and any request for  
365 expunction of a criminal history record may be denied at the  
366 discretion of the court.

367 (d) Subsections (3) and (4) shall apply to expunction  
368 ordered under this subsection.

369 (e) The department shall, by rule adopted pursuant to  
370 chapter 120, establish procedures pertaining to the application  
371 for and issuance of certificates of eligibility for expunction  
372 under this subsection.

373 (6) STATUTORY REFERENCES.—Any reference to any other  
374 chapter, section, or subdivision of the Florida Statutes in this  
375 section constitutes a general reference under the doctrine of  
376 incorporation by reference.

377 Section 3. This act shall take effect July 1, 2017.