

By the Committees on Appropriations; Criminal Justice; and
Judiciary; and Senator Steube

576-02498-17

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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 a photograph; authorizing a person whose arrest
7 booking photograph is published to request in writing
8 that it be removed; requiring that the written request
9 be sent by registered mail and include specified
10 information; requiring a person or entity to remove an
11 arrest booking photograph within a specified timeframe
12 after receipt of a written request; authorizing a
13 person to bring a civil action to enjoin such
14 publishing of a photograph; authorizing a court to
15 impose a civil penalty and award attorney fees and
16 court costs; providing that refusal to remove an
17 arrest booking photograph after written request
18 constitutes an unfair or deceptive practice; providing
19 applicability; amending s. 943.0585, F.S.; revising
20 the elements that must be attested to by a petitioner
21 in a statement submitted in support of the expunction
22 of criminal history records; revising the
23 circumstances under which the Department of Law
24 Enforcement must issue a certificate of eligibility
25 for expunction of a criminal history record; providing
26 an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. (1) Any person or entity engaged in the business
31 of publishing through a publicly accessible print or electronic
32 medium or otherwise disseminating arrest booking photographs of
33 persons who have previously been arrested may not solicit or
34 accept a fee or other form of payment to remove the photographs.

35 (2) A person whose arrest booking photograph is published
36 or otherwise disseminated, or his or her legal representative,
37 may make a request, in writing, for the removal of an arrest
38 booking photograph to the registered agent of the person or
39 entity who published or otherwise disseminated the photograph.
40 The written request for removal of the arrest booking photograph
41 must be sent by registered mail and include sufficient proof of
42 identification of the person whose arrest booking photograph was
43 published or otherwise disseminated and specific information
44 identifying the arrest booking photograph that the written
45 request is seeking to remove. Within 10 days of receipt of the
46 written request for removal of the arrest booking photograph,
47 the person or entity who published or otherwise disseminated the
48 photograph shall remove the arrest booking photograph without
49 charge.

50 (3) The person whose arrest booking photograph was
51 published or otherwise disseminated in the publication or
52 electronic medium may bring a civil action to enjoin the
53 continued publication or dissemination of the photograph if the
54 photograph is not removed within 10 calendar days after receipt
55 of the written request for removal. The court may impose a civil
56 penalty of \$1,000 per day for noncompliance with an injunction
57 and shall award reasonable attorney fees and court costs related
58 to the issuance and enforcement of the injunction. Moneys

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59 recovered for civil penalties under this section shall be
60 deposited into the General Revenue Fund.

61 (4) Refusal to remove an arrest booking photograph after
62 written request has been made constitutes an unfair or deceptive
63 trade practice in accordance with part II of chapter 501,
64 Florida Statutes.

65 (5) This section does not apply to any person or entity
66 that publishes or disseminates information relating to arrest
67 booking photographs unless the person or entity solicits or
68 accepts payment to remove the photographs.

69 Section 2. Paragraph (b) of subsection (1) and paragraphs
70 (a) and (d) of subsection (2) of section 943.0585, Florida
71 Statutes, are amended to read:

72 943.0585 Court-ordered expunction of criminal history
73 records.—The courts of this state have jurisdiction over their
74 own procedures, including the maintenance, expunction, and
75 correction of judicial records containing criminal history
76 information to the extent such procedures are not inconsistent
77 with the conditions, responsibilities, and duties established by
78 this section. Any court of competent jurisdiction may order a
79 criminal justice agency to expunge the criminal history record
80 of a minor or an adult who complies with the requirements of
81 this section. The court shall not order a criminal justice
82 agency to expunge a criminal history record until the person
83 seeking to expunge a criminal history record has applied for and
84 received a certificate of eligibility for expunction pursuant to
85 subsection (2) or subsection (5). A criminal history record that
86 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
87 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,

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88 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
89 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
90 s. 907.041, or any violation specified as a predicate offense
91 for registration as a sexual predator pursuant to s. 775.21,
92 without regard to whether that offense alone is sufficient to
93 require such registration, or for registration as a sexual
94 offender pursuant to s. 943.0435, may not be expunged, without
95 regard to whether adjudication was withheld, if the defendant
96 was found guilty of or pled guilty or nolo contendere to the
97 offense, or if the defendant, as a minor, was found to have
98 committed, or pled guilty or nolo contendere to committing, the
99 offense as a delinquent act. The court may only order expunction
100 of a criminal history record pertaining to one arrest or one
101 incident of alleged criminal activity, except as provided in
102 this section. The court may, at its sole discretion, order the
103 expunction of a criminal history record pertaining to more than
104 one arrest if the additional arrests directly relate to the
105 original arrest. If the court intends to order the expunction of
106 records pertaining to such additional arrests, such intent must
107 be specified in the order. A criminal justice agency may not
108 expunge any record pertaining to such additional arrests if the
109 order to expunge does not articulate the intention of the court
110 to expunge a record pertaining to more than one arrest. This
111 section does not prevent the court from ordering the expunction
112 of only a portion of a criminal history record pertaining to one
113 arrest or one incident of alleged criminal activity.
114 Notwithstanding any law to the contrary, a criminal justice
115 agency may comply with laws, court orders, and official requests
116 of other jurisdictions relating to expunction, correction, or

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117 confidential handling of criminal history records or information
118 derived therefrom. This section does not confer any right to the
119 expunction of any criminal history record, and any request for
120 expunction of a criminal history record may be denied at the
121 sole discretion of the court.

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

125 (b) The petitioner's sworn statement attesting that the
126 petitioner:

127 1. Has never, before ~~prior~~ to the date on which the
128 petition is filed, been adjudicated guilty of a felony ~~criminal~~
129 offense or comparable ordinance violation, or been adjudicated
130 delinquent for committing any felony ~~or a misdemeanor specified~~
131 ~~in s. 943.051(3)(b).~~

132 2. Has not been adjudicated guilty of a misdemeanor offense
133 or been adjudicated delinquent for committing a misdemeanor
134 offense specified in s. 943.051(3)(b) in the previous 10 years.

135 ~~3.2.~~ Has not been adjudicated guilty of, or adjudicated
136 delinquent for committing, any of the acts stemming from the
137 arrest or alleged criminal activity to which the petition
138 pertains.

139 ~~4.3.~~ Has never secured a prior sealing or expunction of a
140 criminal history record under this section, s. 943.059, former
141 s. 893.14, former s. 901.33, or former s. 943.058, unless
142 expunction is sought of a criminal history record previously
143 sealed for 10 years pursuant to paragraph (2)(h) and the record
144 is otherwise eligible for expunction.

145 ~~5.4.~~ Is eligible for such an expunction to the best of his

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146 or her knowledge or belief and does not have any other petition
147 to expunge or any petition to seal pending before any court.
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149 Any person who knowingly provides false information on such
150 sworn statement to the court commits a felony of the third
151 degree, punishable as provided in s. 775.082, s. 775.083, or s.
152 775.084.

153 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
154 petitioning the court to expunge a criminal history record, a
155 person seeking to expunge a criminal history record shall apply
156 to the department for a certificate of eligibility for
157 expunction. The department shall, by rule adopted pursuant to
158 chapter 120, establish procedures pertaining to the application
159 for and issuance of certificates of eligibility for expunction.
160 A certificate of eligibility for expunction is valid for 12
161 months after the date stamped on the certificate when issued by
162 the department. After that time, the petitioner must reapply to
163 the department for a new certificate of eligibility. Eligibility
164 for a renewed certification of eligibility must be based on the
165 status of the applicant and the law in effect at the time of the
166 renewal application. The department shall issue a certificate of
167 eligibility for expunction to a person who is the subject of a
168 criminal history record if that person:

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

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

174 2. That an indictment, information, or other charging

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175 document, if filed or issued in the case, was dismissed or nolle
176 prosequi by the state attorney or statewide prosecutor, or was
177 dismissed by a court of competent jurisdiction, that a judgment
178 of acquittal was rendered by a judge, or that a verdict of not
179 guilty was rendered by a judge or jury ~~and that none of the~~
180 ~~charges related to the arrest or alleged criminal activity to~~
181 ~~which the petition to expunge pertains resulted in a trial,~~
182 ~~without regard to whether the outcome of the trial was other~~
183 ~~than an adjudication of guilt.~~

184 3. That the criminal history record does not relate to a
185 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
186 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
187 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
188 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
189 or any violation specified as a predicate offense for
190 registration as a sexual predator pursuant to s. 775.21, without
191 regard to whether that offense alone is sufficient to require
192 such registration, or for registration as a sexual offender
193 pursuant to s. 943.0435, where the defendant was found guilty
194 of, or pled guilty or nolo contendere to any such offense, or
195 that the defendant, as a minor, was found to have committed, or
196 pled guilty or nolo contendere to committing, such an offense as
197 a delinquent act, without regard to whether adjudication was
198 withheld.

199 (d) 1. Has never, before ~~prior to~~ the date on which the
200 application for a certificate of eligibility is filed, been
201 adjudicated guilty of a felony ~~criminal~~ offense or comparable
202 ordinance violation, or been adjudicated delinquent for
203 committing any felony ~~or a misdemeanor specified in s.~~

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204 ~~943.051(3)(b).~~

205 2. Has not been adjudicated guilty of a misdemeanor offense
206 or been adjudicated delinquent for committing a misdemeanor
207 offense specified in s. 943.051(3)(b) in the previous 10 years.

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