

By the Committees on Appropriations; Governmental Oversight and Accountability; and Criminal Justice; and Senator Brandes

576-03794-17

2017450c3

1 A bill to be entitled
2 An act relating to public records; amending s. 901.40,
3 F.S.; creating an exemption from public records
4 requirements for the personal identifying information
5 of adults who participate in a civil citation or
6 prearrest diversion program; providing applicability;
7 providing retroactive application; providing for
8 future review and repeal of the exemption; providing a
9 statement of public necessity; amending s. 943.0586,
10 F.S.; providing applicability for the administrative
11 sealing of specified criminal history records;
12 amending s. 943.059, F.S.; expanding an existing
13 public records exemption to include the administrative
14 sealing of specified criminal history records;
15 conforming provisions to changes made by the act;
16 providing for future review and repeal of the expanded
17 exemption; providing for reversion of specified
18 language if the exemption is not saved from repeal;
19 providing a statement of public necessity; providing
20 effective dates, including contingent effective dates.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Effective upon the same date that SB 448 or
25 similar legislation takes effect, if such legislation is adopted
26 in the same legislative session or an extension thereof and
27 becomes a law, subsection (6) is added to section 901.40,
28 Florida Statutes, as created by SB 448, 2017 Regular Session, to
29 read:

576-03794-17

2017450c3

30 901.40 Prearrest diversion programs.—

31 (6) PUBLIC RECORDS EXEMPTION.—The personal identifying
32 information of an adult participating in a civil citation or
33 prearrest diversion program is exempt from s. 119.07(1) and s.
34 24(a), Art. I of the State Constitution. The exemption does not
35 apply to the personal identifying information of an adult who
36 fails to complete the civil citation or prearrest diversion
37 program. This exemption applies to personal identifying
38 information held by a law enforcement agency, a program services
39 provider, a clerk of the circuit court, or the entity operating
40 an adult civil citation or prearrest diversion program before,
41 on, or after the effective date of this exemption. This
42 subsection is subject to the Open Government Sunset Review Act
43 in accordance with s. 119.15 and shall stand repealed on October
44 2, 2022, unless reviewed and saved from such repeal through
45 reenactment by the Legislature.

46 Section 2. Effective upon the same date that SB 448 or
47 similar legislation takes effect, if such legislation is adopted
48 in the same legislative session or an extension thereof and
49 becomes a law: The Legislature finds that it is a public
50 necessity that the personal identifying information of an adult
51 participating in a civil citation or prearrest diversion program
52 be exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
53 Article I of the State Constitution. The exemption does not
54 apply to the personal identifying information of an adult who
55 fails to complete the civil citation or prearrest diversion
56 program. The goal of such programs is to give a second chance to
57 adults who commit misdemeanor offenses and allow them the
58 opportunity to avoid having an arrest record. Such goal would be

576-03794-17

2017450c3

59 defeated if the personal identifying information of such adults
60 were not exempt from disclosure and, consequently, would create
61 negative consequences for these adults. If the public were able
62 to obtain the personal identifying information of these adults,
63 the disclosure might adversely impact the civil citation or
64 prearrest diversion program. For these reasons, the Legislature
65 finds that it is a public necessity that the personal
66 identifying information of an adult participating in a civil
67 citation or prearrest diversion program be exempt from public
68 records requirements.

69 Section 3. Effective July 1, 2018, and only if SB 118 or
70 similar legislation is adopted in the same legislative session
71 or an extension thereof and becomes a law, subsection (2) is
72 added to section 943.0586, Florida Statutes, as created by SB
73 118, 2017 Regular session, to read:

74 943.0586 Administrative sealing of criminal history
75 records.-

76 (2) The sealing under this section of a criminal history
77 record has the same effect as a sealing under s. 943.059(4).

78 Section 4. Effective July 1, 2018, and only if SB 118 or
79 similar legislation is adopted in the same legislative session
80 or an extension thereof and becomes a law, subsection (4) of
81 section 943.059, Florida Statutes, is amended to read:

82 943.059 Court-ordered sealing of criminal history records.-
83 The courts of this state shall continue to have jurisdiction
84 over their own procedures, including the maintenance, sealing,
85 and correction of judicial records containing criminal history
86 information to the extent such procedures are not inconsistent
87 with the conditions, responsibilities, and duties established by

576-03794-17

2017450c3

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

576-03794-17

2017450c3

117 order. A criminal justice agency may not seal any record
118 pertaining to such additional arrests if the order to seal does
119 not articulate the intention of the court to seal records
120 pertaining to more than one arrest. This section does not
121 prevent the court from ordering the sealing of only a portion of
122 a criminal history record pertaining to one arrest or one
123 incident of alleged criminal activity. Notwithstanding any law
124 to the contrary, a criminal justice agency may comply with laws,
125 court orders, and official requests of other jurisdictions
126 relating to sealing, correction, or confidential handling of
127 criminal history records or information derived therefrom. This
128 section does not confer any right to the sealing of any criminal
129 history record, and any request for sealing a criminal history
130 record may be denied at the sole discretion of the court.

131 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
132 history record of a minor or an adult which is ordered sealed by
133 a court pursuant to this section or sealed administratively
134 pursuant to s. 943.0586 is confidential and exempt from the
135 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
136 Constitution and is available only to the person who is the
137 subject of the record, to the subject's attorney, to criminal
138 justice agencies for their respective criminal justice purposes,
139 which include conducting a criminal history background check for
140 approval of firearms purchases or transfers as authorized by
141 state or federal law, to judges in the state courts system for
142 the purpose of assisting them in their case-related
143 decisionmaking responsibilities, as set forth in s. 943.053(5),
144 or to those entities set forth in subparagraphs (a)1., 4., 5.,
145 6., 8., 9., and 10. for their respective licensing, access

576-03794-17

2017450c3

146 authorization, and employment purposes.

147 (a) The subject of a criminal history record sealed under
148 this section, s. 943.0586, or under other provisions of law,
149 including former s. 893.14, former s. 901.33, and former s.
150 943.058, may lawfully deny or fail to acknowledge the arrests
151 covered by the sealed record, except when the subject of the
152 record:

153 1. Is a candidate for employment with a criminal justice
154 agency;

155 2. Is a defendant in a criminal prosecution;

156 3. Concurrently or subsequently petitions for relief under
157 this section, s. 943.0583, or s. 943.0585;

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

159 5. Is seeking to be employed or licensed by or to contract
160 with the Department of Children and Families, the Division of
161 Vocational Rehabilitation within the Department of Education,
162 the Agency for Health Care Administration, the Agency for
163 Persons with Disabilities, the Department of Health, the
164 Department of Elderly Affairs, or the Department of Juvenile
165 Justice or to be employed or used by such contractor or licensee
166 in a sensitive position having direct contact with children, the
167 disabled, or the elderly;

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

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

576-03794-17

2017450c3

175 8. Is seeking to be licensed by the Division of Insurance
176 Agent and Agency Services within the Department of Financial
177 Services;

178 9. Is seeking to be appointed as a guardian pursuant to s.
179 744.3125; or

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

185 (b) Subject to the exceptions in paragraph (a), a person
186 who has been granted a sealing under this section, s. 943.0586,
187 former s. 893.14, former s. 901.33, or former s. 943.058 may not
188 be held under any provision of law of this state to commit
189 perjury or to be otherwise liable for giving a false statement
190 by reason of such person's failure to recite or acknowledge a
191 sealed criminal history record.

192 (c) Information relating to the existence of a sealed
193 criminal record provided in accordance with the provisions of
194 paragraph (a) is confidential and exempt from the provisions of
195 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
196 except that the department shall disclose the sealed criminal
197 history record to the entities set forth in subparagraphs (a)1.,
198 4., 5., 6., 8., 9., and 10. for their respective licensing,
199 access authorization, and employment purposes. An employee of an
200 entity set forth in subparagraph (a)1., subparagraph (a)4.,
201 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
202 subparagraph (a)9., or subparagraph (a)10. may not disclose
203 information relating to the existence of a sealed criminal

576-03794-17

2017450c3

204 history record of a person seeking employment, access
205 authorization, or licensure with such entity or contractor,
206 except to the person to whom the criminal history record relates
207 or to persons having direct responsibility for employment,
208 access authorization, or licensure decisions. A person who
209 violates the provisions of this paragraph commits a misdemeanor
210 of the first degree, punishable as provided in s. 775.082 or s.
211 775.083.

212 (d) The expansion of the public records exemption under
213 this subsection to include records sealed administratively under
214 s. 943.0586 is subject to the Open Government Sunset Review Act
215 in accordance with s. 119.15 and shall stand repealed on October
216 2, 2023, unless reviewed and saved from repeal through
217 reenactment by the Legislature. If the expansion of the
218 exemption is not saved from repeal, this subsection shall revert
219 to that in existence on June 30, 2017, except that any
220 amendments to such text other than by this act shall be
221 preserved and continue to operate to the extent that such
222 amendments are not dependent upon the portions of text which
223 expire pursuant to this paragraph.

224 Section 5. Effective July 1, 2018, and only if SB 118 or
225 similar legislation is adopted in the same legislative session
226 or an extension thereof and becomes a law: The Legislature finds
227 that it is a public necessity that the criminal history records
228 of a minor or an adult, which have been administratively sealed
229 pursuant to s. 943.0586, Florida Statutes, because the case was
230 not filed, was dismissed or nolle prosequi, or resulted in the
231 granting of a judgment of acquittal or verdict of not guilty, be
232 made confidential and exempt from s. 119.07(1), Florida

576-03794-17

2017450c3

233 Statutes, and s. 24(a), Article I of the State Constitution. The
234 presence of a criminal history record in an individual's past
235 which has not been validated through criminal proceedings can
236 jeopardize his or her ability to obtain education, employment,
237 and other achievements necessary to becoming a productive,
238 contributing, self-sustaining member of society. Such negative
239 consequences are unwarranted in cases in which the individual
240 was not found to have committed the offense that is the subject
241 of the sealed criminal history record. For these reasons, the
242 Legislature finds that it is a public necessity that the
243 criminal history records of a minor or an adult which have been
244 administratively sealed be confidential and exempt from public
245 records requirements.

246 Section 6. Except as otherwise expressly provided in this
247 act, this act shall take effect on July 1, 2017.