

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.

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
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
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
 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
127 or her knowledge or belief and does not have any other petition
128 to 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
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
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
184 the 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
 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
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.

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
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
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
352 accompanied by:

353 1. A valid certificate of eligibility for expunction
354 issued 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

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2017

376 | incorporation by reference.

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