

By the Committee on Judiciary; and Senator Steube

590-03197-18

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1                   A bill to be entitled  
2       An act relating to the expunction and sealing of  
3       criminal history records; amending s. 943.0585, F.S.;  
4       revising the eligibility requirements for expunction  
5       of criminal history records to include instances in  
6       which a judgment of acquittal or a verdict of not  
7       guilty was rendered; amending s. 943.059, F.S.;  
8       clarifying the circumstances under which the  
9       Department of Law Enforcement must issue a certificate  
10      of eligibility for the sealing of a criminal history  
11      record; providing effective dates.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15       Section 1. Paragraphs (a) and (h) of subsection (2) of  
16      section 943.0585, Florida Statutes, are amended, and paragraph  
17      (b) of subsection (1) and paragraph (f) of subsection (2) of  
18      that section are republished, to read:

19       943.0585 Court-ordered expunction of criminal history  
20      records.—The courts of this state have jurisdiction over their  
21      own procedures, including the maintenance, expunction, and  
22      correction of judicial records containing criminal history  
23      information to the extent such procedures are not inconsistent  
24      with the conditions, responsibilities, and duties established by  
25      this section. Any court of competent jurisdiction may order a  
26      criminal justice agency to expunge the criminal history record  
27      of a minor or an adult who complies with the requirements of  
28      this section. The court shall not order a criminal justice  
29      agency to expunge a criminal history record until the person

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30 seeking to expunge a criminal history record has applied for and  
31 received a certificate of eligibility for expunction pursuant to  
32 subsection (2) or subsection (5). A criminal history record that  
33 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,  
34 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,  
35 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
36 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in  
37 s. 907.041, or any violation specified as a predicate offense  
38 for registration as a sexual predator pursuant to s. 775.21,  
39 without regard to whether that offense alone is sufficient to  
40 require such registration, or for registration as a sexual  
41 offender pursuant to s. 943.0435, may not be expunged, without  
42 regard to whether adjudication was withheld, if the defendant  
43 was found guilty of or pled guilty or nolo contendere to the  
44 offense, or if the defendant, as a minor, was found to have  
45 committed, or pled guilty or nolo contendere to committing, the  
46 offense as a delinquent act. The court may only order expunction  
47 of a criminal history record pertaining to one arrest or one  
48 incident of alleged criminal activity, except as provided in  
49 this section. The court may, at its sole discretion, order the  
50 expunction of a criminal history record pertaining to more than  
51 one arrest if the additional arrests directly relate to the  
52 original arrest. If the court intends to order the expunction of  
53 records pertaining to such additional arrests, such intent must  
54 be specified in the order. A criminal justice agency may not  
55 expunge any record pertaining to such additional arrests if the  
56 order to expunge does not articulate the intention of the court  
57 to expunge a record pertaining to more than one arrest. This  
58 section does not prevent the court from ordering the expunction

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59 of only a portion of a criminal history record pertaining to one  
60 arrest or one incident of alleged criminal activity.

61 Notwithstanding any law to the contrary, a criminal justice  
62 agency may comply with laws, court orders, and official requests  
63 of other jurisdictions relating to expunction, correction, or  
64 confidential handling of criminal history records or information  
65 derived therefrom. This section does not confer any right to the  
66 expunction of any criminal history record, and any request for  
67 expunction of a criminal history record may be denied at the  
68 sole discretion of the court.

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

72 (b) The petitioner's sworn statement attesting that the  
73 petitioner:

74 1. Has never, prior to the date on which the petition is  
75 filed, been adjudicated guilty of a criminal offense or  
76 comparable ordinance violation, or been adjudicated delinquent  
77 for committing any felony or a misdemeanor specified in s.  
78 943.051(3)(b).

79 2. Has not been adjudicated guilty of, or adjudicated  
80 delinquent for committing, any of the acts stemming from the  
81 arrest or alleged criminal activity to which the petition  
82 pertains.

83 3. Has never secured a prior sealing or expunction of a  
84 criminal history record under this section, s. 943.059, former  
85 s. 893.14, former s. 901.33, or former s. 943.058, unless  
86 expunction is sought of a criminal history record previously  
87 sealed for 10 years pursuant to paragraph (2)(h) and the record

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88 is otherwise eligible for expunction.

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

92

93 Any person who knowingly provides false information on such  
94 sworn statement to the court commits a felony of the third  
95 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
96 775.084.

97 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
98 petitioning the court to expunge a criminal history record, a  
99 person seeking to expunge a criminal history record shall apply  
100 to the department for a certificate of eligibility for  
101 expunction. The department shall, by rule adopted pursuant to  
102 chapter 120, establish procedures pertaining to the application  
103 for and issuance of certificates of eligibility for expunction.  
104 A certificate of eligibility for expunction is valid for 12  
105 months after the date stamped on the certificate when issued by  
106 the department. After that time, the petitioner must reapply to  
107 the department for a new certificate of eligibility. Eligibility  
108 for a renewed certification of eligibility must be based on the  
109 status of the applicant and the law in effect at the time of the  
110 renewal application. The department shall issue a certificate of  
111 eligibility for expunction to a person who is the subject of a  
112 criminal history record if that person:

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

116 1. That an indictment, information, or other charging

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117 document was not filed or issued in the case.

118 2. That an indictment, information, or other charging  
119 document, if filed or issued in the case, was dismissed or nolle  
120 prosequi by the state attorney or statewide prosecutor, ~~or~~ was  
121 dismissed by a court of competent jurisdiction, that a judgment  
122 of acquittal was rendered by a judge, or that a verdict of not  
123 guilty was rendered by a judge or jury and that none of the  
124 ~~charges related to the arrest or alleged criminal activity to~~  
125 ~~which the petition to expunge pertains resulted in a trial,~~  
126 ~~without regard to whether the outcome of the trial was other~~  
127 ~~than an adjudication of guilt.~~

128 3. That the criminal history record does not relate to a  
129 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
130 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,  
131 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,  
132 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,  
133 or any violation specified as a predicate offense for  
134 registration as a sexual predator pursuant to s. 775.21, without  
135 regard to whether that offense alone is sufficient to require  
136 such registration, or for registration as a sexual offender  
137 pursuant to s. 943.0435, where the defendant was found guilty  
138 of, or pled guilty or nolo contendere to any such offense, or  
139 that the defendant, as a minor, was found to have committed, or  
140 pled guilty or nolo contendere to committing, such an offense as  
141 a delinquent act, without regard to whether adjudication was  
142 withheld.

143 (f) Has never secured a prior sealing or expunction of a  
144 criminal history record under this section, s. 943.059, former  
145 s. 893.14, former s. 901.33, or former s. 943.058, unless

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146 expunction is sought of a criminal history record previously  
147 sealed for 10 years pursuant to paragraph (h) and the record is  
148 otherwise eligible for expunction.

149 (h) Has previously obtained a court order sealing the  
150 record under this section, former s. 893.14, former s. 901.33,  
151 or former s. 943.058 for a minimum of 10 years because  
152 adjudication was withheld or because all charges related to the  
153 arrest or alleged criminal activity to which the petition to  
154 expunge pertains were not dismissed before ~~prior to~~ trial,  
155 ~~without regard to whether the outcome of the trial was other~~  
156 ~~than an adjudication of guilt.~~ The requirement for the record to  
157 have previously been sealed for a minimum of 10 years does not  
158 apply when a plea was not entered or all charges related to the  
159 arrest or alleged criminal activity to which the petition to  
160 expunge pertains were dismissed before ~~prior to~~ trial, when a  
161 judgment of acquittal was rendered by a judge, or when a verdict  
162 of not guilty was rendered by a judge or jury.

163 Section 2. Effective upon becoming a law, present  
164 paragraphs (c) through (f) of subsection (2) of section 943.059,  
165 Florida Statutes, are redesignated as paragraphs (d) through  
166 (g), respectively, a new paragraph (c) is added to that  
167 subsection, and paragraph (a) of subsection (1) of that section  
168 is republished, to read:

169 943.059 Court-ordered sealing of criminal history records.—  
170 The courts of this state shall continue to have jurisdiction  
171 over their own procedures, including the maintenance, sealing,  
172 and correction of judicial records containing criminal history  
173 information to the extent such procedures are not inconsistent  
174 with the conditions, responsibilities, and duties established by

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175 this section. Any court of competent jurisdiction may order a  
176 criminal justice agency to seal the criminal history record of a  
177 minor or an adult who complies with the requirements of this  
178 section. The court shall not order a criminal justice agency to  
179 seal a criminal history record until the person seeking to seal  
180 a criminal history record has applied for and received a  
181 certificate of eligibility for sealing pursuant to subsection  
182 (2). A criminal history record that relates to a violation of s.  
183 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,  
184 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,  
185 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,  
186 s. 916.1075, a violation enumerated in s. 907.041, or any  
187 violation specified as a predicate offense for registration as a  
188 sexual predator pursuant to s. 775.21, without regard to whether  
189 that offense alone is sufficient to require such registration,  
190 or for registration as a sexual offender pursuant to s.  
191 943.0435, may not be sealed, without regard to whether  
192 adjudication was withheld, if the defendant was found guilty of  
193 or pled guilty or nolo contendere to the offense, or if the  
194 defendant, as a minor, was found to have committed or pled  
195 guilty or nolo contendere to committing the offense as a  
196 delinquent act. The court may only order sealing of a criminal  
197 history record pertaining to one arrest or one incident of  
198 alleged criminal activity, except as provided in this section.  
199 The court may, at its sole discretion, order the sealing of a  
200 criminal history record pertaining to more than one arrest if  
201 the additional arrests directly relate to the original arrest.  
202 If the court intends to order the sealing of records pertaining  
203 to such additional arrests, such intent must be specified in the

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204 order. A criminal justice agency may not seal any record  
205 pertaining to such additional arrests if the order to seal does  
206 not articulate the intention of the court to seal records  
207 pertaining to more than one arrest. This section does not  
208 prevent the court from ordering the sealing of only a portion of  
209 a criminal history record pertaining to one arrest or one  
210 incident of alleged criminal activity. Notwithstanding any law  
211 to the contrary, a criminal justice agency may comply with laws,  
212 court orders, and official requests of other jurisdictions  
213 relating to sealing, correction, or confidential handling of  
214 criminal history records or information derived therefrom. This  
215 section does not confer any right to the sealing of any criminal  
216 history record, and any request for sealing a criminal history  
217 record may be denied at the sole discretion of the court.

218 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each  
219 petition to a court to seal a criminal history record is  
220 complete only when accompanied by:

221 (a) A valid certificate of eligibility for sealing issued  
222 by the department pursuant to subsection (2).

223 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to  
224 petitioning the court to seal a criminal history record, a  
225 person seeking to seal a criminal history record shall apply to  
226 the department for a certificate of eligibility for sealing. The  
227 department shall, by rule adopted pursuant to chapter 120,  
228 establish procedures pertaining to the application for and  
229 issuance of certificates of eligibility for sealing. A  
230 certificate of eligibility for sealing is valid for 12 months  
231 after the date stamped on the certificate when issued by the  
232 department. After that time, the petitioner must reapply to the



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233 department for a new certificate of eligibility. Eligibility for  
234 a renewed certification of eligibility must be based on the  
235 status of the applicant and the law in effect at the time of the  
236 renewal application. The department shall issue a certificate of  
237 eligibility for sealing to a person who is the subject of a  
238 criminal history record provided that such person:

239 (c) Is not seeking to seal a criminal history record that  
240 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,  
241 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,  
242 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
243 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in  
244 s. 907.041, or any violation specified as a predicate offense  
245 for registration as a sexual predator pursuant to s. 775.21,  
246 without regard to whether that offense alone is sufficient to  
247 require such registration, or for registration as a sexual  
248 offender pursuant to s. 943.0435, where the defendant was found  
249 guilty of, or pled guilty or nolo contendere to any such  
250 offense, or which the defendant, as a minor, was found to have  
251 committed, or pled guilty or nolo contendere to committing, such  
252 an offense as a delinquent act, without regard to whether  
253 adjudication was withheld.

254 Section 3. Except as otherwise expressly provided in this  
255 act and except for this section, which shall take effect upon  
256 this act becoming a law, this act shall take effect July 1,  
257 2018.