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LEGISLATIVE ACTION

Senate

.

House

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03/08/2018 02:48 PM

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Senator Bracy moved the following:

Senate Amendment (with title amendment)

Delete lines 19 - 261

and insert:

Section 1. Paragraphs (a) and (h) of subsection (2) of section 943.0585, Florida Statutes, are amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent



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12 with the conditions, responsibilities, and duties established by
13 this section. Any court of competent jurisdiction may order a
14 criminal justice agency to expunge the criminal history record
15 of a minor or an adult who complies with the requirements of
16 this section. The court shall not order a criminal justice
17 agency to expunge a criminal history record until the person
18 seeking to expunge a criminal history record has applied for and
19 received a certificate of eligibility for expunction pursuant to
20 subsection (2) or subsection (5). A criminal history record that
21 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
22 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
23 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
24 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
25 s. 907.041, or any violation specified as a predicate offense
26 for registration as a sexual predator pursuant to s. 775.21,
27 without regard to whether that offense alone is sufficient to
28 require such registration, or for registration as a sexual
29 offender pursuant to s. 943.0435, may not be expunged, without
30 regard to whether adjudication was withheld, if the defendant
31 was found guilty of or pled guilty or nolo contendere to the
32 offense, or if the defendant, as a minor, was found to have
33 committed, or pled guilty or nolo contendere to committing, the
34 offense as a delinquent act. The court may only order expunction
35 of a criminal history record pertaining to one arrest or one
36 incident of alleged criminal activity, except as provided in
37 this section. The court may, at its sole discretion, order the
38 expunction of a criminal history record pertaining to more than
39 one arrest if the additional arrests directly relate to the
40 original arrest. If the court intends to order the expunction of



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41 records pertaining to such additional arrests, such intent must
42 be specified in the order. A criminal justice agency may not
43 expunge any record pertaining to such additional arrests if the
44 order to expunge does not articulate the intention of the court
45 to expunge a record pertaining to more than one arrest. This
46 section does not prevent the court from ordering the expunction
47 of only a portion of a criminal history record pertaining to one
48 arrest or one incident of alleged criminal activity.

49 Notwithstanding any law to the contrary, a criminal justice
50 agency may comply with laws, court orders, and official requests
51 of other jurisdictions relating to expunction, correction, or
52 confidential handling of criminal history records or information
53 derived therefrom. This section does not confer any right to the
54 expunction of any criminal history record, and any request for
55 expunction of a criminal history record may be denied at the
56 sole discretion of the court.

57 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
58 petitioning the court to expunge a criminal history record, a
59 person seeking to expunge a criminal history record shall apply
60 to the department for a certificate of eligibility for
61 expunction. The department shall, by rule adopted pursuant to
62 chapter 120, establish procedures pertaining to the application
63 for and issuance of certificates of eligibility for expunction.
64 A certificate of eligibility for expunction is valid for 12
65 months after the date stamped on the certificate when issued by
66 the department. After that time, the petitioner must reapply to
67 the department for a new certificate of eligibility. Eligibility
68 for a renewed certification of eligibility must be based on the
69 status of the applicant and the law in effect at the time of the



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70 renewal application. The department shall issue a certificate of
71 eligibility for expunction to a person who is the subject of a
72 criminal history record if that person:

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

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

78 2. That an indictment, information, or other charging
79 document, if filed or issued in the case, was dismissed or nolle
80 prosequi by the state attorney or statewide prosecutor, ~~or~~ was
81 dismissed by a court of competent jurisdiction, that a judgment
82 of acquittal was rendered by a judge, or that a verdict of not
83 guilty was rendered by a judge or jury and that none of the
84 charges related to the arrest or alleged criminal activity to
85 which the petition to expunge pertains resulted in a trial,
86 without regard to whether the outcome of the trial was other
87 than an adjudication of guilt.

88 3. That the criminal history record does not relate to a
89 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
90 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
91 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
92 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
93 or any violation specified as a predicate offense for
94 registration as a sexual predator pursuant to s. 775.21, without
95 regard to whether that offense alone is sufficient to require
96 such registration, or for registration as a sexual offender
97 pursuant to s. 943.0435, where the defendant was found guilty
98 of, or pled guilty or nolo contendere to any such offense, or



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99 that the defendant, as a minor, was found to have committed, or
100 pled guilty or nolo contendere to committing, such an offense as
101 a delinquent act, without regard to whether adjudication was
102 withheld.

103 (h) Has previously obtained a court order sealing the
104 record under this section, former s. 893.14, former s. 901.33,
105 or former s. 943.058 for a minimum of 10 years because
106 adjudication was withheld or because all charges related to the
107 arrest or alleged criminal activity to which the petition to
108 expunge pertains were not dismissed before ~~prior to~~ trial,
109 without regard to whether the outcome of the trial was other
110 than an adjudication of guilt. The requirement for the record to
111 have previously been sealed for a minimum of 10 years does not
112 apply when a plea was not entered or all charges related to the
113 arrest or alleged criminal activity to which the petition to
114 expunge pertains were dismissed before ~~prior to~~ trial or a
115 judgment of acquittal was rendered by a judge or a verdict of
116 not guilty was rendered by a judge or jury.

117 Section 2. Paragraphs (c) through (f) of subsection (2) of
118 section 943.059, Florida Statutes, are redesignated as
119 paragraphs (d) through (g), respectively, and a new paragraph
120 (c) is added to that subsection, to read:

121 943.059 Court-ordered sealing of criminal history records.-
122 The courts of this state shall continue to have jurisdiction
123 over their own procedures, including the maintenance, sealing,
124 and correction of judicial records containing criminal history
125 information to the extent such procedures are not inconsistent
126 with the conditions, responsibilities, and duties established by
127 this section. Any court of competent jurisdiction may order a



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128 criminal justice agency to seal the criminal history record of a
129 minor or an adult who complies with the requirements of this
130 section. The court shall not order a criminal justice agency to
131 seal a criminal history record until the person seeking to seal
132 a criminal history record has applied for and received a
133 certificate of eligibility for sealing pursuant to subsection
134 (2). A criminal history record that relates to a violation of s.
135 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
136 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
137 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
138 s. 916.1075, a violation enumerated in s. 907.041, or any
139 violation specified as a predicate offense for registration as a
140 sexual predator pursuant to s. 775.21, without regard to whether
141 that offense alone is sufficient to require such registration,
142 or for registration as a sexual offender pursuant to s.
143 943.0435, may not be sealed, without regard to whether
144 adjudication was withheld, if the defendant was found guilty of
145 or pled guilty or nolo contendere to the offense, or if the
146 defendant, as a minor, was found to have committed or pled
147 guilty or nolo contendere to committing the offense as a
148 delinquent act. The court may only order sealing of a criminal
149 history record pertaining to one arrest or one incident of
150 alleged criminal activity, except as provided in this section.
151 The court may, at its sole discretion, order the sealing of a
152 criminal history record pertaining to more than one arrest if
153 the additional arrests directly relate to the original arrest.
154 If the court intends to order the sealing of records pertaining
155 to such additional arrests, such intent must be specified in the
156 order. A criminal justice agency may not seal any record



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157 pertaining to such additional arrests if the order to seal does
158 not articulate the intention of the court to seal records
159 pertaining to more than one arrest. This section does not
160 prevent the court from ordering the sealing of only a portion of
161 a criminal history record pertaining to one arrest or one
162 incident of alleged criminal activity. Notwithstanding any law
163 to the contrary, a criminal justice agency may comply with laws,
164 court orders, and official requests of other jurisdictions
165 relating to sealing, correction, or confidential handling of
166 criminal history records or information derived therefrom. This
167 section does not confer any right to the sealing of any criminal
168 history record, and any request for sealing a criminal history
169 record may be denied at the sole discretion of the court.

170 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
171 petitioning the court to seal a criminal history record, a
172 person seeking to seal a criminal history record shall apply to
173 the department for a certificate of eligibility for sealing. The
174 department shall, by rule adopted pursuant to chapter 120,
175 establish procedures pertaining to the application for and
176 issuance of certificates of eligibility for sealing. A
177 certificate of eligibility for sealing is valid for 12 months
178 after the date stamped on the certificate when issued by the
179 department. After that time, the petitioner must reapply to the
180 department for a new certificate of eligibility. Eligibility for
181 a renewed certification of eligibility must be based on the
182 status of the applicant and the law in effect at the time of the
183 renewal application. The department shall issue a certificate of
184 eligibility for sealing to a person who is the subject of a
185 criminal history record provided that such person:



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

201 Section 3. This act shall take effect October 1, 2018.

202
203 ===== T I T L E A M E N D M E N T =====

204 And the title is amended as follows:

205 Delete lines 2 - 15

206 and insert:

207 An act relating to expunction of criminal history
208 records; amending s. 943.0585, F.S.; providing that a
209 person receiving a judgment of acquittal or not guilty
210 verdict is eligible to have his or her criminal record
211 expunged; amending s. 943.059, F.S.; revising the
212 circumstances under which the Department of Law
213 Enforcement must issue a certificate of eligibility
214 for the sealing of a criminal history record;



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providing an effective date.