

By Senator Bracy

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1                   A bill to be entitled  
2       An act relating to expunction of criminal history  
3       records; amending s. 943.0585, F.S.; revising the  
4       elements that must be attested to by a petitioner in a  
5       statement submitted in support of the expunction of a  
6       criminal history record; revising the circumstances  
7       under which the Department of Law Enforcement must  
8       issue a certificate of eligibility for expunction of a  
9       criminal history record; providing an effective date.

10  
11 Be It Enacted by the Legislature of the State of Florida:

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

16       943.0585 Court-ordered expunction of criminal history  
17       records.—The courts of this state have jurisdiction over their  
18       own procedures, including the maintenance, expunction, and  
19       correction of judicial records containing criminal history  
20       information to the extent such procedures are not inconsistent  
21       with the conditions, responsibilities, and duties established by  
22       this section. Any court of competent jurisdiction may order a  
23       criminal justice agency to expunge the criminal history record  
24       of a minor or an adult who complies with the requirements of  
25       this section. The court shall not order a criminal justice  
26       agency to expunge a criminal history record until the person  
27       seeking to expunge a criminal history record has applied for and  
28       received a certificate of eligibility for expunction pursuant to  
29       subsection (2) or subsection (5). A criminal history record that

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

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

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

69 (b) The petitioner's sworn statement attesting that the  
70 petitioner:

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

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

79 3.2. 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 4.3. 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 ~~5.4.~~ Is eligible for such an expunction to the best of his  
90 or her knowledge or belief and does not have any other petition  
91 to 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 (d)1. Has never, before ~~prior to~~ the date on which the  
144 application for a certificate of eligibility is filed, been  
145 adjudicated guilty of a felony ~~criminal~~ offense or comparable

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146 ordinance violation, or been adjudicated delinquent for  
147 committing any felony ~~or a misdemeanor specified in s.~~  
148 ~~943.051(3)(b).~~

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

152 Section 2. This act shall take effect July 1, 2018.