

By the Committee on Criminal Justice; and Senator Bracy

591-00907-18

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1 A bill to be entitled
2 An act relating to criminal history records; amending
3 s. 943.0585, F.S.; revising the elements that must be
4 attested to by a petitioner in a statement submitted
5 in support of the expunction of a criminal history
6 record; revising the circumstances under which the
7 Department of Law Enforcement must issue a certificate
8 of eligibility for expunction of a criminal history
9 record; amending s. 943.059, F.S.; revising the
10 elements that must be attested to by a petitioner in a
11 statement submitted in support of the sealing of a
12 criminal history record; revising the circumstances
13 under which the Department of Law Enforcement must
14 issue a certificate of eligibility for sealing of a
15 criminal history record; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Paragraph (b) of subsection (1) and paragraphs
20 (a) and (d) of subsection (2) of section 943.0585, Florida
21 Statutes, are amended to read:

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

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

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59 order to expunge does not articulate the intention of the court
60 to expunge a record pertaining to more than one arrest. This
61 section does not prevent the court from ordering the expunction
62 of only a portion of a criminal history record pertaining to one
63 arrest or one incident of alleged criminal activity.

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

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

75 (b) The petitioner's sworn statement attesting that the
76 petitioner:

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

82 2. Has not been adjudicated delinquent for committing a
83 misdemeanor offense specified in s. 943.051(3)(b) in the
84 previous 10 years.

85 3.2. Has not been adjudicated guilty of, or adjudicated
86 delinquent for committing, any of the acts stemming from the
87 arrest or alleged criminal activity to which the petition

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88 pertains.

89 ~~4.3~~ Has never secured a prior sealing or expunction of a
90 criminal history record under this section, s. 943.059, former
91 s. 893.14, former s. 901.33, or former s. 943.058, unless
92 expunction is sought of a criminal history record previously
93 sealed for 10 years pursuant to paragraph (2) (h) and the record
94 is otherwise eligible for expunction.

95 ~~5.4~~ Is eligible for such an expunction to the best of his
96 or her knowledge or belief and does not have any other petition
97 to expunge or any petition to seal pending before any court.

98
99 Any person who knowingly provides false information on such
100 sworn statement to the court commits a felony of the third
101 degree, punishable as provided in s. 775.082, s. 775.083, or s.
102 775.084.

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

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117 eligibility for expunction to a person who is the subject of a
118 criminal history record if that person:

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

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

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

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

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146 pled guilty or nolo contendere to committing, such an offense as
147 a delinquent act, without regard to whether adjudication was
148 withheld.

149 (d)1. Has never, before ~~prior to~~ the date on which the
150 application for a certificate of eligibility is filed, been
151 adjudicated guilty of a criminal offense or comparable ordinance
152 violation, or been adjudicated delinquent for committing any
153 felony ~~or a misdemeanor specified in s. 943.051(3)(b).~~

154 2. Has not been adjudicated delinquent for committing a
155 misdemeanor offense specified in s. 943.051(3)(b) in the
156 previous 10 years.

157 Section 2. Paragraph (b) of subsection (1) and paragraph
158 (c) of subsection (2) of section 943.059, Florida Statutes, are
159 amended to read:

160 943.059 Court-ordered sealing of criminal history records.—
161 The courts of this state shall continue to have jurisdiction
162 over their own procedures, including the maintenance, sealing,
163 and correction of judicial records containing criminal history
164 information to the extent such procedures are not inconsistent
165 with the conditions, responsibilities, and duties established by
166 this section. Any court of competent jurisdiction may order a
167 criminal justice agency to seal the criminal history record of a
168 minor or an adult who complies with the requirements of this
169 section. The court shall not order a criminal justice agency to
170 seal a criminal history record until the person seeking to seal
171 a criminal history record has applied for and received a
172 certificate of eligibility for sealing pursuant to subsection
173 (2). A criminal history record that relates to a violation of s.
174 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,

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175 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
176 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
177 s. 916.1075, a violation enumerated in s. 907.041, or any
178 violation specified as a predicate offense for registration as a
179 sexual predator pursuant to s. 775.21, without regard to whether
180 that offense alone is sufficient to require such registration,
181 or for registration as a sexual offender pursuant to s.
182 943.0435, may not be sealed, without regard to whether
183 adjudication was withheld, if the defendant was found guilty of
184 or pled guilty or nolo contendere to the offense, or if the
185 defendant, as a minor, was found to have committed or pled
186 guilty or nolo contendere to committing the offense as a
187 delinquent act. The court may only order sealing of a criminal
188 history record pertaining to one arrest or one incident of
189 alleged criminal activity, except as provided in this section.
190 The court may, at its sole discretion, order the sealing of a
191 criminal history record pertaining to more than one arrest if
192 the additional arrests directly relate to the original arrest.
193 If the court intends to order the sealing of records pertaining
194 to such additional arrests, such intent must be specified in the
195 order. A criminal justice agency may not seal any record
196 pertaining to such additional arrests if the order to seal does
197 not articulate the intention of the court to seal records
198 pertaining to more than one arrest. This section does not
199 prevent the court from ordering the sealing of only a portion of
200 a criminal history record pertaining to one arrest or one
201 incident of alleged criminal activity. Notwithstanding any law
202 to the contrary, a criminal justice agency may comply with laws,
203 court orders, and official requests of other jurisdictions

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204 relating to sealing, correction, or confidential handling of
205 criminal history records or information derived therefrom. This
206 section does not confer any right to the sealing of any criminal
207 history record, and any request for sealing a criminal history
208 record may be denied at the sole discretion of the court.

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

212 (b) The petitioner's sworn statement attesting that the
213 petitioner:

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

219 2. Has not been adjudicated delinquent for committing a
220 misdemeanor offense specified in s. 943.051(3)(b) in the
221 previous 10 years.

222 ~~3.2.~~ Has not been adjudicated guilty of or adjudicated
223 delinquent for committing any of the acts stemming from the
224 arrest or alleged criminal activity to which the petition to
225 seal pertains.

226 ~~4.3.~~ Has never secured a prior sealing or expunction of a
227 criminal history record under this section, s. 943.0585, former
228 s. 893.14, former s. 901.33, or former s. 943.058.

229 ~~5.4.~~ Is eligible for such a sealing to the best of his or
230 her knowledge or belief and does not have any other petition to
231 seal or any petition to expunge pending before any court.
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233 Any person who knowingly provides false information on such
234 sworn statement to the court commits a felony of the third
235 degree, punishable as provided in s. 775.082, s. 775.083, or s.
236 775.084.

237 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
238 petitioning the court to seal a criminal history record, a
239 person seeking to seal a criminal history record shall apply to
240 the department for a certificate of eligibility for sealing. The
241 department shall, by rule adopted pursuant to chapter 120,
242 establish procedures pertaining to the application for and
243 issuance of certificates of eligibility for sealing. A
244 certificate of eligibility for sealing is valid for 12 months
245 after the date stamped on the certificate when issued by the
246 department. After that time, the petitioner must reapply to the
247 department for a new certificate of eligibility. Eligibility for
248 a renewed certification of eligibility must be based on the
249 status of the applicant and the law in effect at the time of the
250 renewal application. The department shall issue a certificate of
251 eligibility for sealing to a person who is the subject of a
252 criminal history record provided that such person:

253 (c)1. Has never, before ~~prior to~~ the date on which the
254 application for a certificate of eligibility is filed, been
255 adjudicated guilty of a criminal offense or comparable ordinance
256 violation, or been adjudicated delinquent for committing any
257 felony ~~or a misdemeanor specified in s. 943.051(3)(b).~~

258 2. Has not been adjudicated delinquent for committing a
259 misdemeanor offense specified in s. 943.051(3)(b) in the
260 previous 10 years.

261 Section 3. This act shall take effect July 1, 2018.