

By Senator Thurston

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 943.0515, F.S.; specifying that certain information
4 retained by the Criminal Justice Information Program
5 relating to juvenile offenders is exempt from public
6 records requirements; providing for future legislative
7 review and repeal of the exemption; amending s.
8 943.053, F.S.; deleting exceptions from an exemption
9 from public records requirements for certain
10 information relating to juvenile offenders; delaying
11 future legislative review and repeal of the exemption;
12 conforming a provision to changes made by the act;
13 providing a statement of public necessity; reenacting
14 ss. 943.046(1), 943.0543(5), 943.05(2)(h), 943.056(1),
15 985.04(1)(a) and (6)(a), 985.045(2), and 985.11(1)(b),
16 F.S., relating to notification of criminal offender
17 information, ratification and implementation of the
18 National Crime Prevention and Privacy Compact, the
19 Criminal Justice Information Program, criminal history
20 records, confidential information and treatment of
21 records, court records, and fingerprinting and
22 photographing, respectively, to incorporate the
23 amendment made to s. 943.053, F.S., in references
24 thereto; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (1) of section 943.0515, Florida
29 Statutes, is amended to read:

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30 943.0515 Retention of criminal history records of minors.-

31 (1) (a) 1. The Criminal Justice Information Program shall
32 retain the criminal history record of a minor who is classified
33 as a serious or habitual juvenile offender or committed to a
34 juvenile correctional facility or juvenile prison under chapter
35 985 for 5 years after the date the offender reaches 21 years of
36 age, at which time the record shall be expunged unless it meets
37 the criteria of paragraph (2) (a) or paragraph (2) (b).

38 2. Such information held by the program is confidential and
39 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
40 Constitution. This subparagraph is subject to the Open
41 Government Sunset Review Act in accordance with s. 119.15 and
42 shall stand repealed on October 2, 2023, unless reviewed and
43 saved from repeal through reenactment by the Legislature.

44 (b)1. If the minor is not classified as a serious or
45 habitual juvenile offender or committed to a juvenile
46 correctional facility or juvenile prison under chapter 985, the
47 program shall retain the minor's criminal history record for 2
48 years after the date the minor reaches 19 years of age, at which
49 time the record shall be expunged unless it meets the criteria
50 of paragraph (2) (a) or paragraph (2) (b).

51 2. A minor described in subparagraph 1. may apply to the
52 department to have his or her criminal history record expunged
53 before the minor reaches 21 years of age. To be eligible for
54 expunction under this subparagraph, the minor must be 18 years
55 of age or older and less than 21 years of age and have not been
56 charged by the state attorney with or found to have committed
57 any criminal offense within the 5-year period before the
58 application date. The only offenses eligible to be expunged

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59 under this subparagraph are those that the minor committed
60 before the minor reached 18 years of age. A criminal history
61 record expunged under this subparagraph requires the approval of
62 the state attorney for each circuit in which an offense
63 specified in the criminal history record occurred. A minor
64 seeking to expunge a criminal history record under this
65 subparagraph shall apply to the department for expunction in the
66 manner prescribed by rule. An application for expunction under
67 this subparagraph shall include:

68 a. A processing fee of \$75 to the department for placement
69 in the Department of Law Enforcement Operating Trust Fund,
70 unless such fee is waived by the executive director.

71 b. A full set of fingerprints of the applicant taken by a
72 law enforcement agency for purposes of identity verification.

73 c. A sworn, written statement from the minor seeking relief
74 that he or she is no longer under court supervision applicable
75 to the disposition of the arrest or alleged criminal activity to
76 which the application to expunge pertains and that he or she has
77 not been charged with or found to have committed a criminal
78 offense, in any jurisdiction of the state or within the United
79 States, within the 5-year period before the application date. A
80 person who knowingly provides false information on the sworn
81 statement required by this sub-subparagraph commits a
82 misdemeanor of the first degree, punishable as provided in s.
83 775.082 or s. 775.083.

84 3. A minor who applies, but who is not approved for early
85 expunction in accordance with subparagraph 2., shall have his or
86 her criminal history record expunged at age 21 if eligible under
87 subparagraph 1.

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88 Section 2. Paragraphs (b) and (c) of subsection (3) of
89 section 943.053, Florida Statutes, are amended to read:

90 943.053 Dissemination of criminal justice information;
91 fees.—

92 (3)

93 (b)1. Criminal history information relating to a juvenile
94 compiled by the Criminal Justice Information Program from
95 intrastate sources shall be released as provided in this
96 section. Such information is confidential and exempt from s.
97 119.07(1) and s. 24(a), Art. I of the State Constitution, unless
98 such juvenile has been+

99 ~~a. Taken into custody by a law enforcement officer for a~~
100 ~~violation of law which, if committed by an adult, would be a~~
101 ~~felony;~~

102 ~~b. Charged with a violation of law which, if committed by~~
103 ~~an adult, would be a felony;~~

104 ~~c. Found to have committed an offense which, if committed~~
105 ~~by an adult, would be a felony; or~~

106 ~~d. transferred to adult court pursuant to part X of chapter~~
107 ~~985, and his or her provided the criminal history record has not~~
108 ~~been expunged or sealed under any law applicable to such record.~~

109 2. This paragraph is subject to the Open Government Sunset
110 Review Act in accordance with s. 119.15 and shall stand repealed
111 on October 2, 2023 ~~2021~~, unless reviewed and saved from repeal
112 through reenactment by the Legislature.

113 (c)1. Criminal history information relating to juveniles,
114 including criminal history information consisting in whole or in
115 part of information that is confidential and exempt under
116 paragraph (b), shall be available to:

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117 a. A criminal justice agency for criminal justice purposes
118 on a priority basis and free of charge;

119 b. The person to whom the record relates, or his or her
120 attorney;

121 c. The parent, guardian, or legal custodian of the person
122 to whom the record relates, provided such person has not reached
123 the age of majority, been emancipated by a court, or been
124 legally married; or

125 d. An agency or entity specified in s. 943.0585(4) or s.
126 943.059(4), for the purposes specified therein, and to any
127 person within such agency or entity who has direct
128 responsibility for employment, access authorization, or
129 licensure decisions.

130 2. After providing the program with all known personal
131 identifying information, the criminal history information
132 relating to a juvenile which is not confidential and exempt
133 under this subsection may be released to the private sector and
134 noncriminal justice agencies not specified in s. 943.0585(4) or
135 s. 943.059(4) in the same manner as provided in paragraph (a).
136 Criminal history information relating to a juvenile which is not
137 confidential and exempt under this subsection is the entire
138 criminal history information relating to a juvenile who has been
139 transferred to adult court pursuant to part X of chapter 985
140 ~~satisfies any of the criteria listed in sub-subparagraphs~~
141 ~~(b)1.a.-d.~~, except for any portion of such juvenile's criminal
142 history record which has been expunged or sealed under any law
143 applicable to such record.

144 3. All criminal history information relating to juveniles,
145 other than that provided to criminal justice agencies for

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146 criminal justice purposes, shall be provided upon tender of fees
147 as established in this subsection and in the manner prescribed
148 by rule of the Department of Law Enforcement.

149 Section 3. The Legislature finds that it is a public
150 necessity that the criminal history information of juveniles be
151 made confidential and exempt from s. 119.07(1), Florida
152 Statutes, and s. 24(a), Article I of the State Constitution
153 under ss. 943.0515 and 943.053, Florida Statutes. Many
154 individuals who have either completed their sanctions and
155 received treatment or who were never charged in the juvenile
156 justice system have found it difficult to obtain employment. The
157 presence of an arrest or a criminal history record in these
158 individuals' juvenile past and certain criminal history
159 information relating to a juvenile compiled by the Criminal
160 Justice Information Program creates an unnecessary barrier to
161 becoming productive members of society, thus frustrating the
162 rehabilitative purpose of the juvenile justice system. The
163 Legislature therefore finds that it is in the best interest of
164 the public that individuals with juvenile criminal history
165 records are given the opportunity to become contributing members
166 of society. Therefore, prohibiting the unfettered release of
167 juvenile criminal history records and certain criminal history
168 information relating to a juvenile compiled by the Criminal
169 Justice Information Program is of greater importance than any
170 public benefit that may be derived from the full disclosure and
171 release of such arrest records and information.

172 Section 4. For the purpose of incorporating the amendment
173 made by this act to section 943.053, Florida Statutes, in a
174 reference thereto, subsection (1) of section 943.046, Florida

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175 Statutes, is reenacted to read:

176 943.046 Notification of criminal offender information.—

177 (1) Any state or local law enforcement agency may release
178 to the public any criminal history information and other
179 information regarding a criminal offender, including, but not
180 limited to, public notification by the agency of the
181 information, unless the information is confidential and exempt
182 from s. 119.07(1) and s. 24(a), Art. I of the State
183 Constitution. However, this section does not contravene any
184 provision of s. 943.053 which relates to the method by which an
185 agency or individual may obtain a copy of an offender's criminal
186 history record.

187 Section 5. For the purpose of incorporating the amendment
188 made by this act to section 943.053, Florida Statutes, in a
189 reference thereto, subsection (5) of section 943.0543, Florida
190 Statutes, is reenacted to read:

191 943.0543 National Crime Prevention and Privacy Compact;
192 ratification and implementation.—

193 (5) This compact and this section do not affect or abridge
194 the obligations and responsibilities of the department under
195 other provisions of this chapter, including s. 943.053, and do
196 not alter or amend the manner, direct or otherwise, in which the
197 public is afforded access to criminal history records under
198 state law.

199 Section 6. For the purpose of incorporating the amendment
200 made by this act to section 943.053, Florida Statutes, in a
201 reference thereto, paragraph (h) of subsection (2) of section
202 943.05, Florida Statutes, is reenacted to read:

203 943.05 Criminal Justice Information Program; duties; crime

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204 reports.—

205 (2) The program shall:

206 (h) For each agency or qualified entity that officially
207 requests retention of fingerprints or for which retention is
208 otherwise required by law, search all arrest fingerprint
209 submissions received under s. 943.051 against the fingerprints
210 retained in the statewide automated biometric identification
211 system under paragraph (g).

212 1. Any arrest record that is identified with the retained
213 fingerprints of a person subject to background screening as
214 provided in paragraph (g) shall be reported to the appropriate
215 agency or qualified entity.

216 2. To participate in this search process, agencies or
217 qualified entities must notify each person fingerprinted that
218 his or her fingerprints will be retained, pay an annual fee to
219 the department unless otherwise provided by law, and inform the
220 department of any change in the affiliation, employment, or
221 contractual status of each person whose fingerprints are
222 retained under paragraph (g) if such change removes or
223 eliminates the agency or qualified entity's basis or need for
224 receiving reports of any arrest of that person, so that the
225 agency or qualified entity is not obligated to pay the upcoming
226 annual fee for the retention and searching of that person's
227 fingerprints to the department. The department shall adopt a
228 rule setting the amount of the annual fee to be imposed upon
229 each participating agency or qualified entity for performing
230 these searches and establishing the procedures for the retention
231 of fingerprints and the dissemination of search results. The fee
232 may be borne by the agency, qualified entity, or person subject

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233 to fingerprint retention or as otherwise provided by law.
234 Consistent with the recognition of criminal justice agencies
235 expressed in s. 943.053(3), these services shall be provided to
236 criminal justice agencies for criminal justice purposes free of
237 charge. Qualified entities that elect to participate in the
238 fingerprint retention and search process are required to timely
239 remit the fee to the department by a payment mechanism approved
240 by the department. If requested by the qualified entity, and
241 with the approval of the department, such fees may be timely
242 remitted to the department by a qualified entity upon receipt of
243 an invoice for such fees from the department. Failure of a
244 qualified entity to pay the amount due on a timely basis or as
245 invoiced by the department may result in the refusal by the
246 department to permit the qualified entity to continue to
247 participate in the fingerprint retention and search process
248 until all fees due and owing are paid.

249 3. Agencies that participate in the fingerprint retention
250 and search process may adopt rules pursuant to ss. 120.536(1)
251 and 120.54 to require employers to keep the agency informed of
252 any change in the affiliation, employment, or contractual status
253 of each person whose fingerprints are retained under paragraph
254 (g) if such change removes or eliminates the agency's basis or
255 need for receiving reports of any arrest of that person, so that
256 the agency is not obligated to pay the upcoming annual fee for
257 the retention and searching of that person's fingerprints to the
258 department.

259 Section 7. For the purpose of incorporating the amendment
260 made by this act to section 943.053, Florida Statutes, in a
261 reference thereto, subsection (1) of section 943.056, Florida

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262 Statutes, is reenacted to read:

263 943.056 Criminal history records; access, review, and
264 challenge.—

265 (1) For purposes of verification of the accuracy and
266 completeness of a criminal history record, the Department of Law
267 Enforcement shall provide, in the manner prescribed by rule,
268 such record for review upon verification, by fingerprints, of
269 the identity of the requesting person. If a minor, or the parent
270 or legal guardian of a minor, requests a copy of the minor's
271 criminal history record, the Department of Law Enforcement shall
272 provide such copy, including any portions of the record which
273 may be confidential under s. 943.053(3)(b), for review upon
274 verification, by fingerprints, of the identity of the minor. The
275 providing of such record shall not require the payment of any
276 fees, except those provided for by federal regulations.

277 Section 8. For the purpose of incorporating the amendment
278 made by this act to section 943.053, Florida Statutes, in a
279 reference thereto, paragraph (a) of subsection (1) and paragraph
280 (a) of subsection (6) of section 985.04, Florida Statutes, are
281 reenacted to read:

282 985.04 Oaths; records; confidential information.—

283 (1) (a) Except as provided in subsections (2), (3), (6), and
284 (7) and s. 943.053, all information obtained under this chapter
285 in the discharge of official duty by any judge, any employee of
286 the court, any authorized agent of the department, the Florida
287 Commission on Offender Review, the Department of Corrections,
288 the juvenile justice circuit boards, any law enforcement agent,
289 or any licensed professional or licensed community agency
290 representative participating in the assessment or treatment of a

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291 juvenile is confidential and exempt from s. 119.07(1) and s.
292 24(a), Art. I of the State Constitution. This exemption applies
293 to information obtained before, on, or after the effective date
294 of this exemption.

295 (6) (a) Records maintained by the department, including
296 copies of records maintained by the court, which pertain to a
297 child found to have committed a delinquent act which, if
298 committed by an adult, would be a crime specified in s. 435.04
299 may not be destroyed under this section for 25 years after the
300 youth's final referral to the department, except in cases of the
301 death of the child. Such records, however, shall be sealed by
302 the court for use only in meeting the screening requirements for
303 personnel in s. 402.3055 and the other sections cited above, or
304 under departmental rule; however, current criminal history
305 information must be obtained from the Department of Law
306 Enforcement in accordance with s. 943.053. The information shall
307 be released to those persons specified in the above cited
308 sections for the purposes of complying with those sections. The
309 court may punish by contempt any person who releases or uses the
310 records for any unauthorized purpose.

311 Section 9. For the purpose of incorporating the amendment
312 made by this act to section 943.053, Florida Statutes, in a
313 reference thereto, subsection (2) of section 985.045, Florida
314 Statutes, is reenacted to read:

315 985.045 Court records.—

316 (2) The clerk shall keep all official records required by
317 this section separate from other records of the circuit court,
318 except those records pertaining to motor vehicle violations,
319 which shall be forwarded to the Department of Highway Safety and

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320 Motor Vehicles. Except as provided in ss. 943.053 and
321 985.04(6)(b) and (7), official records required by this chapter
322 are not open to inspection by the public, but may be inspected
323 only upon order of the court by persons deemed by the court to
324 have a proper interest therein, except that a child and the
325 parents, guardians, or legal custodians of the child and their
326 attorneys, law enforcement agencies, the Department of Juvenile
327 Justice and its designees, the Florida Commission on Offender
328 Review, the Department of Corrections, and the Justice
329 Administrative Commission shall always have the right to inspect
330 and copy any official record pertaining to the child. Public
331 defender offices shall have access to official records of
332 juveniles on whose behalf they are expected to appear in
333 detention or other hearings before an appointment of
334 representation. The court may permit authorized representatives
335 of recognized organizations compiling statistics for proper
336 purposes to inspect, and make abstracts from, official records
337 under whatever conditions upon the use and disposition of such
338 records the court may deem proper and may punish by contempt
339 proceedings any violation of those conditions.

340 Section 10. For the purpose of incorporating the amendment
341 made by this act to section 943.053, Florida Statutes, in a
342 reference thereto, paragraph (b) of subsection (1) of section
343 985.11, Florida Statutes, is reenacted to read:

344 985.11 Fingerprinting and photographing.—

345 (1)

346 (b) Unless the child is issued a civil citation or is
347 participating in a similar diversion program pursuant to s.
348 985.12, a child who is charged with or found to have committed

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349 one of the following offenses shall be fingerprinted, and the
350 fingerprints shall be submitted to the Department of Law
351 Enforcement as provided in s. 943.051(3) (b):

- 352 1. Assault, as defined in s. 784.011.
- 353 2. Battery, as defined in s. 784.03.
- 354 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 355 4. Unlawful use of destructive devices or bombs, as defined
356 in s. 790.1615(1).
- 357 5. Neglect of a child, as defined in s. 827.03(1) (e).
- 358 6. Assault on a law enforcement officer, a firefighter, or
359 other specified officers, as defined in s. 784.07(2) (a).
- 360 7. Open carrying of a weapon, as defined in s. 790.053.
- 361 8. Exposure of sexual organs, as defined in s. 800.03.
- 362 9. Unlawful possession of a firearm, as defined in s.
363 790.22(5).
- 364 10. Petit theft, as defined in s. 812.014.
- 365 11. Cruelty to animals, as defined in s. 828.12(1).
- 366 12. Arson, resulting in bodily harm to a firefighter, as
367 defined in s. 806.031(1).
- 368 13. Unlawful possession or discharge of a weapon or firearm
369 at a school-sponsored event or on school property as defined in
370 s. 790.115.

371
372 A law enforcement agency may fingerprint and photograph a child
373 taken into custody upon probable cause that such child has
374 committed any other violation of law, as the agency deems
375 appropriate. Such fingerprint records and photographs shall be
376 retained by the law enforcement agency in a separate file, and
377 these records and all copies thereof must be marked "Juvenile

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378 Confidential." These records are not available for public
379 disclosure and inspection under s. 119.07(1) except as provided
380 in ss. 943.053 and 985.04(2), but shall be available to other
381 law enforcement agencies, criminal justice agencies, state
382 attorneys, the courts, the child, the parents or legal
383 custodians of the child, their attorneys, and any other person
384 authorized by the court to have access to such records. In
385 addition, such records may be submitted to the Department of Law
386 Enforcement for inclusion in the state criminal history records
387 and used by criminal justice agencies for criminal justice
388 purposes. These records may, in the discretion of the court, be
389 open to inspection by anyone upon a showing of cause. The
390 fingerprint and photograph records shall be produced in the
391 court whenever directed by the court. Any photograph taken
392 pursuant to this section may be shown by a law enforcement
393 officer to any victim or witness of a crime for the purpose of
394 identifying the person who committed such crime.

395 Section 11. This act shall take effect July 1, 2018.