

By the Committee on Criminal Justice; and Senator Bracy

591-02589-18

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 943.059, F.S.; expanding an existing public records
4 exemption to include the administrative sealing of
5 specified criminal history records; conforming
6 provisions to changes made by the act; providing for
7 future review and repeal of the expanded exemption;
8 providing for reversion of specified language if the
9 exemption is not saved from repeal; providing a
10 statement of public necessity; providing a contingent
11 effective date.

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

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15 Section 1. Subsection (4) of section 943.059, Florida
16 Statutes, is amended to read:

17 943.059 Court-ordered sealing of criminal history records.—
18 The courts of this state shall continue to have jurisdiction
19 over their own procedures, including the maintenance, sealing,
20 and correction of judicial records containing criminal history
21 information to the extent such procedures are not inconsistent
22 with the conditions, responsibilities, and duties established by
23 this section. Any court of competent jurisdiction may order a
24 criminal justice agency to seal the criminal history record of a
25 minor or an adult who complies with the requirements of this
26 section. The court shall not order a criminal justice agency to
27 seal a criminal history record until the person seeking to seal
28 a criminal history record has applied for and received a
29 certificate of eligibility for sealing pursuant to subsection

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

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

66 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
67 history record of a minor or an adult which is ordered sealed by
68 a court pursuant to this section or sealed administratively
69 pursuant to s. 943.0586 is confidential and exempt from the
70 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
71 Constitution and is available only to the person who is the
72 subject of the record, to the subject's attorney, to criminal
73 justice agencies for their respective criminal justice purposes,
74 which include conducting a criminal history background check for
75 approval of firearms purchases or transfers as authorized by
76 state or federal law, to judges in the state courts system for
77 the purpose of assisting them in their case-related
78 decisionmaking responsibilities, as set forth in s. 943.053(5),
79 or to those entities set forth in subparagraphs (a)1., 4., 5.,
80 6., 8., 9., and 10. for their respective licensing, access
81 authorization, and employment purposes.

82 (a) The subject of a criminal history record sealed under
83 this section, under s. 943.0586, or under other provisions of
84 law, including former s. 893.14, former s. 901.33, and former s.
85 943.058, may lawfully deny or fail to acknowledge the arrests
86 covered by the sealed record, except when the subject of the
87 record:

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- 88 1. Is a candidate for employment with a criminal justice
89 agency;
- 90 2. Is a defendant in a criminal prosecution;
- 91 3. Concurrently or subsequently petitions for relief under
92 this section, s. 943.0583, or s. 943.0585;
- 93 4. Is a candidate for admission to The Florida Bar;
- 94 5. Is seeking to be employed or licensed by or to contract
95 with the Department of Children and Families, the Division of
96 Vocational Rehabilitation within the Department of Education,
97 the Agency for Health Care Administration, the Agency for
98 Persons with Disabilities, the Department of Health, the
99 Department of Elderly Affairs, or the Department of Juvenile
100 Justice or to be employed or used by such contractor or licensee
101 in a sensitive position having direct contact with children, the
102 disabled, or the elderly;
- 103 6. Is seeking to be employed or licensed by the Department
104 of Education, a district school board, a university laboratory
105 school, a charter school, a private or parochial school, or a
106 local governmental entity that licenses child care facilities;
- 107 7. Is attempting to purchase a firearm from a licensed
108 importer, licensed manufacturer, or licensed dealer and is
109 subject to a criminal history check under state or federal law;
- 110 8. Is seeking to be licensed by the Division of Insurance
111 Agent and Agency Services within the Department of Financial
112 Services;
- 113 9. Is seeking to be appointed as a guardian pursuant to s.
114 744.3125; or
- 115 10. Is seeking to be licensed by the Bureau of License
116 Issuance of the Division of Licensing within the Department of

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117 Agriculture and Consumer Services to carry a concealed weapon or
118 concealed firearm. This subparagraph applies only in the
119 determination of an applicant's eligibility under s. 790.06.

120 (b) Subject to the exceptions in paragraph (a), a person
121 who has been granted a sealing under this section, s. 943.0586,
122 former s. 893.14, former s. 901.33, or former s. 943.058 may not
123 be held under any provision of law of this state to commit
124 perjury or to be otherwise liable for giving a false statement
125 by reason of such person's failure to recite or acknowledge a
126 sealed criminal history record.

127 (c) Information relating to the existence of a sealed
128 criminal record provided in accordance with the provisions of
129 paragraph (a) is confidential and exempt from the provisions of
130 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
131 except that the department shall disclose the sealed criminal
132 history record to the entities set forth in subparagraphs (a)1.,
133 4., 5., 6., 8., 9., and 10. for their respective licensing,
134 access authorization, and employment purposes. An employee of an
135 entity set forth in subparagraph (a)1., subparagraph (a)4.,
136 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
137 subparagraph (a)9., or subparagraph (a)10. may not disclose
138 information relating to the existence of a sealed criminal
139 history record of a person seeking employment, access
140 authorization, or licensure with such entity or contractor,
141 except to the person to whom the criminal history record relates
142 or to persons having direct responsibility for employment,
143 access authorization, or licensure decisions. A person who
144 violates the provisions of this paragraph commits a misdemeanor
145 of the first degree, punishable as provided in s. 775.082 or s.

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146 775.083.

147 (d) The expansion of the public records exemption under
148 this subsection to include records sealed administratively under
149 s. 943.0586 is subject to the Open Government Sunset Review Act
150 in accordance with s. 119.15 and shall stand repealed on October
151 2, 2023, unless reviewed and saved from repeal through
152 reenactment by the Legislature. If the expansion of the
153 exemption is not saved from repeal, this subsection shall revert
154 to that in existence on June 30, 2018, except that any
155 amendments to such text other than by this act shall be
156 preserved and continue to operate to the extent that such
157 amendments are not dependent upon the portions of text which
158 expire pursuant to this paragraph.

159 Section 2. The Legislature finds that it is a public
160 necessity that the criminal history records of a minor which
161 have been administratively sealed pursuant to s. 943.0586,
162 Florida Statutes, because a case was not filed, was dismissed or
163 nolle prosequi, or resulted in the granting of a judgment of
164 acquittal or verdict of not guilty be made confidential and
165 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
166 Article I of the State Constitution. The presence of a criminal
167 history record in a minor's past which has not been validated
168 through criminal proceedings can jeopardize his or her ability
169 to obtain education, employment, and other opportunities
170 necessary to becoming a productive, contributing, self-
171 sustaining member of society. Such negative consequences are
172 unwarranted in cases in which the minor was not found to have
173 committed the offense that is the subject of the sealed criminal
174 history record. For these reasons, the Legislature finds that it

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175 is a public necessity that the criminal history records of
176 minors which have been administratively sealed be confidential
177 and exempt from public records requirements.

178 Section 3. This act shall take effect on the same date that
179 SB 860 or similar legislation takes effect, if such legislation
180 is adopted in the same legislative session or an extension
181 thereof and becomes law.