

By Senator Brandes

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1                   A bill to be entitled  
2       An act relating to sentencing; creating s. 322.3401,  
3       F.S.; providing legislative intent; defining terms;  
4       requiring certain persons convicted of driving while  
5       license suspended, revoked, canceled, or disqualified  
6       committed before a specified date to be sentenced in a  
7       specified manner in accordance with the amendments in  
8       chapter 2019-167, Laws of Florida; requiring  
9       resentencing for persons who committed such violations  
10      before a specified date and are serving terms of  
11      imprisonment; specifying the procedures for such  
12      resentencing; requiring certain persons convicted of  
13      driving while license suspended, revoked, canceled, or  
14      disqualified to have such conviction treated as a  
15      misdemeanor for specified purposes; requiring fines,  
16      fees, and costs to be waived; creating s. 943.0587,  
17      F.S.; defining terms; providing that persons who meet  
18      specified criteria are eligible to petition a court to  
19      expunge a criminal history record for convictions of  
20      driving while license suspended, revoked, canceled, or  
21      disqualified; requiring such persons to apply to the  
22      Department of Law Enforcement for a certificate of  
23      eligibly for expunction; requiring the department to  
24      adopt rules; requiring the department to issue such  
25      certificates if specified conditions are met;  
26      providing for the timeframe during which a certificate  
27      is valid; providing requirements for such petitions;  
28      providing criminal penalties; providing court  
29      procedures relating to a petition to expunge;

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30 providing for the effects of expunction orders;  
31 providing effective dates.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Section 322.3401, Florida Statutes, is created  
36 to read:

37 322.3401 Retroactive application relating to s. 322.34;  
38 legislative intent; prohibiting certain sentences for specified  
39 offenses; resentencing procedures.—

40 (1) It is the intent of the Legislature to retroactively  
41 apply section 12 of chapter 2019-167, Laws of Florida, only as  
42 provided in this section, to persons who committed driving while  
43 license suspended, revoked, canceled, or disqualified before  
44 October 1, 2019, the effective date of section 12 of chapter  
45 2019-167, Laws of Florida, which amended s. 322.34 to modify  
46 criminal penalties and collateral consequences for offenses  
47 under that section.

48 (2) As used in this section, the term:

49 (a) "Former s. 322.34" is a reference to s. 322.34 as it  
50 existed at any time before its amendment by chapter 2019-167,  
51 Laws of Florida.

52 (b) "New s. 322.34" is a reference to s. 322.34 as it  
53 exists after the amendments made by chapter 2019-167, Laws of  
54 Florida, became effective.

55 (3) (a) A person who committed driving while license  
56 suspended, revoked, canceled, or disqualified before October 1,  
57 2019, but who was not sentenced under former s. 322.34 before  
58 October 1, 2020, the effective date of this act, must be

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59 sentenced in accordance with s. 775.082, s. 775.083, or s.  
60 775.084 for the degree of offense as provided for in the new s.  
61 322.34.

62 (b) A person who committed driving while license suspended,  
63 revoked, canceled, or disqualified before October 1, 2019, who  
64 was sentenced before October 1, 2019, to a term of imprisonment  
65 pursuant to former s. 322.34, and who is serving such term of  
66 imprisonment on or after October 1, 2020, must be resentenced in  
67 accordance with paragraph (c). The person must be resentenced to  
68 a sentence as provided in s. 775.082, s. 775.083, or s. 775.084.

69 (c) Resentencing under this section must occur in the  
70 following manner:

71 1. The Department of Corrections shall notify the person  
72 described in paragraph (b) of his or her eligibility to request  
73 a sentence review hearing.

74 2. The person seeking sentence review under this section  
75 may submit an application to the court of original jurisdiction  
76 requesting that a sentence review hearing be held. The  
77 sentencing court shall retain original jurisdiction for the  
78 duration of the sentence for this purpose.

79 3. A person who is eligible for a sentence review hearing  
80 under this section is entitled to be represented by counsel, and  
81 the court shall appoint a public defender to represent the  
82 person if he or she cannot afford an attorney.

83 4. Upon receiving an application from the eligible person,  
84 the court of original jurisdiction shall hold a sentence review  
85 hearing to determine if the eligible person meets the criteria  
86 for resentencing under this section. If the court determines at  
87 the sentence review hearing that the eligible person meets the

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88 criteria in this section for resentencing, the court must  
89 resentence the person as provided in this section; however, the  
90 new sentence may not exceed the person's original sentence with  
91 credit for time served. If the court determines that such person  
92 does not meet the criteria for resentencing under this section,  
93 the court must provide written reasons why such person does not  
94 meet such criteria.

95 (4) Notwithstanding any other law, a person who has been  
96 convicted of a felony under former s. 322.34 and whose offense  
97 would not be classified as a felony under the new s. 322.34,  
98 must:

99 (a) Be treated as if he or she had been convicted of a  
100 misdemeanor violation of s. 322.34 for purposes of any right,  
101 privilege, benefit, remedy, or collateral consequence that the  
102 person might be entitled to but for such felony conviction.

103 (b) Have all fines, fees, and costs related to such felony  
104 conviction waived.

105 Section 2. Effective upon the same date that SB \_\_\_\_ or  
106 similar legislation takes effect, only if such legislation is  
107 adopted in the same legislative session or an extension thereof  
108 and becomes a law, section 943.0587, Florida Statutes, is  
109 created to read:

110 943.0587 Driving while license suspended, revoked,  
111 canceled, or disqualified expunction.-

112 (1) DEFINITIONS.-As used in this section, the term:

113 (a) "Former s. 322.34" is a reference to s. 322.34 as it  
114 existed at any time before its amendment by chapter 2019-167,  
115 Laws of Florida.

116 (b) "New s. 322.34" is a reference to s. 322.34 as it

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117 exists after the amendments made by chapter 2019-167, Laws of  
118 Florida, became effective.

119 (c) "Expunction" has the same meaning ascribed in and  
120 effect as s. 943.0585.

121 (2) ELIGIBILITY.—Notwithstanding any other law, a person is  
122 eligible to petition a court to expunge a criminal history  
123 record for a conviction under former s. 322.34 if:

124 (a) The person received a withholding of adjudication or  
125 adjudication of guilt for a violation of former s. 322.34 for  
126 driving while license suspended, revoked, canceled, or  
127 disqualified and whose conviction would not be classified as a  
128 felony under new s. 322.34; and

129 (b) The person has never been convicted of a felony other  
130 than for the felony offenses of the former s. 322.34 for driving  
131 while license suspended, revoked, canceled, or disqualified.

132 (3) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court  
133 to expunge a criminal history record under this section, a  
134 person seeking to expunge a criminal history record must apply  
135 to the department for a certificate of eligibility for  
136 expunction. The department shall adopt rules to establish  
137 procedures for applying for and issuing a certificate of  
138 eligibility for expunction.

139 (a) The department shall issue a certificate of eligibility  
140 for expunction to a person who is the subject of a criminal  
141 history record under this section if that person:

- 142 1. Satisfies the eligibility criteria in subsection (2);  
143 2. Has submitted to the department a written certified  
144 statement from the appropriate state attorney or statewide  
145 prosecutor which confirms the criminal history record complies

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146 with the criteria in subsection (2);

147 3. Has submitted to the department a certified copy of the  
148 disposition of the charge to which the petition to expunge  
149 pertains; and

150 4. Remits a \$75 processing fee to the department for  
151 placement in the Department of Law Enforcement Operating Trust  
152 Fund, unless the executive director waives such fee.

153 (b) A certificate of eligibility for expunction is valid  
154 for 12 months after the date stamped on the certificate when  
155 issued by the department. After that time, the petitioner must  
156 reapply to the department for a new certificate of eligibility.  
157 The petitioner's status and the law in effect at the time of the  
158 renewal application determine the petitioner's eligibility.

159 (4) PETITION.—Each petition to expunge a criminal history  
160 record must be accompanied by the following:

161 (a) A valid certificate of eligibility issued by the  
162 department.

163 (b) The petitioner's sworn statement that he or she:

164 1. Satisfies the eligibility requirements for expunction in  
165 subsection (2); and

166 2. Is eligible for expunction to the best of his or her  
167 knowledge.

168 (5) PENALTIES.—A person who knowingly provides false  
169 information on such sworn statement commits a felony of the  
170 third degree, punishable as provided in s. 775.082, s. 775.083,  
171 or s. 775.084.

172 (6) COURT AUTHORITY.—

173 (a) The courts of this state have jurisdiction over their  
174 own procedures, including the maintenance, expunction, and

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175 correction of judicial records containing criminal history  
176 information to the extent that such procedures are not  
177 inconsistent with the conditions, responsibilities, and duties  
178 established by this section.

179 (b) A court of competent jurisdiction shall order a  
180 criminal justice agency to expunge the criminal history record  
181 of a person who complies with the requirements of this section.  
182 The court may not order a criminal justice agency to expunge a  
183 criminal history record under this section until the person  
184 seeking to expunge a criminal history record has applied for and  
185 received a certificate of eligibility under subsection (3).

186 (c) Expunction granted under this section does not prevent  
187 the person who receives such relief from petitioning for the  
188 expunction or sealing of a later criminal history record as  
189 provided for in ss. 943.0583, 943.0585, and 943.059, if the  
190 person is otherwise eligible under those sections.

191 (7) PROCESSING OF A PETITION OR AN ORDER.—

192 (a) In a judicial proceeding under this section, a copy of  
193 the completed petition to expunge shall be served upon the  
194 appropriate state attorney or the statewide prosecutor and upon  
195 the arresting agency; however, it is not necessary to make any  
196 agency other than the state a party. The appropriate state  
197 attorney or the statewide prosecutor and the arresting agency  
198 may respond to the court regarding the completed petition to  
199 expunge.

200 (b) If relief is granted by the court, the clerk of the  
201 court shall certify copies of the order to the appropriate state  
202 attorney or the statewide prosecutor and the arresting agency.  
203 The arresting agency shall forward the order to any other agency

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204 to which the arresting agency disseminated the criminal history  
205 record information to which the order pertains. The department  
206 shall forward the order to expunge to the Federal Bureau of  
207 Investigation. The clerk of the court shall certify a copy of  
208 the order to any other agency which the records of the court  
209 reflect has received the criminal history record from the court.

210 (c) The department or any other criminal justice agency is  
211 not required to act on an order to expunge entered by a court  
212 when such order does not comply with the requirements of this  
213 section. Upon receipt of such an order, the department must  
214 notify the issuing court, the appropriate state attorney or  
215 statewide prosecutor, the petitioner or the petitioner's  
216 attorney, and the arresting agency of the reason for  
217 noncompliance. The appropriate state attorney or statewide  
218 prosecutor shall take action within 60 days to correct the  
219 record and petition the court to void the order. No cause of  
220 action, including contempt of court, shall arise against any  
221 criminal justice agency for failure to comply with an order to  
222 expunge when the petitioner for such order failed to obtain the  
223 certificate of eligibility as required by this section or such  
224 order does not otherwise comply with the requirements of this  
225 section.

226 (8) EFFECT OF EXPUNCTION ORDER.—

227 (a) The person who is the subject of a criminal history  
228 record that is expunged under this section may lawfully deny or  
229 fail to acknowledge the arrests and convictions covered by the  
230 expunged record, except when the subject of the record:

231 1. Is a candidate for employment with a criminal justice  
232 agency;



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233 2. Is a defendant in a criminal prosecution;

234 3. Concurrently or subsequently petitions for relief under  
235 this section, s. 943.0583, s. 943.059, or s. 943.0585;

236 4. Is a candidate for admission to The Florida Bar;

237 5. Is seeking to be employed or licensed by or to contract  
238 with the Department of Children and Families, the Division of  
239 Vocational Rehabilitation of the Department of Education, the  
240 Agency for Health Care Administration, the Agency for Persons  
241 with Disabilities, the Department of Health, the Department of  
242 Elderly Affairs, or the Department of Juvenile Justice or to be  
243 employed or used by such contractor or licensee in a sensitive  
244 position having direct contact with children, the disabled, or  
245 the elderly;

246 6. Is seeking to be employed or licensed by the Department  
247 of Education, any district school board, any university  
248 laboratory school, any charter school, any private or parochial  
249 school, or any local governmental entity that licenses child  
250 care facilities;

251 7. Is seeking to be licensed by the Division of Insurance  
252 Agent and Agency Services within the Department of Financial  
253 Services; or

254 8. Is seeking to be appointed as a guardian pursuant to s.  
255 744.3125.

256 (b) Subject to the exceptions in paragraph (a), a person  
257 who has been granted an expunction under this section may not be  
258 held under any law of this state to commit perjury or to be  
259 otherwise liable for giving a false statement by reason of such  
260 person's failure to recite or acknowledge an expunged criminal  
261 history record.

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262           Section 3. Except as otherwise expressly provided in this  
263 act, this act shall take effect October 1, 2020.