

By Senator Bracy

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1 A bill to be entitled
2 An act relating to expunction of criminal history
3 records relating to certain cannabis offenses;
4 creating s. 943.0586, F.S.; defining terms;
5 authorizing certain courts to order criminal justice
6 agencies to expunge the criminal history record of an
7 individual with a qualified cannabis offense upon such
8 individual filing a petition for expunction;
9 authorizing an individual to petition for expunction
10 of such criminal history records at any time;
11 specifying petition requirements; requiring a court,
12 upon receipt of a petition, to serve the appropriate
13 state attorney and the arresting agency with a copy of
14 the petition; providing requirements if the state
15 attorney or the arresting agency object to the court
16 granting the petition; requiring the court to grant
17 the petition if no objection is filed; imposing duties
18 on the clerk of the court and the arresting agency if
19 a court grants such a petition; providing
20 construction; requiring that a criminal justice agency
21 that has custody of any criminal history record
22 ordered expunged physically destroy or obliterate the
23 record; providing for the effect of expunged criminal
24 history records; prohibiting a court or criminal
25 justice agency from charging the petitioner fees in
26 connection with the petition; providing a statement
27 regarding certain references and the doctrine of
28 incorporation by reference; providing an effective
29 date.

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31 Be It Enacted by the Legislature of the State of Florida:
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33 Section 1. Section 943.0586, Florida Statutes, is created
34 to read:

35 943.0586 Expunction of criminal history records relating to
36 qualifying cannabis offenses.-

37 (1) As used in this section, the term:

38 (a) "Domestic violence" has the same meaning as in s.
39 741.28. The term includes any crime the underlying factual basis
40 of which has been found by a court to include an act of domestic
41 violence and any act of domestic violence between dating
42 partners as described in s. 784.046(1)(d).

43 (b) "Qualifying cannabis offense" means one or more
44 misdemeanor convictions of obtaining, purchasing, or possessing
45 20 grams or less of cannabis. The term does not include a
46 misdemeanor conviction of obtaining, purchasing, or possessing
47 20 grams or less of cannabis if, in connection with such
48 offense, the individual was found guilty or pled guilty or no
49 contest to a felony offense, to driving under the influence, or
50 to an act of domestic violence.

51 (2) Notwithstanding any other provision of law, upon the
52 filing of a petition for expunction as provided in this section,
53 any court in the circuit in which the petitioner was arrested or
54 in which the petitioner resides may order a criminal justice
55 agency to expunge the criminal history record of an individual
56 with a qualifying cannabis offense who complies with the
57 requirements of this section. A petition need not be filed in
58 the court where the petitioner's criminal proceedings in

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59 connection with the offense were conducted.

60 (3) An individual may petition for the expunction of a
61 criminal history record resulting from a qualifying cannabis
62 offense at any time.

63 (4) Each petition to a court to expunge a qualifying
64 cannabis offense is complete only when accompanied by:

65 (a) The petitioner's sworn statement attesting that the
66 petitioner is eligible for such an expunction to the best of his
67 or her knowledge or belief; and

68 (b) A certified copy of the disposition of any charge to
69 which the petition to expunge pertains.

70 (5) Upon a court receiving a petition under this section,
71 the court shall, as soon as practicable, serve the appropriate
72 state attorney and the arresting agency with a copy of the
73 completed petition. The petitioner or the petitioner's attorney
74 may appear at any hearing under this section telephonically, via
75 video conference, or by other electronic means.

76 (a) If the state attorney or the arresting agency objects
77 to the court granting the petition, a written objection must be
78 filed with the court within 10 days after the date on which the
79 request was received. If such an objection is filed, the court
80 must hold a hearing on the request. At the hearing, the court
81 must grant the petition unless the state attorney or the
82 arresting agency establishes by clear and convincing evidence
83 that there is good cause not to grant the request.

84 (b) If the state attorney or the arresting agency does not
85 file a written objection with the court, the court must grant
86 the petition.

87 (c) If the petition is granted by the court, the clerk of

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88 the court shall certify copies of the order to the appropriate
89 state attorney and the arresting agency. The arresting agency is
90 responsible for forwarding the order to any other agency listed
91 in the court order to which the arresting agency disseminated
92 the criminal history record information covered by the order.
93 The clerk of the court shall certify a copy of the order to any
94 other agency that the records of the court reflect received the
95 criminal history record from the court.

96 (6) (a) The courts of this state have jurisdiction over
97 their own procedures, including the maintenance, expunction, and
98 correction of judicial records containing criminal history
99 information, to the extent that such procedures are not
100 inconsistent with the conditions, responsibilities, and duties
101 established by this section.

102 (b) Any criminal history record of an individual which is
103 ordered expunged pursuant to this section must be physically
104 destroyed or obliterated by any criminal justice agency having
105 custody of such record.

106 (c) The individual who is the subject of a criminal history
107 record that is expunged under this section may lawfully deny or
108 fail to acknowledge the arrests or convictions covered by the
109 expunged records.

110 (d) The individual who has been granted an expunction under
111 this section may not be held under any law of this state to
112 commit perjury or to be otherwise liable for giving a false
113 statement by reason of such individual's failure to recite or
114 acknowledge an expunged criminal history record.

115 (7) A court or criminal justice agency may not charge an
116 individual a fee to complete a petition under this section or to

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117 obtain the necessary documents to complete a petition under this
118 section.

119 (8) Any reference to any other chapter, section, or
120 subdivision of the Florida Statutes in this section constitutes
121 a general reference under the doctrine of incorporation by
122 reference.

123 Section 2. This act shall take effect July 1, 2021.