

By the Committee on Judiciary; and Senator Bracy

590-02872-21

2021468c1

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.; providing for eligibility;
5 requiring a petitioner to obtain a certificate of
6 eligibility from the Department of Law Enforcement;
7 requiring the department to adopt rules; providing
8 application requirements and contents of a certificate
9 of eligibility for expunction; requiring the
10 department to issue a certificate of eligibility for
11 expunction if a person meets specified criteria;
12 providing contents of a petition; providing court
13 procedures for expungement; providing that the subject
14 of an expungement order may lawfully deny or fail to
15 acknowledge the arrest and notice to appear; providing
16 exceptions; providing that a petition for expunction
17 of certain cannabis offenses does not foreclose the
18 petitioner from applying to seal or expunge other
19 criminal arrests; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 943.0586, Florida Statutes, is created
24 to read:

25 943.0586 Expunction of criminal history records relating to
26 qualifying cannabis offenses.-

27 (1) ELIGIBILITY.-A person is eligible to petition a court
28 to expunge a criminal history record under this section if all
29 of the following apply:

590-02872-21

2021468c1

30 (a) The person was arrested or given a notice to appear for
31 a misdemeanor offense for obtaining, purchasing, or possessing
32 20 grams or less of cannabis, regardless of disposition.

33 (b) The person was not convicted of, or did not plead no
34 contest to, a contemporaneous offense other than the misdemeanor
35 offense for obtaining, purchasing, or possessing 20 grams or
36 less of cannabis.

37 (c) At least one year has elapsed since the disposition of
38 the arrest or alleged criminal activity to which the petition to
39 expunge pertains.

40 (d) The person is no longer under court supervision
41 applicable to the disposition of the arrest or alleged criminal
42 activity to which the petition to expunge pertains.

43 (e) The person has not previously been granted relief under
44 this section.

45 (2) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court
46 to expunge a criminal history record, a person seeking to
47 expunge a criminal history record must apply to the department
48 for a certificate of eligibility for expunction. The department
49 shall adopt rules to establish procedures for applying for and
50 issuing a certificate of eligibility for expunction.

51 (a) The department shall issue a certificate of eligibility
52 for expunction to a person who is the subject of a criminal
53 history record if that person:

54 1. Satisfies the eligibility criteria in paragraphs (1) (a)-
55 (e) and is not ineligible under s. 943.0584;

56 2. Has submitted to the department a written certified
57 statement from the appropriate state attorney or statewide
58 prosecutor which confirms the criminal history record complies

590-02872-21

2021468c1

59 with the criteria in paragraphs (1) (a)-(d);

60 3. Has submitted to the department a certified copy of the
61 disposition of the charge to which the petition to expunge
62 pertains; and

63 4. Remits a processing fee, equal to that fee charged
64 pursuant to s. 943.0585(2) (a)4., to the department for placement
65 in the Department of Law Enforcement Operating Trust Fund,
66 unless the executive director waives such fee.

67 (b) A certificate of eligibility for expunction is valid
68 for 12 months after the date stamped on the certificate when
69 issued by the department. After that time, the petitioner must
70 reapply to the department for a new certificate of eligibility.
71 The petitioner's status and the law in effect at the time of the
72 renewal application determine the petitioner's eligibility.

73 (3) PETITION.—Each petition to expunge a criminal history
74 record must be accompanied by all of the following:

75 (a) A valid certificate of eligibility issued by the
76 department.

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

78 1. Satisfies the eligibility requirements for expunction in
79 subsection (1).

80 2. Is eligible for expunction to the best of his or her
81 knowledge and does not have any other petition to seal or
82 expunge a criminal history record pending before any court.

83
84 A person who knowingly provides false information on such sworn
85 statement commits a felony of the third degree, punishable as
86 provided in s. 775.082, s. 775.083, or s. 775.084.

87 (4) COURT AUTHORITY.—

590-02872-21

2021468c1

88 (a) The courts of this state have jurisdiction over their
89 own procedures, including the maintenance, expunction, and
90 correction of judicial records containing criminal history
91 information, to the extent that such procedures are not
92 inconsistent with the conditions, responsibilities, and duties
93 established by this section.

94 (b) A court of competent jurisdiction may order a criminal
95 justice agency to expunge the criminal history record of a minor
96 or an adult who complies with the requirements of this section.
97 The court may not order a criminal justice agency to expunge a
98 criminal history record until the person seeking to expunge a
99 criminal history record has applied for and received a
100 certificate of eligibility under subsection (2).

101 (c) The court may order expunction of a criminal history
102 record pertaining to one arrest or one incident of alleged
103 criminal activity only, except that the court may order the
104 expunction of a criminal history record pertaining to more than
105 one arrest if the additional arrests directly relate to the
106 original arrest. If the court intends to order the expunction of
107 records pertaining to such additional arrests, such intent must
108 be specified in the order. A criminal justice agency may not
109 expunge any record pertaining to such additional arrests if the
110 order to expunge does not articulate the intention of the court
111 to expunge a record pertaining to more than one arrest. This
112 section does not prevent the court from ordering the expunction
113 of only a portion of a criminal history record pertaining to one
114 arrest or one incident of alleged criminal activity.

115 (d) This section does not confer any right to expunction of
116 any criminal history record, and any request for expunction of a

590-02872-21

2021468c1

117 criminal history record may be denied at the sole discretion of
118 the court.

119 (5) PROCESSING OF A PETITION OR AN ORDER.—

120 (a) In judicial proceedings under this section, a copy of
121 the completed petition to expunge shall be served upon the
122 appropriate state attorney or the statewide prosecutor and upon
123 the arresting agency; however, it is not necessary to make any
124 agency other than the state a party. The appropriate state
125 attorney or the statewide prosecutor and the arresting agency
126 may respond to the court regarding the completed petition to
127 expunge.

128 (b) If relief is granted by the court, the clerk of the
129 court shall certify copies of the order to the appropriate state
130 attorney or the statewide prosecutor and the arresting agency.
131 The arresting agency shall forward the order to any other agency
132 to which the arresting agency disseminated the criminal history
133 record information to which the order pertains. The department
134 shall forward the order to expunge to the Federal Bureau of
135 Investigation. The clerk of the court shall certify a copy of
136 the order to any other agency which the records of the court
137 reflect has received the criminal history record from the court.

138 (c) The department or any other criminal justice agency is
139 not required to act on an order to expunge entered by a court
140 when such order does not comply with the requirements of this
141 section. Upon receipt of such an order, the department must
142 notify the issuing court, the appropriate state attorney or
143 statewide prosecutor, the petitioner or the petitioner's
144 attorney, and the arresting agency of the reason for
145 noncompliance. The appropriate state attorney or statewide

590-02872-21

2021468c1

146 prosecutor shall take action within 60 days to correct the
147 record and petition the court to void the order. No cause of
148 action, including contempt of court, shall arise against any
149 criminal justice agency for failure to comply with an order to
150 expunge when the petitioner for such order failed to obtain the
151 certificate of eligibility as required by this section or such
152 order does not otherwise comply with the requirements of this
153 section.

154 (6) EFFECT OF EXPUNCTION ORDER.—

155 (a) The person who is the subject of a criminal history
156 record that is expunged under this section may lawfully deny or
157 fail to acknowledge the arrests and notices to appear covered by
158 the expunged record, except when the subject of the record:

- 159 1. Is a candidate for employment with a criminal justice
160 agency;
161 2. Is a defendant in a criminal prosecution;
162 3. Is a candidate for admission to The Florida Bar;
163 4. Is seeking to be employed or licensed by or to contract
164 with the Department of Children and Families, the Division of
165 Vocational Rehabilitation within the Department of Education,
166 the Agency for Health Care Administration, the Agency for
167 Persons with Disabilities, the Department of Health, the
168 Department of Elderly Affairs, or the Department of Juvenile
169 Justice or to be employed or used by such contractor or licensee
170 in a sensitive position having direct contact with children, the
171 disabled, or the elderly;
172 5. Is seeking to be employed or licensed by the Department
173 of Education, any district school board, any university
174 laboratory school, any charter school, any private or parochial

590-02872-21

2021468c1

175 school, or any local governmental entity that licenses child
176 care facilities;

177 6. Is seeking to be licensed by the Division of Insurance
178 Agent and Agency Services within the Department of Financial
179 Services; or

180 7. Is seeking to be appointed as a guardian pursuant to s.
181 744.3125.

182 (b) Subject to the exceptions in paragraph (a), a person
183 who has been granted an expunction under this section may not be
184 held under any provision of law of this state to commit perjury
185 or to be otherwise liable for giving a false statement by reason
186 of such person's failure to recite or acknowledge an expunged
187 criminal history record.

188 (7) RELATION TO OTHER LAWS ON EXPUNCTION OR SEALING.-
189 Expunction or sealing granted under this section does not
190 prevent the person who receives such relief from petitioning for
191 the expunction or sealing of a criminal history record as
192 provided for in ss. 943.0583, 943.0585, and 943.059, if the
193 person is otherwise eligible under those sections.

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