

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.; providing for eligibility
5 for expunction; requiring a petitioner to obtain a
6 certificate of eligibility for expunction from the
7 Department of Law Enforcement; requiring the
8 department to adopt rules; requiring the department to
9 issue a certificate of eligibility for expunction if a
10 person meets specified criteria; providing that such
11 certificates are valid for a specified timeframe;
12 providing requirements for a petition for expunction;
13 providing criminal penalties; providing court
14 procedures for expunction; providing for the
15 processing of a petition or an order for expunction;
16 authorizing the person who is the subject of an
17 expunction order to lawfully deny or fail to
18 acknowledge the arrest and notice to appear; providing
19 exceptions; providing that a petition for expunction
20 of certain cannabis offenses does not prevent the
21 petitioner from applying to seal or expunge other
22 criminal arrests; providing construction; providing an
23 effective date.

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

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27 Section 1. Section 943.0586, Florida Statutes, is created
28 to read:

29 943.0586 Expunction of criminal history records relating to

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30 qualifying cannabis offenses.—

31 (1) ELIGIBILITY.—A person is eligible to petition a court
32 to expunge a criminal history record under this section if all
33 of the following apply:

34 (a) The person was arrested or given a notice to appear for
35 a misdemeanor offense for obtaining, purchasing, or possessing
36 20 grams or less of cannabis, regardless of disposition.

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

41 (c) At least 1 year has elapsed since the disposition of
42 the arrest or alleged criminal activity to which the petition to
43 expunge pertains.

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

47 (e) The person has not previously been granted relief under
48 this section.

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

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

58 1. Satisfies the eligibility criteria in paragraphs (1) (a)–

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59 (e) and is not ineligible under s. 943.0584;

60 2. Has submitted to the department a written certified
61 statement from the appropriate state attorney or statewide
62 prosecutor which confirms that the person meets the criteria in
63 paragraphs (1) (a) - (d);

64 3. Has submitted to the department a certified copy of the
65 disposition of the charge to which the petition to expunge
66 pertains; and

67 4. Remits a processing fee, equal to the fee charged
68 pursuant to s. 943.0585(2)(a)4., to the department, unless the
69 executive director waives such fee. Moneys collected from such
70 fees must be placed in the Department of Law Enforcement
71 Operating Trust Fund.

72 (b) A certificate of eligibility for expunction is valid
73 for 12 months after the date stamped on the certificate upon
74 issuance by the department. After that time, the petitioner must
75 reapply to the department for a new certificate of eligibility.
76 The petitioner's status and the law in effect at the time of the
77 renewal application determine the petitioner's eligibility.

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

80 (a) A valid certificate of eligibility issued by the
81 department.

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

83 1. Satisfies the eligibility requirements for expunction in
84 subsection (1).

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

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

92 (4) COURT AUTHORITY.—

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

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

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

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117 section does not prevent the court from ordering the expunction
118 of only a portion of a criminal history record pertaining to one
119 arrest or one incident of alleged criminal activity.

120 (d) This section does not confer any right to expunction of
121 any criminal history record, and any request for expunction of a
122 criminal history record may be denied at the sole discretion of
123 the court.

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

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

133 (b) If the court grants the petition, the clerk of the
134 court must certify copies of the order granting the petition to
135 the appropriate state attorney or the statewide prosecutor and
136 the arresting agency. The arresting agency shall forward the
137 order to any other agency to which the arresting agency
138 disseminated the criminal history record information to which
139 the order pertains. The department shall forward the order to
140 expunge to the Federal Bureau of Investigation. The clerk of the
141 court shall certify a copy of the order to any other agency or
142 entity that has received the criminal history record from the
143 court.

144 (c) The department or any other criminal justice agency is
145 not required to act on an order to expunge entered by a court

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146 when such order does not comply with the requirements of this
147 section. Upon receipt of such an order, the department must
148 notify the issuing court, the appropriate state attorney or
149 statewide prosecutor, the petitioner or the petitioner's
150 attorney, and the arresting agency of the reason for
151 noncompliance. The appropriate state attorney or statewide
152 prosecutor shall take action within 60 days after being notified
153 by the department to correct the record and petition the court
154 to void the order. A cause of action, including contempt of
155 court, may not arise against any criminal justice agency for
156 failure to comply with an order to expunge when the petitioner
157 for such order failed to obtain the certificate of eligibility
158 as required by this section or such order does not otherwise
159 comply with the requirements of this section.

160 (6) EFFECT OF EXPUNCTION ORDER.—

161 (a) The person who is the subject of a criminal history
162 record expunged under this section may lawfully deny or fail to
163 acknowledge the arrests and notices to appear covered by the
164 expunged record, except when the subject of the record:

- 165 1. Is a candidate for employment with a criminal justice
166 agency;
- 167 2. Is a defendant in a criminal prosecution;
- 168 3. Is a candidate for admission to The Florida Bar;
- 169 4. Is seeking to be employed or licensed by or to contract
170 with the Department of Children and Families, the Division of
171 Vocational Rehabilitation within the Department of Education,
172 the Agency for Health Care Administration, the Agency for
173 Persons with Disabilities, the Department of Health, the
174 Department of Elderly Affairs, or the Department of Juvenile

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175 Justice or to be employed or used by such contractor or licensee
176 in a sensitive position having direct contact with children, the
177 disabled, or the elderly;

178 5. Is seeking to be employed or licensed by the Department
179 of Education, any district school board, any university
180 laboratory school, any charter school, any private or parochial
181 school, or any local governmental entity that licenses child
182 care facilities;

183 6. Is seeking to be licensed by the Division of Insurance
184 Agent and Agency Services within the Department of Financial
185 Services; or

186 7. Is seeking to be appointed as a guardian pursuant to s.
187 744.3125.

188 (b) Subject to the exceptions in paragraph (a), a person
189 granted an expunction under this section may not be held under
190 state law to have committed perjury and is not otherwise liable
191 for giving a false statement by reason of his or her failure to
192 recite or acknowledge an expunged criminal history record.

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

199 Section 2. This act shall take effect July 1, 2022.