

By Senator Book

32-01146-22

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1 A bill to be entitled
2 An act relating to sealing and expunction of criminal
3 history records; reenacting and amending s. 943.0585,
4 F.S.; revising the eligibility criteria a person must
5 meet to qualify for a court-ordered expunction of a
6 criminal history record; reenacting and amending s.
7 943.059, F.S.; revising the eligibility criteria a
8 person must meet to qualify for a court-ordered
9 sealing of a criminal history record; reenacting ss.
10 948.08(6)(d) and (7)(b), 948.16(1)(b) and (2)(b), and
11 985.345(1)(b) and (2)(c), F.S., relating to a pretrial
12 intervention program, specified misdemeanor
13 intervention programs, and delinquency pretrial
14 intervention programs, respectively, to incorporate
15 the amendment made to s. 943.0585, F.S., in references
16 thereto; reenacting s. 943.0582(2)(b), F.S., relating
17 to diversion program expunction, to incorporate the
18 amendment made to s. 943.059, F.S., in a reference
19 thereto; reenacting s. 943.0582(4), F.S., relating to
20 diversion program expunction, to incorporate the
21 amendments made to ss. 943.0585 and 943.059, F.S., in
22 references thereto; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsection (1) of section 943.0585, Florida
27 Statutes, is reenacted and amended, paragraph (a) of subsection
28 (2) of that section is amended, and paragraph (b) of subsection
29 (6) of that section is reenacted, to read:

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30 943.0585 Court-ordered expunction of criminal history
31 records.-

32 (1) ELIGIBILITY.-A person is eligible to petition a court
33 to expunge a criminal history record if:

34 (a) An indictment, information, or other charging document
35 was not filed or issued in the case giving rise to the criminal
36 history record.

37 (b) An indictment, information, or other charging document
38 was filed or issued in the case giving rise to the criminal
39 history record, was dismissed or nolle prosequi by the state
40 attorney or statewide prosecutor, or was dismissed by a court of
41 competent jurisdiction or a judgment of acquittal was rendered
42 by a judge, or a verdict of not guilty was rendered by a judge
43 or jury.

44 (c) The person is not seeking to expunge a criminal history
45 record that is ineligible for court-ordered expunction under s.
46 943.0584.

47 (d) ~~The person has never,~~ As of the date the application
48 for a certificate of expunction is filed:

49 1. The person has never, been adjudicated guilty in this
50 state of a criminal offense; or

51 2. It has been at least 10 years since the person has been
52 adjudicated guilty in this state of a criminal offense, and the
53 person has never been adjudicated guilty of an offense listed in
54 s. 943.0584(2).

55 (e) As of the date the application for a certificate of
56 expunction is filed, the person has never been adjudicated
57 delinquent in this state for committing any felony or any of the
58 following misdemeanors within the past 10 years, unless the

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59 record of such adjudication of delinquency has been expunged
60 pursuant to s. 943.0515:

- 61 1. Assault, as defined in s. 784.011;
- 62 2. Battery, as defined in s. 784.03;
- 63 3. Assault on a law enforcement officer, a firefighter, or
64 other specified officers, as defined in s. 784.07(2)(a);
- 65 4. Carrying a concealed weapon, as defined in s. 790.01(1);
- 66 5. Open carrying of a weapon, as defined in s. 790.053;
- 67 6. Unlawful possession or discharge of a weapon or firearm
68 at a school-sponsored event or on school property, as defined in
69 s. 790.115;
- 70 7. Unlawful use of destructive devices or bombs, as defined
71 in s. 790.1615(1);
- 72 8. Unlawful possession of a firearm, as defined in s.
73 790.22(5);
- 74 9. Exposure of sexual organs, as defined in s. 800.03;
- 75 10. Arson, as defined in s. 806.031(1);
- 76 11. Petit theft, as defined in s. 812.014(3);
- 77 12. Neglect of a child, as defined in s. 827.03(1)(e); or
- 78 13. Cruelty to animals, as defined in s. 828.12(1).

79 (f)~~(e)~~ The person has not been adjudicated guilty of, or
80 adjudicated delinquent for committing, any of the acts stemming
81 from the arrest or alleged criminal activity to which the
82 petition pertains.

83 (g)~~(f)~~ The person is no longer under court supervision
84 applicable to the disposition of arrest or alleged criminal
85 activity to which the petition to expunge pertains.

86 (h)~~(g)~~ The person has not within the past 10 years ~~never~~
87 secured a prior sealing or expunction of a criminal history

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88 record under this section, s. 943.059, former s. 893.14, former
89 s. 901.33, or former s. 943.058, ~~unless expunction is sought of~~
90 ~~a criminal history record previously sealed for 10 years~~
91 ~~pursuant to paragraph (h) and the record is otherwise eligible~~
92 ~~for expunction.~~

93 (i) ~~(h)~~ The person has previously obtained a court-ordered
94 sealing the criminal history record under s. 943.059, former s.
95 893.14, former s. 901.33, or former s. 943.058 for a minimum of
96 10 years because adjudication was withheld or because all
97 charges related to the arrest or alleged criminal activity to
98 which the petition to expunge pertains were not dismissed before
99 trial, without regard to whether the outcome of the trial was
100 other than an adjudication of guilt. Notwithstanding paragraph
101 (h), the requirement for the record to have previously been
102 sealed for a minimum of 10 years does not apply if a plea was
103 not entered or all charges related to the arrest or alleged
104 criminal activity to which the petition to expunge pertains were
105 dismissed before trial or a judgment of acquittal was rendered
106 by a judge or a verdict of not guilty was rendered by a judge or
107 jury.

108 (2) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court
109 to expunge a criminal history record, a person seeking to
110 expunge a criminal history record must apply to the department
111 for a certificate of eligibility for expunction. The department
112 shall adopt rules to establish procedures for applying for and
113 issuing a certificate of eligibility for expunction.

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

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117 1. Satisfies the eligibility criteria in paragraphs (1) (a)-
118 (i) ~~(1)(a)-(h)~~ and is not ineligible under s. 943.0584.

119 2. Has submitted to the department a written certified
120 statement from the appropriate state attorney or statewide
121 prosecutor which confirms the criminal history record complies
122 with the criteria in paragraph (1) (a) or paragraphs (1) (b) and
123 (c).

124 3. Has submitted to the department a certified copy of the
125 disposition of the charge to which the petition to expunge
126 pertains.

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

130 (6) EFFECT OF EXPUNCTION ORDER.—

131 (b) The person who is the subject of a criminal history
132 record that is expunged under this section or under other
133 provisions of law, including former ss. 893.14, 901.33, and
134 943.058, may lawfully deny or fail to acknowledge the arrests
135 covered by the expunged record, except when the subject of the
136 record:

137 1. Is a candidate for employment with a criminal justice
138 agency;

139 2. Is a defendant in a criminal prosecution;

140 3. Concurrently or subsequently petitions for relief under
141 this section, s. 943.0583, or s. 943.059;

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

143 5. Is seeking to be employed or licensed by or to contract
144 with the Department of Children and Families, the Division of
145 Vocational Rehabilitation within the Department of Education,

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146 the Agency for Health Care Administration, the Agency for
147 Persons with Disabilities, the Department of Health, the
148 Department of Elderly Affairs, or the Department of Juvenile
149 Justice or to be employed or used by such contractor or licensee
150 in a sensitive position having direct contact with children, the
151 disabled, or the elderly;

152 6. Is seeking to be employed or licensed by the Department
153 of Education, any district school board, any university
154 laboratory school, any charter school, any private or parochial
155 school, or any local governmental entity that licenses child
156 care facilities;

157 7. Is seeking to be licensed by the Division of Insurance
158 Agent and Agency Services within the Department of Financial
159 Services; or

160 8. Is seeking to be appointed as a guardian pursuant to s.
161 744.3125.

162 Section 2. Subsection (1) of section 943.059, Florida
163 Statutes, is reenacted and amended, and paragraph (a) of
164 subsection (2) and paragraph (b) of subsection (6) of that
165 section are reenacted, to read:

166 943.059 Court-ordered sealing of criminal history records.-

167 (1) ELIGIBILITY.-A person is eligible to petition a court
168 to seal a criminal history record when:

169 (a) The criminal history record is not ineligible for
170 court-ordered sealing under s. 943.0584.

171 (b) The person has never, before the date the application
172 for a certificate of eligibility is filed, been adjudicated
173 guilty in this state of a criminal offense, or been adjudicated
174 delinquent in this state for committing any felony or any of the

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175 following misdemeanor offenses, unless the record of such
176 adjudication of delinquency has been expunged pursuant to s.
177 943.0515:

- 178 1. Assault, as defined in s. 784.011;
- 179 2. Battery, as defined in s. 784.03;
- 180 3. Assault on a law enforcement officer, a firefighter, or
181 other specified officers, as defined in s. 784.07(2)(a);
- 182 4. Carrying a concealed weapon, as defined in s. 790.01(1);
- 183 5. Open carrying of a weapon, as defined in s. 790.053;
- 184 6. Unlawful possession or discharge of a weapon or firearm
185 at a school-sponsored event or on school property, as defined in
186 s. 790.115;
- 187 7. Unlawful use of destructive devices or bombs, as defined
188 in s. 790.1615(1);
- 189 8. Unlawful possession of a firearm by a minor, as defined
190 in s. 790.22(5);
- 191 9. Exposure of sexual organs, as defined in s. 800.03;
- 192 10. Arson, as defined in s. 806.031(1);
- 193 11. Petit theft, as defined in s. 812.014(3);
- 194 12. Neglect of a child, as defined in s. 827.03(1)(e); or
- 195 13. Cruelty to animals, as defined in s. 828.12(1).

196 (c) The person has not been adjudicated guilty of, or
197 adjudicated delinquent for committing, any of the acts stemming
198 from the arrest or alleged criminal activity to which the
199 petition to seal pertains.

200 (d) The person is no longer under court supervision
201 applicable to the disposition of arrest or alleged criminal
202 activity to which the petition to seal pertains.

203 (e) The person has never secured a prior sealing or

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204 expunction of a criminal history record under this section, s.
205 943.0585, former s. 893.14, former s. 901.33, or former s.
206 943.058, or the person has one prior sealing or expunction and,
207 as of the date the application for a certificate of eligibility
208 is filed, more than 10 years have passed since the prior sealing
209 or expunction was ordered.

210 (2) CERTIFICATE OF ELIGIBILITY.—Before petitioning the
211 court to seal a criminal history record, a person seeking to
212 seal a criminal history record must apply to the department for
213 a certificate of eligibility for sealing. The department shall
214 adopt rules relating to the application for and issuance of
215 certificates of eligibility for sealing.

216 (a) The department shall issue a certificate of eligibility
217 for sealing to a person who is the subject of a criminal history
218 record if that person:

219 1. Satisfies the eligibility criteria in paragraphs (1)(a)-
220 (e) and is not ineligible for court-ordered sealing under s.
221 943.0584.

222 2. Has submitted to the department a certified copy of the
223 disposition of charge to which the petition pertains.

224 3. Remits a \$75 processing fee to the department for
225 placement in the Department of Law Enforcement Operating Trust
226 Fund, unless the executive director waives such fee.

227 (6) EFFECT OF ORDER.—

228 (b) The subject of the criminal history record sealed under
229 this section or under other provisions of law, including former
230 ss. 893.14, 901.33, and 943.058, may lawfully deny or fail to
231 acknowledge the arrests covered by the sealed record, except
232 when the subject of the record:

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- 233 1. Is a candidate for employment with a criminal justice
234 agency;
- 235 2. Is a defendant in a criminal prosecution;
- 236 3. Concurrently or subsequently petitions for relief under
237 this section, s. 943.0583, or s. 943.0585;
- 238 4. Is a candidate for admission to The Florida Bar;
- 239 5. Is seeking to be employed or licensed by or to contract
240 with the Department of Children and Families, the Division of
241 Vocational Rehabilitation within the Department of Education,
242 the Agency for Health Care Administration, the Agency for
243 Persons with Disabilities, the Department of Health, the
244 Department of Elderly Affairs, or the Department of Juvenile
245 Justice or to be employed or used by such contractor or licensee
246 in a sensitive position having direct contact with children, the
247 disabled, or the elderly;
- 248 6. Is seeking to be employed or licensed by the Department
249 of Education, a district school board, a university laboratory
250 school, a charter school, a private or parochial school, or a
251 local governmental entity that licenses child care facilities;
- 252 7. Is attempting to purchase a firearm from a licensed
253 importer, licensed manufacturer, or licensed dealer and is
254 subject to a criminal history check under state or federal law;
- 255 8. Is seeking to be licensed by the Division of Insurance
256 Agent and Agency Services within the Department of Financial
257 Services;
- 258 9. Is seeking to be appointed as a guardian pursuant to s.
259 744.3125; or
- 260 10. Is seeking to be licensed by the Bureau of License
261 Issuance of the Division of Licensing within the Department of

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

265 Section 3. For the purpose of incorporating the amendment
266 made by this act to section 943.0585, Florida Statutes, in
267 references thereto, paragraph (d) of subsection (6) and
268 paragraph (b) of subsection (7) of section 948.08, Florida
269 Statutes, are reenacted to read:

270 948.08 Pretrial intervention program.—

271 (6)

272 (d) While enrolled in a pretrial intervention program
273 authorized by this subsection, the participant is subject to a
274 coordinated strategy developed by a drug court team under s.
275 397.334(4). The coordinated strategy may include a protocol of
276 sanctions that may be imposed upon the participant for
277 noncompliance with program rules. The protocol of sanctions may
278 include, but is not limited to, placement in a substance abuse
279 treatment program offered by a licensed service provider as
280 defined in s. 397.311 or in a jail-based treatment program or
281 serving a period of incarceration within the time limits
282 established for contempt of court. The coordinated strategy must
283 be provided in writing to the participant before the participant
284 agrees to enter into a pretrial treatment-based drug court
285 program or other pretrial intervention program. Any person whose
286 charges are dismissed after successful completion of the
287 treatment-based drug court program, if otherwise eligible, may
288 have his or her arrest record and plea of nolo contendere to the
289 dismissed charges expunged under s. 943.0585.

290 (7)

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291 (b) While enrolled in a pretrial intervention program
292 authorized by this subsection, the participant shall be subject
293 to a coordinated strategy developed by a veterans' treatment
294 intervention team. The coordinated strategy should be modeled
295 after the therapeutic jurisprudence principles and key
296 components in s. 397.334(4), with treatment specific to the
297 needs of servicemembers and veterans. The coordinated strategy
298 may include a protocol of sanctions that may be imposed upon the
299 participant for noncompliance with program rules. The protocol
300 of sanctions may include, but need not be limited to, placement
301 in a treatment program offered by a licensed service provider or
302 in a jail-based treatment program or serving a period of
303 incarceration within the time limits established for contempt of
304 court. The coordinated strategy must be provided in writing to
305 the participant before the participant agrees to enter into a
306 pretrial veterans' treatment intervention program or other
307 pretrial intervention program. Any person whose charges are
308 dismissed after successful completion of the pretrial veterans'
309 treatment intervention program, if otherwise eligible, may have
310 his or her arrest record of the dismissed charges expunged under
311 s. 943.0585.

312 Section 4. For the purpose of incorporating the amendment
313 made by this act to section 943.0585, Florida Statutes, in
314 references thereto, paragraph (b) of subsection (1) and
315 paragraph (b) of subsection (2) of section 948.16, Florida
316 Statutes, are reenacted to read:

317 948.16 Misdemeanor pretrial substance abuse education and
318 treatment intervention program; misdemeanor pretrial veterans'
319 treatment intervention program; misdemeanor pretrial mental

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320 health court program.—

321 (1)

322 (b) While enrolled in a pretrial intervention program
323 authorized by this section, the participant is subject to a
324 coordinated strategy developed by a drug court team under s.
325 397.334(4). The coordinated strategy may include a protocol of
326 sanctions that may be imposed upon the participant for
327 noncompliance with program rules. The protocol of sanctions may
328 include, but is not limited to, placement in a substance abuse
329 treatment program offered by a licensed service provider as
330 defined in s. 397.311 or in a jail-based treatment program or
331 serving a period of incarceration within the time limits
332 established for contempt of court. The coordinated strategy must
333 be provided in writing to the participant before the participant
334 agrees to enter into a pretrial treatment-based drug court
335 program or other pretrial intervention program. Any person whose
336 charges are dismissed after successful completion of the
337 treatment-based drug court program, if otherwise eligible, may
338 have his or her arrest record and plea of nolo contendere to the
339 dismissed charges expunged under s. 943.0585.

340 (2)

341 (b) While enrolled in a pretrial intervention program
342 authorized by this section, the participant shall be subject to
343 a coordinated strategy developed by a veterans' treatment
344 intervention team. The coordinated strategy should be modeled
345 after the therapeutic jurisprudence principles and key
346 components in s. 397.334(4), with treatment specific to the
347 needs of veterans and servicemembers. The coordinated strategy
348 may include a protocol of sanctions that may be imposed upon the

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349 participant for noncompliance with program rules. The protocol
350 of sanctions may include, but need not be limited to, placement
351 in a treatment program offered by a licensed service provider or
352 in a jail-based treatment program or serving a period of
353 incarceration within the time limits established for contempt of
354 court. The coordinated strategy must be provided in writing to
355 the participant before the participant agrees to enter into a
356 misdemeanor pretrial veterans' treatment intervention program or
357 other pretrial intervention program. Any person whose charges
358 are dismissed after successful completion of the misdemeanor
359 pretrial veterans' treatment intervention program, if otherwise
360 eligible, may have his or her arrest record of the dismissed
361 charges expunged under s. 943.0585.

362 Section 5. For the purpose of incorporating the amendment
363 made by this act to section 943.0585, Florida Statutes, in
364 references thereto, paragraph (b) of subsection (1) and
365 paragraph (c) of subsection (2) of section 985.345, Florida
366 Statutes, are reenacted to read:

367 985.345 Delinquency pretrial intervention programs.—

368 (1)

369 (b) While enrolled in a delinquency pretrial intervention
370 program authorized by this subsection, a child is subject to a
371 coordinated strategy developed by a drug court team under s.
372 397.334(4). The coordinated strategy may include a protocol of
373 sanctions that may be imposed upon the child for noncompliance
374 with program rules. The protocol of sanctions may include, but
375 is not limited to, placement in a substance abuse treatment
376 program offered by a licensed service provider as defined in s.
377 397.311 or serving a period of secure detention under this

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378 chapter. The coordinated strategy must be provided in writing to
379 the child before the child agrees to enter the pretrial
380 treatment-based drug court program or other pretrial
381 intervention program. A child whose charges are dismissed after
382 successful completion of the treatment-based drug court program,
383 if otherwise eligible, may have his or her arrest record and
384 plea of nolo contendere to the dismissed charges expunged under
385 s. 943.0585.

386 (2)

387 (c) A child whose charges are dismissed after successful
388 completion of the delinquency pretrial mental health court
389 intervention program, if otherwise eligible, may have his or her
390 criminal history record for such charges expunged under s.
391 943.0585.

392 Section 6. For the purpose of incorporating the amendment
393 made by this act to section 943.059, Florida Statutes, in a
394 reference thereto, paragraph (b) of subsection (2) of section
395 943.0582, Florida Statutes, is reenacted to read:

396 943.0582 Diversion program expunction.—

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

398 (b) "Expunction" has the same meaning ascribed in and
399 effect as s. 943.0585, except that:

400 1. Section 943.0585(6)(b) does not apply, except that the
401 criminal history record of a person whose record is expunged
402 pursuant to this section shall be made available only to
403 criminal justice agencies for the purpose of:

- 404 a. Determining eligibility for diversion programs;
- 405 b. A criminal investigation; or
- 406 c. Making a prosecutorial decision under s. 985.15.

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407 2. Records maintained by local criminal justice agencies in
408 the county in which the arrest occurred that are eligible for
409 expunction pursuant to this section shall be sealed as the term
410 is used in s. 943.059.

411 Section 7. For the purpose of incorporating the amendments
412 made by this act to sections 943.0585 and 943.059, Florida
413 Statutes, in references thereto, subsection (4) of section
414 943.0582, Florida Statutes, is reenacted to read:

415 943.0582 Diversion program expunction.—

416 (4) Expunction or sealing granted under this section does
417 not prevent the minor who receives such relief from petitioning
418 for the expunction or sealing of a later criminal history record
419 as provided for in ss. 943.0583, 943.0585, and 943.059, if the
420 minor is otherwise eligible under those sections.

421 Section 8. This act shall take effect July 1, 2022.