

1 A bill to be entitled
2 An act relating to public records; amending s. 901.40,
3 F.S.; creating an exemption from public records
4 requirements for the personal identifying information
5 of adults who participate in a civil citation or
6 prearrest diversion program; providing applicability;
7 providing retroactive application; providing for
8 future review and repeal of the exemption; providing a
9 statement of public necessity; amending s. 943.0586,
10 F.S.; providing applicability for the administrative
11 sealing of specified criminal history records;
12 amending s. 943.059, F.S.; expanding an existing
13 public records exemption to include the administrative
14 sealing of specified criminal history records;
15 conforming provisions to changes made by the act;
16 providing for future review and repeal of the expanded
17 exemption; providing for reversion of specified
18 language if the exemption is not saved from repeal;
19 providing a statement of public necessity; providing
20 effective dates.

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

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24 Section 1. Effective upon the same date that HB 205 or
25 similar legislation takes effect, if such legislation is adopted

26 | in the same legislative session or an extension thereof and
27 | becomes a law, subsection (6) is added to section 901.40,
28 | Florida Statutes, as created by HB 205, 2017 Regular Session, to
29 | read:

30 | 901.40 Prearrest diversion programs.—

31 | (6) PUBLIC RECORDS EXEMPTION.—The personal identifying
32 | information of an adult participating in a civil citation or
33 | prearrest diversion program is exempt from s. 119.07(1) and s.
34 | 24(a), Art. I of the State Constitution. The exemption does not
35 | apply to the personal identifying information of an adult who
36 | fails to complete the civil citation or prearrest diversion
37 | program. This exemption applies to personal identifying
38 | information held by a law enforcement agency, a program services
39 | provider, a clerk of the circuit court, or the entity operating
40 | an adult civil citation or prearrest diversion program before,
41 | on, or after the effective date of this exemption. This
42 | subsection is subject to the Open Government Sunset Review Act
43 | in accordance with s. 119.15 and shall stand repealed on October
44 | 2, 2022, unless reviewed and saved from such repeal through
45 | reenactment by the Legislature.

46 | Section 2. Effective upon the same date that HB 205 or
47 | similar legislation takes effect, if such legislation is adopted
48 | in the same legislative session or an extension thereof and
49 | becomes a law: The Legislature finds that it is a public
50 | necessity that the personal identifying information of an adult

51 participating in a civil citation or prearrest diversion program
52 be exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
53 Article I of the State Constitution. The exemption does not
54 apply to the personal identifying information of an adult who
55 fails to complete the civil citation or prearrest diversion
56 program. The goal of such programs is to give a second chance to
57 adults who commit misdemeanor offenses and allow them the
58 opportunity to avoid having an arrest record. Such goal would be
59 defeated if the personal identifying information of such adults
60 were not exempt from disclosure and, consequently, would create
61 negative consequences for these adults. If the public were able
62 to obtain the personal identifying information of these adults,
63 the disclosure might adversely impact the civil citation or
64 prearrest diversion program. For these reasons, the Legislature
65 finds that it is a public necessity that the personal
66 identifying information of an adult participating in a civil
67 citation or prearrest diversion program be exempt from public
68 records requirements.

69 Section 3. Effective July 1, 2018, and only if HB 857 or
70 similar legislation is adopted in the same legislative session
71 or an extension thereof and becomes a law, subsection (2) is
72 added to section 943.0586, Florida Statutes, as created by HB
73 857, 2017 Regular session, to read:

74 943.0586 Administrative sealing of criminal history
75 records.—

76 (2) The sealing under this section of a criminal history
 77 record has the same effect as a sealing under s. 943.059(4).

78 Section 4. Effective July 1, 2018, and only if HB 857 or
 79 similar legislation is adopted in the same legislative session
 80 or an extension thereof and becomes a law, subsection (4) of
 81 section 943.059, Florida Statutes, is amended to read:

82 943.059 Court-ordered sealing of criminal history
 83 records.—The courts of this state shall continue to have
 84 jurisdiction over their own procedures, including the
 85 maintenance, sealing, and correction of judicial records
 86 containing criminal history information to the extent such
 87 procedures are not inconsistent with the conditions,
 88 responsibilities, and duties established by this section. Any
 89 court of competent jurisdiction may order a criminal justice
 90 agency to seal the criminal history record of a minor or an
 91 adult who complies with the requirements of this section. The
 92 court shall not order a criminal justice agency to seal a
 93 criminal history record until the person seeking to seal a
 94 criminal history record has applied for and received a
 95 certificate of eligibility for sealing pursuant to subsection
 96 (2). A criminal history record that relates to a violation of s.
 97 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
 98 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
 99 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
 100 s. 916.1075, a violation enumerated in s. 907.041, or any

101 violation specified as a predicate offense for registration as a
102 sexual predator pursuant to s. 775.21, without regard to whether
103 that offense alone is sufficient to require such registration,
104 or for registration as a sexual offender pursuant to s.
105 943.0435, may not be sealed, without regard to whether
106 adjudication was withheld, if the defendant was found guilty of
107 or pled guilty or nolo contendere to the offense, or if the
108 defendant, as a minor, was found to have committed or pled
109 guilty or nolo contendere to committing the offense as a
110 delinquent act. The court may only order sealing of a criminal
111 history record pertaining to one arrest or one incident of
112 alleged criminal activity, except as provided in this section.
113 The court may, at its sole discretion, order the sealing of a
114 criminal history record pertaining to more than one arrest if
115 the additional arrests directly relate to the original arrest.
116 If the court intends to order the sealing of records pertaining
117 to such additional arrests, such intent must be specified in the
118 order. A criminal justice agency may not seal any record
119 pertaining to such additional arrests if the order to seal does
120 not articulate the intention of the court to seal records
121 pertaining to more than one arrest. This section does not
122 prevent the court from ordering the sealing of only a portion of
123 a criminal history record pertaining to one arrest or one
124 incident of alleged criminal activity. Notwithstanding any law
125 to the contrary, a criminal justice agency may comply with laws,

126 court orders, and official requests of other jurisdictions
127 relating to sealing, correction, or confidential handling of
128 criminal history records or information derived therefrom. This
129 section does not confer any right to the sealing of any criminal
130 history record, and any request for sealing a criminal history
131 record may be denied at the sole discretion of the court.

132 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
133 history record of a minor or an adult which is ordered sealed by
134 a court pursuant to this section or sealed administratively
135 pursuant to s. 943.0586 is confidential and exempt from the
136 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
137 Constitution and is available only to the person who is the
138 subject of the record, to the subject's attorney, to criminal
139 justice agencies for their respective criminal justice purposes,
140 which include conducting a criminal history background check for
141 approval of firearms purchases or transfers as authorized by
142 state or federal law, to judges in the state courts system for
143 the purpose of assisting them in their case-related
144 decisionmaking responsibilities, as set forth in s. 943.053(5),
145 or to those entities set forth in subparagraphs (a)1., 4., 5.,
146 6., 8., 9., and 10. for their respective licensing, access
147 authorization, and employment purposes.

148 (a) The subject of a criminal history record sealed under
149 this section, s. 943.0586, or under other provisions of law,
150 including former s. 893.14, former s. 901.33, and former s.

151 943.058, may lawfully deny or fail to acknowledge the arrests
152 covered by the sealed record, except when the subject of the
153 record:

154 1. Is a candidate for employment with a criminal justice
155 agency;

156 2. Is a defendant in a criminal prosecution;

157 3. Concurrently or subsequently petitions for relief under
158 this section, s. 943.0583, or s. 943.0585;

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

160 5. Is seeking to be employed or licensed by or to contract
161 with the Department of Children and Families, the Division of
162 Vocational Rehabilitation within the Department of Education,
163 the Agency for Health Care Administration, the Agency for
164 Persons with Disabilities, the Department of Health, the
165 Department of Elderly Affairs, or the Department of Juvenile
166 Justice or to be employed or used by such contractor or licensee
167 in a sensitive position having direct contact with children, the
168 disabled, or the elderly;

169 6. Is seeking to be employed or licensed by the Department
170 of Education, a district school board, a university laboratory
171 school, a charter school, a private or parochial school, or a
172 local governmental entity that licenses child care facilities;

173 7. Is attempting to purchase a firearm from a licensed
174 importer, licensed manufacturer, or licensed dealer and is
175 subject to a criminal history check under state or federal law;

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

179 9. Is seeking to be appointed as a guardian pursuant to s.
 180 744.3125; or

181 10. Is seeking to be licensed by the Bureau of License
 182 Issuance of the Division of Licensing within the Department of
 183 Agriculture and Consumer Services to carry a concealed weapon or
 184 concealed firearm. This subparagraph applies only in the
 185 determination of an applicant's eligibility under s. 790.06.

186 (b) Subject to the exceptions in paragraph (a), a person
 187 who has been granted a sealing under this section, s. 943.0586,
 188 former s. 893.14, former s. 901.33, or former s. 943.058 may not
 189 be held under any provision of law of this state to commit
 190 perjury or to be otherwise liable for giving a false statement
 191 by reason of such person's failure to recite or acknowledge a
 192 sealed criminal history record.

193 (c) Information relating to the existence of a sealed
 194 criminal record provided in accordance with the provisions of
 195 paragraph (a) is confidential and exempt from the provisions of
 196 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 197 except that the department shall disclose the sealed criminal
 198 history record to the entities set forth in subparagraphs (a)1.,
 199 4., 5., 6., 8., 9., and 10. for their respective licensing,
 200 access authorization, and employment purposes. An employee of an

201 entity set forth in subparagraph (a)1., subparagraph (a)4.,
202 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
203 subparagraph (a)9., or subparagraph (a)10. may not disclose
204 information relating to the existence of a sealed criminal
205 history record of a person seeking employment, access
206 authorization, or licensure with such entity or contractor,
207 except to the person to whom the criminal history record relates
208 or to persons having direct responsibility for employment,
209 access authorization, or licensure decisions. A person who
210 violates the provisions of this paragraph commits a misdemeanor
211 of the first degree, punishable as provided in s. 775.082 or s.
212 775.083.

213 (d) The expansion of the public records exemption under
214 this subsection to include records sealed administratively under
215 s. 943.0586 is subject to the Open Government Sunset Review Act
216 in accordance with s. 119.15 and shall stand repealed on October
217 2, 2023, unless reviewed and saved from repeal through
218 reenactment by the Legislature. If the expansion of the
219 exemption is not saved from repeal, this subsection shall revert
220 to that in existence on June 30, 2017, except that any
221 amendments to such text other than by this act shall be
222 preserved and continue to operate to the extent that such
223 amendments are not dependent upon the portions of text which
224 expire pursuant to this paragraph.

225 Section 5. Effective July 1, 2018, and only if HB 857 or

226 similar legislation is adopted in the same legislative session
227 or an extension thereof and becomes a law: The Legislature finds
228 that it is a public necessity that the criminal history records
229 of a minor or an adult, which have been administratively sealed
230 pursuant to s. 943.0586, Florida Statutes, because the case was
231 not filed, was dismissed or nolle prosequi, or resulted in the
232 granting of a judgment of acquittal or verdict of not guilty, be
233 made confidential and exempt from s. 119.07(1), Florida
234 Statutes, and s. 24(a), Article I of the State Constitution. The
235 presence of a criminal history record in an individual's past
236 which has not been validated through criminal proceedings can
237 jeopardize his or her ability to obtain education, employment,
238 and other achievements necessary to becoming a productive,
239 contributing, self-sustaining member of society. Such negative
240 consequences are unwarranted in cases in which the individual
241 was not found to have committed the offense that is the subject
242 of the sealed criminal history record. For these reasons, the
243 Legislature finds that it is a public necessity that the
244 criminal history records of a minor or an adult which have been
245 administratively sealed be confidential and exempt from public
246 records requirements.

247 Section 6. Except as otherwise expressly provided in this
248 act, this act shall take effect July 1, 2017.