

1 A bill to be entitled
2 An act relating to expunging and sealing criminal
3 history records; amending s. 943.0515, F.S.; providing
4 for the nonjudicial expunction of criminal history
5 records at age 21 years for minors who are not serious
6 or habitual juvenile offenders; creating s. 943.0584,
7 F.S.; establishing a nonjudicial expunction process
8 within the Department of Law Enforcement for specified
9 criminal history records; specifying types of records
10 eligible for the process; providing exceptions to
11 eligibility; establishing an application process and
12 requiring specified documentation be submitted;
13 requiring sworn statement from petitioner; providing a
14 criminal penalty for perjury on such sworn statement;
15 specifying how the nonjudicial expunction must be
16 processed; providing that an expunction under this
17 section has the same effect as a record expunged under
18 s. 943.0585, F.S.; amending s. 943.0585, F.S.;
19 providing jurisdiction of the courts over expunction
20 procedures; specifying types of records that are
21 eligible for court-ordered expunction; providing
22 limitations upon when a court may expunge such
23 specified records; requiring specified documentation
24 be submitted to the Department of Law Enforcement when
25 seeking a certificate of eligibility for court-ordered
26 expunction; specifying documentation that must be

27 | submitted to the court for a petition to expunge;
28 | requiring sworn statement from petitioner; providing a
29 | criminal penalty for perjury on such sworn statement;
30 | providing guidelines for the processing of an order to
31 | expunge; providing the effect of the order to expunge
32 | on the criminal history record; specifying exceptions
33 | to the confidential and exempt status of an expunged
34 | criminal history record; requiring criminal justice
35 | agencies to destroy copies of records that have been
36 | expunged; specifying that no right to expunction is
37 | created; amending s. 943.059, F.S.; establishing a
38 | nonjudicial process within the Department of Law
39 | Enforcement for sealing of specified records;
40 | specifying records that are eligible for the process;
41 | providing exceptions to eligibility; establishing an
42 | application process and requiring specified
43 | documentation be submitted; requiring a sworn
44 | statement from petitioner; providing a criminal
45 | penalty for perjury on such sworn statement;
46 | specifying how the nonjudicial sealing must be
47 | processed; providing for the effect of a record that
48 | has been sealed under this section; amending ss.
49 | 776.09, 790.23, 943.0582, 948.08, 948.16, 961.06,
50 | 985.04, 985.045, and 985.345, F.S.; conforming
51 | provisions to changes made by the act; providing an
52 | appropriation; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 943.0515, Florida Statutes, is amended to read:

943.0515 Retention of criminal history records of minors.—

(1)

(b) If the minor is not classified as a serious or habitual juvenile offender or committed to a juvenile correctional facility or juvenile prison under chapter 985, the program shall retain the minor's criminal history record for 2 ~~5~~ years after the date the minor reaches 19 years of age, at which time the record shall be expunged unless it meets the criteria of paragraph (2) (a) or paragraph (2) (b).

Section 2. Section 943.0584, Florida Statutes, is created to read:

943.0584 Nonjudicial expunction of criminal history records.—

(1) NONJUDICIAL EXPUNCTION.—Notwithstanding any law dealing generally with the preservation and destruction of public records, the department may adopt a rule pursuant to chapter 120 for the nonjudicial expunction of any criminal history record of a minor or an adult described in this section.

(2) ELIGIBILITY.—

(a) The department must approve the nonjudicial expunction of a criminal history record where:

79 1. An indictment, information, or other charging document
 80 was not filed or issued in the case.

81 2.a. Except as provided in sub-subparagraph b., an
 82 indictment, information, or other charging document was filed or
 83 issued in the case, but was subsequently dismissed or nolle
 84 prosequi by the state attorney or statewide prosecutor, or was
 85 dismissed or discharged by a court of competent jurisdiction.

86 b. A person may not obtain an expunction under this
 87 paragraph for a dismissal pursuant to s. 916.145 or s. 985.19.

88 3. An information, indictment, or other charging document
 89 was not filed or was dismissed by the state attorney, or
 90 dismissed by the court, because it was found that the person
 91 acted in lawful self-defense pursuant to the provisions related
 92 to justifiable use of force in chapter 776.

93 4.a. Except as provided in sub-subparagraph b., a not
 94 guilty verdict was rendered subsequent to a trial or
 95 adjudicatory hearing.

96 b. A person may not obtain an expunction under this
 97 paragraph for a verdict of not guilty by reason of insanity.

98 (b) A person may not obtain a nonjudicial expunction under
 99 this section unless all charges stemming from the arrest or
 100 alleged criminal activity to which the application for
 101 expunction pertains were not filed or issued, dismissed, or
 102 discharged, or resulted in an acquittal, as provided herein.

103 (3) LIMITATIONS.—There is no limitation on the number of
 104 times that a person may obtain a nonjudicial expunction for a

105 criminal history record described in paragraph (2) (a). An
106 applicant seeking to have multiple records expunged need only
107 submit one application to the department under this section. The
108 department must approve the nonjudicial expunction of all
109 records pertaining to the applicant that are eligible for
110 expunction under this section.

111 (4) APPLICATION FOR NONJUDICIAL EXPUNCTION.—An adult or,
112 in the case of a minor child, the parent or legal guardian of
113 the minor child, seeking to expunge a criminal history record
114 under this section shall apply to the department in the manner
115 prescribed by rule. An application for a nonjudicial expunction
116 shall include a:

117 (a)1. Written, certified statement from the appropriate
118 state attorney or statewide prosecutor which indicates that the
119 criminal history record sought to be expunged is eligible under
120 this section; or

121 2. For expunction of a record described in subparagraph
122 (2) (a)3., a written, certified statement from the appropriate
123 state attorney or statewide prosecutor which states that an
124 information, indictment, or other charging document was not
125 filed or was dismissed by the state attorney, or dismissed by
126 the court, because it was found that the person acted in lawful
127 self-defense pursuant to the provisions related to justifiable
128 use of force in chapter 776.

129 (b) Processing fee of \$75 to the department for placement
130 in the Department of Law Enforcement Operating Trust Fund,

131 unless such fee is waived by the executive director.

132 (c) Certified copy of the disposition of the charge to
133 which the application to expunge pertains.

134 (d) Full set of fingerprints of the applicant taken by a
135 law enforcement agency for purposes of identity verification.

136 (5) PROCESSING OF A NONJUDICIAL EXPUNCTION.—If the
137 department approves an application for nonjudicial expunction, a
138 certified copy of the form approving the nonjudicial expunction
139 shall be forwarded to the appropriate state attorney or the
140 statewide prosecutor, the arresting agency, and the clerk of the
141 court. The arresting agency is responsible for forwarding the
142 form approving the nonjudicial expunction to any other agency to
143 which the arresting agency disseminated the criminal history
144 record information to which the form pertains. The department
145 shall forward the form approving the nonjudicial expunction to
146 the Federal Bureau of Investigation. The clerk of the court
147 shall forward a copy of the form to any other agency that the
148 records of the court reflect has received the criminal history
149 record from the court.

150 (6) EFFECT OF NONJUDICIAL EXPUNCTION.—A confidential and
151 exempt criminal history record expunged under this section shall
152 have the same effect, and such record may be disclosed by the
153 department in the same manner, as a record expunged under s.
154 943.0585.

155 (7) STATUTORY REFERENCES.—Any reference to any other
156 chapter, section, or subdivision of the Florida Statutes in this

157 section constitutes a general reference under the doctrine of
158 incorporation by reference.

159 Section 3. Section 943.0585, Florida Statutes, is amended
160 to read:

161 (Substantial rewording of section. See
162 s. 943.0585, F.S., for present text.)

163 943.0585 Court-ordered expunction of criminal history
164 records.—

165 (1) JURISDICTION.—The courts of this state have
166 jurisdiction over their own procedures, including the
167 maintenance, expunction, and correction of judicial records
168 containing criminal history information to the extent such
169 procedures are not inconsistent with the conditions,
170 responsibilities, and duties established by this section. A
171 court of competent jurisdiction may order a criminal justice
172 agency to expunge the criminal history record of a minor or an
173 adult who complies with the requirements of this section.

174 (2) ELIGIBILITY.—

175 (a)1. Except as provided in paragraph (b), a court may
176 order the expunction of a criminal history record where the
177 person was found guilty of or found to have committed, or pled
178 guilty or pled nolo contendere to an offense; and

179 2. None of the charges stemming from the arrest or alleged
180 criminal activity to which the petition to expunge pertains
181 resulted in an adjudication of guilt or delinquency.

182 (b) A court may not order the expunction of a criminal

183 history record if:

184 1. The person has, at any time before the date on which
185 the application for a certificate of eligibility is filed, been
186 adjudicated guilty for a felony offense or adjudicated
187 delinquent for an offense that would be a felony if committed by
188 an adult; or

189 2. The record relates to a serious offense in which the
190 person was found guilty of or adjudicated delinquent of, or pled
191 guilty or pled nolo contendere to the offense, regardless of
192 whether adjudication was withheld. For purposes of this
193 subparagraph, the term "serious offense" means a violation of s.
194 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
195 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
196 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
197 s. 916.1075, a violation enumerated in s. 907.041, or any
198 violation specified as a predicate offense for registration as a
199 sexual predator pursuant to s. 775.21, without regard to whether
200 that offense alone is sufficient to require such registration,
201 or for registration as a sexual offender pursuant to s.
202 943.0435.

203 (3) LIMITATIONS.—A court may only order the expunction of
204 one criminal history record described in paragraph (2) (a). A
205 person seeking an expunction under this section is not barred
206 from relief if the same criminal history record has previously
207 been approved for a nonjudicial sealing pursuant to s. 943.059.
208 The record expunged must pertain to one arrest or one incident

209 of alleged criminal activity. However, the court may, at its
210 sole discretion, order the expunction of a criminal history
211 record pertaining to more than one arrest or one incident of
212 alleged criminal activity if the additional arrests directly
213 relate to the original arrest. If the court intends to order the
214 expunction of records pertaining to such additional arrests,
215 such intent must be specified in the order. A criminal justice
216 agency may not expunge a record pertaining to such additional
217 arrests if the order to expunge does not articulate the
218 intention of the court to expunge a record pertaining to more
219 than one arrest. This subsection does not prevent the court from
220 ordering the expunction of only a portion of a criminal history
221 record pertaining to one arrest.

222 (4) CERTIFICATE OF ELIGIBILITY FOR COURT-ORDERED
223 EXPUNCTION.—

224 (a) A person seeking to expunge a criminal history record
225 under this section shall apply to the department for a
226 certificate of eligibility for expunction before petitioning the
227 court for expunction. The department shall issue a certificate
228 of eligibility for expunction to a person who is the subject of
229 a criminal history record if that person:

230 1. Has obtained and submitted to the department a written,
231 certified statement from the appropriate state attorney or
232 statewide prosecutor which indicates that the criminal history
233 record sought to be expunged is eligible under subsection (2).

234 2. Remits a \$75 processing fee to the department for

235 placement in the Department of Law Enforcement Operating Trust
236 Fund, unless such fee is waived by the executive director.

237 3. Has submitted to the department a certified copy of the
238 disposition of the charge to which the petition to expunge
239 pertains.

240 4. Has never secured a prior sealing or expunction of a
241 criminal history record under this section, s. 943.059, former
242 s. 893.14, former 901.33, or former 943.058, unless expunction
243 is sought of a criminal history record that had been previously
244 sealed under former paragraph (2) (h) and the record is otherwise
245 eligible for expunction.

246 5. Is no longer under court supervision applicable to the
247 disposition of the arrest or alleged criminal activity to which
248 the petition to expunge pertains.

249 6. Has not been arrested for or charged with a criminal
250 offense, in any jurisdiction of the state or within the United
251 States, from the date the person completed all sentences of
252 imprisonment or supervisory sanctions imposed by the court for
253 the offense to which the petition to expunge pertains to the
254 date of the application for the certificate of eligibility. This
255 period of time must be no less than 1 year.

256 7. Has submitted a full set of fingerprints taken by a law
257 enforcement agency for purposes of identity verification.

258 (b) A certificate of eligibility for expunction is valid
259 for 12 months after the date that the certificate is issued by
260 the department. After that time, the petitioner must reapply to

261 the department for a new certificate of eligibility. Eligibility
262 for a renewed certification of eligibility must be based on the
263 status of the applicant and the law in effect at the time of the
264 renewal application.

265 (c) The department shall, by rule adopted pursuant to
266 chapter 120, establish procedures pertaining to the application
267 for and issuance of certificates of eligibility for expunction.

268 (5) PETITION FOR COURT-ORDERED EXPUNCTION.—

269 (a) The court shall not order a criminal justice agency to
270 expunge a criminal history record under this section until the
271 person seeking to expunge the record has applied for and
272 received a certificate of eligibility for expunction pursuant to
273 subsection (4). Each petition to a court to expunge a criminal
274 history record is complete only when accompanied by:

275 1. A valid certificate of eligibility for expunction
276 issued by the department pursuant to subsection (4).

277 2. The petitioner's sworn statement attesting that:

278 a. The criminal history record sought to be expunged is
279 eligible under subsection (2).

280 b. The petitioner is eligible for the expunction under
281 subsection (3).

282 c. He or she has not been arrested for or charged with a
283 criminal offense, in any jurisdiction of the state or within the
284 United States, from the date that the person completed all
285 sentences of imprisonment or supervisory sanctions imposed by
286 the court for the offense to which the petition to expunge

287 pertains to the date of the application for the certificate of
288 eligibility. This period of time must be no less than 1 year.

289 (b) A person who knowingly provides false information on
290 the sworn statement required by subparagraph (a)2. commits a
291 felony of the third degree, punishable as provided in s.
292 775.082, s. 775.083, or s. 775.084.

293 (6) PROCESSING OF COURT-ORDERED EXPUNCTION.—

294 (a) In judicial proceedings under this section, a copy of
295 the completed petition to expunge shall be served upon the
296 appropriate state attorney or the statewide prosecutor and upon
297 the arresting agency; however, it is not necessary to make any
298 agency other than the state a party. The appropriate state
299 attorney or the statewide prosecutor and the arresting agency
300 may respond to the court regarding the completed petition to
301 expunge.

302 (b) If relief is granted by the court, the clerk of the
303 court shall certify copies of the order to the appropriate state
304 attorney or the statewide prosecutor and the arresting agency.
305 The arresting agency is responsible for forwarding the order to
306 any other agency to which the arresting agency disseminated the
307 criminal history record information to which the order pertains.
308 The department shall forward the order to expunge to the Federal
309 Bureau of Investigation. The clerk of the court shall certify a
310 copy of the order to any other agency which the records of the
311 court reflect has received the criminal history record from the
312 court.

313 (c) The department or any other criminal justice agency is
314 not required to act on an order to expunge entered by a court
315 when such order does not comply with the requirements of this
316 section. Upon receipt of such an order, the department must
317 notify the issuing court, the appropriate state attorney or
318 statewide prosecutor, the petitioner or the petitioner's
319 attorney, and the arresting agency of the reason for
320 noncompliance. The appropriate state attorney or statewide
321 prosecutor shall take action within 60 days after receiving the
322 order to correct the record and petition the court to void the
323 order. A cause of action, including contempt of court, does not
324 arise against a criminal justice agency for failure to comply
325 with an order to expunge when the petitioner for such order
326 failed to obtain the certificate of eligibility as required by
327 this section or such order does not otherwise comply with the
328 requirements of this section.

329 (7) EFFECT OF EXPUNCTION.—

330 (a) Any criminal history record of a minor or an adult
331 which is ordered expunged by a court of competent jurisdiction
332 pursuant to this section must be physically destroyed or
333 obliterated by any criminal justice agency having custody of
334 such record; except that any criminal history record in the
335 custody of the department must be retained in all cases.

336 (b) The person who is the subject of a criminal history
337 record that is expunged under this section or under other
338 provisions of law, including s. 943.0584, former s. 893.14,

339 former s. 901.33, and former s. 943.058, may lawfully deny or
340 fail to acknowledge the arrests covered by the expunged record,
341 except when the subject of the record:

342 1. Is a candidate for employment with a criminal justice
343 agency;

344 2. Is a defendant in a criminal prosecution;

345 3. Concurrently or subsequently seeks relief under this
346 section, s. 943.0583, or s. 943.059;

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

348 5. Is seeking to be employed or licensed by or to contract
349 with the Department of Children and Families, the Division of
350 Vocational Rehabilitation within the Department of Education,
351 the Agency for Health Care Administration, the Agency for
352 Persons with Disabilities, the Department of Health, the
353 Department of Elderly Affairs, or the Department of Juvenile
354 Justice or to be employed or used by such contractor or licensee
355 in a sensitive position having direct contact with children, the
356 disabled, or the elderly;

357 6. Is seeking to be employed or licensed by the Department
358 of Education, any district school board, any university
359 laboratory school, any charter school, any private or parochial
360 school, or any local governmental entity that licenses child
361 care facilities;

362 7. Is seeking to be licensed by the Division of Insurance
363 Agent and Agency Services within the Department of Financial
364 Services; or

365 8. Is seeking to be appointed as a guardian pursuant to s.
366 744.3125.

367 (c) Subject to the exceptions in paragraph (b), a person
368 who has been granted an expunction under this section, s.
369 943.0584, former s. 893.14, former s. 901.33, or former s.
370 943.058 may not be held under any law of this state to commit
371 perjury or to be otherwise liable for giving a false statement
372 by reason of such person's failure to recite or acknowledge an
373 expunged criminal history record.

374 (d) Notwithstanding any law to the contrary, a criminal
375 justice agency may comply with laws, court orders, and official
376 requests of other jurisdictions relating to expunction,
377 correction, or confidential handling of criminal history records
378 or information derived therefrom.

379 (8) STATUTORY REFERENCES.—Any reference to any other
380 chapter, section, or subdivision of the Florida Statutes in this
381 section constitutes a general reference under the doctrine of
382 incorporation by reference.

383 (9) NO RIGHT TO EXPUNCTION.—This section does not confer a
384 right to the expunction of a criminal history record, and a
385 request for expunction of a criminal history record may be
386 denied at the sole discretion of the court.

387 Section 4. Section 943.059, Florida Statutes, is amended
388 to read:

389 (Substantial rewording of section. See
390 s. 943.059, F.S., for present text.)

391 943.059 Nonjudicial sealing of criminal history records.-
 392 (1) NONJUDICIAL SEALING.-Notwithstanding any law dealing
 393 generally with the preservation and destruction of public
 394 records, the department may adopt a rule pursuant to chapter 120
 395 for the nonjudicial sealing of any criminal history record of a
 396 minor or an adult described in this section.

397 (2) ELIGIBILITY.-

398 (a) Except as provided in paragraph (b), the department
 399 must approve the nonjudicial sealing of a criminal history
 400 record where:

401 1.a. The person was found guilty of, found to have
 402 committed, pled guilty to, or pled nolo contendere to an
 403 offense.

404 b. None of the charges stemming from the arrest or alleged
 405 criminal activity to which the application for nonjudicial
 406 sealing pertains resulted in an adjudication of guilt or
 407 delinquency; or

408 2. The person was adjudicated guilty or adjudicated
 409 delinquent for a nonviolent misdemeanor. For purposes of this
 410 subparagraph, the term "nonviolent misdemeanor" means a
 411 misdemeanor violation of:

412 a. Section 562.11(2), s. 562.111, s. 806.101, s. 806.13,
 413 s. 810.08, s. 810.09, s. 810.10, s. 810.11, s. 810.115, s.
 414 810.13, s. 812.014(3)(a), s. 823.01, s. 823.02, s. 856.011, s.
 415 856.015, s. 870.02, s. 893.13(3), s. 893.13(6)(b), or s.
 416 893.147(1), in which the petitioner was adjudicated guilty or

417 adjudicated delinquent; or

418 b. An offense found in chapters 316-324 for which the
419 petitioner was adjudicated guilty or adjudicated delinquent,
420 unless the violation of such offense directly caused serious
421 bodily injury or death to a person.

422 (b) A criminal history record may not be approved for a
423 nonjudicial sealing pursuant to this section if:

424 1. The person seeking the sealing has, at any time before
425 the date on which the application for nonjudicial sealing is
426 filed, been adjudicated guilty for a felony offense or
427 adjudicated delinquent for an offense which would be a felony if
428 committed by an adult; or

429 2. The record relates to a serious offense in which the
430 person was found guilty of or adjudicated delinquent of, or pled
431 guilty or pled nolo contendere to the offense, regardless of
432 whether adjudication was withheld. For purposes of this
433 subparagraph, the term "serious offense" means a violation of s.
434 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
435 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
436 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
437 s. 916.1075, a violation enumerated in s. 907.041, or any
438 violation specified as a predicate offense for registration as a
439 sexual predator pursuant to s. 775.21, without regard to whether
440 that offense alone is sufficient to require such registration,
441 or for registration as a sexual offender pursuant to s.
442 943.0435.

443 (3) LIMITATIONS.—The department may only approve the
444 sealing of one criminal history record described in paragraph
445 (2) (a). Each record sealed must pertain to one arrest or one
446 incident of alleged criminal activity. However, if the
447 department receives supporting documentation as described in
448 paragraph (4) (b) stating that additional arrests are directly
449 related to the arrest sought to be expunged, the department must
450 approve the sealing of a criminal history record pertaining to
451 the additional arrests. If the department approves the sealing
452 of records pertaining to such additional arrests, such intent
453 must be specified in the approval form. A criminal justice
454 agency may not seal any record pertaining to such additional
455 arrests if the department has not approved sealing records
456 pertaining to more than one arrest.

457 (4) APPLICATION FOR NONJUDICIAL SEALING.—An adult or, in
458 the case of a minor child, the parent or legal guardian of the
459 minor child, seeking to seal a criminal history record under
460 this section shall apply to the department in the manner
461 prescribed by rule. An application for nonjudicial sealing shall
462 include a:

463 (a) Written, certified statement from the appropriate
464 state attorney or statewide prosecutor which indicates that the
465 criminal history record sought to be sealed is eligible under
466 subsection (2).

467 (b) Written, certified statement from the appropriate
468 state attorney or statewide prosecutor that indicates any

469 additional arrests the applicant seeks to seal are directly
470 related to the original arrest, if applicable. If the state
471 attorney or statewide prosecutor does not confirm that the
472 additional arrests are directly related, the person applying for
473 the sealing has the right to appeal this decision to the circuit
474 court.

475 (c) A processing fee of \$75 to the department for
476 placement in the Department of Law Enforcement Operating Trust
477 Fund, unless the fee is waived by the executive director.

478 (d) Certified copy of the disposition of the charge to
479 which the application to seal pertains.

480 (e) Full set of fingerprints of the applicant taken by a
481 law enforcement agency for purposes of identity verification.

482 (f) Sworn, written statement from the person seeking the
483 sealing that he or she:

484 1. Is no longer under court supervision applicable to the
485 disposition of the arrest or alleged criminal activity to which
486 the application to seal pertains.

487 2. Has never secured a prior sealing or expunction of a
488 criminal history record under this section, s. 943.0585, former
489 s. 893.14, former 901.33, or former 943.058.

490 3. Has not been arrested for or charged with a criminal
491 offense, in any jurisdiction of the state or within the United
492 States, from the date the person completed all sentences of
493 imprisonment or supervisory sanctions imposed by the court for
494 the offense to which the application for nonjudicial sealing

495 pertains to the date of the application for the nonjudicial
496 sealing. This period of time must be no less than 1 year.

497 (g) A person who knowingly provides false information on
498 the sworn statement required by paragraph (f) commits a felony
499 of the third degree, punishable as provided in s. 775.082, s.
500 775.083, or s. 775.084.

501 (6) PROCESSING OF NONJUDICIAL SEALING.—

502 (a) If the department approves an application for a
503 nonjudicial sealing, a certified copy of the form approving the
504 nonjudicial sealing shall be forwarded to the appropriate state
505 attorney or the statewide prosecutor, the arresting agency, and
506 the clerk of the court. The arresting agency is responsible for
507 forwarding the form approving the nonjudicial sealing to any
508 other agency to which the arresting agency disseminated the
509 criminal history record information to which the form pertains.
510 The department shall forward the form approving the nonjudicial
511 sealing to the Federal Bureau of Investigation. The clerk of the
512 court shall forward a copy of the form to any other agency that
513 the records of the court reflect has received the criminal
514 history record from the court.

515 (b) The nonjudicial sealing of a criminal history record
516 pursuant to this section does not require that such record be
517 surrendered to the court, and such record shall continue to be
518 maintained by the department and other criminal justice
519 agencies.

520 (7) EFFECT OF SEALING.—

521 (a) The person who is the subject of a criminal history
522 record that is sealed under this section or under other
523 provisions of law, including former s. 893.14, former s. 901.33,
524 and former s. 943.058, may lawfully deny or fail to acknowledge
525 the arrests covered by the sealed record, except when the
526 subject of the record:

527 1. Is a candidate for employment with a criminal justice
528 agency;

529 2. Is a defendant in a criminal prosecution;

530 3. Concurrently or subsequently seeks relief under this
531 section, s. 943.0583, s. 943.0584, or s. 943.0585;

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

533 5. Is seeking to be employed or licensed by or to contract
534 with the Department of Children and Families, the Division of
535 Vocational Rehabilitation within the Department of Education,
536 the Agency for Health Care Administration, the Agency for
537 Persons with Disabilities, the Department of Health, the
538 Department of Elderly Affairs, or the Department of Juvenile
539 Justice or to be employed or used by such contractor or licensee
540 in a sensitive position having direct contact with children, the
541 disabled, or the elderly;

542 6. Is seeking to be employed or licensed by the Department
543 of Education, any district school board, any university
544 laboratory school, any charter school, any private or parochial
545 school, or any local governmental entity that licenses child
546 care facilities;

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

550 8. Is seeking to be licensed by the Division of Insurance
551 Agent and Agency Services within the Department of Financial
552 Services;

553 9. Is seeking to be appointed as a guardian pursuant to s.
554 744.3125; or

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

560 (b) Subject to the exceptions in paragraph (a), a person
561 who has been granted a sealing under this section, former s.
562 893.14, former s. 901.33, or former s. 943.058 may not be held
563 under any provision of law of this state to commit perjury or to
564 be otherwise liable for giving a false statement by reason of
565 such person's failure to recite or acknowledge a sealed criminal
566 history record.

567 (c) Notwithstanding any law to the contrary, a criminal
568 justice agency may comply with laws, court orders, and official
569 requests of other jurisdictions relating to sealing, correction,
570 or confidential handling of criminal history records or
571 information derived therefrom.

572 (8) STATUTORY REFERENCES.—Any reference to any other

573 chapter, section, or subdivision of the Florida Statutes in this
 574 section constitutes a general reference under the doctrine of
 575 incorporation by reference.

576 Section 5. Subsection (3) of section 776.09, Florida
 577 Statutes, is amended to read:

578 776.09 Retention of records pertaining to persons found to
 579 be acting in lawful self-defense; expunction of criminal history
 580 records.—

581 (3) Under either condition described in subsection (1) or
 582 subsection (2), the person accused may apply for the nonjudicial
 583 expunction of a certificate of eligibility to expunge the
 584 associated criminal history record, pursuant to s.
 585 943.0584(2)(a)3. ~~943.0585(5)~~, notwithstanding the eligibility
 586 requirements prescribed in s. 943.0584(2) and (4)(a)2
 587 ~~943.0585(1)(b) or (2)~~.

588 Section 6. Paragraphs (b) and (d) of subsection (1) of
 589 section 790.23, Florida Statutes, are amended to read:

590 790.23 Felons and delinquents; possession of firearms,
 591 ammunition, or electric weapons or devices unlawful.—

592 (1) It is unlawful for any person to own or to have in his
 593 or her care, custody, possession, or control any firearm,
 594 ammunition, or electric weapon or device, or to carry a
 595 concealed weapon, including a tear gas gun or chemical weapon or
 596 device, if that person has been:

597 (b)1. Found, in the courts of this state, to have
 598 committed a delinquent act that would be a felony if committed

599 by an adult, such person meets the description of s.
 600 943.0515(1)(a), and such person is under 24 years of age; or
 601 2. Found, in the courts of this state, to have committed a
 602 delinquent act that would be a felony if committed by an adult,
 603 such person meets the description of s. 943.0515(1)(b), and such
 604 person is under 21 years of age;

605 (d)1. Found to have committed a delinquent act in another
 606 state, territory, or country that would be a felony if committed
 607 by an adult and which was punishable by imprisonment for a term
 608 exceeding 1 year, such person meets the description of s.
 609 943.0515(1)(a), and such person is under 24 years of age; ~~or~~

610 2. Found to have committed a delinquent act in another
 611 state, territory, or country that would be a felony if committed
 612 by an adult and which was punishable by imprisonment for a term
 613 exceeding 1 year, such person meets the description of s.
 614 943.0515(1)(b), and such person is under 21 years of age; or

615 Section 7. Section 943.0582, Florida Statutes, is amended
 616 to read:

617 943.0582 Prearrest, postarrest, or teen court diversion
 618 program expunction.—

619 (1) Notwithstanding any law dealing generally with the
 620 preservation and destruction of public records, the department
 621 may provide, by rule adopted pursuant to chapter 120, for the
 622 expunction of any nonjudicial record of the arrest of a minor
 623 who has successfully completed a prearrest or postarrest
 624 diversion program for minors as authorized by s. 985.125.

625 (2) (a) As used in this section, the term "expunction" has
 626 the same meaning ascribed in and effect as ss. 943.0584 and s.
 627 943.0585, except that:

628 1. The provisions of s. 943.0585(7)(b) ~~943.0585(4)(a)~~ do
 629 not apply, except that the criminal history record of a person
 630 whose record is expunged pursuant to this section shall be made
 631 available only to criminal justice agencies for the purpose of
 632 determining eligibility for prearrest, postarrest, or teen court
 633 diversion programs; when the record is sought as part of a
 634 criminal investigation; or when the subject of the record is a
 635 candidate for employment with a criminal justice agency. For all
 636 other purposes, a person whose record is expunged under this
 637 section may lawfully deny or fail to acknowledge the arrest and
 638 the charge covered by the expunged record.

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

643 (b) As used in this section, the term "nonviolent
 644 misdemeanor" includes simple assault or battery when prearrest
 645 or postarrest diversion expunction is approved in writing by the
 646 state attorney for the county in which the arrest occurred.

647 (3) The department shall expunge the nonjudicial arrest
 648 record of a minor who has successfully completed a prearrest or
 649 postarrest diversion program if that minor:

650 (a) Submits an application for prearrest or postarrest

651 diversion expunction, on a form prescribed by the department,
652 signed by the minor's parent or legal guardian, or by the minor
653 if he or she has reached the age of majority at the time of
654 applying.

655 (b) Submits the application for prearrest or postarrest
656 diversion expunction no later than 12 months after completion of
657 the diversion program.

658 (c) Submits to the department, with the application, an
659 official written statement from the state attorney for the
660 county in which the arrest occurred certifying that he or she
661 has successfully completed that county's prearrest or postarrest
662 diversion program, that his or her participation in the program
663 was based on an arrest for a nonviolent misdemeanor, and that he
664 or she has not otherwise been charged by the state attorney with
665 or found to have committed any criminal offense or comparable
666 ordinance violation.

667 (d) Participated in a prearrest or postarrest diversion
668 program that expressly authorizes or permits such expunction to
669 occur.

670 (e) Participated in a prearrest or postarrest diversion
671 program based on an arrest for a nonviolent misdemeanor that
672 would not qualify as an act of domestic violence as that term is
673 defined in s. 741.28.

674 (f) Has never, prior to filing the application for
675 expunction, been charged by the state attorney with or been
676 found to have committed any criminal offense or comparable

677 ordinance violation.

678 (4) The department may ~~is authorized to~~ charge a \$75
679 processing fee for each request received for prearrest or
680 postarrest diversion program expunction, for placement in the
681 Department of Law Enforcement Operating Trust Fund, unless such
682 fee is waived by the executive director.

683 (5) Expunction or sealing granted under this section does
684 not prevent the minor who receives such relief from seeking
685 ~~petitioning for~~ the expunction or sealing of a later criminal
686 history record as provided for in ss. 943.0583, 943.0584,
687 943.0585, and 943.059, if the minor is otherwise eligible under
688 those sections.

689 Section 8. Paragraph (b) of subsection (6) and paragraph
690 (b) of subsection (7) of section 948.08, Florida Statutes, are
691 amended to read:

692 948.08 Pretrial intervention program.—

693 (6)

694 (b) While enrolled in a pretrial intervention program
695 authorized by this subsection, the participant is subject to a
696 coordinated strategy developed by a drug court team under s.
697 397.334(4). The coordinated strategy may include a protocol of
698 sanctions that may be imposed upon the participant for
699 noncompliance with program rules. The protocol of sanctions may
700 include, but is not limited to, placement in a substance abuse
701 treatment program offered by a licensed service provider as
702 defined in s. 397.311 or in a jail-based treatment program or

703 serving a period of incarceration within the time limits
704 established for contempt of court. The coordinated strategy must
705 be provided in writing to the participant before the participant
706 agrees to enter into a pretrial treatment-based drug court
707 program or other pretrial intervention program. Any person whose
708 charges are dismissed after successful completion of the
709 treatment-based drug court program, if otherwise eligible, may
710 have his or her arrest record and plea of nolo contendere to the
711 dismissed charges expunged under s. 943.0584 ~~943.0585~~.

712 (7)

713 (b) While enrolled in a pretrial intervention program
714 authorized by this subsection, the participant shall be subject
715 to a coordinated strategy developed by a veterans' treatment
716 intervention team. The coordinated strategy should be modeled
717 after the therapeutic jurisprudence principles and key
718 components in s. 397.334(4), with treatment specific to the
719 needs of servicemembers and veterans. The coordinated strategy
720 may include a protocol of sanctions that may be imposed upon the
721 participant for noncompliance with program rules. The protocol
722 of sanctions may include, but need not be limited to, placement
723 in a treatment program offered by a licensed service provider or
724 in a jail-based treatment program or serving a period of
725 incarceration within the time limits established for contempt of
726 court. The coordinated strategy must be provided in writing to
727 the participant before the participant agrees to enter into a
728 pretrial veterans' treatment intervention program or other

729 pretrial intervention program. Any person whose charges are
730 dismissed after successful completion of the pretrial veterans'
731 treatment intervention program, if otherwise eligible, may have
732 his or her arrest record of the dismissed charges expunged under
733 s. 943.0584 ~~943.0585~~.

734 Section 9. Paragraph (b) of subsection (1) and paragraph
735 (b) of subsection (2) of section 948.16, Florida Statutes, are
736 amended to read:

737 948.16 Misdemeanor pretrial substance abuse education and
738 treatment intervention program; misdemeanor pretrial veterans'
739 treatment intervention program.—

740 (1)

741 (b) While enrolled in a pretrial intervention program
742 authorized by this section, the participant is subject to a
743 coordinated strategy developed by a drug court team under s.
744 397.334(4). The coordinated strategy may include a protocol of
745 sanctions that may be imposed upon the participant for
746 noncompliance with program rules. The protocol of sanctions may
747 include, but is not limited to, placement in a substance abuse
748 treatment program offered by a licensed service provider as
749 defined in s. 397.311 or in a jail-based treatment program or
750 serving a period of incarceration within the time limits
751 established for contempt of court. The coordinated strategy must
752 be provided in writing to the participant before the participant
753 agrees to enter into a pretrial treatment-based drug court
754 program or other pretrial intervention program. Any person whose

755 charges are dismissed after successful completion of the
756 treatment-based drug court program, if otherwise eligible, may
757 have his or her arrest record and plea of nolo contendere to the
758 dismissed charges expunged under s. 943.0584 ~~943.0585~~.

759 (2)

760 (b) While enrolled in a pretrial intervention program
761 authorized by this section, the participant shall be subject to
762 a coordinated strategy developed by a veterans' treatment
763 intervention team. The coordinated strategy should be modeled
764 after the therapeutic jurisprudence principles and key
765 components in s. 397.334(4), with treatment specific to the
766 needs of veterans and servicemembers. The coordinated strategy
767 may include a protocol of sanctions that may be imposed upon the
768 participant for noncompliance with program rules. The protocol
769 of sanctions may include, but need not be limited to, placement
770 in a treatment program offered by a licensed service provider or
771 in a jail-based treatment program or serving a period of
772 incarceration within the time limits established for contempt of
773 court. The coordinated strategy must be provided in writing to
774 the participant before the participant agrees to enter into a
775 misdemeanor pretrial veterans' treatment intervention program or
776 other pretrial intervention program. Any person whose charges
777 are dismissed after successful completion of the misdemeanor
778 pretrial veterans' treatment intervention program, if otherwise
779 eligible, may have his or her arrest record of the dismissed
780 charges expunged under s. 943.0584 ~~943.0585~~.

781 Section 10. Paragraph (e) of subsection (1) of section
 782 961.06, Florida Statutes, is amended to read:

783 961.06 Compensation for wrongful incarceration.—

784 (1) Except as otherwise provided in this act and subject
 785 to the limitations and procedures prescribed in this section, a
 786 person who is found to be entitled to compensation under the
 787 provisions of this act is entitled to:

788 (e) Notwithstanding any provision to the contrary in s.
 789 943.0583, 943.0584, or s. 943.0585, immediate administrative
 790 expunction of the person's criminal record resulting from his or
 791 her wrongful arrest, wrongful conviction, and wrongful
 792 incarceration. The Department of Legal Affairs and the
 793 Department of Law Enforcement shall, upon a determination that a
 794 claimant is entitled to compensation, immediately take all
 795 action necessary to administratively expunge the claimant's
 796 criminal record arising from his or her wrongful arrest,
 797 wrongful conviction, and wrongful incarceration. All fees for
 798 this process shall be waived.

799
 800 The total compensation awarded under paragraphs (a), (c), and
 801 (d) may not exceed \$2 million. No further award for attorney's
 802 fees, lobbying fees, costs, or other similar expenses shall be
 803 made by the state.

804 Section 11. Paragraph (b) of subsection (7) of section
 805 985.04, Florida Statutes, is amended to read:

806 985.04 Oaths; records; confidential information.—

807 (7)
 808 (b) The destruction of records pertaining to children
 809 committed to or supervised by the department pursuant to a court
 810 order, which records are retained until a child reaches the age
 811 of 21 ~~24~~ years or until a serious or habitual delinquent child
 812 reaches the age of 26 years, shall be subject to chapter 943.

813 Section 12. Subsection (1) of section 985.045, Florida
 814 Statutes, is amended to read:

815 985.045 Court records.—

816 (1) The clerk of the court shall make and keep records of
 817 all cases brought before it under this chapter. The court shall
 818 preserve the records pertaining to a child charged with
 819 committing a delinquent act or violation of law until the child
 820 reaches 21 ~~24~~ years of age or reaches 26 years of age if he or
 821 she is a serious or habitual delinquent child, until 5 years
 822 after the last entry was made, or until 3 years after the death
 823 of the child, whichever is earlier, and may then destroy them,
 824 except that records made of traffic offenses in which there is
 825 no allegation of delinquency may be destroyed as soon as this
 826 can be reasonably accomplished. The court shall make official
 827 records of all petitions and orders filed in a case arising
 828 under this chapter and of any other pleadings, certificates,
 829 proofs of publication, summonses, warrants, and writs that are
 830 filed pursuant to the case.

831 Section 13. Subsection (2) of section 985.345, Florida
 832 Statutes, is amended to read:

833 985.345 Delinquency pretrial intervention program.—
 834 (2) While enrolled in a delinquency pretrial intervention
 835 program authorized by this section, a child is subject to a
 836 coordinated strategy developed by a drug court team under s.
 837 397.334(4). The coordinated strategy may include a protocol of
 838 sanctions that may be imposed upon the child for noncompliance
 839 with program rules. The protocol of sanctions may include, but
 840 is not limited to, placement in a substance abuse treatment
 841 program offered by a licensed service provider as defined in s.
 842 397.311 or serving a period of secure detention under this
 843 chapter. The coordinated strategy must be provided in writing to
 844 the child before the child agrees to enter the pretrial
 845 treatment-based drug court program or other pretrial
 846 intervention program. Any child whose charges are dismissed
 847 after successful completion of the treatment-based drug court
 848 program, if otherwise eligible, may have his or her arrest
 849 record and plea of nolo contendere to the dismissed charges
 850 expunged under s. 943.0584 ~~943.0585~~.

851 Section 14. For the 2015-2016 fiscal year, the sum of
 852 \$500,000 in recurring funds is appropriated from the Operating
 853 Trust Fund of the Department of Law Enforcement from revenues
 854 received pursuant to ss. 943.0584 and 943.0585, Florida
 855 Statutes, to the Department of Law Enforcement to provide for
 856 the sealing and expunction of criminal history records pursuant
 857 to this act. The Department of Law Enforcement may submit budget
 858 amendments pursuant to chapter 216, Florida Statutes, requesting

CS/HB 7105

2015

859 | an increase in budget authority based on workload increases
860 | resulting from this act.

861 | Section 15. This act shall take effect October 1, 2015.