



921458

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/24/2017	.	
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The Committee on Judiciary (Steube) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. (1) Any person or entity engaged in the business of publishing or otherwise disseminating arrest booking photographs of persons who have previously been arrested through a publicly accessible print or electronic medium may not solicit or accept a fee or other form of payment to remove, correct, or modify such photographs.

(2) Upon receipt of a written request from a person whose



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12 booking photograph is published or otherwise disseminated, or  
13 his or her legal representative, the person or entity who  
14 published or otherwise disseminated the photograph shall remove  
15 the photograph without charge within 10 calendar days after  
16 receiving the request for removal.

17 (3) The person whose arrest booking photograph was  
18 published or otherwise disseminated in the publication or  
19 electronic medium may bring a civil action to enjoin the  
20 continued publication or dissemination of the photograph if the  
21 photograph is not removed within 10 calendar days after receipt  
22 of the written request for removal. In addition to the remedies  
23 set forth in this subsection, the court may impose a civil  
24 penalty of \$1,000 per day for noncompliance with an injunction  
25 and shall award reasonable attorney fees and court costs related  
26 to the issuance of the injunction.

27 (4) Refusal to remove an arrest booking photograph after  
28 written request has been made constitutes an unfair or deceptive  
29 trade practice in accordance with part II of chapter 501.

30 (5) This section does not apply to any person or entity  
31 that publishes or disseminates information relating to arrests  
32 unless the person or entity solicits or accepts payment to  
33 remove the information.

34 Section 2. Section 943.0585, Florida Statutes, is amended  
35 to read:

36 943.0585 Court-ordered expunction of criminal history  
37 records.—The courts of this state have jurisdiction over their  
38 own procedures, including the maintenance, expunction, and  
39 correction of judicial records containing criminal history  
40 information to the extent such procedures are not inconsistent



41 with the conditions, responsibilities, and duties established by  
42 this section. Any court of competent jurisdiction may order a  
43 criminal justice agency to expunge the criminal history record  
44 of a minor or an adult who complies with the requirements of  
45 this section. The court shall not order a criminal justice  
46 agency to expunge a criminal history record until the person  
47 seeking to expunge a criminal history record has applied for and  
48 received a certificate of eligibility for expunction pursuant to  
49 subsection (2) or subsection (5). A criminal history record that  
50 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,  
51 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,  
52 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
53 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in  
54 s. 907.041, or any violation specified as a predicate offense  
55 for registration as a sexual predator pursuant to s. 775.21,  
56 without regard to whether that offense alone is sufficient to  
57 require such registration, or for registration as a sexual  
58 offender pursuant to s. 943.0435, may not be expunged, without  
59 regard to whether adjudication was withheld, if the defendant  
60 was found guilty of or pled guilty or nolo contendere to the  
61 offense, or if the defendant, as a minor, was found to have  
62 committed, or pled guilty or nolo contendere to committing, the  
63 offense as a delinquent act. The court may only order expunction  
64 of a criminal history record pertaining to one arrest or one  
65 incident of alleged criminal activity, except as provided in  
66 this section. The court may, at its sole discretion, order the  
67 expunction of a criminal history record pertaining to more than  
68 one arrest if the additional arrests directly relate to the  
69 original arrest. If the court intends to order the expunction of



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70 records pertaining to such additional arrests, such intent must  
71 be specified in the order. A criminal justice agency may not  
72 expunge any record pertaining to such additional arrests if the  
73 order to expunge does not articulate the intention of the court  
74 to expunge a record pertaining to more than one arrest. This  
75 section does not prevent the court from ordering the expunction  
76 of only a portion of a criminal history record pertaining to one  
77 arrest or one incident of alleged criminal activity.

78 Notwithstanding any law to the contrary, a criminal justice  
79 agency may comply with laws, court orders, and official requests  
80 of other jurisdictions relating to expunction, correction, or  
81 confidential handling of criminal history records or information  
82 derived therefrom. This section does not confer any right to the  
83 expunction of any criminal history record, and any request for  
84 expunction of a criminal history record may be denied at the  
85 sole discretion of the court.

86 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each  
87 petition to a court to expunge a criminal history record is  
88 complete only when accompanied by:

89 (a) A valid certificate of eligibility for expunction  
90 issued by the department pursuant to subsection (2).

91 (b) The petitioner's sworn statement attesting that the  
92 petitioner:

93 1. Has never, prior to the date on which the petition is  
94 filed, been adjudicated guilty of a criminal offense or  
95 comparable ordinance violation, or been adjudicated delinquent  
96 for committing any felony or a misdemeanor specified in s.  
97 943.051(3)(b).

98 2. Has not been adjudicated guilty of, or adjudicated



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99 delinquent for committing, any of the acts stemming from the  
100 arrest or alleged criminal activity to which the petition  
101 pertains.

102       3.a. Has never secured a prior sealing or expunction of a  
103 criminal history record under this section, s. 943.059, former  
104 s. 893.14, former s. 901.33, or former s. 943.058, unless  
105 expunction is sought of a criminal history record previously  
106 sealed for 10 years pursuant to paragraph (2) (h) and the record  
107 is otherwise eligible for expunction; or

108       b. Is seeking to expunge a criminal history record  
109 associated with a judgment of acquittal or a not guilty verdict.

110       4. Is eligible for such an expunction to the best of his or  
111 her knowledge or belief and does not have any other petition to  
112 expunge or any petition to seal pending before any court.

113  
114 Any person who knowingly provides false information on such  
115 sworn statement to the court commits a felony of the third  
116 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
117 775.084.

118       (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
119 petitioning the court to expunge a criminal history record, a  
120 person seeking to expunge a criminal history record shall apply  
121 to the department for a certificate of eligibility for  
122 expunction. The department shall, by rule adopted pursuant to  
123 chapter 120, establish procedures pertaining to the application  
124 for and issuance of certificates of eligibility for expunction.  
125 A certificate of eligibility for expunction is valid for 12  
126 months after the date stamped on the certificate when issued by  
127 the department. After that time, the petitioner must reapply to



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128 the department for a new certificate of eligibility. Eligibility  
129 for a renewed certification of eligibility must be based on the  
130 status of the applicant and the law in effect at the time of the  
131 renewal application. The department shall issue a certificate of  
132 eligibility for expunction to a person who is the subject of a  
133 criminal history record if that person:

134 (a) Has obtained, and submitted to the department, a  
135 written, certified statement from the appropriate state attorney  
136 or statewide prosecutor which indicates:

137 1. That an indictment, information, or other charging  
138 document was not filed or issued in the case.

139 2. That an indictment, information, or other charging  
140 document, if filed or issued in the case, was dismissed or nolle  
141 prosequi by the state attorney or statewide prosecutor, or was  
142 dismissed by a court of competent jurisdiction, that a judgment  
143 of acquittal was rendered by a judge, or that a verdict of not  
144 guilty was rendered by a judge or jury and that none of the  
145 charges related to the arrest or alleged criminal activity to  
146 which the petition to expunge pertains resulted in a trial,  
147 without regard to whether the outcome of the trial was other  
148 than an adjudication of guilt.

149 3. That the criminal history record does not relate to a  
150 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
151 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,  
152 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,  
153 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,  
154 or any violation specified as a predicate offense for  
155 registration as a sexual predator pursuant to s. 775.21, without  
156 regard to whether that offense alone is sufficient to require



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157 such registration, or for registration as a sexual offender  
158 pursuant to s. 943.0435, where the defendant was found guilty  
159 of, or pled guilty or nolo contendere to any such offense, or  
160 that the defendant, as a minor, was found to have committed, or  
161 pled guilty or nolo contendere to committing, such an offense as  
162 a delinquent act, without regard to whether adjudication was  
163 withheld.

164 (b) Remits a \$75 processing fee to the department for  
165 placement in the Department of Law Enforcement Operating Trust  
166 Fund, unless such fee is waived by the executive director.

167 (c) Has submitted to the department a certified copy of the  
168 disposition of the charge to which the petition to expunge  
169 pertains.

170 (d) Has never, prior to the date on which the application  
171 for a certificate of eligibility is filed, been adjudicated  
172 guilty of a criminal offense or comparable ordinance violation,  
173 or been adjudicated delinquent for committing any felony or a  
174 misdemeanor specified in s. 943.051(3)(b).

175 (e) Has not been adjudicated guilty of, or adjudicated  
176 delinquent for committing, any of the acts stemming from the  
177 arrest or alleged criminal activity to which the petition to  
178 expunge pertains.

179 (f)1. Has never secured a prior sealing or expunction of a  
180 criminal history record under this section, s. 943.059, former  
181 s. 893.14, former s. 901.33, or former s. 943.058, unless  
182 expunction is sought of a criminal history record previously  
183 sealed for 10 years pursuant to paragraph (h) and the record is  
184 otherwise eligible for expunction; or

185 2. Is seeking to expunge a criminal history record



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186 associated with a judgment of acquittal or a not guilty verdict.

187 (g) Is no longer under court supervision applicable to the  
188 disposition of the arrest or alleged criminal activity to which  
189 the petition to expunge pertains.

190 (h) Has previously obtained a court order sealing the  
191 record under this section, former s. 893.14, former s. 901.33,  
192 or former s. 943.058 for a minimum of 10 years because  
193 adjudication was withheld or because all charges related to the  
194 arrest or alleged criminal activity to which the petition to  
195 expunge pertains were not dismissed prior to trial, without  
196 regard to whether the outcome of the trial was other than an  
197 adjudication of guilt. The requirement for the record to have  
198 previously been sealed for a minimum of 10 years does not apply  
199 when a plea was not entered or all charges related to the arrest  
200 or alleged criminal activity to which the petition to expunge  
201 pertains were dismissed prior to trial.

202 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

203 (a) In judicial proceedings under this section, a copy of  
204 the completed petition to expunge shall be served upon the  
205 appropriate state attorney or the statewide prosecutor and upon  
206 the arresting agency; however, it is not necessary to make any  
207 agency other than the state a party. The appropriate state  
208 attorney or the statewide prosecutor and the arresting agency  
209 may respond to the court regarding the completed petition to  
210 expunge.

211 (b) If relief is granted by the court, the clerk of the  
212 court shall certify copies of the order to the appropriate state  
213 attorney or the statewide prosecutor and the arresting agency.  
214 The arresting agency is responsible for forwarding the order to





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215 any other agency to which the arresting agency disseminated the  
216 criminal history record information to which the order pertains.  
217 The department shall forward the order to expunge to the Federal  
218 Bureau of Investigation. The clerk of the court shall certify a  
219 copy of the order to any other agency which the records of the  
220 court reflect has received the criminal history record from the  
221 court.

222 (c) For an order to expunge entered by a court prior to  
223 July 1, 1992, the department shall notify the appropriate state  
224 attorney or statewide prosecutor of an order to expunge which is  
225 contrary to law because the person who is the subject of the  
226 record has previously been convicted of a crime or comparable  
227 ordinance violation or has had a prior criminal history record  
228 sealed or expunged. Upon receipt of such notice, the appropriate  
229 state attorney or statewide prosecutor shall take action, within  
230 60 days, to correct the record and petition the court to void  
231 the order to expunge. The department shall seal the record until  
232 such time as the order is voided by the court.

233 (d) On or after July 1, 1992, the department or any other  
234 criminal justice agency is not required to act on an order to  
235 expunge entered by a court when such order does not comply with  
236 the requirements of this section. Upon receipt of such an order,  
237 the department must notify the issuing court, the appropriate  
238 state attorney or statewide prosecutor, the petitioner or the  
239 petitioner's attorney, and the arresting agency of the reason  
240 for noncompliance. The appropriate state attorney or statewide  
241 prosecutor shall take action within 60 days to correct the  
242 record and petition the court to void the order. No cause of  
243 action, including contempt of court, shall arise against any



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244 criminal justice agency for failure to comply with an order to  
245 expunge when the petitioner for such order failed to obtain the  
246 certificate of eligibility as required by this section or such  
247 order does not otherwise comply with the requirements of this  
248 section.

249 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
250 criminal history record of a minor or an adult which is ordered  
251 expunged by a court of competent jurisdiction pursuant to this  
252 section must be physically destroyed or obliterated by any  
253 criminal justice agency having custody of such record; except  
254 that any criminal history record in the custody of the  
255 department must be retained in all cases. A criminal history  
256 record ordered expunged that is retained by the department is  
257 confidential and exempt from the provisions of s. 119.07(1) and  
258 s. 24(a), Art. I of the State Constitution and not available to  
259 any person or entity except upon order of a court of competent  
260 jurisdiction. A criminal justice agency may retain a notation  
261 indicating compliance with an order to expunge.

262 (a) The person who is the subject of a criminal history  
263 record that is expunged under this section or under other  
264 provisions of law, including former s. 893.14, former s. 901.33,  
265 and former s. 943.058, may lawfully deny or fail to acknowledge  
266 the arrests covered by the expunged record, except when the  
267 subject of the record:

- 268 1. Is a candidate for employment with a criminal justice  
269 agency;
- 270 2. Is a defendant in a criminal prosecution;
- 271 3. Concurrently or subsequently petitions for relief under  
272 this section, s. 943.0583, or s. 943.059;



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- 273           4. Is a candidate for admission to The Florida Bar;
- 274           5. Is seeking to be employed or licensed by or to contract  
275 with the Department of Children and Families, the Division of  
276 Vocational Rehabilitation within the Department of Education,  
277 the Agency for Health Care Administration, the Agency for  
278 Persons with Disabilities, the Department of Health, the  
279 Department of Elderly Affairs, or the Department of Juvenile  
280 Justice or to be employed or used by such contractor or licensee  
281 in a sensitive position having direct contact with children, the  
282 disabled, or the elderly;
- 283           6. Is seeking to be employed or licensed by the Department  
284 of Education, any district school board, any university  
285 laboratory school, any charter school, any private or parochial  
286 school, or any local governmental entity that licenses child  
287 care facilities;
- 288           7. Is seeking to be licensed by the Division of Insurance  
289 Agent and Agency Services within the Department of Financial  
290 Services; or
- 291           8. Is seeking to be appointed as a guardian pursuant to s.  
292 744.3125.
- 293           (b) Subject to the exceptions in paragraph (a), a person  
294 who has been granted an expunction under this section, former s.  
295 893.14, former s. 901.33, or former s. 943.058 may not be held  
296 under any provision of law of this state to commit perjury or to  
297 be otherwise liable for giving a false statement by reason of  
298 such person's failure to recite or acknowledge an expunged  
299 criminal history record.
- 300           (c) Information relating to the existence of an expunged  
301 criminal history record which is provided in accordance with



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302 paragraph (a) is confidential and exempt from the provisions of  
303 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
304 except that the department shall disclose the existence of a  
305 criminal history record ordered expunged to the entities set  
306 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their  
307 respective licensing, access authorization, and employment  
308 purposes, and to criminal justice agencies for their respective  
309 criminal justice purposes. It is unlawful for any employee of an  
310 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
311 subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or  
312 subparagraph (a)8. to disclose information relating to the  
313 existence of an expunged criminal history record of a person  
314 seeking employment, access authorization, or licensure with such  
315 entity or contractor, except to the person to whom the criminal  
316 history record relates or to persons having direct  
317 responsibility for employment, access authorization, or  
318 licensure decisions. Any person who violates this paragraph  
319 commits a misdemeanor of the first degree, punishable as  
320 provided in s. 775.082 or s. 775.083.

321 (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the  
322 eligibility requirements prescribed in paragraph (1)(b) and  
323 subsection (2), the department shall issue a certificate of  
324 eligibility for expunction under this subsection to a person who  
325 is the subject of a criminal history record if that person:

326 (a) Has obtained, and submitted to the department, on a  
327 form provided by the department, a written, certified statement  
328 from the appropriate state attorney or statewide prosecutor  
329 which states whether an information, indictment, or other  
330 charging document was not filed or was dismissed by the state



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331 attorney, or dismissed by the court, because it was found that  
332 the person acted in lawful self-defense pursuant to the  
333 provisions related to justifiable use of force in chapter 776.

334 (b) Each petition to a court to expunge a criminal history  
335 record pursuant to this subsection is complete only when  
336 accompanied by:

337 1. A valid certificate of eligibility for expunction issued  
338 by the department pursuant to this subsection.

339 2. The petitioner's sworn statement attesting that the  
340 petitioner is eligible for such an expunction to the best of his  
341 or her knowledge or belief.

342  
343 Any person who knowingly provides false information on such  
344 sworn statement to the court commits a felony of the third  
345 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
346 775.084.

347 (c) This subsection does not confer any right to the  
348 expunction of a criminal history record, and any request for  
349 expunction of a criminal history record may be denied at the  
350 discretion of the court.

351 (d) Subsections (3) and (4) shall apply to expunction  
352 ordered under this subsection.

353 (e) The department shall, by rule adopted pursuant to  
354 chapter 120, establish procedures pertaining to the application  
355 for and issuance of certificates of eligibility for expunction  
356 under this subsection.

357 (6) STATUTORY REFERENCES.—Any reference to any other  
358 chapter, section, or subdivision of the Florida Statutes in this  
359 section constitutes a general reference under the doctrine of



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360 incorporation by reference.

361 Section 3. This act shall take effect July 1, 2017.

362

363 ===== T I T L E A M E N D M E N T =====

364 And the title is amended as follows:

365 Delete everything before the enacting clause

366 and insert:

367 A bill to be entitled

368 An act relating to criminal history records;

369 prohibiting a person or entity engaged in publishing

370 or disseminating arrest booking photographs from

371 soliciting or accepting a fee or other payment to

372 remove, correct, or modify such photograph; requiring

373 a person or entity, within a specified timeframe, to

374 remove an arrest booking photograph after receipt of a

375 written request; authorizing a person to bring a civil

376 action to enjoin such publishing of a photograph;

377 authorizing a court to impose a civil penalty and

378 award attorney fees and court costs; providing

379 applicability; amending s. 943.0585, F.S.; revising

380 the eligibility requirements for expunction of

381 criminal history records to include instances in which

382 a judgment of acquittal or a verdict of not guilty is

383 rendered; providing an effective date.