

By the Committees on Criminal Justice; and Judiciary; and
Senator Steube

591-02116A-17

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1 A bill to be entitled
2 An act relating to criminal history records;
3 prohibiting a person or entity engaged in publishing
4 or disseminating arrest booking photographs from
5 soliciting or accepting a fee or other payment to
6 remove the photograph; requiring a person or entity,
7 within a specified timeframe, to remove an arrest
8 booking photograph after receipt of a written request;
9 authorizing a person to bring a civil action to enjoin
10 such publishing of a photograph; authorizing a court
11 to impose a civil penalty and award attorney fees and
12 court costs; providing applicability; amending s.
13 943.0585, F.S.; revising the elements that must be
14 attested to by a petitioner in a statement submitted
15 in support of the expunction of criminal history
16 records; revising the circumstances under which the
17 Department of Law Enforcement must issue a certificate
18 of eligibility for expunction of a criminal history
19 record; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. (1) Any person or entity engaged in the business
24 of publishing or otherwise disseminating arrest booking
25 photographs of persons who have previously been arrested through
26 a publicly accessible print or electronic medium may not solicit
27 or accept a fee or other form of payment to remove the
28 photographs.

29 (2) Within 10 calendar days of receipt of a written request

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30 for removal of a booking photograph from a person whose booking
31 photograph is published or otherwise disseminated, or from his
32 or her legal representative, the person or entity who published
33 or otherwise disseminated the photograph shall remove the
34 photograph without charge.

35 (3) The person whose arrest booking photograph was
36 published or otherwise disseminated in the publication or
37 electronic medium may bring a civil action to enjoin the
38 continued publication or dissemination of the photograph if the
39 photograph is not removed within 10 calendar days after receipt
40 of the written request for removal. The court may impose a civil
41 penalty of \$1,000 per day for noncompliance with an injunction
42 and shall award reasonable attorney fees and court costs related
43 to the issuance and enforcement of the injunction. Monies
44 recovered for civil penalties under this section shall be
45 deposited into the General Revenue Fund.

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

49 (5) This section does not apply to any person or entity
50 that publishes or disseminates information relating to arrest
51 booking photographs unless the person or entity solicits or
52 accepts payment to remove the photographs.

53 Section 2. Paragraph (b) of subsection (1) and paragraphs
54 (a) and (d) of subsection (2) of section 943.0585, Florida
55 Statutes, are amended to read:

56 943.0585 Court-ordered expunction of criminal history
57 records.—The courts of this state have jurisdiction over their
58 own procedures, including the maintenance, expunction, and

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59 correction of judicial records containing criminal history
60 information to the extent such procedures are not inconsistent
61 with the conditions, responsibilities, and duties established by
62 this section. Any court of competent jurisdiction may order a
63 criminal justice agency to expunge the criminal history record
64 of a minor or an adult who complies with the requirements of
65 this section. The court shall not order a criminal justice
66 agency to expunge a criminal history record until the person
67 seeking to expunge a criminal history record has applied for and
68 received a certificate of eligibility for expunction pursuant to
69 subsection (2) or subsection (5). A criminal history record that
70 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
71 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
72 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
73 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
74 s. 907.041, or any violation specified as a predicate offense
75 for registration as a sexual predator pursuant to s. 775.21,
76 without regard to whether that offense alone is sufficient to
77 require such registration, or for registration as a sexual
78 offender pursuant to s. 943.0435, may not be expunged, without
79 regard to whether adjudication was withheld, if the defendant
80 was found guilty of or pled guilty or nolo contendere to the
81 offense, or if the defendant, as a minor, was found to have
82 committed, or pled guilty or nolo contendere to committing, the
83 offense as a delinquent act. The court may only order expunction
84 of a criminal history record pertaining to one arrest or one
85 incident of alleged criminal activity, except as provided in
86 this section. The court may, at its sole discretion, order the
87 expunction of a criminal history record pertaining to more than

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88 one arrest if the additional arrests directly relate to the
89 original arrest. If the court intends to order the expunction of
90 records pertaining to such additional arrests, such intent must
91 be specified in the order. A criminal justice agency may not
92 expunge any record pertaining to such additional arrests if the
93 order to expunge does not articulate the intention of the court
94 to expunge a record pertaining to more than one arrest. This
95 section does not prevent the court from ordering the expunction
96 of only a portion of a criminal history record pertaining to one
97 arrest or one incident of alleged criminal activity.

98 Notwithstanding any law to the contrary, a criminal justice
99 agency may comply with laws, court orders, and official requests
100 of other jurisdictions relating to expunction, correction, or
101 confidential handling of criminal history records or information
102 derived therefrom. This section does not confer any right to the
103 expunction of any criminal history record, and any request for
104 expunction of a criminal history record may be denied at the
105 sole discretion of the court.

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

109 (b) The petitioner's sworn statement attesting that the
110 petitioner:

111 1. Has never, before ~~prior~~ to the date on which the
112 petition is filed, been adjudicated guilty of a felony ~~criminal~~
113 offense or comparable ordinance violation, or been adjudicated
114 delinquent for committing any felony ~~or a misdemeanor~~ specified
115 ~~in s. 943.051(3)(b)~~.

116 2. Has not been adjudicated guilty of a misdemeanor offense

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117 or been adjudicated delinquent for committing a misdemeanor
118 specified in s. 943.051(3)(b) in the previous 10 years.

119 ~~3.2.~~ Has not been adjudicated guilty of, or adjudicated
120 delinquent for committing, any of the acts stemming from the
121 arrest or alleged criminal activity to which the petition
122 pertains.

123 ~~4.3.~~ Has never secured a prior sealing or expunction of a
124 criminal history record under this section, s. 943.059, former
125 s. 893.14, former s. 901.33, or former s. 943.058, unless
126 expunction is sought of a criminal history record previously
127 sealed for 10 years pursuant to paragraph (2)(h) and the record
128 is otherwise eligible for expunction.

129 ~~5.4.~~ Is eligible for such an expunction to the best of his
130 or her knowledge or belief and does not have any other petition
131 to expunge or any petition to seal pending before any court.

132
133 Any person who knowingly provides false information on such
134 sworn statement to the court commits a felony of the third
135 degree, punishable as provided in s. 775.082, s. 775.083, or s.
136 775.084.

137 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
138 petitioning the court to expunge a criminal history record, a
139 person seeking to expunge a criminal history record shall apply
140 to the department for a certificate of eligibility for
141 expunction. The department shall, by rule adopted pursuant to
142 chapter 120, establish procedures pertaining to the application
143 for and issuance of certificates of eligibility for expunction.
144 A certificate of eligibility for expunction is valid for 12
145 months after the date stamped on the certificate when issued by

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146 the department. After that time, the petitioner must reapply to
147 the department for a new certificate of eligibility. Eligibility
148 for a renewed certification of eligibility must be based on the
149 status of the applicant and the law in effect at the time of the
150 renewal application. The department shall issue a certificate of
151 eligibility for expunction to a person who is the subject of a
152 criminal history record if that person:

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

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

158 2. That an indictment, information, or other charging
159 document, if filed or issued in the case, was dismissed or nolle
160 prosequi by the state attorney or statewide prosecutor, or was
161 dismissed by a court of competent jurisdiction, that a judgment
162 of acquittal was rendered by a judge, or that a verdict of not
163 guilty was rendered by a judge or jury and that none of the
164 charges related to the arrest or alleged criminal activity to
165 which the petition to expunge pertains resulted in a trial,
166 without regard to whether the outcome of the trial was other
167 than an adjudication of guilt.

168 3. That the criminal history record does not relate to a
169 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
170 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
171 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
172 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
173 or any violation specified as a predicate offense for
174 registration as a sexual predator pursuant to s. 775.21, without

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175 regard to whether that offense alone is sufficient to require
176 such registration, or for registration as a sexual offender
177 pursuant to s. 943.0435, where the defendant was found guilty
178 of, or pled guilty or nolo contendere to any such offense, or
179 that the defendant, as a minor, was found to have committed, or
180 pled guilty or nolo contendere to committing, such an offense as
181 a delinquent act, without regard to whether adjudication was
182 withheld.

183 (d)1. Has never, before ~~prior to~~ the date on which the
184 application for a certificate of eligibility is filed, been
185 adjudicated guilty of a felony ~~criminal~~ offense or comparable
186 ordinance violation, or been adjudicated delinquent for
187 committing any felony ~~or a misdemeanor specified in s.~~
188 ~~943.051(3) (b).~~

189 2. Has not been adjudicated guilty of a misdemeanor offense
190 or been adjudicated delinquent for committing a misdemeanor
191 specified in s. 943.051(3) (b) in the previous 10 years.

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