

By the Committee on Judiciary; and Senator Steube

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1 A bill to be entitled
2 An act relating to the expunction and sealing of
3 criminal history records; amending s. 943.0585, F.S.;
4 revising the eligibility requirements for expunction
5 of criminal history records to include instances in
6 which a judgment of acquittal or a verdict of not
7 guilty was rendered; amending s. 943.059, F.S.;
8 clarifying the circumstances under which the
9 Department of Law Enforcement must issue a certificate
10 of eligibility for the sealing of a criminal history
11 record; providing effective dates.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraphs (a) and (h) of subsection (2) of
16 section 943.0585, Florida Statutes, are amended, and paragraph
17 (b) of subsection (1) and paragraph (f) of subsection (2) of
18 that section are republished, to read:

19 943.0585 Court-ordered expunction of criminal history
20 records.—The courts of this state have jurisdiction over their
21 own procedures, including the maintenance, expunction, and
22 correction of judicial records containing criminal history
23 information to the extent such procedures are not inconsistent
24 with the conditions, responsibilities, and duties established by
25 this section. Any court of competent jurisdiction may order a
26 criminal justice agency to expunge the criminal history record
27 of a minor or an adult who complies with the requirements of
28 this section. The court shall not order a criminal justice
29 agency to expunge a criminal history record until the person

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30 seeking to expunge a criminal history record has applied for and
31 received a certificate of eligibility for expunction pursuant to
32 subsection (2) or subsection (5). A criminal history record that
33 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
34 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
35 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
36 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
37 s. 907.041, or any violation specified as a predicate offense
38 for registration as a sexual predator pursuant to s. 775.21,
39 without regard to whether that offense alone is sufficient to
40 require such registration, or for registration as a sexual
41 offender pursuant to s. 943.0435, may not be expunged, without
42 regard to whether adjudication was withheld, if the defendant
43 was found guilty of or pled guilty or nolo contendere to the
44 offense, or if the defendant, as a minor, was found to have
45 committed, or pled guilty or nolo contendere to committing, the
46 offense as a delinquent act. The court may only order expunction
47 of a criminal history record pertaining to one arrest or one
48 incident of alleged criminal activity, except as provided in
49 this section. The court may, at its sole discretion, order the
50 expunction of a criminal history record pertaining to more than
51 one arrest if the additional arrests directly relate to the
52 original arrest. If the court intends to order the expunction of
53 records pertaining to such additional arrests, such intent must
54 be specified in the order. A criminal justice agency may not
55 expunge any record pertaining to such additional arrests if the
56 order to expunge does not articulate the intention of the court
57 to expunge a record pertaining to more than one arrest. This
58 section does not prevent the court from ordering the expunction

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59 of only a portion of a criminal history record pertaining to one
60 arrest or one incident of alleged criminal activity.

61 Notwithstanding any law to the contrary, a criminal justice
62 agency may comply with laws, court orders, and official requests
63 of other jurisdictions relating to expunction, correction, or
64 confidential handling of criminal history records or information
65 derived therefrom. This section does not confer any right to the
66 expunction of any criminal history record, and any request for
67 expunction of a criminal history record may be denied at the
68 sole discretion of the court.

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

72 (b) The petitioner's sworn statement attesting that the
73 petitioner:

74 1. Has never, prior to the date on which the petition is
75 filed, been adjudicated guilty of a criminal offense or
76 comparable ordinance violation, or been adjudicated delinquent
77 for committing any felony or a misdemeanor specified in s.
78 943.051(3)(b).

79 2. Has not been adjudicated guilty of, or adjudicated
80 delinquent for committing, any of the acts stemming from the
81 arrest or alleged criminal activity to which the petition
82 pertains.

83 3. Has never secured a prior sealing or expunction of a
84 criminal history record under this section, s. 943.059, former
85 s. 893.14, former s. 901.33, or former s. 943.058, unless
86 expunction is sought of a criminal history record previously
87 sealed for 10 years pursuant to paragraph (2)(h) and the record

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88 is otherwise eligible for expunction.

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

92

93 Any person who knowingly provides false information on such
94 sworn statement to the court commits a felony of the third
95 degree, punishable as provided in s. 775.082, s. 775.083, or s.
96 775.084.

97 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
98 petitioning the court to expunge a criminal history record, a
99 person seeking to expunge a criminal history record shall apply
100 to the department for a certificate of eligibility for
101 expunction. The department shall, by rule adopted pursuant to
102 chapter 120, establish procedures pertaining to the application
103 for and issuance of certificates of eligibility for expunction.
104 A certificate of eligibility for expunction is valid for 12
105 months after the date stamped on the certificate when issued by
106 the department. After that time, the petitioner must reapply to
107 the department for a new certificate of eligibility. Eligibility
108 for a renewed certification of eligibility must be based on the
109 status of the applicant and the law in effect at the time of the
110 renewal application. The department shall issue a certificate of
111 eligibility for expunction to a person who is the subject of a
112 criminal history record if that person:

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

116 1. That an indictment, information, or other charging

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117 document was not filed or issued in the case.

118 2. That an indictment, information, or other charging
119 document, if filed or issued in the case, was dismissed or nolle
120 prosequi by the state attorney or statewide prosecutor, ~~or~~ was
121 dismissed by a court of competent jurisdiction, that a judgment
122 of acquittal was rendered by a judge, or that a verdict of not
123 guilty was rendered by a judge or jury and that none of the
124 charges related to the arrest or alleged criminal activity to
125 which the petition to expunge pertains resulted in a trial,
126 without regard to whether the outcome of the trial was other
127 than an adjudication of guilt.

128 3. That the criminal history record does not relate to a
129 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
130 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
131 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
132 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
133 or any violation specified as a predicate offense for
134 registration as a sexual predator pursuant to s. 775.21, without
135 regard to whether that offense alone is sufficient to require
136 such registration, or for registration as a sexual offender
137 pursuant to s. 943.0435, where the defendant was found guilty
138 of, or pled guilty or nolo contendere to any such offense, or
139 that the defendant, as a minor, was found to have committed, or
140 pled guilty or nolo contendere to committing, such an offense as
141 a delinquent act, without regard to whether adjudication was
142 withheld.

143 (f) Has never secured a prior sealing or expunction of a
144 criminal history record under this section, s. 943.059, former
145 s. 893.14, former s. 901.33, or former s. 943.058, unless

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146 expunction is sought of a criminal history record previously
147 sealed for 10 years pursuant to paragraph (h) and the record is
148 otherwise eligible for expunction.

149 (h) Has previously obtained a court order sealing the
150 record under this section, former s. 893.14, former s. 901.33,
151 or former s. 943.058 for a minimum of 10 years because
152 adjudication was withheld or because all charges related to the
153 arrest or alleged criminal activity to which the petition to
154 expunge pertains were not dismissed before ~~prior to~~ trial,
155 ~~without regard to whether the outcome of the trial was other~~
156 ~~than an adjudication of guilt.~~ The requirement for the record to
157 have previously been sealed for a minimum of 10 years does not
158 apply when a plea was not entered or all charges related to the
159 arrest or alleged criminal activity to which the petition to
160 expunge pertains were dismissed before ~~prior to~~ trial, when a
161 judgment of acquittal was rendered by a judge, or when a verdict
162 of not guilty was rendered by a judge or jury.

163 Section 2. Effective upon becoming a law, present
164 paragraphs (c) through (f) of subsection (2) of section 943.059,
165 Florida Statutes, are redesignated as paragraphs (d) through
166 (g), respectively, a new paragraph (c) is added to that
167 subsection, and paragraph (a) of subsection (1) of that section
168 is republished, to read:

169 943.059 Court-ordered sealing of criminal history records.—
170 The courts of this state shall continue to have jurisdiction
171 over their own procedures, including the maintenance, sealing,
172 and correction of judicial records containing criminal history
173 information to the extent such procedures are not inconsistent
174 with the conditions, responsibilities, and duties established by

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175 this section. Any court of competent jurisdiction may order a
176 criminal justice agency to seal the criminal history record of a
177 minor or an adult who complies with the requirements of this
178 section. The court shall not order a criminal justice agency to
179 seal a criminal history record until the person seeking to seal
180 a criminal history record has applied for and received a
181 certificate of eligibility for sealing pursuant to subsection
182 (2). A criminal history record that relates to a violation of s.
183 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
184 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
185 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
186 s. 916.1075, a violation enumerated in s. 907.041, or any
187 violation specified as a predicate offense for registration as a
188 sexual predator pursuant to s. 775.21, without regard to whether
189 that offense alone is sufficient to require such registration,
190 or for registration as a sexual offender pursuant to s.
191 943.0435, may not be sealed, without regard to whether
192 adjudication was withheld, if the defendant was found guilty of
193 or pled guilty or nolo contendere to the offense, or if the
194 defendant, as a minor, was found to have committed or pled
195 guilty or nolo contendere to committing the offense as a
196 delinquent act. The court may only order sealing of a criminal
197 history record pertaining to one arrest or one incident of
198 alleged criminal activity, except as provided in this section.
199 The court may, at its sole discretion, order the sealing of a
200 criminal history record pertaining to more than one arrest if
201 the additional arrests directly relate to the original arrest.
202 If the court intends to order the sealing of records pertaining
203 to such additional arrests, such intent must be specified in the

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204 order. A criminal justice agency may not seal any record
205 pertaining to such additional arrests if the order to seal does
206 not articulate the intention of the court to seal records
207 pertaining to more than one arrest. This section does not
208 prevent the court from ordering the sealing of only a portion of
209 a criminal history record pertaining to one arrest or one
210 incident of alleged criminal activity. Notwithstanding any law
211 to the contrary, a criminal justice agency may comply with laws,
212 court orders, and official requests of other jurisdictions
213 relating to sealing, correction, or confidential handling of
214 criminal history records or information derived therefrom. This
215 section does not confer any right to the sealing of any criminal
216 history record, and any request for sealing a criminal history
217 record may be denied at the sole discretion of the court.

218 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
219 petition to a court to seal a criminal history record is
220 complete only when accompanied by:

221 (a) A valid certificate of eligibility for sealing issued
222 by the department pursuant to subsection (2).

223 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
224 petitioning the court to seal a criminal history record, a
225 person seeking to seal a criminal history record shall apply to
226 the department for a certificate of eligibility for sealing. The
227 department shall, by rule adopted pursuant to chapter 120,
228 establish procedures pertaining to the application for and
229 issuance of certificates of eligibility for sealing. A
230 certificate of eligibility for sealing is valid for 12 months
231 after the date stamped on the certificate when issued by the
232 department. After that time, the petitioner must reapply to the

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233 department for a new certificate of eligibility. Eligibility for
234 a renewed certification of eligibility must be based on the
235 status of the applicant and the law in effect at the time of the
236 renewal application. The department shall issue a certificate of
237 eligibility for sealing to a person who is the subject of a
238 criminal history record provided that such person:

239 (c) Is not seeking to seal a criminal history record that
240 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
241 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
242 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
243 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
244 s. 907.041, or any violation specified as a predicate offense
245 for registration as a sexual predator pursuant to s. 775.21,
246 without regard to whether that offense alone is sufficient to
247 require such registration, or for registration as a sexual
248 offender pursuant to s. 943.0435, where the defendant was found
249 guilty of, or pled guilty or nolo contendere to any such
250 offense, or which the defendant, as a minor, was found to have
251 committed, or pled guilty or nolo contendere to committing, such
252 an offense as a delinquent act, without regard to whether
253 adjudication was withheld.

254 Section 3. Except as otherwise expressly provided in this
255 act and except for this section, which shall take effect upon
256 this act becoming a law, this act shall take effect July 1,
257 2018.