

By Senator Brandes

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1                   A bill to be entitled  
2       An act relating to public records; amending s.  
3       943.059, F.S.; expanding an existing public records  
4       exemption to include the administrative sealing of  
5       specified criminal history records; conforming  
6       provisions to changes made by the act; providing for  
7       future review and repeal of the expanded exemption;  
8       providing for reversion of specified language if the  
9       exemption is not saved from repeal; providing a  
10      statement of public necessity; providing a contingent  
11      effective date.

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

14  
15       Section 1. Subsection (4) of section 943.059, Florida  
16 Statutes, is amended to read:

17       943.059 Court-ordered sealing of criminal history records.—  
18 The courts of this state shall continue to have jurisdiction  
19 over their own procedures, including the maintenance, sealing,  
20 and correction of judicial records containing criminal history  
21 information to the extent such procedures are not inconsistent  
22 with the conditions, responsibilities, and duties established by  
23 this section. Any court of competent jurisdiction may order a  
24 criminal justice agency to seal the criminal history record of a  
25 minor or an adult who complies with the requirements of this  
26 section. The court shall not order a criminal justice agency to  
27 seal a criminal history record until the person seeking to seal  
28 a criminal history record has applied for and received a  
29 certificate of eligibility for sealing pursuant to subsection

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

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

66 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
67 history record of a minor or an adult which is ordered sealed by  
68 a court pursuant to this section or sealed administratively  
69 pursuant to s. 943.0586 is confidential and exempt from the  
70 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
71 Constitution and is available only to the person who is the  
72 subject of the record, to the subject's attorney, to criminal  
73 justice agencies for their respective criminal justice purposes,  
74 which include conducting a criminal history background check for  
75 approval of firearms purchases or transfers as authorized by  
76 state or federal law, to judges in the state courts system for  
77 the purpose of assisting them in their case-related  
78 decisionmaking responsibilities, as set forth in s. 943.053(5),  
79 or to those entities set forth in subparagraphs (a)1., 4., 5.,  
80 6., 8., 9., and 10. for their respective licensing, access  
81 authorization, and employment purposes.

82 (a) The subject of a criminal history record sealed under  
83 this section, s. 943.0586, or under other provisions of law,  
84 including former s. 893.14, former s. 901.33, and former s.  
85 943.058, may lawfully deny or fail to acknowledge the arrests  
86 covered by the sealed record, except when the subject of the  
87 record:

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- 88           1. Is a candidate for employment with a criminal justice  
89 agency;
- 90           2. Is a defendant in a criminal prosecution;
- 91           3. Concurrently or subsequently petitions for relief under  
92 this section, s. 943.0583, or s. 943.0585;
- 93           4. Is a candidate for admission to The Florida Bar;
- 94           5. Is seeking to be employed or licensed by or to contract  
95 with the Department of Children and Families, the Division of  
96 Vocational Rehabilitation within the Department of Education,  
97 the Agency for Health Care Administration, the Agency for  
98 Persons with Disabilities, the Department of Health, the  
99 Department of Elderly Affairs, or the Department of Juvenile  
100 Justice or to be employed or used by such contractor or licensee  
101 in a sensitive position having direct contact with children, the  
102 disabled, or the elderly;
- 103           6. Is seeking to be employed or licensed by the Department  
104 of Education, a district school board, a university laboratory  
105 school, a charter school, a private or parochial school, or a  
106 local governmental entity that licenses child care facilities;
- 107           7. Is attempting to purchase a firearm from a licensed  
108 importer, licensed manufacturer, or licensed dealer and is  
109 subject to a criminal history check under state or federal law;
- 110           8. Is seeking to be licensed by the Division of Insurance  
111 Agent and Agency Services within the Department of Financial  
112 Services;
- 113           9. Is seeking to be appointed as a guardian pursuant to s.  
114 744.3125; or
- 115           10. Is seeking to be licensed by the Bureau of License  
116 Issuance of the Division of Licensing within the Department of

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117 Agriculture and Consumer Services to carry a concealed weapon or  
118 concealed firearm. This subparagraph applies only in the  
119 determination of an applicant's eligibility under s. 790.06.

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

127 (c) Information relating to the existence of a sealed  
128 criminal record provided in accordance with the provisions of  
129 paragraph (a) is confidential and exempt from the provisions of  
130 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
131 except that the department shall disclose the sealed criminal  
132 history record to the entities set forth in subparagraphs (a)1.,  
133 4., 5., 6., 8., 9., and 10. for their respective licensing,  
134 access authorization, and employment purposes. An employee of an  
135 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
136 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,  
137 subparagraph (a)9., or subparagraph (a)10. may not disclose  
138 information relating to the existence of a sealed criminal  
139 history record of a person seeking employment, access  
140 authorization, or licensure with such entity or contractor,  
141 except to the person to whom the criminal history record relates  
142 or to persons having direct responsibility for employment,  
143 access authorization, or licensure decisions. A person who  
144 violates the provisions of this paragraph commits a misdemeanor  
145 of the first degree, punishable as provided in s. 775.082 or s.

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146 775.083.

147 (d) The expansion of the public records exemption under  
148 this subsection to include records sealed administratively under  
149 s. 943.0586 is subject to the Open Government Sunset Review Act  
150 in accordance with s. 119.15 and shall stand repealed on October  
151 2, 2023, unless reviewed and saved from repeal through  
152 reenactment by the Legislature. If the expansion of the  
153 exemption is not saved from repeal, this subsection shall revert  
154 to that in existence on June 30, 2018, except that any  
155 amendments to such text other than by this act shall be  
156 preserved and continue to operate to the extent that such  
157 amendments are not dependent upon the portions of text which  
158 expire pursuant to this paragraph.

159 Section 2. The Legislature finds that it is a public  
160 necessity that the criminal history records of a minor or an  
161 adult which have been administratively sealed pursuant to s.  
162 943.0586, Florida Statutes, because a case was not filed, was  
163 dismissed or nolle prosequi, or resulted in the granting of a  
164 judgment of acquittal or verdict of not guilty be made  
165 confidential and exempt from s. 119.07(1), Florida Statutes, and  
166 s. 24(a), Article I of the State Constitution. The presence of a  
167 criminal history record in an individual's past which has not  
168 been validated through criminal proceedings can jeopardize his  
169 or her ability to obtain education, employment, and other  
170 opportunities necessary to becoming a productive, contributing,  
171 self-sustaining member of society. Such negative consequences  
172 are unwarranted in cases in which the individual was not found  
173 to have committed the offense that is the subject of the sealed  
174 criminal history record. For these reasons, the Legislature

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175 finds that it is a public necessity that the criminal history  
176 records of a minor or an adult which have been administratively  
177 sealed be confidential and exempt from public records  
178 requirements.

179       Section 3. This act shall take effect on the same date that  
180 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
181 is adopted in the same legislative session or an extension  
182 thereof and becomes law.