

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.

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 13 Be It Enacted by the Legislature of the State of Florida:
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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
 18 records.—The courts of this state shall continue to have
 19 jurisdiction over their own procedures, including the
 20 maintenance, sealing, and correction of judicial records
 21 containing criminal history information to the extent such
 22 procedures are not inconsistent with the conditions,
 23 responsibilities, and duties established by this section. Any
 24 court of competent jurisdiction may order a criminal justice
 25 agency to seal the criminal history record of a minor or an

26 adult who complies with the requirements of this section. The
27 court shall not order a criminal justice agency to seal a
28 criminal history record until the person seeking to seal a
29 criminal history record has applied for and received a
30 certificate of eligibility for sealing pursuant to subsection
31 (2). A criminal history record that relates to a violation of s.
32 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
33 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
34 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
35 s. 916.1075, a violation enumerated in s. 907.041, or any
36 violation specified as a predicate offense for registration as a
37 sexual predator pursuant to s. 775.21, without regard to whether
38 that offense alone is sufficient to require such registration,
39 or for registration as a sexual offender pursuant to s.
40 943.0435, may not be sealed, without regard to whether
41 adjudication was withheld, if the defendant was found guilty of
42 or pled guilty or nolo contendere to the offense, or if the
43 defendant, as a minor, was found to have committed or pled
44 guilty or nolo contendere to committing the offense as a
45 delinquent act. The court may only order sealing of a criminal
46 history record pertaining to one arrest or one incident of
47 alleged criminal activity, except as provided in this section.
48 The court may, at its sole discretion, order the sealing of a
49 criminal history record pertaining to more than one arrest if
50 the additional arrests directly relate to the original arrest.

51 | If the court intends to order the sealing of records pertaining
52 | to such additional arrests, such intent must be specified in the
53 | order. A criminal justice agency may not seal any record
54 | pertaining to such additional arrests if the order to seal does
55 | not articulate the intention of the court to seal records
56 | pertaining to more than one arrest. This section does not
57 | prevent the court from ordering the sealing of only a portion of
58 | a criminal history record pertaining to one arrest or one
59 | incident of alleged criminal activity. Notwithstanding any law
60 | to the contrary, a criminal justice agency may comply with laws,
61 | court orders, and official requests of other jurisdictions
62 | relating to sealing, correction, or confidential handling of
63 | criminal history records or information derived therefrom. This
64 | section does not confer any right to the sealing of any criminal
65 | history record, and any request for sealing a criminal history
66 | record may be denied at the sole discretion of the court.

67 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
68 | history record of a minor or an adult which is ordered sealed by
69 | a court pursuant to this section or sealed administratively
70 | pursuant to s. 943.0586 is confidential and exempt from the
71 | provisions of s. 119.07(1) and s. 24(a), Art. I of the State
72 | Constitution and is available only to the person who is the
73 | subject of the record, to the subject's attorney, to criminal
74 | justice agencies for their respective criminal justice purposes,
75 | which include conducting a criminal history background check for

76 approval of firearms purchases or transfers as authorized by
 77 state or federal law, to judges in the state courts system for
 78 the purpose of assisting them in their case-related
 79 decisionmaking responsibilities, as set forth in s. 943.053(5),
 80 or to those entities set forth in subparagraphs (a)1., 4., 5.,
 81 6., 8., 9., and 10. for their respective licensing, access
 82 authorization, and employment purposes.

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

- 89 1. Is a candidate for employment with a criminal justice
 90 agency;
- 91 2. Is a defendant in a criminal prosecution;
- 92 3. Concurrently or subsequently petitions for relief under
 93 this section, s. 943.0583, or s. 943.0585;
- 94 4. Is a candidate for admission to The Florida Bar;
- 95 5. Is seeking to be employed or licensed by or to contract
 96 with the Department of Children and Families, the Division of
 97 Vocational Rehabilitation within the Department of Education,
 98 the Agency for Health Care Administration, the Agency for
 99 Persons with Disabilities, the Department of Health, the
 100 Department of Elderly Affairs, or the Department of Juvenile

101 Justice or to be employed or used by such contractor or licensee
 102 in a sensitive position having direct contact with children, the
 103 disabled, or the elderly;

104 6. Is seeking to be employed or licensed by the Department
 105 of Education, a district school board, a university laboratory
 106 school, a charter school, a private or parochial school, or a
 107 local governmental entity that licenses child care facilities;

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

111 8. Is seeking to be licensed by the Division of Insurance
 112 Agent and Agency Services within the Department of Financial
 113 Services;

114 9. Is seeking to be appointed as a guardian pursuant to s.
 115 744.3125; or

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

121 (b) Subject to the exceptions in paragraph (a), a person
 122 who has been granted a sealing under this section, s. 943.0586,
 123 former s. 893.14, former s. 901.33, or former s. 943.058 may not
 124 be held under any provision of law of this state to commit
 125 perjury or to be otherwise liable for giving a false statement

126 | by reason of such person's failure to recite or acknowledge a
127 | sealed criminal history record.

128 | (c) Information relating to the existence of a sealed
129 | criminal record provided in accordance with the provisions of
130 | paragraph (a) is confidential and exempt from the provisions of
131 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
132 | except that the department shall disclose the sealed criminal
133 | history record to the entities set forth in subparagraphs (a)1.,
134 | 4., 5., 6., 8., 9., and 10. for their respective licensing,
135 | access authorization, and employment purposes. An employee of an
136 | entity set forth in subparagraph (a)1., subparagraph (a)4.,
137 | subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
138 | subparagraph (a)9., or subparagraph (a)10. may not disclose
139 | information relating to the existence of a sealed criminal
140 | history record of a person seeking employment, access
141 | authorization, or licensure with such entity or contractor,
142 | except to the person to whom the criminal history record relates
143 | or to persons having direct responsibility for employment,
144 | access authorization, or licensure decisions. A person who
145 | violates the provisions of this paragraph commits a misdemeanor
146 | of the first degree, punishable as provided in s. 775.082 or s.
147 | 775.083.

148 | (d) The expansion of the public records exemption under
149 | this subsection to include records sealed administratively under
150 | s. 943.0586 is subject to the Open Government Sunset Review Act

151 in accordance with s. 119.15 and shall stand repealed on October
152 2, 2023, unless reviewed and saved from repeal through
153 reenactment by the Legislature. If the expansion of the
154 exemption is not saved from repeal, this subsection shall revert
155 to that in existence on June 30, 2018, except that any
156 amendments to such text other than by this act shall be
157 preserved and continue to operate to the extent that such
158 amendments are not dependent upon the portions of text which
159 expire pursuant to this paragraph.

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

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176 | is a public necessity that the criminal history records of
177 | minors which have been administratively sealed be confidential
178 | and exempt from public records requirements.

179 | Section 3. This act shall take effect on the same date
180 | that HB 919 or similar legislation takes effect, if such
181 | legislation is adopted in the same legislative session or an
182 | extension thereof and becomes law.