

**By** the Committee on Criminal Justice; and Senators Brandes, Rouson, and Bracy

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1                                   A bill to be entitled  
2       An act relating to sentencing; creating s. 322.3401,  
3       F.S.; providing legislative intent; defining terms;  
4       requiring certain persons convicted of driving while  
5       license suspended, revoked, canceled, or disqualified  
6       committed before a specified date to be sentenced in a  
7       specified manner in accordance with the amendments in  
8       chapter 2019-167, Laws of Florida; requiring  
9       resentencing for persons who committed such violations  
10      before a specified date and are serving terms of  
11      imprisonment or supervision; specifying the procedures  
12      for such resentencing; requiring outstanding fines,  
13      fees, and costs to be waived; requiring certain  
14      persons convicted of driving while license suspended,  
15      revoked, canceled, or disqualified to have such  
16      conviction treated as a misdemeanor for specified  
17      purposes; creating s. 943.0587, F.S.; defining terms;  
18      providing that persons who meet specified criteria are  
19      eligible to petition a court to expunge a criminal  
20      history record for convictions of driving while  
21      license suspended, revoked, canceled, or disqualified;  
22      requiring such persons to apply to the Department of  
23      Law Enforcement for a certificate of eligibly for  
24      expunction; requiring the department to adopt rules;  
25      requiring the department to issue such certificates if  
26      specified conditions are met; providing for the  
27      timeframe during which a certificate is valid;  
28      providing requirements for such petitions; providing  
29      criminal penalties; providing court procedures

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30 relating to a petition to expunge; providing for the  
31 effects of expunction orders; providing effective  
32 dates.

33  
34 Be It Enacted by the Legislature of the State of Florida:

35  
36 Section 1. Section 322.3401, Florida Statutes, is created  
37 to read:

38 322.3401 Retroactive application relating to s. 322.34;  
39 legislative intent; prohibiting certain sentences for specified  
40 offenses; resentencing procedures.-

41 (1) It is the intent of the Legislature to retroactively  
42 apply section 12 of chapter 2019-167, Laws of Florida, only as  
43 provided in this section, to persons who committed driving while  
44 license suspended, revoked, canceled, or disqualified before  
45 October 1, 2019, the effective date of section 12 of chapter  
46 2019-167, Laws of Florida, which amended s. 322.34 to modify  
47 criminal penalties and collateral consequences for offenses  
48 under that section.

49 (2) As used in this section, the term:

50 (a) "Former s. 322.34" is a reference to s. 322.34 as it  
51 existed at any time before its amendment by chapter 2019-167,  
52 Laws of Florida.

53 (b) "New s. 322.34" is a reference to s. 322.34 as it  
54 exists after the amendments made by chapter 2019-167, Laws of  
55 Florida, became effective.

56 (3) (a) A person who committed driving while license  
57 suspended, revoked, canceled, or disqualified before October 1,  
58 2019, but who was not sentenced under former s. 322.34 before

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59 October 1, 2020, the effective date of this act, must be  
60 sentenced in accordance with s. 775.082, s. 775.083, or s.  
61 775.084 for the degree of offense as provided for in the new s.  
62 322.34.

63 (b) A person who committed driving while license suspended,  
64 revoked, canceled, or disqualified before October 1, 2019, who  
65 was sentenced before October 1, 2019, to a term of imprisonment  
66 or supervision pursuant to former s. 322.34, and who is serving  
67 such penalty on or after October 1, 2020, must be resentenced in  
68 accordance with paragraph (c). The person must be resentenced to  
69 a sentence as provided in s. 775.082, s. 775.083, or s. 775.084.

70 (c) Resentencing under this section must occur in the  
71 following manner:

72 1. A person described in paragraph (b) who is eligible to  
73 request a sentence review hearing pursuant to this section shall  
74 be notified of such eligibility by the facility in which the  
75 person is imprisoned or the entity who is supervising the  
76 person.

77 2. A person seeking a sentence review hearing under this  
78 section must submit an application to the court of original  
79 jurisdiction requesting such hearing to be conducted. Such  
80 request by the person serves to initiate the procedures provided  
81 for in this section. The sentencing court shall retain original  
82 jurisdiction for the duration of the sentence for this purpose.

83 3. A person who is eligible for a sentence review hearing  
84 under this section is entitled to be represented by counsel, and  
85 the court shall appoint a public defender to represent the  
86 person if he or she cannot afford an attorney.

87 4. Upon receiving an application from the eligible person,

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88 the court of original jurisdiction shall hold a sentence review  
89 hearing to determine if the eligible person meets the criteria  
90 for resentencing under this section. If the court determines at  
91 the sentence review hearing that the eligible person meets the  
92 criteria in this section for resentencing, the court must  
93 resentence the person as provided in this section; however, the  
94 new sentence may not exceed the person's original sentence with  
95 credit for time served. If the court determines that such person  
96 does not meet the criteria for resentencing under this section,  
97 the court must provide written reasons why such person does not  
98 meet such criteria.

99 (4) Notwithstanding any other law, a person who has been  
100 convicted of a felony under former s. 322.34 and whose offense  
101 would not be classified as a felony under the new s. 322.34,  
102 must have all outstanding fines, fees, and costs related to such  
103 felony conviction waived. In addition, such person must be  
104 treated as if he or she had been convicted of a misdemeanor  
105 violation of s. 322.34 for purposes of any right, privilege,  
106 benefit, remedy, or collateral consequence that the person might  
107 be entitled to but for such felony conviction. This provision  
108 does not serve to remove the designation of the person as a  
109 convicted felon. However, the consequences of such felony  
110 conviction that are solely statutory in nature and are imposed  
111 as a result of such conviction shall no longer apply.

112 Section 2. Effective upon the same date that SB 1506 or  
113 similar legislation takes effect, only if such legislation is  
114 adopted in the same legislative session or an extension thereof  
115 and becomes a law, section 943.0587, Florida Statutes, is  
116 created to read:

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117 943.0587 Driving while license suspended, revoked,  
118 canceled, or disqualified expunction.-

119 (1) DEFINITIONS.-As used in this section, the term:

120 (a) "Former s. 322.34" is a reference to s. 322.34 as it  
121 existed at any time before its amendment by chapter 2019-167,  
122 Laws of Florida.

123 (b) "New s. 322.34" is a reference to s. 322.34 as it  
124 exists after the amendments made by chapter 2019-167, Laws of  
125 Florida, became effective.

126 (c) "Expunction" has the same meaning ascribed in and  
127 effect as s. 943.0585.

128 (2) ELIGIBILITY.-Notwithstanding any other law, a person is  
129 eligible to petition a court to expunge a criminal history  
130 record for a conviction under former s. 322.34 if:

131 (a) The person received a withholding of adjudication or  
132 adjudication of guilt for a violation of former s. 322.34 for  
133 driving while license suspended, revoked, canceled, or  
134 disqualified and whose conviction would not be classified as a  
135 felony under new s. 322.34; and

136 (b) The person has never been convicted of a felony other  
137 than for the felony offenses of the former s. 322.34 for driving  
138 while license suspended, revoked, canceled, or disqualified.

139 (3) CERTIFICATE OF ELIGIBILITY.-Before petitioning a court  
140 to expunge a criminal history record under this section, a  
141 person seeking to expunge a criminal history record must apply  
142 to the department for a certificate of eligibility for  
143 expunction. The department shall adopt rules to establish  
144 procedures for applying for and issuing a certificate of  
145 eligibility for expunction.

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146 (a) The department shall issue a certificate of eligibility  
147 for expunction to a person who is the subject of a criminal  
148 history record under this section if that person:

149 1. Satisfies the eligibility criteria in subsection (2);

150 2. Has submitted to the department a written certified  
151 statement from the appropriate state attorney or statewide  
152 prosecutor which confirms the criminal history record complies  
153 with the criteria in subsection (2);

154 3. Has submitted to the department a certified copy of the  
155 disposition of the charge to which the petition to expunge  
156 pertains; and

157 4. Remits a \$75 processing fee to the department for  
158 placement in the Department of Law Enforcement Operating Trust  
159 Fund, unless the executive director waives such fee.

160 (b) A certificate of eligibility for expunction is valid  
161 for 12 months after the date stamped on the certificate when  
162 issued by the department. After that time, the petitioner must  
163 reapply to the department for a new certificate of eligibility.  
164 The petitioner's status and the law in effect at the time of the  
165 renewal application determine the petitioner's eligibility.

166 (4) PETITION.—Each petition to expunge a criminal history  
167 record must be accompanied by the following:

168 (a) A valid certificate of eligibility issued by the  
169 department.

170 (b) The petitioner's sworn statement that he or she:

171 1. Satisfies the eligibility requirements for expunction in  
172 subsection (2); and

173 2. Is eligible for expunction to the best of his or her  
174 knowledge.

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175 (5) PENALTIES.—A person who knowingly provides false  
176 information on such sworn statement commits a felony of the  
177 third degree, punishable as provided in s. 775.082, s. 775.083,  
178 or s. 775.084.

179 (6) COURT AUTHORITY.—

180 (a) The courts of this state have jurisdiction over their  
181 own procedures, including the maintenance, expunction, and  
182 correction of judicial records containing criminal history  
183 information to the extent that such procedures are not  
184 inconsistent with the conditions, responsibilities, and duties  
185 established by this section.

186 (b) A court of competent jurisdiction shall order a  
187 criminal justice agency to expunge the criminal history record  
188 of a person who complies with the requirements of this section.  
189 The court may not order a criminal justice agency to expunge a  
190 criminal history record under this section until the person  
191 seeking to expunge a criminal history record has applied for and  
192 received a certificate of eligibility under subsection (3).

193 (c) Expunction granted under this section does not prevent  
194 the person who receives such relief from petitioning for the  
195 expunction or sealing of a later criminal history record as  
196 provided for in ss. 943.0583, 943.0585, and 943.059, if the  
197 person is otherwise eligible under those sections.

198 (7) PROCESSING OF A PETITION OR AN ORDER.—

199 (a) In a judicial proceeding under this section, a copy of  
200 the completed petition to expunge shall be served upon the  
201 appropriate state attorney or the statewide prosecutor and upon  
202 the arresting agency; however, it is not necessary to make any  
203 agency other than the state a party. The appropriate state

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204 attorney or the statewide prosecutor and the arresting agency  
205 may respond to the court regarding the completed petition to  
206 expunge.

207 (b) If relief is granted by the court, the clerk of the  
208 court shall certify copies of the order to the appropriate state  
209 attorney or the statewide prosecutor and the arresting agency.  
210 The arresting agency shall forward the order to any other agency  
211 to which the arresting agency disseminated the criminal history  
212 record information to which the order pertains. The department  
213 shall forward the order to expunge to the Federal Bureau of  
214 Investigation. The clerk of the court shall certify a copy of  
215 the order to any other agency which the records of the court  
216 reflect has received the criminal history record from the court.

217 (c) The department or any other criminal justice agency is  
218 not required to act on an order to expunge entered by a court  
219 when such order does not comply with the requirements of this  
220 section. Upon receipt of such an order, the department must  
221 notify the issuing court, the appropriate state attorney or  
222 statewide prosecutor, the petitioner or the petitioner's  
223 attorney, and the arresting agency of the reason for  
224 noncompliance. The appropriate state attorney or statewide  
225 prosecutor shall take action within 60 days to correct the  
226 record and petition the court to void the order. No cause of  
227 action, including contempt of court, shall arise against any  
228 criminal justice agency for failure to comply with an order to  
229 expunge when the petitioner for such order failed to obtain the  
230 certificate of eligibility as required by this section or such  
231 order does not otherwise comply with the requirements of this  
232 section.



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233 (8) EFFECT OF EXPUNCTION ORDER.—

234 (a) The person who is the subject of a criminal history  
235 record that is expunged under this section may lawfully deny or  
236 fail to acknowledge the arrests and convictions covered by the  
237 expunged record, except when the subject of the record:

238 1. Is a candidate for employment with a criminal justice  
239 agency;

240 2. Is a defendant in a criminal prosecution;

241 3. Concurrently or subsequently petitions for relief under  
242 this section, s. 943.0583, s. 943.0585, or s. 943.059;

243 4. Is a candidate for admission to The Florida Bar;

244 5. Is seeking to be employed or licensed by or to contract  
245 with the Department of Children and Families, the Division of  
246 Vocational Rehabilitation of the Department of Education, the  
247 Agency for Health Care Administration, the Agency for Persons  
248 with Disabilities, the Department of Health, the Department of  
249 Elderly Affairs, or the Department of Juvenile Justice or to be  
250 employed or used by such contractor or licensee in a sensitive  
251 position having direct contact with children, the disabled, or  
252 the elderly;

253 6. Is seeking to be employed or licensed by the Department  
254 of Education, any district school board, any university  
255 laboratory school, any charter school, any private or parochial  
256 school, or any local governmental entity that licenses child  
257 care facilities;

258 7. Is seeking to be licensed by the Division of Insurance  
259 Agent and Agency Services within the Department of Financial  
260 Services; or

261 8. Is seeking to be appointed as a guardian pursuant to s.

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262 744.3125.

263 (b) Subject to the exceptions in paragraph (a), a person  
264 who has been granted an expunction under this section may not be  
265 held under any law of this state to commit perjury or to be  
266 otherwise liable for giving a false statement by reason of such  
267 person's failure to recite or acknowledge an expunged criminal  
268 history record.

269 Section 3. Except as otherwise expressly provided in this  
270 act, this act shall take effect October 1, 2020.