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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 943.0586 is created to read:

943.0586 Expunction of criminal history records relating to
qualifying cannabis offenses.—

(1) ELIGIBILITY.—A person is eligible to petition a court
to expunge a criminal history record under this section if all
of the following apply:

(a) The person was arrested or given a notice to appear for



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12 a misdemeanor offense for obtaining, purchasing, or possessing
13 20 grams or less of cannabis, regardless of disposition.

14 (b) The person was not convicted of, or did not pled no
15 contest to, a contemporaneous offense other than the misdemeanor
16 offense for obtaining, purchasing, or possessing 20 grams or
17 less of cannabis.

18 (c) At least one year has elapsed since the disposition of
19 the arrest or alleged criminal activity to which the petition to
20 expunge pertains.

21 (d) The person is no longer under court supervision
22 applicable to the disposition of the arrest or alleged criminal
23 activity to which the petition to expunge pertains.

24 (e) The person has not previously been granted relief under
25 this section.

26 (2) CERTIFICATE OF ELIGIBILITY.—Before petitioning a court
27 to expunge a criminal history record, a person seeking to
28 expunge a criminal history record must apply to the department
29 for a certificate of eligibility for expunction. The department
30 shall adopt rules to establish procedures for applying for and
31 issuing a certificate of eligibility for expunction.

32 (a) The department shall issue a certificate of eligibility
33 for expunction to a person who is the subject of a criminal
34 history record if that person:

35 1. Satisfies the eligibility criteria in paragraphs (1) (a)–
36 (e) and is not ineligible under s. 943.0584.

37 2. Has submitted to the department a written certified
38 statement from the appropriate state attorney or statewide
39 prosecutor which confirms the criminal history record complies
40 with the criteria in paragraphs (1) (a) through (1) (d).



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41 3. Has submitted to the department a certified copy of the
42 disposition of the charge to which the petition to expunge
43 pertains.

44 4. Remits a processing fee, equal to that fee charged
45 pursuant to s. 943.0585(2)(a)4., to the department for placement
46 in the Department of Law Enforcement Operating Trust Fund,
47 unless the executive director waives such fee.

48 (b) A certificate of eligibility for expunction is valid
49 for 12 months after the date stamped on the certificate when
50 issued by the department. After that time, the petitioner must
51 reapply to the department for a new certificate of eligibility.
52 The petitioner's status and the law in effect at the time of the
53 renewal application determine the petitioner's eligibility.

54 (3) PETITION.—Each petition to expunge a criminal history
55 record must be accompanied by:

56 (a) A valid certificate of eligibility issued by the
57 department.

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

59 1. Satisfies the eligibility requirements for expunction in
60 subsection (1).

61 2. Is eligible for expunction to the best of his or her
62 knowledge and does not have any other petition to seal or
63 expunge a criminal history record pending before any court.

64
65 A person who knowingly provides false information on such sworn
66 statement commits a felony of the third degree, punishable as
67 provided in s. 775.082, s. 775.083, or s. 775.084.

68 (4) COURT AUTHORITY.—

69 (a) The courts of this state have jurisdiction over their



70 own procedures, including the maintenance, expunction, and
71 correction of judicial records containing criminal history
72 information to the extent that such procedures are not
73 inconsistent with the conditions, responsibilities, and duties
74 established by this section.

75 (b) A court of competent jurisdiction may order a criminal
76 justice agency to expunge the criminal history record of a minor
77 or an adult who complies with the requirements of this section.
78 The court may not order a criminal justice agency to expunge a
79 criminal history record until the person seeking to expunge a
80 criminal history record has applied for and received a
81 certificate of eligibility under subsection (2).

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

96 (d) This section does not confer any right to expunction of
97 any criminal history record, and any request for expunction of a
98 criminal history record may be denied at the sole discretion of



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99 the court.

100 (5) PROCESSING OF A PETITION OR AN ORDER.—

101 (a) In judicial proceedings under this section, a copy of
102 the completed petition to expunge shall be served upon the
103 appropriate state attorney or the statewide prosecutor and upon
104 the arresting agency; however, it is not necessary to make any
105 agency other than the state a party. The appropriate state
106 attorney or the statewide prosecutor and the arresting agency
107 may respond to the court regarding the completed petition to
108 expunge.

109 (b) If relief is granted by the court, the clerk of the
110 court shall certify copies of the order to the appropriate state
111 attorney or the statewide prosecutor and the arresting agency.
112 The arresting agency shall forward the order to any other agency
113 to which the arresting agency disseminated the criminal history
114 record information to which the order pertains. The department
115 shall forward the order to expunge to the Federal Bureau of
116 Investigation. The clerk of the court shall certify a copy of
117 the order to any other agency which the records of the court
118 reflect has received the criminal history record from the court.

119 (c) The department or any other criminal justice agency is
120 not required to act on an order to expunge entered by a court
121 when such order does not comply with the requirements of this
122 section. Upon receipt of such an order, the department must
123 notify the issuing court, the appropriate state attorney or
124 statewide prosecutor, the petitioner or the petitioner's
125 attorney, and the arresting agency of the reason for
126 noncompliance. The appropriate state attorney or statewide
127 prosecutor shall take action within 60 days to correct the



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128 record and petition the court to void the order. No cause of
129 action, including contempt of court, shall arise against any
130 criminal justice agency for failure to comply with an order to
131 expunge when the petitioner for such order failed to obtain the
132 certificate of eligibility as required by this section or such
133 order does not otherwise comply with the requirements of this
134 section.

135 (6) EFFECT OF EXPUNCTION ORDER.—

136 (a) The person who is the subject of a criminal history
137 record that is expunged under this section, may lawfully deny or
138 fail to acknowledge the arrests and notices to appear covered by
139 the expunged record, except when the subject of the record:

140 1. Is a candidate for employment with a criminal justice
141 agency;

142 2. Is a defendant in a criminal prosecution;

143 3. Is a candidate for admission to The Florida Bar;

144 4. Is seeking to be employed or licensed by or to contract
145 with the Department of Children and Families, the Division of
146 Vocational Rehabilitation within the Department of Education,
147 the Agency for Health Care Administration, the Agency for
148 Persons with Disabilities, the Department of Health, the
149 Department of Elderly Affairs, or the Department of Juvenile
150 Justice or to be employed or used by such contractor or licensee
151 in a sensitive position having direct contact with children, the
152 disabled, or the elderly;

153 5. Is seeking to be employed or licensed by the Department
154 of Education, any district school board, any university
155 laboratory school, any charter school, any private or parochial
156 school, or any local governmental entity that licenses child



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157 care facilities;

158 6. Is seeking to be licensed by the Division of Insurance
159 Agent and Agency Services within the Department of Financial
160 Services; or

161 7. Is seeking to be appointed as a guardian pursuant to s.
162 744.3125.

163 (b) Subject to the exceptions in paragraph (a), a person
164 who has been granted an expunction under this section may not be
165 held under any provision of law of this state to commit perjury
166 or to be otherwise liable for giving a false statement by reason
167 of such person's failure to recite or acknowledge an expunged
168 criminal history record.

169 (7) RELATION TO OTHER LAWS ON EXPUNCTION OR SEALING.-
170 Expunction or sealing granted under this section does not
171 prevent the person who receives such relief from petitioning for
172 the expunction or sealing of a criminal history record as
173 provided for in ss. 943.0583, 943.0585, and 943.059, if the
174 person is otherwise eligible under those sections.

175
176 ===== T I T L E A M E N D M E N T =====

177 And the title is amended as follows:

178 Delete everything before the enacting clause
179 and insert:

180 A bill to be entitled
181 An act relating to expunction of criminal history
182 records relating to certain cannabis offenses;
183 creating s. 943.0586, F.S.; providing for eligibility;
184 requiring a petitioner to obtain a certificate of
185 eligibility from the Department of Law Enforcement;



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186 providing application requirements and contents of a
187 certificate; requiring a petition to expunge;
188 providing contents of a petition; providing court
189 procedures for expungement; providing that the subject
190 of an expungement order may lawfully deny the arrest;
191 providing exceptions; providing that a petitioner for
192 expunction of certain cannabis offenses does not
193 foreclose the petitioner from applying to seal or
194 expunge other criminal arrests; providing an effective
195 date.