

1 A bill to be entitled

2 An act relating to court-ordered expunction of
3 criminal history records; amending s. 943.0582, F.S.;
4 allowing minors who have certain felony arrests to
5 have the Department of Law Enforcement expunge their
6 nonjudicial arrest records upon successful completion
7 of a prearrest or postarrest diversion program;
8 extending the application submission date for minors
9 who completed the program before a certain date;
10 amending s. 943.0585, F.S.; revising the information
11 that must be provided in the written statement from
12 the state attorney or statewide prosecutor in order
13 for a person to be eligible for a criminal history
14 record expunction; revising when a certificate of
15 eligibility for expunction shall be issued;
16 authorizing the Department of Law Enforcement to enter
17 certain expunged records in specified databases;
18 requiring the Department of Law Enforcement to
19 disclose certain expunged records to specified
20 governmental entities; providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraphs (c), (e), and (f) of subsection (3)
25 of section 943.0582, Florida Statutes, are amended, present
26 subsection (5) is renumbered as subsection (6), and a new

27 subsection (5) is added to that section, to read:

28 943.0582 Prearrest, postarrest, or teen court diversion
 29 program expunction.—

30 (3) The department shall expunge the nonjudicial arrest
 31 record of a minor who has successfully completed a prearrest or
 32 postarrest diversion program if that minor:

33 (c) Submits to the department, with the application, an
 34 official written statement from the state attorney for the
 35 county in which the arrest occurred certifying that he or she
 36 has successfully completed that county's prearrest or postarrest
 37 diversion program;7 that his or her participation in the program
 38 was based on an arrest for a nonviolent misdemeanor, or for a
 39 felony that does not relate to a violation of s. 393.135, s.
 40 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
 41 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
 42 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a
 43 violation enumerated in s. 907.041, or any violation specified
 44 as a predicate offense for registration as a sexual predator
 45 pursuant to s. 775.21, without regard to whether that offense
 46 alone is sufficient to require such registration, or for
 47 registration as a sexual offender pursuant to s. 943.0435; and
 48 that he or she has not otherwise been charged with or found to
 49 have committed any criminal offense or comparable ordinance
 50 violation.

51 ~~(c) Participated in a prearrest or postarrest diversion~~
 52 ~~program based on an arrest for a nonviolent misdemeanor that~~

53 ~~would not qualify as an act of domestic violence as that term is~~
54 ~~defined in s. 741.28.~~

55 (e) ~~(f)~~ Has never, prior to filing the application for
56 expunction, been charged with or been found to have committed
57 any criminal offense or comparable ordinance violation.

58 (5) In the case of a minor whose completion of the program
59 occurred before July 1, 2014, the application for prearrest or
60 postarrest diversion expunction must be submitted within 6
61 months after July 1, 2014.

62 Section 2. Paragraphs (a) and (h) of subsection (2) and
63 subsection (4) of section 943.0585, Florida Statutes, are
64 amended to read:

65 943.0585 Court-ordered expunction of criminal history
66 records.—The courts of this state have jurisdiction over their
67 own procedures, including the maintenance, expunction, and
68 correction of judicial records containing criminal history
69 information to the extent such procedures are not inconsistent
70 with the conditions, responsibilities, and duties established by
71 this section. Any court of competent jurisdiction may order a
72 criminal justice agency to expunge the criminal history record
73 of a minor or an adult who complies with the requirements of
74 this section. The court shall not order a criminal justice
75 agency to expunge a criminal history record until the person
76 seeking to expunge a criminal history record has applied for and
77 received a certificate of eligibility for expunction pursuant to
78 subsection (2). A criminal history record that relates to a

79 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
80 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
81 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
82 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
83 any violation specified as a predicate offense for registration
84 as a sexual predator pursuant to s. 775.21, without regard to
85 whether that offense alone is sufficient to require such
86 registration, or for registration as a sexual offender pursuant
87 to s. 943.0435, may not be expunged, without regard to whether
88 adjudication was withheld, if the defendant was found guilty of
89 or pled guilty or nolo contendere to the offense, or if the
90 defendant, as a minor, was found to have committed, or pled
91 guilty or nolo contendere to committing, the offense as a
92 delinquent act. The court may only order expunction of a
93 criminal history record pertaining to one arrest or one incident
94 of alleged criminal activity, except as provided in this
95 section. The court may, at its sole discretion, order the
96 expunction of a criminal history record pertaining to more than
97 one arrest if the additional arrests directly relate to the
98 original arrest. If the court intends to order the expunction of
99 records pertaining to such additional arrests, such intent must
100 be specified in the order. A criminal justice agency may not
101 expunge any record pertaining to such additional arrests if the
102 order to expunge does not articulate the intention of the court
103 to expunge a record pertaining to more than one arrest. This
104 section does not prevent the court from ordering the expunction

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

107 Notwithstanding any law to the contrary, a criminal justice
108 agency may comply with laws, court orders, and official requests
109 of other jurisdictions relating to expunction, correction, or
110 confidential handling of criminal history records or information
111 derived therefrom. This section does not confer any right to the
112 expunction of any criminal history record, and any request for
113 expunction of a criminal history record may be denied at the
114 sole discretion of the court.

115 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
116 petitioning the court to expunge a criminal history record, a
117 person seeking to expunge a criminal history record shall apply
118 to the department for a certificate of eligibility for
119 expunction. The department shall, by rule adopted pursuant to
120 chapter 120, establish procedures pertaining to the application
121 for and issuance of certificates of eligibility for expunction.
122 A certificate of eligibility for expunction is valid for 12
123 months after the date stamped on the certificate when issued by
124 the department. After that time, the petitioner must reapply to
125 the department for a new certificate of eligibility. Eligibility
126 for a renewed certification of eligibility must be based on the
127 status of the applicant and the law in effect at the time of the
128 renewal application. The department shall issue a certificate of
129 eligibility for expunction to a person who is the subject of a
130 criminal history record if that person:

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

134 1. That an indictment, information, or other charging
135 document was not filed or issued in the case.

136 2. That an indictment, information, or other charging
137 document, if filed or issued in the case, was dismissed or nolle
138 prosequed ~~prosequi~~ by the state attorney or statewide
139 prosecutor, or was dismissed by a court of competent
140 jurisdiction, or a judge or jury rendered a verdict of not
141 guilty. The records of a person adjudicated not guilty by reason
142 of insanity are not eligible for expunction under this section
143 ~~and that none of the charges related to the arrest or alleged~~
144 ~~criminal activity to which the petition to expunge pertains~~
145 ~~resulted in a trial, without regard to whether the outcome of~~
146 ~~the trial was other than an adjudication of guilt.~~

147 3. That the criminal history record does not relate to a
148 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
149 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
150 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
151 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
152 any violation specified as a predicate offense for registration
153 as a sexual predator pursuant to s. 775.21, without regard to
154 whether that offense alone is sufficient to require such
155 registration, or for registration as a sexual offender pursuant
156 to s. 943.0435, where the defendant was found guilty of, or pled

157 | guilty or nolo contendere to any such offense, or that the
 158 | defendant, as a minor, was found to have committed, or pled
 159 | guilty or nolo contendere to committing, such an offense as a
 160 | delinquent act, without regard to whether adjudication was
 161 | withheld.

162 | (h) Has previously obtained a court order sealing the
 163 | record under this section, former s. 893.14, former s. 901.33,
 164 | or former s. 943.058 for a minimum of 10 years because
 165 | adjudication was withheld ~~or because all charges related to the~~
 166 | ~~arrest or alleged criminal activity to which the petition to~~
 167 | ~~expunge pertains were not dismissed prior to trial, without~~
 168 | ~~regard to whether the outcome of the trial was other than an~~
 169 | ~~adjudication of guilt.~~ The requirement for the record to have
 170 | previously been sealed for a minimum of 10 years does not apply
 171 | when a plea was not entered, when ~~or~~ all charges related to the
 172 | arrest or alleged criminal activity to which the petition to
 173 | expunge pertains were dismissed prior to trial, or when a judge
 174 | or jury rendered a verdict of not guilty. The records of a
 175 | person adjudicated not guilty by reason of insanity are not
 176 | eligible for expunction under this section.

177 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 178 | criminal history record of a minor or an adult which is ordered
 179 | expunged by a court of competent jurisdiction pursuant to this
 180 | section must be physically destroyed or obliterated by any
 181 | criminal justice agency having custody of such record; except
 182 | that any criminal history record in the custody of the

183 department must be retained in all cases. A criminal history
184 record ordered expunged that is retained by the department is
185 confidential and exempt from the provisions of s. 119.07(1) and
186 s. 24(a), Art. I of the State Constitution and not available to
187 any person or entity except upon order of a court of competent
188 jurisdiction. A criminal justice agency may retain a notation
189 indicating compliance with an order to expunge. If a person is
190 incompetent to stand trial, the expunction of the criminal
191 history record does not prevent entry of the finding in state
192 and national databases for use in determining eligibility to
193 purchase or possess a firearm or to carry a concealed firearm,
194 as authorized in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t),
195 nor shall it prevent a governmental agency that is authorized by
196 state or federal law to determine eligibility to purchase or
197 possess a firearm or to carry a concealed firearm from accessing
198 or using the record of the finding in the course of such
199 agency's official duties.

200 (a) The person who is the subject of a criminal history
201 record that is expunged under this section or under other
202 provisions of law, including former s. 893.14, former s. 901.33,
203 and former s. 943.058, may lawfully deny or fail to acknowledge
204 the arrests covered by the expunged record, except when the
205 subject of the record:

- 206 1. Is a candidate for employment with a criminal justice
207 agency;
- 208 2. Is a defendant in a criminal prosecution;

209 3. Concurrently or subsequently petitions for relief under
210 this section, s. 943.0583, or s. 943.059;

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

212 5. Is seeking to be employed or licensed by or to contract
213 with the Department of Children and Families, the Division of
214 Vocational Rehabilitation within the Department of Education,
215 the Agency for Health Care Administration, the Agency for
216 Persons with Disabilities, the Department of Health, the
217 Department of Elderly Affairs, or the Department of Juvenile
218 Justice or to be employed or used by such contractor or licensee
219 in a sensitive position having direct contact with children, the
220 disabled, or the elderly; or

221 6. Is seeking to be employed or licensed by the Department
222 of Education, any district school board, any university
223 laboratory school, any charter school, any private or parochial
224 school, or any local governmental entity that licenses child
225 care facilities.

226 (b) Subject to the exceptions in paragraph (a), a person
227 who has been granted an expunction under this section, former s.
228 893.14, former s. 901.33, or former s. 943.058 may not be held
229 under any provision of law of this state to commit perjury or to
230 be otherwise liable for giving a false statement by reason of
231 such person's failure to recite or acknowledge an expunged
232 criminal history record.

233 (c) Information relating to the existence of an expunged
234 criminal history record which is provided in accordance with

235 paragraph (a) is confidential and exempt from the provisions of
236 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
237 except that the department shall disclose the existence of a
238 criminal history record ordered expunged to the entities set
239 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
240 respective licensing, access authorization, and employment
241 purposes, and to criminal justice agencies for their respective
242 criminal justice purposes, and with respect to a governmental
243 agency that is authorized by state or federal law to determine
244 eligibility to purchase or possess a firearm or to carry a
245 concealed firearm, the department shall disclose the record of a
246 finding of incompetence to stand trial for use in the course of
247 such agency's official duties. It is unlawful for any employee
248 of an entity set forth in subparagraph (a)1., subparagraph
249 (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph
250 (a)7. to disclose information relating to the existence of an
251 expunged criminal history record of a person seeking employment,
252 access authorization, or licensure with such entity or
253 contractor, except to the person to whom the criminal history
254 record relates or to persons having direct responsibility for
255 employment, access authorization, or licensure decisions. Any
256 person who violates this paragraph commits a misdemeanor of the
257 first degree, punishable as provided in s. 775.082 or s.
258 775.083.

259 Section 3. This act shall take effect July 1, 2014.