

HB 7079

2016

1 A bill to be entitled
2 An act relating to public records; amending s.
3 943.0585, F.S.; providing an exemption from public
4 records requirements for an adult's or minor's
5 criminal history records related to a not-guilty
6 verdict that have been expunged pursuant to s.
7 943.0585, F.S.; providing for future legislative
8 review and repeal of the exemption; amending s.
9 943.059, F.S.; providing an exemption from public
10 records requirements for an adult's or minor's record
11 related to a withhold of adjudication or nonviolent
12 misdemeanor conviction that has been sealed pursuant
13 to s. 943.059, F.S.; providing for future legislative
14 review and repeal of the exemption; amending s.
15 943.0595, F.S.; providing an exemption from public
16 records requirements for an adult's or minor's
17 specified records that have been approved for
18 nonjudicial sealing pursuant to s. 943.0595, F.S.;
19 providing for future legislative review and repeal of
20 the exemption; amending s. 943.0582, F.S.; conforming
21 cross-references; providing a statement of public
22 necessity; providing a contingent effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Paragraphs (b), (c), and (d) of subsection (7)

27 of section 943.0585, Florida Statutes, as amended by HB 7077,
 28 are redesignated as paragraphs (c), (d), and (f), respectively,
 29 new paragraphs (b) and (e) are added to that subsection, and
 30 present paragraph (c) of that subsection is amended, to read:

31 943.0585 Court-ordered expunction of criminal history
 32 records.—

33 (7) EFFECT.—

34 (b) A criminal history record that is ordered expunged and
 35 that is retained by the department is confidential and exempt
 36 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
 37 State Constitution and is not available to any person or entity
 38 except upon order of a court of competent jurisdiction. A
 39 criminal justice agency may retain a notation indicating
 40 compliance with an order to expunge. This paragraph is subject
 41 to the Open Government Sunset Review Act in accordance with s.
 42 119.15 and shall stand repealed on October 2, 2021, unless
 43 reviewed and saved from repeal through reenactment by the
 44 Legislature.

45 (d)(e) Subject to the exceptions in paragraph (c) ~~(b)~~, a
 46 person who has been granted an expunction under this section,
 47 former s. 893.14, former s. 901.33, or former s. 943.058 may not
 48 be held under a law of this state to commit perjury or to be
 49 otherwise liable for giving a false statement by reason of such
 50 person's failure to recite or acknowledge an expunged criminal
 51 history record.

52 (e) Information relating to the existence of an expunged

53 criminal history record which is provided in accordance with
54 paragraph (c) is confidential and exempt from the provisions of
55 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

56 1. The existence of a confidential and exempt criminal
57 history record expunged under this section may be disclosed by
58 the department to the entities set forth in subparagraphs (c)1.,
59 4., 5., 6., 7., and 8. for their respective licensing, access
60 authorization, and employment purposes, and to criminal justice
61 agencies for their respective criminal justice purposes. It is
62 unlawful for an employee of an entity set forth in subparagraph
63 (c)1., subparagraph (c)4., subparagraph (c)5., subparagraph
64 (c)6., subparagraph (c)7., or subparagraph(c)8. to disclose
65 information relating to the existence of an expunged criminal
66 history record of a person seeking employment, access
67 authorization, or licensure with such entity or contractor,
68 except to the person to whom the criminal history record relates
69 or to a person having direct responsibility for employment,
70 access authorization, or licensure decisions.

71 2. A person who violates this paragraph commits a
72 misdemeanor of the first degree, punishable as provided in s.
73 775.082 or s. 775.083.

74 3. This paragraph is subject to the Open Government Sunset
75 Review Act in accordance with s. 119.15 and shall stand repealed
76 on October 2, 2021, unless reviewed and saved from repeal
77 through reenactment by the Legislature.

78 Section 2. Paragraphs (a), (b), and (c) of subsection (7)

79 of section 943.059, Florida Statutes, as amended by HB 7077, are
 80 redesignated as paragraphs (b), (c), and (e), respectively, new
 81 paragraphs (a) and (d) are added to that subsection, and present
 82 paragraph (b) of that subsection is amended, to read:

83 943.059 Court-ordered sealing of criminal history
 84 records.—

85 (7) EFFECT.—

86 (a) A criminal history record that is ordered sealed by a
 87 court is confidential and exempt from the provisions of s.
 88 119.07(1) and s. 24(a), Art. I of the State Constitution.

89 1. A confidential and exempt criminal history record may
 90 be disclosed by the department to:

91 a. The person who is the subject of the record or to the
 92 subject's attorney.

93 b. A criminal justice agency in the furtherance of its
 94 lawful duties and responsibilities, which include conducting a
 95 criminal history background check for approval of firearms
 96 purchases or transfers as authorized by state or federal law.

97 c. A judge in the state courts system for the purpose of
 98 assisting in case-related decisionmaking responsibilities as set
 99 forth in s. 943.053(5).

100 d. Those entities set forth in subparagraphs (c)1., 4.,
 101 5., 6., 8., 9., 10. and 11. for their respective licensing,
 102 access authorization, and employment purposes.

103 2. This paragraph is subject to the Open Government Sunset
 104 Review Act in accordance with s. 119.15 and shall stand repealed

105 on October 2, 2021, unless reviewed and saved from repeal
106 through reenactment by the Legislature.

107 (c)~~(b)~~ Subject to the exceptions in paragraph (b) ~~(a)~~, a
108 person who has been granted a sealing under this section, former
109 s. 893.14, former s. 901.33, or former s. 943.058 may not be
110 held under any provision of law of this state to commit perjury
111 or to be otherwise liable for giving a false statement by reason
112 of such person's failure to recite or acknowledge a sealed
113 criminal history record.

114 (d) Information relating to the existence of a sealed
115 criminal history record which is provided in accordance with
116 paragraph (b) is confidential and exempt from the provisions of
117 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
118 except that the department shall disclose the sealed criminal
119 history record to the entities set forth in subparagraphs (b)1.,
120 4., 5., 6., 8., 9., 10., and 11. for their respective licensing,
121 access authorization, and employment purposes, and to criminal
122 justice agencies for their respective criminal justice purposes.

123 1. It is unlawful for an employee of an entity set forth
124 in subparagraph (b)1., subparagraph (b)4., subparagraph (b)5.,
125 subparagraph (b)6., subparagraph (b)8., subparagraph (b)9.,
126 subparagraph (b)10., or subparagraph (b)11. to disclose
127 information relating to the existence of a sealed criminal
128 history record of a person seeking employment, access
129 authorization, or licensure with such entity or contractor,
130 except to the person to whom the criminal history record relates

131 or to persons having direct responsibility for employment,
132 access authorization, or licensure decisions.

133 2. A person who violates this paragraph commits a
134 misdemeanor of the first degree, punishable as provided in s.
135 775.082 or s. 775.083.

136 3. This paragraph is subject to the Open Government Sunset
137 Review Act in accordance with s. 119.15 and shall stand repealed
138 on October 2, 2021, unless reviewed and saved from repeal
139 through reenactment by the Legislature.

140 Section 3. Subsection (6) of section 943.0595, Florida
141 Statutes, as created by HB 7077, is amended to read:

142 943.0595 Nonjudicial sealing of criminal history records.—

143 (6) EFFECT.—

144 (a) A criminal history record of an adult or a minor
145 described under paragraph (2)(a) which is approved for
146 nonjudicial sealing by the department pursuant to this section
147 is confidential and exempt from the provisions of s. 119.07(1)
148 and s. 24(a), Art. I of the State Constitution.

149 (b) The sealing of a record under this section shall have
150 the same effect, and such record may be disclosed by the
151 department in the same manner, as a record sealed under s.
152 943.059, except that a record sealed under this section shall
153 not be made available to the Department of Highway Safety and
154 Motor Vehicles.

155 (c) This subsection is subject to the Open Government
156 Sunset Review Act in accordance with s. 119.15 and shall stand

157 repealed on October 2, 2021, unless reviewed and saved from
 158 repeal through reenactment by the Legislature.

159 Section 4. Paragraph (a) of subsection (2) of section
 160 943.0582, Florida Statutes, as amended by HB 7077, is amended to
 161 read:

162 943.0582 Prearrest, postarrest, or teen court diversion
 163 program expunction.—

164 (2) (a) As used in this section, the term "expunction" has
 165 the same meaning ascribed in and effect as s. 943.0585, except
 166 that:

167 1. The provisions of s. 943.0585(7)(c) ~~943.0585(7)(b)~~ do
 168 not apply, except that the criminal history record of a person
 169 whose record is expunged pursuant to this section shall be made
 170 available only to criminal justice agencies for the purpose of
 171 determining eligibility for prearrest, postarrest, or teen court
 172 diversion programs; when the record is sought as part of a
 173 criminal investigation; or when the subject of the record is a
 174 candidate for employment with a criminal justice agency. For all
 175 other purposes, a person whose record is expunged under this
 176 section may lawfully deny or fail to acknowledge the arrest and
 177 the charge covered by the expunged record.

178 2. Records maintained by local criminal justice agencies
 179 in the county in which the arrest occurred that are eligible for
 180 expunction pursuant to this section shall be sealed as the term
 181 is used in s. 943.059.

182 Section 5. The Legislature finds that it is a public

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183 necessity that the criminal history records of an adult or minor
184 which have been expunged or sealed be made confidential and
185 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
186 Article I of the State Constitution. Many people whose
187 prosecutions have been abandoned, were found not guilty
188 subsequent to a jury trial, or who have completed any sanctions
189 imposed by the court in the criminal or juvenile justice system
190 have found it difficult to obtain employment. The presence of a
191 criminal history record in these individuals' pasts creates an
192 unnecessary barrier to becoming productive members of society
193 and can jeopardize individuals' ability to achieve a safe
194 livelihood. The Legislature therefore finds that it is in the
195 best interest of the public that persons are given the
196 opportunity to become contributing members of society.

197 Section 6. This act shall take effect on the same date
198 that HB 7077 or similar legislation relating to expunging and
199 sealing of criminal history records takes effect, if such
200 legislation is adopted in the same legislative session or an
201 extension thereof and becomes law.