

1 A bill to be entitled
 2 An act relating to criminal history records;
 3 prohibiting a person or entity engaged in publishing
 4 or disseminating arrest booking photographs from
 5 soliciting or accepting a fee or other payment to
 6 remove the photograph; requiring a person or entity,
 7 within a specified timeframe, to remove an arrest
 8 booking photograph after receipt of a written request;
 9 authorizing a person to bring a civil action to enjoin
 10 such publishing of a photograph; authorizing a court
 11 to impose a civil penalty and award attorney fees and
 12 court costs; providing applicability; amending s.
 13 943.0585, F.S.; revising the elements that must be
 14 attested to by a petitioner in a statement submitted
 15 in support of the expunction of criminal history
 16 records; revising the circumstances under which the
 17 Department of Law Enforcement must issue a certificate
 18 of eligibility for expunction of a criminal history
 19 record; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

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 23 Section 1. (1) Any person or entity engaged in the
 24 business of publishing or otherwise disseminating arrest booking
 25 photographs of persons who have previously been arrested through

26 | a publicly accessible print or electronic medium may not solicit
27 | or accept a fee or other form of payment to remove the
28 | photographs.

29 | (2) Within 10 calendar days of receipt of a written
30 | request for removal of a booking photograph from a person whose
31 | booking photograph is published or otherwise disseminated, or
32 | from his or her legal representative, the person or entity who
33 | published or otherwise disseminated the photograph shall remove
34 | the photograph without charge.

35 | (3) The person whose arrest booking photograph was
36 | published or otherwise disseminated in the publication or
37 | electronic medium may bring a civil action to enjoin the
38 | continued publication or dissemination of the photograph if the
39 | photograph is not removed within 10 calendar days after receipt
40 | of the written request for removal. The court may impose a civil
41 | penalty of \$1,000 per day for noncompliance with an injunction
42 | and shall award reasonable attorney fees and court costs related
43 | to the issuance and enforcement of the injunction. Monies
44 | recovered for civil penalties under this section shall be
45 | deposited into the General Revenue Fund.

46 | (4) Refusal to remove an arrest booking photograph after
47 | written request has been made constitutes an unfair or deceptive
48 | trade practice in accordance with part II of chapter 501.

49 | (5) This section does not apply to any person or entity
50 | that publishes or disseminates information relating to arrest

51 booking photographs unless the person or entity solicits or
 52 accepts payment to remove the photographs.

53 Section 2. Paragraph (b) of subsection (1) and paragraphs
 54 (a) and (d) of subsection (2) of section 943.0585, Florida
 55 Statutes, are amended to read:

56 943.0585 Court-ordered expunction of criminal history
 57 records.—The courts of this state have jurisdiction over their
 58 own procedures, including the maintenance, expunction, and
 59 correction of judicial records containing criminal history
 60 information to the extent such procedures are not inconsistent
 61 with the conditions, responsibilities, and duties established by
 62 this section. Any court of competent jurisdiction may order a
 63 criminal justice agency to expunge the criminal history record
 64 of a minor or an adult who complies with the requirements of
 65 this section. The court shall not order a criminal justice
 66 agency to expunge a criminal history record until the person
 67 seeking to expunge a criminal history record has applied for and
 68 received a certificate of eligibility for expunction pursuant to
 69 subsection (2) or subsection (5). A criminal history record that
 70 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
 71 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
 72 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
 73 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
 74 s. 907.041, or any violation specified as a predicate offense
 75 for registration as a sexual predator pursuant to s. 775.21,

76 | without regard to whether that offense alone is sufficient to
77 | require such registration, or for registration as a sexual
78 | offender pursuant to s. 943.0435, may not be expunged, without
79 | regard to whether adjudication was withheld, if the defendant
80 | was found guilty of or pled guilty or nolo contendere to the
81 | offense, or if the defendant, as a minor, was found to have
82 | committed, or pled guilty or nolo contendere to committing, the
83 | offense as a delinquent act. The court may only order expunction
84 | of a criminal history record pertaining to one arrest or one
85 | incident of alleged criminal activity, except as provided in
86 | this section. The court may, at its sole discretion, order the
87 | expunction of a criminal history record pertaining to more than
88 | one arrest if the additional arrests directly relate to the
89 | original arrest. If the court intends to order the expunction of
90 | records pertaining to such additional arrests, such intent must
91 | be specified in the order. A criminal justice agency may not
92 | expunge any record pertaining to such additional arrests if the
93 | order to expunge does not articulate the intention of the court
94 | to expunge a record pertaining to more than one arrest. This
95 | section does not prevent the court from ordering the expunction
96 | of only a portion of a criminal history record pertaining to one
97 | arrest or one incident of alleged criminal activity.
98 | Notwithstanding any law to the contrary, a criminal justice
99 | agency may comply with laws, court orders, and official requests
100 | of other jurisdictions relating to expunction, correction, or

101 confidential handling of criminal history records or information
 102 derived therefrom. This section does not confer any right to the
 103 expunction of any criminal history record, and any request for
 104 expunction of a criminal history record may be denied at the
 105 sole discretion of the court.

106 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
 107 petition to a court to expunge a criminal history record is
 108 complete only when accompanied by:

109 (b) The petitioner's sworn statement attesting that the
 110 petitioner:

111 1. Has never, before ~~prior~~ to the date on which the
 112 petition is filed, been adjudicated guilty of a felony ~~criminal~~
 113 offense or comparable ordinance violation, or been adjudicated
 114 delinquent for committing any felony ~~or a misdemeanor specified~~
 115 ~~in s. 943.051(3) (b)~~.

116 2. Has not been adjudicated guilty of a misdemeanor
 117 offense or been adjudicated delinquent for committing a
 118 misdemeanor specified in s. 943.051(3) (b) in the previous 10
 119 years.

120 ~~3.2.~~ Has not been adjudicated guilty of, or adjudicated
 121 delinquent for committing, any of the acts stemming from the
 122 arrest or alleged criminal activity to which the petition
 123 pertains.

124 ~~4.3.~~ Has never secured a prior sealing or expunction of a
 125 criminal history record under this section, s. 943.059, former

126 s. 893.14, former s. 901.33, or former s. 943.058, unless
127 expunction is sought of a criminal history record previously
128 sealed for 10 years pursuant to paragraph (2)(h) and the record
129 is otherwise eligible for expunction.

130 ~~5.4.~~ Is eligible for such an expunction to the best of his
131 or her knowledge or belief and does not have any other petition
132 to expunge or any petition to seal pending before any court.
133

134 Any person who knowingly provides false information on such
135 sworn statement to the court commits a felony of the third
136 degree, punishable as provided in s. 775.082, s. 775.083, or s.
137 775.084.

138 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
139 petitioning the court to expunge a criminal history record, a
140 person seeking to expunge a criminal history record shall apply
141 to the department for a certificate of eligibility for
142 expunction. The department shall, by rule adopted pursuant to
143 chapter 120, establish procedures pertaining to the application
144 for and issuance of certificates of eligibility for expunction.
145 A certificate of eligibility for expunction is valid for 12
146 months after the date stamped on the certificate when issued by
147 the department. After that time, the petitioner must reapply to
148 the department for a new certificate of eligibility. Eligibility
149 for a renewed certification of eligibility must be based on the
150 status of the applicant and the law in effect at the time of the

151 renewal application. The department shall issue a certificate of
 152 eligibility for expunction to a person who is the subject of a
 153 criminal history record if that person:

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

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

159 2. That an indictment, information, or other charging
 160 document, if filed or issued in the case, was dismissed or nolle
 161 prosequi by the state attorney or statewide prosecutor, or was
 162 dismissed by a court of competent jurisdiction, that a judgment
 163 of acquittal was rendered by a judge, or that a verdict of not
 164 guilty was rendered by a judge or jury ~~and that none of the~~
 165 ~~charges related to the arrest or alleged criminal activity to~~
 166 ~~which the petition to expunge pertains resulted in a trial,~~
 167 ~~without regard to whether the outcome of the trial was other~~
 168 ~~than an adjudication of guilt.~~

169 3. That the criminal history record does not relate to a
 170 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 171 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
 172 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
 173 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
 174 or any violation specified as a predicate offense for
 175 registration as a sexual predator pursuant to s. 775.21, without

176 regard to whether that offense alone is sufficient to require
 177 such registration, or for registration as a sexual offender
 178 pursuant to s. 943.0435, where the defendant was found guilty
 179 of, or pled guilty or nolo contendere to any such offense, or
 180 that the defendant, as a minor, was found to have committed, or
 181 pled guilty or nolo contendere to committing, such an offense as
 182 a delinquent act, without regard to whether adjudication was
 183 withheld.

184 (d)1. Has never, before ~~prior to~~ the date on which the
 185 application for a certificate of eligibility is filed, been
 186 adjudicated guilty of a felony ~~criminal~~ offense or comparable
 187 ordinance violation, or been adjudicated delinquent for
 188 committing any felony ~~or a misdemeanor specified in s.~~
 189 ~~943.051(3)(b).~~

190 2. Has not been adjudicated guilty of a misdemeanor
 191 offense or been adjudicated delinquent for committing a
 192 misdemeanor specified in s. 943.051(3)(b) in the previous 10
 193 years.

194 Section 3. This act shall take effect July 1, 2017.