

CHAPTER 2016-42

Committee Substitute for Senate Bill No. 386

An act relating to expunction of records of minors; amending s. 790.23, F.S.; creating an exception for specified minors who, before attaining 21 years of age, had a criminal history record expunged; amending s. 943.0515, F.S.; decreasing the period of time that a minor's criminal history record must be retained before expunction; authorizing specified minors to apply for expunction of a criminal history record under certain circumstances; establishing an application process and requiring that specified documentation be submitted to the Department of Law Enforcement; requiring that specified fees be deposited into the Department of Law Enforcement Operating Trust Fund; requiring a sworn written statement from the applicant; providing a criminal penalty for perjury on such sworn written statement; amending s. 943.0582, F.S.; deleting a limitation on the period of time within which a minor must submit an application for prearrest or postarrest diversion expunction to the Department of Law Enforcement after successful completion of the diversion program; reenacting s. 985.125(3), F.S., relating to prearrest and postarrest diversion programs, to incorporate the amendment made to s. 943.0582, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (2) of section 790.23, Florida Statutes, is amended to read:

790.23 Felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.—

(2) This section shall not apply to a person:

(a) Convicted of a felony whose civil rights and firearm authority have been restored.

(b) Whose criminal history record has been expunged pursuant to s. 943.0515(1)(b).

Section 2. Paragraph (b) of subsection (1) of section 943.0515, Florida Statutes, is amended to read:

943.0515 Retention of criminal history records of minors.—

(1)

(b)1. If the minor is not classified as a serious or habitual juvenile offender or committed to a juvenile correctional facility or juvenile prison under chapter 985, the program shall retain the minor's criminal history record for 2 ~~5~~ years after the date the minor reaches 19 years of age, at which

time the record shall be expunged unless it meets the criteria of paragraph (2)(a) or paragraph (2)(b).

2. A minor described in subparagraph 1. may apply to the department to have his or her criminal history record expunged before the minor reaches 21 years of age. To be eligible for expunction under this subparagraph, the minor must be 18 years of age or older and less than 21 years of age and have not been charged by the state attorney with or found to have committed any criminal offense within the 5-year period before the application date. The only offenses eligible to be expunged under this subparagraph are those that the minor committed before the minor reached 18 years of age. A criminal history record expunged under this subparagraph requires the approval of the state attorney for each circuit in which an offense specified in the criminal history record occurred. A minor seeking to expunge a criminal history record under this subparagraph shall apply to the department for expunction in the manner prescribed by rule. An application for expunction under this subparagraph shall include:

a. A processing fee of \$75 to the department for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

b. A full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification.

c. A sworn, written statement from the minor seeking relief that he or she is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the application to expunge pertains and that he or she has not been charged with or found to have committed a criminal offense, in any jurisdiction of the state or within the United States, within the 5-year period before the application date.

A person who knowingly provides false information on the sworn statement required by this sub-subparagraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

3. A minor who applies, but who is not approved for early expunction in accordance with subparagraph 2., shall have his or her criminal history record expunged at age 21 if eligible under subparagraph 1.

Section 3. Subsection (3) of section 943.0582, Florida Statutes, is amended to read:

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

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

(a) Submits an application for prearrest or postarrest diversion expunction, on a form prescribed by the department, signed by the minor’s parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying.

~~(b) Submits the application for prearrest or postarrest diversion expunction no later than 12 months after completion of the diversion program.~~

~~(b)(e)~~ Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county’s prearrest or postarrest diversion program, that his or her participation in the program was based on an arrest for a nonviolent misdemeanor, and that he or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.

~~(c)(d)~~ Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.

~~(d)(e)~~ Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28.

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

Section 4. For the purpose of incorporating the amendment made by this act to section 943.0582, Florida Statutes, in a reference thereto, subsection (3) of section 985.125, Florida Statutes, is reenacted to read:

985.125 Prearrest or postarrest diversion programs.—

(3) The prearrest or postarrest diversion program may, upon agreement of the agencies that establish the program, provide for the expunction of the nonjudicial arrest record of a minor who successfully completes such a program pursuant to s. 943.0582.

Section 5. This act shall take effect July 1, 2016.

Approved by the Governor March 10, 2016.

Filed in Office Secretary of State March 10, 2016.