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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2009	.	
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The Committee on Children, Families, and Elder Affairs (Storms) recommended the following:

Senate Amendment (with title amendment)

Delete line 177
and insert:

Section 6. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent



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12 with the conditions, responsibilities, and duties established by
13 this section. Any court of competent jurisdiction may order a
14 criminal justice agency to expunge the criminal history record
15 of a minor or an adult who complies with the requirements of
16 this section. The court shall not order a criminal justice
17 agency to expunge a criminal history record until the person
18 seeking to expunge a criminal history record has applied for and
19 received a certificate of eligibility for expunction pursuant to
20 subsection (2). A criminal history record that relates to a
21 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
22 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
23 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
24 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
25 any violation specified as a predicate offense for registration
26 as a sexual predator pursuant to s. 775.21, without regard to
27 whether that offense alone is sufficient to require such
28 registration, or for registration as a sexual offender pursuant
29 to s. 943.0435, may not be expunged, without regard to whether
30 adjudication was withheld, if the defendant was found guilty of
31 or pled guilty or nolo contendere to the offense, or if the
32 defendant, as a minor, was found to have committed, or pled
33 guilty or nolo contendere to committing, the offense as a
34 delinquent act. The court may only order expunction of a
35 criminal history record pertaining to one arrest or one incident
36 of alleged criminal activity, except as provided in this
37 section. The court may, at its sole discretion, order the
38 expunction of a criminal history record pertaining to more than
39 one arrest if the additional arrests directly relate to the
40 original arrest. If the court intends to order the expunction of



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41 records pertaining to such additional arrests, such intent must
42 be specified in the order. A criminal justice agency may not
43 expunge any record pertaining to such additional arrests if the
44 order to expunge does not articulate the intention of the court
45 to expunge a record pertaining to more than one arrest. This
46 section does not prevent the court from ordering the expunction
47 of only a portion of a criminal history record pertaining to one
48 arrest or one incident of alleged criminal activity.

49 Notwithstanding any law to the contrary, a criminal justice
50 agency may comply with laws, court orders, and official requests
51 of other jurisdictions relating to expunction, correction, or
52 confidential handling of criminal history records or information
53 derived therefrom. This section does not confer any right to the
54 expunction of any criminal history record, and any request for
55 expunction of a criminal history record may be denied at the
56 sole discretion of the court.

57 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
58 criminal history record of a minor or an adult which is ordered
59 expunged by a court of competent jurisdiction pursuant to this
60 section must be physically destroyed or obliterated by any
61 criminal justice agency having custody of such record; except
62 that any criminal history record in the custody of the
63 department must be retained in all cases. A criminal history
64 record ordered expunged that is retained by the department is
65 confidential and exempt from the provisions of s. 119.07(1) and
66 s. 24(a), Art. I of the State Constitution and not available to
67 any person or entity except upon order of a court of competent
68 jurisdiction. A criminal justice agency may retain a notation
69 indicating compliance with an order to expunge.



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70 (a) The person who is the subject of a criminal history
71 record that is expunged under this section or under other
72 provisions of law, including former s. 893.14, former s. 901.33,
73 and former s. 943.058, may lawfully deny or fail to acknowledge
74 the arrests covered by the expunged record, except when the
75 subject of the record:

76 1. is a candidate for employment with a criminal justice
77 agency;

78 2. is a defendant in a criminal prosecution;

79 3. Concurrently or subsequently petitions for relief under
80 this section or s. 943.059;

81 4. is a candidate for admission to The Florida Bar;

82 5. Is seeking to be employed or licensed by or to contract
83 with the Department of Children and Family Services, the Agency
84 for health Care Administration, the Agency for persons with
85 Disabilities, or the Department of Juvenile Justice or to be
86 employed or used by such contractor or licensee in a sensitive
87 position having direct contact with children, the
88 developmentally disabled, the aged, or the elderly as provided
89 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
90 402.302(3), S. 402.313(3), S. 409.175(2)(I), S. 415.102(5)(4),
91 CHAPTER 916, S. 985.644, CHAPTER 400, OR CHAPTER 429;

92 6. Is seeking to be employed or licensed by the Department
93 of Education, any district school board, any university
94 laboratory school, any charter school, any private or parochial
95 school, or any local governmental entity that licenses child
96 care facilities; or

97 7. Is seeking authorization from a Florida seaport
98 identified in s. 311.09 for employment within or access to one



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99 or more of such seaports pursuant to s. 311.12 or s. 311.125.

100 Section 7. Paragraph (a) of subsection (4) of section
101 943.059, Florida Statutes, is amended to read:

102 943.059 Court-ordered sealing of criminal history records.-
103 The courts of this state shall continue to have jurisdiction
104 over their own procedures, including the maintenance, sealing,
105 and correction of judicial records containing criminal history
106 information to the extent such procedures are not inconsistent
107 with the conditions, responsibilities, and duties established by
108 this section. Any court of competent jurisdiction may order a
109 criminal justice agency to seal the criminal history record of a
110 minor or an adult who complies with the requirements of this
111 section. The court shall not order a criminal justice agency to
112 seal a criminal history record until the person seeking to seal
113 a criminal history record has applied for and received a
114 certificate of eligibility for sealing pursuant to subsection
115 (2). A criminal history record that relates to a violation of s.
116 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
117 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
118 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
119 916.1075, a violation enumerated in s. 907.041, or any violation
120 specified as a predicate offense for registration as a sexual
121 predator pursuant to s. 775.21, without regard to whether that
122 offense alone is sufficient to require such registration, or for
123 registration as a sexual offender pursuant to s. 943.0435, may
124 not be sealed, without regard to whether adjudication was
125 withheld, if the defendant was found guilty of or pled guilty or
126 nolo contendere to the offense, or if the defendant, as a minor,
127 was found to have committed or pled guilty or nolo contendere to



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128 committing the offense as a delinquent act. The court may only
129 order sealing of a criminal history record pertaining to one
130 arrest or one incident of alleged criminal activity, except as
131 provided in this section. The court may, at its sole discretion,
132 order the sealing of a criminal history record pertaining to
133 more than one arrest if the additional arrests directly relate
134 to the original arrest. If the court intends to order the
135 sealing of records pertaining to such additional arrests, such
136 intent must be specified in the order. A criminal justice agency
137 may not seal any record pertaining to such additional arrests if
138 the order to seal does not articulate the intention of the court
139 to seal records pertaining to more than one arrest. This section
140 does not prevent the court from ordering the sealing of only a
141 portion of a criminal history record pertaining to one arrest or
142 one incident of alleged criminal activity. Notwithstanding any
143 law to the contrary, a criminal justice agency may comply with
144 laws, court orders, and official requests of other jurisdictions
145 relating to sealing, correction, or confidential handling of
146 criminal history records or information derived therefrom. This
147 section does not confer any right to the sealing of any criminal
148 history record, and any request for sealing a criminal history
149 record may be denied at the sole discretion of the court.

150 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
151 history record of a minor or an adult which is ordered sealed by
152 a court of competent jurisdiction pursuant to this section is
153 confidential and exempt from the provisions of s. 119.07(1) and
154 s. 24(a), Art. I of the State Constitution and is available only
155 to the person who is the subject of the record, to the subject's
156 attorney, to criminal justice agencies for their respective



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157 criminal justice purposes, which include conducting a criminal
158 history background check for approval of firearms purchases or
159 transfers as authorized by state or federal law, to judges in
160 the state courts system for the purpose of assisting them in
161 their case-related decisionmaking responsibilities, as set forth
162 in s. 943.053(5), or to those entities set forth in
163 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
164 licensing, access authorization, and employment purposes.

165 (a) The subject of a criminal history record sealed under
166 this section or under other provisions of law, including former
167 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
168 deny or fail to acknowledge the arrests covered by the sealed
169 record, except when the subject of the record:

- 170 1. is a candidate for employment with a criminal justice
171 agency;
- 172 2. Is a defendant in a criminal prosecution;
- 173 3. Concurrently or subsequently petitions for relief under
174 this section or s. 943.0585;
- 175 4. is a candidate for admission to The Florida Bar;
- 176 5. Is seeking to be employed or licensed by or to contract
177 with the Department of Children and Family Services, the Agency
178 for Health Care Administration, the Agency for Persons with
179 Disabilities, or the Department of Juvenile Justice or to be
180 employed or used by such contractor or licensee in a sensitive
181 position having direct contact with children, the
182 developmentally disabled, the aged, or the elderly as provided
183 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
184 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5)(4),
185 s. 415.103, chapter 916, s. 985.644, chapter 400, or chapter



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186 429;

187 6. Is seeking to be employed or licensed by the Department
188 of Education, any district school board, any university
189 laboratory school, any charter school, any private or parochial
190 school, or any local governmental entity that licenses child
191 care facilities;

192 7. Is attempting to purchase a firearm from a licensed
193 importer, licensed manufacturer, or licensed dealer and is
194 subject to a criminal history background check under state or
195 federal law; or

196 8. Is seeking authorization from a Florida seaport
197 identified in s. 311.09 for employment within or access to one
198 or more of such seaports pursuant to s. 311.12 or s. 311.125.

199 Section 8. This act shall take effect July 1, 2009.

200

201 ===== T I T L E A M E N D M E N T =====

202 And the title is amended as follows:

203 Delete line 17

204 and insert:

205 of protective investigations; amending ss. 943.0585 and
206 943.059, F.S.; conforming cross-references; providing an
207 effective

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