

By Senator Joyner

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1 A bill to be entitled
2 An act relating to sealing criminal history records;
3 providing a short title; amending s. 943.059, F.S.;
4 authorizing a court to seal a criminal history record
5 of a person who had a prior criminal history record
6 sealed or expunged under certain circumstances;
7 providing an effective date.
8

9 Be It Enacted by the Legislature of the State of Florida:
10

11 Section 1. This act may be cited as the "Jim King Keep
12 Florida Working Act."

13 Section 2. Section 943.059, Florida Statutes, is amended to
14 read:

15 943.059 Court-ordered sealing of criminal history records.—
16 The courts of this state shall continue to have jurisdiction
17 over their own procedures, including the maintenance, sealing,
18 and correction of judicial records containing criminal history
19 information to the extent such procedures are not inconsistent
20 with the conditions, responsibilities, and duties established by
21 this section. Any court of competent jurisdiction may order a
22 criminal justice agency to seal the criminal history record of a
23 minor or an adult who complies with the requirements of this
24 section. The court shall not order a criminal justice agency to
25 seal a criminal history record until the person seeking to seal
26 a criminal history record has applied for and received a
27 certificate of eligibility for sealing pursuant to subsection
28 (2). A criminal history record that relates to a violation of s.
29 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.

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30 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
31 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
32 916.1075, a violation enumerated in s. 907.041, or any violation
33 specified as a predicate offense for registration as a sexual
34 predator pursuant to s. 775.21, without regard to whether that
35 offense alone is sufficient to require such registration, or for
36 registration as a sexual offender pursuant to s. 943.0435, may
37 not be sealed, without regard to whether adjudication was
38 withheld, if the defendant was found guilty of or pled guilty or
39 nolo contendere to the offense, or if the defendant, as a minor,
40 was found to have committed or pled guilty or nolo contendere to
41 committing the offense as a delinquent act. The court may only
42 order sealing of a criminal history record pertaining to one
43 arrest or one incident of alleged criminal activity, except as
44 provided in this section. The court may, at its sole discretion,
45 order the sealing of a criminal history record pertaining to
46 more than one arrest if the additional arrests directly relate
47 to the original arrest. If the court intends to order the
48 sealing of records pertaining to such additional arrests, such
49 intent must be specified in the order. A criminal justice agency
50 may not seal any record pertaining to such additional arrests if
51 the order to seal does not articulate the intention of the court
52 to seal records pertaining to more than one arrest. This section
53 does not prevent the court from ordering the sealing of only a
54 portion of a criminal history record pertaining to one arrest or
55 one incident of alleged criminal activity. Notwithstanding any
56 law to the contrary, a criminal justice agency may comply with
57 laws, court orders, and official requests of other jurisdictions
58 relating to sealing, correction, or confidential handling of

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59 criminal history records or information derived therefrom. This
60 section does not confer any right to the sealing of any criminal
61 history record, and any request for sealing a criminal history
62 record may be denied at the sole discretion of the court.

63 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
64 petition to a court to seal a criminal history record is
65 complete only when accompanied by:

66 (a) A valid certificate of eligibility for sealing issued
67 by the department pursuant to subsection (2).

68 (b) The petitioner's sworn statement attesting that the
69 petitioner:

70 1. Has never, prior to the date on which the petition is
71 filed, been adjudicated guilty of a criminal offense or
72 comparable ordinance violation, or been adjudicated delinquent
73 for committing any felony or a misdemeanor specified in s.
74 943.051(3)(b).

75 2. Has not been adjudicated guilty of or adjudicated
76 delinquent for committing any of the acts stemming from the
77 arrest or alleged criminal activity to which the petition to
78 seal pertains.

79 3. Has never secured a prior sealing or expunction, except
80 as provided in subsection (5), of a criminal history record
81 under this section, former s. 893.14, former s. 901.33, former
82 s. 943.058, or from any jurisdiction outside the state.

83 4. Is eligible for such a sealing to the best of his or her
84 knowledge or belief and does not have any other petition to seal
85 or any petition to expunge pending before any court.

86
87 Any person who knowingly provides false information on such

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88 sworn statement to the court commits a felony of the third
89 degree, punishable as provided in s. 775.082, s. 775.083, or s.
90 775.084.

91 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
92 petitioning the court to seal a criminal history record, a
93 person seeking to seal a criminal history record shall apply to
94 the department for a certificate of eligibility for sealing. The
95 department shall, by rule adopted pursuant to chapter 120,
96 establish procedures pertaining to the application for and
97 issuance of certificates of eligibility for sealing. A
98 certificate of eligibility for sealing is valid for 12 months
99 after the date stamped on the certificate when issued by the
100 department. After that time, the petitioner must reapply to the
101 department for a new certificate of eligibility. Eligibility for
102 a renewed certification of eligibility must be based on the
103 status of the applicant and the law in effect at the time of the
104 renewal application. The department shall issue a certificate of
105 eligibility for sealing to a person who is the subject of a
106 criminal history record provided that such person:

107 (a) Has submitted to the department a certified copy of the
108 disposition of the charge to which the petition to seal
109 pertains.

110 (b) Remits a \$75 processing fee to the department for
111 placement in the Department of Law Enforcement Operating Trust
112 Fund, unless such fee is waived by the executive director.

113 (c) Has never, prior to the date on which the application
114 for a certificate of eligibility is filed, been adjudicated
115 guilty of a criminal offense or comparable ordinance violation,
116 or been adjudicated delinquent for committing any felony or a

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117 misdemeanor specified in s. 943.051(3)(b).

118 (d) Has not been adjudicated guilty of or adjudicated
119 delinquent for committing any of the acts stemming from the
120 arrest or alleged criminal activity to which the petition to
121 seal pertains.

122 (e) Has never secured a prior sealing or expunction, except
123 as provided in subsection (5), of a criminal history record
124 under this section, former s. 893.14, former s. 901.33, or
125 former s. 943.058.

126 (f) Is no longer under court supervision applicable to the
127 disposition of the arrest or alleged criminal activity to which
128 the petition to seal pertains.

129 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

130 (a) In judicial proceedings under this section, a copy of
131 the completed petition to seal shall be served upon the
132 appropriate state attorney or the statewide prosecutor and upon
133 the arresting agency; however, it is not necessary to make any
134 agency other than the state a party. The appropriate state
135 attorney or the statewide prosecutor and the arresting agency
136 may respond to the court regarding the completed petition to
137 seal.

138 (b) If relief is granted by the court, the clerk of the
139 court shall certify copies of the order to the appropriate state
140 attorney or the statewide prosecutor and to the arresting
141 agency. The arresting agency is responsible for forwarding the
142 order to any other agency to which the arresting agency
143 disseminated the criminal history record information to which
144 the order pertains. The department shall forward the order to
145 seal to the Federal Bureau of Investigation. The clerk of the

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146 court shall certify a copy of the order to any other agency
147 which the records of the court reflect has received the criminal
148 history record from the court.

149 (c) For an order to seal entered by a court prior to July
150 1, 1992, the department shall notify the appropriate state
151 attorney or statewide prosecutor of any order to seal which is
152 contrary to law because the person who is the subject of the
153 record has previously been convicted of a crime or comparable
154 ordinance violation or has had a prior criminal history record
155 sealed or expunged, except as provided in subsection (5). Upon
156 receipt of such notice, the appropriate state attorney or
157 statewide prosecutor shall take action, within 60 days, to
158 correct the record and petition the court to void the order to
159 seal. The department shall seal the record until such time as
160 the order is voided by the court.

161 (d) On or after July 1, 1992, the department or any other
162 criminal justice agency is not required to act on an order to
163 seal entered by a court when such order does not comply with the
164 requirements of this section. Upon receipt of such an order, the
165 department must notify the issuing court, the appropriate state
166 attorney or statewide prosecutor, the petitioner or the
167 petitioner's attorney, and the arresting agency of the reason
168 for noncompliance. The appropriate state attorney or statewide
169 prosecutor shall take action within 60 days to correct the
170 record and petition the court to void the order. No cause of
171 action, including contempt of court, shall arise against any
172 criminal justice agency for failure to comply with an order to
173 seal when the petitioner for such order failed to obtain the
174 certificate of eligibility as required by this section or when

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175 such order does not comply with the requirements of this
176 section.

177 (e) An order sealing a criminal history record pursuant to
178 this section does not require that such record be surrendered to
179 the court, and such record shall continue to be maintained by
180 the department and other criminal justice agencies.

181 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
182 history record of a minor or an adult which is ordered sealed by
183 a court of competent jurisdiction pursuant to this section is
184 confidential and exempt from the provisions of s. 119.07(1) and
185 s. 24(a), Art. I of the State Constitution and is available only
186 to the person who is the subject of the record, to the subject's
187 attorney, to criminal justice agencies for their respective
188 criminal justice purposes, which include conducting a criminal
189 history background check for approval of firearms purchases or
190 transfers as authorized by state or federal law, to judges in
191 the state courts system for the purpose of assisting them in
192 their case-related decisionmaking responsibilities, as set forth
193 in s. 943.053(5), or to those entities set forth in
194 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
195 licensing, access authorization, and employment purposes.

196 (a) The subject of a criminal history record sealed under
197 this section or under other provisions of law, including former
198 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
199 deny or fail to acknowledge the arrests covered by the sealed
200 record, except when the subject of the record:

- 201 1. Is a candidate for employment with a criminal justice
202 agency;
- 203 2. Is a defendant in a criminal prosecution;

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204 3. Concurrently or subsequently petitions for relief under
205 this section or s. 943.0585;

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

207 5. Is seeking to be employed or licensed by or to contract
208 with the Department of Children and Family Services, the Agency
209 for Health Care Administration, the Agency for Persons with
210 Disabilities, or the Department of Juvenile Justice or to be
211 employed or used by such contractor or licensee in a sensitive
212 position having direct contact with children, the
213 developmentally disabled, the aged, or the elderly as provided
214 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
215 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.
216 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

217 6. Is seeking to be employed or licensed by the Department
218 of Education, any district school board, any university
219 laboratory school, any charter school, any private or parochial
220 school, or any local governmental entity that licenses child
221 care facilities;

222 7. Is attempting to purchase a firearm from a licensed
223 importer, licensed manufacturer, or licensed dealer and is
224 subject to a criminal history check under state or federal law;
225 or

226 8. Is seeking authorization from a Florida seaport
227 identified in s. 311.09 for employment within or access to one
228 or more of such seaports pursuant to s. 311.12.

229 (b) Subject to the exceptions in paragraph (a), a person
230 who has been granted a sealing under this section, former s.
231 893.14, former s. 901.33, or former s. 943.058 may not be held
232 under any provision of law of this state to commit perjury or to

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233 be otherwise liable for giving a false statement by reason of
234 such person's failure to recite or acknowledge a sealed criminal
235 history record.

236 (c) Information relating to the existence of a sealed
237 criminal record provided in accordance with the provisions of
238 paragraph (a) is confidential and exempt from the provisions of
239 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
240 except that the department shall disclose the sealed criminal
241 history record to the entities set forth in subparagraphs (a)1.,
242 4., 5., 6., and 8. for their respective licensing, access
243 authorization, and employment purposes. It is unlawful for any
244 employee of an entity set forth in subparagraph (a)1.,
245 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
246 subparagraph (a)8. to disclose information relating to the
247 existence of a sealed criminal history record of a person
248 seeking employment, access authorization, or licensure with such
249 entity or contractor, except to the person to whom the criminal
250 history record relates or to persons having direct
251 responsibility for employment, access authorization, or
252 licensure decisions. Any person who violates the provisions of
253 this paragraph commits a misdemeanor of the first degree,
254 punishable as provided in s. 775.082 or s. 775.083.

255 (5) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING
256 OR EXPUNCTION.—

257 (a) A court may seal a person's criminal history record
258 after a prior criminal history record has been sealed or
259 expunged only if the person obtains a certificate from the
260 department to seal the criminal history record. The department
261 shall issue the certificate for a second sealing only if:

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262 1. The person has had only one prior expunction or sealing
263 of his or her criminal history record under s. 943.0585 or this
264 section or one prior expunction following the sealing of the
265 same arrest or alleged criminal activity that was expunged;

266 2. The person has not been arrested in this state during
267 the 5-year period prior to the date on which the application for
268 the certificate is filed; and

269 3. The person has not previously sealed or expunged a
270 criminal history record that involved the same offense to which
271 the petition to seal pertains.

272 (b) All other provisions and requirements of this section
273 apply to an application to seal a second criminal history
274 record.

275 (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
276 chapter, section, or subdivision of the Florida Statutes in this
277 section constitutes a general reference under the doctrine of
278 incorporation by reference.

279 Section 3. This act shall take effect July 1, 2011.