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1                   A bill to be entitled  
2           An act relating to criminal history records; providing a  
3           short title; amending s. 943.0585, F.S.; authorizing a  
4           chief judge in a circuit to use senior judges or county  
5           court judges to hear expunction petitions; authorizing  
6           expunction of a record containing more than one arrest;  
7           deleting provisions relating to a limitation on expunging  
8           only records with one arrest; providing duties for private  
9           companies or individuals that disseminate public records;  
10          revising requirements for a petition to expunge a criminal  
11          history record; revising requirements for service of  
12          petitions to expunge records; providing for automatic  
13          qualification for expunction of records in certain  
14          circumstances; providing requirements for expunction of  
15          such records; providing for expunction orders; providing  
16          for a procedure if the Department of Law Enforcement or  
17          any other criminal justice agency believes an expunction  
18          order did not comply with requirements; providing that an  
19          order expunging a criminal history record under specified  
20          provisions does not require that the record be surrendered  
21          to the court; providing that such record shall continue to  
22          be maintained by the department and other criminal justice  
23          agencies; amending s. 943.0582, F.S.; conforming a cross-  
24          reference; providing an effective date.

25  
26   Be It Enacted by the Legislature of the State of Florida:  
27

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

30           Section 2. Section 943.0585, Florida Statutes, is amended  
31 to read:

32           943.0585 Court-ordered expunction of criminal history  
33 records.—The courts of this state have jurisdiction over their  
34 own procedures, including the maintenance, expunction, and  
35 correction of judicial records containing criminal history  
36 information to the extent such procedures are not inconsistent  
37 with the conditions, responsibilities, and duties established by  
38 this section. The chief judge in any circuit may authorize the  
39 use of senior judges or county court judges to hear cases  
40 involving petitions to expunge criminal history records. Any  
41 court of competent jurisdiction may order a criminal justice  
42 agency to expunge the criminal history record of a minor or an  
43 adult who complies with the requirements of this section. The  
44 court may ~~shall~~ not order a criminal justice agency to expunge a  
45 criminal history record until the person seeking to expunge a  
46 criminal history record has applied for and received a  
47 certificate of eligibility for expunction pursuant to subsection  
48 (2), unless the person qualifies for an automatic expunction  
49 under subsection (4). A criminal history record that relates to  
50 a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
51 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
52 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
53 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
54 any violation specified as a predicate offense for registration  
55 as a sexual predator pursuant to s. 775.21, without regard to

56 | whether that offense alone is sufficient to require such  
 57 | registration, or for registration as a sexual offender pursuant  
 58 | to s. 943.0435, may not be expunged, without regard to whether  
 59 | adjudication was withheld, if the defendant was found guilty of  
 60 | or pled guilty or nolo contendere to the offense, or if the  
 61 | defendant, as a minor, was found to have committed, or pled  
 62 | guilty or nolo contendere to committing, the offense as a  
 63 | delinquent act. The court may ~~only~~ order expunction of a  
 64 | criminal history record pertaining to one or more arrests ~~arrest~~  
 65 | or incidents ~~one incident~~ of alleged criminal activity, ~~except~~  
 66 | as provided in this section. The court shall automatically  
 67 | expunge, upon appropriate petition as provided in this section,  
 68 | the criminal history record in which formal charges were either  
 69 | not filed by the state or, if filed, were ultimately dismissed  
 70 | by the state or a court of competent jurisdiction or resulted in  
 71 | a finding of not guilty by the fact finder in a trial on the  
 72 | merits of the charges ~~The court may, at its sole discretion,~~  
 73 | ~~order the expunction of a criminal history record pertaining to~~  
 74 | ~~more than one arrest if the additional arrests directly relate~~  
 75 | ~~to the original arrest. If the court intends to order the~~  
 76 | ~~expunction of records pertaining to such additional arrests,~~  
 77 | ~~such intent must be specified in the order. A criminal justice~~  
 78 | ~~agency may not expunge any record pertaining to such additional~~  
 79 | ~~arrests if the order to expunge does not articulate the~~  
 80 | ~~intention of the court to expunge a record pertaining to more~~  
 81 | ~~than one arrest. This section does not prevent the court from~~  
 82 | ordering the expunction of only a portion of a criminal history  
 83 | record ~~pertaining to one arrest or one incident of alleged~~

84 ~~criminal activity~~. Notwithstanding any law to the contrary, a  
 85 criminal justice agency may comply with laws, court orders, and  
 86 official requests of other jurisdictions relating to expunction,  
 87 correction, or confidential handling of criminal history records  
 88 or information derived therefrom. This section does not confer  
 89 any right to the expunction of any criminal history record, with  
 90 the exception of the automatic expunging of criminal history  
 91 records upon appropriate petition, and any request for  
 92 expunction of a criminal history record may be denied at the  
 93 sole discretion of the court. Any private company or individual  
 94 that disseminates public records subject to this section is  
 95 under an affirmative duty to maintain accurate records and must  
 96 comply with all provisions of this section.

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

100 (a) A valid certificate of eligibility for expunction  
 101 issued by the department pursuant to subsection (2).

102 (b) The petitioner's sworn statement attesting that the  
 103 petitioner:

104 ~~1. Has never, prior to the date on which the petition is~~  
 105 ~~filed, been adjudicated guilty of a criminal offense or~~  
 106 ~~comparable ordinance violation, or been adjudicated delinquent~~  
 107 ~~for committing any felony or a misdemeanor specified in s.~~  
 108 ~~943.051(3)(b).~~

109 1.2. Has not been adjudicated guilty of, or adjudicated  
 110 delinquent for committing, any of the acts stemming from the  
 111 arrest or alleged criminal activity to which the petition

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112 | pertains.

113 |       ~~2.3.~~ Has never secured a prior ~~sealing or~~ expunction of a  
114 | criminal history record under this section, former s. 893.14,  
115 | former s. 901.33, or former s. 943.058, ~~or from any jurisdiction~~  
116 | ~~outside the state,~~ unless expunction is sought of a criminal  
117 | history record previously sealed for 10 years pursuant to  
118 | paragraph (2) (g) ~~(h)~~ or, if expunction is sought for a  
119 | misdemeanor, the petitioner has been free from arrest for a  
120 | period of 5 years or, if expunction is sought for a felony, the  
121 | petitioner has been free from arrest for a period of 10 years,  
122 | and the record is otherwise eligible for expunction.

123 |       ~~3.4.~~ Is eligible for such an expunction to the best of his  
124 | or her knowledge or belief and does not have any other petition  
125 | to expunge or any petition to seal pending before any court.

126 |  
127 | Any person who knowingly provides false information on such  
128 | sworn statement to the court commits a felony of the third  
129 | degree, punishable as provided in s. 775.082, s. 775.083, or s.  
130 | 775.084.

131 |       (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
132 | petitioning the court to expunge a criminal history record, a  
133 | person seeking to expunge a criminal history record shall apply  
134 | to the department for a certificate of eligibility for  
135 | expunction. The department shall, by rule adopted pursuant to  
136 | chapter 120, establish procedures pertaining to the application  
137 | for and issuance of certificates of eligibility for expunction.  
138 | A certificate of eligibility for expunction is valid for 12  
139 | months after the date stamped on the certificate when issued by

140 the department. After that time, the petitioner must reapply to  
 141 the department for a new certificate of eligibility. Eligibility  
 142 for a renewed certification of eligibility must be based on the  
 143 status of the applicant and the law in effect at the time of the  
 144 renewal application. The department shall issue a certificate of  
 145 eligibility for expunction to a person who is the subject of a  
 146 criminal history record if that person:

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

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

152 2. That an indictment, information, or other charging  
 153 document, if filed or issued in the case, was dismissed or nolle  
 154 prosequi by the state attorney or statewide prosecutor, or was  
 155 dismissed by a court of competent jurisdiction, ~~and that none of~~  
 156 ~~the charges related to the arrest or alleged criminal activity~~  
 157 ~~to which the petition to expunge pertains resulted in a trial,~~  
 158 ~~without regard to whether the outcome of the trial was other~~  
 159 ~~than an adjudication of guilt.~~

160 3. That the criminal history record does not relate to a  
 161 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 162 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
 163 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
 164 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
 165 any violation specified as a predicate offense for registration  
 166 as a sexual predator pursuant to s. 775.21, without regard to  
 167 whether that offense alone is sufficient to require such

168 registration, or for registration as a sexual offender pursuant  
 169 to s. 943.0435, where the defendant was found guilty of, or pled  
 170 guilty or nolo contendere to any such offense, or that the  
 171 defendant, as a minor, was found to have committed, or pled  
 172 guilty or nolo contendere to committing, such an offense as a  
 173 delinquent act, without regard to whether adjudication was  
 174 withheld.

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

178 (c) Has submitted to the department a certified copy of  
 179 the disposition of the charge to which the petition to expunge  
 180 pertains.

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

186 (d)~~(e)~~ Has not been adjudicated guilty of, or adjudicated  
 187 delinquent for committing, any of the acts stemming from the  
 188 arrest or alleged criminal activity to which the petition to  
 189 expunge pertains.

190 (e)~~(f)~~ Has never secured a prior ~~sealing or~~ expunction of  
 191 a criminal history record under this section, former s. 893.14,  
 192 former s. 901.33, or former s. 943.058, unless expunction is  
 193 sought of a criminal history record previously sealed for 2 ~~10~~  
 194 years pursuant to paragraph (g) or, if expunction is sought for  
 195 a misdemeanor, the petitioner has been free from arrest for a

196 period of 5 years or, if expunction is sought for a felony, the  
 197 petitioner has been free from arrest for a period of 10 years  
 198 ~~(h)~~ and the record is otherwise eligible for expunction.

199 (f)~~(g)~~ Is no longer under court supervision applicable to  
 200 the disposition of the arrest or alleged criminal activity to  
 201 which the petition to expunge pertains.

202 (g)~~(h)~~ Has previously obtained a court order sealing the  
 203 record under this section, former s. 893.14, former s. 901.33,  
 204 or former s. 943.058 for a minimum of 10 years because  
 205 adjudication was withheld or because all charges related to the  
 206 arrest or alleged criminal activity to which the petition to  
 207 expunge pertains were not dismissed prior to trial, without  
 208 regard to whether the outcome of the trial was other than an  
 209 adjudication of guilt. The requirement for the record to have  
 210 previously been sealed for a minimum of 10 years does not apply  
 211 when a plea was not entered or all charges related to the arrest  
 212 or alleged criminal activity to which the petition to expunge  
 213 pertains were dismissed prior to trial.

214 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

215 (a) In judicial proceedings under this section, a copy of  
 216 the completed petition to expunge shall be served upon the  
 217 ~~appropriate state attorney or the statewide prosecutor and upon~~  
 218 ~~the~~ arresting agency; however, it is not necessary to make any  
 219 agency ~~other than the state~~ a party. The ~~appropriate state~~  
 220 ~~attorney or the statewide prosecutor and the~~ arresting agency  
 221 may respond to the court regarding the completed petition to  
 222 expunge.

223 (b) If relief is granted by the court, the clerk of the



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224 court shall certify copies of the order to the ~~appropriate state~~  
225 ~~attorney or the statewide prosecutor and the~~ arresting agency.  
226 The arresting agency is responsible for forwarding the order to  
227 any other agency to which the arresting agency disseminated the  
228 criminal history record information to which the order pertains.  
229 The department shall forward the order to expunge to the Federal  
230 Bureau of Investigation and the appropriate office of the state  
231 attorney or the statewide prosecutor that prosecuted the case.  
232 The clerk of the court shall certify a copy of the order to any  
233 other agency which the records of the court reflect has received  
234 the criminal history record from the court.

235 (c) For an order to expunge entered by a court prior to  
236 July 1, 1992, the department shall notify the appropriate state  
237 attorney or statewide prosecutor of an order to expunge which is  
238 contrary to law ~~because the person who is the subject of the~~  
239 ~~record has previously been convicted of a crime or comparable~~  
240 ~~ordinance violation or has had a prior criminal history record~~  
241 ~~sealed or expunged.~~ Upon receipt of such notice, the appropriate  
242 state attorney or statewide prosecutor shall take action, within  
243 60 days, to correct the record and petition the court to void  
244 the order to expunge. The department shall seal the record until  
245 such time as the order is voided by the court.

246 (d) On or after July 1, 1992, the department or any other  
247 criminal justice agency is not required to act on an order to  
248 expunge entered by a court when such order does not comply with  
249 the requirements of this section. Upon receipt of such an order,  
250 the department must notify the issuing court, the appropriate  
251 state attorney or statewide prosecutor, the petitioner or the

252 petitioner's attorney, and the arresting agency of the reason  
 253 for noncompliance. The appropriate state attorney or statewide  
 254 prosecutor shall take action within 60 days to correct the  
 255 record and petition the court to void the order. With the  
 256 exception of automatic expunction brought by petition under  
 257 subsection (4), no cause of action, including contempt of court,  
 258 may ~~shall~~ arise against any criminal justice agency for failure  
 259 to comply with an order to expunge when the petitioner for such  
 260 order failed to obtain the certificate of eligibility as  
 261 required by this section or such order does not otherwise comply  
 262 with the requirements of this section.

263 (4) AUTOMATIC QUALIFICATION FOR EXPUNCTION.—  
 264 Notwithstanding any provisions of this section or any law  
 265 dealing generally with the preservation and destruction of  
 266 public records, a criminal history record relating to a person  
 267 who has not been found guilty of, or not pled guilty or nolo  
 268 contendere to, an offense automatically qualifies for  
 269 expunction. If the person was adjudicated guilty of or  
 270 adjudicated delinquent for committing any of the acts stemming  
 271 from the arrest or alleged criminal activity or delinquent act,  
 272 the record does not qualify for automatic expunction.

273 (a) A record automatically qualified for expunction shall  
 274 be expunged if:

275 1. An indictment, information, or other charging document  
 276 was not filed or issued in the case;

277 2. An indictment, information, or other charging document  
 278 was filed or issued in the case and was dismissed or a nolle  
 279 prosequi was filed by the state attorney or statewide prosecutor

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280 or the case was dismissed by a court of competent jurisdiction;

281 or

282 3. The person was found not guilty or acquitted by a judge

283 or jury.

284 (b) Each petition to a court to expunge a criminal history

285 record under this subsection is complete only when accompanied

286 by a certified copy of the disposition of the offenses sought to

287 be sealed.

288 (c)1. A certificate of eligibility for expunction from the

289 department is not required under this subsection.

290 2. Any court of competent jurisdiction may order a

291 criminal justice agency to expunge the criminal history record

292 of a minor or an adult whose record qualifies for automatic

293 expunction under this subsection.

294 3. In judicial proceedings under this subsection, a copy

295 of the completed petition to expunge shall be served upon the

296 arresting agency; however, it is not necessary to make any

297 agency other than the state a party to the proceedings. The

298 arresting agency may respond to the court regarding the

299 completed petition to expunge.

300 4. Notwithstanding this section, s. 943.059, and any other

301 provision of law, the court may order expunction of a criminal

302 history record pertaining to more than one arrest or more than

303 one incident of alleged criminal activity if the person has not

304 been adjudicated guilty of or adjudicated delinquent for

305 committing any of the acts stemming from the arrest or alleged

306 criminal activity or delinquent act to which the petition to

307 expunge pertains.

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308       5. If relief is granted by the court, the clerk of the  
309 court shall certify copies of the order to the appropriate state  
310 attorney or the statewide prosecutor, to the county, and to the  
311 arresting agency. The arresting agency is responsible for  
312 forwarding the order to any other agency to which the arresting  
313 agency disseminated the criminal history record information to  
314 which the order pertains. The department shall forward the order  
315 to expunge to the Federal Bureau of Investigation. The clerk of  
316 the court shall certify a copy of the order to any other agency  
317 that court records indicate has received the criminal history  
318 record from the court. The county is responsible for forwarding  
319 the order to any agency, organization, or company to which the  
320 county disseminated the criminal history information to which  
321 the order pertains.

322       6. The department or any other criminal justice agency is  
323 not required to act on an order to expunge entered by a court  
324 when such order does not comply with the requirements of this  
325 section. Upon receipt of such an order, the department must  
326 notify the issuing court, the appropriate state attorney or the  
327 statewide prosecutor, the petitioner or the petitioner's  
328 attorney, and the arresting agency within 5 business days after  
329 determining that the department or the agency cannot comply with  
330 the court order. The appropriate state attorney or the statewide  
331 prosecutor shall take action within 5 business days to correct  
332 the record and petition the court to void the order. No cause of  
333 action, including contempt of court, may arise against any  
334 criminal justice agency for failure to comply with an order to  
335 expunge when such order does not comply with the requirements of

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336 this subsection.

337 7. An order expunging a criminal history record pursuant  
338 to this subsection does not require that such record be  
339 surrendered to the court, and such record shall continue to be  
340 maintained by the department and other criminal justice  
341 agencies.

342 ~~(5)~~(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
343 criminal history record of a minor or an adult which is ordered  
344 expunged by a court of competent jurisdiction pursuant to this  
345 section must be physically destroyed or obliterated by any  
346 criminal justice agency having custody of such record; except  
347 that any criminal history record in the custody of the  
348 department must be retained in all cases. A criminal history  
349 record ordered expunged that is retained by the department is  
350 confidential and exempt from the provisions of s. 119.07(1) and  
351 s. 24(a), Art. I of the State Constitution and not available to  
352 any person or entity except upon order of a court of competent  
353 jurisdiction. A criminal justice agency may retain a notation  
354 indicating compliance with an order to expunge.

355 (a) The person who is the subject of a criminal history  
356 record that is expunged under this section or under other  
357 provisions of law, including former s. 893.14, former s. 901.33,  
358 and former s. 943.058, may lawfully deny or fail to acknowledge  
359 the arrests covered by the expunged record, except when the  
360 subject of the record:

- 361 1. Is a candidate for employment with a criminal justice  
362 agency;
- 363 2. Is a defendant in a criminal prosecution;

364 3. Concurrently or subsequently petitions for relief under  
 365 this section or s. 943.059;

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

367 5. Is seeking to be employed or licensed by or to contract  
 368 with the Department of Children and Family Services, the Agency  
 369 for Health Care Administration, the Agency for Persons with  
 370 Disabilities, or the Department of Juvenile Justice or to be  
 371 employed or used by such contractor or licensee in a sensitive  
 372 position having direct contact with children, the  
 373 developmentally disabled, the aged, or the elderly as provided  
 374 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
 375 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),  
 376 chapter 916, s. 985.644, chapter 400, or chapter 429;

377 6. Is seeking to be employed or licensed by the Department  
 378 of Education, any district school board, any university  
 379 laboratory school, any charter school, any private or parochial  
 380 school, or any local governmental entity that licenses child  
 381 care facilities; or

382 7. Is seeking authorization from a seaport listed in s.  
 383 311.09 for employment within or access to one or more of such  
 384 seaports pursuant to s. 311.12.

385 (b) Subject to the exceptions in paragraph (a), a person  
 386 who has been granted an expunction under this section, former s.  
 387 893.14, former s. 901.33, or former s. 943.058 may not be held  
 388 under any provision of law of this state to commit perjury or to  
 389 be otherwise liable for giving a false statement by reason of  
 390 such person's failure to recite or acknowledge an expunged  
 391 criminal history record.

392 (c) Information relating to the existence of an expunged  
 393 criminal history record which is provided in accordance with  
 394 paragraph (a) is confidential and exempt from the provisions of  
 395 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
 396 except that the department shall disclose the existence of a  
 397 criminal history record ordered expunged to the entities set  
 398 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
 399 respective licensing, access authorization, and employment  
 400 purposes, and to criminal justice agencies for their respective  
 401 criminal justice purposes. It is unlawful for any employee of an  
 402 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
 403 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to  
 404 disclose information relating to the existence of an expunged  
 405 criminal history record of a person seeking employment, access  
 406 authorization, or licensure with such entity or contractor,  
 407 except to the person to whom the criminal history record relates  
 408 or to persons having direct responsibility for employment,  
 409 access authorization, or licensure decisions. Any person who  
 410 violates this paragraph commits a misdemeanor of the first  
 411 degree, punishable as provided in s. 775.082 or s. 775.083.

412 (6) ~~(5)~~ STATUTORY REFERENCES.—Any reference to any other  
 413 chapter, section, or subdivision of the Florida Statutes in this  
 414 section constitutes a general reference under the doctrine of  
 415 incorporation by reference.

416 Section 3. Paragraph (a) of subsection (2) of section  
 417 943.0582, Florida Statutes, is amended to read:

418 943.0582 Prearrest, postarrest, or teen court diversion  
 419 program expunction.—

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

423 1. The provisions of s. 943.0585 (5) ~~(4)~~ (a) do not apply,  
424 except that the criminal history record of a person whose record  
425 is expunged pursuant to this section shall be made available  
426 only to criminal justice agencies for the purpose of determining  
427 eligibility for prearrest, postarrest, or teen court diversion  
428 programs; when the record is sought as part of a criminal  
429 investigation; or when the subject of the record is a candidate  
430 for employment with a criminal justice agency. For all other  
431 purposes, a person whose record is expunged under this section  
432 may lawfully deny or fail to acknowledge the arrest and the  
433 charge covered by the expunged record.

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

438 Section 4. This act shall take effect July 1, 2011.