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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/12/2011	.	
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The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

Section 2. Paragraph (b) of subsection (1), paragraph (f) of subsection (2), paragraph (c) of subsection (3), and subsection (4) of section 943.0585, Florida Statutes, are amended, subsection (5) of that section is renumbered as subsection (7), and a new subsection (5) and subsection (6) are added to that section, to read:



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13 943.0585 Court-ordered expunction of criminal history
14 records.—The courts of this state have jurisdiction over their
15 own procedures, including the maintenance, expunction, and
16 correction of judicial records containing criminal history
17 information to the extent such procedures are not inconsistent
18 with the conditions, responsibilities, and duties established by
19 this section. Any court of competent jurisdiction may order a
20 criminal justice agency to expunge the criminal history record
21 of a minor or an adult who complies with the requirements of
22 this section. The court shall not order a criminal justice
23 agency to expunge a criminal history record until the person
24 seeking to expunge a criminal history record has applied for and
25 received a certificate of eligibility for expunction pursuant to
26 subsection (2). A criminal history record that relates to a
27 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
28 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
29 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
30 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
31 any violation specified as a predicate offense for registration
32 as a sexual predator pursuant to s. 775.21, without regard to
33 whether that offense alone is sufficient to require such
34 registration, or for registration as a sexual offender pursuant
35 to s. 943.0435, may not be expunged, without regard to whether
36 adjudication was withheld, if the defendant was found guilty of
37 or pled guilty or nolo contendere to the offense, or if the
38 defendant, as a minor, was found to have committed, or pled
39 guilty or nolo contendere to committing, the offense as a
40 delinquent act. The court may only order expunction of a
41 criminal history record pertaining to one arrest or one incident



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42 of alleged criminal activity, except as provided in this
43 section. The court may, at its sole discretion, order the
44 expunction of a criminal history record pertaining to more than
45 one arrest if the additional arrests directly relate to the
46 original arrest. If the court intends to order the expunction of
47 records pertaining to such additional arrests, such intent must
48 be specified in the order. A criminal justice agency may not
49 expunge any record pertaining to such additional arrests if the
50 order to expunge does not articulate the intention of the court
51 to expunge a record pertaining to more than one arrest. This
52 section does not prevent the court from ordering the expunction
53 of only a portion of a criminal history record pertaining to one
54 arrest or one incident of alleged criminal activity.
55 Notwithstanding any law to the contrary, a criminal justice
56 agency may comply with laws, court orders, and official requests
57 of other jurisdictions relating to expunction, correction, or
58 confidential handling of criminal history records or information
59 derived therefrom. This section does not confer any right to the
60 expunction of any criminal history record, and any request for
61 expunction of a criminal history record may be denied at the
62 sole discretion of the court.

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

66 (b) The petitioner's sworn statement attesting that the
67 petitioner:

68 1. Has never, prior to the date on which the petition is
69 filed, been adjudicated guilty of a criminal offense or
70 comparable ordinance violation, or been adjudicated delinquent



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71 for committing any felony or a misdemeanor specified in s.
72 943.051(3)(b).

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

77 3. Has never secured a prior sealing or expunction, except
78 as provided in subsection (5) and s. 943.059(5), of a criminal
79 history record under this section, former s. 893.14, former s.
80 901.33, or former s. 943.058, or from any jurisdiction outside
81 the state, unless expunction is sought of a criminal history
82 record previously sealed for 10 years pursuant to paragraph
83 (2)(h) and the record is otherwise eligible for expunction.

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

87
88 Any person who knowingly provides false information on such
89 sworn statement to the court commits a felony of the third
90 degree, punishable as provided in s. 775.082, s. 775.083, or s.
91 775.084.

92 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
93 petitioning the court to expunge a criminal history record, a
94 person seeking to expunge a criminal history record shall apply
95 to the department for a certificate of eligibility for
96 expunction. The department shall, by rule adopted pursuant to
97 chapter 120, establish procedures pertaining to the application
98 for and issuance of certificates of eligibility for expunction.
99 A certificate of eligibility for expunction is valid for 12



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100 months after the date stamped on the certificate when issued by
101 the department. After that time, the petitioner must reapply to
102 the department for a new certificate of eligibility. Eligibility
103 for a renewed certification of eligibility must be based on the
104 status of the applicant and the law in effect at the time of the
105 renewal application. The department shall issue a certificate of
106 eligibility for expunction to a person who is the subject of a
107 criminal history record if that person:

108 (f) Has never secured a prior sealing or expunction, except
109 as provided in subsection (5) and s. 943.059(5), of a criminal
110 history record under this section, former s. 893.14, former s.
111 901.33, or former s. 943.058, unless expunction is sought of a
112 criminal history record previously sealed for 10 years pursuant
113 to paragraph (h) and the record is otherwise eligible for
114 expunction.

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

116 (c) For an order to expunge entered by a court prior to
117 July 1, 1992, the department shall notify the appropriate state
118 attorney or statewide prosecutor of an order to expunge which is
119 contrary to law because the person who is the subject of the
120 record has previously been convicted of a crime or comparable
121 ordinance violation or has had a prior criminal history record
122 sealed or expunged, except as provided in subsection (5) and s.
123 943.059(5). Upon receipt of such notice, the appropriate state
124 attorney or statewide prosecutor shall take action, within 60
125 days, to correct the record and petition the court to void the
126 order to expunge. The department shall seal the record until
127 such time as the order is voided by the court.

128 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any



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129 criminal history record of a minor or an adult which is ordered
130 expunged by a court of competent jurisdiction pursuant to this
131 section must be physically destroyed or obliterated by any
132 criminal justice agency having custody of such record; except
133 that any criminal history record in the custody of the
134 department must be retained in all cases. A criminal history
135 record ordered expunged that is retained by the department is
136 confidential and exempt from the provisions of s. 119.07(1) and
137 s. 24(a), Art. I of the State Constitution and not available to
138 any person or entity except upon order of a court of competent
139 jurisdiction. A criminal justice agency may retain a notation
140 indicating compliance with an order to expunge.

141 (a) The person who is the subject of a criminal history
142 record that is expunged under this section or under other
143 provisions of law, including former s. 893.14, former s. 901.33,
144 and former s. 943.058, may lawfully deny or fail to acknowledge
145 the arrests and subsequent dispositions covered by the expunged
146 record, except when the subject of the record:

- 147 1. Is a candidate for employment with a criminal justice
148 agency;
- 149 2. Is a defendant in a criminal prosecution;
- 150 3. Concurrently or subsequently petitions for relief under
151 this section or s. 943.059;
- 152 4. Is a candidate for admission to The Florida Bar;
- 153 5. Is seeking to be employed or licensed by or to contract
154 with the Department of Children and Family Services, the Agency
155 for Health Care Administration, the Agency for Persons with
156 Disabilities, or the Department of Juvenile Justice or to be
157 employed or used by such contractor or licensee in a sensitive



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158 position having direct contact with children, the
159 developmentally disabled, the aged, or the elderly as provided
160 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
161 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),
162 chapter 916, s. 985.644, chapter 400, or chapter 429;

163 6. Is seeking to be employed or licensed by the Department
164 of Education, any district school board, any university
165 laboratory school, any charter school, any private or parochial
166 school, or any local governmental entity that licenses child
167 care facilities; or

168 7. Is seeking authorization from a seaport listed in s.
169 311.09 for employment within or access to one or more of such
170 seaports pursuant to s. 311.12.

171 (b) Subject to the exceptions in paragraph (a), a person
172 who has been granted an expunction under this section, former s.
173 893.14, former s. 901.33, or former s. 943.058 may not be held
174 under any provision of law of this state to commit perjury or to
175 be otherwise liable for giving a false statement by reason of
176 such person's failure to recite or acknowledge an expunged
177 criminal history record, including failure to recite or
178 acknowledge such information on an employment application.

179 (c) Information relating to the existence of an expunged
180 criminal history record which is provided in accordance with
181 paragraph (a) is confidential and exempt from the provisions of
182 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
183 except that the department shall disclose the existence of a
184 criminal history record ordered expunged to the entities set
185 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
186 respective licensing, access authorization, and employment



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187 purposes, and to criminal justice agencies for their respective
188 criminal justice purposes. It is unlawful for any employee of an
189 entity set forth in subparagraph (a)1., subparagraph (a)4.,
190 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
191 disclose information relating to the existence of an expunged
192 criminal history record of a person seeking employment, access
193 authorization, or licensure with such entity or contractor,
194 except to the person to whom the criminal history record relates
195 or to persons having direct responsibility for employment,
196 access authorization, or licensure decisions. Any person who
197 violates this paragraph commits a misdemeanor of the first
198 degree, punishable as provided in s. 775.082 or s. 775.083.

199 (d) The department may disclose the contents of an expunged
200 record to the subject of the record upon receipt of a written,
201 notarized request from the subject of the record.

202 (5) EXPUNCTION OF CRIMINAL HISTORY RECORD AFTER PRIOR
203 SEALING OR EXPUNCTION.-

204 (a) A court may expunge a person's criminal history record
205 after a prior criminal history record has been sealed or
206 expunged only if the person obtains a certificate from the
207 department to expunge the criminal history record. The
208 department may issue the certificate for a second expunction
209 only if:

210 1. The person has had only one prior expunction of his or
211 her criminal history record under this section or one prior
212 expunction following the sealing of the same arrest or alleged
213 criminal activity that was expunged;

214 2. The person has not been arrested in this state during
215 the 10-year period prior to the date on which the application



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216 for the certificate is filed; and

217 3. The person has not previously sealed or expunged a
218 criminal history record that involved the same offense to which
219 the petition to expunge pertains.

220 (b) All other provisions and requirements of this section
221 apply to an application to expunge a second criminal history
222 record.

223 (6) INFORMATION.—Each website for the office of a clerk of
224 court must include information relating to procedures to seal or
225 expunge criminal history records. This information must include
226 a link to related information on the department's website.

227 Section 3. Paragraph (b) of subsection (1), paragraph (e)
228 of subsection (2), paragraph (c) of subsection (3), and
229 paragraphs (a) and (b) of subsection (4) of section 943.059,
230 Florida Statutes, are amended, subsection (5) is renumbered as
231 subsection (6), and a new subsection (5) is added to that
232 section, to read:

233 943.059 Court-ordered sealing of criminal history records.—
234 The courts of this state shall continue to have jurisdiction
235 over their own procedures, including the maintenance, sealing,
236 and correction of judicial records containing criminal history
237 information to the extent such procedures are not inconsistent
238 with the conditions, responsibilities, and duties established by
239 this section. Any court of competent jurisdiction may order a
240 criminal justice agency to seal the criminal history record of a
241 minor or an adult who complies with the requirements of this
242 section. The court shall not order a criminal justice agency to
243 seal a criminal history record until the person seeking to seal
244 a criminal history record has applied for and received a



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245 certificate of eligibility for sealing pursuant to subsection
246 (2). A criminal history record that relates to a violation of s.
247 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
248 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
249 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
250 916.1075, a violation enumerated in s. 907.041, or any violation
251 specified as a predicate offense for registration as a sexual
252 predator pursuant to s. 775.21, without regard to whether that
253 offense alone is sufficient to require such registration, or for
254 registration as a sexual offender pursuant to s. 943.0435, may
255 not be sealed, without regard to whether adjudication was
256 withheld, if the defendant was found guilty of or pled guilty or
257 nolo contendere to the offense, or if the defendant, as a minor,
258 was found to have committed or pled guilty or nolo contendere to
259 committing the offense as a delinquent act. The court may only
260 order sealing of a criminal history record pertaining to one
261 arrest or one incident of alleged criminal activity, except as
262 provided in this section. The court may, at its sole discretion,
263 order the sealing of a criminal history record pertaining to
264 more than one arrest if the additional arrests directly relate
265 to the original arrest. If the court intends to order the
266 sealing of records pertaining to such additional arrests, such
267 intent must be specified in the order. A criminal justice agency
268 may not seal any record pertaining to such additional arrests if
269 the order to seal does not articulate the intention of the court
270 to seal records pertaining to more than one arrest. This section
271 does not prevent the court from ordering the sealing of only a
272 portion of a criminal history record pertaining to one arrest or
273 one incident of alleged criminal activity. Notwithstanding any



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274 law to the contrary, a criminal justice agency may comply with
275 laws, court orders, and official requests of other jurisdictions
276 relating to sealing, correction, or confidential handling of
277 criminal history records or information derived therefrom. This
278 section does not confer any right to the sealing of any criminal
279 history record, and any request for sealing a criminal history
280 record may be denied at the sole discretion of the court.

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

284 (b) The petitioner's sworn statement attesting that the
285 petitioner:

286 1. Has never, prior to the date on which the petition is
287 filed, been adjudicated guilty of a criminal offense or
288 comparable ordinance violation, or been adjudicated delinquent
289 for committing any felony or a misdemeanor specified in s.
290 943.051(3)(b).

291 2. Has not been adjudicated guilty of or adjudicated
292 delinquent for committing any of the acts stemming from the
293 arrest or alleged criminal activity to which the petition to
294 seal pertains.

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

299 4. Is eligible for such a sealing to the best of his or her
300 knowledge or belief and does not have any other petition to seal
301 or any petition to expunge pending before any court.
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303 Any person who knowingly provides false information on such
304 sworn statement to the court commits a felony of the third
305 degree, punishable as provided in s. 775.082, s. 775.083, or s.
306 775.084.

307 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
308 petitioning the court to seal a criminal history record, a
309 person seeking to seal a criminal history record shall apply to
310 the department for a certificate of eligibility for sealing. The
311 department shall, by rule adopted pursuant to chapter 120,
312 establish procedures pertaining to the application for and
313 issuance of certificates of eligibility for sealing. A
314 certificate of eligibility for sealing is valid for 12 months
315 after the date stamped on the certificate when issued by the
316 department. After that time, the petitioner must reapply to the
317 department for a new certificate of eligibility. Eligibility for
318 a renewed certification of eligibility must be based on the
319 status of the applicant and the law in effect at the time of the
320 renewal application. The department shall issue a certificate of
321 eligibility for sealing to a person who is the subject of a
322 criminal history record provided that such person:

323 (e) Has never secured a prior sealing or expunction, except
324 as provided in subsection (5), of a criminal history record
325 under this section, former s. 893.14, former s. 901.33, or
326 former s. 943.058.

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

328 (c) For an order to seal entered by a court prior to July
329 1, 1992, the department shall notify the appropriate state
330 attorney or statewide prosecutor of any order to seal which is
331 contrary to law because the person who is the subject of the



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332 record has previously been convicted of a crime or comparable
333 ordinance violation or has had a prior criminal history record
334 sealed or expunged, except as provided in subsection (5). Upon
335 receipt of such notice, the appropriate state attorney or
336 statewide prosecutor shall take action, within 60 days, to
337 correct the record and petition the court to void the order to
338 seal. The department shall seal the record until such time as
339 the order is voided by the court.

340 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
341 history record of a minor or an adult which is ordered sealed by
342 a court of competent jurisdiction pursuant to this section is
343 confidential and exempt from the provisions of s. 119.07(1) and
344 s. 24(a), Art. I of the State Constitution and is available only
345 to the person who is the subject of the record, to the subject's
346 attorney, to criminal justice agencies for their respective
347 criminal justice purposes, which include conducting a criminal
348 history background check for approval of firearms purchases or
349 transfers as authorized by state or federal law, to judges in
350 the state courts system for the purpose of assisting them in
351 their case-related decisionmaking responsibilities, as set forth
352 in s. 943.053(5), or to those entities set forth in
353 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
354 licensing, access authorization, and employment purposes.

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



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- 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. 943.0585;
- 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), s.
376 415.103, 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;
- 382 7. Is attempting to purchase a firearm from a licensed
383 importer, licensed manufacturer, or licensed dealer and is
384 subject to a criminal history check under state or federal law;
385 or
- 386 8. Is seeking authorization from a Florida seaport
387 identified in s. 311.09 for employment within or access to one
388 or more of such seaports pursuant to s. 311.12.
- 389 (b) Subject to the exceptions in paragraph (a), a person



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390 who has been granted a sealing under this section, former s.
391 893.14, former s. 901.33, or former s. 943.058 may not be held
392 under any provision of law of this state to commit perjury or to
393 be otherwise liable for giving a false statement by reason of
394 such person's failure to recite or acknowledge a sealed criminal
395 history record, including failure to recite or acknowledge such
396 information on an employment application.

397 (5) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING
398 OR EXPUNCTION.—

399 (a) A court may seal a person's criminal history record
400 after a prior criminal history record has been sealed or
401 expunged only if the person obtains a certificate from the
402 department to seal the criminal history record. The department
403 may issue the certificate for a second sealing only if:

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

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

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

414 (b) All other provisions and requirements of this section
415 apply to an application to seal a second criminal history
416 record.

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

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

420 And the title is amended as follows:

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422 Delete everything before the enacting clause
423 and insert:

424

A bill to be entitled

425

An act relating to criminal history records; providing
426 a short title; amending s. 943.0585, F.S.; authorizing
427 a court to expunge a criminal history record of a
428 person who had a prior criminal history record sealed
429 or expunged in certain circumstances; authorizing a
430 person to lawfully deny or fail to acknowledge the
431 arrests and subsequent dispositions of an expunged
432 record under certain circumstances; providing that a
433 person may fail to recite or acknowledge an expunged
434 criminal history record on an employment application
435 without committing certain violations; authorizing the
436 Department of Law Enforcement to disclose the contents
437 of an expunged record to the subject of the record
438 upon the subject's request; providing requirements for
439 a second expunction; requiring the website of a clerk
440 of court to include information relating to sealing
441 and expunction procedures and a link to related
442 information on the department's website; amending s.
443 943.059, F.S.; authorizing a court to seal a criminal
444 history record of a person who had a prior criminal
445 history record sealed or expunged in certain
446 circumstances; authorizing a person to lawfully deny
447 or fail to acknowledge the arrests and subsequent



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448 dispositions of a sealed record under certain
449 circumstances; providing that a person may fail to
450 recite or acknowledge a sealed criminal history record
451 on an employment application without committing
452 certain violations; providing requirements for a
453 second sealing; providing an effective date.