

By the Committee on Criminal Justice; and Senator Smith

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1 A bill to be entitled
2 An act relating to criminal history records; providing
3 a short title; amending s. 943.0585, F.S.; authorizing
4 a court to expunge a criminal history record of a
5 person who had a prior criminal history record sealed
6 or expunged in certain circumstances; authorizing a
7 person to lawfully deny or fail to acknowledge the
8 arrests and subsequent dispositions of an expunged
9 record under certain circumstances; providing that a
10 person may fail to recite or acknowledge an expunged
11 criminal history record on an employment application
12 without committing certain violations; authorizing the
13 Department of Law Enforcement to disclose the contents
14 of an expunged record to the subject of the record
15 upon the subject's request; providing requirements for
16 a second expunction; requiring the website of a clerk
17 of court to include information relating to sealing
18 and expunction procedures and a link to related
19 information on the department's website; amending s.
20 943.059, F.S.; authorizing a court to seal a criminal
21 history record of a person who had a prior criminal
22 history record sealed or expunged in certain
23 circumstances; authorizing a person to lawfully deny
24 or fail to acknowledge the arrests and subsequent
25 dispositions of a sealed record under certain
26 circumstances; providing that a person may fail to
27 recite or acknowledge a sealed criminal history record
28 on an employment application without committing
29 certain violations; providing requirements for a

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30 second sealing; providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. This act may be cited as the "Jim King Keep
35 Florida Working Act."

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

42 943.0585 Court-ordered expunction of criminal history
43 records.—The courts of this state have jurisdiction over their
44 own procedures, including the maintenance, expunction, and
45 correction of judicial records containing criminal history
46 information to the extent such procedures are not inconsistent
47 with the conditions, responsibilities, and duties established by
48 this section. Any court of competent jurisdiction may order a
49 criminal justice agency to expunge the criminal history record
50 of a minor or an adult who complies with the requirements of
51 this section. The court shall not order a criminal justice
52 agency to expunge a criminal history record until the person
53 seeking to expunge a criminal history record has applied for and
54 received a certificate of eligibility for expunction pursuant to
55 subsection (2). A criminal history record that relates to a
56 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
57 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
58 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.

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59 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
60 any violation specified as a predicate offense for registration
61 as a sexual predator pursuant to s. 775.21, without regard to
62 whether that offense alone is sufficient to require such
63 registration, or for registration as a sexual offender pursuant
64 to s. 943.0435, may not be expunged, without regard to whether
65 adjudication was withheld, if the defendant was found guilty of
66 or pled guilty or nolo contendere to the offense, or if the
67 defendant, as a minor, was found to have committed, or pled
68 guilty or nolo contendere to committing, the offense as a
69 delinquent act. The court may only order expunction of a
70 criminal history record pertaining to one arrest or one incident
71 of alleged criminal activity, except as provided in this
72 section. The court may, at its sole discretion, order the
73 expunction of a criminal history record pertaining to more than
74 one arrest if the additional arrests directly relate to the
75 original arrest. If the court intends to order the expunction of
76 records pertaining to such additional arrests, such intent must
77 be specified in the order. A criminal justice agency may not
78 expunge any record pertaining to such additional arrests if the
79 order to expunge does not articulate the intention of the court
80 to expunge a record pertaining to more than one arrest. This
81 section does not prevent the court from ordering the expunction
82 of only a portion of a criminal history record pertaining to one
83 arrest or one incident of alleged criminal activity.
84 Notwithstanding any law to the contrary, a criminal justice
85 agency may comply with laws, court orders, and official requests
86 of other jurisdictions relating to expunction, correction, or
87 confidential handling of criminal history records or information

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88 derived therefrom. This section does not confer any right to the
89 expunction of any criminal history record, and any request for
90 expunction of a criminal history record may be denied at the
91 sole discretion of the court.

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

95 (b) The petitioner's sworn statement attesting that the
96 petitioner:

97 1. Has never, prior to the date on which the petition is
98 filed, been adjudicated guilty of a criminal offense or
99 comparable ordinance violation, or been adjudicated delinquent
100 for committing any felony or a misdemeanor specified in s.
101 943.051(3)(b).

102 2. Has not been adjudicated guilty of, or adjudicated
103 delinquent for committing, any of the acts stemming from the
104 arrest or alleged criminal activity to which the petition
105 pertains.

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

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

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117 Any person who knowingly provides false information on such
118 sworn statement to the court commits a felony of the third
119 degree, punishable as provided in s. 775.082, s. 775.083, or s.
120 775.084.

121 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
122 petitioning the court to expunge a criminal history record, a
123 person seeking to expunge a criminal history record shall apply
124 to the department for a certificate of eligibility for
125 expunction. The department shall, by rule adopted pursuant to
126 chapter 120, establish procedures pertaining to the application
127 for and issuance of certificates of eligibility for expunction.
128 A certificate of eligibility for expunction is valid for 12
129 months after the date stamped on the certificate when issued by
130 the department. After that time, the petitioner must reapply to
131 the department for a new certificate of eligibility. Eligibility
132 for a renewed certification of eligibility must be based on the
133 status of the applicant and the law in effect at the time of the
134 renewal application. The department shall issue a certificate of
135 eligibility for expunction to a person who is the subject of a
136 criminal history record if that person:

137 (f) Has never secured a prior sealing or expunction, except
138 as provided in subsection (5) and s. 943.059(5), of a criminal
139 history record under this section, former s. 893.14, former s.
140 901.33, or former s. 943.058, unless expunction is sought of a
141 criminal history record previously sealed for 10 years pursuant
142 to paragraph (h) and the record is otherwise eligible for
143 expunction.

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

145 (c) For an order to expunge entered by a court prior to

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146 July 1, 1992, the department shall notify the appropriate state
147 attorney or statewide prosecutor of an order to expunge which is
148 contrary to law because the person who is the subject of the
149 record has previously been convicted of a crime or comparable
150 ordinance violation or has had a prior criminal history record
151 sealed or expunged, except as provided in subsection (5) and s.
152 943.059(5). Upon receipt of such notice, the appropriate state
153 attorney or statewide prosecutor shall take action, within 60
154 days, to correct the record and petition the court to void the
155 order to expunge. The department shall seal the record until
156 such time as the order is voided by the court.

157 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
158 criminal history record of a minor or an adult which is ordered
159 expunged by a court of competent jurisdiction pursuant to this
160 section must be physically destroyed or obliterated by any
161 criminal justice agency having custody of such record; except
162 that any criminal history record in the custody of the
163 department must be retained in all cases. A criminal history
164 record ordered expunged that is retained by the department is
165 confidential and exempt from the provisions of s. 119.07(1) and
166 s. 24(a), Art. I of the State Constitution and not available to
167 any person or entity except upon order of a court of competent
168 jurisdiction. A criminal justice agency may retain a notation
169 indicating compliance with an order to expunge.

170 (a) The person who is the subject of a criminal history
171 record that is expunged under this section or under other
172 provisions of law, including former s. 893.14, former s. 901.33,
173 and former s. 943.058, may lawfully deny or fail to acknowledge
174 the arrests and subsequent dispositions covered by the expunged

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175 record, except when the subject of the record:

176 1. Is a candidate for employment with a criminal justice
177 agency;

178 2. Is a defendant in a criminal prosecution;

179 3. Concurrently or subsequently petitions for relief under
180 this section or s. 943.059;

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

182 5. Is seeking to be employed or licensed by or to contract
183 with the Department of Children and Family Services, the Agency
184 for Health Care Administration, the Agency for Persons with
185 Disabilities, or the Department of Juvenile Justice or to be
186 employed or used by such contractor or licensee in a sensitive
187 position having direct contact with children, the
188 developmentally disabled, the aged, or the elderly as provided
189 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
190 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5),
191 chapter 916, s. 985.644, chapter 400, or chapter 429;

192 6. Is seeking to be employed or licensed by the Department
193 of Education, any district school board, any university
194 laboratory school, any charter school, any private or parochial
195 school, or any local governmental entity that licenses child
196 care facilities; or

197 7. Is seeking authorization from a seaport listed in s.
198 311.09 for employment within or access to one or more of such
199 seaports pursuant to s. 311.12.

200 (b) Subject to the exceptions in paragraph (a), a person
201 who has been granted an expunction under this section, former s.
202 893.14, former s. 901.33, or former s. 943.058 may not be held
203 under any provision of law of this state to commit perjury or to

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204 be otherwise liable for giving a false statement by reason of
205 such person's failure to recite or acknowledge an expunged
206 criminal history record, including failure to recite or
207 acknowledge such information on an employment application.

208 (c) Information relating to the existence of an expunged
209 criminal history record which is provided in accordance with
210 paragraph (a) is confidential and exempt from the provisions of
211 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
212 except that the department shall disclose the existence of a
213 criminal history record ordered expunged to the entities set
214 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
215 respective licensing, access authorization, and employment
216 purposes, and to criminal justice agencies for their respective
217 criminal justice purposes. It is unlawful for any employee of an
218 entity set forth in subparagraph (a)1., subparagraph (a)4.,
219 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
220 disclose information relating to the existence of an expunged
221 criminal history record of a person seeking employment, access
222 authorization, or licensure with such entity or contractor,
223 except to the person to whom the criminal history record relates
224 or to persons having direct responsibility for employment,
225 access authorization, or licensure decisions. Any person who
226 violates this paragraph commits a misdemeanor of the first
227 degree, punishable as provided in s. 775.082 or s. 775.083.

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

231 (5) EXPUNCTION OF CRIMINAL HISTORY RECORD AFTER PRIOR
232 SEALING OR EXPUNCTION.-

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233 (a) A court may expunge a person's criminal history record
234 after a prior criminal history record has been sealed or
235 expunged only if the person obtains a certificate from the
236 department to expunge the criminal history record. The
237 department may issue the certificate for a second expunction
238 only if:

239 1. The person has had only one prior expunction of his or
240 her criminal history record under this section or one prior
241 expunction following the sealing of the same arrest or alleged
242 criminal activity that was expunged;

243 2. The person has not been arrested in this state during
244 the 10-year period prior to the date on which the application
245 for the certificate is filed; and

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

249 (b) All other provisions and requirements of this section
250 apply to an application to expunge a second criminal history
251 record.

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

256 Section 3. Paragraph (b) of subsection (1), paragraph (e)
257 of subsection (2), paragraph (c) of subsection (3), and
258 paragraphs (a) and (b) of subsection (4) of section 943.059,
259 Florida Statutes, are amended, present subsection (5) is
260 renumbered as subsection (6), and a new subsection (5) is added
261 to that section, to read:

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262 943.059 Court-ordered sealing of criminal history records.-
263 The courts of this state shall continue to have jurisdiction
264 over their own procedures, including the maintenance, sealing,
265 and correction of judicial records containing criminal history
266 information to the extent such procedures are not inconsistent
267 with the conditions, responsibilities, and duties established by
268 this section. Any court of competent jurisdiction may order a
269 criminal justice agency to seal the criminal history record of a
270 minor or an adult who complies with the requirements of this
271 section. The court shall not order a criminal justice agency to
272 seal a criminal history record until the person seeking to seal
273 a criminal history record has applied for and received a
274 certificate of eligibility for sealing pursuant to subsection
275 (2). A criminal history record that relates to a violation of s.
276 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
277 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
278 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
279 916.1075, a violation enumerated in s. 907.041, or any violation
280 specified as a predicate offense for registration as a sexual
281 predator pursuant to s. 775.21, without regard to whether that
282 offense alone is sufficient to require such registration, or for
283 registration as a sexual offender pursuant to s. 943.0435, may
284 not be sealed, without regard to whether adjudication was
285 withheld, if the defendant was found guilty of or pled guilty or
286 nolo contendere to the offense, or if the defendant, as a minor,
287 was found to have committed or pled guilty or nolo contendere to
288 committing the offense as a delinquent act. The court may only
289 order sealing of a criminal history record pertaining to one
290 arrest or one incident of alleged criminal activity, except as

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291 provided in this section. The court may, at its sole discretion,
292 order the sealing of a criminal history record pertaining to
293 more than one arrest if the additional arrests directly relate
294 to the original arrest. If the court intends to order the
295 sealing of records pertaining to such additional arrests, such
296 intent must be specified in the order. A criminal justice agency
297 may not seal any record pertaining to such additional arrests if
298 the order to seal does not articulate the intention of the court
299 to seal records pertaining to more than one arrest. This section
300 does not prevent the court from ordering the sealing of only a
301 portion of a criminal history record pertaining to one arrest or
302 one incident of alleged criminal activity. Notwithstanding any
303 law to the contrary, a criminal justice agency may comply with
304 laws, court orders, and official requests of other jurisdictions
305 relating to sealing, correction, or confidential handling of
306 criminal history records or information derived therefrom. This
307 section does not confer any right to the sealing of any criminal
308 history record, and any request for sealing a criminal history
309 record may be denied at the sole discretion of the court.

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

313 (b) The petitioner's sworn statement attesting that the
314 petitioner:

315 1. Has never, prior to the date on which the petition is
316 filed, been adjudicated guilty of a criminal offense or
317 comparable ordinance violation, or been adjudicated delinquent
318 for committing any felony or a misdemeanor specified in s.
319 943.051(3)(b).

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320 2. Has not been adjudicated guilty of or adjudicated
321 delinquent for committing any of the acts stemming from the
322 arrest or alleged criminal activity to which the petition to
323 seal pertains.

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

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

331
332 Any person who knowingly provides false information on such
333 sworn statement to the court commits a felony of the third
334 degree, punishable as provided in s. 775.082, s. 775.083, or s.
335 775.084.

336 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
337 petitioning the court to seal a criminal history record, a
338 person seeking to seal a criminal history record shall apply to
339 the department for a certificate of eligibility for sealing. The
340 department shall, by rule adopted pursuant to chapter 120,
341 establish procedures pertaining to the application for and
342 issuance of certificates of eligibility for sealing. A
343 certificate of eligibility for sealing is valid for 12 months
344 after the date stamped on the certificate when issued by the
345 department. After that time, the petitioner must reapply to the
346 department for a new certificate of eligibility. Eligibility for
347 a renewed certification of eligibility must be based on the
348 status of the applicant and the law in effect at the time of the

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349 renewal application. The department shall issue a certificate of
350 eligibility for sealing to a person who is the subject of a
351 criminal history record provided that such person:

352 (e) Has never secured a prior sealing or expunction, except
353 as provided in subsection (5), of a criminal history record
354 under this section, former s. 893.14, former s. 901.33, or
355 former s. 943.058.

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

357 (c) For an order to seal entered by a court prior to July
358 1, 1992, the department shall notify the appropriate state
359 attorney or statewide prosecutor of any order to seal which is
360 contrary to law because the person who is the subject of the
361 record has previously been convicted of a crime or comparable
362 ordinance violation or has had a prior criminal history record
363 sealed or expunged, except as provided in subsection (5). Upon
364 receipt of such notice, the appropriate state attorney or
365 statewide prosecutor shall take action, within 60 days, to
366 correct the record and petition the court to void the order to
367 seal. The department shall seal the record until such time as
368 the order is voided by the court.

369 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
370 history record of a minor or an adult which is ordered sealed by
371 a court of competent jurisdiction pursuant to this section is
372 confidential and exempt from the provisions of s. 119.07(1) and
373 s. 24(a), Art. I of the State Constitution and is available only
374 to the person who is the subject of the record, to the subject's
375 attorney, to criminal justice agencies for their respective
376 criminal justice purposes, which include conducting a criminal
377 history background check for approval of firearms purchases or

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378 transfers as authorized by state or federal law, to judges in
379 the state courts system for the purpose of assisting them in
380 their case-related decisionmaking responsibilities, as set forth
381 in s. 943.053(5), or to those entities set forth in
382 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
383 licensing, access authorization, and employment purposes.

384 (a) The subject of a criminal history record sealed under
385 this section or under other provisions of law, including former
386 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
387 deny or fail to acknowledge the arrests and subsequent
388 dispositions covered by the sealed record, except when the
389 subject of the record:

- 390 1. Is a candidate for employment with a criminal justice
391 agency;
- 392 2. Is a defendant in a criminal prosecution;
- 393 3. Concurrently or subsequently petitions for relief under
394 this section or s. 943.0585;
- 395 4. Is a candidate for admission to The Florida Bar;
- 396 5. Is seeking to be employed or licensed by or to contract
397 with the Department of Children and Family Services, the Agency
398 for Health Care Administration, the Agency for Persons with
399 Disabilities, or the Department of Juvenile Justice or to be
400 employed or used by such contractor or licensee in a sensitive
401 position having direct contact with children, the
402 developmentally disabled, the aged, or the elderly as provided
403 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
404 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(5), s.
405 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;
- 406 6. Is seeking to be employed or licensed by the Department

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407 of Education, any district school board, any university
408 laboratory school, any charter school, any private or parochial
409 school, or any local governmental entity that licenses child
410 care facilities;

411 7. Is attempting to purchase a firearm from a licensed
412 importer, licensed manufacturer, or licensed dealer and is
413 subject to a criminal history check under state or federal law;
414 or

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

418 (b) Subject to the exceptions in paragraph (a), a person
419 who has been granted a sealing under this section, former s.
420 893.14, former s. 901.33, or former s. 943.058 may not be held
421 under any provision of law of this state to commit perjury or to
422 be otherwise liable for giving a false statement by reason of
423 such person's failure to recite or acknowledge a sealed criminal
424 history record, including failure to recite or acknowledge such
425 information on an employment application.

426 (5) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING
427 OR EXPUNCTION.—

428 (a) A court may seal a person's criminal history record
429 after a prior criminal history record has been sealed or
430 expunged only if the person obtains a certificate from the
431 department to seal the criminal history record. The department
432 may issue the certificate for a second sealing only if:

433 1. The person has had only one prior expunction or sealing
434 of his or her criminal history record under s. 943.0585 or this
435 section or one prior expunction following the sealing of the

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436 same arrest or alleged criminal activity that was expunged;

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

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

443 (b) All other provisions and requirements of this section
444 apply to an application to seal a second criminal history
445 record.

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