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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Criminal Justice (Steube) recommended the following:

1 **Senate Substitute for Amendment (240462) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. (1) Any person or entity engaged in the business
7 of publishing or otherwise disseminating arrest booking
8 photographs of persons who have previously been arrested through
9 a publicly accessible print or electronic medium may not solicit
10 or accept a fee or other form of payment to remove the



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11 photographs.

12 (2) Within 10 calendar days of receipt of a written request
13 for removal of a booking photograph from a person whose booking
14 photograph is published or otherwise disseminated, or from his
15 or her legal representative, the person or entity who published
16 or otherwise disseminated the photograph shall remove the
17 photograph without charge.

18 (3) The person whose arrest booking photograph was
19 published or otherwise disseminated in the publication or
20 electronic medium may bring a civil action to enjoin the
21 continued publication or dissemination of the photograph if the
22 photograph is not removed within 10 calendar days after receipt
23 of the written request for removal. The court may impose a civil
24 penalty of \$1,000 per day for noncompliance with an injunction
25 and shall award reasonable attorney fees and court costs related
26 to the issuance and enforcement of the injunction. Monies
27 recovered for civil penalties under this section shall be
28 deposited into the General Revenue Fund.

29 (4) Refusal to remove an arrest booking photograph after
30 written request has been made constitutes an unfair or deceptive
31 trade practice in accordance with part II of chapter 501.

32 (5) This section does not apply to any person or entity
33 that publishes or disseminates information relating to arrest
34 booking photographs unless the person or entity solicits or
35 accepts payment to remove the photographs.

36 Section 2. Paragraph (a) of subsection (2) of section
37 943.0585, Florida Statutes, is amended to read:

38 943.0585 Court-ordered expunction of criminal history
39 records.-Court-ordered expunction of criminal history records.-



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40 The courts of this state have jurisdiction over their own
41 procedures, including the maintenance, expunction, and
42 correction of judicial records containing criminal history
43 information to the extent such procedures are not inconsistent
44 with the conditions, responsibilities, and duties established by
45 this section. Any court of competent jurisdiction may order a
46 criminal justice agency to expunge the criminal history record
47 of a minor or an adult who complies with the requirements of
48 this section. The court shall not order a criminal justice
49 agency to expunge a criminal history record until the person
50 seeking to expunge a criminal history record has applied for and
51 received a certificate of eligibility for expunction pursuant to
52 subsection (2) or subsection (5). A criminal history record that
53 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
54 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
55 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
56 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
57 s. 907.041, or any violation specified as a predicate offense
58 for registration as a sexual predator pursuant to s. 775.21,
59 without regard to whether that offense alone is sufficient to
60 require such registration, or for registration as a sexual
61 offender pursuant to s. 943.0435, may not be expunged, without
62 regard to whether adjudication was withheld, if the defendant
63 was found guilty of or pled guilty or nolo contendere to the
64 offense, or if the defendant, as a minor, was found to have
65 committed, or pled guilty or nolo contendere to committing, the
66 offense as a delinquent act. The court may only order expunction
67 of a criminal history record pertaining to one arrest or one
68 incident of alleged criminal activity, except as provided in



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69 this section. The court may, at its sole discretion, order the
70 expunction of a criminal history record pertaining to more than
71 one arrest if the additional arrests directly relate to the
72 original arrest. If the court intends to order the expunction of
73 records pertaining to such additional arrests, such intent must
74 be specified in the order. A criminal justice agency may not
75 expunge any record pertaining to such additional arrests if the
76 order to expunge does not articulate the intention of the court
77 to expunge a record pertaining to more than one arrest. This
78 section does not prevent the court from ordering the expunction
79 of only a portion of a criminal history record pertaining to one
80 arrest or one incident of alleged criminal activity.
81 Notwithstanding any law to the contrary, a criminal justice
82 agency may comply with laws, court orders, and official requests
83 of other jurisdictions relating to expunction, correction, or
84 confidential handling of criminal history records or information
85 derived therefrom. This section does not confer any right to the
86 expunction of any criminal history record, and any request for
87 expunction of a criminal history record may be denied at the
88 sole discretion of the court.

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



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

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

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

110 2. That an indictment, information, or other charging
111 document, if filed or issued in the case, was dismissed or nolle
112 prosequi by the state attorney or statewide prosecutor, or was
113 dismissed by a court of competent jurisdiction, that a judgment
114 of acquittal was rendered by a judge, or that a verdict of not
115 guilty was rendered by a judge or jury and that none of the
116 charges related to the arrest or alleged criminal activity to
117 which the petition to expunge pertains resulted in a trial,
118 without regard to whether the outcome of the trial was other
119 than an adjudication of guilt.

120 3. That the criminal history record does not relate to a
121 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
122 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
123 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
124 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
125 or any violation specified as a predicate offense for
126 registration as a sexual predator pursuant to s. 775.21, without



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127 regard to whether that offense alone is sufficient to require
128 such registration, or for registration as a sexual offender
129 pursuant to s. 943.0435, where the defendant was found guilty
130 of, or pled guilty or nolo contendere to any such offense, or
131 that the defendant, as a minor, was found to have committed, or
132 pled guilty or nolo contendere to committing, such an offense as
133 a delinquent act, without regard to whether adjudication was
134 withheld.

135 Section 3. This act shall take effect July 1, 2017.

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

138 And the title is amended as follows:

139 Delete everything before the enacting clause
140 and insert:

141 A bill to be entitled
142 An act relating to criminal history records;
143 prohibiting a person or entity engaged in publishing
144 or disseminating arrest booking photographs from
145 soliciting or accepting a fee or other payment to
146 remove the photograph; requiring a person or entity,
147 within a specified timeframe, to remove an arrest
148 booking photograph after receipt of a written request;
149 authorizing a person to bring a civil action to enjoin
150 such publishing of a photograph; authorizing a court
151 to impose a civil penalty and award attorney fees and
152 court costs; providing applicability; amending s.
153 943.0585, F.S.; revising the eligibility requirements
154 for expunction of criminal history records to include
155 instances in which a judgment of acquittal or a



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verdict of not guilty is rendered; providing an
effective date.