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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Effective upon the same date that SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law, subsection (6) is added to section 901.40, Florida Statutes, as created by SB 448, 2017 Regular Session, to read:



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11 901.40 Prearrest diversion programs.-

12 (6) PUBLIC RECORDS EXEMPTION.—The personal identifying
13 information of an adult participating in a civil citation or
14 prearrest diversion program is exempt from s. 119.07(1) and s.
15 24(a), Art. I of the State Constitution. The exemption does not
16 apply to the personal identifying information of an adult who
17 fails to complete the civil citation or prearrest diversion
18 program. This exemption applies to personal identifying
19 information held by a law enforcement agency, a program services
20 provider, or the entity operating an adult civil citation or
21 prearrest diversion program before, on, or after the effective
22 date of this exemption. This subsection is subject to the Open
23 Government Sunset Review Act in accordance with s. 119.15 and
24 shall stand repealed on October 2, 2022, unless reviewed and
25 saved from such repeal through reenactment by the Legislature.

26 Section 2. Effective upon the same date that SB 448 or
27 similar legislation takes effect, if such legislation is adopted
28 in the same legislative session or an extension thereof and
29 becomes a law: The Legislature finds that it is a public
30 necessity that the personal identifying information of an adult
31 participating in a civil citation or prearrest diversion program
32 be exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
33 Article I of the State Constitution. The exemption does not
34 apply to the personal identifying information of an adult who
35 fails to complete the civil citation or prearrest diversion
36 program. The goal of such programs is to give a second chance to
37 adults who commit misdemeanor offenses and allow them the
38 opportunity to avoid having an arrest record. Such goal would be
39 defeated if the personal identifying information of such adults



40 were not exempt from disclosure and, consequently, would create
41 negative consequences for these adults. If the public were able
42 to obtain the personal identifying information of these adults,
43 the disclosure might adversely impact the civil citation or
44 prearrest diversion program. For these reasons, the Legislature
45 finds that it is a public necessity that the personal
46 identifying information of an adult participating in a civil
47 citation or prearrest diversion program be exempt from public
48 records requirements.

49 Section 3. Effective July 1, 2018, and only if SB 118 or
50 similar legislation is adopted in the same legislative session
51 or an extension thereof and becomes a law, subsection (2) is
52 added to section 943.0586, Florida Statutes, as created by SB
53 118, 2017 Regular session, to read:

54 943.0586 Administrative sealing of criminal history
55 records.-

56 (2) The sealing under this section of a criminal history
57 record has the same effect as a sealing under s. 943.059(4).

58 Section 4. Effective July 1, 2018, and only if SB 118 or
59 similar legislation is adopted in the same legislative session
60 or an extension thereof and becomes a law, subsection (4) of
61 section 943.059, Florida Statutes, is amended to read:

62 943.059 Court-ordered sealing of criminal history records.-

63 The courts of this state shall continue to have jurisdiction
64 over their own procedures, including the maintenance, sealing,
65 and correction of judicial records containing criminal history
66 information to the extent such procedures are not inconsistent
67 with the conditions, responsibilities, and duties established by
68 this section. Any court of competent jurisdiction may order a



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69 criminal justice agency to seal the criminal history record of a
70 minor or an adult who complies with the requirements of this
71 section. The court shall not order a criminal justice agency to
72 seal a criminal history record until the person seeking to seal
73 a criminal history record has applied for and received a
74 certificate of eligibility for sealing pursuant to subsection
75 (2). A criminal history record that relates to a violation of s.
76 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
77 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
78 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
79 s. 916.1075, a violation enumerated in s. 907.041, or any
80 violation specified as a predicate offense for registration as a
81 sexual predator pursuant to s. 775.21, without regard to whether
82 that offense alone is sufficient to require such registration,
83 or for registration as a sexual offender pursuant to s.
84 943.0435, may not be sealed, without regard to whether
85 adjudication was withheld, if the defendant was found guilty of
86 or pled guilty or nolo contendere to the offense, or if the
87 defendant, as a minor, was found to have committed or pled
88 guilty or nolo contendere to committing the offense as a
89 delinquent act. The court may only order sealing of a criminal
90 history record pertaining to one arrest or one incident of
91 alleged criminal activity, except as provided in this section.
92 The court may, at its sole discretion, order the sealing of a
93 criminal history record pertaining to more than one arrest if
94 the additional arrests directly relate to the original arrest.
95 If the court intends to order the sealing of records pertaining
96 to such additional arrests, such intent must be specified in the
97 order. A criminal justice agency may not seal any record



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98 pertaining to such additional arrests if the order to seal does
99 not articulate the intention of the court to seal records
100 pertaining to more than one arrest. This section does not
101 prevent the court from ordering the sealing of only a portion of
102 a criminal history record pertaining to one arrest or one
103 incident of alleged criminal activity. Notwithstanding any law
104 to the contrary, a criminal justice agency may comply with laws,
105 court orders, and official requests of other jurisdictions
106 relating to sealing, correction, or confidential handling of
107 criminal history records or information derived therefrom. This
108 section does not confer any right to the sealing of any criminal
109 history record, and any request for sealing a criminal history
110 record may be denied at the sole discretion of the court.

111 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
112 history record of a minor or an adult which is ordered sealed by
113 a court pursuant to this section or sealed administratively
114 pursuant to s. 943.0586 is confidential and exempt from the
115 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
116 Constitution and is available only to the person who is the
117 subject of the record, to the subject's attorney, to criminal
118 justice agencies for their respective criminal justice purposes,
119 which include conducting a criminal history background check for
120 approval of firearms purchases or transfers as authorized by
121 state or federal law, to judges in the state courts system for
122 the purpose of assisting them in their case-related
123 decisionmaking responsibilities, as set forth in s. 943.053(5),
124 or to those entities set forth in subparagraphs (a)1., 4., 5.,
125 6., 8., 9., and 10. for their respective licensing, access
126 authorization, and employment purposes.



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127 (a) The subject of a criminal history record sealed under
128 this section, s. 943.0586, or under other provisions of law,
129 including former s. 893.14, former s. 901.33, and former s.
130 943.058, may lawfully deny or fail to acknowledge the arrests
131 covered by the sealed record, except when the subject of the
132 record:

- 133 1. Is a candidate for employment with a criminal justice
134 agency;
- 135 2. Is a defendant in a criminal prosecution;
- 136 3. Concurrently or subsequently petitions for relief under
137 this section, s. 943.0583, or s. 943.0585;
- 138 4. Is a candidate for admission to The Florida Bar;
- 139 5. Is seeking to be employed or licensed by or to contract
140 with the Department of Children and Families, the Division of
141 Vocational Rehabilitation within the Department of Education,
142 the Agency for Health Care Administration, the Agency for
143 Persons with Disabilities, the Department of Health, the
144 Department of Elderly Affairs, or the Department of Juvenile
145 Justice or to be employed or used by such contractor or licensee
146 in a sensitive position having direct contact with children, the
147 disabled, or the elderly;
- 148 6. Is seeking to be employed or licensed by the Department
149 of Education, a district school board, a university laboratory
150 school, a charter school, a private or parochial school, or a
151 local governmental entity that licenses child care facilities;
- 152 7. Is attempting to purchase a firearm from a licensed
153 importer, licensed manufacturer, or licensed dealer and is
154 subject to a criminal history check under state or federal law;
- 155 8. Is seeking to be licensed by the Division of Insurance



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156 Agent and Agency Services within the Department of Financial
157 Services;

158 9. Is seeking to be appointed as a guardian pursuant to s.
159 744.3125; or

160 10. Is seeking to be licensed by the Bureau of License
161 Issuance of the Division of Licensing within the Department of
162 Agriculture and Consumer Services to carry a concealed weapon or
163 concealed firearm. This subparagraph applies only in the
164 determination of an applicant's eligibility under s. 790.06.

165 (b) Subject to the exceptions in paragraph (a), a person
166 who has been granted a sealing under this section, s. 943.0586,
167 former s. 893.14, former s. 901.33, or former s. 943.058 may not
168 be held under any provision of law of this state to commit
169 perjury or to be otherwise liable for giving a false statement
170 by reason of such person's failure to recite or acknowledge a
171 sealed criminal history record.

172 (c) Information relating to the existence of a sealed
173 criminal record provided in accordance with the provisions of
174 paragraph (a) is confidential and exempt from the provisions of
175 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
176 except that the department shall disclose the sealed criminal
177 history record to the entities set forth in subparagraphs (a)1.,
178 4., 5., 6., 8., 9., and 10. for their respective licensing,
179 access authorization, and employment purposes. An employee of an
180 entity set forth in subparagraph (a)1., subparagraph (a)4.,
181 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
182 subparagraph (a)9., or subparagraph (a)10. may not disclose
183 information relating to the existence of a sealed criminal
184 history record of a person seeking employment, access



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185 authorization, or licensure with such entity or contractor,
186 except to the person to whom the criminal history record relates
187 or to persons having direct responsibility for employment,
188 access authorization, or licensure decisions. A person who
189 violates the provisions of this paragraph commits a misdemeanor
190 of the first degree, punishable as provided in s. 775.082 or s.
191 775.083.

192 (d) The expansion of the public records exemption under
193 this subsection to include records sealed administratively under
194 s. 943.0586 is subject to the Open Government Sunset Review Act
195 in accordance with s. 119.15 and shall stand repealed on October
196 2, 2023, unless reviewed and saved from repeal through
197 reenactment by the Legislature. If the expansion of the
198 exemption is not saved from repeal, this subsection shall revert
199 to that in existence on June 30, 2017, except that any
200 amendments to such text other than by this act shall be
201 preserved and continue to operate to the extent that such
202 amendments are not dependent upon the portions of text which
203 expire pursuant to this paragraph.

204 Section 5. Effective July 1, 2018, and only if SB 118 or
205 similar legislation is adopted in the same legislative session
206 or an extension thereof and becomes a law: The Legislature finds
207 that it is a public necessity that the criminal history records
208 of a minor or an adult, which have been administratively sealed
209 pursuant to s. 943.0586, Florida Statutes, because the case was
210 not filed, was dismissed or nolle prosequi, or resulted in the
211 granting of a judgment of acquittal or verdict of not guilty, be
212 made confidential and exempt from s. 119.07(1), Florida
213 Statutes, and s. 24(a), Article I of the State Constitution. The



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214 presence of a criminal history record in an individual's past
215 which has not been validated through criminal proceedings can
216 jeopardize his or her ability to obtain education, employment,
217 and other achievements necessary to becoming a productive,
218 contributing, self-sustaining member of society. Such negative
219 consequences are unwarranted in cases in which the individual
220 was not found to have committed the offense that is the subject
221 of the sealed criminal history record. For these reasons, the
222 Legislature finds that it is a public necessity that the
223 criminal history records of a minor or an adult which have been
224 administratively sealed be confidential and exempt from public
225 records requirements.

226 Section 6. Except as otherwise expressly provided in this
227 act, this act shall take effect on July 1, 2017.

228
229 ===== T I T L E A M E N D M E N T =====

230 And the title is amended as follows:

231 Delete everything before the enacting clause
232 and insert:

233 A bill to be entitled
234 An act relating to public records; amending s. 901.40,
235 F.S.; creating an exemption from public records
236 requirements for the personal identifying information
237 of adults who participate in a civil citation or
238 prearrest diversion program; providing applicability;
239 providing retroactive application; providing for
240 future review and repeal of the exemption; providing a
241 statement of public necessity; amending s. 943.0586,
242 F.S.; providing applicability for the administrative



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243 sealing of specified criminal history records;
244 amending s. 943.059, F.S.; expanding an existing
245 public records exemption to include the administrative
246 sealing of specified criminal history records;
247 conforming provisions to changes made by the act;
248 providing for future review and repeal of the expanded
249 exemption; providing for reversion of specified
250 language if the exemption is not saved from repeal;
251 providing a statement of public necessity; providing
252 effective dates, including contingent effective dates.