

By the Committee on Law Enforcement & Crime Prevention and  
Representative Futch

1                                   A bill to be entitled  
2           An act relating to criminal justice  
3           information; repealing s. 943.051(5), F.S.,  
4           relating to the authority of the Department of  
5           Law Enforcement with respect to criminal  
6           justice information management; creating s.  
7           943.0531, F.S.; providing the authority of the  
8           department regarding the information management  
9           needs of the criminal justice community;  
10          authorizing establishment of an intra-agency  
11          communication network for state criminal  
12          justice agencies; authorizing limited presence  
13          on the network for certain other entities and  
14          specifying the authority of the department with  
15          respect to contracts and pilot projects with,  
16          and collection of fees or other consideration  
17          from, such entities; authorizing the department  
18          to enter into certain agreements; providing for  
19          rules; creating s. 943.0545, F.S.; ratifying  
20          the National Crime Prevention and Privacy  
21          Compact; specifying that the department shall  
22          be the criminal history record repository under  
23          the compact and the executive director of the  
24          department or his or her designee shall  
25          administer the compact; providing for rules;  
26          creating s. 943.0565, F.S.; directing the  
27          department to provide a mechanism whereby  
28          employees or volunteers or applicants therefor  
29          of qualified entities that provide care to  
30          children, the elderly, or persons with  
31          disabilities may be screened using state and

1 national criminal history information, in  
2 accordance with the National Child Protection  
3 Act of 1993; providing definitions; requiring  
4 qualified entities to register with the  
5 department and authorizing audits of such  
6 entities; providing requirements with respect  
7 to requests for screening; providing for fees;  
8 providing responsibilities of employees and  
9 volunteers subject to screening; providing  
10 conditions for provision of criminal history  
11 information to qualified entities and providing  
12 responsibilities with respect thereto;  
13 providing duties of qualified entities;  
14 authorizing the department to establish a  
15 database of qualified entities; specifying  
16 liability with respect to obtaining or  
17 providing such information; providing for  
18 rules; authorizing the department to establish  
19 positions to implement these provisions;  
20 reenacting and amending ss. 943.0585 and  
21 943.059, F.S., which provide procedures and  
22 requirements for court-ordered expunction and  
23 sealing of criminal history records, to  
24 incorporate prior amendments to statutes  
25 referenced in said sections; specifying that  
26 statutory references in said sections are  
27 general references; clarifying the meaning of  
28 "previous" in provisions which require  
29 statements regarding previous offenses;  
30 correcting references; providing an effective  
31 date.

1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Subsection (5) of section 943.051, Florida  
4 Statutes, is repealed.

5 Section 2. Section 943.0531, Florida Statutes, is  
6 created to read:

7 943.0531 Criminal justice information network and  
8 information management.--

9 (1) The department may develop, implement, maintain,  
10 and manage innovative, progressive, and effective methods of  
11 servicing the information management needs of the criminal  
12 justice community, and may take such steps as are necessary to  
13 promote efficient and cost-effective utilization of such  
14 information.

15 (2) The department is authorized to develop,  
16 implement, maintain, manage, and operate an intra-agency  
17 information and data sharing communication network for use by  
18 Florida criminal justice agencies, to be named the Criminal  
19 Justice Network. Access by Florida criminal justice agencies  
20 to the Criminal Justice Network shall be determined and  
21 regulated by the department, after consultation with the  
22 Criminal and Juvenile Justice Information Systems Council as  
23 established under s. 943.06.

24 (3) In addition to access to the Criminal Justice  
25 Network provided to Florida criminal justice agencies, the  
26 department may authorize entities that offer or provide a  
27 product, program, or service determined by the department to  
28 be of substantial value to the criminal justice information  
29 needs of the criminal justice agencies participating in the  
30 Criminal Justice Network special limited presence on the  
31 network under terms, conditions, and limitations established

1 by the department after consultation with the Criminal and  
2 Juvenile Justice Information Systems Council.

3 (4) In meeting its duties under this section, the  
4 department may enter into contracts with, conduct pilot  
5 studies and projects with, and assess and collect fees,  
6 commissions, royalties, or other charges from, entities  
7 approved for special presence on the Criminal Justice Network  
8 in consideration for such presence. The department may enter  
9 into agreements by which products, programs, or services of  
10 value to the department or the information needs of the  
11 criminal justice community are provided in lieu of all or a  
12 part of a fee, commission, royalty, or charge that might be  
13 otherwise assessed by the department upon an entity granted  
14 special limited presence on the network.

15 (5) The department is authorized to enter into an  
16 agreement with any entity to facilitate the department's  
17 responsibilities for receiving, maintaining, managing,  
18 processing, allowing access to, and disseminating criminal  
19 justice information, intelligence, or data, or criminal  
20 history records and information, or to otherwise accomplish  
21 the information and records-related duties and  
22 responsibilities defined in this section and chapter. The  
23 department may enter into agreements by which products,  
24 programs, or services of value to the department or the  
25 information needs of the criminal justice community are  
26 provided in lieu of all or a part of a fee, commission,  
27 royalty, or charge that might be otherwise assessed by the  
28 department upon an entity entering into an agreement with the  
29 department. Any entity under contract with the department to  
30 perform all or part of the department's information function  
31 or duties shall, as specified in the contract, be performing

1 such functions or duties as a criminal justice agency for  
2 purposes of handling, collecting, managing, or disseminating  
3 criminal justice information, intelligence, data, histories,  
4 and other records. Disclosure of such information to an  
5 entity under such a contract does not waive any  
6 confidentiality or exemption from disclosure under s. 119.07  
7 or any other applicable law.

8 (6) The department has authority to adopt such rules  
9 as are necessary to implement and perform the powers and  
10 duties defined in this section. Except as specified in this  
11 section, nothing in this section shall alter or limit the  
12 powers and duties of the department as otherwise established  
13 by this chapter.

14 Section 3. Section 943.0545, Florida Statutes, is  
15 created to read:

16 943.0545 National Crime Prevention and Privacy  
17 Compact; ratification and implementation.--

18 (1) In order to facilitate authorized interstate  
19 criminal history exchange for noncriminal justice purposes  
20 such as background checks for governmental licensing and the  
21 screening of employees and volunteers under the National Child  
22 Protection Act of 1993, as amended, and to implement the  
23 National Crime Prevention and Privacy Compact, 42 U.S.C. s.  
24 14616, the Legislature hereby approves and ratifies the  
25 National Crime Prevention and Privacy Compact. The compact  
26 officer designated in this section is authorized to execute  
27 the compact on behalf of the state.

28 (2) The department shall be the criminal history  
29 record repository for purposes of the compact and is  
30 authorized and directed to do all things necessary or  
31 incidental to carrying out the compact in every particular.

1       (3) The executive director of the department or the  
2 director's designee shall be the state's compact officer to  
3 administer the compact within Florida. The department has  
4 authority to adopt rules to implement procedures for the  
5 cooperative state-federal exchange of criminal history records  
6 for noncriminal justice uses.

7       (4) The state's ratification of the compact shall  
8 remain in effect until such time as legislation specifically  
9 renouncing the compact is enacted.

10       (5) Nothing in the compact or this section shall  
11 affect or abridge the obligations and responsibilities of the  
12 department under other provisions of this chapter, including  
13 s. 943.053, or alter or amend the manner in which access,  
14 direct or otherwise, to criminal history record information is  
15 afforded the public under state law.

16       Section 4. Section 943.0565, Florida Statutes, is  
17 created to read:

18       943.0565 Access to criminal history information  
19 provided by the department to qualified entities providing  
20 care or care placement services.--

21       (1) The United States Congress, in passing the  
22 National Child Protection Act of 1993, as amended, has  
23 established a national policy promoting a broader exchange of  
24 criminal history information for purposes of assisting  
25 entities that provide care, treatment, education, training,  
26 instruction, supervision, or recreation to children, the  
27 elderly, or individuals with disabilities in screening  
28 volunteers and employees associated with those entities and in  
29 helping to prevent the abuse of those served by the entities.  
30 Through the National Child Protection Act, Congress has

31

1 defined a process by which states may have access to national  
2 criminal history information for the stated purposes.

3 (2) The Legislature believes that the safety of our  
4 children and disabled and elderly persons is a priority, and  
5 establishes this section to conform with the processes and  
6 requirements established by Congress as a requisite for  
7 allowing national criminal history information to be provided  
8 to qualified entities. The department shall provide,  
9 consistent with federal law, a mechanism whereby employees or  
10 volunteers working with qualified entities may be screened  
11 using state and national criminal history information.

12 (3) As used in this section, "qualified entity" means  
13 a business or organization, whether public, private, for  
14 profit, not-for-profit, or voluntary, that provides care or  
15 care placement services, including a business or organization  
16 that licenses or certifies others to provide care or care  
17 placement services. "Care" means the provision of care,  
18 treatment, education, training, instruction, supervision, or  
19 recreation to children, the elderly, or individuals with  
20 disabilities.

21 (4)(a) A qualified entity must register with the  
22 department prior to submitting requests for screening under  
23 this section. All such requests are voluntary and must  
24 conform to the requirements established in the National Child  
25 Protection Act of 1993, as amended. As a part of the  
26 registration, the qualified entity shall agree to comply with  
27 the provisions of federal and state law and shall so indicate  
28 by signing an agreement approved by the department. The  
29 department may arrange periodic audits of qualified entities  
30 necessary to ensure compliance with federal laws and  
31 regulations and this section.

1       (b) A qualified entity shall submit to the department  
2 the request for screening of an employee or volunteer or  
3 person applying to be an employee or volunteer on a completed  
4 fingerprint card, with a signed waiver allowing the release of  
5 state and national criminal history record information to the  
6 qualified entity submitting the request.

7       (c) Each such request shall be accompanied by the  
8 payment of the prescribed fee. The fee shall be the same as  
9 that charged governmental agencies not qualified as criminal  
10 justice agencies for state criminal history records under s.  
11 943.053, plus the amount required by the Federal Bureau of  
12 Investigation for the national criminal history check in  
13 compliance with the National Child Protection Act of 1993, as  
14 amended.

15       (d) Any employee or volunteer who is subject to a  
16 request for screening shall indicate to the qualified entity  
17 submitting the request the name and address of all qualified  
18 entities that have submitted previous requests for screening  
19 regarding the employee or volunteer.

20       (5) The department shall provide directly to the  
21 qualified entity the state criminal history records which are  
22 not exempt from disclosure under chapter 119 or otherwise  
23 confidential under law. A person who is the subject of a state  
24 criminal history record may challenge the record only as  
25 provided in s. 943.056.

26       (6) The national criminal history data is available to  
27 qualified entities to use only for screening employees and  
28 volunteers or persons applying to be an employee or volunteer  
29 with a qualified entity. The department shall provide this  
30 national criminal history record information directly to the  
31



1 qualified entity as authorized by the written waiver required  
2 for submission of a request to the department.

3 (7) The determination whether the criminal history  
4 record shows that the employee or volunteer is convicted of or  
5 is under pending indictment for any crime that bears upon the  
6 employee or volunteer's fitness to have responsibility for the  
7 safety and well-being of children, the elderly, or disabled  
8 persons shall solely be made by the qualified entity. Nothing  
9 in this section shall be construed as requiring the department  
10 to make such a determination on behalf of any qualified  
11 entity.

12 (8) The qualified entity must notify the person of his  
13 or her right to obtain a copy of any background check report,  
14 including the criminal history records, if any, contained in  
15 the report, and the person's right to challenge the accuracy  
16 and completeness of any information contained in any such  
17 report and to obtain a determination as to the validity of  
18 such challenge before a final determination regarding the  
19 person is made by the qualified entity reviewing the criminal  
20 history information. Qualified entities which are required by  
21 law to apply screening criteria, including the right to  
22 contest or request an exemption from disqualification, shall  
23 continue to apply such criteria to the state and national  
24 criminal history record information received from the  
25 department.

26 (9) The department may establish a database of  
27 registered qualified entities and make this data available  
28 free of charge to all registered qualified entities. The  
29 database shall include, at a minimum, the name, address, and  
30 phone number of each qualified entity.

31

1       (10) A qualified entity shall not be liable in an  
2 action for damages solely for failure to obtain the  
3 information authorized under this section on an employee or  
4 volunteer, nor shall the state or any political subdivision  
5 thereof or any agency, officer, or employee thereof be liable  
6 in an action for damages for providing the information  
7 requested under this section.

8       (11) The department has authority to adopt rules to  
9 implement this section.

10       Section 5. The Department of Law Enforcement is  
11 authorized to establish necessary positions to implement s.  
12 943.0565, Florida Statutes. The positions shall be  
13 established in accordance with the demands for criminal  
14 history information at the rate of one position for each 5,000  
15 requests received by the department, with an initial  
16 authorization of 14 positions.

17       Section 6. For the purpose of incorporating all  
18 amendments made prior to the effective date of this act to the  
19 chapters, sections, or subdivisions of Florida Statutes  
20 referenced in section 943.0585, Florida Statutes, 1998  
21 Supplement, which amendments have not been incorporated by  
22 reference thereto, section 943.0585, Florida Statutes, 1998  
23 Supplement, is reenacted, and paragraph (b) of subsection (1),  
24 paragraph (d) of subsection (2), and paragraph (a) of  
25 subsection (4) of said section are amended, and subsection (5)  
26 is added to said section, to read:

27       943.0585 Court-ordered expunction of criminal history  
28 records.--The courts of this state have jurisdiction over  
29 their own procedures, including the maintenance, expunction,  
30 and correction of judicial records containing criminal history  
31 information to the extent such procedures are not inconsistent

1 with the conditions, responsibilities, and duties established  
2 by this section. Any court of competent jurisdiction may  
3 order a criminal justice agency to expunge the criminal  
4 history record of a minor or an adult who complies with the  
5 requirements of this section. The court shall not order a  
6 criminal justice agency to expunge a criminal history record  
7 until the person seeking to expunge a criminal history record  
8 has applied for and received a certificate of eligibility for  
9 expunction pursuant to subsection (2). A criminal history  
10 record that relates to a violation of chapter 794, s. 800.04,  
11 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a  
12 violation enumerated in s. 907.041 may not be expunged,  
13 without regard to whether adjudication was withheld, if the  
14 defendant was found guilty of or pled guilty or nolo  
15 contendere to the offense, or if the defendant, as a minor,  
16 was found to have committed, or pled guilty or nolo contendere  
17 to committing, the offense as a delinquent act. The court may  
18 only order expunction of a criminal history record pertaining  
19 to one arrest or one incident of alleged criminal activity,  
20 except as provided in this section. The court may, at its sole  
21 discretion, order the expunction of a criminal history record  
22 pertaining to more than one arrest if the additional arrests  
23 directly relate to the original arrest. If the court intends  
24 to order the expunction of records pertaining to such  
25 additional arrests, such intent must be specified in the  
26 order. A criminal justice agency may not expunge any record  
27 pertaining to such additional arrests if the order to expunge  
28 does not articulate the intention of the court to expunge a  
29 record pertaining to more than one arrest. This section does  
30 not prevent the court from ordering the expunction of only a  
31 portion of a criminal history record pertaining to one arrest

1 or one incident of alleged criminal activity. Notwithstanding  
2 any law to the contrary, a criminal justice agency may comply  
3 with laws, court orders, and official requests of other  
4 jurisdictions relating to expunction, correction, or  
5 confidential handling of criminal history records or  
6 information derived therefrom. This section does not confer  
7 any right to the expunction of any criminal history record,  
8 and any request for expunction of a criminal history record  
9 may be denied at the sole discretion of the court.

10 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY  
11 RECORD.--Each petition to a court to expunge a criminal  
12 history record is complete only when accompanied by:

13 (a) A certificate of eligibility for expunction issued  
14 by the department pursuant to subsection (2).

15 (b) The petitioner's sworn statement attesting that  
16 the petitioner:

17 1. Has never previous to the date on which the  
18 petition is filed ~~previously~~ been adjudicated guilty of a  
19 criminal offense or comparable ordinance violation or  
20 adjudicated delinquent for committing a felony or a  
21 misdemeanor specified in s. 943.051(3)(b).

22 2. Has not been adjudicated guilty of, or adjudicated  
23 delinquent for committing, any of the acts stemming from the  
24 arrest or alleged criminal activity to which the petition  
25 pertains.

26 3. Has never secured a prior sealing or expunction of  
27 a criminal history record under this section, former s.  
28 893.14, former s. 901.33, or former s. 943.058, or from any  
29 jurisdiction outside the state.

30 4. Is eligible for such an expunction to the best of  
31 his or her knowledge or belief and does not have any other

1 petition to expunge or any petition to seal pending before any  
2 court.

3

4 Any person who knowingly provides false information on such  
5 sworn statement to the court commits a felony of the third  
6 degree, punishable as provided in s. 775.082, s. 775.083, or  
7 s. 775.084.

8 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior  
9 to petitioning the court to expunge a criminal history record,  
10 a person seeking to expunge a criminal history record shall  
11 apply to the department for a certificate of eligibility for  
12 expunction. The department shall, by rule adopted pursuant to  
13 chapter 120, establish procedures pertaining to the  
14 application for and issuance of certificates of eligibility  
15 for expunction. The department shall issue a certificate of  
16 eligibility for expunction to a person who is the subject of a  
17 criminal history record if that person:

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

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

23 2. That an indictment, information, or other charging  
24 document, if filed or issued in the case, was dismissed or  
25 nolle prosequi by the state attorney or statewide prosecutor,  
26 or was dismissed by a court of competent jurisdiction.

27 3. That the criminal history record does not relate to  
28 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,  
29 chapter 839, s. 893.135, or a violation enumerated in s.  
30 907.041, where the defendant was found guilty of, or pled  
31 guilty or nolo contendere to any such offense, or that the

1 defendant, as a minor, was found to have committed, or pled  
2 guilty or nolo contendere to committing, such an offense as a  
3 delinquent act, without regard to whether adjudication was  
4 withheld.

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

8 (c) Has submitted to the department a certified copy  
9 of the disposition of the charge to which the petition to  
10 expunge pertains.

11 (d) Has never previous to the date on which the  
12 application for a certificate of eligibility is filed  
13 ~~previously~~ been adjudicated guilty of a criminal offense or  
14 comparable ordinance violation or adjudicated delinquent for  
15 committing a felony or a misdemeanor specified in s.  
16 943.051(3)(b).

17 (e) Has not been adjudicated guilty of, or adjudicated  
18 delinquent for committing, any of the acts stemming from the  
19 arrest or alleged criminal activity to which the petition to  
20 expunge pertains.

21 (f) Has never secured a prior sealing or expunction of  
22 a criminal history record under this section, former s.  
23 893.14, former s. 901.33, or former s. 943.058.

24 (g) Is no longer under court supervision applicable to  
25 the disposition of the arrest or alleged criminal activity to  
26 which the petition to expunge pertains.

27 (h) Is not required to wait a minimum of 10 years  
28 prior to being eligible for an expunction of such records  
29 because all charges related to the arrest or criminal activity  
30 to which the petition to expunge pertains were dismissed prior  
31 to trial, adjudication, or the withholding of adjudication.

1 Otherwise, such criminal history record must be sealed under  
2 this section, former s. 893.14, former s. 901.33, or former s.  
3 943.058 for at least 10 years before such record is eligible  
4 for expunction.

5 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

6 (a) In judicial proceedings under this section, a copy  
7 of the completed petition to expunge shall be served upon the  
8 appropriate state attorney or the statewide prosecutor and  
9 upon the arresting agency; however, it is not necessary to  
10 make any agency other than the state a party. The appropriate  
11 state attorney or the statewide prosecutor and the arresting  
12 agency may respond to the court regarding the completed  
13 petition to expunge.

14 (b) If relief is granted by the court, the clerk of  
15 the court shall certify copies of the order to the appropriate  
16 state attorney or the statewide prosecutor and the arresting  
17 agency. The arresting agency is responsible for forwarding the  
18 order to any other agency to which the arresting agency  
19 disseminated the criminal history record information to which  
20 the order pertains. The department shall forward the order to  
21 expunge to the Federal Bureau of Investigation. The clerk of  
22 the court shall certify a copy of the order to any other  
23 agency which the records of the court reflect has received the  
24 criminal history record from the court.

25 (c) For an order to expunge entered by a court prior  
26 to July 1, 1992, the department shall notify the appropriate  
27 state attorney or statewide prosecutor of an order to expunge  
28 which is contrary to law because the person who is the subject  
29 of the record has previously been convicted of a crime or  
30 comparable ordinance violation or has had a prior criminal  
31 history record sealed or expunged. Upon receipt of such

1 notice, the appropriate state attorney or statewide prosecutor  
2 shall take action, within 60 days, to correct the record and  
3 petition the court to void the order to expunge. The  
4 department shall seal the record until such time as the order  
5 is voided by the court.

6 (d) On or after July 1, 1992, the department or any  
7 other criminal justice agency is not required to act on an  
8 order to expunge entered by a court when such order does not  
9 comply with the requirements of this section. Upon receipt of  
10 such an order, the department must notify the issuing court,  
11 the appropriate state attorney or statewide prosecutor, the  
12 petitioner or the petitioner's attorney, and the arresting  
13 agency of the reason for noncompliance. The appropriate state  
14 attorney or statewide prosecutor shall take action within 60  
15 days to correct the record and petition the court to void the  
16 order. No cause of action, including contempt of court, shall  
17 arise against any criminal justice agency for failure to  
18 comply with an order to expunge when the petitioner for such  
19 order failed to obtain the certificate of eligibility as  
20 required by this section or such order does not otherwise  
21 comply with the requirements of this section.

22 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
23 criminal history record of a minor or an adult which is  
24 ordered expunged by a court of competent jurisdiction pursuant  
25 to this section must be physically destroyed or obliterated by  
26 any criminal justice agency having custody of such record;  
27 except that any criminal history record in the custody of the  
28 department must be retained in all cases. A criminal history  
29 record ordered expunged that is retained by the department is  
30 confidential and exempt from the provisions of s. 119.07(1)  
31 and s. 24(a), Art. I of the State Constitution and not



1 available to any person or entity except upon order of a court  
2 of competent jurisdiction. A criminal justice agency may  
3 retain a notation indicating compliance with an order to  
4 expunge.

5 (a) The person who is the subject of a criminal  
6 history record that is expunged under this section or under  
7 other provisions of law, including former s. 893.14, former s.  
8 901.33, and former s. 943.058, may lawfully deny or fail to  
9 acknowledge the arrests covered by the expunged record, except  
10 when the subject of the record:

11 1. Is a candidate for employment with a criminal  
12 justice agency;

13 2. Is a defendant in a criminal prosecution;

14 3. Concurrently or subsequently petitions for relief  
15 under this section or s. 943.059;

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

17 5. Is seeking to be employed or licensed by or to  
18 contract with the Department of Children and Family Services  
19 or the Department of Juvenile Justice or to be employed or  
20 used by such contractor or licensee in a sensitive position  
21 having direct contact with children, the developmentally  
22 disabled, the aged, or the elderly as provided in s.  
23 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.  
24 402.302(3)~~(8)~~, s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),  
25 s. 415.1075(4), s. 985.407, or chapter 400; or

26 6. Is seeking to be employed or licensed by the Office  
27 of Teacher Education, Certification, Staff Development, and  
28 Professional Practices of the Department of Education, any  
29 district school board, or any local governmental entity that  
30 licenses child care facilities.

31

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

8           (c) Information relating to the existence of an  
9 expunged criminal history record which is provided in  
10 accordance with paragraph (a) is confidential and exempt from  
11 the provisions of s. 119.07(1) and s. 24(a), Art. I of the  
12 State Constitution, except that the department shall disclose  
13 the existence of a criminal history record ordered expunged to  
14 the entities set forth in subparagraphs (a)1., 4., 5., and 6.  
15 for their respective licensing and employment purposes, and to  
16 criminal justice agencies for their respective criminal  
17 justice purposes. It is unlawful for any employee of an  
18 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
19 subparagraph (a)5., or subparagraph (a)6. to disclose  
20 information relating to the existence of an expunged criminal  
21 history record of a person seeking employment or licensure  
22 with such entity or contractor, except to the person to whom  
23 the criminal history record relates or to persons having  
24 direct responsibility for employment or licensure decisions.  
25 Any person who violates this paragraph commits a misdemeanor  
26 of the first degree, punishable as provided in s. 775.082 or  
27 s. 775.083.

28           (5) STATUTORY REFERENCES.--Any reference to any other  
29 chapter, section, or subdivision of the Florida Statutes in  
30 this section constitutes a general reference under the  
31 doctrine of incorporation by reference.

1           Section 7. For the purpose of incorporating all  
2 amendments made prior to the effective date of this act to the  
3 chapters, sections, or subdivisions of Florida Statutes  
4 referenced in section 943.059, Florida Statutes, 1998  
5 Supplement, which amendments have not been incorporated by  
6 reference thereto, section 943.059, Florida Statutes, 1998  
7 Supplement, is reenacted, and paragraph (b) of subsection (1),  
8 paragraph (c) of subsection (2), and paragraph (a) of  
9 subsection (4) of said section are amended, and subsection (5)  
10 is added to said section, to read:

11           943.059 Court-ordered sealing of criminal history  
12 records.--The courts of this state shall continue to have  
13 jurisdiction over their own procedures, including the  
14 maintenance, sealing, and correction of judicial records  
15 containing criminal history information to the extent such  
16 procedures are not inconsistent with the conditions,  
17 responsibilities, and duties established by this section. Any  
18 court of competent jurisdiction may order a criminal justice  
19 agency to seal the criminal history record of a minor or an  
20 adult who complies with the requirements of this section. The  
21 court shall not order a criminal justice agency to seal a  
22 criminal history record until the person seeking to seal a  
23 criminal history record has applied for and received a  
24 certificate of eligibility for sealing pursuant to subsection  
25 (2). A criminal history record that relates to a violation of  
26 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,  
27 s. 893.135, or a violation enumerated in s. 907.041 may not be  
28 sealed, without regard to whether adjudication was withheld,  
29 if the defendant was found guilty of or pled guilty or nolo  
30 contendere to the offense, or if the defendant, as a minor,  
31 was found to have committed or pled guilty or nolo contendere

1 to committing the offense as a delinquent act. The court may  
2 only order sealing of a criminal history record pertaining to  
3 one arrest or one incident of alleged criminal activity,  
4 except as provided in this section. The court may, at its sole  
5 discretion, order the sealing of a criminal history record  
6 pertaining to more than one arrest if the additional arrests  
7 directly relate to the original arrest. If the court intends  
8 to order the sealing of records pertaining to such additional  
9 arrests, such intent must be specified in the order. A  
10 criminal justice agency may not seal any record pertaining to  
11 such additional arrests if the order to seal does not  
12 articulate the intention of the court to seal records  
13 pertaining to more than one arrest. This section does not  
14 prevent the court from ordering the sealing of only a portion  
15 of a criminal history record pertaining to one arrest or one  
16 incident of alleged criminal activity. Notwithstanding any law  
17 to the contrary, a criminal justice agency may comply with  
18 laws, court orders, and official requests of other  
19 jurisdictions relating to sealing, correction, or confidential  
20 handling of criminal history records or information derived  
21 therefrom. This section does not confer any right to the  
22 sealing of any criminal history record, and any request for  
23 sealing a criminal history record may be denied at the sole  
24 discretion of the court.

25 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each  
26 petition to a court to seal a criminal history record is  
27 complete only when accompanied by:

28 (a) A certificate of eligibility for sealing issued by  
29 the department pursuant to subsection (2).

30 (b) The petitioner's sworn statement attesting that  
31 the petitioner:

1           1. Has never previous to the date on which the  
2 petition is filed ~~previously~~ been adjudicated guilty of a  
3 criminal offense or comparable ordinance violation or  
4 adjudicated delinquent for committing a felony or a  
5 misdemeanor specified in s. 943.051(3)(b).

6           2. Has not been adjudicated guilty of or adjudicated  
7 delinquent for committing any of the acts stemming from the  
8 arrest or alleged criminal activity to which the petition to  
9 seal pertains.

10           3. Has never secured a prior sealing or expunction of  
11 a criminal history record under this section, former s.  
12 893.14, former s. 901.33, former s. 943.058, or from any  
13 jurisdiction outside the state.

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

18  
19 Any person who knowingly provides false information on such  
20 sworn statement to the court commits a felony of the third  
21 degree, punishable as provided in s. 775.082, s. 775.083, or  
22 s. 775.084.

23           (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
24 petitioning the court to seal a criminal history record, a  
25 person seeking to seal a criminal history record shall apply  
26 to the department for a certificate of eligibility for  
27 sealing. The department shall, by rule adopted pursuant to  
28 chapter 120, establish procedures pertaining to the  
29 application for and issuance of certificates of eligibility  
30 for sealing. The department shall issue a certificate of  
31

1 eligibility for sealing to a person who is the subject of a  
2 criminal history record provided that such person:

3 (a) Has submitted to the department a certified copy  
4 of the disposition of the charge to which the petition to seal  
5 pertains.

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

9 (c) Has never previous to the date on which the  
10 application for a certificate of eligibility is filed  
11 ~~previously~~ been adjudicated guilty of a criminal offense or  
12 comparable ordinance violation or adjudicated delinquent for  
13 committing a felony or a misdemeanor specified in s.  
14 943.051(3)(b).

15 (d) Has not been adjudicated guilty of or adjudicated  
16 delinquent for committing any of the acts stemming from the  
17 arrest or alleged criminal activity to which the petition to  
18 seal pertains.

19 (e) Has never secured a prior sealing or expunction of  
20 a criminal history record under this section, former s.  
21 893.14, former s. 901.33, or former s. 943.058.

22 (f) Is no longer under court supervision applicable to  
23 the disposition of the arrest or alleged criminal activity to  
24 which the petition to seal pertains.

25 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

26 (a) In judicial proceedings under this section, a copy  
27 of the completed petition to seal shall be served upon the  
28 appropriate state attorney or the statewide prosecutor and  
29 upon the arresting agency; however, it is not necessary to  
30 make any agency other than the state a party. The appropriate  
31 state attorney or the statewide prosecutor and the arresting

1 agency may respond to the court regarding the completed  
2 petition to seal.

3 (b) If relief is granted by the court, the clerk of  
4 the court shall certify copies of the order to the appropriate  
5 state attorney or the statewide prosecutor and to the  
6 arresting agency. The arresting agency is responsible for  
7 forwarding the order to any other agency to which the  
8 arresting agency disseminated the criminal history record  
9 information to which the order pertains. The department shall  
10 forward the order to seal to the Federal Bureau of  
11 Investigation. The clerk of the court shall certify a copy of  
12 the order to any other agency which the records of the court  
13 reflect has received the criminal history record from the  
14 court.

15 (c) For an order to seal entered by a court prior to  
16 July 1, 1992, the department shall notify the appropriate  
17 state attorney or statewide prosecutor of any order to seal  
18 which is contrary to law because the person who is the subject  
19 of the record has previously been convicted of a crime or  
20 comparable ordinance violation or has had a prior criminal  
21 history record sealed or expunged. Upon receipt of such  
22 notice, the appropriate state attorney or statewide prosecutor  
23 shall take action, within 60 days, to correct the record and  
24 petition the court to void the order to seal. The department  
25 shall seal the record until such time as the order is voided  
26 by the court.

27 (d) On or after July 1, 1992, the department or any  
28 other criminal justice agency is not required to act on an  
29 order to seal entered by a court when such order does not  
30 comply with the requirements of this section. Upon receipt of  
31 such an order, the department must notify the issuing court,

1 the appropriate state attorney or statewide prosecutor, the  
2 petitioner or the petitioner's attorney, and the arresting  
3 agency of the reason for noncompliance. The appropriate state  
4 attorney or statewide prosecutor shall take action within 60  
5 days to correct the record and petition the court to void the  
6 order. No cause of action, including contempt of court, shall  
7 arise against any criminal justice agency for failure to  
8 comply with an order to seal when the petitioner for such  
9 order failed to obtain the certificate of eligibility as  
10 required by this section or when such order does not comply  
11 with the requirements of this section.

12 (e) An order sealing a criminal history record  
13 pursuant to this section does not require that such record be  
14 surrendered to the court, and such record shall continue to be  
15 maintained by the department and other criminal justice  
16 agencies.

17 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A  
18 criminal history record of a minor or an adult which is  
19 ordered sealed by a court of competent jurisdiction pursuant  
20 to this section is confidential and exempt from the provisions  
21 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
22 and is available only to the person who is the subject of the  
23 record, to the subject's attorney, to criminal justice  
24 agencies for their respective criminal justice purposes, or to  
25 those entities set forth in subparagraphs (a)1., 4., 5., and  
26 6. for their respective licensing and employment purposes.

27 (a) The subject of a criminal history record sealed  
28 under this section or under other provisions of law, including  
29 former s. 893.14, former s. 901.33, and former s. 943.058, may  
30 lawfully deny or fail to acknowledge the arrests covered by  
31 the sealed record, except when the subject of the record:



1           1. Is a candidate for employment with a criminal  
2 justice agency;  
3           2. Is a defendant in a criminal prosecution;  
4           3. Concurrently or subsequently petitions for relief  
5 under this section or s. 943.0585;  
6           4. Is a candidate for admission to The Florida Bar;  
7           5. Is seeking to be employed or licensed by or to  
8 contract with the Department of Children and Family Services  
9 or the Department of Juvenile Justice or to be employed or  
10 used by such contractor or licensee in a sensitive position  
11 having direct contact with children, the developmentally  
12 disabled, the aged, or the elderly as provided in s.  
13 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.  
14 402.302(3)~~(8)~~, s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),  
15 s. 415.103, s. 985.407, or chapter 400; or  
16           6. Is seeking to be employed or licensed by the Office  
17 of Teacher Education, Certification, Staff Development, and  
18 Professional Practices of the Department of Education, any  
19 district school board, or any local governmental entity which  
20 licenses child care facilities.  
21           (b) Subject to the exceptions in paragraph (a), a  
22 person who has been granted a sealing under this section,  
23 former s. 893.14, former s. 901.33, or former s. 943.058 may  
24 not be held under any provision of law of this state to commit  
25 perjury or to be otherwise liable for giving a false statement  
26 by reason of such person's failure to recite or acknowledge a  
27 sealed criminal history record.  
28           (c) Information relating to the existence of a sealed  
29 criminal record provided in accordance with the provisions of  
30 paragraph (a) is confidential and exempt from the provisions  
31 of s. 119.07(1) and s. 24(a), Art. I of the State

1 Constitution, except that the department shall disclose the  
2 sealed criminal history record to the entities set forth in  
3 subparagraphs (a)1., 4., 5., and 6. for their respective  
4 licensing and employment purposes. It is unlawful for any  
5 employee of an entity set forth in subparagraph (a)1.,  
6 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.  
7 to disclose information relating to the existence of a sealed  
8 criminal history record of a person seeking employment or  
9 licensure with such entity or contractor, except to the person  
10 to whom the criminal history record relates or to persons  
11 having direct responsibility for employment or licensure  
12 decisions. Any person who violates the provisions of this  
13 paragraph commits a misdemeanor of the first degree,  
14 punishable as provided in s. 775.082 or s. 775.083.

15 (5) STATUTORY REFERENCES.--Any reference to any other  
16 chapter, section, or subdivision of the Florida Statutes in  
17 this section constitutes a general reference under the  
18 doctrine of incorporation by reference.

19 Section 8. This act shall take effect October 1, 1999.  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

HOUSE SUMMARY

Provides the authority of the Department of Law Enforcement regarding the information management needs of the criminal justice community. Authorizes establishment of an intra-agency communication network for state criminal justice agencies and authorizes limited presence on the network for certain other entities. Specifies the authority of the department with respect to contracts and pilot projects with, and collection of fees or other consideration from, such entities.

Ratifies the National Crime Prevention and Privacy Compact and specifies that the department shall be the criminal history record repository under the compact and the executive director of the department or his or her designee shall administer the compact.

Directs the department to provide a mechanism whereby employees or volunteers, or applicants therefor, of qualified entities that provide care to children, the elderly, or persons with disabilities may be screened using state and national criminal history information, in accordance with the National Child Protection Act of 1993. Requires such entities to register with the department. Provides requirements relating to screening requests and provides the duties and responsibilities of such entities, employees and volunteers, and the department.

Reenacts provisions which provide procedures and requirements for court-ordered expunction and sealing of criminal history records, to incorporate prior amendments to statutes referenced therein. Specifies that statutory references in said provisions are general references. Clarifies the meaning of "previous" in provisions which require statements regarding previous offenses.