

By Senator Brown-Waite

10-1053-99

1 A bill to be entitled
2 An act relating to the Department of Law
3 Enforcement; creating s. 943.0543, F.S.;
4 requiring that the department provide qualified
5 entities that provide care, treatment, or other
6 services for children, the elderly, or
7 individuals with disabilities access to
8 criminal history information; requiring
9 compliance with certain federal laws; providing
10 for fees; providing for the disclosure of
11 criminal history records that are not exempt
12 from disclosure under the public records law;
13 requiring the department to establish a
14 database of entities qualified to obtain
15 criminal history information; providing certain
16 exemptions from liability; creating s.
17 943.0543, F.S.; ratifying the National Crime
18 Prevention and Privacy Compact; requiring that
19 the executive director of the department
20 administer the compact; creating s. 943.0544,
21 F.S.; authorizing the department to develop and
22 operate the Criminal Justice Network; providing
23 for the department to regulate access to the
24 network; authorizing the department to accept
25 services in lieu of fees or other charges;
26 authorizing the department to enter into
27 agreements with private entities for the
28 purpose of managing and disseminating criminal
29 justice information; providing rulemaking
30 authority; amending ss. 943.0585, 943.059,
31 F.S., relating to the court-ordered expunction

1 and sealing of criminal history records;
2 providing that references to s. 907.041, F.S.,
3 are general references under the doctrine of
4 incorporation by reference; clarifying certain
5 requirements for a petition to expunge or seal
6 a criminal history record; repealing s.
7 943.051(5), F.S., relating to the department's
8 authority to contract with other agencies and
9 private entities for the management and
10 dissemination of criminal justice information;
11 authorizing additional positions within the
12 department; providing an effective date.

13
14 WHEREAS, the United States Congress, in passing the
15 National Child Protection Act of 1993, as amended, has
16 established a national policy to promote a broader exchange of
17 criminal history information for purposes of assisting
18 entities in screening volunteers and employees who provide
19 care, treatment, education, supervision, or recreation for
20 children, the elderly, or individuals with disabilities, and

21 WHEREAS, through the National Child Protection Act,
22 Congress has defined a process by which the state may have
23 access to national criminal history information for stated
24 purposes, and

25 WHEREAS, the Legislature finds that the safety of our
26 children, the elderly, and the disabled is a priority and this
27 act is intended to conform with the processes and requirements
28 established by Congress as a requisite for allowing national
29 criminal history information to be provided to qualified
30 entities, and

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1 WHEREAS, the Legislature intends to provide, consistent
2 with federal law, a mechanism whereby employees or volunteers
3 who work with qualified entities may be screened using state
4 and national criminal history information, NOW, THEREFORE,

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

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8 Section 1. Section 943.0542, Florida Statutes, is
9 created to read:

10 943.0542 Access to criminal history information
11 provided by the department to qualified entities.--

12 (1) As used in this section, the term:

13 (a) "Care" means the provision of care, treatment,
14 education, training, instruction, supervision, or recreation
15 to children, the elderly, or individuals with disabilities.

16 (b) "Qualified entity" means a business or
17 organization, whether public, private, operated for profit,
18 operated not for profit, or voluntary, which provides care or
19 care-placement services, including a business or organization
20 that licenses or certifies others to provide care or
21 care-placement services.

22 (2)(a) A qualified entity must register with the
23 department before submitting a request for screening under
24 this section. Each such request must be voluntary and conform
25 to the requirements established in the National Child
26 Protection Act of 1993, as amended. As a part of the
27 registration, the qualified entity must agree to comply with
28 state and federal law and must so indicate by signing an
29 agreement approved by the department. The department may
30 periodically audit qualified entities to ensure compliance
31 with federal law and this section.

1 (b) A qualified entity shall submit to the department
2 a request for screening an employee or volunteer who has or
3 will have responsibility for the safety and well-being of
4 children, the elderly, or individuals with disabilities on a
5 completed fingerprint card, with a signed waiver allowing the
6 release of state and national criminal history record
7 information to any qualified entity.

8 (c) Each such request must be accompanied by a fee,
9 which shall approximate the actual cost of producing the
10 record information, as provided in s. 943.053, plus the amount
11 required by the Federal Bureau of Investigation for the
12 national criminal history check in compliance with the
13 National Child Protection Act of 1993, as amended.

14 (d) Any employee or volunteer who is subject to a
15 request for screening must indicate to the qualified entity
16 submitting the request the name and address of each qualified
17 entity that has submitted a previous request for screening
18 regarding that employee or volunteer. The qualified entity
19 submitting the current request must include this information
20 in the request forwarded to the department.

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

27 (4) The national criminal history data is available to
28 qualified entities to use only for the purpose of screening
29 employees and volunteers who work with children, the elderly,
30 or disabled individuals. The department shall provide this
31 national criminal history record information directly to the

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

3 (5) The determination whether the criminal history
4 record shows that the employee or volunteer has been convicted
5 of or is under pending indictment for any crime that bears
6 upon the fitness of the employee or volunteer to have
7 responsibility for the safety and well-being of children, the
8 elderly, or disabled persons shall solely be made by the
9 qualified entity. This section does not require the department
10 to make such a determination on behalf of any qualified
11 entity.

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

26 (7) 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 must include, at a minimum, the name, address, and
30 phone number of each qualified entity.

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1 (8) A qualified entity is not liable for damages
2 solely for failing to obtain the information authorized under
3 this section with respect to an employee or volunteer. The
4 state, any political subdivision of the state, or any agency,
5 officer, or employee of the state or a political subdivision
6 is not liable for damages for providing the information
7 requested under this section.

8 Section 2. Section 943.0543, Florida Statutes, is
9 created to read:

10 943.0543 National Crime Prevention and Privacy
11 Compact; ratification and implementation.--

12 (1) In order to facilitate the authorized interstate
13 exchange of criminal history information for noncriminal
14 justice purposes, including, but not limited to, background
15 checks for the licensing and screening of employees and
16 volunteers under the National Child Protection Act of 1993, as
17 amended, and to implement the National Crime Prevention and
18 Privacy Compact, 42 U.S.C. s. 14616, the Legislature approves
19 and ratifies the compact. The executive director of the
20 Department of Law Enforcement shall execute the compact on
21 behalf of the state.

22 (2) The department is the repository of criminal
23 history records for purposes of the compact and shall do all
24 things necessary or incidental to carrying out the compact.

25 (3) The executive director of the department, or the
26 director's designee, is the state's compact officer and shall
27 administer the compact within the state. The department may
28 adopt rules and establish procedures for the cooperative
29 exchange of criminal history records between the state and
30 Federal Government for use in noncriminal justice cases.

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1 (4) The state's ratification of the compact remains in
2 effect until legislation is enacted which specifically
3 renounces the compact.

4 (5) This compact and this section do not affect or
5 abridge the obligations and responsibilities of the department
6 under other provisions of this chapter, including s. 943.053,
7 and does not alter or amend the manner, direct or otherwise,
8 in which the public is afforded access to criminal history
9 records under state law.

10 Section 3. Section 943.0544, Florida Statutes, is
11 created to read:

12 943.0544 Criminal justice information network and
13 information management.--

14 (1) The department may develop, implement, maintain,
15 and manage innovative, progressive, and effective methods of
16 servicing the information-management needs of criminal justice
17 agencies, and may take necessary steps to promote the
18 efficient and cost-effective use of such information.

19 (2) The department may develop, implement, maintain,
20 manage, and operate the Criminal Justice Network, which shall
21 be an intraagency information and data-sharing network for use
22 by the state's criminal justice agencies. The department, in
23 consultation with the Criminal and Juvenile Justice
24 Information Systems Council, shall determine and regulate
25 access to the Criminal Justice Network by the state's criminal
26 justice agencies.

27 (3) In addition, the department may authorize entities
28 that offer or provide a product, program, or service
29 determined by the department to be of substantial value to the
30 criminal justice information needs of the state's criminal
31 justice agencies a special limited presence on the network

1 under terms, conditions, and limitations established by the
2 department after consultation with the Criminal and Juvenile
3 Justice Information Systems Council.

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

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

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

8 (6) The department may adopt rules to administer this
9 section. Except as otherwise specified in this section, this
10 section does not alter or limit the powers and duties of the
11 department established under this chapter.

12 Section 4. Section 943.0585, Florida Statutes, 1998
13 Supplement, is amended to read:

14 943.0585 Court-ordered expunction of criminal history
15 records.--The courts of this state have jurisdiction over
16 their own procedures, including the maintenance, expunction,
17 and correction of judicial records containing criminal history
18 information to the extent such procedures are not inconsistent
19 with the conditions, responsibilities, and duties established
20 by this section. Any court of competent jurisdiction may
21 order a criminal justice agency to expunge the criminal
22 history record of a minor or an adult who complies with the
23 requirements of this section. The court shall not order a
24 criminal justice agency to expunge a criminal history record
25 until the person seeking to expunge a criminal history record
26 has applied for and received a certificate of eligibility for
27 expunction pursuant to subsection (2). A criminal history
28 record that relates to a violation of chapter 794, s. 800.04,
29 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
30 violation enumerated in s. 907.041 may not be expunged,
31 without regard to whether adjudication was withheld, if the

1 defendant was found guilty of or pled guilty or nolo
2 contendere to the offense, or if the defendant, as a minor,
3 was found to have committed, or pled guilty or nolo contendere
4 to committing, the offense as a delinquent act. For the
5 purpose of clarifying to the court the offenses that are
6 included within the references to s. 907.041 contained in this
7 section, s. 907.041 constitutes a general reference under the
8 doctrine of incorporation by reference.The court may only
9 order expunction of a criminal history record pertaining to
10 one arrest or one incident of alleged criminal activity,
11 except as provided in this section. The court may, at its sole
12 discretion, order the expunction of a criminal history record
13 pertaining to more than one arrest if the additional arrests
14 directly relate to the original arrest. If the court intends
15 to order the expunction of records pertaining to such
16 additional arrests, such intent must be specified in the
17 order. A criminal justice agency may not expunge any record
18 pertaining to such additional arrests if the order to expunge
19 does not articulate the intention of the court to expunge a
20 record pertaining to more than one arrest. This section does
21 not prevent the court from ordering the expunction of only a
22 portion of a criminal history record pertaining to one arrest
23 or one incident of alleged criminal activity. Notwithstanding
24 any law to the contrary, a criminal justice agency may comply
25 with laws, court orders, and official requests of other
26 jurisdictions relating to expunction, correction, or
27 confidential handling of criminal history records or
28 information derived therefrom. This section does not confer
29 any right to the expunction of any criminal history record,
30 and any request for expunction of a criminal history record
31 may be denied at the sole discretion of the court.

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

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

6 (b) The petitioner's sworn statement attesting that
7 the petitioner:

8 1. Has never, prior to the date on which the petition
9 is filed,~~previously~~ been adjudicated guilty of a criminal
10 offense or comparable ordinance violation or adjudicated
11 delinquent for committing a felony or a misdemeanor specified
12 in s. 943.051(3)(b).

13 2. Has not been adjudicated guilty of, or adjudicated
14 delinquent for committing, any of the acts stemming from the
15 arrest or alleged criminal activity to which the petition
16 pertains.

17 3. Has never secured a prior sealing or expunction of
18 a criminal history record under this section, former s.
19 893.14, former s. 901.33, or former s. 943.058, or from any
20 jurisdiction outside the state.

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

25
26 Any person who knowingly provides false information on such
27 sworn statement to the court commits a felony of the third
28 degree, punishable as provided in s. 775.082, s. 775.083, or
29 s. 775.084.

30 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
31 to petitioning the court to expunge a criminal history record,

1 a person seeking to expunge a criminal history record shall
2 apply to the department for a certificate of eligibility for
3 expunction. The department shall, by rule adopted pursuant to
4 chapter 120, establish procedures pertaining to the
5 application for and issuance of certificates of eligibility
6 for expunction. The department shall issue a certificate of
7 eligibility for expunction to a person who is the subject of a
8 criminal history record if that person:

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

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

14 2. That an indictment, information, or other charging
15 document, if filed or issued in the case, was dismissed or
16 nolle prosequi by the state attorney or statewide prosecutor,
17 or was dismissed by a court of competent jurisdiction.

18 3. That the criminal history record does not relate to
19 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
20 chapter 839, s. 893.135, or a violation enumerated in s.
21 907.041, where the defendant was found guilty of, or pled
22 guilty or nolo contendere to any such offense, or that the
23 defendant, as a minor, was found to have committed, or pled
24 guilty or nolo contendere to committing, such an offense as a
25 delinquent act, without regard to whether adjudication was
26 withheld.

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

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1 (c) Has submitted to the department a certified copy
2 of the disposition of the charge to which the petition to
3 expunge pertains.

4 (d) Has never, prior to the date on which the
5 application for a certificate of eligibility is filed,
6 ~~previously~~ been adjudicated guilty of a criminal offense or
7 comparable ordinance violation or adjudicated delinquent for
8 committing a felony or a misdemeanor specified in s.
9 943.051(3)(b).

10 (e) Has not been adjudicated guilty of, or adjudicated
11 delinquent for committing, any of the acts stemming from the
12 arrest or alleged criminal activity to which the petition to
13 expunge pertains.

14 (f) Has never secured a prior sealing or expunction of
15 a criminal history record under this section, former s.
16 893.14, former s. 901.33, or former s. 943.058.

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

20 (h) Is not required to wait a minimum of 10 years
21 prior to being eligible for an expunction of such records
22 because all charges related to the arrest or criminal activity
23 to which the petition to expunge pertains were dismissed prior
24 to trial, adjudication, or the withholding of adjudication.
25 Otherwise, such criminal history record must be sealed under
26 this section, former s. 893.14, former s. 901.33, or former s.
27 943.058 for at least 10 years before such record is eligible
28 for expunction.

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

30 (a) In judicial proceedings under this section, a copy
31 of the completed petition to expunge shall be served upon the

1 appropriate state attorney or the statewide prosecutor and
2 upon the arresting agency; however, it is not necessary to
3 make any agency other than the state a party. The appropriate
4 state attorney or the statewide prosecutor and the arresting
5 agency may respond to the court regarding the completed
6 petition to expunge.

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

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

30 (d) On or after July 1, 1992, the department or any
31 other criminal justice agency is not required to act on an

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

15 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
16 criminal history record of a minor or an adult which is
17 ordered expunged by a court of competent jurisdiction pursuant
18 to this section must be physically destroyed or obliterated by
19 any criminal justice agency having custody of such record;
20 except that any criminal history record in the custody of the
21 department must be retained in all cases. A criminal history
22 record ordered expunged that is retained by the department is
23 confidential and exempt from the provisions of s. 119.07(1)
24 and s. 24(a), Art. I of the State Constitution and not
25 available to any person or entity except upon order of a court
26 of competent jurisdiction. A criminal justice agency may
27 retain a notation indicating compliance with an order to
28 expunge.

29 (a) The person who is the subject of a criminal
30 history record that is expunged under this section or under
31 other provisions of law, including former s. 893.14, former s.

1 901.33, and former s. 943.058, may lawfully deny or fail to
2 acknowledge the arrests covered by the expunged record, except
3 when the subject of the record:

4 1. Is a candidate for employment with a criminal
5 justice agency;

6 2. Is a defendant in a criminal prosecution;

7 3. Concurrently or subsequently petitions for relief
8 under this section or s. 943.059;

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

10 5. Is seeking to be employed or licensed by or to
11 contract with the Department of Children and Family Services
12 or the Department of Juvenile Justice or to be employed or
13 used by such contractor or licensee in a sensitive position
14 having direct contact with children, the developmentally
15 disabled, the aged, or the elderly as provided in s.
16 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
17 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
18 415.1075(4), s. 985.407, or chapter 400; or

19 6. Is seeking to be employed or licensed by the Office
20 of Teacher Education, Certification, Staff Development, and
21 Professional Practices of the Department of Education, any
22 district school board, or any local governmental entity that
23 licenses child care facilities.

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

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

21 Section 5. Section 943.059, Florida Statutes, 1998
22 Supplement, is amended to read:

23 943.059 Court-ordered sealing of criminal history
24 records.--The courts of this state shall continue to have
25 jurisdiction over their own procedures, including the
26 maintenance, sealing, and correction of judicial records
27 containing criminal history information to the extent such
28 procedures are not inconsistent with the conditions,
29 responsibilities, and duties established by this section. Any
30 court of competent jurisdiction may order a criminal justice
31 agency to seal the criminal history record of a minor or an

1 adult who complies with the requirements of this section. The
2 court shall not order a criminal justice agency to seal a
3 criminal history record until the person seeking to seal a
4 criminal history record has applied for and received a
5 certificate of eligibility for sealing pursuant to subsection
6 (2). A criminal history record that relates to a violation of
7 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
8 s. 893.135, or a violation enumerated in s. 907.041 may not be
9 sealed, without regard to whether adjudication was withheld,
10 if the defendant was found guilty of or pled guilty or nolo
11 contendere to the offense, or if the defendant, as a minor,
12 was found to have committed or pled guilty or nolo contendere
13 to committing the offense as a delinquent act. For the purpose
14 of clarifying to the court the offenses that are included
15 within the references to s. 907.041 contained in this section,
16 s. 907.041 constitutes a general reference under the doctrine
17 of incorporation by reference.The court may only order
18 sealing of a criminal history record pertaining to one arrest
19 or one incident of alleged criminal activity, except as
20 provided in this section. The court may, at its sole
21 discretion, order the sealing 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 sealing of records pertaining to such additional
25 arrests, such intent must be specified in the order. A
26 criminal justice agency may not seal any record pertaining to
27 such additional arrests if the order to seal does not
28 articulate the intention of the court to seal records
29 pertaining to more than one arrest. This section does not
30 prevent the court from ordering the sealing of only a portion
31 of a criminal history record pertaining to one arrest or one

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

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

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

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

17 1. Has never, prior to the date on which the petition
18 is filed,~~previously~~ been adjudicated guilty of a criminal
19 offense or comparable ordinance violation or adjudicated
20 delinquent for committing a felony or a misdemeanor specified
21 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 to
25 seal 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, former s. 943.058, or from any
29 jurisdiction outside the state.

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

1 petition to seal or any petition to expunge 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 SEALING.--Prior to
9 petitioning the court to seal a criminal history record, a
10 person seeking to seal a criminal history record shall apply
11 to the department for a certificate of eligibility for
12 sealing. 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 sealing. The department shall issue a certificate of
16 eligibility for sealing to a person who is the subject of a
17 criminal history record provided that such person:

18 (a) Has submitted to the department a certified copy
19 of the disposition of the charge to which the petition to seal
20 pertains.

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

24 (c) Has never, prior to the date on which the
25 application for a certificate of eligibility is filed,
26 ~~previously~~ been adjudicated guilty of a criminal offense or
27 comparable ordinance violation or adjudicated delinquent for
28 committing a felony or a misdemeanor specified in s.
29 943.051(3)(b).

30 (d) Has not been adjudicated guilty of or adjudicated
31 delinquent for committing any of the acts stemming from the

1 arrest or alleged criminal activity to which the petition to
2 seal pertains.

3 (e) Has never secured a prior sealing or expunction of
4 a criminal history record under this section, former s.
5 893.14, former s. 901.33, or former s. 943.058.

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

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

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

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

30 (c) For an order to seal entered by a court prior to
31 July 1, 1992, the department shall notify the appropriate

1 state attorney or statewide prosecutor of any order to seal
2 which is contrary to law because the person who is the subject
3 of the record has previously been convicted of a crime or
4 comparable ordinance violation or has had a prior criminal
5 history record sealed or expunged. Upon receipt of such
6 notice, the appropriate state attorney or statewide prosecutor
7 shall take action, within 60 days, to correct the record and
8 petition the court to void the order to seal. The department
9 shall seal the record until such time as the order is voided
10 by the court.

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

27 (e) An order sealing a criminal history record
28 pursuant to this section does not require that such record be
29 surrendered to the court, and such record shall continue to be
30 maintained by the department and other criminal justice
31 agencies.

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

11 (a) The subject of a criminal history record sealed
12 under this section or under other provisions of law, including
13 former s. 893.14, former s. 901.33, and former s. 943.058, may
14 lawfully deny or fail to acknowledge the arrests covered by
15 the sealed record, except when the subject of the record:

- 16 1. Is a candidate for employment with a criminal
17 justice agency;
- 18 2. Is a defendant in a criminal prosecution;
- 19 3. Concurrently or subsequently petitions for relief
20 under this section or s. 943.0585;
- 21 4. Is a candidate for admission to The Florida Bar;
- 22 5. Is seeking to be employed or licensed by or to
23 contract with the Department of Children and Family Services
24 or the Department of Juvenile Justice or to be employed or
25 used by such contractor or licensee in a sensitive position
26 having direct contact with children, the developmentally
27 disabled, the aged, or the elderly as provided in s.
28 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
29 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
30 415.103, s. 985.407, or chapter 400; or

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1 6. Is seeking to be employed or licensed by the Office
2 of Teacher Education, Certification, Staff Development, and
3 Professional Practices of the Department of Education, any
4 district school board, or any local governmental entity which
5 licenses child care facilities.

6 (b) Subject to the exceptions in paragraph (a), a
7 person who has been granted a sealing under this section,
8 former s. 893.14, former s. 901.33, or former s. 943.058 may
9 not be held under any provision of law of this state to commit
10 perjury or to be otherwise liable for giving a false statement
11 by reason of such person's failure to recite or acknowledge a
12 sealed criminal history record.

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

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