

By the Committee on Criminal Justice and Senator Brown-Waite

307-1889-99

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; providing rulemaking
17 authority; creating s. 943.0543, F.S.;
18 ratifying the National Crime Prevention and
19 Privacy Compact; requiring that the executive
20 director of the department administer the
21 compact; creating s. 943.0544, F.S.;
22 authorizing the department to develop and
23 operate the Criminal Justice Network; providing
24 for the department to regulate access to the
25 network; authorizing the department to accept
26 services in lieu of fees or other charges;
27 authorizing the department to enter into
28 agreements with private entities for the
29 purpose of managing and disseminating criminal
30 justice information; providing rulemaking
31 authority; amending ss. 943.0585, 943.059,

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

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

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

28 WHEREAS, the Legislature finds that the safety of our
29 children, the elderly, and the disabled is a priority and this
30 act is intended to conform with the processes and requirements
31 established by Congress as a requisite for allowing national

1 criminal history information to be provided to qualified
2 entities, and

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

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

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10 Section 1. Section 943.0542, Florida Statutes, is
11 created to read:

12 943.0542 Access to criminal history information
13 provided by the department to qualified entities.--

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

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

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

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

1 periodically audit qualified entities to ensure compliance
2 with federal law and this section.

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

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

15 (d) Any current or prospective employee or volunteer
16 who is subject to a request for screening must indicate to the
17 qualified entity submitting the request the name and address
18 of each qualified entity that has submitted a previous request
19 for screening regarding that employee or volunteer.

20 (3) The department shall provide directly to the
21 qualified entity the state criminal history records that 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 (4) The national criminal history data is available to
27 qualified entities to use only for the purpose of screening
28 employees and volunteers or persons applying to be an employee
29 or volunteer with a qualified entity. The department shall
30 provide this national criminal history record information
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1 directly to the qualified entity as authorized by the written
2 waiver required 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 in writing the
13 person of his or her right to obtain a copy of any background
14 screening report, including the criminal history records, if
15 any, 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, including any
22 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 for those persons subject to the
26 required screening.

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

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

10 Section 2. Section 943.0543, Florida Statutes, is
11 created to read:

12 943.0543 National Crime Prevention and Privacy
13 Compact; ratification and implementation.--

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

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

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

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

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

12 Section 3. Section 943.0544, Florida Statutes, is
13 created to read:

14 943.0544 Criminal justice information network and
15 information management.--

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

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

29 (3) In addition, the department may authorize entities
30 that offer or provide a product, program, or service
31 determined by the department to be of substantial value to the

1 criminal justice information needs of the state's criminal
2 justice agencies a special limited presence on the network
3 under terms, conditions, and limitations established by the
4 department after consultation with the Criminal and Juvenile
5 Justice Information Systems Council.

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

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

1 the department to perform all or part of the department's
2 information functions or duties shall, as specified in the
3 contract, be performing such functions or duties as a criminal
4 justice agency for purposes of handling, collecting, managing,
5 or disseminating criminal justice information, intelligence,
6 data, histories, and other records. Disclosure of such
7 information to an entity under such a contract does not waive
8 any confidentiality or exemption from disclosure under s.
9 119.07 or any other applicable law.

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

14 Section 4. For the purpose of incorporating all
15 amendments made prior to the effective date of this act to the
16 chapters, sections, or subdivisions of Florida Statutes
17 referenced in section 943.0585, Florida Statutes, 1998
18 Supplement, which amendments have not been incorporated by
19 reference thereto, section 943.0585, Florida Statutes, 1998
20 Supplement, is reenacted and amended to read:

21 943.0585 Court-ordered expunction of criminal history
22 records.--The courts of this state have jurisdiction over
23 their own procedures, including the maintenance, expunction,
24 and correction of judicial records containing criminal history
25 information to the extent such procedures are not inconsistent
26 with the conditions, responsibilities, and duties established
27 by this section. Any court of competent jurisdiction may
28 order a criminal justice agency to expunge the criminal
29 history record of a minor or an adult who complies with the
30 requirements of this section. The court shall not order a
31 criminal justice agency to expunge a criminal history record

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

1 any right to the expunction of any criminal history record,
2 and any request for expunction of a criminal history record
3 may be denied at the sole discretion of the court.

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

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

9 (b) The petitioner's sworn statement attesting that
10 the petitioner:

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

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

20 3. Has never secured a prior sealing or expunction of
21 a criminal history record under this section, former s.
22 893.14, former s. 901.33, or former s. 943.058, or from any
23 jurisdiction outside the state.

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

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29 Any person who knowingly provides false information on such
30 sworn statement to the court commits a felony of the third

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1 degree, punishable as provided in s. 775.082, s. 775.083, or
2 s. 775.084.

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

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

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

18 2. That an indictment, information, or other charging
19 document, if filed or issued in the case, was dismissed or
20 nolle prosequi by the state attorney or statewide prosecutor,
21 or was dismissed by a court of competent jurisdiction.

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

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

4 (c) Has submitted to the department a certified copy
5 of the disposition of the charge to which the petition to
6 expunge pertains.

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

13 (e) 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 to
16 expunge pertains.

17 (f) 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.

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

23 (h) Is not required to wait a minimum of 10 years
24 prior to being eligible for an expunction of such records
25 because all charges related to the arrest or criminal activity
26 to which the petition to expunge pertains were dismissed prior
27 to trial, adjudication, or the withholding of adjudication.
28 Otherwise, such criminal history record must be sealed under
29 this section, former s. 893.14, former s. 901.33, or former s.
30 943.058 for at least 10 years before such record is eligible
31 for expunction.

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

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

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

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

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1 department shall seal the record until such time as the order
2 is voided by the court.

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

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

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

9 1. Is a candidate for employment with a criminal
10 justice agency;

11 2. Is a defendant in a criminal prosecution;

12 3. Concurrently or subsequently petitions for relief
13 under this section or s. 943.059;

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

15 5. Is seeking to be employed or licensed by or to
16 contract with the Department of Children and Family Services
17 or the Department of Juvenile Justice or to be employed or
18 used by such contractor or licensee in a sensitive position
19 having direct contact with children, the developmentally
20 disabled, the aged, or the elderly as provided in s.

21 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
22 402.302(3)~~s. 402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s.
23 415.102(4), s. 415.1075(4), s. 985.407, or chapter 400; or

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

29 (b) Subject to the exceptions in paragraph (a), a
30 person who has been granted an expunction under this section,
31 former s. 893.14, former s. 901.33, or former s. 943.058 may

1 not be held under any provision of law of this state to commit
2 perjury or to be otherwise liable for giving a false statement
3 by reason of such person's failure to recite or acknowledge an
4 expunged criminal history record.

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

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

29 Section 5. For the purpose of incorporating all
30 amendments made prior to the effective date of this act to the
31 chapters, sections, or subdivisions of Florida Statutes

1 referenced in section 943.059, Florida Statutes, 1998
2 Supplement, which amendments have not been incorporated by
3 reference thereto, section 943.059, Florida Statutes, 1998
4 Supplement, is reenacted and amended to read:
5 943.059 Court-ordered sealing of criminal history
6 records.--The courts of this state shall continue to have
7 jurisdiction over their own procedures, including the
8 maintenance, sealing, and correction of judicial records
9 containing criminal history information to the extent such
10 procedures are not inconsistent with the conditions,
11 responsibilities, and duties established by this section. Any
12 court of competent jurisdiction may order a criminal justice
13 agency to seal the criminal history record of a minor or an
14 adult who complies with the requirements of this section. The
15 court shall not order a criminal justice agency to seal a
16 criminal history record until the person seeking to seal a
17 criminal history record has applied for and received a
18 certificate of eligibility for sealing pursuant to subsection
19 (2). A criminal history record that relates to a violation of
20 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
21 s. 893.135, or a violation enumerated in s. 907.041 may not be
22 sealed, without regard to whether adjudication was withheld,
23 if the defendant was found guilty of or pled guilty or nolo
24 contendere to the offense, or if the defendant, as a minor,
25 was found to have committed or pled guilty or nolo contendere
26 to committing the offense as a delinquent act. The court may
27 only order sealing of a criminal history record pertaining to
28 one arrest or one incident of alleged criminal activity,
29 except as provided in this section. The court may, at its sole
30 discretion, order the sealing of a criminal history record
31 pertaining to more than one arrest if the additional arrests

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

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

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

24 (b) The petitioner's sworn statement attesting that
25 the petitioner:

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

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1 2. Has not been adjudicated guilty of or adjudicated
2 delinquent for committing any of the acts stemming from the
3 arrest or alleged criminal activity to which the petition to
4 seal pertains.

5 3. Has never secured a prior sealing or expunction of
6 a criminal history record under this section, former s.
7 893.14, former s. 901.33, former s. 943.058, or from any
8 jurisdiction outside the state.

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

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14 Any person who knowingly provides false information on such
15 sworn statement to the court commits a felony of the third
16 degree, punishable as provided in s. 775.082, s. 775.083, or
17 s. 775.084.

18 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
19 petitioning the court to seal a criminal history record, a
20 person seeking to seal a criminal history record shall apply
21 to the department for a certificate of eligibility for
22 sealing. The department shall, by rule adopted pursuant to
23 chapter 120, establish procedures pertaining to the
24 application for and issuance of certificates of eligibility
25 for sealing. The department shall issue a certificate of
26 eligibility for sealing to a person who is the subject of a
27 criminal history record provided that such person:

28 (a) Has submitted to the department a certified copy
29 of the disposition of the charge to which the petition to seal
30 pertains.

31

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

4 (c) 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 (d) 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 seal pertains.

14 (e) 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 (f) Is no longer under court supervision applicable to
18 the disposition of the arrest or alleged criminal activity to
19 which the petition to seal pertains.

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

21 (a) In judicial proceedings under this section, a copy
22 of the completed petition to seal shall be served upon the
23 appropriate state attorney or the statewide prosecutor and
24 upon the arresting agency; however, it is not necessary to
25 make any agency other than the state a party. The appropriate
26 state attorney or the statewide prosecutor and the arresting
27 agency may respond to the court regarding the completed
28 petition to seal.

29 (b) If relief is granted by the court, the clerk of
30 the court shall certify copies of the order to the appropriate
31 state attorney or the statewide prosecutor and to the

1 arresting agency. The arresting agency is responsible for
2 forwarding the order to any other agency to which the
3 arresting agency disseminated the criminal history record
4 information to which the order pertains. The department shall
5 forward the order to seal to the Federal Bureau of
6 Investigation. The clerk of the court shall certify a copy of
7 the order to any other agency which the records of the court
8 reflect has received the criminal history record from the
9 court.

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

22 (d) On or after July 1, 1992, the department or any
23 other criminal justice agency is not required to act on an
24 order to seal entered by a court when such order does not
25 comply with the requirements of this section. Upon receipt of
26 such an order, the department must notify the issuing court,
27 the appropriate state attorney or statewide prosecutor, the
28 petitioner or the petitioner's attorney, and the arresting
29 agency of the reason for noncompliance. The appropriate state
30 attorney or statewide prosecutor shall take action within 60
31 days to correct the record and petition the court to void the

1 order. No cause of action, including contempt of court, shall
2 arise against any criminal justice agency for failure to
3 comply with an order to seal when the petitioner for such
4 order failed to obtain the certificate of eligibility as
5 required by this section or when such order does not comply
6 with the requirements of this section.

7 (e) An order sealing a criminal history record
8 pursuant to this section does not require that such record be
9 surrendered to the court, and such record shall continue to be
10 maintained by the department and other criminal justice
11 agencies.

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

22 (a) The subject of a criminal history record sealed
23 under this section or under other provisions of law, including
24 former s. 893.14, former s. 901.33, and former s. 943.058, may
25 lawfully deny or fail to acknowledge the arrests covered by
26 the sealed record, except when the subject of the record:

- 27 1. Is a candidate for employment with a criminal
28 justice agency;
- 29 2. Is a defendant in a criminal prosecution;
- 30 3. Concurrently or subsequently petitions for relief
31 under this section or s. 943.0585;

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

2 5. Is seeking to be employed or licensed by or to
3 contract with the Department of Children and Family Services
4 or the Department of Juvenile Justice or to be employed or
5 used by such contractor or licensee in a sensitive position
6 having direct contact with children, the developmentally
7 disabled, the aged, or the elderly as provided in s.
8 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
9 402.302(3)~~s. 402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s.
10 415.102(4), s. 415.103, s. 985.407, or chapter 400; or

11 6. Is seeking to be employed or licensed by the Office
12 of Teacher Education, Certification, Staff Development, and
13 Professional Practices of the Department of Education, any
14 district school board, or any local governmental entity which
15 licenses child care facilities.

16 (b) Subject to the exceptions in paragraph (a), a
17 person who has been granted a sealing under this section,
18 former s. 893.14, former s. 901.33, or former s. 943.058 may
19 not be held under any provision of law of this state to commit
20 perjury or to be otherwise liable for giving a false statement
21 by reason of such person's failure to recite or acknowledge a
22 sealed criminal history record.

23 (c) Information relating to the existence of a sealed
24 criminal record provided in accordance with the provisions of
25 paragraph (a) is confidential and exempt from the provisions
26 of s. 119.07(1) and s. 24(a), Art. I of the State
27 Constitution, except that the department shall disclose the
28 sealed criminal history record to the entities set forth in
29 subparagraphs (a)1., 4., 5., and 6. for their respective
30 licensing and employment purposes. It is unlawful for any
31 employee of an entity set forth in subparagraph (a)1.,

1 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
2 to disclose information relating to the existence of a sealed
3 criminal history record of a person seeking employment or
4 licensure with such entity or contractor, except to the person
5 to whom the criminal history record relates or to persons
6 having direct responsibility for employment or licensure
7 decisions. Any person who violates the provisions of this
8 paragraph commits a misdemeanor of the first degree,
9 punishable as provided in s. 775.082 or s. 775.083.

10 (5) STATUTORY REFERENCES.--Any reference to any other
11 chapter, section, or subdivision of the Florida Statutes in
12 this section constitutes a general reference under the
13 doctrine of incorporation by reference.

14 Section 6. Subsection (5) of section 943.051, Florida
15 Statutes, as amended by section 6 of chapter 98-94, Laws of
16 Florida, is repealed.

17 Section 7. Fourteen additional positions are
18 authorized for the Department of Law Enforcement to carry out
19 the requirements of this act. In order to meet the added
20 demand for the release of criminal history information created
21 by this act, the department may establish other additional
22 positions at the rate of one position for every 5,000 requests
23 received by the department.

24 Section 8. This act shall take effect July 1, 1999.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1936

1. Clarifies that qualified entities may obtain the criminal history records of any current or prospective employees and volunteers.
2. Adds that the bill's notice requirement must be in writing.
3. Provides the Florida Department of Law Enforcement with rulemaking authority for its implementation of s. 943.0542, F.S.