

Bill No. HB 391
Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Brown-Waite moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 1, line 10,		
15			
16	and insert:		
17	Section 1. Section 943.0542, Florida Statutes, is		
18	created to read:		
19	<u>943.0542 Access to criminal history information</u>		
20	<u>provided by the department to qualified entities.--</u>		
21	<u>(1) As used in this section, the term:</u>		
22	<u>(a) "Care" means the provision of care, treatment,</u>		
23	<u>education, training, instruction, supervision, or recreation</u>		
24	<u>to children, the elderly, or individuals with disabilities.</u>		
25	<u>(b) "Qualified entity" means a business or</u>		
26	<u>organization, whether public, private, operated for profit,</u>		
27	<u>operated not for profit, or voluntary, which provides care or</u>		
28	<u>care-placement services, including a business or organization</u>		
29	<u>that licenses or certifies others to provide care or</u>		
30	<u>care-placement services.</u>		
31	<u>(2)(a) A qualified entity must register with the</u>		

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1 department before submitting a request for screening under
2 this section. Each such request must be voluntary and conform
3 to the requirements established in the National Child
4 Protection Act of 1993, as amended. As a part of the
5 registration, the qualified entity must agree to comply with
6 state and federal law and must so indicate by signing an
7 agreement approved by the department. The department may
8 periodically audit qualified entities to ensure compliance
9 with federal law and this section.

10 (b) A qualified entity shall submit to the department
11 a request for screening an employee or volunteer or person
12 applying to be an employee or volunteer on a completed
13 fingerprint card, with a signed waiver allowing the release of
14 state and national criminal history record information to the
15 qualified entity.

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

22 (d) Any current or prospective employee or volunteer
23 who is subject to a request for screening must indicate to the
24 qualified entity submitting the request the name and address
25 of each qualified entity that has submitted a previous request
26 for screening regarding that employee or volunteer.

27 (3) The department shall provide directly to the
28 qualified entity the state criminal history records that are
29 not exempt from disclosure under chapter 119 or otherwise
30 confidential under law. A person who is the subject of a state
31 criminal history record may challenge the record only as

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1 provided in s. 943.056.

2 (4) The national criminal history data is available to
3 qualified entities to use only for the purpose of screening
4 employees and volunteers or persons applying to be an employee
5 or volunteer with a qualified entity. The department shall
6 provide this national criminal history record information
7 directly to the qualified entity as authorized by the written
8 waiver required for submission of a request to the department.

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

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

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1 required screening.

2 (7) The department may establish a database of
3 registered qualified entities and make this data available
4 free of charge to all registered qualified entities. The
5 database must include, at a minimum, the name, address, and
6 phone number of each qualified entity.

7 (8) A qualified entity is not liable for damages
8 solely for failing to obtain the information authorized under
9 this section with respect to an employee or volunteer. The
10 state, any political subdivision of the state, or any agency,
11 officer, or employee of the state or a political subdivision
12 is not liable for damages for providing the information
13 requested under this section.

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

16 Section 2. Section 943.0543, Florida Statutes, is
17 created to read:

18 943.0543 National Crime Prevention and Privacy
19 Compact; ratification and implementation.--

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

30 (2) The department is the repository of criminal
31 history records for purposes of the compact and shall do all

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1 things necessary or incidental to carrying out the compact.

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

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

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

17 Section 3. Section 943.0544, Florida Statutes, is
18 created to read:

19 943.0544 Criminal justice information network and
20 information management.--

21 (1) The department may develop, implement, maintain,
22 and manage innovative, progressive, and effective methods of
23 servicing the information-management needs of criminal justice
24 agencies, and may take necessary steps to promote the
25 efficient and cost-effective use of such information.

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

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1 access to the Criminal Justice Network by the state's criminal
2 justice agencies.

3 (3) In addition, the department may authorize entities
4 that offer or provide a product, program, or service
5 determined by the department to be of substantial value to the
6 criminal justice information needs of the state's criminal
7 justice agencies a special limited presence on the network
8 under terms, conditions, and limitations established by the
9 department after consultation with the Criminal and Juvenile
10 Justice Information Systems Council.

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

23 (5) The department may enter into an agreement with
24 any entity to facilitate the department's responsibilities for
25 receiving, maintaining, managing, processing, allowing access
26 to, and disseminating criminal justice information,
27 intelligence, data, or criminal history records and
28 information, or to otherwise accomplish the duties and
29 responsibilities related to information and records as defined
30 in this chapter. The department may enter into agreements by
31 which products, programs, or services of value to the

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1 department or the information needs of criminal justice
2 agencies are provided in lieu of all or part of a fee,
3 commission, royalty, or charge that might be otherwise
4 assessed by the department upon an entity entering into an
5 agreement with the department. Any entity under contract with
6 the department to perform all or part of the department's
7 information functions or duties shall, as specified in the
8 contract, be performing such functions or duties as a criminal
9 justice agency for purposes of handling, collecting, managing,
10 or disseminating criminal justice information, intelligence,
11 data, histories, and other records. Disclosure of such
12 information to an entity under such a contract does not waive
13 any confidentiality or exemption from disclosure under s.
14 119.07 or any other applicable law.

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

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

26 943.0585 Court-ordered expunction of criminal history
27 records.--The courts of this state have jurisdiction over
28 their own procedures, including the maintenance, expunction,
29 and correction of judicial records containing criminal history
30 information to the extent such procedures are not inconsistent
31 with the conditions, responsibilities, and duties established

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

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

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

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

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

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

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

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

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

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1 court.

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

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

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

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

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

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

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1 guilty or nolo contendere to committing, such an offense as a
2 delinquent act, without regard to whether adjudication was
3 withheld.

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

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

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

16 (e) 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 to
19 expunge pertains.

20 (f) 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.

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

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

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1 this section, former s. 893.14, former s. 901.33, or former s.
2 943.058 for at least 10 years before such record is eligible
3 for expunction.

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

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

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

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

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

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

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

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1 of competent jurisdiction. A criminal justice agency may
2 retain a notation indicating compliance with an order to
3 expunge.

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

- 10 1. Is a candidate for employment with a criminal
- 11 justice agency;
- 12 2. Is a defendant in a criminal prosecution;
- 13 3. Concurrently or subsequently petitions for relief
- 14 under this section or s. 943.059;
- 15 4. Is a candidate for admission to The Florida Bar;
- 16 5. Is seeking to be employed or licensed by or to
- 17 contract with the Department of Children and Family Services
- 18 or the Department of Juvenile Justice or to be employed or
- 19 used by such contractor or licensee in a sensitive position
- 20 having direct contact with children, the developmentally
- 21 disabled, the aged, or the elderly as provided in s.
- 22 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
- 23 402.302(3)~~s. 402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s.
- 24 415.102(4), s. 415.1075(4), s. 985.407, or chapter 400; or
- 25 6. Is seeking to be employed or licensed by the Office
- 26 of Teacher Education, Certification, Staff Development, and
- 27 Professional Practices of the Department of Education, any
- 28 district school board, or any local governmental entity that
- 29 licenses child care facilities.

30 (b) Subject to the exceptions in paragraph (a), a
31 person who has been granted an expunction under this section,

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1 former s. 893.14, former s. 901.33, or former s. 943.058 may
2 not be held under any provision of law of this state to commit
3 perjury or to be otherwise liable for giving a false statement
4 by reason of such person's failure to recite or acknowledge an
5 expunged criminal history record.

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

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

30 Section 5. For the purpose of incorporating all
31 amendments made prior to the effective date of this act to the

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1 chapters, sections, or subdivisions of Florida Statutes
2 referenced in section 943.059, Florida Statutes, 1998
3 Supplement, which amendments have not been incorporated by
4 reference thereto, section 943.059, Florida Statutes, 1998
5 Supplement, is reenacted and amended to read:

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

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

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

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

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

27 1. Has never, prior to the date on which the petition
28 is filed,~~previously~~ been adjudicated guilty of a criminal
29 offense or comparable ordinance violation or adjudicated
30 delinquent for committing a felony or a misdemeanor specified
31 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.

13

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 (b) Remits a \$75 processing fee to the department for

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1 placement in the Department of Law Enforcement Operating Trust
2 Fund, unless such fee is waived by the executive director.

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

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

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

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

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

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

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

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

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

21 (d) On or after July 1, 1992, the department or any
22 other criminal justice agency is not required to act on an
23 order to seal entered by a court when such order does not
24 comply with the requirements of this section. Upon receipt of
25 such an order, the department must notify the issuing court,
26 the appropriate state attorney or statewide prosecutor, the
27 petitioner or the petitioner's attorney, and the arresting
28 agency of the reason for noncompliance. The appropriate state
29 attorney or statewide prosecutor shall take action within 60
30 days to correct the record and petition the court to void the
31 order. No cause of action, including contempt of court, shall

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1 arise against any criminal justice agency for failure to
2 comply with an order to seal when the petitioner for such
3 order failed to obtain the certificate of eligibility as
4 required by this section or when such order does not comply
5 with the requirements of this section.

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

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

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

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

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

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

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

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

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

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

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

16 Section 7. In order to meet added demand for the
17 release of criminal history information created by this act,
18 the Department of Law Enforcement may file an application with
19 the Executive Office of the Governor certifying that there are
20 no authorized positions available for addition, deletion, or
21 transfer within the agency and recommending an increase in the
22 number of positions. The Administration Commission may, after
23 a public hearing, authorize an increase in the number of
24 positions in excess of the amount established by the
25 Legislature. Any request under this section is subject to the
26 notice and review procedures set forth in section 216.177,
27 Florida Statutes.

28
29 (Redesignate subsequent sections.)
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31

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

2 And the title is amended as follows:

3 On page 1, lines 2 and 3, delete those lines

4

5 and insert:

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

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1 agreements with private entities for the
2 purpose of managing and disseminating criminal
3 justice information; providing rulemaking
4 authority; amending ss. 943.0585, 943.059,
5 F.S., relating to the court-ordered expunction
6 and sealing of criminal history records;
7 providing that references to any chapter,
8 section, or subdivision in the section
9 constitute a general reference under the
10 doctrine of incorporation by reference;
11 clarifying certain requirements for a petition
12 to expunge or seal a criminal history record;
13 repealing s. 943.051(5), F.S., relating to the
14 department's authority to contract with other
15 agencies and private entities for the
16 management and dissemination of criminal
17 justice information; authorizing the
18 Administration Commission to increase positions
19 within the department following notice and
20 public hearing; amending s. 943.053, F.S.;

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