

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 the
14 Administration Commission to increase positions
15 within the department following notice and
16 public hearing; amending s. 790.065, F.S.,
17 relating to the sale and delivery of firearms;
18 postponing the expiration of that section;
19 providing for modification, or suspension of
20 collection, of fees for criminal history
21 checks; amending s. 943.053, F.S.; amending s.
22 943.053, F.S.; providing each office of the
23 Public Defender on-line access to criminal
24 records which are not exempt from disclosure
25 and not confidential under law; providing an
26 effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. Section 943.0542, Florida Statutes, is
31 created to read:

1 943.0542 Access to criminal history information
2 provided by the department to qualified entities.--

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

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

7 (b) "Qualified entity" means a business or
8 organization, whether public, private, operated for profit,
9 operated not for profit, or voluntary, which provides care or
10 care-placement services, including a business or organization
11 that licenses or certifies others to provide care or
12 care-placement services.

13 (2)(a) A qualified entity must register with the
14 department before submitting a request for screening under
15 this section. Each such request must be voluntary and conform
16 to the requirements established in the National Child
17 Protection Act of 1993, as amended. As a part of the
18 registration, the qualified entity must agree to comply with
19 state and federal law and must so indicate by signing an
20 agreement approved by the department. The department may
21 periodically audit qualified entities to ensure compliance
22 with federal law and this section.

23 (b) A qualified entity shall submit to the department
24 a request for screening an employee or volunteer or person
25 applying to be an employee or volunteer on a completed
26 fingerprint card, with a signed waiver allowing the release of
27 state and national criminal history record information to the
28 qualified entity.

29 (c) Each such request must be accompanied by a fee,
30 which shall approximate the actual cost of producing the
31 record information, as provided in s. 943.053, plus the amount

1 required by the Federal Bureau of Investigation for the
2 national criminal history check in compliance with the
3 National Child Protection Act of 1993, as amended.

4 (d) Any current or prospective employee or volunteer
5 who is subject to a request for screening must indicate to the
6 qualified entity submitting the request the name and address
7 of each qualified entity that has submitted a previous request
8 for screening regarding that employee or volunteer.

9 (3) The department shall provide directly to the
10 qualified entity the state criminal history records that are
11 not exempt from disclosure under chapter 119 or otherwise
12 confidential under law. A person who is the subject of a state
13 criminal history record may challenge the record only as
14 provided in s. 943.056.

15 (4) The national criminal history data is available to
16 qualified entities to use only for the purpose of screening
17 employees and volunteers or persons applying to be an employee
18 or volunteer with a qualified entity. The department shall
19 provide this national criminal history record information
20 directly to the qualified entity as authorized by the written
21 waiver required for submission of a request to the department.

22 (5) The determination whether the criminal history
23 record shows that the employee or volunteer has been convicted
24 of or is under pending indictment for any crime that bears
25 upon the fitness of the employee or volunteer to have
26 responsibility for the safety and well-being of children, the
27 elderly, or disabled persons shall solely be made by the
28 qualified entity. This section does not require the department
29 to make such a determination on behalf of any qualified
30 entity.

31

1 (6) The qualified entity must notify in writing the
2 person of his or her right to obtain a copy of any background
3 screening report, including the criminal history records, if
4 any, contained in the report, and of the person's right to
5 challenge the accuracy and completeness of any information
6 contained in any such report and to obtain a determination as
7 to the validity of such challenge before a final determination
8 regarding the person is made by the qualified entity reviewing
9 the criminal history information. A qualified entity that is
10 required by law to apply screening criteria, including any
11 right to contest or request an exemption from
12 disqualification, shall apply such screening criteria to the
13 state and national criminal history record information
14 received from the department for those persons subject to the
15 required screening.

16 (7) The department may establish a database of
17 registered qualified entities and make this data available
18 free of charge to all registered qualified entities. The
19 database must include, at a minimum, the name, address, and
20 phone number of each qualified entity.

21 (8) A qualified entity is not liable for damages
22 solely for failing to obtain the information authorized under
23 this section with respect to an employee or volunteer. The
24 state, any political subdivision of the state, or any agency,
25 officer, or employee of the state or a political subdivision
26 is not liable for damages for providing the information
27 requested under this section.

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

30 Section 2. Section 943.0543, Florida Statutes, is
31 created to read:

1 943.0543 National Crime Prevention and Privacy

2 Compact; ratification and implementation.--

3 (1) In order to facilitate the authorized interstate
4 exchange of criminal history information for noncriminal
5 justice purposes, including, but not limited to, background
6 checks for the licensing and screening of employees and
7 volunteers under the National Child Protection Act of 1993, as
8 amended, and to implement the National Crime Prevention and
9 Privacy Compact, 42 U.S.C. s. 14616, the Legislature approves
10 and ratifies the compact. The executive director of the
11 Department of Law Enforcement shall execute the compact on
12 behalf of the state.

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

16 (3) The executive director of the department, or the
17 director's designee, is the state's compact officer and shall
18 administer the compact within the state. The department may
19 adopt rules and establish procedures for the cooperative
20 exchange of criminal history records between the state and
21 Federal Government for use in noncriminal justice cases.

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

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

31

1 Section 3. Section 943.0544, Florida Statutes, is
2 created to read:

3 943.0544 Criminal justice information network and
4 information management.--

5 (1) The department may develop, implement, maintain,
6 and manage innovative, progressive, and effective methods of
7 servicing the information-management needs of criminal justice
8 agencies, and may take necessary steps to promote the
9 efficient and cost-effective use of such information.

10 (2) The department may develop, implement, maintain,
11 manage, and operate the Criminal Justice Network, which shall
12 be an intraagency information and data-sharing network for use
13 by the state's criminal justice agencies. The department, in
14 consultation with the Criminal and Juvenile Justice
15 Information Systems Council, shall determine and regulate
16 access to the Criminal Justice Network by the state's criminal
17 justice agencies.

18 (3) In addition, the department may authorize entities
19 that offer or provide a product, program, or service
20 determined by the department to be of substantial value to the
21 criminal justice information needs of the state's criminal
22 justice agencies a special limited presence on the network
23 under terms, conditions, and limitations established by the
24 department after consultation with the Criminal and Juvenile
25 Justice Information Systems Council.

26 (4) In carrying out its duties under this section, the
27 department may enter into contracts; conduct pilot studies and
28 projects; assess and collect fees, commissions, royalties, or
29 other charges from entities approved for special presence on
30 the Criminal Justice Network in consideration for such
31 presence. The department may enter into agreements by which

1 products, programs, or services of value to the department or
 2 the information needs of criminal justice agencies are
 3 provided in lieu of all or a part of a fee, commission,
 4 royalty, or charge that might otherwise be assessed by the
 5 department upon an entity granted special limited presence as
 6 provided in this subsection.

7 (5) The department may enter into an agreement with
 8 any entity to facilitate the department's responsibilities for
 9 receiving, maintaining, managing, processing, allowing access
 10 to, and disseminating criminal justice information,
 11 intelligence, data, or criminal history records and
 12 information, or to otherwise accomplish the duties and
 13 responsibilities related to information and records as defined
 14 in this chapter. The department may enter into agreements by
 15 which products, programs, or services of value to the
 16 department or the information needs of criminal justice
 17 agencies are provided in lieu of all or part of a fee,
 18 commission, royalty, or charge that might be otherwise
 19 assessed by the department upon an entity entering into an
 20 agreement with the department. Any entity under contract with
 21 the department to perform all or part of the department's
 22 information functions or duties shall, as specified in the
 23 contract, be performing such functions or duties as a criminal
 24 justice agency for purposes of handling, collecting, managing,
 25 or disseminating criminal justice information, intelligence,
 26 data, histories, and other records. Disclosure of such
 27 information to an entity under such a contract does not waive
 28 any confidentiality or exemption from disclosure under s.
 29 119.07 or any other applicable law.

30 (6) The department may adopt rules to administer this
 31 section. Except as otherwise specified in this section, this

1 section does not alter or limit the powers and duties of the
2 department established under this chapter.

3 Section 4. For the purpose of incorporating all
4 amendments made prior to the effective date of this act to the
5 chapters, sections, or subdivisions of Florida Statutes
6 referenced in section 943.0585, Florida Statutes, 1998
7 Supplement, which amendments have not been incorporated by
8 reference thereto, section 943.0585, Florida Statutes, 1998
9 Supplement, is reenacted and amended to read:

10 943.0585 Court-ordered expunction of criminal history
11 records.--The courts of this state have jurisdiction over
12 their own procedures, including the maintenance, expunction,
13 and correction of judicial records containing criminal history
14 information to the extent such procedures are not inconsistent
15 with the conditions, responsibilities, and duties established
16 by this section. Any court of competent jurisdiction may
17 order a criminal justice agency to expunge the criminal
18 history record of a minor or an adult who complies with the
19 requirements of this section. The court shall not order a
20 criminal justice agency to expunge a criminal history record
21 until the person seeking to expunge a criminal history record
22 has applied for and received a certificate of eligibility for
23 expunction pursuant to subsection (2). A criminal history
24 record that relates to a violation of chapter 794, s. 800.04,
25 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
26 violation enumerated in s. 907.041 may not be expunged,
27 without regard to whether adjudication was withheld, if the
28 defendant was found guilty of or pled guilty or nolo
29 contendere to the offense, or if the defendant, as a minor,
30 was found to have committed, or pled guilty or nolo contendere
31 to committing, the offense as a delinquent act. The court may

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

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

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

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

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

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

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

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

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

23 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
24 to petitioning the court to expunge a criminal history record,
25 a person seeking to expunge a criminal history record shall
26 apply to the department for a certificate of eligibility for
27 expunction. The department shall, by rule adopted pursuant to
28 chapter 120, establish procedures pertaining to the
29 application for and issuance of certificates of eligibility
30 for expunction. The department shall issue a certificate of
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1 eligibility for expunction to a person who is the subject of a
2 criminal history record if that person:

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

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

8 2. That an indictment, information, or other charging
9 document, if filed or issued in the case, was dismissed or
10 nolle prosequi by the state attorney or statewide prosecutor,
11 or was dismissed by a court of competent jurisdiction.

12 3. That the criminal history record does not relate to
13 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
14 chapter 839, s. 893.135, or a violation enumerated in s.
15 907.041, where the defendant was found guilty of, or pled
16 guilty or nolo contendere to any such offense, or that the
17 defendant, as a minor, was found to have committed, or pled
18 guilty or nolo contendere to committing, such an offense as a
19 delinquent act, without regard to whether adjudication was
20 withheld.

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 submitted to the department a certified copy
25 of the disposition of the charge to which the petition to
26 expunge pertains.

27 (d) Has never, prior to the date on which the
28 application for a certificate of eligibility is filed,
29 ~~previously~~ been adjudicated guilty of a criminal offense or
30 comparable ordinance violation or adjudicated delinquent for
31

1 committing a felony or a misdemeanor specified in s.
2 943.051(3)(b).

3 (e) Has not been adjudicated guilty of, or adjudicated
4 delinquent for committing, any of the acts stemming from the
5 arrest or alleged criminal activity to which the petition to
6 expunge pertains.

7 (f) Has never secured a prior sealing or expunction of
8 a criminal history record under this section, former s.
9 893.14, former s. 901.33, or former s. 943.058.

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

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

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

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

31

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

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

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

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

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

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

- 29 1. Is a candidate for employment with a criminal
30 justice agency;
- 31 2. Is a defendant in a criminal prosecution;

1 3. Concurrently or subsequently petitions for relief
2 under this section or s. 943.059;

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

4 5. Is seeking to be employed or licensed by or to
5 contract with the Department of Children and Family Services
6 or the Department of Juvenile Justice or to be employed or
7 used by such contractor or licensee in a sensitive position
8 having direct contact with children, the developmentally
9 disabled, the aged, or the elderly as provided in s.

10 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
11 402.302(3)~~s. 402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s.
12 415.102(4), s. 415.1075(4), s. 985.407, or chapter 400; or

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

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

25 (c) Information relating to the existence of an
26 expunged criminal history record which is provided in
27 accordance with paragraph (a) is confidential and exempt from
28 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
29 State Constitution, except that the department shall disclose
30 the existence of a criminal history record ordered expunged to
31 the entities set forth in subparagraphs (a)1., 4., 5., and 6.

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

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

18 Section 5. For the purpose of incorporating all
 19 amendments made prior to the effective date of this act to the
 20 chapters, sections, or subdivisions of Florida Statutes
 21 referenced in section 943.059, Florida Statutes, 1998
 22 Supplement, which amendments have not been incorporated by
 23 reference thereto, section 943.059, Florida Statutes, 1998
 24 Supplement, is reenacted and amended to read:

25 943.059 Court-ordered sealing of criminal history
 26 records.--The courts of this state shall continue to have
 27 jurisdiction over their own procedures, including the
 28 maintenance, sealing, and correction of judicial records
 29 containing criminal history information to the extent such
 30 procedures are not inconsistent with the conditions,
 31 responsibilities, and duties established by this section. Any

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

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

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

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

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

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

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

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

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

1
2 Any person who knowingly provides false information on such
3 sworn statement to the court commits a felony of the third
4 degree, punishable as provided in s. 775.082, s. 775.083, or
5 s. 775.084.

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

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

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

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

28 (d) Has not been adjudicated guilty of or adjudicated
29 delinquent for committing any of the acts stemming from the
30 arrest or alleged criminal activity to which the petition to
31 seal pertains.

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

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

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

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

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

28 (c) For an order to seal entered by a court prior to
29 July 1, 1992, the department shall notify the appropriate
30 state attorney or statewide prosecutor of any order to seal
31 which is contrary to law because the person who is the subject

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

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

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

30 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
31 criminal history record of a minor or an adult which is

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

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

14 1. Is a candidate for employment with a criminal
15 justice agency;

16 2. Is a defendant in a criminal prosecution;

17 3. Concurrently or subsequently petitions for relief
18 under this section or s. 943.0585;

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

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

26 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
27 402.302(3)~~s. 402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s.
28 415.102(4), s. 415.103, s. 985.407, or chapter 400; or

29 6. Is seeking to be employed or licensed by the Office
30 of Teacher Education, Certification, Staff Development, and
31 Professional Practices of the Department of Education, any

1 district school board, or any local governmental entity which
2 licenses child care facilities.

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

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

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

1 Section 6. Subsection (5) of section 943.051, Florida
2 Statutes, as amended by section 6 of chapter 98-94, Laws of
3 Florida, is repealed.

4 Section 7. In order to meet added demand for the
5 release of criminal history information created by this act,
6 the Department of Law Enforcement may file an application with
7 the Executive Office of the Governor certifying that there are
8 no authorized positions available for addition, deletion, or
9 transfer within the agency and recommending an increase in the
10 number of positions. The Administration Commission may, after
11 a public hearing, authorize an increase in the number of
12 positions in excess of the amount established by the
13 Legislature. Any request under this section is subject to the
14 notice and review procedures set forth in section 216.177,
15 Florida Statutes.

16 Section 8. Subsection (14) of section 790.065, Florida
17 Statutes, as created by section 1 of chapter 93-197, Laws of
18 Florida, is amended to read:

19 790.065 Sale and delivery of firearms.--

20 (14) This section is repealed effective June 1, 2000
21 ~~October 1, 1999.~~

22 Section 9. Subsection (1) of section 790.065, Florida
23 Statutes, 1998 Supplement, is amended to read:

24 790.065 Sale and delivery of firearms.--

25 (1) A licensed importer, licensed manufacturer, or
26 licensed dealer may not sell or deliver from her or his
27 inventory at her or his licensed premises any firearm to
28 another person, other than a licensed importer, licensed
29 manufacturer, licensed dealer, or licensed collector, until
30 she or he has:

31

1 (a) Obtained a completed form from the potential buyer
2 or transferee, which form shall have been promulgated by the
3 Department of Law Enforcement and provided by the licensed
4 importer, licensed manufacturer, or licensed dealer, which
5 shall include the name, date of birth, gender, race, and
6 social security number or other identification number of such
7 potential buyer or transferee and has inspected proper
8 identification including an identification containing a
9 photograph of the potential buyer or transferee.

10 (b) Collected a fee from the potential buyer for
11 processing the criminal history check of the potential buyer.
12 The fee shall be established by the Department of Law
13 Enforcement and may not exceed \$8 per transaction. The
14 Department of Law Enforcement may reduce, or suspend
15 collection of, the fee to reflect payment received from the
16 Federal Government applied to the cost of maintaining the
17 criminal history check system established by this section as a
18 means of facilitating or supplementing the National Instant
19 Criminal Background Check System.The Department of Law
20 Enforcement shall, by rule, establish procedures for the fees
21 to be transmitted by the licensee to the Department of Law
22 Enforcement. All such fees shall be deposited into the
23 Department of Law Enforcement Operating Trust Fund, but shall
24 be segregated from all other funds deposited into such trust
25 fund and must be accounted for separately. Such segregated
26 funds must not be used for any purpose other than the
27 operation of the criminal history checks required by this
28 section. The Department of Law Enforcement, each year prior to
29 February 1, shall make a full accounting of all receipts and
30 expenditures of such funds to the President of the Senate, the
31 Speaker of the House of Representatives, the majority and

1 minority leaders of each house of the Legislature, and the
2 chairs of the appropriations committees of each house of the
3 Legislature. In the event that the cumulative amount of funds
4 collected exceeds the cumulative amount of expenditures by
5 more than \$2.5 million, excess funds may be used for the
6 purpose of purchasing soft body armor for law enforcement
7 officers.

8 (c) Requested, by means of a toll-free telephone call,
9 the Department of Law Enforcement to conduct a check of the
10 information as reported and reflected in the Florida Crime
11 Information Center and National Crime Information Center
12 systems as of the date of the request.

13 (d) Received a unique approval number for that inquiry
14 from the Department of Law Enforcement, and recorded the date
15 and such number on the consent form.

16
17 However, if the person purchasing, or receiving delivery of,
18 the firearm is a holder of a valid concealed weapons or
19 firearms license pursuant to the provisions of s. 790.06 or
20 holds an active certification from the Criminal Justice
21 Standards and Training Commission as a "law enforcement
22 officer," a "correctional officer," or a "correctional
23 probation officer" as defined in s. 943.10(1), (2), (3), (6),
24 (7), (8), or (9), the provisions of this subsection do not
25 apply.

26 Section 10. Subsections (6), (7), and (8) of section
27 943.053, Florida Statutes, 1998 Supplement, are renumbered as
28 subsections (7), (8), and (9), respectively, and a new
29 subsection (6) is added to said section, to read:

30 943.053 Dissemination of criminal justice information;
31 fees.--

1 (6) Notwithstanding any other provision of law, the
2 department shall provide to each office of the Public Defender
3 on-line access to criminal records of this state which are not
4 exempt from disclosure under chapter 119 or confidential under
5 law. Such access shall be used solely in support of the duties
6 of a public defender as provided in s. 27.51 or of any
7 attorney specially assigned as authorized in s. 27.53 in the
8 representation of any person who is determined indigent as
9 provided in s. 27.52. The costs of establishing and
10 maintaining such on-line access shall be borne by the office
11 to which the access has been provided.

12 Section 11. This act shall take effect July 1, 1999.