

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.07, F.S.; providing an exemption from
4 public records requirements for certain
5 information on health care practitioners
6 working in correctional or mental health
7 facilities; amending s. 455.5656, F.S.;
8 providing exemption from public records
9 requirements for information obtained for
10 practitioner profiles of health care
11 practitioners not previously profiled; amending
12 s. 943.0585, F.S.; providing exemption from
13 public records requirements for expunged
14 criminal history information on health care
15 practitioners obtained for certain employment,
16 licensure, or contracting purposes; providing a
17 penalty; providing an exemption from public
18 records requirements for certain information on
19 certain court records to enforce certain orders
20 by the Department of Health; providing for
21 future review and repeal; amending s. 943.059,
22 F.S.; providing sealed criminal history records
23 to the department under certain circumstances;
24 providing findings of public necessity;
25 providing a contingent effective date.

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

28
29 Section 1. Paragraph (dd) is added to subsection (3)
30 of section 119.07, Florida Statutes, to read:

31

1 119.07 Inspection, examination, and duplication of
2 records; exemptions.--

3 (3)

4 (dd) The home addresses and home telephone numbers of
5 health care practitioners, as defined in s. 455.501(4),
6 working in or with any type of correctional facility,
7 including any prison or jail, or in any forensic mental health
8 facility, who have a reasonable belief that release of the
9 information may be used to threaten, intimidate, harass,
10 inflict violence upon, or defraud the employee, are exempt
11 from the provisions of subsection (1) and s.24(a).Art.I of the
12 State Constitution. The employing and licensing agencies shall
13 withhold the home address and home telephone number from
14 public records requirements only if the health care
15 practitioner submits a written request to the agencies.

16 Section 2. The Legislature finds that it is a public
17 necessity that the home addresses and home telephone numbers
18 of health care practitioners who work in or with any type of
19 correctional facility, including any prison or jail, or in any
20 forensic mental health facility and who have a reasonable
21 belief that release of the information may be used to
22 threaten, stalk, intimidate, harass, inflict violence upon, or
23 defraud the employee or a member of the employee's family, be
24 held exempt from public records requirements because revealing
25 such information may pose an unnecessary risk to the safety
26 and well-being of such health care practitioners in their own
27 homes from inmates or clients of such facilities. The
28 disclosure of such information may also deter health care
29 practitioners from seeking to work or working in such
30 facilities, which would be contrary to the state's interest in

1 ensuring the availability of health care service in such
2 facilities.

3 Section 3. Section 455.5656, Florida Statutes, is
4 amended to read:

5 455.5656 Practitioner's profiles; confidentiality.--

6 (1) Any patient name or other information that
7 identifies a patient which is in a record obtained by the
8 Department of Health or its agent for the purpose of compiling
9 a practitioner profile is confidential and exempt from the
10 provisions of chapter 119 and s. 24(a), Art. I of the State
11 Constitution. Other data received by the department or its
12 agent as a result of its duty to compile and promulgate
13 practitioner profiles are confidential and exempt from the
14 provisions of chapter 119 and s. 24(a), Art. I of the State
15 Constitution until the profile into which the data are
16 incorporated or with respect to which the data are submitted
17 is made public. Any information or record that the Department
18 of Health obtains from the Agency for Health Care
19 Administration or any other governmental entity for the
20 purpose of compiling a practitioner profile or substantiating
21 other information or records submitted for that purpose and
22 that was exempt from the provisions of chapter 119 and s.
23 24(a), Art. I of the State Constitution does not lose that
24 character by coming into the possession of the Department of
25 Health, and such information or record continues to be exempt
26 from the provisions of chapter 119 and s. 24(a), Art. I of the
27 State Constitution.

28 (2)(a) The provisions of subsection (1) with respect
29 to practitioners who are subject to profiling under s. 455.565
30 are ~~This section is~~ subject to the Open Government Sunset
31 Review Act of 1995 in accordance with s. 119.15 and shall

1 stand repealed on October 2, 2002, unless reviewed and saved
2 from repeal through reenactment by the Legislature.

3 (b) The provisions of subsection (1) with respect to
4 practitioners who are subject to profiling under s. 455.56503
5 or s. 455.56505 are subject to the Open Government Sunset
6 Review Act of 1995 in accordance with s. 119.15 and shall
7 stand repealed on October 2, 2005, unless reviewed and saved
8 from repeal through reenactment by the Legislature.

9 Section 4. The Legislature finds that public release
10 of a patient record or other document which includes a
11 statement of the patient's medical disease, condition, or
12 treatment plan that identifies the patient by name or by other
13 identifier could result in serious and irreparable damage to
14 the patient. Such records obtained by the Department of Health
15 or its agent for purposes of compiling a practitioner profile,
16 if open to the public, may adversely affect the integrity and
17 trust of the practitioner-patient relationship and may deter
18 affected parties from seeking needed health care services;
19 therefore, it is a matter of public necessity to protect the
20 confidentiality of such patient health information. The
21 Legislature further finds that, because of the nature of the
22 data submitted to the Department of Health or its agent for
23 purposes of constructing practitioner profiles, the necessity
24 of ensuring the accuracy of those data, the need to refrain
25 from unnecessarily affecting the livelihood of persons who are
26 the subject of practitioner profiles, and the need to maintain
27 the integrity and trust of the practitioner-patient
28 relationship without unwarranted aspersions on the
29 professional competence and ability of these persons, it is a
30 matter of public necessity to protect the confidentiality of
31 the data during the period of their verification. The

1 Legislature further finds that the need to learn or verify
 2 information about health care practitioners, though furthering
 3 a state interest, does not override the public policy
 4 determinations made to exempt certain information from public
 5 disclosure and that records so exempted should retain that
 6 status when obtained and used by another governmental entity.

7 Section 5. Paragraphs (a) and (c) of subsection (4) of
 8 section 943.0585, Florida Statutes, are amended to read:

9 943.0585 Court-ordered expunction of criminal history
 10 records.--The courts of this state have jurisdiction over
 11 their own procedures, including the maintenance, expunction,
 12 and correction of judicial records containing criminal history
 13 information to the extent such procedures are not inconsistent
 14 with the conditions, responsibilities, and duties established
 15 by this section. Any court of competent jurisdiction may
 16 order a criminal justice agency to expunge the criminal
 17 history record of a minor or an adult who complies with the
 18 requirements of this section. The court shall not order a
 19 criminal justice agency to expunge a criminal history record
 20 until the person seeking to expunge a criminal history record
 21 has applied for and received a certificate of eligibility for
 22 expunction pursuant to subsection (2). A criminal history
 23 record that relates to a violation of chapter 794, s. 800.04,
 24 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
 25 violation enumerated in s. 907.041 may not be expunged,
 26 without regard to whether adjudication was withheld, if the
 27 defendant was found guilty of or pled guilty or nolo
 28 contendere to the offense, or if the defendant, as a minor,
 29 was found to have committed, or pled guilty or nolo contendere
 30 to committing, the offense as a delinquent act. The court may
 31 only order expunction of a criminal history record pertaining

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

23 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
24 criminal history record of a minor or an adult which is
25 ordered expunged by a court of competent jurisdiction pursuant
26 to this section must be physically destroyed or obliterated by
27 any criminal justice agency having custody of such record;
28 except that any criminal history record in the custody of the
29 department must be retained in all cases. A criminal history
30 record ordered expunged that is retained by the department is
31 confidential and exempt from the provisions of s. 119.07(1)

1 and s. 24(a), Art. I of the State Constitution and not
2 available to any person or entity except upon order of a court
3 of competent jurisdiction. A criminal justice agency may
4 retain a notation indicating compliance with an order to
5 expunge.

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

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

14 2. Is a defendant in a criminal prosecution;

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

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

18 5. Is seeking to be employed or licensed by or to
19 contract with the Department of Children and Family Services
20 or the Department of Juvenile Justice or to be employed or
21 used by such contractor or licensee in a sensitive position
22 having direct contact with children, the developmentally
23 disabled, the aged, or the elderly as provided in s.
24 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
25 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
26 415.1075(4), s. 985.407, or chapter 400; ~~or~~

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

1 7. Is seeking to be employed or licensed by or to
2 contract with the Department of Health or to be employed or
3 used by such contractor or licensee in a sensitive position
4 having direct contact with children, the developmentally
5 disabled, the aged, or the elderly as provided in s.
6 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
7 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
8 415.1075(4), s. 985.407, or chapter 400.

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

16 (c)1. Information relating to the existence of an
17 expunged criminal history record which is provided in
18 accordance with subparagraphs (a)1.-6.~~paragraph (a)~~ is
19 confidential and exempt from the provisions of s. 119.07(1)
20 and s. 24(a), Art. I of the State Constitution, except that
21 the department shall disclose the existence of a criminal
22 history record ordered expunged to the entities set forth in
23 subparagraphs (a)1., 4., 5., and 6. for their respective
24 licensing and employment purposes, and to criminal justice
25 agencies for their respective criminal justice purposes. It
26 is unlawful for any employee of an entity set forth in
27 subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or
28 subparagraph (a)6. to disclose information relating to the
29 existence of an expunged criminal history record of a person
30 seeking employment or licensure with such entity or
31 contractor, except to the person to whom the criminal history

1 record relates or to persons having direct responsibility for
 2 employment or licensure decisions. Any person who violates
 3 this ~~subparagraph~~ ~~paragraph~~ commits a misdemeanor of the first
 4 degree, punishable as provided in s. 775.082 or s. 775.083.

5 2. Information relating to the existence of an
 6 expunged criminal history record which is provided in
 7 accordance with subparagraph (a)7. is confidential and exempt
 8 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
 9 the State Constitution, except that the department shall
 10 disclose the existence of a criminal history record ordered
 11 expunged to the Department of Health as set forth in
 12 subparagraph (a)7. for its licensing and employment purposes,
 13 and to criminal justice agencies for their respective criminal
 14 justice purposes. It is unlawful for any employee of the
 15 Department of Health as set forth in subparagraph (a)7. to
 16 disclose information relating to the existence of an expunged
 17 criminal history record of a person seeking employment or
 18 licensure with such entity or contractor, except to the person
 19 to whom the criminal history record relates, to persons having
 20 direct responsibility for employment or licensure decisions,
 21 or to any other state agency that is authorized in this state
 22 to receive expunged criminal history records from the
 23 department. Any person who violates this subparagraph commits
 24 a misdemeanor of the first degree, punishable as provided in
 25 s. 775.082 or s. 775.083. This subparagraph is subject to the
 26 Open Government Sunset Review Act of 1995 in accordance with
 27 s. 119.15 and shall stand repealed on October 2, 2005, unless
 28 reviewed and saved from repeal through reenactment by the
 29 Legislature.

30 Section 6. In any court proceeding to enforce an order
 31 by the Department of Health to compel a licensed health care

1 practitioner to submit to a mental or physical examination by
2 physicians designated by the department under section 455.624,
3 Florida Statutes, the licensee against whom the petition for
4 enforcement is filed may not be named or identified by
5 initials in any public court records or documents and is
6 confidential and exempt from the provisions of chapter 119,
7 Florida Statutes, and Section (24)(a), Article I of the State
8 Constitution, and the proceedings shall be closed to the
9 public. This section is subject to the Open Government Sunset
10 Review Act of 1995 in accordance with section 119.15, Florida
11 Statutes, and shall stand repealed on October 2, 2005, unless
12 reviewed and saved from repeal through reenactment by the
13 Legislature.

14 Section 7. Paragraph (a) of subsection (4) of section
15 943.059, Florida Statutes, is amended to read:

16 943.059 Court-ordered sealing of criminal history
17 records.--The courts of this state shall continue to have
18 jurisdiction over their own procedures, including the
19 maintenance, sealing, and correction of judicial records
20 containing criminal history information to the extent such
21 procedures are not inconsistent with the conditions,
22 responsibilities, and duties established by this section. Any
23 court of competent jurisdiction may order a criminal justice
24 agency to seal the criminal history record of a minor or an
25 adult who complies with the requirements of this section. The
26 court shall not order a criminal justice agency to seal a
27 criminal history record until the person seeking to seal a
28 criminal history record has applied for and received a
29 certificate of eligibility for sealing pursuant to subsection
30 (2). A criminal history record that relates to a violation of
31 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,

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

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(15), s. 394.4572(1), s. 397.451, s.
27 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
28 415.103, s. 985.407, or chapter 400; ~~or~~
- 29 6. Is seeking to be employed or licensed by or to
30 contract with the Department of Health or to be employed or
31 used by such contractor or licensee in a sensitive position

1 having direct contact with children, the developmentally
2 disabled, the aged, or the elderly as provided in s.
3 110.1127(3), s.393.063(15), s. 394.4572(1), s. 397.451, s.
4 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
5 415.1075(4), s. 985.407, or chapter 400; or

6 ~~7.6.~~ Is seeking to be employed or licensed by the
7 Office of Teacher Education, Certification, Staff Development,
8 and Professional Practices of the Department of Education, any
9 district school board, or any local governmental entity which
10 licenses child care facilities.

11 Section 8. The Legislature finds that public release
12 of sealed or expunged criminal history information on health
13 care practitioners seeking employment, licensure, or a
14 contract with the Department of Health to work with children,
15 the developmentally disabled, the aged, or the elderly may
16 adversely affect the integrity and trust of such a
17 practitioner-patient relationship, may deter affected parties
18 from seeking needed health care services as a result, and may
19 cast unwarranted aspersions on the professional competence and
20 ability of such practitioners and thereby affect their
21 livelihood; therefore, it is a matter of public necessity to
22 protect the confidentiality of such information. The
23 Legislature further finds that such information is already
24 confidential under identical circumstances for persons seeking
25 employment, licensure, or a contract with the Department of
26 Children and Family Services and the Department of Juvenile
27 Justice. The Legislature further finds that the need to learn
28 or verify information about health care practitioners, though
29 furthering a state interest, does not override the public
30 policy determinations made to exempt certain information from
31 public disclosure and that records so exempted should retain

1 that status when obtained and used by another governmental
2 entity.

3 Section 9. The Legislature finds that public release
4 of medical information pertaining to the mental or physical
5 condition of a patient could result in serious and irreparable
6 damage to the patient. The Legislature further finds that
7 there is a public necessity in maintaining the confidentiality
8 of such medical records and that a patient should not lose
9 such protection simply because that patient has applied for or
10 been issued a license to practice a health care profession in
11 this state. The Legislature finds that absent a finding of
12 probable cause that the applicant or practitioner has violated
13 the law and poses a danger to the patients to whom the
14 practitioner may provide health care services, such
15 practitioner should be afforded the same privileges and rights
16 of confidentiality as non-health care practitioners. The
17 Legislature finds that it is a matter of public necessity to
18 protect health care practitioners, as well as other patients,
19 from the release of information regarding the practitioner's
20 mental or physical health to refrain from unnecessarily
21 affecting the livelihood of practitioners and to maintain the
22 trust of the practitioner-patient relationship without
23 unwarranted aspersions on the professional competence and
24 ability of these persons. Moreover, the Legislature finds
25 that the public's need to know information about practitioners
26 does not override the public policy determination to protect
27 all patients regardless of their occupation or licensure
28 status from intrusion. Furthermore, this public records
29 exemption conforms to existing public records exemptions for
30 other practitioners such as physicians pursuant to ss.

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1 458.331(1)(s) and 459.015(1)(w), dentists pursuant to s.
2 466.028(1)(s), and others.

3 Section 10. This act shall take effect on the
4 effective date of House Bill 1659 or similar legislation
5 creating s. 455.56503 or s.455.56505, Florida Statutes, to
6 provide for practitioner profiling of additional health care
7 practitioners, and s. 943.0585(4)(a)7., Florida Statutes, to
8 provide the Department of Health access to expunged criminal
9 history information on health care practitioners seeking to
10 work with children, the developmentally disabled, or the aged
11 or elderly, if such legislation is adopted in the same
12 legislative session or an extension thereof.

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