

By the Committee on Criminal Justice and Senators Bronson,  
Burt and Crist

18-1662A-01

1                                   A bill to be entitled  
2           An act relating to criminal justice; amending  
3           s. 943.031, F.S.; renaming the Florida Violent  
4           Crime Council as the Florida Violent Crime and  
5           Drug Control Council; adding members; revising  
6           powers and duties of the council, particularly  
7           with respect to money laundering and with drug  
8           control; limiting funding that agencies may  
9           receive from the council; amending s. 943.042,  
10          F.S.; redesignating the Violent Crime Emergency  
11          Account as the Violent Crime Emergency and Drug  
12          Control Strategy Implementation Account;  
13          prescribing uses that may be made of moneys  
14          from the account; limiting funding that  
15          agencies may receive from the account;  
16          requiring rules that provide funding criteria;  
17          providing for disqualification of an agency  
18          from funding eligibility and for demand for  
19          reimbursement by an agency for failure to use  
20          funds as authorized; creating s. 943.0582,  
21          F.S.; authorizing the expunction under certain  
22          circumstances of the arrest record of a minor  
23          who successfully completes a prearrest,  
24          postarrest, or teen court diversion program;  
25          amending s. 985.3065, F.S.; providing for a law  
26          enforcement agency or school district to  
27          establish a postarrest diversion program;  
28          providing for expunction of the arrest of a  
29          minor who completes such program; amending ss.  
30          943.0585, 943.059, F.S.; prescribing additional  
31          criminal violations for which a criminal

1 history record may not be expunged or sealed;  
2 amending s. 943.325, F.S.; authorizing use of  
3 biological specimens other than blood for DNA  
4 analysis; authorizing use of trained,  
5 nonmedical personnel in collecting specimens;  
6 providing for collection of specimens from  
7 persons who are required to provide specimens  
8 but have never been incarcerated; providing  
9 immunity from liability for persons assisting  
10 in collecting specimens; authorizing collection  
11 of specimens at remote sites; amending s.  
12 760.40, F.S.; exempting tests performed under  
13 s. 943.325, F.S., from requirements for  
14 informed consent to genetic testing; creating  
15 s. 843.167, F.S.; prohibiting the interception  
16 of police communications for certain purposes;  
17 prohibiting disclosure of police  
18 communications; providing presumptions;  
19 providing penalties; providing an effective  
20 date.

21  
22 Be It Enacted by the Legislature of the State of Florida:  
23

24 Section 1. Section 943.031, Florida Statutes, is  
25 amended to read:  
26 943.031 Florida Violent Crime and Drug Control  
27 Council.--The Legislature finds that there is a need to  
28 develop and implement a statewide strategy to address violent  
29 criminal activity and drug-control efforts by state and local  
30 law enforcement agencies, including investigations of illicit  
31 money laundering. In recognition of this need, the Florida

1 Violent Crime and Drug Control Council is created within the  
2 department. The council shall serve in an advisory capacity  
3 to the department.

4 (1) MEMBERSHIP.--The council shall consist of 14 ~~12~~  
5 members, as follows:

6 (a) The Attorney General or a designee ~~designate~~.

7 (b) A designee ~~designate~~ of the executive director of  
8 the Department of Law Enforcement.

9 (c) The secretary of the Department of Corrections or  
10 a designee ~~designate~~.

11 (d) The Secretary of Juvenile Justice or a designee  
12 ~~designate~~.

13 (e) The Commissioner of Education or a designee  
14 ~~designate~~.

15 (f) The president of the Florida Network of  
16 Victim/Witness Services, Inc., or a designee ~~designate~~.

17 (g) The Director of the Office of Drug Control,  
18 Executive Office of the Governor, or a designee.

19 (h) The Comptroller, or a designee.

20 (i)~~(g)~~ Six members appointed by the Governor,  
21 consisting of two sheriffs, two chiefs of police, one medical  
22 examiner, and one state attorney.

23  
24 The Governor, when making appointments under this subsection,  
25 must take into consideration representation by geography,  
26 population, ethnicity, and other relevant factors to ensure  
27 that the membership of the council is representative of the  
28 state at large. A designee appearing on behalf of a council  
29 member who is unable to attend a meeting of the council may  
30 vote on issues before the council to the same extent the  
31 designating council member may do so.

1           (2) TERMS OF MEMBERSHIP; OFFICERS; COMPENSATION;  
2 STAFF.--

3           (a) Members appointed by the Governor shall be  
4 appointed for terms of 2 years. The other members are  
5 standing members of the council. In no event shall a member  
6 serve beyond the time he or she ceases to hold the office or  
7 employment which was the basis for appointment to the council.  
8 In the event of a vacancy, an appointment to fill the vacancy  
9 shall be only for the unexpired term.

10          (b) The Legislature finds that the council serves a  
11 legitimate state, county, and municipal purpose and that  
12 service on the council is consistent with a member's principal  
13 service in a public office or employment. Membership on the  
14 council does not disqualify a member from holding any other  
15 public office or being employed by a public entity, except  
16 that no member of the Legislature shall serve on the council.

17          (c) The members of the council shall elect a chair and  
18 a vice chair every 2 years, to serve for a 2-year term. As  
19 deemed appropriate, other officers may be elected by the  
20 members.

21          (d) Members of the council shall serve without  
22 compensation but are entitled to reimbursement for per diem  
23 and travel expenses pursuant to s. 112.061. Reimbursements  
24 made pursuant to this paragraph shall be paid from funds  
25 available in the Violent Crime Emergency and Drug Control  
26 Strategy Implementation Account within the Department of Law  
27 Enforcement ~~Operating Trust Fund~~.

28          (e) The department shall provide the council with  
29 staff necessary to assist the council in the performance of  
30 its duties.

31

1           (3) MEETINGS.--The council must meet at least  
2 semiannually. Additional meetings may be held when it is  
3 determined ~~deemed appropriate~~ by the chair that extraordinary  
4 circumstances prompt an additional meeting of the council ~~or a~~  
5 ~~majority of the council members~~. A majority of the members of  
6 the council constitutes a quorum.

7           (4) DUTIES OF COUNCIL.--The council shall provide  
8 advice and make recommendations, as necessary, to the  
9 executive director of the department.

10           (a) The council may advise the executive director on  
11 the feasibility of undertaking initiatives which include, but  
12 are not limited to, the following:

13           1. Establishing a program which provides grants to  
14 criminal justice agencies that develop and implement effective  
15 violent crime prevention and investigative programs and  
16 providing grants to law enforcement agencies for the purpose  
17 of investigative or task force efforts relating to illicit  
18 money laundering and drug control which are determined by the  
19 council to significantly contribute to achieving the state's  
20 goal of reducing drug-related crime as articulated by the  
21 Office of Drug Control, which represent a significant  
22 investigative effort into illicit money laundering, or which  
23 otherwise significantly support statewide strategies developed  
24 by the Statewide Drug Policy Advisory Council established  
25 under s. 397.333 under the limitations provided in this  
26 section. The grant program may ~~shall~~ include an innovations  
27 grant program to provide startup funding for new initiatives  
28 by local and state law enforcement agencies to combat violent  
29 crime or to implement law enforcement drug-control or illicit  
30 money-laundering investigative or task force efforts,  
31 including, but not limited to, initiatives such as:

- 1           a. Providing ~~Provision~~ of enhanced community-oriented  
2 policing.
- 3           b. Providing ~~Provision~~ of additional undercover  
4 officers and other investigative officers to assist with  
5 violent crime investigations in emergency situations.
- 6           c. Providing funding of multi-agency or statewide  
7 investigations or task force efforts relating to illicit money  
8 laundering and drug control which cannot be reasonably totally  
9 funded by alternative sources and which significantly  
10 contribute to achieving the state's goal of reducing  
11 drug-related crime as articulated by the Office of Drug  
12 Control, which represent a significant investigative effort  
13 into money laundering, or which otherwise significantly  
14 support statewide strategies developed by the Statewide Drug  
15 Policy Advisory Council established under s. 397.333.
- 16           ~~2. Creating a criminal justice research and behavioral~~  
17 ~~science center. The center shall provide key support to local~~  
18 ~~law enforcement agencies undertaking unique or emergency~~  
19 ~~violent crime investigations, including the mobilization of~~  
20 ~~special task forces to directly target violent crime in~~  
21 ~~specific areas.~~
- 22           ~~2.3.~~ Expanding the use of automated fingerprint  
23 identification systems at the state and local level.
- 24           ~~3.4.~~ Identifying methods to prevent violent crime.
- 25           4. Identifying methods to enhance multi-agency or  
26 statewide investigations or task force efforts relating to  
27 illicit money laundering or drug control which significantly  
28 contribute to achieving the state's goal of reducing  
29 drug-related crime as articulated by the Office of Drug  
30 Control, which represent a significant investigative effort  
31 into money laundering, or which otherwise significantly

1 support statewide strategies developed by the Statewide Drug  
2 Policy Advisory Council established under s. 397.333.

3 5. Enhancing criminal justice training programs which  
4 address violent crime or investigative techniques or efforts  
5 relating to illicit money laundering or drug control.

6 6. Developing and promoting crime prevention services  
7 and educational programs that serve the public, including, but  
8 not limited to:

9 a. Enhanced victim and witness counseling services  
10 that also provide crisis intervention, information referral,  
11 transportation, and emergency financial assistance.

12 b. A well-publicized rewards program for the  
13 apprehension and conviction of criminals who perpetrate  
14 violent crimes.

15 7. Enhancing information sharing and assistance in the  
16 criminal justice community by expanding the use of community  
17 partnerships and community policing programs. Such expansion  
18 may include the use of civilian employees or volunteers to  
19 relieve law enforcement officers of clerical work in order to  
20 enable the officers to concentrate on street visibility within  
21 the community.

22 (b) ~~Additionally,~~The council shall:

23 1. Receive periodic reports from ~~Advise the executive~~  
24 ~~director on the creation of~~ regional violent crime  
25 investigation and statewide drug-control strategy  
26 implementation coordinating teams related to violent crime  
27 trends or investigative needs or successes in the regions, and  
28 factors and trends relevant to the implementation of the  
29 statewide drug strategy and the results of investigative  
30 efforts funded in part by the council and relating to drug  
31 control and illicit money laundering.

1           2. Maintain and use ~~Develop~~ criteria for the  
2 disbursement of funds from the Violent Crime Emergency and  
3 Drug Control Strategy Implementation Account within the  
4 Department of Law Enforcement ~~Operating Trust Fund~~. Funding  
5 from the council for any single investigative effort is  
6 limited to a maximum of \$100,000. No individual investigating  
7 agency may receive more than \$200,000 in council funding  
8 during the agency's fiscal year.

9           3. Review and approve all requests for disbursement of  
10 funds from the Violent Crime Emergency Account and Drug  
11 Control Strategy Implementation within the Department of Law  
12 Enforcement ~~Operating Trust Fund~~. An expedited approval  
13 procedure shall be established for rapid disbursement of funds  
14 in violent crime emergency situations.

15           4. ~~Advise the executive director on the development of~~  
16 ~~a statewide violent crime information system.~~

17           (5) REPORTS.--The council shall report annually on its  
18 activities, on or before December 30 of each calendar year, to  
19 the executive director, the President of the Senate, the  
20 Speaker of the House of Representatives, and the chairs of the  
21 Committees on Criminal Justice in both chambers. Comments and  
22 responses of the executive director to the report are to be  
23 included ~~must respond to the annual report and any other~~  
24 ~~recommendations of the council in writing. All written~~  
25 ~~responses must be forwarded to the council members, the~~  
26 ~~President of the Senate, the Speaker of the House of~~  
27 ~~Representatives, and the chairs of the Committees on Criminal~~  
28 ~~Justice in both chambers.~~

29           (6) VICTIM AND WITNESS PROTECTION REVIEW COMMITTEE.--

30           (a) The Victim and Witness Protection Review Committee  
31 is created within the Florida Violent Crime Council,



1 consisting of the statewide prosecutor or a state attorney, a  
2 sheriff, a chief of police, and the designee of the executive  
3 director of the Department of Law Enforcement. The committee  
4 shall be appointed from the membership of the council by the  
5 chair of the council after the chair has consulted with the  
6 executive director of the Department of Law Enforcement.  
7 Committee members shall meet in conjunction with the meetings  
8 of the council.

9 (b) The committee shall:

10 1. Maintain and use ~~Develop~~ criteria for disbursing  
11 funds to reimburse law enforcement agencies for costs  
12 associated with providing victim and witness protective or  
13 temporary relocation services.

14 2. Review and approve or deny, in whole or in part,  
15 all reimbursement requests submitted by law enforcement  
16 agencies.

17 (c) The lead law enforcement agency providing victim  
18 or witness protective or temporary relocation services  
19 pursuant to the provisions of s. 914.25 may submit a request  
20 for reimbursement to the Victim and Witness Protection Review  
21 Committee in a format approved by the committee. The lead law  
22 enforcement agency shall submit such reimbursement request on  
23 behalf of all law enforcement agencies that cooperated in  
24 providing protective or temporary relocation services related  
25 to a particular criminal investigation or prosecution. As part  
26 of the reimbursement request, the lead law enforcement agency  
27 must indicate how any reimbursement proceeds will be  
28 distributed among the agencies that provided protective or  
29 temporary relocation services.

30 (d) The committee, in its discretion, may use funds  
31 available to the committee to provide all or partial

1 reimbursement to the lead law enforcement agency for such  
2 costs, or may decline to provide any reimbursement.

3 (e) The committee may conduct its meeting by  
4 teleconference or conference phone calls when the chair of the  
5 committee finds that the need for reimbursement is such that  
6 delaying until the next scheduled council meeting will  
7 adversely affect the requesting agency's ability to provide  
8 the protection services.

9 (7) CONFIDENTIALITY; EXEMPTED PORTIONS OF COUNCIL  
10 MEETINGS AND RECORDS.--

11 (a)1. The Legislature finds that during limited  
12 portions of the meetings of the Florida Violent Crime and Drug  
13 Control Council it is necessary that the council be presented  
14 with and discuss details, information, and documents related  
15 to active criminal investigations or matters constituting  
16 active criminal intelligence, as those concepts are defined by  
17 s. 119.011. These presentations and discussions are necessary  
18 for the council to make its funding decisions as required by  
19 the Legislature. The Legislature finds that to reveal the  
20 contents of documents containing active criminal investigative  
21 or intelligence information or to allow active criminal  
22 investigative or active criminal intelligence matters to be  
23 discussed in a meeting open to the public negatively impacts  
24 the ability of law enforcement agencies to efficiently  
25 continue their investigative or intelligence gathering  
26 activities. The Legislature finds that information coming  
27 before the council that pertains to active criminal  
28 investigations or intelligence should remain confidential and  
29 exempt from public disclosure. The Legislature finds that the  
30 Florida Violent Crime and Drug Control Council may, by  
31 declaring only those portions of council meetings in which

1 active criminal investigative or active criminal intelligence  
2 information is to be presented or discussed closed to the  
3 public, assure an appropriate balance between the policy of  
4 this state that meetings be public and the policy of this  
5 state to facilitate efficient law enforcement efforts.

6 2. The Legislature finds that it is a public necessity  
7 that portions of the meetings of the Florida Violent Crime and  
8 Drug Control Council be closed when the confidential details,  
9 information, and documents related to active criminal  
10 investigations or matters constituting active criminal  
11 intelligence are discussed. The Legislature further finds  
12 that it is no less a public necessity that portions of public  
13 records generated at closed council meetings, such as tape  
14 recordings, minutes, and notes, memorializing the discussions  
15 regarding such confidential details, information, and  
16 documents related to active criminal investigations or matters  
17 constituting active criminal intelligence, also shall be held  
18 confidential.

19 (b) The Florida Violent Crime and Drug Control Council  
20 shall be considered a "criminal justice agency" within the  
21 definition of s. 119.011(4).

22 (c)1. The Florida Violent Crime and Drug Control  
23 Council may close portions of meetings during which the  
24 council will hear or discuss active criminal investigative  
25 information or active criminal intelligence information, and  
26 such portions of meetings shall be exempt from the provisions  
27 of s. 286.011 and s. 24(b), Art. I of the State Constitution,  
28 provided that the following conditions are met:

29 a. The chair of the council shall advise the council  
30 at a public meeting that, in connection with the performance  
31 of a council duty, it is necessary that the council hear or

1 discuss active criminal investigative information or active  
2 criminal intelligence information.

3 ~~b. The chair's declaration of necessity for closure~~  
4 ~~and the specific reasons for such necessity shall be stated in~~  
5 ~~writing in a document that shall be a public record and shall~~  
6 ~~be filed with the official records of the council.~~

7 b.c. The entire closed session shall be recorded. The  
8 recording shall include the times of commencement and  
9 termination of the closed session, all discussion and  
10 proceedings, and the names of all persons present. No portion  
11 of the session shall be off the record. Such recording shall  
12 be maintained by the council, and is exempt from the  
13 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
14 Constitution until such time as the criminal investigative  
15 information or criminal intelligence information that  
16 justifies closure ceases to be active, at which time the  
17 portion of the record related to the no longer active  
18 information or intelligence shall be open for public  
19 inspection and copying.

20  
21 The exemption in this paragraph is subject to the Open  
22 Government Sunset Review Act of 1995 in accordance with s.  
23 119.15 and shall stand repealed on October 2, 2002, unless  
24 reviewed and saved from repeal through reenactment by the  
25 Legislature.

26 2. Only members of the council, Department of Law  
27 Enforcement staff supporting the council's function, and other  
28 persons whose presence has been authorized by the chair of the  
29 council shall be allowed to attend the exempted portions of  
30 the council meetings. The council shall assure that any  
31 closure of its meetings as authorized by this section is

1 limited so that the general policy of this state in favor of  
2 public meetings is maintained.

3 (d) Those portions of any public record, such as a  
4 tape recording, minutes, and notes, generated during that  
5 portion of a Florida Violent Crime and Drug Control Council  
6 meeting which is closed to the public pursuant to this  
7 section, which contain information relating to active criminal  
8 investigations or matters constituting active criminal  
9 intelligence, are confidential and exempt from the provisions  
10 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
11 until such criminal investigative information or criminal  
12 intelligence information ceases to be active. The exemptions  
13 in this paragraph are subject to the Open Government Sunset  
14 Review Act of 1995 in accordance with s. 119.15 and shall  
15 stand repealed on October 2, 2002, unless reviewed and saved  
16 from repeal through reenactment by the Legislature.

17 Section 2. Section 943.042, Florida Statutes, is  
18 amended to read:

19 943.042 Violent Crime Emergency and Drug Control  
20 Strategy Implementation Account within the Department of Law  
21 Enforcement Operating Trust Fund.--

22 (1) There is created a Violent Crime Emergency and  
23 Drug Control Strategy Implementation Account within the  
24 Department of Law Enforcement Operating Trust Fund. The  
25 account shall be used to provide emergency supplemental funds  
26 to:

27 (a) State and local law enforcement agencies which are  
28 involved in complex and lengthy violent crime investigations  
29 or multi-agency or statewide investigations or task force  
30 efforts relating to illicit money laundering and drug control  
31 which significantly contribute to achieving the state's goal

1 of reducing drug-related crime as articulated by the Office of  
2 Drug Control, which represent a significant investigative  
3 effort relating to illicit money laundering, or which  
4 otherwise significantly support statewide strategies developed  
5 by the Statewide Drug Policy Advisory Council established  
6 under s. 397.333;

7 (b) State and local law enforcement agencies which are  
8 involved in violent crime investigations which constitute a  
9 significant emergency within the state; or

10 (c) Counties which demonstrate a significant hardship  
11 or an inability to cover extraordinary expenses associated  
12 with a violent crime trial.

13 (2) In consultation with the Florida Violent Crime and  
14 Drug Control Council, the department must maintain ~~promulgate~~  
15 rules which, at minimum, address the following:

16 (a) Criteria for determining what constitutes a  
17 complex and lengthy violent crime investigation for the  
18 purpose of this section.

19 (b) Criteria for determining those violent crime  
20 investigations which constitute a significant emergency within  
21 the state for the purpose of this section.

22 (c) Criteria for determining the circumstances under  
23 which counties may receive emergency supplemental funds for  
24 extraordinary expenses associated with a violent crime trial  
25 under this section.

26 (d) Guidelines which establish a \$100,000 maximum  
27 limit ~~limits~~ on the amount that may be disbursed on a single  
28 investigation and a \$200,000 maximum limit on funds that may  
29 be provided to a single agency during the agency's fiscal  
30 year.

31

1           (e) Procedures for law enforcement agencies to use  
2 when applying for funds, including certification by the head  
3 of the agency that a request complies with the requirements  
4 established by the council.

5           (f) Annual evaluation and audit of the trust fund.

6           (3) With regard to the funding of investigations or  
7 task force efforts relating to illicit money-laundering or  
8 drug control, the department must adopt rules that, at a  
9 minimum, address the following:

10           (a) Criteria for determining what constitutes a  
11 multi-agency or statewide investigation or task force effort  
12 relating to illicit money laundering or drug control eligible  
13 to seek funding under this section.

14           (b) Criteria for determining whether a multi-agency or  
15 statewide investigation or task force effort significantly  
16 contributes to achieving the state's goals and strategies.

17           (c) Limitations upon the amount that may be disbursed  
18 yearly to a single multi-agency or statewide illicit  
19 money-laundering or drug-control investigation or task force.

20           (d) Procedures to use when applying for funds,  
21 including a required designation of the amount of matching  
22 funds being provided by the task force or participating  
23 agencies and a signed commitment by the head of each agency  
24 seeking funds that funds so designated will be used as  
25 represented if council funding is provided.

26           (e) Requirements to expend council-provided funds in  
27 the manner authorized by the council and a method of  
28 accounting for the receipt, use, and disbursement of any funds  
29 expended in money-laundering or drug-control investigative or  
30 task force efforts funded in part under the authority of this  
31 section.

1           (f) Requirements for reporting by recipient agencies  
2 of the performance and accomplishments secured by the  
3 investigative or task-force efforts, including a requirement  
4 that the reports demonstrate how the state's drug-control  
5 goals and strategies have been promoted by the efforts and how  
6 other investigative goals have been met, including arrests due  
7 to such efforts, results of prosecutions based on such  
8 arrests, impact upon organized criminal enterprise structures  
9 by reason of efforts, property or currency seizures made,  
10 illicit money-laundering operations disrupted or otherwise  
11 impacted, forfeiture of assets by reason of such efforts, and  
12 anticipated or actual use of assets received by reason of a  
13 forfeiture based in whole or in part upon an investigation  
14 funded in whole or in part by council funds.

15           (4)(a)(3)(a) Except as allowed in this section, a  
16 disbursement from for the Violent Crime Emergency and Drug  
17 Control Strategy Implementation Account shall not be used to  
18 supplant existing appropriations of state and local law  
19 enforcement agencies and counties or to otherwise fund  
20 expenditures that are ordinarily or reasonably predictable for  
21 the operation of a state or local law enforcement agency.

22           (b) The moneys placed in the account shall consist of  
23 appropriations from the Legislature or moneys received from  
24 any other public or private source. Any local law enforcement  
25 agency that acquires funds pursuant to the Florida Contraband  
26 Forfeiture Act is authorized to donate a portion of such funds  
27 to the account.

28           (c) Upon a finding by a majority of the members of the  
29 council, any unexcused failure by recipient agencies or task  
30 forces to use funds in the manner authorized by this section  
31 and the Florida Violent Crime and Drug Control Council or to



1 timely provide required accounting, reports, or other  
2 information requested by the council or by the department  
3 related to funding requested or provided, shall:

4 1. Constitute a basis for a demand by the council for  
5 the immediate return of all or any portion of funds previously  
6 provided to the recipient by the council;

7 2. Result in termination or limitation of any pending  
8 funding by the council under this section

9  
10 and may, upon specific direction of a majority of the council,  
11 result in disqualification of the involved agencies or task  
12 force from consideration of additional or future funding for  
13 efforts as provided by this section for a period of not more  
14 than 2 years following the council's action. The council, by  
15 and through the department, is authorized to pursue any  
16 collection remedies necessary if a recipient agency fails to  
17 return funds as demanded.

18 Section 3. Section 943.0582, Florida Statutes, is  
19 created to read:

20 943.0582 Expunction of record following completion of  
21 prearrest, postarrest, or teen court diversion program.--

22 (1) Notwithstanding any law dealing generally with the  
23 preservation and destruction of public records, the department  
24 may provide, by rule adopted pursuant to chapter 120, for the  
25 expunction of any nonjudicial record of the arrest of a minor  
26 who has successfully completed a prearrest or postarrest  
27 diversion program for minors as authorized by s. 985.3065.

28 (2) As used in this section, the term "expunction" has  
29 the same meaning ascribed in s. 943.0585, except that:

30 (a) The provisions of s. 943.0585(4)(a) do not apply  
31 except that the criminal history record of a person whose

1 record is expunged pursuant to this section must be made  
2 available only to criminal justice agencies for the purpose of  
3 determining eligibility for prearrest, postarrest, or teen  
4 court diversion programs; when the record is sought as part of  
5 a criminal investigation; or when the subject of the record is  
6 a candidate for employment with a criminal justice agency.  
7 For all other purposes, a person whose record is expunged  
8 pursuant to this section may lawfully deny or fail to  
9 acknowledge the arrest or charge covered by the expunged  
10 record.

11 (b) Records maintained by local criminal justice  
12 agencies in the county in which the arrest occurred which are  
13 eligible for expunction pursuant to this section must be  
14 sealed as the term is used in s. 943.059.

15  
16 As used in this section, the term "nonviolent misdemeanor"  
17 includes simple assault or battery when prearrest or  
18 postarrest diversion expunction is approved in writing by the  
19 state attorney for the county in which the arrest occurred.

20 (3) The department shall expunge the nonjudicial  
21 arrest record of a minor who has successfully completed a  
22 prearrest or postarrest diversion program if that minor:

23 (a) Submits an application for prearrest or postarrest  
24 diversion expunction, on a form prescribed by the department,  
25 signed by the minor's parent or legal guardian, or by the  
26 minor if he or she has reached the age of majority at the time  
27 of applying;

28 (b) Submits the application for prearrest or  
29 postarrest diversion expunction no later than 6 months after  
30 completion of the diversion program;

31

1           (c) Submits to the department, with the application,  
2 an official written statement from the state attorney for the  
3 county in which the arrest occurred certifying that he or she  
4 has successfully completed that county's prearrest or  
5 postarrest diversion program and that participation in the  
6 program is strictly limited to minors arrested for a  
7 nonviolent misdemeanor who have not otherwise been charged  
8 with or found to have committed any criminal offense or  
9 comparable ordinance violation;

10           (d) Participated in a prearrest or postarrest  
11 diversion program that expressly authorizes or permits such  
12 expunction to occur;

13           (e) Participated in a prearrest or postarrest  
14 diversion program based on an arrest for a nonviolent  
15 misdemeanor that would not qualify as an act of domestic  
16 violence as defined in s. 741.28; and

17           (f) Has never, prior to filing the application for  
18 expunction, been charged with or found to have committed any  
19 criminal offense or comparable ordinance violation.

20           (4) The department may charge a \$75 processing fee for  
21 each request received for prearrest or postarrest diversion  
22 program expunction, for placement in the Department of Law  
23 Enforcement Operating Trust Fund, unless such fee is waived by  
24 the executive director.

25           (5) This section shall operate retroactively to permit  
26 the expunction of any nonjudicial record of the arrest of a  
27 minor who has successfully completed a prearrest or postarrest  
28 diversion program on or after July 1, 2000, provided that, in  
29 the case of a minor whose completion of the program occurred  
30 before the effective date of this section, the application for  
31

1 prearrest or postarrest diversion expunction is submitted by  
2 January 1, 2002.

3 (6) Expunction or sealing granted under this section  
4 does not preclude the minor who receives such relief from  
5 petitioning for the expunction or sealing of a later  
6 criminal-history record as provided for in ss. 943.0585 and  
7 943.059, if he or she is otherwise eligible under those  
8 sections.

9 Section 4. Section 985.3065, Florida Statutes, is  
10 amended to read:

11 985.3065 Prearrest or postarrest diversion programs.--

12 (1) A law enforcement agency or school district, in  
13 cooperation with the state attorney, may establish a prearrest  
14 or postarrest diversion program.

15 (2) As part of the prearrest or postarrest diversion  
16 program, a child who is alleged to have committed a delinquent  
17 act may be required to surrender his or her driver's license,  
18 or refrain from applying for a driver's license, for not more  
19 than 90 days. If the child fails to comply with the  
20 requirements of the program, the state attorney may notify the  
21 Department of Highway Safety and Motor Vehicles in writing to  
22 suspend the child's driver's license for a period that may not  
23 exceed 90 days.

24 (3) The prearrest or postarrest diversion program may,  
25 upon agreement of the agencies that establish the program,  
26 provide for the expunction of the nonjudicial arrest record of  
27 a minor who successfully completes such a program pursuant to  
28 s. 943.0582.

29 Section 5. Section 943.0585, Florida Statutes, is  
30 amended to read:

31

1           943.0585 Court-ordered expunction of criminal history  
2 records.--The courts of this state have jurisdiction over  
3 their own procedures, including the maintenance, expunction,  
4 and correction of judicial records containing criminal history  
5 information to the extent such procedures are not inconsistent  
6 with the conditions, responsibilities, and duties established  
7 by this section. Any court of competent jurisdiction may  
8 order a criminal justice agency to expunge the criminal  
9 history record of a minor or an adult who complies with the  
10 requirements of this section. The court shall not order a  
11 criminal justice agency to expunge a criminal history record  
12 until the person seeking to expunge a criminal history record  
13 has applied for and received a certificate of eligibility for  
14 expunction pursuant to subsection (2). A criminal history  
15 record that relates to a violation of s. 787.025,chapter 794,  
16 s. 796.03,s. 800.04, s. 817.034, s. 825.1025,s. 827.071,  
17 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,s.  
18 893.135, or a violation enumerated in s. 907.041 may not be  
19 expunged, without regard to whether adjudication was withheld,  
20 if the defendant was found guilty of or pled guilty or nolo  
21 contendere to the offense, or if the defendant, as a minor,  
22 was found to have committed, or pled guilty or nolo contendere  
23 to committing, the offense as a delinquent act. The court may  
24 only order expunction of a criminal history record pertaining  
25 to one arrest or one incident of alleged criminal activity,  
26 except as provided in this section. The court may, at its sole  
27 discretion, order the expunction of a criminal history record  
28 pertaining to more than one arrest if the additional arrests  
29 directly relate to the original arrest. If the court intends  
30 to order the expunction of records pertaining to such  
31 additional arrests, such intent must be specified in the

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

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

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

21 (b) The petitioner's sworn statement attesting that  
22 the petitioner:

23 1. Has never, prior to the date on which the petition  
24 is filed, 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 2. 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  
31 pertains.

1           3. 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, or from any  
4 jurisdiction outside the state.

5           4. Is eligible for such an expunction to the best of  
6 his or her knowledge or belief and does not have any other  
7 petition to expunge or any petition to seal pending before any  
8 court.

9  
10 Any person who knowingly provides false information on such  
11 sworn statement to the court commits a felony of the third  
12 degree, punishable as provided in s. 775.082, s. 775.083, or  
13 s. 775.084.

14           (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior  
15 to petitioning the court to expunge a criminal history record,  
16 a person seeking to expunge a criminal history record shall  
17 apply to the department for a certificate of eligibility for  
18 expunction. The department shall, by rule adopted pursuant to  
19 chapter 120, establish procedures pertaining to the  
20 application for and issuance of certificates of eligibility  
21 for expunction. The department shall issue a certificate of  
22 eligibility for expunction to a person who is the subject of a  
23 criminal history record if that person:

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

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

29           2. That an indictment, information, or other charging  
30 document, if filed or issued in the case, was dismissed or  
31

1 nolle prosequi by the state attorney or statewide prosecutor,  
2 or was dismissed by a court of competent jurisdiction.

3 3. That the criminal history record does not relate to  
4 a violation of s. 787.025,chapter 794, s. 796.03,s. 800.04,  
5 s. 817.034, s. 825.1025,s. 827.071, chapter 839, s. 847.0133,  
6 s. 847.0135, s. 847.0145,s. 893.135, or a violation  
7 enumerated in s. 907.041, where the defendant was found guilty  
8 of, or pled guilty or nolo contendere to any such offense, or  
9 that the defendant, as a minor, was found to have committed,  
10 or pled guilty or nolo contendere to committing, such an  
11 offense as a delinquent act, without regard to whether  
12 adjudication was withheld.

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

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

19 (d) Has never, prior to the date on which the  
20 application for a certificate of eligibility is filed, been  
21 adjudicated guilty of a criminal offense or comparable  
22 ordinance violation or adjudicated delinquent for committing a  
23 felony or a misdemeanor specified in s. 943.051(3)(b).

24 (e) Has not been adjudicated guilty of, or adjudicated  
25 delinquent for committing, any of the acts stemming from the  
26 arrest or alleged criminal activity to which the petition to  
27 expunge pertains.

28 (f) Has never secured a prior sealing or expunction of  
29 a criminal history record under this section, former s.  
30 893.14, former s. 901.33, or former s. 943.058.

31



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

4 (h) Is not required to wait a minimum of 10 years  
5 prior to being eligible for an expunction of such records  
6 because all charges related to the arrest or criminal activity  
7 to which the petition to expunge pertains were dismissed prior  
8 to trial, adjudication, or the withholding of adjudication.  
9 Otherwise, such criminal history record must be sealed under  
10 this section, former s. 893.14, former s. 901.33, or former s.  
11 943.058 for at least 10 years before such record is eligible  
12 for expunction.

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

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

22 (b) If relief is granted by the court, the clerk of  
23 the court shall certify copies of the order to the appropriate  
24 state attorney or the statewide prosecutor and the arresting  
25 agency. The arresting agency is responsible for forwarding the  
26 order to any other agency to which the arresting agency  
27 disseminated the criminal history record information to which  
28 the order pertains. The department shall forward the order to  
29 expunge to the Federal Bureau of Investigation. The clerk of  
30 the court shall certify a copy of the order to any other  
31

1 agency which the records of the court reflect has received the  
2 criminal history record from the court.

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

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

31

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

15           (a) The person who is the subject of a criminal  
16 history record that is expunged under this section or under  
17 other provisions of law, including former s. 893.14, former s.  
18 901.33, and former s. 943.058, may lawfully deny or fail to  
19 acknowledge the arrests covered by the expunged record, except  
20 when the subject of the record:

- 21           1. Is a candidate for employment with a criminal  
22 justice agency;
- 23           2. Is a defendant in a criminal prosecution;
- 24           3. Concurrently or subsequently petitions for relief  
25 under this section or s. 943.059;
- 26           4. Is a candidate for admission to The Florida Bar;
- 27           5. Is seeking to be employed or licensed by or to  
28 contract with the Department of Children and Family Services  
29 or the Department of Juvenile Justice or to be employed or  
30 used by such contractor or licensee in a sensitive position  
31 having direct contact with children, the developmentally

1 disabled, the aged, or the elderly as provided in s.  
2 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
3 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
4 985.407, or chapter 400; or

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

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

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

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

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

10 Section 6. Section 943.059, Florida Statutes, is  
11 amended to read:

12 943.059 Court-ordered sealing of criminal history  
13 records.--The courts of this state shall continue to have  
14 jurisdiction over their own procedures, including the  
15 maintenance, sealing, and correction of judicial records  
16 containing criminal history information to the extent such  
17 procedures are not inconsistent with the conditions,  
18 responsibilities, and duties established by this section. Any  
19 court of competent jurisdiction may order a criminal justice  
20 agency to seal the criminal history record of a minor or an  
21 adult who complies with the requirements of this section. The  
22 court shall not order a criminal justice agency to seal a  
23 criminal history record until the person seeking to seal a  
24 criminal history record has applied for and received a  
25 certificate of eligibility for sealing pursuant to subsection  
26 (2). A criminal history record that relates to a violation of  
27 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.  
28 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
29 s. 847.0145, s. 893.135, or a violation enumerated in s.  
30 907.041 may not be sealed, without regard to whether  
31 adjudication was withheld, if the defendant was found guilty

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

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

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

1 (b) The petitioner's sworn statement attesting that  
2 the petitioner:

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

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

12 3. Has never secured a prior sealing or expunction of  
13 a criminal history record under this section, former s.  
14 893.14, former s. 901.33, former s. 943.058, or from any  
15 jurisdiction outside the state.

16 4. Is eligible for such a sealing to the best of his  
17 or her knowledge or belief and does not have any other  
18 petition to seal or any petition to expunge pending before any  
19 court.

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

25 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
26 petitioning the court to seal a criminal history record, a  
27 person seeking to seal a criminal history record shall apply  
28 to the department for a certificate of eligibility for  
29 sealing. The department shall, by rule adopted pursuant to  
30 chapter 120, establish procedures pertaining to the  
31 application for and issuance of certificates of eligibility

1 for sealing. The department shall issue a certificate of  
2 eligibility for sealing to a person who is the subject of a  
3 criminal history record provided that such person:

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

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

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

15 (d) Has not been adjudicated guilty of or adjudicated  
16 delinquent for committing any of the acts stemming from the  
17 arrest or alleged criminal activity to which the petition to  
18 seal pertains.

19 (e) Has never secured a prior sealing or expunction of  
20 a criminal history record under this section, former s.  
21 893.14, former s. 901.33, or former s. 943.058.

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

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

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



1 agency may respond to the court regarding the completed  
2 petition to seal.

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

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

27 (d) On or after July 1, 1992, the department or any  
28 other criminal justice agency is not required to act on an  
29 order to seal entered by a court when such order does not  
30 comply with the requirements of this section. Upon receipt of  
31 such an order, the department must notify the issuing court,

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

12 (e) An order sealing a criminal history record  
13 pursuant to this section does not require that such record be  
14 surrendered to the court, and such record shall continue to be  
15 maintained by the department and other criminal justice  
16 agencies.

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

27 (a) The subject of a criminal history record sealed  
28 under this section or under other provisions of law, including  
29 former s. 893.14, former s. 901.33, and former s. 943.058, may  
30 lawfully deny or fail to acknowledge the arrests covered by  
31 the sealed record, except when the subject of the record:

1           1. Is a candidate for employment with a criminal  
2 justice agency;  
3           2. Is a defendant in a criminal prosecution;  
4           3. Concurrently or subsequently petitions for relief  
5 under this section or s. 943.0585;  
6           4. Is a candidate for admission to The Florida Bar;  
7           5. Is seeking to be employed or licensed by or to  
8 contract with the Department of Children and Family Services  
9 or the Department of Juvenile Justice or to be employed or  
10 used by such contractor or licensee in a sensitive position  
11 having direct contact with children, the developmentally  
12 disabled, the aged, or the elderly as provided in s.  
13 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
14 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
15 415.103, s. 985.407, or chapter 400; or  
16           6. Is seeking to be employed or licensed by the Office  
17 of Teacher Education, Certification, Staff Development, and  
18 Professional Practices of the Department of Education, any  
19 district school board, or any local governmental entity which  
20 licenses child care facilities.  
21           (b) Subject to the exceptions in paragraph (a), a  
22 person who has been granted a sealing under this section,  
23 former s. 893.14, former s. 901.33, or former s. 943.058 may  
24 not be held under any provision of law of this state to commit  
25 perjury or to be otherwise liable for giving a false statement  
26 by reason of such person's failure to recite or acknowledge a  
27 sealed criminal history record.  
28           (c) Information relating to the existence of a sealed  
29 criminal record provided in accordance with the provisions of  
30 paragraph (a) is confidential and exempt from the provisions  
31 of s. 119.07(1) and s. 24(a), Art. I of the State

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

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

19 Section 7. Effective October 1, 2001, section 943.325,  
20 Florida Statutes, is amended to read:

21 943.325 Blood specimen testing for DNA analysis.--

22 (1)(a) Any person who is convicted or was previously  
23 convicted in this state for any offense or attempted offense  
24 defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s.  
25 810.02, s. 812.133, or s. 812.135 or a similar offense in  
26 another jurisdiction and who is either:

- 27 1. Still incarcerated, or
- 28 2. No longer incarcerated or, not having ever been  
29 incarcerated, yet ~~but~~ is within the confines of the legal  
30 state boundaries and is on probation, community control,  
31

1 parole, conditional release, control release, or any other  
2 court-ordered supervision,

3  
4 shall be required to submit two specimens of blood or other  
5 biological specimens approved by the Department of Law  
6 Enforcement to a Department of Law Enforcement designated  
7 testing facility as directed by the department.

8 (b) For the purpose of this section, the term "any  
9 person" shall include both juveniles and adults committed to  
10 or under the supervision of the Department of Corrections or  
11 the Department of Juvenile Justice or committed to a county  
12 jail.

13 (2) The withdrawal of blood for purposes of this  
14 section shall be performed in a medically approved manner  
15 using a collection kit provided by, or accepted by, the  
16 Department of Law Enforcement and only by or under the  
17 supervision of a physician, registered nurse, licensed  
18 practical nurse, ~~or~~ duly licensed medical personnel or other  
19 trained and competent personnel. The collection of other  
20 approved biological specimens shall be performed by any person  
21 using a collection kit provided or accepted by the Department  
22 of Law Enforcement in a manner approved by the department as  
23 directed in the kit or as otherwise found to be acceptable by  
24 the department.

25 (3) Upon a conviction of any person for any offense  
26 under paragraph (1)(a) which results in the commitment of the  
27 offender to a county jail, correctional facility, or juvenile  
28 facility, the entity responsible for the facility shall assure  
29 that the blood specimens or other biological specimens  
30 required by this section and approved by the Department of Law  
31 Enforcement are promptly secured and transmitted to the

1 Department of Law Enforcement. If the person is not  
2 incarcerated following such conviction, the person may not be  
3 released from the custody of the court or released pursuant to  
4 a bond or surety until the blood or other approved biological  
5 specimens required by this section have been taken. The chief  
6 judge of each circuit shall, in conjunction with the sheriff  
7 or other entity that maintains the county jail, assure  
8 implementation of a method to promptly collect required blood  
9 or other approved biological specimens and forward the  
10 specimens to the Department of Law Enforcement. The Department  
11 of Law Enforcement, in conjunction with the sheriff, the  
12 courts, the Department of Corrections, and the Department of  
13 Juvenile Justice, shall develop a statewide protocol for  
14 securing the blood or other approved biological specimens of  
15 any person required to provide specimens under this section.  
16 Personnel at the jail, correctional facility, or juvenile  
17 facility shall implement the protocol as part of the regular  
18 processing of offenders.

19 (4) If any blood or other approved biological  
20 specimens submitted to the Department of Law Enforcement under  
21 this section are found to be unacceptable for analysis and use  
22 or cannot be used by the department in the manner required by  
23 this section, the Department of Law Enforcement may require  
24 that another set of blood or other approved biological  
25 specimens be taken as set forth in subsection (11).

26 (5) The Department of Law Enforcement shall provide  
27 the specimen vials, mailing tubes, labels, or other  
28 appropriate containers and instructions for the collection of  
29 blood or other approved biological specimens. The specimens  
30 shall thereafter be forwarded to the designated testing  
31 facility for analysis to determine genetic markers and

1 characteristics for the purpose of individual identification  
2 of the person submitting the sample.

3       (6) In addition to the specimens submitted by reason  
4 of the mandated collection of specimens required by this  
5 section, the Department of Law Enforcement may, at its option,  
6 receive and use other blood or other approved biological  
7 specimens. Any ~~The~~ analysis, when completed, shall be entered  
8 into the automated database maintained by the Department of  
9 Law Enforcement for such purpose as provided in this section,  
10 and shall not be included in the state central criminal  
11 justice information repository.

12       (7) The results of a DNA analysis and the comparison  
13 of analytic results shall be released only to criminal justice  
14 agencies as defined in s. 943.045(10), at the request of the  
15 agency. Otherwise, such information is confidential and exempt  
16 from the provisions of s. 119.07(1) and s. 24(a), Art. I of  
17 the State Constitution.

18       (8) The Department of Law Enforcement and the  
19 statewide criminal laboratory analysis system shall establish,  
20 implement, and maintain a statewide automated personal  
21 identification system capable of, but not limited to,  
22 classifying, matching, and storing analyses of DNA  
23 (deoxyribonucleic acid) and other biological molecules. The  
24 system shall be available to all criminal justice agencies.

25       (9) The Department of Law Enforcement shall:

26       (a) Receive, process, and store blood and other  
27 approved biological samples and the data derived therefrom  
28 furnished pursuant to subsection (1) or pursuant to a  
29 requirement of supervision imposed by the court or the Parole  
30 Commission with respect to a person convicted of any offense  
31 specified in subsection (1) or as specified in subsection (6).

1           (b) Collect, process, maintain, and disseminate  
2 information and records pursuant to this section.

3           (c) Strive to maintain or disseminate only accurate  
4 and complete records.

5           (d) Adopt rules prescribing the proper procedure for  
6 state and local law enforcement and correctional agencies to  
7 collect and submit blood and other approved biological samples  
8 pursuant to this section.

9           (10)(a) The court shall include in the judgment of  
10 conviction for an offense specified in this section, or a  
11 finding that a person described in subsection (1) violated a  
12 condition of probation, community control, or any other  
13 court-ordered supervision, an order stating that blood or  
14 other approved biological specimens are required to be drawn  
15 by the appropriate agency in a manner consistent with this  
16 section and, unless the convicted person lacks the ability to  
17 pay, the person shall reimburse the appropriate agency for the  
18 cost of drawing and transmitting the blood or other approved  
19 biological specimens to the Florida Department of Law  
20 Enforcement. The reimbursement payment may be deducted from  
21 any existing balance in the inmate's bank account. If the  
22 account balance is insufficient to cover the cost of drawing  
23 and transmitting the blood or other approved biological  
24 specimens to the Florida Department of Law Enforcement, 50  
25 percent of each deposit to the account must be withheld until  
26 the total amount owed has been paid. If the judgment places  
27 the convicted person on probation, community control, or any  
28 other court-ordered supervision, the court shall order the  
29 convicted person to submit to the drawing of the blood or  
30 other approved biological specimens as a condition of the  
31 probation, community control, or other court-ordered



1 supervision. For the purposes of a person who is on  
2 probation, community control, or any other court-ordered  
3 supervision, the collection requirement must be based upon a  
4 court order, or as otherwise provided by the person in the  
5 absence of a court order. If the judgment sentences the  
6 convicted person to time served, the court shall order the  
7 convicted person to submit to the drawing of the blood or  
8 other approved biological specimens as a condition of such  
9 sentence.

10 (b) The appropriate agency shall cause the specimens  
11 to be drawn or collected as soon as practical after conviction  
12 but, in the case of any person ordered to serve a term of  
13 incarceration as part of the sentence, the specimen shall be  
14 drawn or collected as soon as practical after the receipt of  
15 the convicted person by the custodial facility. For the  
16 purpose of this section, the appropriate agency shall be the  
17 Department of Corrections whenever the convicted person is  
18 committed to the legal and physical custody of the department.  
19 Conviction information contained in the offender information  
20 system of the Department of Corrections shall be sufficient to  
21 determine applicability under this section. The appropriate  
22 agency shall be the sheriff or officer in charge of the county  
23 correctional facility whenever the convicted person is placed  
24 on probation, community control, or any other court-ordered  
25 supervision or form of supervised release or is committed to  
26 the legal and physical custody of a county correctional  
27 facility.

28 (c) Any person previously convicted of an offense  
29 specified in this section, or a crime which, if committed in  
30 this state, would be an offense specified in this section, and  
31 who is also subject to the registration requirement imposed by

1 s. 775.13, shall be subject to the collection requirement of  
2 this section when the appropriate agency described in this  
3 section verifies the identification information of the person.  
4 The collection requirement of this section does not apply to a  
5 person as described in s. 775.13(5).

6 (d) For the purposes of this section, conviction shall  
7 include a finding of guilty, or entry of a plea of nolo  
8 contendere or guilty, regardless of adjudication or, in the  
9 case of a juvenile, the finding of delinquency.

10 (e) If necessary, the state or local law enforcement  
11 or correctional agency having authority over the person  
12 subject to the sampling under this section shall assist in the  
13 procedure. The law enforcement or correctional officer so  
14 assisting may use reasonable force if necessary to require  
15 such person to submit to the withdrawal of blood specimens or  
16 the collection of other approved biological specimens. Any  
17 such ~~The~~ withdrawal or collection shall be performed in a  
18 reasonable manner. A hospital, clinical laboratory, medical  
19 clinic, or similar medical institution; a physician, certified  
20 paramedic, registered nurse, licensed practical nurse, or  
21 other personnel authorized by a hospital to draw blood; a  
22 licensed clinical laboratory director, supervisor,  
23 technologist, or technician; or any other person who assists a  
24 law enforcement officer is not civilly or criminally liable as  
25 a result of withdrawing blood specimens according to accepted  
26 medical standards when requested to do so by a law enforcement  
27 officer or any personnel of a jail, correctional facility, or  
28 juvenile detention facility, regardless of whether the  
29 convicted person resisted the drawing of blood specimens. A  
30 person other than the subject required to provide the  
31 biological specimens who collects or assists in the collection

1 of approved specimens other than blood is not civilly or  
2 criminally liable if a collection kit provided or accepted by  
3 the Department of Law Enforcement is used and the collection  
4 is done in a manner approved by the department, as directed in  
5 the kit, or is performed in an otherwise reasonable manner.

6 (f) If a judgment fails to order the convicted person  
7 to submit to the drawing of the blood or collecting of other  
8 approved biological specimens as mandated by this section, the  
9 state attorney may seek an amended order from the sentencing  
10 court mandating the submission of blood or other approved  
11 biological specimens in compliance with this section. As an  
12 alternative, the department, a state attorney, the Department  
13 of Corrections, or any law enforcement agency may seek a court  
14 order to secure the blood or other approved biological  
15 specimens as authorized in subsection (11).

16 (11) If the Department of Law Enforcement determines  
17 that a convicted person who is required to submit blood or  
18 other approved biological specimens under this section has not  
19 provided the specimens, the department, a state attorney, or  
20 any law enforcement agency may apply to the circuit court for  
21 an order that authorizes taking the convicted person into  
22 custody for the purpose of securing the required specimens.  
23 The court shall issue the order upon a showing of probable  
24 cause. Following issuance of the order, the convicted person  
25 shall be transported to a location acceptable to the agency  
26 that has custody of the person, the blood or other approved  
27 biological specimens shall be withdrawn or collected in a  
28 reasonable manner, and the person shall be released if there  
29 is no other reason to justify retaining the person in custody.  
30 The agency that takes the convicted person into custody may,  
31 but is not required to, transport the person back to the

1 | location where the person was taken into custody. An agency  
2 | acting under authority of an order under this section may, in  
3 | lieu of transporting the convicted person to a collection  
4 | site, secure the blood or other approved biological specimens  
5 | at the location of the convicted person in a reasonable  
6 | manner. If the convicted person resists providing the  
7 | specimens, reasonable force may be used to secure the  
8 | specimens, and any person using such force to secure the  
9 | specimens or reasonably assisting in the securing of the  
10 | specimens is not civilly or criminally liable for actions  
11 | taken.

12 |           (12) Unless the convicted person has been declared  
13 | indigent by the court, the convicted person shall pay the  
14 | actual costs of collecting the blood or other approved  
15 | biological specimens required under this section.

16 |           (13) If a court, a law enforcement agency, or the  
17 | Department of Law Enforcement fails to strictly comply with  
18 | this section or to abide by a statewide protocol for  
19 | collecting blood or other approved biological specimens, such  
20 | failure is not grounds for challenging the validity of the  
21 | collection or the use of a specimen, and evidence based upon  
22 | or derived from the collected blood or other approved  
23 | biological specimens may not be excluded by a court.

24 |           Section 8. Effective October 1, 2001, paragraph (a) of  
25 | subsection (2) of section 760.40, Florida Statutes, is amended  
26 | to read:

27 |           760.40 Genetic testing; informed consent;  
28 | confidentiality.--

29 |           (2)(a) Except for purposes of criminal prosecution,  
30 | except for purposes of determining paternity as provided in s.  
31 | 742.12(1), and except for purposes of acquiring specimens from

1 persons convicted of certain offenses or as otherwise provided  
2 in s. 943.325, DNA analysis may be performed only with the  
3 informed consent of the person to be tested, and the results  
4 of such DNA analysis, whether held by a public or private  
5 entity, are the exclusive property of the person tested, are  
6 confidential, and may not be disclosed without the consent of  
7 the person tested. Such information held by a public entity is  
8 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.  
9 I of the State Constitution.

10 Section 9. Section 843.167, Florida Statutes, is  
11 created to read:

12 843.167 Unlawful use of police communications;  
13 enhanced penalties.--

14 (1) A person may not:

15 (a) Intercept any police radio communication by use of  
16 a scanner or any other means for the purpose of using that  
17 communication to assist in committing a crime or to escape  
18 from or avoid detection, arrest, trial, conviction, or  
19 punishment in connection with the commission of such crime.

20 (b) Divulge the existence, contents, substance,  
21 purport, effect, or meaning of a police radio communication to  
22 any person he or she knows to be a suspect in the commission  
23 of a crime with the intent that the suspect may escape from or  
24 avoid detection, arrest, trial, conviction, or punishment.

25 (2) Any person who is charged with a crime and who,  
26 during the time such crime was committed, possessed or used a  
27 police radio scanner or similar device capable of receiving  
28 police radio transmissions is presumed to have violated  
29 paragraph (1)(a).

30  
31

1           (3) The penalty for a crime that is committed by a  
2 person who violates paragraph (1)(a) shall be enhanced as  
3 follows:

4           (a) A misdemeanor of the second degree shall be  
5 punished as if it were a misdemeanor of the first degree.

6           (b) A misdemeanor of the first degree shall be  
7 punished as if it were a felony of the third degree.

8           (c) A felony of the third degree shall be punished as  
9 if it were a felony of the second degree.

10           (d) A felony of the second degree shall be punished as  
11 if it were a felony of the first degree.

12           (e) A felony of the first degree shall be punished as  
13 if it were a life felony.

14           (4) Any person who violates paragraph (1)(b) commits a  
15 misdemeanor of the first degree, punishable as provided in s.  
16 775.082 or s. 775.083.

17           Section 10. Except as otherwise expressly provided in  
18 this act, this act shall take effect July 1, 2001.

19  
20                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
21                           COMMITTEE SUBSTITUTE FOR  
22                           Senate Bill's 1864 and 2086

- 23 - Removes provisions in SB 2086 that included numerous  
24 substantive law changes to reflect the transfer of the  
25 Criminal Justice Program from the Department of  
26 Community Affairs to the Department of Law Enforcement.  
27 - Provides for expunction of any nonjudicial record of the  
28 arrest of a minor who has successfully completed a  
29 prearrest or postarrest diversion program for minors who  
30 have been arrested for a nonviolent offense and who do  
31 not have a prior criminal history.  
- Provides for enhanced penalties and a misdemeanor  
offense relating to unlawful interception of police  
radio communications or the divulging of information  
obtained from such communications.