

By Representative Clarke

1 A bill to be entitled
2 An act relating to criminal history records;
3 amending ss. 943.0585 and 943.059, F.S.;
4 prohibiting a court from expunging or sealing
5 the criminal history record of a person who has
6 been found guilty of or pled guilty or nolo
7 contendere to distributing or showing obscene
8 material to a minor or who has been found
9 guilty of or pled guilty or nolo contendere to
10 certain activities involving computer
11 pornography; providing an effective date.

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

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15 Section 1. Section 943.0585, Florida Statutes, is
16 amended to read:

17 943.0585 Court-ordered expunction of criminal history
18 records.--The courts of this state have jurisdiction over
19 their own procedures, including the maintenance, expunction,
20 and correction of judicial records containing criminal history
21 information to the extent such procedures are not inconsistent
22 with the conditions, responsibilities, and duties established
23 by this section. Any court of competent jurisdiction may
24 order a criminal justice agency to expunge the criminal
25 history record of a minor or an adult who complies with the
26 requirements of this section. The court shall not order a
27 criminal justice agency to expunge a criminal history record
28 until the person seeking to expunge a criminal history record
29 has applied for and received a certificate of eligibility for
30 expunction pursuant to subsection (2). A criminal history
31 record that relates to a violation of chapter 794, s. 800.04,

1 s. 817.034, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
2 s. 893.135, or a violation enumerated in s. 907.041 may not be
3 expunged, without regard to whether adjudication was withheld,
4 if the defendant was found guilty of or pled guilty or nolo
5 contendere to the offense, or if the defendant, as a minor,
6 was found to have committed, or pled guilty or nolo contendere
7 to committing, the offense as a delinquent act. The court may
8 only order expunction of a criminal history record pertaining
9 to one arrest or one incident of alleged criminal activity,
10 except as provided in this section. The court may, at its sole
11 discretion, order the expunction of a criminal history record
12 pertaining to more than one arrest if the additional arrests
13 directly relate to the original arrest. If the court intends
14 to order the expunction of records pertaining to such
15 additional arrests, such intent must be specified in the
16 order. A criminal justice agency may not expunge any record
17 pertaining to such additional arrests if the order to expunge
18 does not articulate the intention of the court to expunge a
19 record pertaining to more than one arrest. This section does
20 not prevent the court from ordering the expunction of only a
21 portion of a criminal history record pertaining to one arrest
22 or one incident of alleged criminal activity. Notwithstanding
23 any law to the contrary, a criminal justice agency may comply
24 with laws, court orders, and official requests of other
25 jurisdictions relating to expunction, correction, or
26 confidential handling of criminal history records or
27 information derived therefrom. This section does not confer
28 any right to the expunction of any criminal history record,
29 and any request for expunction of a criminal history record
30 may be denied at the sole discretion of the court.
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1 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY
2 RECORD.--Each petition to a court to expunge a criminal
3 history record is complete only when accompanied by:
4 (a) A certificate of eligibility for expunction issued
5 by the department pursuant to subsection (2).
6 (b) The petitioner's sworn statement attesting that
7 the petitioner:
8 1. Has never, prior to the date on which the petition
9 is filed, been adjudicated guilty of a criminal offense or
10 comparable ordinance violation or adjudicated delinquent for
11 committing a felony or a misdemeanor specified in s.
12 943.051(3)(b).
13 2. Has not been adjudicated guilty of, or adjudicated
14 delinquent for committing, any of the acts stemming from the
15 arrest or alleged criminal activity to which the petition
16 pertains.
17 3. Has never secured a prior sealing or expunction of
18 a criminal history record under this section, former s.
19 893.14, former s. 901.33, or former s. 943.058, or from any
20 jurisdiction outside the state.
21 4. Is eligible for such an expunction to the best of
22 his or her knowledge or belief and does not have any other
23 petition to expunge or any petition to seal pending before any
24 court.
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26 Any person who knowingly provides false information on such
27 sworn statement to the court commits a felony of the third
28 degree, punishable as provided in s. 775.082, s. 775.083, or
29 s. 775.084.
30 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
31 to petitioning the court to expunge a criminal history record,

1 a person seeking to expunge a criminal history record shall
2 apply to the department for a certificate of eligibility for
3 expunction. The department shall, by rule adopted pursuant to
4 chapter 120, establish procedures pertaining to the
5 application for and issuance of certificates of eligibility
6 for expunction. The department shall issue a certificate of
7 eligibility for expunction to a person who is the subject of a
8 criminal history record if that person:

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

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

14 2. That an indictment, information, or other charging
15 document, if filed or issued in the case, was dismissed or
16 nolle prosequi by the state attorney or statewide prosecutor,
17 or was dismissed by a court of competent jurisdiction.

18 3. That the criminal history record does not relate to
19 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
20 chapter 839, s. 847.0133, s. 847.0135,s. 893.135, or a
21 violation enumerated in s. 907.041, where the defendant was
22 found guilty of, or pled guilty or nolo contendere to any such
23 offense, or that the defendant, as a minor, was found to have
24 committed, or pled guilty or nolo contendere to committing,
25 such an offense as a delinquent act, without regard to whether
26 adjudication was withheld.

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

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1 (c) Has submitted to the department a certified copy
2 of the disposition of the charge to which the petition to
3 expunge pertains.

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

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

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

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

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

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

29 (a) In judicial proceedings under this section, a copy
30 of the completed petition to expunge shall be served upon the
31 appropriate state attorney or the statewide prosecutor and

1 upon the arresting agency; however, it is not necessary to
2 make any agency other than the state a party. The appropriate
3 state attorney or the statewide prosecutor and the arresting
4 agency may respond to the court regarding the completed
5 petition to expunge.

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

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

29 (d) On or after July 1, 1992, the department or any
30 other criminal justice agency is not required to act on an
31 order to expunge entered by a court when such order does not

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

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

28 (a) The person who is the subject of a criminal
29 history record that is expunged under this section or under
30 other provisions of law, including former s. 893.14, former s.
31 901.33, and former s. 943.058, may lawfully deny or fail to

1 acknowledge the arrests covered by the expunged record, except
2 when the subject of the record:

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

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

30 (c) Information relating to the existence of an
31 expunged criminal history record which is provided in

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

19 (5) STATUTORY REFERENCES.--Any reference to any other
20 chapter, section, or subdivision of the Florida Statutes in
21 this section constitutes a general reference under the
22 doctrine of incorporation by reference.

23 Section 2. Section 943.059, Florida Statutes, is
24 amended to read:

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

1 court of competent jurisdiction may order a criminal justice
2 agency to seal the criminal history record of a minor or an
3 adult who complies with the requirements of this section. The
4 court shall not order a criminal justice agency to seal a
5 criminal history record until the person seeking to seal a
6 criminal history record has applied for and received a
7 certificate of eligibility for sealing pursuant to subsection
8 (2). A criminal history record that relates to a violation of
9 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
10 s. 847.0133, s. 847.0135, s. 893.135, or a violation
11 enumerated in s. 907.041 may not be sealed, without regard to
12 whether adjudication was withheld, if the defendant was found
13 guilty of or pled guilty or nolo contendere to the offense, or
14 if the defendant, as a minor, was found to have committed or
15 pled guilty or nolo contendere to committing the offense as a
16 delinquent act. The court may only order sealing of a
17 criminal history record pertaining to one arrest or one
18 incident of alleged criminal activity, except as provided in
19 this section. The court may, at its sole discretion, order the
20 sealing of a criminal history record pertaining to more than
21 one arrest if the additional arrests directly relate to the
22 original arrest. If the court intends to order the sealing of
23 records pertaining to such additional arrests, such intent
24 must be specified in the order. A criminal justice agency may
25 not seal any record pertaining to such additional arrests if
26 the order to seal does not articulate the intention of the
27 court to seal records pertaining to more than one arrest.
28 This section does not prevent the court from ordering the
29 sealing of only a portion of a criminal history record
30 pertaining to one arrest or one incident of alleged criminal
31 activity. Notwithstanding any law to the contrary, a criminal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 14 1. Is a candidate for employment with a criminal
15 justice agency;
- 16 2. Is a defendant in a criminal prosecution;
- 17 3. Concurrently or subsequently petitions for relief
18 under this section or s. 943.0585;
- 19 4. Is a candidate for admission to The Florida Bar;
- 20 5. Is seeking to be employed or licensed by or to
21 contract with the Department of Children and Family Services
22 or the Department of Juvenile Justice or to be employed or
23 used by such contractor or licensee in a sensitive position
24 having direct contact with children, the developmentally
25 disabled, the aged, or the elderly as provided in s.
26 110.1127(3), s. 393.063(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 the Office
30 of Teacher Education, Certification, Staff Development, and
31 Professional Practices of the Department of Education, any

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

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

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

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

1 Section 3. This act shall take effect July 1, 2001.

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SENATE SUMMARY

Provides that a court may not expunge or seal the criminal history record of a person who has been found guilty of or pled guilty or nolo contendere to a violation of s. 943.0585, F.S., relating to the unlawful distribution of obscene material to a minor, or who has been found guilty of or pled guilty or nolo contendere to a violation of s. 943.059, F.S., relating to unlawful activities involving computer pornography.