

By Senator Smith

14-337-04

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 the expunction or sealing of a  
5           criminal history record concerning a defendant  
6           who was found guilty of, or who pled guilty or  
7           nolo contendere to, the offense of voyeurism,  
8           regardless of whether adjudication was  
9           withheld; providing an effective date.

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

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13           Section 1. Section 943.0585, Florida Statutes, is  
14 amended to read:

15           943.0585 Court-ordered expunction of criminal history  
16 records.--The courts of this state have jurisdiction over  
17 their own procedures, including the maintenance, expunction,  
18 and correction of judicial records containing criminal history  
19 information to the extent such procedures are not inconsistent  
20 with the conditions, responsibilities, and duties established  
21 by this section. Any court of competent jurisdiction may order  
22 a criminal justice agency to expunge the criminal history  
23 record of a minor or an adult who complies with the  
24 requirements of this section. The court shall not order a  
25 criminal justice agency to expunge a criminal history record  
26 until the person seeking to expunge a criminal history record  
27 has applied for and received a certificate of eligibility for  
28 expunction pursuant to subsection (2). A criminal history  
29 record that relates to a violation of s. 787.025, chapter 794,  
30 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
31 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,

1 s. 893.135, or a violation enumerated in s. 907.041 may not be  
2 expunged, without regard to whether adjudication was withheld,  
3 if the defendant was found guilty of or pled guilty or nolo  
4 contendere to the offense, or if the defendant, as a minor,  
5 was found to have committed, or pled guilty or nolo contendere  
6 to committing, the offense as a delinquent act. The court may  
7 only order expunction of a criminal history record pertaining  
8 to one arrest or one incident of alleged criminal activity,  
9 except as provided in this section. The court may, at its sole  
10 discretion, order the expunction of a criminal history record  
11 pertaining to more than one arrest if the additional arrests  
12 directly relate to the original arrest. If the court intends  
13 to order the expunction of records pertaining to such  
14 additional arrests, such intent must be specified in the  
15 order. A criminal justice agency may not expunge any record  
16 pertaining to such additional arrests if the order to expunge  
17 does not articulate the intention of the court to expunge a  
18 record pertaining to more than one arrest. This section does  
19 not prevent the court from ordering the expunction of only a  
20 portion of a criminal history record pertaining to one arrest  
21 or one incident of alleged criminal activity. Notwithstanding  
22 any law to the contrary, a criminal justice agency may comply  
23 with laws, court orders, and official requests of other  
24 jurisdictions relating to expunction, correction, or  
25 confidential handling of criminal history records or  
26 information derived therefrom. This section does not confer  
27 any right to the expunction of any criminal history record,  
28 and any request for expunction of a criminal history record  
29 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 s. 787.025, chapter 794, s. 796.03, s. 800.04,  
20 s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839,  
21 s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, or a  
22 violation enumerated in s. 907.041, where the defendant was  
23 found guilty of, or pled guilty or nolo contendere to any such  
24 offense, or that the defendant, as a minor, was found to have  
25 committed, or pled guilty or nolo contendere to committing,  
26 such an offense as a delinquent act, without regard to whether  
27 adjudication was withheld.

28 (b) Remits a \$75 processing fee to the department for  
29 placement in the Department of Law Enforcement Operating Trust  
30 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 entity  
9 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 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s.  
10 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.  
11 847.0135, s. 847.0145, s. 893.135, or a violation enumerated  
12 in s. 907.041 may not be sealed, without regard to whether  
13 adjudication was withheld, if the defendant was found guilty  
14 of or pled guilty or nolo contendere to the offense, or if the  
15 defendant, as a minor, was found to have committed or pled  
16 guilty or nolo contendere to committing the offense as a  
17 delinquent act. The court may only order sealing of a criminal  
18 history record pertaining to one arrest or one incident of  
19 alleged criminal activity, except as provided in this section.  
20 The court may, at its sole discretion, order the sealing of a  
21 criminal history record pertaining to more than one arrest if  
22 the additional arrests directly relate to the original arrest.  
23 If the court intends to order the sealing of records  
24 pertaining to such additional arrests, such intent must be  
25 specified in the order. A criminal justice agency may not seal  
26 any record pertaining to such additional arrests if the order  
27 to seal does not articulate the intention of the court to seal  
28 records pertaining to more than one arrest. This section does  
29 not prevent the court from ordering the sealing of only a  
30 portion of a criminal history record pertaining to one arrest  
31 or one incident of alleged criminal activity. Notwithstanding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (e) Has never secured a prior sealing or expunction of  
4 a criminal history record under this section, former s.  
5 893.14, former s. 901.33, or former s. 943.058.

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

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

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

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

30 (c) For an order to seal entered by a court prior to  
31 July 1, 1992, the department shall notify the appropriate

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

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

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

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

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

- 16           1. Is a candidate for employment with a criminal  
17 justice agency;
- 18           2. Is a defendant in a criminal prosecution;
- 19           3. Concurrently or subsequently petitions for relief  
20 under this section or s. 943.0585;
- 21           4. Is a candidate for admission to The Florida Bar;
- 22           5. Is seeking to be employed or licensed by or to  
23 contract with the Department of Children and Family Services  
24 or the Department of Juvenile Justice or to be employed or  
25 used by such contractor or licensee in a sensitive position  
26 having direct contact with children, the developmentally  
27 disabled, the aged, or the elderly as provided in s.  
28 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
29 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
30 415.103, s. 985.407, or chapter 400; or

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1           6. Is seeking to be employed or licensed by the Office  
2 of Teacher Education, Certification, Staff Development, and  
3 Professional Practices of the Department of Education, any  
4 district school board, or any local governmental entity which  
5 licenses child care facilities.

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

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

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