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A bill to be entitled

An act relating to the sealing of criminal records; amending s. 943.059, F.S.; providing that a prohibition against sealing the criminal history record of certain offenses does not apply if a charging document is not filed, if the case is dismissed, if a nolle prosequi is entered in the case, or if the defendant is acquitted or found not guilty; providing that a certificate of eligibility for sealing is available if the person seeking the certificate has never secured a prior sealing or expunction of a criminal history record under specified provisions involving an offense for which he or she was found guilty or pled guilty or nolo contendere; providing an effective date.

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

Section 1. Section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent the ~~such~~ procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an

29 adult who complies with the requirements of this section. The  
 30 court shall not order a criminal justice agency to seal a  
 31 criminal history record until the person seeking to seal a  
 32 criminal history record has applied for and received a  
 33 certificate of eligibility for sealing pursuant to subsection  
 34 (3) ~~(2)~~.

35 (1) PROHIBITION ON SEALING CERTAIN RECORDS.--A criminal  
 36 history record that relates to a violation of s. 393.135, s.  
 37 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
 38 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.  
 39 847.0135, s. 847.0145, s. 893.135, s. 916.1075, or a violation  
 40 enumerated in s. 907.041 may not be sealed, ~~without regard to~~  
 41 ~~whether adjudication was withheld,~~ if the defendant was found  
 42 guilty of or pled guilty or nolo contendere to the offense, or  
 43 if the defendant, as a minor, was found to have committed or  
 44 pled guilty or nolo contendere to committing the offense as a  
 45 delinquent act, even if the adjudication was withheld. The  
 46 prohibition applies only to cases in which the defendant,  
 47 including a minor, was found guilty of or pled guilty or nolo  
 48 contendere to the offense. In all other cases involving the  
 49 offenses enumerated in this subsection, if an indictment,  
 50 information, or other charging document was not filed or issued,  
 51 the criminal history record may be sealed. If a charging  
 52 document was filed or issued in the case, the criminal history  
 53 record may be sealed if the case was dismissed or a nolle  
 54 prosequi was entered by the state attorney or statewide  
 55 prosecutor, if the case was dismissed by a court of competent  
 56 jurisdiction, or if the defendant was acquitted or found not

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57 guilty. The court may only order sealing of a criminal history  
58 record pertaining to one arrest or one incident of alleged  
59 criminal activity, except as provided in this section. The court  
60 may, at its sole discretion, order the sealing of a criminal  
61 history record pertaining to more than one arrest if the  
62 additional arrests directly relate to the original arrest. If  
63 the court intends to order the sealing of records pertaining to  
64 the ~~such~~ additional arrests, the ~~such~~ intent must be specified  
65 in the order. A criminal justice agency may not seal any record  
66 pertaining to the ~~such~~ additional arrests if the order to seal  
67 does not articulate the intention of the court to seal records  
68 pertaining to more than one arrest. This section does not  
69 prevent the court from ordering the sealing of only a portion of  
70 a criminal history record pertaining to one arrest or one  
71 incident of alleged criminal activity. Notwithstanding any law  
72 to the contrary, a criminal justice agency may comply with laws,  
73 court orders, and official requests of other jurisdictions  
74 relating to sealing, correction, or confidential handling of  
75 criminal history records or information derived therefrom. This  
76 section does not confer any right to the sealing of any criminal  
77 history record, and any request for sealing a criminal history  
78 record may be denied at the sole discretion of the court.

79 (2) ~~(1)~~ PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each  
80 petition to a court to seal a criminal history record is  
81 complete only when accompanied by:

82 (a) A certificate of eligibility for sealing issued by the  
83 department pursuant to subsection (3) ~~(2)~~.

84 (b) The petitioner's sworn statement attesting that the

85 petitioner:

86 1. Has never, prior to the date on which the petition is  
 87 filed, been adjudicated guilty of a criminal offense or  
 88 comparable ordinance violation or adjudicated delinquent for  
 89 committing a felony or a misdemeanor specified in s.  
 90 943.051(3)(b).

91 2. Has not been adjudicated guilty of or adjudicated  
 92 delinquent for committing any of the acts stemming from the  
 93 arrest or alleged criminal activity to which the petition to  
 94 seal pertains.

95 3. Except as otherwise provided in this section, has never  
 96 secured a prior sealing or expunction of a criminal history  
 97 record under this section, former s. 893.14, former s. 901.33,  
 98 former s. 943.058, or from any jurisdiction outside the state.

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

102  
 103 Any person who knowingly provides false information on the ~~such~~  
 104 sworn statement to the court commits a felony of the third  
 105 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 106 775.084.

107 (3)~~(2)~~ CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
 108 petitioning the court to seal a criminal history record, a  
 109 person seeking to seal a criminal history record shall apply to  
 110 the department for a certificate of eligibility for sealing. The  
 111 department shall, by rule adopted pursuant to chapter 120,  
 112 establish procedures pertaining to the application for and

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113 issuance of certificates of eligibility for sealing. The  
 114 department shall issue a certificate of eligibility for sealing  
 115 to a person who is the subject of a criminal history record  
 116 provided that the ~~such~~ person:

117 (a) Has submitted to the department a certified copy of  
 118 the disposition of the charge to which the petition to seal  
 119 pertains.

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

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

128 (d) Has not been adjudicated guilty of or adjudicated  
 129 delinquent for committing any of the acts stemming from the  
 130 arrest or alleged criminal activity to which the petition to  
 131 seal pertains.

132 (e) Has never secured a prior sealing or expunction of a  
 133 criminal history record under this section, former s. 893.14,  
 134 former s. 901.33, or former s. 943.058 involving an offense for  
 135 which the defendant has been found guilty or pled guilty or nolo  
 136 contendere.

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

140 (4) ~~(3)~~ PROCESSING OF A PETITION OR ORDER TO SEAL.--

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141 (a) In judicial proceedings under this section, a copy of  
142 the completed petition to seal shall be served upon the  
143 appropriate state attorney or the statewide prosecutor and upon  
144 the arresting agency; however, it is not necessary to make any  
145 agency other than the state a party. The appropriate state  
146 attorney or the statewide prosecutor and the arresting agency  
147 may respond to the court regarding the completed petition to  
148 seal.

149 (b) If relief is granted by the court, the clerk of the  
150 court shall certify copies of the order to the appropriate state  
151 attorney or the statewide prosecutor and to the arresting  
152 agency. The arresting agency is responsible for forwarding the  
153 order to any other agency to which the arresting agency  
154 disseminated the criminal history record information to which  
155 the order pertains. The department shall forward the order to  
156 seal to the Federal Bureau of Investigation. The clerk of the  
157 court shall certify a copy of the order to any other agency  
158 which the records of the court reflect has received the criminal  
159 history record from the court.

160 (c) For an order to seal entered by a court prior to July  
161 1, 1992, the department shall notify the appropriate state  
162 attorney or statewide prosecutor of any order to seal which is  
163 contrary to law because the person who is the subject of the  
164 record has previously been convicted of a crime or comparable  
165 ordinance violation or has had a prior criminal history record  
166 sealed or expunged. Upon receipt of the ~~such~~ notice, the  
167 appropriate state attorney or statewide prosecutor shall take  
168 action, within 60 days, to correct the record and petition the

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169 court to void the order to seal. The department shall seal the  
 170 record until such time as the order is voided by the court.

171 (d) On or after July 1, 1992, the department or any other  
 172 criminal justice agency is not required to act on an order to  
 173 seal entered by a court when the ~~such~~ order does not comply with  
 174 the requirements of this section. Upon receipt of ~~such~~ an order,  
 175 the department must notify the issuing court, the appropriate  
 176 state attorney or statewide prosecutor, the petitioner or the  
 177 petitioner's attorney, and the arresting agency of the reason  
 178 for noncompliance. The appropriate state attorney or statewide  
 179 prosecutor shall take action within 60 days to correct the  
 180 record and petition the court to void the order. No cause of  
 181 action, including contempt of court, shall arise against any  
 182 criminal justice agency for failure to comply with an order to  
 183 seal when the petitioner for the ~~such~~ order failed to obtain the  
 184 certificate of eligibility as required by this section or when  
 185 the ~~such~~ order does not comply with the requirements of this  
 186 section.

187 (e) An order sealing a criminal history record pursuant to  
 188 this section does not require that the ~~such~~ record be  
 189 surrendered to the court, and the ~~such~~ record shall continue to  
 190 be maintained by the department and other criminal justice  
 191 agencies.

192 (5)~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A  
 193 criminal history record of a minor or an adult which is ordered  
 194 sealed by a court of competent jurisdiction pursuant to this  
 195 section is confidential and exempt from the provisions of s.  
 196 119.07(1) and s. 24(a), Art. I of the State Constitution and is

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197 available only to the person who is the subject of the record,  
 198 to the subject's attorney, to criminal justice agencies for  
 199 their respective criminal justice purposes, or to those entities  
 200 set forth in subparagraphs (a)1., 4., 5., and 6. for their  
 201 respective licensing and employment purposes.

202 (a) The subject of a criminal history record sealed under  
 203 this section or under other provisions of law, including former  
 204 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 205 deny or fail to acknowledge the arrests covered by the sealed  
 206 record, except when the subject of the record:

- 207 1. Is a candidate for employment with a criminal justice  
 208 agency;
- 209 2. Is a defendant in a criminal prosecution;
- 210 3. Concurrently or subsequently petitions for relief under  
 211 this section or s. 943.0585;
- 212 4. Is a candidate for admission to The Florida Bar;
- 213 5. Is seeking to be employed or licensed by or to contract  
 214 with the Department of Children and Family Services or the  
 215 Department of Juvenile Justice or to be employed or used by the  
 216 ~~such~~ contractor or licensee in a sensitive position having  
 217 direct contact with children, the developmentally disabled, the  
 218 aged, or the elderly as provided in s. 110.1127(3), s. 393.063,  
 219 s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 220 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and  
 221 (13), s. 985.407, or chapter 400; or
- 222 6. Is seeking to be employed or licensed by the Department  
 223 of Education, any district school board, any university  
 224 laboratory school, any charter school, any private or parochial



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225 school, or any local governmental entity that licenses child  
226 care facilities.

227 (b) Subject to the exceptions in paragraph (a), a person  
228 who has been granted a sealing under this section, former s.  
229 893.14, former s. 901.33, or former s. 943.058 may not be held  
230 under any provision of law of this state to commit perjury or to  
231 be otherwise liable for giving a false statement by reason of  
232 the ~~such~~ person's failure to recite or acknowledge a sealed  
233 criminal history record.

234 (c) Information relating to the existence of a sealed  
235 criminal record provided in accordance with the provisions of  
236 paragraph (a) is confidential and exempt from the provisions of  
237 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
238 except that the department shall disclose the sealed criminal  
239 history record to the entities set forth in subparagraphs (a)1.,  
240 4., 5., and 6. for their respective licensing and employment  
241 purposes. It is unlawful for any employee of an entity set forth  
242 in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5.,  
243 or subparagraph (a)6. to disclose information relating to the  
244 existence of a sealed criminal history record of a person  
245 seeking employment or licensure with the ~~such~~ entity or  
246 contractor, except to the person to whom the criminal history  
247 record relates or to persons having direct responsibility for  
248 employment or licensure decisions. Any person who violates the  
249 provisions of this paragraph commits a misdemeanor of the first  
250 degree, punishable as provided in s. 775.082 or s. 775.083.

251 (6)~~(5)~~ STATUTORY REFERENCES.--Any reference to any other  
252 chapter, section, or subdivision of the Florida Statutes in this

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253 | section constitutes a general reference under the doctrine of  
254 | incorporation by reference.

255 |       Section 2. This act shall take effect upon becoming a law.