

By Senator Wilson

33-1258-07

1 A bill to be entitled
2 An act relating to criminal records; amending
3 s. 943.0515, F.S.; requiring the Department of
4 Law Enforcement to notify certain specified
5 agencies of the criminal records of a minor
6 which are expunged; requiring the arresting
7 agency, the county, and the department to
8 notify those entities that received the
9 criminal records information; requiring that
10 criminal history records that are to be
11 expunged be physically destroyed or obliterated
12 by the department and any criminal justice
13 agency having physical custody of the records;
14 amending s. 943.0585, F.S.; prohibiting certain
15 criminal records from being expunged; providing
16 that other records may be expunged under
17 certain circumstances; providing that certain
18 information be included in the application for
19 a certificate of eligibility for expunction;
20 prohibiting an agency, organization, or company
21 to which criminal history information was
22 disseminated from releasing the expunged
23 information after a specified period; amending
24 s. 943.059, F.S.; prohibiting certain criminal
25 records from being sealed; providing that other
26 records may be sealed under certain
27 circumstances; requiring that certain
28 information be included in the application for
29 a certificate of eligibility for sealing;
30 prohibiting an agency, organization, or company
31 to which criminal history information was

1 disseminated from releasing the sealed
2 information after a specified period; amending
3 s. 943.0582, F.S.; conforming a
4 cross-reference; providing an effective date.
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6 Be It Enacted by the Legislature of the State of Florida:
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8 Section 1. Subsections (3) and (4) are added to
9 section 943.0515, Florida Statutes, to read:

10 943.0515 Retention of criminal history records of
11 minors.--

12 (3) The department shall notify the appropriate clerk
13 of the court, the state attorney or statewide prosecutor, the
14 county, and the arresting agency of any criminal history
15 record that is expunged under this section. The arresting
16 agency shall send the department's notification to any other
17 agency to which the arresting agency disseminated the criminal
18 history record information and to which the order pertains.
19 The county shall send the department's notification to any
20 agency, organization, or company to which the county
21 disseminated the criminal history information and to which the
22 order pertains. The department shall send the notification of
23 expungement to the Federal Bureau of Investigation. The clerk
24 of the court shall certify a copy of the department's
25 notification to any other agency that has received the
26 criminal history record, as reflected in the records of the
27 court.

28 (4) Any criminal history record that is expunged by
29 the department under this section must be physically destroyed
30 or obliterated by any criminal justice agency that has custody
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1 of the record, except that a criminal history record in the
2 custody of the department must be retained in all cases.

3 Section 2. Section 943.0585, Florida Statutes, is
4 amended to read:

5 943.0585 Court-ordered expunction of criminal history
6 records.--The courts of this state have jurisdiction over
7 their own procedures, including the maintenance, expunction,
8 and correction of judicial records containing criminal history
9 information to the extent such procedures are not inconsistent
10 with the conditions, responsibilities, and duties established
11 by this section. Any court of competent jurisdiction may order
12 a criminal justice agency to expunge the criminal history
13 record of a minor or an adult who complies with the
14 requirements of this section. The court shall not order a
15 criminal justice agency to expunge a criminal history record
16 until the person seeking to expunge a criminal history record
17 has applied for and received a certificate of eligibility for
18 expunction pursuant to subsection ~~(3)~~ ~~(2)~~.

19 (1) PROHIBITION ON EXPUNGING CERTAIN RECORDS.-- A
20 criminal history record that relates to a violation of s.
21 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
22 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
23 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
24 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
25 any violation specified as a predicate offense for
26 registration as a sexual predator pursuant to s. 775.21,
27 without regard to whether that offense alone is sufficient to
28 require such registration, or for registration as a sexual
29 offender pursuant to s. 943.0435, may not be expunged, ~~without~~
30 ~~regard to whether adjudication was withheld,~~ if the defendant
31 was found guilty of or pled guilty or nolo contendere to the

1 offense, or if the defendant, as a minor, was found to have
2 committed, or pled guilty or nolo contendere to committing,
3 the offense as a delinquent act even if the adjudication was
4 withheld. The prohibition applies only to cases in which the
5 defendant, including a minor, was found guilty of or pled
6 guilty or nolo contendere to the offense. In all other
7 instances involving the enumerated offenses in this
8 subsection, the record may be expunged if an indictment,
9 information, or other charging document was not filed or
10 issued in the case or, if filed or issued in the case, was
11 dismissed or nolle prosequi by the state attorney or statewide
12 prosecutor or was dismissed by a court of competent
13 jurisdiction, or the person was found not guilty or acquitted
14 by a judge or jury. The court may only order expunction of a
15 criminal history record pertaining to one arrest or one
16 incident of alleged criminal activity, except as provided in
17 this section. The court may, at its sole discretion, order the
18 expunction of a criminal history record pertaining to more
19 than one arrest if the additional arrests directly relate to
20 the original arrest. If the court intends to order the
21 expunction of records pertaining to such additional arrests,
22 such intent must be specified in the order. A criminal justice
23 agency may not expunge any record pertaining to ~~such~~
24 additional arrests if the order to expunge does not articulate
25 the intention of the court to expunge a record pertaining to
26 more than one arrest. This section does not prevent the court
27 from ordering the expunction of only a portion of a criminal
28 history record pertaining to one arrest or one incident of
29 alleged criminal activity. Notwithstanding any law to the
30 contrary, a criminal justice agency may comply with laws,
31 court orders, and official requests of other jurisdictions

1 relating to expunction, correction, or confidential handling
2 of criminal history records or information derived therefrom.
3 This section does not confer any right to the expunction of
4 any criminal history record, and any request for expunction of
5 a criminal history record may be denied at the sole discretion
6 of the court.

7 ~~(2)~~(1) PETITION TO EXPUNGE A CRIMINAL HISTORY
8 RECORD.--Each petition to a court to expunge a criminal
9 history record is complete only when accompanied by:

10 (a) A valid certificate of eligibility for expunction
11 issued by the department pursuant to subsection (2).

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

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

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

23 3. Except as otherwise provided in this section, has
24 never secured a prior sealing or expunction of a criminal
25 history record under this section, former s. 893.14, former s.
26 901.33, or former s. 943.058, or from any jurisdiction outside
27 the state, unless expunction is sought of a criminal history
28 record previously sealed for 10 years pursuant to paragraph
29 (2)(h) and the record is otherwise eligible for expunction.

30 4. Is eligible for such an expunction to the best of
31 his or her knowledge or belief and does not have any other

1 petition to expunge or any petition to seal 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 ~~(3)~~⁽²⁾ CERTIFICATE OF ELIGIBILITY FOR
9 EXPUNCTION.--~~Before~~ ~~Prior to~~ petitioning the court to expunge
10 a criminal history record, a person seeking to expunge a
11 criminal history record shall apply to the department for a
12 certificate of eligibility for expunction. The department
13 shall, by rule adopted pursuant to chapter 120, establish
14 procedures pertaining to the application for and issuance of
15 certificates of eligibility for expunction. A certificate of
16 eligibility for expunction is valid for 12 months after the
17 date stamped on the certificate when issued by the department.
18 After that time, the petitioner must reapply to the department
19 for a new certificate of eligibility. Eligibility for a
20 renewed certification of eligibility must be based on the
21 status of the applicant and the law in effect at the time of
22 the renewal application. The department shall issue a
23 certificate of eligibility for expunction to a person who is
24 the subject of a criminal history record if that person:

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

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

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

1 nolle prosequi by the state attorney or statewide prosecutor,
2 or was dismissed by a court of competent jurisdiction, or that
3 the person was found not guilty or acquitted by a judge or
4 jury, and that none of the charges related to the arrest or
5 alleged criminal activity to which the petition to expunge
6 pertains resulted in a trial, without regard to whether the
7 outcome of the trial was other than an adjudication of guilt.

8 3. That the criminal history record does not relate to
9 a violation of s. 393.135, s. 394.4593, s. 787.025, chapter
10 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
11 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
12 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
13 s. 907.041, or any violation specified as a predicate offense
14 for registration as a sexual predator pursuant to s. 775.21,
15 without regard to whether that offense alone is sufficient to
16 require such registration, or for registration as a sexual
17 offender pursuant to s. 943.0435, where the defendant was
18 found guilty of, or pled guilty or nolo contendere to any such
19 offense, or that the defendant, as a minor, was found to have
20 committed, or pled guilty or nolo contendere to committing,
21 such an offense as a delinquent act, without regard to whether
22 adjudication was withheld.

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

26 (c) Has submitted to the department a certified copy
27 of the disposition of the charge to which the petition to
28 expunge pertains.

29 (d) Has never, prior to the date on which the
30 application for a certificate of eligibility is filed, been
31 adjudicated guilty of a criminal offense or comparable

1 ordinance violation, or been adjudicated delinquent for
2 committing any felony or a misdemeanor specified in s.
3 943.051(3)(b).

4 (e) Has not been adjudicated guilty of, or adjudicated
5 delinquent for committing, any of the acts stemming from the
6 arrest or alleged criminal activity to which the petition to
7 expunge pertains.

8 (f) Has never secured a prior sealing or expunction of
9 a criminal history record under this section, former s.

10 893.14, former s. 901.33, or former s. 943.058, involving an
11 offense for which the defendant had been found guilty or pled

12 guilty or nolo contendere, unless expunction is sought of a
13 criminal history record previously sealed for 10 years

14 pursuant to paragraph (h) and the record is otherwise eligible
15 for expunction.

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) Has previously obtained a court order sealing the
20 record under this section, former s. 893.14, former s. 901.33,
21 or former s. 943.058 for a minimum of 10 years because

22 adjudication was withheld or because all charges related to
23 the arrest or alleged criminal activity to which the petition
24 to expunge pertains were not dismissed prior to trial, without

25 regard to whether the outcome of the trial was other than an
26 adjudication of guilt. The requirement for the record to have
27 previously been sealed for a minimum of 10 years does not

28 apply when a plea was not entered or all charges related to
29 the arrest or alleged criminal activity to which the petition
30 to expunge pertains were dismissed prior to trial.

31 ~~(4)~~(3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

1 (a) In judicial proceedings under this section, a copy
2 of the completed petition to expunge shall be served upon the
3 appropriate state attorney or the statewide prosecutor and
4 upon the arresting agency; however, it is not necessary to
5 make any agency other than the state a party. The appropriate
6 state attorney or the statewide prosecutor and the arresting
7 agency may respond to the court regarding the completed
8 petition to expunge.

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

24 (c) For an order to expunge entered by a court prior
25 to July 1, 1992, the department shall notify the appropriate
26 state attorney or statewide prosecutor of an order to expunge
27 which is contrary to law because the person who is the subject
28 of the record has previously been convicted of a crime or
29 comparable ordinance violation or has had a prior criminal
30 history record sealed or expunged. Upon receipt of such
31 notice, the appropriate state attorney or statewide prosecutor

1 shall take action, within 60 days, to correct the record and
2 petition the court to void the order to expunge. The
3 department shall seal the record until such time as the order
4 is voided by the court.

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

21 (5)~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD
22 EXPUNCTION.--Any criminal history record of a minor or an
23 adult which is ordered expunged by a court of competent
24 jurisdiction pursuant to this section must be physically
25 destroyed or obliterated by any criminal justice agency having
26 custody of such record; except that any criminal history
27 record in the custody of the department must be retained in
28 all cases. A criminal history record ordered expunged that is
29 retained by the department is confidential and exempt from the
30 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
31 Constitution and not available to any person or entity except

1 upon order of a court of competent jurisdiction. A criminal
2 justice agency may retain a notation indicating compliance
3 with an order to expunge.

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

10 1. Is a candidate for employment with a criminal
11 justice agency;

12 2. Is a defendant in a criminal prosecution;

13 3. Concurrently or subsequently petitions for relief
14 under this section or s. 943.059;

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

16 5. Is seeking to be employed or licensed by or to
17 contract with the Department of Children and Family Services
18 or the Department of Juvenile Justice or to be employed or
19 used by such contractor or licensee in a sensitive position
20 having direct contact with children, the developmentally
21 disabled, the aged, or the elderly as provided in s.

22 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
23 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),
24 chapter 916, s. 985.644, chapter 400, or chapter 429;

25 6. Is seeking to be employed or licensed by the
26 Department of Education, any district school board, any
27 university laboratory school, any charter school, any private
28 or parochial school, or any local governmental entity that
29 licenses child care facilities; or

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1 7. Is seeking authorization from a Florida seaport
2 identified in s. 311.09 for employment within or access to one
3 or more of such seaports pursuant to s. 311.12 or s. 311.125.

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

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

1 (d) An agency, organization, or company to which the
2 county, state, or arresting agency disseminated the criminal
3 history information and which has received the order expunging
4 the record may not release the expunged information to the
5 public after 30 days following the date that it receives the
6 court order expunging the record.

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

11 Section 3. Section 943.059, Florida Statutes, is
12 amended to read:

13 943.059 Court-ordered sealing of criminal history
14 records.--The courts of this state shall continue to have
15 jurisdiction over their own procedures, including the
16 maintenance, sealing, and correction of judicial records
17 containing criminal history information to the extent such
18 procedures are not inconsistent with the conditions,
19 responsibilities, and duties established by this section. Any
20 court of competent jurisdiction may order a criminal justice
21 agency to seal the criminal history record of a minor or an
22 adult who complies with the requirements of this section. The
23 court shall not order a criminal justice agency to seal a
24 criminal history record until the person seeking to seal a
25 criminal history record has applied for and received a
26 certificate of eligibility for sealing pursuant to subsection
27 ~~(3)(2)~~.

28 (1) PROHIBITION ON SEALING CERTAIN RECORDS.--A
29 criminal history record that relates to a violation of s.
30 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
31 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,

1 | chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
2 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
3 | any violation specified as a predicate offense for
4 | registration as a sexual predator pursuant to s. 775.21,
5 | without regard to whether that offense alone is sufficient to
6 | require such registration, or for registration as a sexual
7 | offender pursuant to s. 943.0435, may not be sealed, ~~without~~
8 | ~~regard to whether adjudication was withheld,~~ if the defendant
9 | was found guilty of or pled guilty or nolo contendere to the
10 | offense, or if the defendant, as a minor, was found to have
11 | committed or pled guilty or nolo contendere to committing the
12 | offense as a delinquent act even if the adjudication was
13 | withheld. The prohibition applies only to cases in which the
14 | defendant, including a minor, was found guilty of or pled
15 | guilty or nolo contendere to the offense. In all other
16 | instances involving the enumerated offenses in this
17 | subsection, the record may be sealed if an indictment,
18 | information, or other charging document was not filed or
19 | issued in the case or, if filed or issued in the case, was
20 | dismissed or nolle prosequi by the state attorney or statewide
21 | prosecutor or was dismissed by a court of competent
22 | jurisdiction, or the person was found not guilty or acquitted
23 | by a judge or jury. The court may only order sealing of a
24 | criminal history record pertaining to one arrest or one
25 | incident of alleged criminal activity, except as provided in
26 | this section. The court may, at its sole discretion, order the
27 | sealing of a criminal history record pertaining to more than
28 | one arrest if the additional arrests directly relate to the
29 | original arrest. If the court intends to order the sealing of
30 | records pertaining to such additional arrests, such intent
31 | must be specified in the order. A criminal justice agency may

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

15 (2)~~(1)~~ PETITION TO SEAL A CRIMINAL HISTORY
16 RECORD.--Each petition to a court to seal a criminal history
17 record is complete only when accompanied by:

18 (a) A valid certificate of eligibility for sealing
19 issued by the department pursuant to subsection (2).

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

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

27 2. 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 3. Except as otherwise provided in this section, has
2 never secured a prior sealing or expunction of a criminal
3 history record under this section, former s. 893.14, former s.
4 901.33, former s. 943.058, or from any jurisdiction outside
5 the state.

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

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

15 ~~(3)~~~~(2)~~ CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior
16 to petitioning the court to seal a criminal history record, a
17 person seeking to seal a criminal history record shall apply
18 to the department for a certificate of eligibility for
19 sealing. The department shall, by rule adopted pursuant to
20 chapter 120, establish procedures pertaining to the
21 application for and issuance of certificates of eligibility
22 for sealing. A certificate of eligibility for sealing is valid
23 for 12 months after the date stamped on the certificate when
24 issued by the department. After that time, the petitioner must
25 reapply to the department for a new certificate of
26 eligibility. Eligibility for a renewed certification of
27 eligibility must be based on the status of the applicant and
28 the law in effect at the time of the renewal application. The
29 department shall issue a certificate of eligibility for
30 sealing to a person who is the subject of a criminal history
31 record provided that such person:

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

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

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

13 (d) 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 to
16 seal pertains.

17 (e) 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 involving an
20 offense for which the defendant had been found guilty or pled
21 guilty or nolo contendere.

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 ~~(4)(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, the county and to
6 the 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 county is
10 responsible for forwarding the order to any agency,
11 organization, or company to which the county disseminated the
12 criminal history information to which the order pertains.

13 The department shall forward the order to seal to the
14 Federal Bureau of Investigation. The clerk of the court shall
15 certify a copy of the order to any other agency which the
16 records of the court reflect has received the criminal history
17 record from the court.

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

30 (d) On or after July 1, 1992, the department or any
31 other criminal justice agency is not required to act on an

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

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

20 (f) An agency, organization, or company to which the
21 county, state, or arresting agency disseminated the criminal
22 history information and which has received the order sealing
23 the record may not release the sealed information to the
24 public after 30 days following the date that it receives the
25 court order sealing the record.

26 ~~(5)(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
27 criminal history record of a minor or an adult which is
28 ordered sealed by a court of competent jurisdiction pursuant
29 to this section is confidential and exempt from the provisions
30 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
31 and is available only to the person who is the subject of the

1 record, to the subject's attorney, to criminal justice
2 agencies for their respective criminal justice purposes, which
3 include conducting a criminal history background check for
4 approval of firearms purchases or transfers as authorized by
5 state or federal law, or to those entities set forth in
6 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
7 licensing, access authorization, and employment purposes.

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

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

15 2. Is a defendant in a criminal prosecution;

16 3. Concurrently or subsequently petitions for relief
17 under this section or s. 943.0585;

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

19 5. Is seeking to be employed or licensed by or to
20 contract with the Department of Children and Family Services
21 or the Department of Juvenile Justice or to be employed or
22 used by such contractor or licensee in a sensitive position
23 having direct contact with children, the developmentally
24 disabled, the aged, or the elderly as provided in s.
25 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.

26 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
27 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

28 6. Is seeking to be employed or licensed by the
29 Department of Education, any district school board, any
30 university laboratory school, any charter school, any private
31

1 or parochial school, or any local governmental entity that
2 licenses child care facilities;

3 7. Is attempting to purchase a firearm from a licensed
4 importer, licensed manufacturer, or licensed dealer and is
5 subject to a criminal history background check under state or
6 federal law; or

7 8. Is seeking authorization from a Florida seaport
8 identified in s. 311.09 for employment within or access to one
9 or more of such seaports pursuant to s. 311.12 or s. 311.125.

10 (b) Subject to the exceptions in paragraph (a), a
11 person who has been granted a sealing 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 a
16 sealed criminal history record.

17 (c) Information relating to the existence of a sealed
18 criminal record provided in accordance with the provisions of
19 paragraph (a) is confidential and exempt from the provisions
20 of s. 119.07(1) and s. 24(a), Art. I of the State
21 Constitution, except that the department shall disclose the
22 sealed criminal history record to the entities set forth in
23 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
24 licensing, access authorization, and employment purposes. It
25 is unlawful for any employee of an entity set forth in
26 subparagraph (a)1., subparagraph (a)4., subparagraph (a)5.,
27 subparagraph (a)6., or subparagraph (a)8. to disclose
28 information relating to the existence of a sealed criminal
29 history record of a person seeking employment, access
30 authorization, or licensure with such entity or contractor,
31 except to the person to whom the criminal history record

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

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

10 | Section 4. Paragraph (a) of subsection (2) of section
11 | 943.0582, Florida Statutes, is amended to read:

12 | 943.0582 Prearrest, postarrest, or teen court
13 | diversion program expunction.--

14 | (2)(a) As used in this section, the term "expunction"
15 | has the same meaning ascribed in and effect as s. 943.0585,
16 | except that:

17 | 1. The provisions of s. 943.0585(5)(a) ~~s.~~
18 | ~~943.0585(4)(a)~~ do not apply, except that the criminal history
19 | record of a person whose record is expunged pursuant to this
20 | section shall be made available only to criminal justice
21 | agencies for the purpose of determining eligibility for
22 | prearrest, postarrest, or teen court diversion programs; when
23 | the record is sought as part of a criminal investigation; or
24 | when the subject of the record is a candidate for employment
25 | with a criminal justice agency. For all other purposes, a
26 | person whose record is expunged under this section may
27 | lawfully deny or fail to acknowledge the arrest and the charge
28 | covered by the expunged record.

29 | 2. Records maintained by local criminal justice
30 | agencies in the county in which the arrest occurred that are
31 |

1 eligible for expunction pursuant to this section shall be
2 sealed as the term is used in s. 943.059.

3 Section 5. This act shall take effect July 1, 2007.
4

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6 SENATE SUMMARY

7 Requires the Department of Law Enforcement to notify
8 certain specified agencies of the criminal records of a
9 minor which are being expunged. Requires that criminal
10 history records that are to be expunged be physically
11 destroyed or obliterated by the department and any
12 criminal justice agency having physical custody of the
13 records. Prohibits certain criminal records from being
14 expunged or sealed. Provides that other records may be
15 expunged or sealed under certain circumstances. Provides
16 that certain information be included in the application
17 for a certificate of eligibility for expunction or the
18 application for a certificate of eligibility for sealing.
19 Prohibits an agency, organization, or company to which
20 criminal history information was disseminated from
21 releasing the expunged or sealed information after a
22 specified period.
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