

HB 717

2007

1                                   A bill to be entitled  
 2           An act relating to sealing criminal history records;  
 3           amending s. 943.059, F.S.; permitting the sealing of a  
 4           criminal history record that relates to specified  
 5           misdemeanor violations; defining terms; providing for a  
 6           petition to seal; providing for a certificate of  
 7           eligibility; providing an effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1.   Section 943.059, Florida Statutes, is amended  
 12   to read:

13           943.059   Court-ordered sealing of criminal history  
 14   records.--

15           (1) REQUIREMENTS AND RESTRICTIONS.--The courts of this  
 16   state shall continue to have jurisdiction over their own  
 17   procedures, including the maintenance, sealing, and correction  
 18   of judicial records containing criminal history information to  
 19   the extent such procedures are not inconsistent with the  
 20   conditions, responsibilities, and duties established by this  
 21   section. Any court of competent jurisdiction may order a  
 22   criminal justice agency to seal the criminal history record of a  
 23   minor or an adult who complies with the requirements of this  
 24   section. The court shall not order a criminal justice agency to  
 25   seal a criminal history record until the person seeking to seal  
 26   a criminal history record has applied for and received a  
 27   certificate of eligibility for sealing pursuant to subsection  
 28   (3) or subsection (5) ~~(2)~~. A criminal history record that

HB 717

2007

29 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,  
30 chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s.  
31 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.  
32 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s.  
33 907.041, or any violation specified as a predicate offense for  
34 registration as a sexual predator pursuant to s. 775.21, without  
35 regard to whether that offense alone is sufficient to require  
36 such registration, or for registration as a sexual offender  
37 pursuant to s. 943.0435, may not be sealed, without regard to  
38 whether adjudication was withheld, if the defendant was found  
39 guilty of or pled guilty or nolo contendere to the offense, or  
40 if the defendant, as a minor, was found to have committed or  
41 pled guilty or nolo contendere to committing the offense as a  
42 delinquent act. The court may only order sealing of a criminal  
43 history record pertaining to one arrest or one incident of  
44 alleged criminal activity, except as provided in this section.  
45 The court may, at its sole discretion, order the sealing of a  
46 criminal history record pertaining to more than one arrest if  
47 the additional arrests directly relate to the original arrest.  
48 If the court intends to order the sealing of records pertaining  
49 to such additional arrests, such intent must be specified in the  
50 order. A criminal justice agency may not seal any record  
51 pertaining to such additional arrests if the order to seal does  
52 not articulate the intention of the court to seal records  
53 pertaining to more than one arrest. This section does not  
54 prevent the court from ordering the sealing of only a portion of  
55 a criminal history record pertaining to one arrest or one  
56 incident of alleged criminal activity. Notwithstanding any law

HB 717

2007

57 | to the contrary, a criminal justice agency may comply with laws,  
58 | court orders, and official requests of other jurisdictions  
59 | relating to sealing, correction, or confidential handling of  
60 | criminal history records or information derived therefrom. This  
61 | section does not confer any right to the sealing of any criminal  
62 | history record, and any request for sealing a criminal history  
63 | record may be denied at the sole discretion of the court.

64 |       (2)~~(1)~~ PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Except  
65 | as provided for in subsection (4), each petition to a court to  
66 | seal a criminal history record is complete only when accompanied  
67 | by:

68 |           (a) A valid certificate of eligibility for sealing issued  
69 | by the department pursuant to subsection (3) ~~(2)~~.

70 |           (b) The petitioner's sworn statement attesting that the  
71 | petitioner:

72 |               1. Has never, prior to the date on which the petition is  
73 | filed, been adjudicated guilty of a criminal offense or  
74 | comparable ordinance violation, or been adjudicated delinquent  
75 | for committing any felony or a misdemeanor specified in s.  
76 | 943.051(3)(b).

77 |               2. Has not been adjudicated guilty of or adjudicated  
78 | delinquent for committing any of the acts stemming from the  
79 | arrest or alleged criminal activity to which the petition to  
80 | seal pertains.

81 |               3. Has never secured a prior sealing or expunction of a  
82 | criminal history record under this section, former s. 893.14,  
83 | former s. 901.33, former s. 943.058, or from any jurisdiction  
84 | outside the state.

HB 717

2007

85 4. Is eligible for such a sealing to the best of his or  
86 her knowledge or belief and does not have any other petition to  
87 seal or any petition to expunge pending before any court.  
88

89 Any person who knowingly provides false information on such  
90 sworn statement to the court commits a felony of the third  
91 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
92 775.084.

93 ~~(3)(2)~~ CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
94 petitioning the court to seal a criminal history record, a  
95 person seeking to seal a criminal history record shall apply to  
96 the department for a certificate of eligibility for sealing. The  
97 department shall, by rule adopted pursuant to chapter 120,  
98 establish procedures pertaining to the application for and  
99 issuance of certificates of eligibility for sealing. A  
100 certificate of eligibility for sealing is valid for 12 months  
101 after the date stamped on the certificate when issued by the  
102 department. After that time, the petitioner must reapply to the  
103 department for a new certificate of eligibility. Eligibility for  
104 a renewed certification of eligibility must be based on the  
105 status of the applicant and the law in effect at the time of the  
106 renewal application. Except as provided for in subsection (5),  
107 the department shall issue a certificate of eligibility for  
108 sealing to a person who is the subject of a criminal history  
109 record provided that such person:

110 (a) Has submitted to the department a certified copy of  
111 the disposition of the charge to which the petition to seal  
112 pertains.

HB 717

2007

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

116 (c) Has never, prior to the date on which the application  
 117 for a certificate of eligibility is filed, been adjudicated  
 118 guilty of a criminal offense or comparable ordinance violation,  
 119 or been adjudicated delinquent for committing any felony or a  
 120 misdemeanor specified in s. 943.051(3)(b).

121 (d) Has not been adjudicated guilty of or adjudicated  
 122 delinquent for committing any of the acts stemming from the  
 123 arrest or alleged criminal activity to which the petition to  
 124 seal pertains.

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

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

131 (4) PETITION TO SEAL A CRIMINAL HISTORY RECORD RELATING TO  
 132 CERTAIN MISDEMEANORS.--

133 (a) For purposes of this subsection and subsection (5),  
 134 the term "specially sealable misdemeanor" means a misdemeanor  
 135 violation of s. 562.11(2), s. 562.111, s. 806.101, s. 806.13, s.  
 136 s. 810.08, s. 810.09, s. 810.10, s. 810.11, s. 810.115, s.  
 137 810.13, s. 823.01, s. 823.02, s. 856.011, s. 856.015, s. 870.02,  
 138 or chapter 893 in which the petitioner was adjudicated guilty or  
 139 delinquent.

HB 717

2007

140       (b) Each petition to a court to seal a criminal history  
141 record that relates to a specially sealable misdemeanor is  
142 complete only when accompanied by:

143       1. A valid certificate of eligibility for sealing issued  
144 by the department pursuant to subsection (5).

145       2. The petitioner's sworn statement attesting that:

146       a. With the exception of being adjudicated guilty or  
147 delinquent for committing a specially sealable misdemeanor to  
148 which the petition to seal pertains, the petitioner has never,  
149 prior to the date on which the petition is filed, been  
150 adjudicated guilty of a criminal offense or comparable ordinance  
151 violation or been adjudicated delinquent for committing any  
152 felony or a misdemeanor specified in s. 943.051(3)(b).

153       b. The petitioner was adjudicated guilty or delinquent of  
154 a specially sealable misdemeanor to which the petition pertains  
155 more than 10 years prior to the date on which the petition is  
156 filed.

157       c. The petitioner has never secured a prior sealing or  
158 expunction of a criminal history record under this section,  
159 former s. 893.14, former s. 901.33, or former s. 943.058, or  
160 from any jurisdiction outside the state.

161       d. The petitioner is eligible for such a sealing to the  
162 best of his or her knowledge or belief and does not have any  
163 other petition to seal or any petition to expunge pending before  
164 any court.

165  
166 Any person who knowingly provides false information on such  
167 sworn statement to the court commits a felony of the third

HB 717

2007

168 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
169 775.084.

170 (5) CERTIFICATE OF ELIGIBILITY FOR SEALING A CRIMINAL  
171 HISTORY RECORD RELATING TO CERTAIN MISDEMEANORS.--Prior to  
172 petitioning the court to seal a criminal history record relating  
173 to a specially sealable misdemeanor, a person seeking to seal a  
174 criminal history record shall apply to the department for a  
175 certificate of eligibility for sealing. The department shall, by  
176 rule adopted pursuant to chapter 120, establish procedures  
177 pertaining to the application for and issuance of certificates  
178 of eligibility for sealing. The department shall endeavor to  
179 make forms and procedures as simple to use as possible in order  
180 to facilitate applicants who are proceeding without assistance.  
181 A certificate of eligibility for sealing is valid for 12 months  
182 after the date stamped on the certificate when issued by the  
183 department. After that time, the petitioner must reapply to the  
184 department for a new certificate of eligibility. Eligibility for  
185 a renewed certification of eligibility must be based on the  
186 status of the applicant and the law in effect at the time of the  
187 renewal application. The department shall issue a certificate of  
188 eligibility for sealing to a person who is the subject of a  
189 criminal history record provided that such person:

190 (a) Has submitted to the department a certified copy of  
191 the disposition of the charge to which the petition to seal  
192 pertains.

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

196        (c) With the exception of being adjudicated guilty or  
 197 delinquent for committing a misdemeanor violation of a provision  
 198 listed in paragraph (4) (a) to which the petition to seal  
 199 pertains, has never, prior to the date on which the application  
 200 for a certificate of eligibility is filed, been adjudicated  
 201 guilty of a criminal offense or comparable ordinance violation  
 202 or been adjudicated delinquent for committing any felony or a  
 203 misdemeanor specified in s. 943.051(3) (b).

204        (d) Was adjudicated guilty or delinquent for a specially  
 205 sealable misdemeanor to which the petition pertains more than 10  
 206 years prior to the date on which the petition is filed.

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

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

213        ~~(6)(3)~~ PROCESSING OF A PETITION OR ORDER TO SEAL.--

214        (a) In judicial proceedings under this section, a copy of  
 215 the completed petition to seal shall be served upon the  
 216 appropriate state attorney or the statewide prosecutor and upon  
 217 the arresting agency; however, it is not necessary to make any  
 218 agency other than the state a party. The appropriate state  
 219 attorney or the statewide prosecutor and the arresting agency  
 220 may respond to the court regarding the completed petition to  
 221 seal.

222        (b) If relief is granted by the court, the clerk of the  
 223 court shall certify copies of the order to the appropriate state



HB 717

2007

224 attorney or the statewide prosecutor and to the arresting  
225 agency. The arresting agency is responsible for forwarding the  
226 order to any other agency to which the arresting agency  
227 disseminated the criminal history record information to which  
228 the order pertains. The department shall forward the order to  
229 seal to the Federal Bureau of Investigation. The clerk of the  
230 court shall certify a copy of the order to any other agency  
231 which the records of the court reflect has received the criminal  
232 history record from the court.

233 (c) For an order to seal entered by a court prior to July  
234 1, 1992, the department shall notify the appropriate state  
235 attorney or statewide prosecutor of any order to seal which is  
236 contrary to law because the person who is the subject of the  
237 record has previously been convicted of a crime or comparable  
238 ordinance violation or has had a prior criminal history record  
239 sealed or expunged. Upon receipt of such notice, the appropriate  
240 state attorney or statewide prosecutor shall take action, within  
241 60 days, to correct the record and petition the court to void  
242 the order to seal. The department shall seal the record until  
243 such time as the order is voided by the court.

244 (d) On or after July 1, 1992, the department or any other  
245 criminal justice agency is not required to act on an order to  
246 seal entered by a court when such order does not comply with the  
247 requirements of this section. Upon receipt of such an order, the  
248 department must notify the issuing court, the appropriate state  
249 attorney or statewide prosecutor, the petitioner or the  
250 petitioner's attorney, and the arresting agency of the reason  
251 for noncompliance. The appropriate state attorney or statewide

HB 717

2007

252 prosecutor shall take action within 60 days to correct the  
253 record and petition the court to void the order. No cause of  
254 action, including contempt of court, shall arise against any  
255 criminal justice agency for failure to comply with an order to  
256 seal when the petitioner for such order failed to obtain the  
257 certificate of eligibility as required by this section or when  
258 such order does not comply with the requirements of this  
259 section.

260 (e) An order sealing a criminal history record pursuant to  
261 this section does not require that such record be surrendered to  
262 the court, and such record shall continue to be maintained by  
263 the department and other criminal justice agencies.

264 (7)~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A  
265 criminal history record of a minor or an adult which is ordered  
266 sealed by a court of competent jurisdiction pursuant to this  
267 section is confidential and exempt from the provisions of s.  
268 119.07(1) and s. 24(a), Art. I of the State Constitution and is  
269 available only to the person who is the subject of the record,  
270 to the subject's attorney, to criminal justice agencies for  
271 their respective criminal justice purposes, which include  
272 conducting a criminal history background check for approval of  
273 firearms purchases or transfers as authorized by state or  
274 federal law, or to those entities set forth in subparagraphs  
275 (a)1., 4., 5., 6., and 8. for their respective licensing, access  
276 authorization, and employment purposes.

277 (a) The subject of a criminal history record sealed under  
278 this section or under other provisions of law, including former  
279 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully

HB 717

2007

280 deny or fail to acknowledge the arrests covered by the sealed  
 281 record, except when the subject of the record:  
 282 1. Is a candidate for employment with a criminal justice  
 283 agency;  
 284 2. Is a defendant in a criminal prosecution;  
 285 3. Concurrently or subsequently petitions for relief under  
 286 this section or s. 943.0585;  
 287 4. Is a candidate for admission to The Florida Bar;  
 288 5. Is seeking to be employed or licensed by or to contract  
 289 with the Department of Children and Family Services or the  
 290 Department of Juvenile Justice or to be employed or used by such  
 291 contractor or licensee in a sensitive position having direct  
 292 contact with children, the developmentally disabled, the aged,  
 293 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
 294 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
 295 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.  
 296 985.644, chapter 400, or chapter 429;  
 297 6. Is seeking to be employed or licensed by the Department  
 298 of Education, any district school board, any university  
 299 laboratory school, any charter school, any private or parochial  
 300 school, or any local governmental entity that licenses child  
 301 care facilities;  
 302 7. Is attempting to purchase a firearm from a licensed  
 303 importer, licensed manufacturer, or licensed dealer and is  
 304 subject to a criminal history background check under state or  
 305 federal law; or

HB 717

2007

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

309           (b) Subject to the exceptions in paragraph (a), a person  
310 who has been granted a sealing under this section, former s.  
311 893.14, former s. 901.33, or former s. 943.058 may not be held  
312 under any provision of law of this state to commit perjury or to  
313 be otherwise liable for giving a false statement by reason of  
314 such person's failure to recite or acknowledge a sealed criminal  
315 history record.

316           (c) Information relating to the existence of a sealed  
317 criminal record provided in accordance with the provisions of  
318 paragraph (a) is confidential and exempt from the provisions of  
319 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
320 except that the department shall disclose the sealed criminal  
321 history record to the entities set forth in subparagraphs (a)1.,  
322 4., 5., 6., and 8. for their respective licensing, access  
323 authorization, and employment purposes. It is unlawful for any  
324 employee of an entity set forth in subparagraph (a)1.,  
325 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or  
326 subparagraph (a)8. to disclose information relating to the  
327 existence of a sealed criminal history record of a person  
328 seeking employment, access authorization, or licensure with such  
329 entity or contractor, except to the person to whom the criminal  
330 history record relates or to persons having direct  
331 responsibility for employment, access authorization, or  
332 licensure decisions. Any person who violates the provisions of

HB 717

2007

333 | this paragraph commits a misdemeanor of the first degree,  
334 | punishable as provided in s. 775.082 or s. 775.083.

335 |       (8)~~(5)~~ STATUTORY REFERENCES.--Any reference to any other  
336 | chapter, section, or subdivision of the Florida Statutes in this  
337 | section constitutes a general reference under the doctrine of  
338 | incorporation by reference.

339 |       Section 2. This act shall take effect July 1, 2007.