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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/9/2008	.	
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1 The Committee on Governmental Operations (King) recommended the  
2 following **substitute for amendment (629348)**:

3  
4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause  
6 and insert:

7 Section 1. Restrictions on the employment of ex-offenders;  
8 legislative intent; state agency reporting requirements.-

9 1) The Legislature declares that it is the goal of this  
10 state to provide to prospective employees a clear statement of  
11 which crimes would disqualify ex-offenders from which  
12 occupations. It is the intent of the Legislature to make  
13 opportunities for employment available to ex-offenders so that  
14 they will be less likely to revert to criminal behavior, insofar  
15 as the employment of such persons does not detract from the  
16 safety of the public. The Legislature further declares that state  
17 agencies should state all restrictions imposed by the agencies or



100094

18 by boards that regulate professions and occupations on employment  
19 and should make an effort to establish that each such restriction  
20 is as defined as possible while continuing to maintain public  
21 safety.

22 (2) Each state agency, including, but not limited to,  
23 professional and occupational regulatory boards, shall, by  
24 December 31, 2008, submit to the Governor, President of the  
25 Senate, the Speaker of the House of Representatives a brief  
26 report that includes:

27 (a) A review of policies followed by the agency or imposed  
28 by the board which disqualify from employment or licensure  
29 persons who have been convicted of a crime and have completed any  
30 incarceration and restitution to which they have been sentenced  
31 for such a crime.

32 (b) The conclusions resulting from the review of these  
33 policies and a determination of whether the disqualifications are  
34 readily available to prospective employees and prospective  
35 licensees.

36 (c) If the restriction is based on a standard of good moral  
37 character, or crimes or acts of moral turpitude the agency shall  
38 determine the merits of alternative policies and particular  
39 disqualifying offenses which may more precisely describe the  
40 basis for denial of employment or licensure.

41 (3) Beginning in 2011, each state agency shall submit a  
42 brief report in accordance with subsection (2) every eight years  
43 by December of that year.

44 Section 2. Section 112.011, Florida Statutes, is amended to  
45 read:



100094

46           112.011 Disqualification for licensing and public  
47 employment based on criminal conviction Felons; removal of  
48 disqualifications for employment, exceptions.--

49           (1) (a) Except as provided in s. 775.16, a person may ~~shall~~  
50 not be disqualified from employment by the state, any of its  
51 agencies or political subdivisions, or any municipality solely  
52 because of a prior conviction for a crime. However, a person may  
53 be denied employment by the state, any of its agencies or  
54 political subdivisions, or any municipality by reason of the  
55 prior conviction for a crime if the crime was a felony or first  
56 degree misdemeanor and directly related to the position of  
57 employment sought.

58           (b) Except as provided in s. 775.16, a person ~~whose civil~~  
59 ~~rights have been restored shall not be disqualified to practice,~~  
60 ~~pursue, or engage in any occupation, trade, vocation, profession,~~  
61 ~~or business for which a license, permit, or certificate is~~  
62 ~~required to be issued by the state, any of its agencies or~~  
63 ~~political subdivisions, or any municipality solely because of a~~  
64 ~~prior conviction for a crime. However, a person whose civil~~  
65 ~~rights have been restored~~ may be denied a license, permit, or  
66 certification to pursue, practice, or engage in an occupation,  
67 trade, vocation, profession, or business by reason of the prior  
68 conviction for a crime if the crime was a felony or first degree  
69 misdemeanor ~~and~~ directly related to or relevant to the standards  
70 normally associated with, or determined by the regulatory  
71 authority to be necessary for the protection of the public or  
72 other parties with, the specific occupation, trade, vocation,  
73 profession, or business for which the license, permit, or  
74 certificate is sought.



100094

75        (c) Notwithstanding any law to the contrary, a person may  
76 not be disqualified from receiving a license, permit, or  
77 certificate or from obtaining public employment on the grounds  
78 that a person's civil rights have not been restored. A person is  
79 not required to secure the restoration of his or her civil rights  
80 or prove that his or her civil rights have been restored in order  
81 to receive a license, permit, or certificate or to obtain public  
82 employment.

83        (2) (a) This section does ~~shall~~ not apply ~~be applicable~~ to  
84 any law enforcement or correctional agency.

85        (b) This section does ~~shall~~ not apply ~~be applicable~~ to the  
86 employment practices of any fire department relating to the  
87 hiring of firefighters. An applicant for employment with any fire  
88 department who has ~~with~~ a prior felony conviction shall be  
89 excluded from employment for a period of 4 years after expiration  
90 of sentence or final release by the Parole Commission unless the  
91 applicant, prior to the expiration of the 4-year period, has  
92 received a full pardon or has had his or her civil rights  
93 restored.

94        (c) This section does ~~shall~~ not apply ~~be applicable~~ to the  
95 employment practices of any county or municipality relating to  
96 the hiring of personnel for positions deemed to be critical to  
97 security or public safety pursuant to ss. 125.5801 and 166.0442.

98        (3) Any complaint concerning the violation of this section  
99 shall be adjudicated in accordance with the procedures set forth  
100 in chapter 120 for administrative and judicial review.

101        Section 3. Section 943.0581, Florida Statutes, is amended  
102 to read:

103        943.0581 Administrative expunction.--



100094

104 (1) Notwithstanding any law dealing generally with the  
105 preservation and destruction of public records, the department  
106 may provide, by rule adopted pursuant to chapter 120, for the  
107 administrative expunction of any nonjudicial record of an arrest  
108 of a minor or an adult made contrary to law or by mistake.

109 (2) A law enforcement agency shall apply to the department  
110 in the manner prescribed by rule for the administrative  
111 expunction of any nonjudicial record of any arrest of a minor or  
112 an adult who is subsequently determined by the agency, at its  
113 discretion, or by the final order of a court of competent  
114 jurisdiction, to have been arrested contrary to law or by  
115 mistake.

116 (3) An adult or, in the case of a minor child, the parent  
117 or legal guardian of the minor child, may apply to the department  
118 in the manner prescribed by rule for the administrative  
119 expunction of any nonjudicial record of an arrest alleged to have  
120 been made contrary to law or by mistake, provided that the  
121 application is supported by the endorsement of the head of the  
122 arresting agency or his or her designee or the state attorney or  
123 his or her designee of the judicial circuit in which the arrest  
124 occurred.

125 (4) An application for administrative expunction shall  
126 include ~~an affidavit executed by the chief of the law enforcement~~  
127 ~~agency, sheriff, or department head of the state law enforcement~~  
128 ~~agency in which the affiant verifies that he or she has reviewed~~  
129 ~~the record of the arrest and that the arrest was contrary to law~~  
130 ~~or was a mistake. The affidavit shall include the date and time~~  
131 ~~of the arrest, the name of the arresting officer, the name of the~~  
132 ~~person arrested, and the crime or crimes charged, and the~~  
133 offender based tracking system number. The application shall be



100094

134 on the submitting agency's letterhead and signed by the head of  
135 the submitting agency or his or her designee.

136 (5) In the case of a person arrested on a warrant, capias,  
137 or pick-up order, the request for an administrative expunction  
138 may be made by the sheriff or his or her designee of the county  
139 where the warrant, capias, or pick-up order was issued or by the  
140 state attorney or his or her designee of the judicial circuit  
141 where the warrant, capias, or pick-up order was issued.

142 (6) ~~(5)~~ No application ~~or~~, endorsement, ~~or affidavit~~ made  
143 under this section shall be admissible as evidence in any  
144 judicial or administrative proceeding or otherwise be construed  
145 in any way as an admission of liability in connection with an  
146 arrest.

147 Section 4. Section 943.0585, Florida Statutes, is amended  
148 to read:

149 943.0585 Court-ordered expunction of criminal history  
150 records.--The courts of this state have jurisdiction over their  
151 own procedures, including the maintenance, expunction, and  
152 correction of judicial records containing criminal history  
153 information to the extent such procedures are not inconsistent  
154 with the conditions, responsibilities, and duties established by  
155 this section. Any court of competent jurisdiction may order a  
156 criminal justice agency to expunge the criminal history record of  
157 a minor or an adult who complies with the requirements of this  
158 section. The court shall not order a criminal justice agency to  
159 expunge a criminal history record until the person seeking to  
160 expunge a criminal history record has applied for and received a  
161 certificate of eligibility for expunction pursuant to subsection  
162 (2). A criminal history record that relates to a violation of s.  
163 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.



100094

164 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
165 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
166 916.1075, a violation enumerated in s. 907.041, or any violation  
167 specified as a predicate offense for registration as a sexual  
168 predator pursuant to s. 775.21, without regard to whether that  
169 offense alone is sufficient to require such registration, or for  
170 registration as a sexual offender pursuant to s. 943.0435, may  
171 not be expunged, without regard to whether adjudication was  
172 withheld, if the defendant was found guilty of or pled guilty or  
173 nolo contendere to the offense, or if the defendant, as a minor,  
174 was found to have committed, or pled guilty or nolo contendere to  
175 committing, the offense as a delinquent act. The court may only  
176 order expunction of a criminal history record pertaining to one  
177 arrest or one incident of alleged criminal activity, except as  
178 provided in this section. The court may, at its sole discretion,  
179 order the expunction of a criminal history record pertaining to  
180 more than one arrest if the additional arrests directly relate to  
181 the original arrest. If the court intends to order the expunction  
182 of records pertaining to such additional arrests, such intent  
183 must be specified in the order. A criminal justice agency may not  
184 expunge any record pertaining to such additional arrests if the  
185 order to expunge does not articulate the intention of the court  
186 to expunge a record pertaining to more than one arrest. This  
187 section does not prevent the court from ordering the expunction  
188 of only a portion of a criminal history record pertaining to one  
189 arrest or one incident of alleged criminal activity.  
190 Notwithstanding any law to the contrary, a criminal justice  
191 agency may comply with laws, court orders, and official requests  
192 of other jurisdictions relating to expunction, correction, or  
193 confidential handling of criminal history records or information



100094

194 derived therefrom. This section does not confer any right to the  
195 expunction of any criminal history record, and any request for  
196 expunction of a criminal history record may be denied at the sole  
197 discretion of the court.

198 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each  
199 petition to a court to expunge a criminal history record is  
200 complete only when accompanied by:

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

203 (b) The petitioner's sworn statement attesting that the  
204 petitioner:

205 1. Has never, prior to the date on which the petition is  
206 filed, been adjudicated guilty of a criminal offense or  
207 comparable ordinance violation, or been adjudicated delinquent  
208 for committing any felony or a misdemeanor specified in s.  
209 943.051(3)(b).

210 2. Has not been adjudicated guilty of, or adjudicated  
211 delinquent for committing, any of the acts stemming from the  
212 arrest or alleged criminal activity to which the petition  
213 pertains.

214 3. Has never secured a prior sealing or expunction of a  
215 criminal history record under this section, former s. 893.14,  
216 former s. 901.33, or former s. 943.058, or from any jurisdiction  
217 outside the state, unless expunction is sought of a criminal  
218 history record previously sealed for 10 years pursuant to  
219 paragraph (2)(h) and the record is otherwise eligible for  
220 expunction.

221 4. Is eligible for such an expunction to the best of his or  
222 her knowledge or belief and does not have any other petition to  
223 expunge or any petition to seal pending before any court.





100094

224  
225 Any person who knowingly provides false information on such sworn  
226 statement to the court commits a felony of the third degree,  
227 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

228 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to  
229 petitioning the court to expunge a criminal history record, a  
230 person seeking to expunge a criminal history record shall apply  
231 to the department for a certificate of eligibility for  
232 expunction. The department shall, by rule adopted pursuant to  
233 chapter 120, establish procedures pertaining to the application  
234 for and issuance of certificates of eligibility for expunction. A  
235 certificate of eligibility for expunction is valid for 12 months  
236 after the date stamped on the certificate when issued by the  
237 department. After that time, the petitioner must reapply to the  
238 department for a new certificate of eligibility. Eligibility for  
239 a renewed certification of eligibility must be based on the  
240 status of the applicant and the law in effect at the time of the  
241 renewal application. The department shall issue a certificate of  
242 eligibility for expunction to a person who is the subject of a  
243 criminal history record if that person:

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

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

249 2. That an indictment, information, or other charging  
250 document, if filed or issued in the case, was dismissed or nolle  
251 prosequi by the state attorney or statewide prosecutor, or was  
252 dismissed by a court of competent jurisdiction, and that none of  
253 the charges related to the arrest or alleged criminal activity to



100094

254 | which the petition to expunge pertains resulted in a trial,  
255 | without regard to whether the outcome of the trial was other than  
256 | an adjudication of guilt.

257 |         3. That the criminal history record does not relate to a  
258 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s.  
259 | 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
260 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
261 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
262 | any violation specified as a predicate offense for registration  
263 | as a sexual predator pursuant to s. 775.21, without regard to  
264 | whether that offense alone is sufficient to require such  
265 | registration, or for registration as a sexual offender pursuant  
266 | to s. 943.0435, where the defendant was found guilty of, or pled  
267 | guilty or nolo contendere to any such offense, or that the  
268 | defendant, as a minor, was found to have committed, or pled  
269 | guilty or nolo contendere to committing, such an offense as a  
270 | delinquent act, without regard to whether adjudication was  
271 | withheld.

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

275 |         (c) Has submitted to the department a certified copy of the  
276 | disposition of the charge to which the petition to expunge  
277 | pertains.

278 |         (d) Has never, prior to the date on which the application  
279 | for a certificate of eligibility is filed, been adjudicated  
280 | guilty of a criminal offense or comparable ordinance violation,  
281 | or been adjudicated delinquent for committing any felony or a  
282 | misdemeanor specified in s. 943.051(3)(b).



100094

283 (e) Has not been adjudicated guilty of, or adjudicated  
284 delinquent for committing, any of the acts stemming from the  
285 arrest or alleged criminal activity to which the petition to  
286 expunge pertains.

287 (f) Has never secured a prior sealing or expunction of a  
288 criminal history record under this section, former s. 893.14,  
289 former s. 901.33, or former s. 943.058, unless expunction is  
290 sought of a criminal history record previously sealed for 10  
291 years pursuant to paragraph (h) and the record is otherwise  
292 eligible for expunction.

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

296 (h) Has previously obtained a court order sealing the  
297 record under this section, former s. 893.14, former s. 901.33, or  
298 former s. 943.058 for a minimum of 10 years because adjudication  
299 was withheld or because all charges related to the arrest or  
300 alleged criminal activity to which the petition to expunge  
301 pertains were not dismissed prior to trial, without regard to  
302 whether the outcome of the trial was other than an adjudication  
303 of guilt. The requirement for the record to have previously been  
304 sealed for a minimum of 10 years does not apply when a plea was  
305 not entered or all charges related to the arrest or alleged  
306 criminal activity to which the petition to expunge pertains were  
307 dismissed prior to trial.

308  
309 Each clerk of court shall place information on his or her  
310 Internet website about the availability of criminal history  
311 sealing and expunction. This information shall include a link to



100094

312 | the department's website for information and applications for  
313 | sealing and expunging a criminal history record.

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

315 | (a) In judicial proceedings under this section, a copy of  
316 | the completed petition to expunge shall be served upon the  
317 | appropriate state attorney or the statewide prosecutor and upon  
318 | the arresting agency; however, it is not necessary to make any  
319 | agency other than the state a party. The appropriate state  
320 | attorney or the statewide prosecutor and the arresting agency may  
321 | respond to the court regarding the completed petition to expunge.

322 | (b) If relief is granted by the court, the clerk of the  
323 | court shall certify copies of the order to the appropriate state  
324 | attorney or the statewide prosecutor and the arresting agency.  
325 | The arresting agency is responsible for forwarding the order to  
326 | any other agency to which the arresting agency disseminated the  
327 | criminal history record information to which the order pertains.  
328 | The department shall forward the order to expunge to the Federal  
329 | Bureau of Investigation. The clerk of the court shall certify a  
330 | copy of the order to any other agency which the records of the  
331 | court reflect has received the criminal history record from the  
332 | court.

333 | (c) For an order to expunge entered by a court prior to  
334 | July 1, 1992, the department shall notify the appropriate state  
335 | attorney or statewide prosecutor of an order to expunge which is  
336 | contrary to law because the person who is the subject of the  
337 | record has previously been convicted of a crime or comparable  
338 | ordinance violation or has had a prior criminal history record  
339 | sealed or expunged. Upon receipt of such notice, the appropriate  
340 | state attorney or statewide prosecutor shall take action, within  
341 | 60 days, to correct the record and petition the court to void the



100094

342 order to expunge. The department shall seal the record until such  
343 time as the order is voided by the court.

344 (d) On or after July 1, 1992, the department or any other  
345 criminal justice agency is not required to act on an order to  
346 expunge entered by a court when such order does not comply with  
347 the requirements of this section. Upon receipt of such an order,  
348 the department must notify the issuing court, the appropriate  
349 state attorney or statewide prosecutor, the petitioner or the  
350 petitioner's attorney, and the arresting agency of the reason for  
351 noncompliance. The appropriate state attorney or statewide  
352 prosecutor shall take action within 60 days to correct the record  
353 and petition the court to void the order. No cause of action,  
354 including contempt of court, shall arise against any criminal  
355 justice agency for failure to comply with an order to expunge  
356 when the petitioner for such order failed to obtain the  
357 certificate of eligibility as required by this section or such  
358 order does not otherwise comply with the requirements of this  
359 section.

360 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
361 criminal history record of a minor or an adult which is ordered  
362 expunged by a court of competent jurisdiction pursuant to this  
363 section must be physically destroyed or obliterated by any  
364 criminal justice agency having custody of such record; except  
365 that any criminal history record in the custody of the department  
366 must be retained in all cases. A criminal history record ordered  
367 expunged that is retained by the department is confidential and  
368 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
369 of the State Constitution and not available to any person or  
370 entity except upon order of a court of competent jurisdiction. A



100094

371 criminal justice agency may retain a notation indicating  
372 compliance with an order to expunge.

373 (a) The person who is the subject of a criminal history  
374 record that is expunged under this section or under other  
375 provisions of law, including former s. 893.14, former s. 901.33,  
376 and former s. 943.058, may lawfully deny or fail to acknowledge  
377 the arrests and subsequent dispositions covered by the expunged  
378 record, except when the subject of the record:

379 1. Is a candidate for employment with a criminal justice  
380 agency;

381 2. Is a defendant in a criminal prosecution;

382 3. Concurrently or subsequently petitions for relief under  
383 this section or s. 943.059;

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

385 5. Is seeking to be employed or licensed by or to contract  
386 with the Department of Children and Family Services or the  
387 Department of Juvenile Justice or to be employed or used by such  
388 contractor or licensee in a sensitive position having direct  
389 contact with children, the developmentally disabled, the aged, or  
390 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
391 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
392 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter  
393 400, or chapter 429;

394 6. Is seeking to be employed or licensed by the Department  
395 of Education, any district school board, any university  
396 laboratory school, any charter school, any private or parochial  
397 school, or any local governmental entity that licenses child care  
398 facilities; or



100094

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

402 |           (b) Subject to the exceptions in paragraph (a), a person  
403 | who has been granted an expunction under this section, former s.  
404 | 893.14, former s. 901.33, or former s. 943.058 may not be held  
405 | under any provision of law of this state to commit perjury or to  
406 | be otherwise liable for giving a false statement by reason of  
407 | such person's failure to recite or acknowledge an expunged  
408 | criminal history record, including when asked on an employment  
409 | application.

410 |           (c) Information relating to the existence of an expunged  
411 | criminal history record which is provided in accordance with  
412 | paragraph (a) is confidential and exempt from the provisions of  
413 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
414 | except that the department shall disclose the existence of a  
415 | criminal history record ordered expunged to the entities set  
416 | forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
417 | respective licensing, access authorization, and employment  
418 | purposes, and to criminal justice agencies for their respective  
419 | criminal justice purposes. It is unlawful for any employee of an  
420 | entity set forth in subparagraph (a)1., subparagraph (a)4.,  
421 | subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to  
422 | disclose information relating to the existence of an expunged  
423 | criminal history record of a person seeking employment, access  
424 | authorization, or licensure with such entity or contractor,  
425 | except to the person to whom the criminal history record relates  
426 | or to persons having direct responsibility for employment, access  
427 | authorization, or licensure decisions. Any person who violates



100094

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

430 |       (d) The contents of an expunged record may be disclosed to  
431 | the subject of the record by the department upon the receipt of  
432 | the written, notarized request from the subject of the record.

433 |       (5) STATUTORY REFERENCES.--Any reference to any other  
434 | chapter, section, or subdivision of the Florida Statutes in this  
435 | section constitutes a general reference under the doctrine of  
436 | incorporation by reference.

437 |       Section 5. Section 943.059, Florida Statutes, is amended to  
438 | read:

439 |       943.059 Court-ordered sealing of criminal history  
440 | records.--The courts of this state shall continue to have  
441 | jurisdiction over their own procedures, including the  
442 | maintenance, sealing, and correction of judicial records  
443 | containing criminal history information to the extent such  
444 | procedures are not inconsistent with the conditions,  
445 | responsibilities, and duties established by this section. Any  
446 | court of competent jurisdiction may order a criminal justice  
447 | agency to seal the criminal history record of a minor or an adult  
448 | who complies with the requirements of this section. The court  
449 | shall not order a criminal justice agency to seal a criminal  
450 | history record until the person seeking to seal a criminal  
451 | history record has applied for and received a certificate of  
452 | eligibility for sealing pursuant to subsection (2). A criminal  
453 | history record that relates to a violation of s. 393.135, s.  
454 | 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
455 | 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.  
456 | 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a  
457 | violation enumerated in s. 907.041, or any violation specified as





100094

458 | a predicate offense for registration as a sexual predator  
459 | pursuant to s. 775.21, without regard to whether that offense  
460 | alone is sufficient to require such registration, or for  
461 | registration as a sexual offender pursuant to s. 943.0435, may  
462 | not be sealed, without regard to whether adjudication was  
463 | withheld, if the defendant was found guilty of or pled guilty or  
464 | nolo contendere to the offense, or if the defendant, as a minor,  
465 | was found to have committed or pled guilty or nolo contendere to  
466 | committing the offense as a delinquent act. The court may only  
467 | order sealing of a criminal history record pertaining to one  
468 | arrest or one incident of alleged criminal activity, except as  
469 | provided in this section. The court may, at its sole discretion,  
470 | order the sealing of a criminal history record pertaining to more  
471 | than one arrest if the additional arrests directly relate to the  
472 | original arrest. If the court intends to order the sealing of  
473 | records pertaining to such additional arrests, such intent must  
474 | be specified in the order. A criminal justice agency may not seal  
475 | any record pertaining to such additional arrests if the order to  
476 | seal does not articulate the intention of the court to seal  
477 | records pertaining to more than one arrest. This section does not  
478 | prevent the court from ordering the sealing of only a portion of  
479 | a criminal history record pertaining to one arrest or one  
480 | incident of alleged criminal activity. Notwithstanding any law to  
481 | the contrary, a criminal justice agency may comply with laws,  
482 | court orders, and official requests of other jurisdictions  
483 | relating to sealing, correction, or confidential handling of  
484 | criminal history records or information derived therefrom. This  
485 | section does not confer any right to the sealing of any criminal  
486 | history record, and any request for sealing a criminal history  
487 | record may be denied at the sole discretion of the court.



100094

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

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

493 (b) The petitioner's sworn statement attesting that the  
494 petitioner:

495 1. Has never, prior to the date on which the petition is  
496 filed, been adjudicated guilty of a criminal offense or  
497 comparable ordinance violation, or been adjudicated delinquent  
498 for committing any felony or a misdemeanor specified in s.  
499 943.051(3)(b).

500 2. Has not been adjudicated guilty of or adjudicated  
501 delinquent for committing any of the acts stemming from the  
502 arrest or alleged criminal activity to which the petition to seal  
503 pertains.

504 3. Has never secured a prior sealing, except as provided in  
505 subsection (6), or expunction of a criminal history record under  
506 this section, former s. 893.14, former s. 901.33, former s.  
507 943.058, or from any jurisdiction outside the state.

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

511  
512 Any person who knowingly provides false information on such sworn  
513 statement to the court commits a felony of the third degree,  
514 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

515 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
516 petitioning the court to seal a criminal history record, a person  
517 seeking to seal a criminal history record shall apply to the



100094

518 | department for a certificate of eligibility for sealing. The  
519 | department shall, by rule adopted pursuant to chapter 120,  
520 | establish procedures pertaining to the application for and  
521 | issuance of certificates of eligibility for sealing. A  
522 | certificate of eligibility for sealing is valid for 12 months  
523 | after the date stamped on the certificate when issued by the  
524 | department. After that time, the petitioner must reapply to the  
525 | department for a new certificate of eligibility. Eligibility for  
526 | a renewed certification of eligibility must be based on the  
527 | status of the applicant and the law in effect at the time of the  
528 | renewal application. The department shall issue a certificate of  
529 | eligibility for sealing to a person who is the subject of a  
530 | criminal history record provided that such person:

531 |       (a) Has submitted to the department a certified copy of the  
532 | disposition of the charge to which the petition to seal pertains.

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

536 |       (c) Has never, prior to the date on which the application  
537 | for a certificate of eligibility is filed, been adjudicated  
538 | guilty of a criminal offense or comparable ordinance violation,  
539 | or been adjudicated delinquent for committing any felony or a  
540 | misdemeanor specified in s. 943.051(3)(b).

541 |       (d) Has not been adjudicated guilty of or adjudicated  
542 | delinquent for committing any of the acts stemming from the  
543 | arrest or alleged criminal activity to which the petition to seal  
544 | pertains.

545 |       (e) Has never secured a prior sealing, except as provided  
546 | in subsection (6), or expunction of a criminal history record



100094

547 | under this section, former s. 893.14, former s. 901.33, or former  
548 | s. 943.058.

549 |       (f) Is no longer under court supervision applicable to the  
550 | disposition of the arrest or alleged criminal activity to which  
551 | the petition to seal pertains.

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

553 |       (a) In judicial proceedings under this section, a copy of  
554 | the completed petition to seal shall be served upon the  
555 | appropriate state attorney or the statewide prosecutor and upon  
556 | the arresting agency; however, it is not necessary to make any  
557 | agency other than the state a party. The appropriate state  
558 | attorney or the statewide prosecutor and the arresting agency may  
559 | respond to the court regarding the completed petition to seal.

560 |       (b) If relief is granted by the court, the clerk of the  
561 | court shall certify copies of the order to the appropriate state  
562 | attorney or the statewide prosecutor and to the arresting agency.  
563 | The arresting agency is responsible for forwarding the order to  
564 | any other agency to which the arresting agency disseminated the  
565 | criminal history record information to which the order pertains.  
566 | The department shall forward the order to seal to the Federal  
567 | Bureau of Investigation. The clerk of the court shall certify a  
568 | copy of the order to any other agency which the records of the  
569 | court reflect has received the criminal history record from the  
570 | court.

571 |       (c) For an order to seal entered by a court prior to July  
572 | 1, 1992, the department shall notify the appropriate state  
573 | attorney or statewide prosecutor of any order to seal which is  
574 | contrary to law because the person who is the subject of the  
575 | record has previously been convicted of a crime or comparable  
576 | ordinance violation or has had a prior criminal history record



100094

577 | sealed, except as provided in subsection (6), or expunged. Upon  
578 | receipt of such notice, the appropriate state attorney or  
579 | statewide prosecutor shall take action, within 60 days, to  
580 | correct the record and petition the court to void the order to  
581 | seal. The department shall seal the record until such time as the  
582 | order is voided by the court.

583 |       (d) On or after July 1, 1992, the department or any other  
584 | criminal justice agency is not required to act on an order to  
585 | seal entered by a court when such order does not comply with the  
586 | requirements of this section. Upon receipt of such an order, the  
587 | department must notify the issuing court, the appropriate state  
588 | attorney or statewide prosecutor, the petitioner or the  
589 | petitioner's attorney, and the arresting agency of the reason for  
590 | noncompliance. The appropriate state attorney or statewide  
591 | prosecutor shall take action within 60 days to correct the record  
592 | and petition the court to void the order. No cause of action,  
593 | including contempt of court, shall arise against any criminal  
594 | justice agency for failure to comply with an order to seal when  
595 | the petitioner for such order failed to obtain the certificate of  
596 | eligibility as required by this section or when such order does  
597 | not comply with the requirements of this section.

598 |       (e) An order sealing a criminal history record pursuant to  
599 | this section does not require that such record be surrendered to  
600 | the court, and such record shall continue to be maintained by the  
601 | department and other criminal justice agencies.

602 |       (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
603 | history record of a minor or an adult which is ordered sealed by  
604 | a court of competent jurisdiction pursuant to this section is  
605 | confidential and exempt from the provisions of s. 119.07(1) and  
606 | s. 24(a), Art. I of the State Constitution and is available only



100094

607 | to the person who is the subject of the record, to the subject's  
608 | attorney, to criminal justice agencies for their respective  
609 | criminal justice purposes, which include conducting a criminal  
610 | history background check for approval of firearms purchases or  
611 | transfers as authorized by state or federal law, or to those  
612 | entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for  
613 | their respective licensing, access authorization, and employment  
614 | purposes.

615 |         (a) The subject of a criminal history record sealed under  
616 | this section or under other provisions of law, including former  
617 | s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
618 | deny or fail to acknowledge the arrests and subsequent  
619 | dispositions covered by the sealed record, except when the  
620 | subject of the record:

621 |         1. Is a candidate for employment with a criminal justice  
622 | agency;

623 |         2. Is a defendant in a criminal prosecution;

624 |         3. Concurrently or subsequently petitions for relief under  
625 | this section or s. 943.0585;

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

627 |         5. Is seeking to be employed or licensed by or to contract  
628 | with the Department of Children and Family Services or the  
629 | Department of Juvenile Justice or to be employed or used by such  
630 | contractor or licensee in a sensitive position having direct  
631 | contact with children, the developmentally disabled, the aged, or  
632 | the elderly as provided in s. 110.1127(3), s. 393.063, s.  
633 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
634 | 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.  
635 | 985.644, chapter 400, or chapter 429;



100094

636           6. Is seeking to be employed or licensed by the Department  
637 of Education, any district school board, any university  
638 laboratory school, any charter school, any private or parochial  
639 school, or any local governmental entity that licenses child care  
640 facilities;

641           7. Is attempting to purchase a firearm from a licensed  
642 importer, licensed manufacturer, or licensed dealer and is  
643 subject to a criminal history background check under state or  
644 federal law; or

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

648           (b) Subject to the exceptions in paragraph (a), a person  
649 who has been granted a sealing under this section, former s.  
650 893.14, former s. 901.33, or former s. 943.058 may not be held  
651 under any provision of law of this state to commit perjury or to  
652 be otherwise liable for giving a false statement by reason of  
653 such person's failure to recite or acknowledge a sealed criminal  
654 history record, including when asked on an employment  
655 application.

656           (c) Information relating to the existence of a sealed  
657 criminal record provided in accordance with the provisions of  
658 paragraph (a) is confidential and exempt from the provisions of  
659 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
660 except that the department shall disclose the sealed criminal  
661 history record to the entities set forth in subparagraphs (a)1.,  
662 4., 5., 6., and 8. for their respective licensing, access  
663 authorization, and employment purposes. It is unlawful for any  
664 employee of an entity set forth in subparagraph (a)1.,  
665 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or



100094

666 subparagraph (a)8. to disclose information relating to the  
667 existence of a sealed criminal history record of a person seeking  
668 employment, access authorization, or licensure with such entity  
669 or contractor, except to the person to whom the criminal history  
670 record relates or to persons having direct responsibility for  
671 employment, access authorization, or licensure decisions. Any  
672 person who violates the provisions of this paragraph commits a  
673 misdemeanor of the first degree, punishable as provided in s.  
674 775.082 or s. 775.083.

675 (5) STATUTORY REFERENCES.--Any reference to any other  
676 chapter, section, or subdivision of the Florida Statutes in this  
677 section constitutes a general reference under the doctrine of  
678 incorporation by reference.

679 (6) SECOND SEALING OF CRIMINAL HISTORY RECORD.--A person  
680 may petition the court to seek a second sealing of his or her  
681 criminal history record after having secured one previous  
682 expunction or sealing under the following circumstances only.  
683 Before petitioning the court for such relief, the person must  
684 apply to the department to obtain a certificate of eligibility  
685 for the second sealing of his or her criminal history record. The  
686 department shall issue the certificate only if the person has not  
687 been arrested during the 5-year period following the date of the  
688 court order for the initial expunction or sealing of his or her  
689 criminal history record. All other provisions and requirements of  
690 this section apply when a person seeks a second sealing of his  
691 criminal history record.

692 Section 6. The Office of Program Policy Analysis and  
693 Government Accountability, in cooperation with the Department of  
694 Law Enforcement, shall:





100094

695       (1) Assess current safeguards for the accuracy of the  
696 criminal history data contained in the Department of Law  
697 Enforcement's Computerized Criminal History (CCH) database.

698       (2) Assess the current process available to potential  
699 private employers or licensing entities in determining whether an  
700 applicant has a criminal history.

701       (3) Assess whether an adequate process exists to allow the  
702 potential private employer or licensing entity to determine  
703 whether an applicant's response to an "arrest, conviction, or  
704 adjudication withheld" criminal history question on an  
705 application is truthful and complete.

706       (4) Assess the feasibility of establishing appropriate  
707 privacy safeguards to protect job or license applicants, such as  
708 providing informed consent and the opportunity to review a  
709 criminal history record before a job or licensing application is  
710 made, before the criminal history record is provided to the  
711 potential employer or licensing entity, and before adverse action  
712 is taken by the potential employer or licensing entity.

713       (5) Identify actions that could be taken to improve both  
714 the completeness of the criminal history record and the consumer  
715 readability of the criminal history record.

716  
717 The Office of Program Policy Analysis and Government  
718 Accountability shall report its findings to the President of the  
719 Senate and Speaker of the House of Representatives by February 1,  
720 2009.

721       Section 7. This act shall take effect July 1, 2008.

722  
723 ===== T I T L E   A M E N D M E N T =====

724 And the title is amended as follows:



100094

725 Delete everything before the enacting clause  
726 and insert:

727 A bill to be entitled  
728 An act relating to criminal justice; providing legislative  
729 intent; requiring state agencies and regulatory boards to  
730 submit to the Governor and legislative officers a report  
731 that states current restrictions on employment of ex-  
732 offenders and possible alternatives that are compatible  
733 with public safety; requiring that such report be  
734 submitted in 2011 and then every eight years thereafter;  
735 amending s. 112.011, F.S.; providing that a person may not  
736 be disqualified from receiving a license, permit, or  
737 certificate or from obtaining public employment on the  
738 grounds that the person's civil rights have not been  
739 restored; providing that a person is not required to  
740 secure the restoration of his or her civil rights or prove  
741 that his or her civil rights have been restored in order  
742 to receive a license, permit, or certificate or to obtain  
743 public employment; amending s. 943.0581, F.S.; authorizing  
744 the arresting agency or the agency where the warrant was  
745 issued to request an administrative expunction; amending  
746 s. 943.0585, F.S.; requiring the clerk of the court to  
747 place information about the availability of criminal  
748 history sealing and expunction on the court's Internet  
749 website and provide a link to the Department of Law  
750 Enforcement's website related to such information;  
751 clarifying under what circumstances a person may legally  
752 deny an expunged criminal history record; authorizing  
753 disclosure of the contents of an expunged record upon  
754 receipt of a written, notarized request from the record



100094

755 | subject; amending s. 943.059, F.S.; clarifying under what  
756 | circumstances a person may legally deny a sealed criminal  
757 | history record; authorizing a person to petition the court  
758 | to seek a second criminal history record sealing under  
759 | certain circumstances; requiring the Office of Program  
760 | Policy Analysis and Government Accountability to conduct a  
761 | study; specifying the research questions for the study;  
762 | requiring a report to be submitted to the Legislature;  
763 | providing an effective date.