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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/1/2008	.	
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	.	

1 The Committee on Criminal Justice (Dockery) recommended the
 2 following **amendment**:

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

5 Between line(s) 68 and 69

6 insert:

7 Section 2. Section 943.0581, Florida Statutes, is amended
 8 to read:

9 943.0581 Administrative expunction.--

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

15 (2) A law enforcement agency shall apply to the department
 16 in the manner prescribed by rule for the administrative
 17 expunction of any nonjudicial record of any arrest of a minor or

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18 | an adult who is subsequently determined by the agency, at its
19 | discretion, or by the final order of a court of competent
20 | jurisdiction, to have been arrested contrary to law or by
21 | mistake.

22 | (3) An adult or, in the case of a minor child, the parent
23 | or legal guardian of the minor child, may apply to the department
24 | in the manner prescribed by rule for the administrative
25 | expunction of any nonjudicial record of an arrest alleged to have
26 | been made contrary to law or by mistake, provided that the
27 | application is supported by the endorsement of the head of the
28 | arresting agency or his or her designee or the state attorney or
29 | his or her designee of the judicial circuit in which the arrest
30 | occurred.

31 | (4) An application for administrative expunction shall
32 | include ~~an affidavit executed by the chief of the law enforcement~~
33 | ~~agency, sheriff, or department head of the state law enforcement~~
34 | ~~agency in which the affiant verifies that he or she has reviewed~~
35 | ~~the record of the arrest and that the arrest was contrary to law~~
36 | ~~or was a mistake. The affidavit shall include the date and time~~
37 | ~~of the arrest, the name of the arresting officer, the name of the~~
38 | ~~person arrested, and the crime or crimes charged, and the~~
39 | offender based tracking system number. The application shall be
40 | on the submitting agency's letterhead, and signed by the head of
41 | the submitting agency or his or her designee.

42 | (5) In the case of persons arrested on a warrant, capias or
43 | pick-up order, the request for an administrative expunction may
44 | be made by the sheriff or his or her designee of the county where
45 | the warrant, capias or pick-up order was issued or by the state
46 | attorney or his or her designee of the judicial circuit where the
47 | warrant, capias or pick-up order was issued.

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48 ~~(6)(5)~~ No application, or endorsement, ~~or affidavit~~ made
49 under this section shall be admissible as evidence in any
50 judicial or administrative proceeding or otherwise be construed
51 in any way as an admission of liability in connection with an
52 arrest.

53 Section 3. Section 943.0585, Florida Statutes, is amended
54 to read:

55 943.0585 Court-ordered expunction of criminal history
56 records.--The courts of this state have jurisdiction over their
57 own procedures, including the maintenance, expunction, and
58 correction of judicial records containing criminal history
59 information to the extent such procedures are not inconsistent
60 with the conditions, responsibilities, and duties established by
61 this section. Any court of competent jurisdiction may order a
62 criminal justice agency to expunge the criminal history record of
63 a minor or an adult who complies with the requirements of this
64 section. The court shall not order a criminal justice agency to
65 expunge a criminal history record until the person seeking to
66 expunge a criminal history record has applied for and received a
67 certificate of eligibility for expunction pursuant to subsection
68 (2). A criminal history record that relates to a violation of s.
69 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
70 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
71 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
72 916.1075, a violation enumerated in s. 907.041, or any violation
73 specified as a predicate offense for registration as a sexual
74 predator pursuant to s. 775.21, without regard to whether that
75 offense alone is sufficient to require such registration, or for
76 registration as a sexual offender pursuant to s. 943.0435, may
77 not be expunged, without regard to whether adjudication was



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78 withheld, if the defendant was found guilty of or pled guilty or
79 nolo contendere to the offense, or if the defendant, as a minor,
80 was found to have committed, or pled guilty or nolo contendere to
81 committing, the offense as a delinquent act. The court may only
82 order expunction of a criminal history record pertaining to one
83 arrest or one incident of alleged criminal activity, except as
84 provided in this section. The court may, at its sole discretion,
85 order the expunction of a criminal history record pertaining to
86 more than one arrest if the additional arrests directly relate to
87 the original arrest. If the court intends to order the expunction
88 of records pertaining to such additional arrests, such intent
89 must be specified in the order. A criminal justice agency may not
90 expunge any record pertaining to such additional arrests if the
91 order to expunge does not articulate the intention of the court
92 to expunge a record pertaining to more than one arrest. This
93 section does not prevent the court from ordering the expunction
94 of only a portion of a criminal history record pertaining to one
95 arrest or one incident of alleged criminal activity.

96 Notwithstanding any law to the contrary, a criminal justice
97 agency may comply with laws, court orders, and official requests
98 of other jurisdictions relating to expunction, correction, or
99 confidential handling of criminal history records or information
100 derived therefrom. This section does not confer any right to the
101 expunction of any criminal history record, and any request for
102 expunction of a criminal history record may be denied at the sole
103 discretion of the court.

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



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

109 (b) The petitioner's sworn statement attesting that the
110 petitioner:

111 1. Has never, prior to the date on which the petition is
112 filed, been adjudicated guilty of a criminal offense or
113 comparable ordinance violation, or been adjudicated delinquent
114 for committing any felony or a misdemeanor specified in s.
115 943.051(3)(b).

116 2. Has not been adjudicated guilty of, or adjudicated
117 delinquent for committing, any of the acts stemming from the
118 arrest or alleged criminal activity to which the petition
119 pertains.

120 3. Has never secured a prior sealing or expunction of a
121 criminal history record under this section, former s. 893.14,
122 former s. 901.33, or former s. 943.058, or from any jurisdiction
123 outside the state, unless expunction is sought of a criminal
124 history record previously sealed for 10 years pursuant to
125 paragraph (2)(h) and the record is otherwise eligible for
126 expunction.

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

130
131 Any person who knowingly provides false information on such sworn
132 statement to the court commits a felony of the third degree,
133 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

134 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to
135 petitioning the court to expunge a criminal history record, a
136 person seeking to expunge a criminal history record shall apply



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137 to the department for a certificate of eligibility for
138 expunction. The department shall, by rule adopted pursuant to
139 chapter 120, establish procedures pertaining to the application
140 for and issuance of certificates of eligibility for expunction. A
141 certificate of eligibility for expunction is valid for 12 months
142 after the date stamped on the certificate when issued by the
143 department. After that time, the petitioner must reapply to the
144 department for a new certificate of eligibility. Eligibility for
145 a renewed certification of eligibility must be based on the
146 status of the applicant and the law in effect at the time of the
147 renewal application. The department shall issue a certificate of
148 eligibility for expunction to a person who is the subject of a
149 criminal history record if that person:

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

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

155 2. That an indictment, information, or other charging
156 document, if filed or issued in the case, was dismissed or nolle
157 prosequi by the state attorney or statewide prosecutor, or was
158 dismissed by a court of competent jurisdiction, and that none of
159 the charges related to the arrest or alleged criminal activity to
160 which the petition to expunge pertains resulted in a trial,
161 without regard to whether the outcome of the trial was other than
162 an adjudication of guilt.

163 3. That the criminal history record does not relate to a
164 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s.
165 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
166 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.



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167 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
168 any violation specified as a predicate offense for registration
169 as a sexual predator pursuant to s. 775.21, without regard to
170 whether that offense alone is sufficient to require such
171 registration, or for registration as a sexual offender pursuant
172 to s. 943.0435, where the defendant was found guilty of, or pled
173 guilty or nolo contendere to any such offense, or that the
174 defendant, as a minor, was found to have committed, or pled
175 guilty or nolo contendere to committing, such an offense as a
176 delinquent act, without regard to whether adjudication was
177 withheld.

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

181 (c) Has submitted to the department a certified copy of the
182 disposition of the charge to which the petition to expunge
183 pertains.

184 (d) Has never, prior to the date on which the application
185 for a certificate of eligibility is filed, been adjudicated
186 guilty of a criminal offense or comparable ordinance violation,
187 or been adjudicated delinquent for committing any felony or a
188 misdemeanor specified in s. 943.051(3)(b).

189 (e) Has not been adjudicated guilty of, or adjudicated
190 delinquent for committing, any of the acts stemming from the
191 arrest or alleged criminal activity to which the petition to
192 expunge pertains.

193 (f) Has never secured a prior sealing or expunction of a
194 criminal history record under this section, former s. 893.14,
195 former s. 901.33, or former s. 943.058, unless expunction is
196 sought of a criminal history record previously sealed for 10

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197 | years pursuant to paragraph (h) and the record is otherwise
198 | eligible for expunction.

199 | (g) Is no longer under court supervision applicable to the
200 | disposition of the arrest or alleged criminal activity to which
201 | the petition to expunge pertains.

202 | (h) Has previously obtained a court order sealing the
203 | record under this section, former s. 893.14, former s. 901.33, or
204 | former s. 943.058 for a minimum of 10 years because adjudication
205 | was withheld or because all charges related to the arrest or
206 | alleged criminal activity to which the petition to expunge
207 | pertains were not dismissed prior to trial, without regard to
208 | whether the outcome of the trial was other than an adjudication
209 | of guilt. The requirement for the record to have previously been
210 | sealed for a minimum of 10 years does not apply when a plea was
211 | not entered or all charges related to the arrest or alleged
212 | criminal activity to which the petition to expunge pertains were
213 | dismissed prior to trial.

214 | Each Clerk of Court shall place information on his or her
215 | Internet web site about the availability of criminal history
216 | sealing and expunction. This information shall include a link to
217 | the department's web pages for criminal history seal and expunge
218 | information and applications.

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

220 | (a) In judicial proceedings under this section, a copy of
221 | the completed petition to expunge shall be served upon the
222 | appropriate state attorney or the statewide prosecutor and upon
223 | the arresting agency; however, it is not necessary to make any
224 | agency other than the state a party. The appropriate state
225 | attorney or the statewide prosecutor and the arresting agency may
226 | respond to the court regarding the completed petition to expunge.



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227 (b) If relief is granted by the court, the clerk of the
228 court shall certify copies of the order to the appropriate state
229 attorney or the statewide prosecutor and the arresting agency.
230 The arresting agency is responsible for forwarding the order to
231 any other agency to which the arresting agency disseminated the
232 criminal history record information to which the order pertains.
233 The department shall forward the order to expunge to the Federal
234 Bureau of Investigation. The clerk of the court shall certify a
235 copy of the order to any other agency which the records of the
236 court reflect has received the criminal history record from the
237 court.

238 (c) For an order to expunge entered by a court prior to
239 July 1, 1992, the department shall notify the appropriate state
240 attorney or statewide prosecutor of an order to expunge which is
241 contrary to law because the person who is the subject of the
242 record has previously been convicted of a crime or comparable
243 ordinance violation or has had a prior criminal history record
244 sealed or expunged. Upon receipt of such notice, the appropriate
245 state attorney or statewide prosecutor shall take action, within
246 60 days, to correct the record and petition the court to void the
247 order to expunge. The department shall seal the record until such
248 time as the order is voided by the court.

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



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

265 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
266 criminal history record of a minor or an adult which is ordered
267 expunged by a court of competent jurisdiction pursuant to this
268 section must be physically destroyed or obliterated by any
269 criminal justice agency having custody of such record; except
270 that any criminal history record in the custody of the department
271 must be retained in all cases. A criminal history record ordered
272 expunged that is retained by the department is confidential and
273 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
274 of the State Constitution and not available to any person or
275 entity except upon order of a court of competent jurisdiction. A
276 criminal justice agency may retain a notation indicating
277 compliance with an order to expunge.

278 (a) The person who is the subject of a criminal history
279 record that is expunged under this section or under other
280 provisions of law, including former s. 893.14, former s. 901.33,
281 and former s. 943.058, may lawfully deny or fail to acknowledge
282 the arrests and subsequent dispositions covered by the expunged
283 record, except when the subject of the record:

- 284 1. Is a candidate for employment with a criminal justice
285 agency;
- 286 2. Is a defendant in a criminal prosecution;

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287 | 3. Concurrently or subsequently petitions for relief under
288 | this section or s. 943.059;

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

290 | 5. Is seeking to be employed or licensed by or to contract
291 | with the Department of Children and Family Services or the
292 | Department of Juvenile Justice or to be employed or used by such
293 | contractor or licensee in a sensitive position having direct
294 | contact with children, the developmentally disabled, the aged, or
295 | the elderly as provided in s. 110.1127(3), s. 393.063, s.
296 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
297 | 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter
298 | 400, or chapter 429;

299 | 6. Is seeking to be employed or licensed by the Department
300 | of Education, any district school board, any university
301 | laboratory school, any charter school, any private or parochial
302 | school, or any local governmental entity that licenses child care
303 | facilities; or

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

307 | (b) Subject to the exceptions in paragraph (a), a person
308 | who has been granted an expunction under this section, former s.
309 | 893.14, former s. 901.33, or former s. 943.058 may not be held
310 | under any provision of law of this state to commit perjury or to
311 | be otherwise liable for giving a false statement by reason of
312 | such person's failure to recite or acknowledge an expunged
313 | criminal history record, including when asked on an employment
314 | application.

315 | (c) Information relating to the existence of an expunged
316 | criminal history record which is provided in accordance with



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317 paragraph (a) is confidential and exempt from the provisions of
318 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
319 except that the department shall disclose the existence of a
320 criminal history record ordered expunged to the entities set
321 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
322 respective licensing, access authorization, and employment
323 purposes, and to criminal justice agencies for their respective
324 criminal justice purposes. It is unlawful for any employee of an
325 entity set forth in subparagraph (a)1., subparagraph (a)4.,
326 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
327 disclose information relating to the existence of an expunged
328 criminal history record of a person seeking employment, access
329 authorization, or licensure with such entity or contractor,
330 except to the person to whom the criminal history record relates
331 or to persons having direct responsibility for employment, access
332 authorization, or licensure decisions. Any person who violates
333 this paragraph commits a misdemeanor of the first degree,
334 punishable as provided in s. 775.082 or s. 775.083.

335 (d) The contents of an expunged record may be disclosed by the
336 department upon the receipt of the written, notarized request
337 from the subject of the record.

338 (5) STATUTORY REFERENCES.--Any reference to any other
339 chapter, section, or subdivision of the Florida Statutes in this
340 section constitutes a general reference under the doctrine of
341 incorporation by reference.

342 Section 4. Section 943.059, Florida Statutes, is amended to
343 read:

344 943.059 Court-ordered sealing of criminal history records.-
345 -The courts of this state shall continue to have jurisdiction
346 over their own procedures, including the maintenance, sealing,



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347 and correction of judicial records containing criminal history
348 information to the extent such procedures are not inconsistent
349 with the conditions, responsibilities, and duties established by
350 this section. Any court of competent jurisdiction may order a
351 criminal justice agency to seal the criminal history record of a
352 minor or an adult who complies with the requirements of this
353 section. The court shall not order a criminal justice agency to
354 seal a criminal history record until the person seeking to seal a
355 criminal history record has applied for and received a
356 certificate of eligibility for sealing pursuant to subsection
357 (2). A criminal history record that relates to a violation of s.
358 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
359 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
360 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
361 916.1075, a violation enumerated in s. 907.041, or any violation
362 specified as a predicate offense for registration as a sexual
363 predator pursuant to s. 775.21, without regard to whether that
364 offense alone is sufficient to require such registration, or for
365 registration as a sexual offender pursuant to s. 943.0435, may
366 not be sealed, without regard to whether adjudication was
367 withheld, if the defendant was found guilty of or pled guilty or
368 nolo contendere to the offense, or if the defendant, as a minor,
369 was found to have committed or pled guilty or nolo contendere to
370 committing the offense as a delinquent act. The court may only
371 order sealing of a criminal history record pertaining to one
372 arrest or one incident of alleged criminal activity, except as
373 provided in this section. The court may, at its sole discretion,
374 order the sealing of a criminal history record pertaining to more
375 than one arrest if the additional arrests directly relate to the
376 original arrest. If the court intends to order the sealing of



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377 records pertaining to such additional arrests, such intent must
378 be specified in the order. A criminal justice agency may not seal
379 any record pertaining to such additional arrests if the order to
380 seal does not articulate the intention of the court to seal
381 records pertaining to more than one arrest. This section does not
382 prevent the court from ordering the sealing of only a portion of
383 a criminal history record pertaining to one arrest or one
384 incident of alleged criminal activity. Notwithstanding any law to
385 the contrary, a criminal justice agency may comply with laws,
386 court orders, and official requests of other jurisdictions
387 relating to sealing, correction, or confidential handling of
388 criminal history records or information derived therefrom. This
389 section does not confer any right to the sealing of any criminal
390 history record, and any request for sealing a criminal history
391 record may be denied at the sole discretion of the court.

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

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

397 (b) The petitioner's sworn statement attesting that the
398 petitioner:

399 1. Has never, prior to the date on which the petition is
400 filed, been adjudicated guilty of a criminal offense or
401 comparable ordinance violation, or been adjudicated delinquent
402 for committing any felony or a misdemeanor specified in s.
403 943.051(3)(b).

404 2. Has not been adjudicated guilty of or adjudicated
405 delinquent for committing any of the acts stemming from the



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406 arrest or alleged criminal activity to which the petition to seal
407 pertains.

408 3. Has never secured a prior sealing, except as provided in
409 subsection(6), or expunction of a criminal history record under
410 this section, former s. 893.14, former s. 901.33, former s.
411 943.058, or from any jurisdiction outside the state.

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

415

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

419 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
420 petitioning the court to seal a criminal history record, a person
421 seeking to seal a criminal history record shall apply to the
422 department for a certificate of eligibility for sealing. The
423 department shall, by rule adopted pursuant to chapter 120,
424 establish procedures pertaining to the application for and
425 issuance of certificates of eligibility for sealing. A
426 certificate of eligibility for sealing is valid for 12 months
427 after the date stamped on the certificate when issued by the
428 department. After that time, the petitioner must reapply to the
429 department for a new certificate of eligibility. Eligibility for
430 a renewed certification of eligibility must be based on the
431 status of the applicant and the law in effect at the time of the
432 renewal application. The department shall issue a certificate of
433 eligibility for sealing to a person who is the subject of a
434 criminal history record provided that such person:



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435 (a) Has submitted to the department a certified copy of the
436 disposition of the charge to which the petition to seal pertains.

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

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

445 (d) Has not been adjudicated guilty of or adjudicated
446 delinquent for committing any of the acts stemming from the
447 arrest or alleged criminal activity to which the petition to seal
448 pertains.

449 (e) Has never secured a prior sealing, except as provided
450 in subsection (6), or expunction of a criminal history record
451 under this section, former s. 893.14, former s. 901.33, or former
452 s. 943.058.

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

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

457 (a) In judicial proceedings under this section, a copy of
458 the completed petition to seal shall be served upon the
459 appropriate state attorney or the statewide prosecutor and upon
460 the arresting agency; however, it is not necessary to make any
461 agency other than the state a party. The appropriate state
462 attorney or the statewide prosecutor and the arresting agency may
463 respond to the court regarding the completed petition to seal.



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464 (b) If relief is granted by the court, the clerk of the
465 court shall certify copies of the order to the appropriate state
466 attorney or the statewide prosecutor and to the arresting agency.
467 The arresting agency is responsible for forwarding the order to
468 any other agency to which the arresting agency disseminated the
469 criminal history record information to which the order pertains.
470 The department shall forward the order to seal to the Federal
471 Bureau of Investigation. The clerk of the court shall certify a
472 copy of the order to any other agency which the records of the
473 court reflect has received the criminal history record from the
474 court.

475 (c) For an order to seal entered by a court prior to July
476 1, 1992, the department shall notify the appropriate state
477 attorney or statewide prosecutor of any order to seal which is
478 contrary to law because the person who is the subject of the
479 record has previously been convicted of a crime or comparable
480 ordinance violation or has had a prior criminal history record
481 sealed, except as provided in subsection (6), or expunged. Upon
482 receipt of such notice, the appropriate state attorney or
483 statewide prosecutor shall take action, within 60 days, to
484 correct the record and petition the court to void the order to
485 seal. The department shall seal the record until such time as the
486 order is voided by the court.

487 (d) On or after July 1, 1992, the department or any other
488 criminal justice agency is not required to act on an order to
489 seal entered by a court when such order does not comply with the
490 requirements of this section. Upon receipt of such an order, the
491 department must notify the issuing court, the appropriate state
492 attorney or statewide prosecutor, the petitioner or the
493 petitioner's attorney, and the arresting agency of the reason for



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494 noncompliance. The appropriate state attorney or statewide
495 prosecutor shall take action within 60 days to correct the record
496 and petition the court to void the order. No cause of action,
497 including contempt of court, shall arise against any criminal
498 justice agency for failure to comply with an order to seal when
499 the petitioner for such order failed to obtain the certificate of
500 eligibility as required by this section or when such order does
501 not comply with the requirements of this section.

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

506 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
507 history record of a minor or an adult which is ordered sealed by
508 a court of competent jurisdiction pursuant to this section is
509 confidential and exempt from the provisions of s. 119.07(1) and
510 s. 24(a), Art. I of the State Constitution and is available only
511 to the person who is the subject of the record, to the subject's
512 attorney, to criminal justice agencies for their respective
513 criminal justice purposes, which include conducting a criminal
514 history background check for approval of firearms purchases or
515 transfers as authorized by state or federal law, or to those
516 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for
517 their respective licensing, access authorization, and employment
518 purposes.

519 (a) The subject of a criminal history record sealed under
520 this section or under other provisions of law, including former
521 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
522 deny or fail to acknowledge the arrests and subsequent

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523 | dispositions covered by the sealed record, except when the
524 | subject of the record:

525 | 1. Is a candidate for employment with a criminal justice
526 | agency;

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

528 | 3. Concurrently or subsequently petitions for relief under
529 | this section or s. 943.0585;

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

531 | 5. Is seeking to be employed or licensed by or to contract
532 | with the Department of Children and Family Services or the
533 | Department of Juvenile Justice or to be employed or used by such
534 | contractor or licensee in a sensitive position having direct
535 | contact with children, the developmentally disabled, the aged, or
536 | the elderly as provided in s. 110.1127(3), s. 393.063, s.
537 | 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
538 | 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.
539 | 985.644, chapter 400, or chapter 429;

540 | 6. Is seeking to be employed or licensed by the Department
541 | of Education, any district school board, any university
542 | laboratory school, any charter school, any private or parochial
543 | school, or any local governmental entity that licenses child care
544 | facilities;

545 | 7. Is attempting to purchase a firearm from a licensed
546 | importer, licensed manufacturer, or licensed dealer and is
547 | subject to a criminal history background check under state or
548 | federal law; or

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

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552 (b) Subject to the exceptions in paragraph (a), a person
553 who has been granted a sealing under this section, former s.
554 893.14, former s. 901.33, or former s. 943.058 may not be held
555 under any provision of law of this state to commit perjury or to
556 be otherwise liable for giving a false statement by reason of
557 such person's failure to recite or acknowledge a sealed criminal
558 history record, including when asked on an employment
559 application.

560 (c) Information relating to the existence of a sealed
561 criminal record provided in accordance with the provisions of
562 paragraph (a) is confidential and exempt from the provisions of
563 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
564 except that the department shall disclose the sealed criminal
565 history record to the entities set forth in subparagraphs (a)1.,
566 4., 5., 6., and 8. for their respective licensing, access
567 authorization, and employment purposes. It is unlawful for any
568 employee of an entity set forth in subparagraph (a)1.,
569 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
570 subparagraph (a)8. to disclose information relating to the
571 existence of a sealed criminal history record of a person seeking
572 employment, access authorization, or licensure with such entity
573 or contractor, except to the person to whom the criminal history
574 record relates or to persons having direct responsibility for
575 employment, access authorization, or licensure decisions. Any
576 person who violates the provisions of this paragraph commits a
577 misdemeanor of the first degree, punishable as provided in s.
578 775.082 or s. 775.083.

579 (5) STATUTORY REFERENCES.--Any reference to any other
580 chapter, section, or subdivision of the Florida Statutes in this



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581 section constitutes a general reference under the doctrine of
582 incorporation by reference.

583 (6) A person may petition the court to seek a sealing of his
584 criminal history record, after having secured one previous
585 expunction or sealing, under the following circumstances. Prior
586 to petitioning the court for such relief, a person shall apply to
587 the department to obtain a certificate of eligibility for a
588 sealing of his criminal history record only if five years have
589 passed without any subsequent arrests occurring since the date of
590 the court order for the initial criminal history record
591 expunction or sealing. All other provisions and requirements
592 under this section apply when a person seeks a second sealing of
593 his criminal history record.

594 Section 5. The Office of Program Policy Analysis and
595 Government Accountability, in cooperation with the Florida
596 Department of Law Enforcement, shall:

597 1. Assess current safeguards for the accuracy of the
598 criminal history data contained in the Florida Department of Law
599 Enforcement's Computerized Criminal History (CCH) database.

600 2. Assess the current process available to potential
601 private employers or licensing entities in determining whether an
602 applicant has a criminal history.

603 3. Assess whether an adequate process exists to allow the
604 potential private employer or licensing entity to determine
605 whether an applicant's response to an "arrest, conviction or
606 adjudication withheld" criminal history question on an
607 application is truthful and complete.

608 4. Assess the feasibility of establishing appropriate
609 privacy safeguards to protect job or license applicants, such as
610 providing informed consent and the opportunity to review a



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611 criminal history record before a job or licensing application is
 612 made, before the criminal history record is provided to the
 613 potential employer or licensing entity, and before adverse action
 614 is taken by the potential employer or licensing entity.

615 5. Identify actions that could be taken to improve both the
 616 completeness of the criminal history record and the consumer
 617 readability of the criminal history record.

618
 619 The Office of Program Policy Analysis and Government
 620 Accountability shall report its findings to the President of the
 621 Senate and Speaker of the House of Representatives no later than
 622 February 1, 2009.

623
 624 (Redesignate subsequent section.)

625
 626 ===== T I T L E A M E N D M E N T =====

627 And the title is amended as follows:

628 On line 11, after the semicolon
 629 insert:

630 amending s. 943.0581, F.S., permitting either the
 631 arresting agency or the agency where the warrant was
 632 issued to request an administrative expunction; amending
 633 s. 943.0585, F.S., requiring the Clerk of the Court to
 634 place information about the availability of criminal
 635 history sealing and expunction on his Internet web site,
 636 including a link to the Department of Law Enforcement's
 637 web pages related to such information; clarifying under
 638 what circumstances a person can legally deny an expunged
 639 criminal history record; authorizing disclosure of the
 640 contents of an expunged record upon receipt of a written,



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641 | notarized request from the record subject; amending s.
642 | 943.059, F.S.; clarifying under what circumstances a
643 | person can legally deny a sealed criminal history record;
644 | providing that a person may petition the court to seek a
645 | second criminal history record sealing under certain
646 | circumstances; requiring OPPAGA to conduct a study;
647 | specifying the research questions for the study; requiring
648 | a report to be submitted to presiding officers;