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CHAMBER ACTION

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

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



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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:



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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.



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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. Subsection (1) of section 760.10, Florida  
102 Statutes, is amended to read:

103        760.10 Unlawful employment practices.--

104        (1) It is an unlawful employment practice for an employer:



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105 (a) To discharge or to fail or refuse to hire any  
106 individual, or otherwise to discriminate against any individual  
107 with respect to compensation, terms, conditions, or privileges of  
108 employment, because of such individual's race, color, religion,  
109 sex, national origin, age, handicap, or marital status.

110 (b) To limit, segregate, or classify employees or  
111 applicants for employment in any way which would deprive or tend  
112 to deprive any individual of employment opportunities, or  
113 adversely affect any individual's status as an employee, because  
114 of such individual's race, color, religion, sex, national origin,  
115 age, handicap, or marital status.

116 (c) On and after July 1, 2009, with regard to an  
117 application for employment, to request any information, to make  
118 or keep a record of such information, to use any form of  
119 application or application blank that requests such information,  
120 or to exclude, limit, or otherwise discriminate against any  
121 person by reason of his or her failure to furnish such  
122 information through a written application or oral inquiry or  
123 otherwise regarding an arrest, detention, or disposition  
124 regarding any violation of law in which no conviction resulted.

125  
126 No applicant for employment shall be held under any provision of  
127 any law to be guilty of perjury or of otherwise giving a false  
128 statement by reason of his or her failure to recite or  
129 acknowledge such information as he or she has a right to withhold  
130 under this paragraph.

131 Section 4. Section 943.0581, Florida Statutes, is amended  
132 to read:

133 943.0581 Administrative expunction.--



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

139 (2) A law enforcement agency shall apply to the department  
140 in the manner prescribed by rule for the administrative  
141 expunction of any nonjudicial record of any arrest of a minor or  
142 an adult who is subsequently determined by the agency, at its  
143 discretion, or by the final order of a court of competent  
144 jurisdiction, to have been arrested contrary to law or by  
145 mistake.

146 (3) An adult or, in the case of a minor child, the parent  
147 or legal guardian of the minor child, may apply to the department  
148 in the manner prescribed by rule for the administrative  
149 expunction of any nonjudicial record of an arrest alleged to have  
150 been made contrary to law or by mistake, provided that the  
151 application is supported by the endorsement of the head of the  
152 arresting agency or his or her designee or the state attorney or  
153 his or her designee of the judicial circuit in which the arrest  
154 occurred.

155 (4) An application for administrative expunction shall  
156 include ~~an affidavit executed by the chief of the law enforcement~~  
157 ~~agency, sheriff, or department head of the state law enforcement~~  
158 ~~agency in which the affiant verifies that he or she has reviewed~~  
159 ~~the record of the arrest and that the arrest was contrary to law~~  
160 ~~or was a mistake. The affidavit shall include the date and time~~  
161 ~~of the arrest, the name of the arresting officer, the name of the~~  
162 ~~person arrested, and the crime or crimes charged, and the~~  
163 offender based tracking system number. The application shall be



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

166 (5) In the case of a person arrested on a warrant, capias,  
167 or pick-up order, the request for an administrative expunction  
168 may be made by the sheriff or his or her designee of the county  
169 where the warrant, capias, or pick-up order was issued or by the  
170 state attorney or his or her designee of the judicial circuit  
171 where the warrant, capias, or pick-up order was issued.

172 (6) ~~(5)~~ No application ~~or~~, endorsement, ~~or~~ affidavit made  
173 under this section shall be admissible as evidence in any  
174 judicial or administrative proceeding or otherwise be construed  
175 in any way as an admission of liability in connection with an  
176 arrest.

177 Section 5. Section 943.0585, Florida Statutes, is amended  
178 to read:

179 943.0585 Court-ordered expunction of criminal history  
180 records.--The courts of this state have jurisdiction over their  
181 own procedures, including the maintenance, expunction, and  
182 correction of judicial records containing criminal history  
183 information to the extent such procedures are not inconsistent  
184 with the conditions, responsibilities, and duties established by  
185 this section. Any court of competent jurisdiction may order a  
186 criminal justice agency to expunge the criminal history record of  
187 a minor or an adult who complies with the requirements of this  
188 section. The court shall not order a criminal justice agency to  
189 expunge a criminal history record until the person seeking to  
190 expunge a criminal history record has applied for and received a  
191 certificate of eligibility for expunction pursuant to subsection  
192 (2). A criminal history record that relates to a violation of s.  
193 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.



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194 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
195 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
196 916.1075, a violation enumerated in s. 907.041, or any violation  
197 specified as a predicate offense for registration as a sexual  
198 predator pursuant to s. 775.21, without regard to whether that  
199 offense alone is sufficient to require such registration, or for  
200 registration as a sexual offender pursuant to s. 943.0435, may  
201 not be expunged, without regard to whether adjudication was  
202 withheld, if the defendant was found guilty of or pled guilty or  
203 nolo contendere to the offense, or if the defendant, as a minor,  
204 was found to have committed, or pled guilty or nolo contendere to  
205 committing, the offense as a delinquent act. The court may only  
206 order expunction of a criminal history record pertaining to one  
207 arrest or one incident of alleged criminal activity, except as  
208 provided in this section. The court may, at its sole discretion,  
209 order the expunction of a criminal history record pertaining to  
210 more than one arrest if the additional arrests directly relate to  
211 the original arrest. If the court intends to order the expunction  
212 of records pertaining to such additional arrests, such intent  
213 must be specified in the order. A criminal justice agency may not  
214 expunge any record pertaining to such additional arrests if the  
215 order to expunge does not articulate the intention of the court  
216 to expunge a record pertaining to more than one arrest. This  
217 section does not prevent the court from ordering the expunction  
218 of only a portion of a criminal history record pertaining to one  
219 arrest or one incident of alleged criminal activity.  
220 Notwithstanding any law to the contrary, a criminal justice  
221 agency may comply with laws, court orders, and official requests  
222 of other jurisdictions relating to expunction, correction, or  
223 confidential handling of criminal history records or information





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224 derived therefrom. This section does not confer any right to the  
225 expunction of any criminal history record, and any request for  
226 expunction of a criminal history record may be denied at the sole  
227 discretion of the court.

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

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

233 (b) The petitioner's sworn statement attesting that the  
234 petitioner:

235 1. Has never, prior to the date on which the petition is  
236 filed, been adjudicated guilty of a criminal offense or  
237 comparable ordinance violation, or been adjudicated delinquent  
238 for committing any felony or a misdemeanor specified in s.  
239 943.051(3)(b).

240 2. Has not been adjudicated guilty of, or adjudicated  
241 delinquent for committing, any of the acts stemming from the  
242 arrest or alleged criminal activity to which the petition  
243 pertains.

244 3. Has never secured a prior sealing or expunction of a  
245 criminal history record under this section, former s. 893.14,  
246 former s. 901.33, or former s. 943.058, or from any jurisdiction  
247 outside the state, unless expunction is sought of a criminal  
248 history record previously sealed for 10 years pursuant to  
249 paragraph (2)(h) and the record is otherwise eligible for  
250 expunction.

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



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254  
255 Any person who knowingly provides false information on such sworn  
256 statement to the court commits a felony of the third degree,  
257 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

258 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to  
259 petitioning the court to expunge a criminal history record, a  
260 person seeking to expunge a criminal history record shall apply  
261 to the department for a certificate of eligibility for  
262 expunction. The department shall, by rule adopted pursuant to  
263 chapter 120, establish procedures pertaining to the application  
264 for and issuance of certificates of eligibility for expunction. A  
265 certificate of eligibility for expunction is valid for 12 months  
266 after the date stamped on the certificate when issued by the  
267 department. After that time, the petitioner must reapply to the  
268 department for a new certificate of eligibility. Eligibility for  
269 a renewed certification of eligibility must be based on the  
270 status of the applicant and the law in effect at the time of the  
271 renewal application. The department shall issue a certificate of  
272 eligibility for expunction to a person who is the subject of a  
273 criminal history record if that person:

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

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

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



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284 | which the petition to expunge pertains resulted in a trial,  
285 | unless ~~without regard to whether~~ the outcome of the trial was an  
286 | acquittal ~~other than an adjudication of guilt.~~

287 |         3. That the criminal history record does not relate to a  
288 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s.  
289 | 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
290 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
291 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
292 | any violation specified as a predicate offense for registration  
293 | as a sexual predator pursuant to s. 775.21, without regard to  
294 | whether that offense alone is sufficient to require such  
295 | registration, or for registration as a sexual offender pursuant  
296 | to s. 943.0435, where the defendant was found guilty of, or pled  
297 | guilty or nolo contendere to any such offense, or that the  
298 | defendant, as a minor, was found to have committed, or pled  
299 | guilty or nolo contendere to committing, such an offense as a  
300 | delinquent act, without regard to whether adjudication was  
301 | withheld.

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

305 |         (c) Has submitted to the department a certified copy of the  
306 | disposition of the charge to which the petition to expunge  
307 | pertains.

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



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313 (e) Has not been adjudicated guilty of, or adjudicated  
314 delinquent for committing, any of the acts stemming from the  
315 arrest or alleged criminal activity to which the petition to  
316 expunge pertains.

317 (f) Has never secured a prior sealing or expunction of a  
318 criminal history record under this section, former s. 893.14,  
319 former s. 901.33, or former s. 943.058, unless expunction is  
320 sought of a criminal history record previously sealed for 10  
321 years pursuant to paragraph (h) and the record is otherwise  
322 eligible for expunction.

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

326 (h) Has previously obtained a court order sealing the  
327 record under this section, former s. 893.14, former s. 901.33, or  
328 former s. 943.058 for a minimum of 10 years because adjudication  
329 was withheld or because all charges related to the arrest or  
330 alleged criminal activity to which the petition to expunge  
331 pertains were not dismissed prior to trial, unless ~~without regard~~  
332 ~~to whether~~ the outcome of the trial was an acquittal ~~other than~~  
333 ~~an adjudication of guilt~~. The requirement for the record to have  
334 previously been sealed for a minimum of 10 years does not apply  
335 when a plea was not entered or all charges related to the arrest  
336 or alleged criminal activity to which the petition to expunge  
337 pertains were dismissed prior to trial or the outcome of the  
338 trial was an acquittal.

339  
340 Each clerk of court shall place information on his or her  
341 Internet website about the availability of criminal history  
342 sealing and expunction. This information shall include a link to



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343 the department's website for information and applications for  
344 sealing and expunging a criminal history record.

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

346 (a) In judicial proceedings under this section, a copy of  
347 the completed petition to expunge shall be served upon the  
348 appropriate state attorney or the statewide prosecutor and upon  
349 the arresting agency; however, it is not necessary to make any  
350 agency other than the state a party. The appropriate state  
351 attorney or the statewide prosecutor and the arresting agency may  
352 respond to the court regarding the completed petition to expunge.

353 (b) If relief is granted by the court, the clerk of the  
354 court shall certify copies of the order to the appropriate state  
355 attorney or the statewide prosecutor and the arresting agency.  
356 The arresting agency is responsible for forwarding the order to  
357 any other agency to which the arresting agency disseminated the  
358 criminal history record information to which the order pertains.  
359 The department shall forward the order to expunge to the Federal  
360 Bureau of Investigation. The clerk of the court shall certify a  
361 copy of the order to any other agency which the records of the  
362 court reflect has received the criminal history record from the  
363 court.

364 (c) For an order to expunge entered by a court prior to  
365 July 1, 1992, the department shall notify the appropriate state  
366 attorney or statewide prosecutor of an order to expunge which is  
367 contrary to law because the person who is the subject of the  
368 record has previously been convicted of a crime or comparable  
369 ordinance violation or has had a prior criminal history record  
370 sealed or expunged. Upon receipt of such notice, the appropriate  
371 state attorney or statewide prosecutor shall take action, within  
372 60 days, to correct the record and petition the court to void the



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

375 (d) On or after July 1, 1992, the department or any other  
376 criminal justice agency is not required to act on an order to  
377 expunge entered by a court when such order does not comply with  
378 the requirements of this section. Upon receipt of such an order,  
379 the department must notify the issuing court, the appropriate  
380 state attorney or statewide prosecutor, the petitioner or the  
381 petitioner's attorney, and the arresting agency of the reason for  
382 noncompliance. The appropriate state attorney or statewide  
383 prosecutor shall take action within 60 days to correct the record  
384 and petition the court to void the order. No cause of action,  
385 including contempt of court, shall arise against any criminal  
386 justice agency for failure to comply with an order to expunge  
387 when the petitioner for such order failed to obtain the  
388 certificate of eligibility as required by this section or such  
389 order does not otherwise comply with the requirements of this  
390 section.

391 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
392 criminal history record of a minor or an adult which is ordered  
393 expunged by a court of competent jurisdiction pursuant to this  
394 section must be physically destroyed or obliterated by any  
395 criminal justice agency having custody of such record; except  
396 that any criminal history record in the custody of the department  
397 must be retained in all cases. A criminal history record ordered  
398 expunged that is retained by the department is confidential and  
399 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
400 of the State Constitution and not available to any person or  
401 entity except upon order of a court of competent jurisdiction. A



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402 criminal justice agency may retain a notation indicating  
403 compliance with an order to expunge.

404 (a) The person who is the subject of a criminal history  
405 record that is expunged under this section or under other  
406 provisions of law, including former s. 893.14, former s. 901.33,  
407 and former s. 943.058, may lawfully deny or fail to acknowledge  
408 the arrests and subsequent dispositions covered by the expunged  
409 record, except when the subject of the record:

410 1. Is a candidate for employment with a criminal justice  
411 agency;

412 2. Is a defendant in a criminal prosecution;

413 3. Concurrently or subsequently petitions for relief under  
414 this section or s. 943.059;

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

416 5. Is seeking to be employed or licensed by or to contract  
417 with the Department of Children and Family Services or the  
418 Department of Juvenile Justice or to be employed or used by such  
419 contractor or licensee in a sensitive position having direct  
420 contact with children, the developmentally disabled, the aged, or  
421 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
422 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
423 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter  
424 400, or chapter 429;

425 6. Is seeking to be employed or licensed by the Department  
426 of Education, any district school board, any university  
427 laboratory school, any charter school, any private or parochial  
428 school, or any local governmental entity that licenses child care  
429 facilities; or



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

433           (b) Subject to the exceptions in paragraph (a), a person  
434 who has been granted an expunction under this section, former s.  
435 893.14, former s. 901.33, or former s. 943.058 may not be held  
436 under any provision of law of this state to commit perjury or to  
437 be otherwise liable for giving a false statement by reason of  
438 such person's failure to recite or acknowledge an expunged  
439 criminal history record, including when asked on an employment  
440 application.

441           (c) Information relating to the existence of an expunged  
442 criminal history record which is provided in accordance with  
443 paragraph (a) is confidential and exempt from the provisions of  
444 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
445 except that the department shall disclose the existence of a  
446 criminal history record ordered expunged to the entities set  
447 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
448 respective licensing, access authorization, and employment  
449 purposes, and to criminal justice agencies for their respective  
450 criminal justice purposes. It is unlawful for any employee of an  
451 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
452 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to  
453 disclose information relating to the existence of an expunged  
454 criminal history record of a person seeking employment, access  
455 authorization, or licensure with such entity or contractor,  
456 except to the person to whom the criminal history record relates  
457 or to persons having direct responsibility for employment, access  
458 authorization, or licensure decisions. Any person who violates





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

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

464 |       (5) STATUTORY REFERENCES.--Any reference to any other  
465 | chapter, section, or subdivision of the Florida Statutes in this  
466 | section constitutes a general reference under the doctrine of  
467 | incorporation by reference.

468 |       Section 6. Section 943.059, Florida Statutes, is amended to  
469 | read:

470 |       943.059 Court-ordered sealing of criminal history  
471 | records.--The courts of this state shall continue to have  
472 | jurisdiction over their own procedures, including the  
473 | maintenance, sealing, and correction of judicial records  
474 | containing criminal history information to the extent such  
475 | procedures are not inconsistent with the conditions,  
476 | responsibilities, and duties established by this section. Any  
477 | court of competent jurisdiction may order a criminal justice  
478 | agency to seal the criminal history record of a minor or an adult  
479 | who complies with the requirements of this section. The court  
480 | shall not order a criminal justice agency to seal a criminal  
481 | history record until the person seeking to seal a criminal  
482 | history record has applied for and received a certificate of  
483 | eligibility for sealing pursuant to subsection (2). A criminal  
484 | history record that relates to a violation of s. 393.135, s.  
485 | 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
486 | 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.  
487 | 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a  
488 | violation enumerated in s. 907.041, or any violation specified as



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489 a predicate offense for registration as a sexual predator  
490 pursuant to s. 775.21, without regard to whether that offense  
491 alone is sufficient to require such registration, or for  
492 registration as a sexual offender pursuant to s. 943.0435, may  
493 not be sealed, without regard to whether adjudication was  
494 withheld, if the defendant was found guilty of or pled guilty or  
495 nolo contendere to the offense, or if the defendant, as a minor,  
496 was found to have committed or pled guilty or nolo contendere to  
497 committing the offense as a delinquent act. The court may only  
498 order sealing of a criminal history record pertaining to one  
499 arrest or one incident of alleged criminal activity, except as  
500 provided in this section. The court may, at its sole discretion,  
501 order the sealing of a criminal history record pertaining to more  
502 than one arrest if the additional arrests directly relate to the  
503 original arrest. If the court intends to order the sealing of  
504 records pertaining to such additional arrests, such intent must  
505 be specified in the order. A criminal justice agency may not seal  
506 any record pertaining to such additional arrests if the order to  
507 seal does not articulate the intention of the court to seal  
508 records pertaining to more than one arrest. This section does not  
509 prevent the court from ordering the sealing of only a portion of  
510 a criminal history record pertaining to one arrest or one  
511 incident of alleged criminal activity. Notwithstanding any law to  
512 the contrary, a criminal justice agency may comply with laws,  
513 court orders, and official requests of other jurisdictions  
514 relating to sealing, correction, or confidential handling of  
515 criminal history records or information derived therefrom. This  
516 section does not confer any right to the sealing of any criminal  
517 history record, and any request for sealing a criminal history  
518 record may be denied at the sole discretion of the court.



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

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

524 (b) The petitioner's sworn statement attesting that the  
525 petitioner:

526 1. Has never, prior to the date on which the petition is  
527 filed, been adjudicated guilty of a criminal offense or  
528 comparable ordinance violation, or been adjudicated delinquent  
529 for committing any felony or a misdemeanor specified in s.  
530 943.051(3)(b).

531 2. Has not been adjudicated guilty of or adjudicated  
532 delinquent for committing any of the acts stemming from the  
533 arrest or alleged criminal activity to which the petition to seal  
534 pertains.

535 3. Has never secured a prior sealing, except as provided in  
536 subsection (6), or expunction of a criminal history record under  
537 this section, former s. 893.14, former s. 901.33, former s.  
538 943.058, or from any jurisdiction outside the state.

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

542  
543 Any person who knowingly provides false information on such sworn  
544 statement to the court commits a felony of the third degree,  
545 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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



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549 department for a certificate of eligibility for sealing. The  
550 department shall, by rule adopted pursuant to chapter 120,  
551 establish procedures pertaining to the application for and  
552 issuance of certificates of eligibility for sealing. A  
553 certificate of eligibility for sealing is valid for 12 months  
554 after the date stamped on the certificate when issued by the  
555 department. After that time, the petitioner must reapply to the  
556 department for a new certificate of eligibility. Eligibility for  
557 a renewed certification of eligibility must be based on the  
558 status of the applicant and the law in effect at the time of the  
559 renewal application. The department shall issue a certificate of  
560 eligibility for sealing to a person who is the subject of a  
561 criminal history record provided that such person:

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

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

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

572 (d) Has not been adjudicated guilty of or adjudicated  
573 delinquent for committing any of the acts stemming from the  
574 arrest or alleged criminal activity to which the petition to seal  
575 pertains.

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



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578 | under this section, former s. 893.14, former s. 901.33, or former  
579 | s. 943.058.

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

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

584 |       (a) In judicial proceedings under this section, a copy of  
585 | the completed petition to seal shall be served upon the  
586 | appropriate state attorney or the statewide prosecutor and upon  
587 | the arresting agency; however, it is not necessary to make any  
588 | agency other than the state a party. The appropriate state  
589 | attorney or the statewide prosecutor and the arresting agency may  
590 | respond to the court regarding the completed petition to seal.

591 |       (b) If relief is granted by the court, the clerk of the  
592 | court shall certify copies of the order to the appropriate state  
593 | attorney or the statewide prosecutor and to the arresting agency.  
594 | The arresting agency is responsible for forwarding the order to  
595 | any other agency to which the arresting agency disseminated the  
596 | criminal history record information to which the order pertains.  
597 | The department shall forward the order to seal to the Federal  
598 | Bureau of Investigation. The clerk of the court shall certify a  
599 | copy of the order to any other agency which the records of the  
600 | court reflect has received the criminal history record from the  
601 | court.

602 |       (c) For an order to seal entered by a court prior to July  
603 | 1, 1992, the department shall notify the appropriate state  
604 | attorney or statewide prosecutor of any order to seal which is  
605 | contrary to law because the person who is the subject of the  
606 | record has previously been convicted of a crime or comparable  
607 | ordinance violation or has had a prior criminal history record



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608 sealed, except as provided in subsection (6), or expunged. Upon  
609 receipt of such notice, the appropriate state attorney or  
610 statewide prosecutor shall take action, within 60 days, to  
611 correct the record and petition the court to void the order to  
612 seal. The department shall seal the record until such time as the  
613 order is voided by the court.

614 (d) On or after July 1, 1992, the department or any other  
615 criminal justice agency is not required to act on an order to  
616 seal entered by a court when such order does not comply with the  
617 requirements of this section. Upon receipt of such an order, the  
618 department must notify the issuing court, the appropriate state  
619 attorney or statewide prosecutor, the petitioner or the  
620 petitioner's attorney, and the arresting agency of the reason for  
621 noncompliance. The appropriate state attorney or statewide  
622 prosecutor shall take action within 60 days to correct the record  
623 and petition the court to void the order. No cause of action,  
624 including contempt of court, shall arise against any criminal  
625 justice agency for failure to comply with an order to seal when  
626 the petitioner for such order failed to obtain the certificate of  
627 eligibility as required by this section or when such order does  
628 not comply with the requirements of this section.

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

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



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638 to the person who is the subject of the record, to the subject's  
639 attorney, to criminal justice agencies for their respective  
640 criminal justice purposes, which include conducting a criminal  
641 history background check for approval of firearms purchases or  
642 transfers as authorized by state or federal law, or to those  
643 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for  
644 their respective licensing, access authorization, and employment  
645 purposes.

646 (a) The subject of a criminal history record sealed under  
647 this section or under other provisions of law, including former  
648 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
649 deny or fail to acknowledge the arrests and subsequent  
650 dispositions covered by the sealed record, except when the  
651 subject of the record:

652 1. Is a candidate for employment with a criminal justice  
653 agency;

654 2. Is a defendant in a criminal prosecution;

655 3. Concurrently or subsequently petitions for relief under  
656 this section or s. 943.0585;

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

658 5. Is seeking to be employed or licensed by or to contract  
659 with the Department of Children and Family Services or the  
660 Department of Juvenile Justice or to be employed or used by such  
661 contractor or licensee in a sensitive position having direct  
662 contact with children, the developmentally disabled, the aged, or  
663 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
664 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
665 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.  
666 985.644, chapter 400, or chapter 429;



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667           6. Is seeking to be employed or licensed by the Department  
668 of Education, any district school board, any university  
669 laboratory school, any charter school, any private or parochial  
670 school, or any local governmental entity that licenses child care  
671 facilities;

672           7. Is attempting to purchase a firearm from a licensed  
673 importer, licensed manufacturer, or licensed dealer and is  
674 subject to a criminal history background check under state or  
675 federal law; or

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

679           (b) Subject to the exceptions in paragraph (a), a person  
680 who has been granted a sealing under this section, former s.  
681 893.14, former s. 901.33, or former s. 943.058 may not be held  
682 under any provision of law of this state to commit perjury or to  
683 be otherwise liable for giving a false statement by reason of  
684 such person's failure to recite or acknowledge a sealed criminal  
685 history record, including when asked on an employment  
686 application.

687           (c) Information relating to the existence of a sealed  
688 criminal record provided in accordance with the provisions of  
689 paragraph (a) is confidential and exempt from the provisions of  
690 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
691 except that the department shall disclose the sealed criminal  
692 history record to the entities set forth in subparagraphs (a)1.,  
693 4., 5., 6., and 8. for their respective licensing, access  
694 authorization, and employment purposes. It is unlawful for any  
695 employee of an entity set forth in subparagraph (a)1.,  
696 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or





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697 subparagraph (a)8. to disclose information relating to the  
698 existence of a sealed criminal history record of a person seeking  
699 employment, access authorization, or licensure with such entity  
700 or contractor, except to the person to whom the criminal history  
701 record relates or to persons having direct responsibility for  
702 employment, access authorization, or licensure decisions. Any  
703 person who violates the provisions of this paragraph commits a  
704 misdemeanor of the first degree, punishable as provided in s.  
705 775.082 or s. 775.083.

706 (5) STATUTORY REFERENCES.--Any reference to any other  
707 chapter, section, or subdivision of the Florida Statutes in this  
708 section constitutes a general reference under the doctrine of  
709 incorporation by reference.

710 (6) SECOND SEALING OF CRIMINAL HISTORY RECORD.--A person  
711 may petition the court to seek a second sealing of his or her  
712 criminal history record after having secured one previous  
713 expunction or sealing under the following circumstances only.  
714 Before petitioning the court for such relief, the person must  
715 apply to the department to obtain a certificate of eligibility  
716 for the second sealing of his or her criminal history record. The  
717 department shall issue the certificate only if the person has not  
718 been arrested during the 5-year period following the date of the  
719 court order for the initial expunction or sealing of his or her  
720 criminal history record. All other provisions and requirements of  
721 this section apply when a person seeks a second sealing of his  
722 criminal history record.

723 Section 7. The Office of Program Policy Analysis and  
724 Government Accountability, in cooperation with the Department of  
725 Law Enforcement, shall:



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

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

732       (3) Assess whether an adequate process exists to allow the  
733 potential private employer or licensing entity to determine  
734 whether an applicant's response to an "arrest, conviction, or  
735 adjudication withheld" criminal history question on an  
736 application is truthful and complete.

737       (4) Assess the feasibility of establishing appropriate  
738 privacy safeguards to protect job or license applicants, such as  
739 providing informed consent and the opportunity to review a  
740 criminal history record before a job or licensing application is  
741 made, before the criminal history record is provided to the  
742 potential employer or licensing entity, and before adverse action  
743 is taken by the potential employer or licensing entity.

744       (5) Identify actions that could be taken to improve both  
745 the completeness of the criminal history record and the consumer  
746 readability of the criminal history record.

747  
748 The Office of Program Policy Analysis and Government  
749 Accountability shall report its findings to the President of the  
750 Senate and Speaker of the House of Representatives by February 1,  
751 2009.

752       Section 8. This act shall take effect July 1, 2008.

753  
754 ===== T I T L E   A M E N D M E N T =====  
755 And the title is amended as follows:



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756 Delete everything before the enacting clause  
757 and insert:

758 A bill to be entitled  
759 An act relating to criminal justice; providing legislative  
760 intent; requiring state agencies and regulatory boards to  
761 submit to the Governor and legislative officers a report  
762 that states current restrictions on employment of ex-  
763 offenders and possible alternatives that are compatible  
764 with public safety; requiring that such report be  
765 submitted in 2011 and then every eight years thereafter;  
766 amending s. 112.011, F.S.; providing that a person may not  
767 be disqualified from receiving a license, permit, or  
768 certificate or from obtaining public employment on the  
769 grounds that the person's civil rights have not been  
770 restored; providing that a person is not required to  
771 secure the restoration of his or her civil rights or prove  
772 that his or her civil rights have been restored in order  
773 to receive a license, permit, or certificate or to obtain  
774 public employment; amending s. 760.10, F.S.; prohibiting  
775 an employer from requesting, making, or keeping certain  
776 criminal history records; prohibiting the criminal  
777 prosecution for perjury in certain circumstances; amending  
778 s. 943.0581, F.S.; authorizing the arresting agency or the  
779 agency where the warrant was issued to request an  
780 administrative expunction; amending s. 943.0585, F.S.;  
781 allowing an expungement of a criminal history record when  
782 the subject of the record has been acquitted of the charge  
783 at trial; requiring the clerk of the court to place  
784 information about the availability of criminal history  
785 sealing and expunction on the court's Internet website and



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786 provide a link to the Department of Law Enforcement's  
787 website related to such information; clarifying under what  
788 circumstances a person may legally deny an expunged  
789 criminal history record; authorizing disclosure of the  
790 contents of an expunged record upon receipt of a written,  
791 notarized request from the record subject; amending s.  
792 943.059, F.S.; clarifying under what circumstances a  
793 person may legally deny a sealed criminal history record;  
794 authorizing a person to petition the court to seek a  
795 second criminal history record sealing under certain  
796 circumstances; requiring the Office of Program Policy  
797 Analysis and Government Accountability to conduct a study;  
798 specifying the research questions for the study; requiring  
799 a report to be submitted to the Legislature; providing an  
800 effective date.