



658294

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: WD	.	
3/25/2008	.	
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1 The Committee on Criminal Justice (Dockery) recommended the  
 2 following **amendment**:

**Senate Amendment (with title amendment)**

Between line(s) 68 and 69

insert:

Section 2. Section 943.0561, Florida Statutes, is created  
to read:

943.0561 Unlawful dissemination of sealed or expunged  
criminal records by private sector third-party background  
screening companies.-

(1) The Legislature finds that issues of information  
quality in criminal history databases, whether commercial or  
state, require adequate privacy safeguards that provide  
individuals a meaningful opportunity to correct inaccurate or  
incomplete information before it has an adverse effect on an  
employment or licensure opportunity. Providing a process for



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18 appealing incorrect or incomplete records will enhance individual  
19 protections for privacy and the fair use of the information.

20 (2) It is unlawful for any person, business, corporation,  
21 partnership, or other private entity to knowingly make available,  
22 lend, donate, or sell any criminal history record obtained from  
23 the Department of Law Enforcement or any local, county, or state  
24 entity, which has been sealed or expunged or otherwise made  
25 exempt from public dissemination pursuant to s. 943.059.

26 (3) Any person who is aggrieved by a violation of this  
27 section or disputes the unlawful dissemination of a sealed or  
28 expunged record may contact the private entity and request a  
29 correction of information. A record correction must be requested  
30 in writing by certified mail to the entity. Once received, the  
31 person, business, corporation, partnership, or other private  
32 entity who disseminated the disputed record must conduct an  
33 investigation within 30 days of receipt of the correction  
34 request, unless the dispute is deemed frivolous. The private  
35 entity must send to the person requesting the correction a  
36 written investigation report and a copy of the revised criminal  
37 history record if changes were made. The person requesting the  
38 correction may also request that revised criminal history records  
39 be sent to recent recipients.

40 (4) A person who knowingly violates subsection (2) shall be  
41 guilty of a misdemeanor of the first degree, punishable as  
42 provide in s. 775.082 or s. 775.083.

43 (5) No person, business, corporation, partnership, or  
44 private entity may be held civilly liable for disseminating a  
45 disputed record, made in good faith pursuant to this subsection.

46 Section 3. Section 943.0581, Florida Statutes, is amended  
47 to read:



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48 | 943.0581 Administrative expunction.--

49 | (1) Notwithstanding any law dealing generally with the  
50 | preservation and destruction of public records, the department  
51 | may provide, by rule adopted pursuant to chapter 120, for the  
52 | administrative expunction of any nonjudicial record of an arrest  
53 | of a minor or an adult made contrary to law or by mistake.

54 | (2) A law enforcement agency shall apply to the department  
55 | in the manner prescribed by rule for the administrative  
56 | expunction of any nonjudicial record of any arrest of a minor or  
57 | an adult who is subsequently determined by the agency, at its  
58 | discretion, or by the final order of a court of competent  
59 | jurisdiction, to have been arrested contrary to law or by  
60 | mistake.

61 | (3) An adult or, in the case of a minor child, the parent  
62 | or legal guardian of the minor child, may apply to the department  
63 | in the manner prescribed by rule for the administrative  
64 | expunction of any nonjudicial record of an arrest alleged to have  
65 | been made contrary to law or by mistake, provided that the  
66 | application is supported by the endorsement of the head of the  
67 | arresting agency or his or her designee or the state attorney or  
68 | his or her designee of the judicial circuit in which the arrest  
69 | occurred.

70 | (4) An application for administrative expunction shall  
71 | include ~~an affidavit executed by the chief of the law enforcement~~  
72 | ~~agency, sheriff, or department head of the state law enforcement~~  
73 | ~~agency in which the affiant verifies that he or she has reviewed~~  
74 | ~~the record of the arrest and that the arrest was contrary to law~~  
75 | ~~or was a mistake. The affidavit shall include the date and time~~  
76 | ~~of the arrest, the name of the arresting officer, the name of the~~  
77 | ~~person arrested, and the crime or crimes charged, and the~~

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78 offender based tracking system number. The application shall be  
79 on the submitting agency's letterhead.

80 (5) In the case of persons arrested on a warrant, capias or  
81 pick-up order, the request for an administrative expunction may  
82 be made by the sheriff or his or her designee of the county where  
83 the warrant, capias or pick-up order was issued or by the state  
84 attorney or his or her designee of the judicial circuit where the  
85 warrant, capias or pick-up order was issued.

86 (6) ~~(5)~~ No application, or endorsement, ~~or affidavit~~ made  
87 under this section shall be admissible as evidence in any  
88 judicial or administrative proceeding or otherwise be construed  
89 in any way as an admission of liability in connection with an  
90 arrest.

91 Section 4. Section 943.0585, Florida Statutes, is amended  
92 to read:

93 943.0585 Court-ordered expunction of criminal history  
94 records.--The courts of this state have jurisdiction over their  
95 own procedures, including the maintenance, expunction, and  
96 correction of judicial records containing criminal history  
97 information to the extent such procedures are not inconsistent  
98 with the conditions, responsibilities, and duties established by  
99 this section. Any court of competent jurisdiction may order a  
100 criminal justice agency to expunge the criminal history record of  
101 a minor or an adult who complies with the requirements of this  
102 section. The court shall not order a criminal justice agency to  
103 expunge a criminal history record until the person seeking to  
104 expunge a criminal history record has applied for and received a  
105 certificate of eligibility for expunction pursuant to subsection  
106 (2). A criminal history record that relates to a violation of s.  
107 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.



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108 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
109 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
110 916.1075, a violation enumerated in s. 907.041, or any violation  
111 specified as a predicate offense for registration as a sexual  
112 predator pursuant to s. 775.21, without regard to whether that  
113 offense alone is sufficient to require such registration, or for  
114 registration as a sexual offender pursuant to s. 943.0435, may  
115 not be expunged, without regard to whether adjudication was  
116 withheld, if the defendant was found guilty of or pled guilty or  
117 nolo contendere to the offense, or if the defendant, as a minor,  
118 was found to have committed, or pled guilty or nolo contendere to  
119 committing, the offense as a delinquent act. The court may only  
120 order expunction of a criminal history record pertaining to one  
121 arrest or one incident of alleged criminal activity, except as  
122 provided in this section. The court may, at its sole discretion,  
123 order the expunction of a criminal history record pertaining to  
124 more than one arrest if the additional arrests directly relate to  
125 the original arrest. If the court intends to order the expunction  
126 of records pertaining to such additional arrests, such intent  
127 must be specified in the order. A criminal justice agency may not  
128 expunge any record pertaining to such additional arrests if the  
129 order to expunge does not articulate the intention of the court  
130 to expunge a record pertaining to more than one arrest. This  
131 section does not prevent the court from ordering the expunction  
132 of only a portion of a criminal history record pertaining to one  
133 arrest or one incident of alleged criminal activity.  
134 Notwithstanding any law to the contrary, a criminal justice  
135 agency may comply with laws, court orders, and official requests  
136 of other jurisdictions relating to expunction, correction, or  
137 confidential handling of criminal history records or information



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138 derived therefrom. This section does not confer any right to the  
139 expunction of any criminal history record, and any request for  
140 expunction of a criminal history record may be denied at the sole  
141 discretion of the court.

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

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

147 (b) The petitioner's sworn statement attesting that the  
148 petitioner:

149 1. Has never, prior to the date on which the petition is  
150 filed, been adjudicated guilty of a criminal offense or  
151 comparable ordinance violation, or been adjudicated delinquent  
152 for committing any felony or a misdemeanor specified in s.  
153 943.051(3)(b).

154 2. Has not been adjudicated guilty of, or adjudicated  
155 delinquent for committing, any of the acts stemming from the  
156 arrest or alleged criminal activity to which the petition  
157 pertains.

158 3. Has never secured a prior sealing or expunction of a  
159 criminal history record under this section, former s. 893.14,  
160 former s. 901.33, or former s. 943.058, or from any jurisdiction  
161 outside the state, unless expunction is sought of a criminal  
162 history record previously sealed for 10 years pursuant to  
163 paragraph (2)(h) and the record is otherwise eligible for  
164 expunction.

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



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168  
169 Any person who knowingly provides false information on such sworn  
170 statement to the court commits a felony of the third degree,  
171 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

172 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to  
173 petitioning the court to expunge a criminal history record, a  
174 person seeking to expunge a criminal history record shall apply  
175 to the department for a certificate of eligibility for  
176 expunction. The department shall, by rule adopted pursuant to  
177 chapter 120, establish procedures pertaining to the application  
178 for and issuance of certificates of eligibility for expunction. A  
179 certificate of eligibility for expunction is valid for 12 months  
180 after the date stamped on the certificate when issued by the  
181 department. After that time, the petitioner must reapply to the  
182 department for a new certificate of eligibility. Eligibility for  
183 a renewed certification of eligibility must be based on the  
184 status of the applicant and the law in effect at the time of the  
185 renewal application. The department shall issue a certificate of  
186 eligibility for expunction to a person who is the subject of a  
187 criminal history record if that person:

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

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

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

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

201 |         3. That the criminal history record does not relate to a  
202 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s.  
203 | 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
204 | 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
205 | 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
206 | any violation specified as a predicate offense for registration  
207 | as a sexual predator pursuant to s. 775.21, without regard to  
208 | whether that offense alone is sufficient to require such  
209 | registration, or for registration as a sexual offender pursuant  
210 | to s. 943.0435, where the defendant was found guilty of, or pled  
211 | guilty or nolo contendere to any such offense, or that the  
212 | defendant, as a minor, was found to have committed, or pled  
213 | guilty or nolo contendere to committing, such an offense as a  
214 | delinquent act, without regard to whether adjudication was  
215 | withheld.

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

219 |         (c) Has submitted to the department a certified copy of the  
220 | disposition of the charge to which the petition to expunge  
221 | pertains.

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





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227 (e) Has not been adjudicated guilty of, or adjudicated  
228 delinquent for committing, any of the acts stemming from the  
229 arrest or alleged criminal activity to which the petition to  
230 expunge pertains.

231 (f) Has never secured a prior sealing or expunction of a  
232 criminal history record under this section, former s. 893.14,  
233 former s. 901.33, or former s. 943.058, unless expunction is  
234 sought of a criminal history record previously sealed for 10  
235 years pursuant to paragraph (h) and the record is otherwise  
236 eligible for expunction.

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

240 (h) Has previously obtained a court order sealing the  
241 record under this section, former s. 893.14, former s. 901.33, or  
242 former s. 943.058 for a minimum of 10 years because adjudication  
243 was withheld or because all charges related to the arrest or  
244 alleged criminal activity to which the petition to expunge  
245 pertains were not dismissed prior to trial, without regard to  
246 whether the outcome of the trial was other than an adjudication  
247 of guilt. The requirement for the record to have previously been  
248 sealed for a minimum of 10 years does not apply when a plea was  
249 not entered or all charges related to the arrest or alleged  
250 criminal activity to which the petition to expunge pertains were  
251 dismissed prior to trial.

252 Each Clerk of Court shall place information on his or her  
253 Internet web site about the availability of criminal history  
254 sealing and expunction. This information shall include a link to  
255 the department's web pages for criminal history seal and expunge  
256 information and applications.



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

258 (a) In judicial proceedings under this section, a copy of  
259 the completed petition to expunge shall be served upon the  
260 appropriate state attorney or the statewide prosecutor and upon  
261 the arresting agency; however, it is not necessary to make any  
262 agency other than the state a party. The appropriate state  
263 attorney or the statewide prosecutor and the arresting agency may  
264 respond to the court regarding the completed petition to expunge.

265 (b) If relief is granted by the court, the clerk of the  
266 court shall certify copies of the order to the appropriate state  
267 attorney or the statewide prosecutor and the arresting agency.  
268 The arresting agency is responsible for forwarding the order to  
269 any other agency to which the arresting agency disseminated the  
270 criminal history record information to which the order pertains.  
271 The department shall forward the order to expunge to the Federal  
272 Bureau of Investigation. The clerk of the court shall certify a  
273 copy of the order to any other agency which the records of the  
274 court reflect has received the criminal history record from the  
275 court.

276 (c) For an order to expunge entered by a court prior to  
277 July 1, 1992, the department shall notify the appropriate state  
278 attorney or statewide prosecutor of an order to expunge which is  
279 contrary to law because the person who is the subject of the  
280 record has previously been convicted of a crime or comparable  
281 ordinance violation or has had a prior criminal history record  
282 sealed or expunged. Upon receipt of such notice, the appropriate  
283 state attorney or statewide prosecutor shall take action, within  
284 60 days, to correct the record and petition the court to void the  
285 order to expunge. The department shall seal the record until such  
286 time as the order is voided by the court.



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287 (d) On or after July 1, 1992, the department or any other  
288 criminal justice agency is not required to act on an order to  
289 expunge entered by a court when such order does not comply with  
290 the requirements of this section. Upon receipt of such an order,  
291 the department must notify the issuing court, the appropriate  
292 state attorney or statewide prosecutor, the petitioner or the  
293 petitioner's attorney, and the arresting agency of the reason for  
294 noncompliance. The appropriate state attorney or statewide  
295 prosecutor shall take action within 60 days to correct the record  
296 and petition the court to void the order. No cause of action,  
297 including contempt of court, shall arise against any criminal  
298 justice agency for failure to comply with an order to expunge  
299 when the petitioner for such order failed to obtain the  
300 certificate of eligibility as required by this section or such  
301 order does not otherwise comply with the requirements of this  
302 section.

303 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
304 criminal history record of a minor or an adult which is ordered  
305 expunged by a court of competent jurisdiction pursuant to this  
306 section must be physically destroyed or obliterated by any  
307 criminal justice agency having custody of such record; except  
308 that any criminal history record in the custody of the department  
309 must be retained in all cases. A criminal history record ordered  
310 expunged that is retained by the department is confidential and  
311 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
312 of the State Constitution and not available to any person or  
313 entity except upon order of a court of competent jurisdiction. A  
314 criminal justice agency may retain a notation indicating  
315 compliance with an order to expunge.



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316 (a) The person who is the subject of a criminal history  
317 record that is expunged under this section or under other  
318 provisions of law, including former s. 893.14, former s. 901.33,  
319 and former s. 943.058, may lawfully deny or fail to acknowledge  
320 the arrests and subsequent dispositions covered by the expunged  
321 record, except when the subject of the record:

322 1. Is a candidate for employment with a criminal justice  
323 agency;

324 2. Is a defendant in a criminal prosecution;

325 3. Concurrently or subsequently petitions for relief under  
326 this section or s. 943.059;

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

328 5. Is seeking to be employed or licensed by or to contract  
329 with the Department of Children and Family Services or the  
330 Department of Juvenile Justice or to be employed or used by such  
331 contractor or licensee in a sensitive position having direct  
332 contact with children, the developmentally disabled, the aged, or  
333 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
334 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
335 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter  
336 400, or chapter 429;

337 6. Is seeking to be employed or licensed by the Department  
338 of Education, any district school board, any university  
339 laboratory school, any charter school, any private or parochial  
340 school, or any local governmental entity that licenses child care  
341 facilities; or

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



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345           (b) Subject to the exceptions in paragraph (a), a person  
346 who has been granted an expunction under this section, former s.  
347 893.14, former s. 901.33, or former s. 943.058 may not be held  
348 under any provision of law of this state to commit perjury or to  
349 be otherwise liable for giving a false statement by reason of  
350 such person's failure to recite or acknowledge an expunged  
351 criminal history record, including when asked on an employment  
352 application.

353           (c) Information relating to the existence of an expunged  
354 criminal history record which is provided in accordance with  
355 paragraph (a) is confidential and exempt from the provisions of  
356 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
357 except that the department shall disclose the existence of a  
358 criminal history record ordered expunged to the entities set  
359 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
360 respective licensing, access authorization, and employment  
361 purposes, and to criminal justice agencies for their respective  
362 criminal justice purposes. It is unlawful for any employee of an  
363 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
364 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to  
365 disclose information relating to the existence of an expunged  
366 criminal history record of a person seeking employment, access  
367 authorization, or licensure with such entity or contractor,  
368 except to the person to whom the criminal history record relates  
369 or to persons having direct responsibility for employment, access  
370 authorization, or licensure decisions. Any person who violates  
371 this paragraph commits a misdemeanor of the first degree,  
372 punishable as provided in s. 775.082 or s. 775.083.

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

376 (5) STATUTORY REFERENCES.--Any reference to any other  
377 chapter, section, or subdivision of the Florida Statutes in this  
378 section constitutes a general reference under the doctrine of  
379 incorporation by reference.

380 Section 5. Section 943.059, Florida Statutes, is amended to  
381 read:

382 943.059 Court-ordered sealing of criminal history records.-  
383 -The courts of this state shall continue to have jurisdiction  
384 over their own procedures, including the maintenance, sealing,  
385 and correction of judicial records containing criminal history  
386 information to the extent such procedures are not inconsistent  
387 with the conditions, responsibilities, and duties established by  
388 this section. Any court of competent jurisdiction may order a  
389 criminal justice agency to seal the criminal history record of a  
390 minor or an adult who complies with the requirements of this  
391 section. The court shall not order a criminal justice agency to  
392 seal a criminal history record until the person seeking to seal a  
393 criminal history record has applied for and received a  
394 certificate of eligibility for sealing pursuant to subsection  
395 (2). A criminal history record that relates to a violation of s.  
396 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
397 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
398 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
399 916.1075, a violation enumerated in s. 907.041, or any violation  
400 specified as a predicate offense for registration as a sexual  
401 predator pursuant to s. 775.21, without regard to whether that  
402 offense alone is sufficient to require such registration, or for



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403 registration as a sexual offender pursuant to s. 943.0435, may  
404 not be sealed, without regard to whether adjudication was  
405 withheld, if the defendant was found guilty of or pled guilty or  
406 nolo contendere to the offense, or if the defendant, as a minor,  
407 was found to have committed or pled guilty or nolo contendere to  
408 committing the offense as a delinquent act. The court may only  
409 order sealing of a criminal history record pertaining to one  
410 arrest or one incident of alleged criminal activity, except as  
411 provided in this section. The court may, at its sole discretion,  
412 order the sealing of a criminal history record pertaining to more  
413 than one arrest if the additional arrests directly relate to the  
414 original arrest. If the court intends to order the sealing of  
415 records pertaining to such additional arrests, such intent must  
416 be specified in the order. A criminal justice agency may not seal  
417 any record pertaining to such additional arrests if the order to  
418 seal does not articulate the intention of the court to seal  
419 records pertaining to more than one arrest. This section does not  
420 prevent the court from ordering the sealing of only a portion of  
421 a criminal history record pertaining to one arrest or one  
422 incident of alleged criminal activity. Notwithstanding any law to  
423 the contrary, a criminal justice agency may comply with laws,  
424 court orders, and official requests of other jurisdictions  
425 relating to sealing, correction, or confidential handling of  
426 criminal history records or information derived therefrom. This  
427 section does not confer any right to the sealing of any criminal  
428 history record, and any request for sealing a criminal history  
429 record may be denied at the sole discretion of the court.

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



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

435 (b) The petitioner's sworn statement attesting that the  
436 petitioner:

437 1. Has never, prior to the date on which the petition is  
438 filed, been adjudicated guilty of a criminal offense or  
439 comparable ordinance violation, or been adjudicated delinquent  
440 for committing any felony or a misdemeanor specified in s.  
441 943.051(3)(b).

442 2. Has not been adjudicated guilty of or adjudicated  
443 delinquent for committing any of the acts stemming from the  
444 arrest or alleged criminal activity to which the petition to seal  
445 pertains.

446 3. Has never secured a prior sealing, except as provided in  
447 subsection(6), or expunction of a criminal history record under  
448 this section, former s. 893.14, former s. 901.33, former s.  
449 943.058, or from any jurisdiction outside the state.

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

453  
454 Any person who knowingly provides false information on such sworn  
455 statement to the court commits a felony of the third degree,  
456 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

457 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
458 petitioning the court to seal a criminal history record, a person  
459 seeking to seal a criminal history record shall apply to the  
460 department for a certificate of eligibility for sealing. The  
461 department shall, by rule adopted pursuant to chapter 120,  
462 establish procedures pertaining to the application for and





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463 issuance of certificates of eligibility for sealing. A  
464 certificate of eligibility for sealing is valid for 12 months  
465 after the date stamped on the certificate when issued by the  
466 department. After that time, the petitioner must reapply to the  
467 department for a new certificate of eligibility. Eligibility for  
468 a renewed certification of eligibility must be based on the  
469 status of the applicant and the law in effect at the time of the  
470 renewal application. The department shall issue a certificate of  
471 eligibility for sealing to a person who is the subject of a  
472 criminal history record provided that such person:

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

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

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

483 (d) Has not been adjudicated guilty of or adjudicated  
484 delinquent for committing any of the acts stemming from the  
485 arrest or alleged criminal activity to which the petition to seal  
486 pertains.

487 (e) Has never secured a prior sealing, except as provided  
488 in subsection (6), or expunction of a criminal history record  
489 under this section, former s. 893.14, former s. 901.33, or former  
490 s. 943.058.



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

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

495 (a) In judicial proceedings under this section, a copy of  
496 the completed petition to seal shall be served upon the  
497 appropriate state attorney or the statewide prosecutor and upon  
498 the arresting agency; however, it is not necessary to make any  
499 agency other than the state a party. The appropriate state  
500 attorney or the statewide prosecutor and the arresting agency may  
501 respond to the court regarding the completed petition to seal.

502 (b) If relief is granted by the court, the clerk of the  
503 court shall certify copies of the order to the appropriate state  
504 attorney or the statewide prosecutor and to the arresting agency.  
505 The arresting agency is responsible for forwarding the order to  
506 any other agency to which the arresting agency disseminated the  
507 criminal history record information to which the order pertains.  
508 The department shall forward the order to seal to the Federal  
509 Bureau of Investigation. The clerk of the court shall certify a  
510 copy of the order to any other agency which the records of the  
511 court reflect has received the criminal history record from the  
512 court.

513 (c) For an order to seal entered by a court prior to July  
514 1, 1992, the department shall notify the appropriate state  
515 attorney or statewide prosecutor of any order to seal which is  
516 contrary to law because the person who is the subject of the  
517 record has previously been convicted of a crime or comparable  
518 ordinance violation or has had a prior criminal history record  
519 sealed, except as provided in subsection (6), or expunged. Upon  
520 receipt of such notice, the appropriate state attorney or



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521 statewide prosecutor shall take action, within 60 days, to  
522 correct the record and petition the court to void the order to  
523 seal. The department shall seal the record until such time as the  
524 order is voided by the court.

525 (d) On or after July 1, 1992, the department or any other  
526 criminal justice agency is not required to act on an order to  
527 seal entered by a court when such order does not comply with the  
528 requirements of this section. Upon receipt of such an order, the  
529 department must notify the issuing court, the appropriate state  
530 attorney or statewide prosecutor, the petitioner or the  
531 petitioner's attorney, and the arresting agency of the reason for  
532 noncompliance. The appropriate state attorney or statewide  
533 prosecutor shall take action within 60 days to correct the record  
534 and petition the court to void the order. No cause of action,  
535 including contempt of court, shall arise against any criminal  
536 justice agency for failure to comply with an order to seal when  
537 the petitioner for such order failed to obtain the certificate of  
538 eligibility as required by this section or when such order does  
539 not comply with the requirements of this section.

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

544 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
545 history record of a minor or an adult which is ordered sealed by  
546 a court of competent jurisdiction pursuant to this section is  
547 confidential and exempt from the provisions of s. 119.07(1) and  
548 s. 24(a), Art. I of the State Constitution and is available only  
549 to the person who is the subject of the record, to the subject's  
550 attorney, to criminal justice agencies for their respective



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551 criminal justice purposes, which include conducting a criminal  
552 history background check for approval of firearms purchases or  
553 transfers as authorized by state or federal law, or to those  
554 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for  
555 their respective licensing, access authorization, and employment  
556 purposes.

557 (a) The subject of a criminal history record sealed under  
558 this section or under other provisions of law, including former  
559 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
560 deny or fail to acknowledge the arrests and subsequent  
561 dispositions covered by the sealed record, except when the  
562 subject of the record:

563 1. Is a candidate for employment with a criminal justice  
564 agency;

565 2. Is a defendant in a criminal prosecution;

566 3. Concurrently or subsequently petitions for relief under  
567 this section or s. 943.0585;

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

569 5. Is seeking to be employed or licensed by or to contract  
570 with the Department of Children and Family Services or the  
571 Department of Juvenile Justice or to be employed or used by such  
572 contractor or licensee in a sensitive position having direct  
573 contact with children, the developmentally disabled, the aged, or  
574 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
575 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
576 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.  
577 985.644, chapter 400, or chapter 429;

578 6. Is seeking to be employed or licensed by the Department  
579 of Education, any district school board, any university  
580 laboratory school, any charter school, any private or parochial

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581 school, or any local governmental entity that licenses child care  
582 facilities;

583 7. Is attempting to purchase a firearm from a licensed  
584 importer, licensed manufacturer, or licensed dealer and is  
585 subject to a criminal history background check under state or  
586 federal law; or

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

590 (b) Subject to the exceptions in paragraph (a), a person  
591 who has been granted a sealing under this section, former s.  
592 893.14, former s. 901.33, or former s. 943.058 may not be held  
593 under any provision of law of this state to commit perjury or to  
594 be otherwise liable for giving a false statement by reason of  
595 such person's failure to recite or acknowledge a sealed criminal  
596 history record, including when asked on an employment  
597 application.

598 (c) Information relating to the existence of a sealed  
599 criminal record provided in accordance with the provisions of  
600 paragraph (a) is confidential and exempt from the provisions of  
601 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
602 except that the department shall disclose the sealed criminal  
603 history record to the entities set forth in subparagraphs (a)1.,  
604 4., 5., 6., and 8. for their respective licensing, access  
605 authorization, and employment purposes. It is unlawful for any  
606 employee of an entity set forth in subparagraph (a)1.,  
607 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or  
608 subparagraph (a)8. to disclose information relating to the  
609 existence of a sealed criminal history record of a person seeking  
610 employment, access authorization, or licensure with such entity

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611 or contractor, except to the person to whom the criminal history  
612 record relates or to persons having direct responsibility for  
613 employment, access authorization, or licensure decisions. Any  
614 person who violates the provisions of this paragraph commits a  
615 misdemeanor of the first degree, punishable as provided in s.  
616 775.082 or s. 775.083.

617 (5) STATUTORY REFERENCES.--Any reference to any other  
618 chapter, section, or subdivision of the Florida Statutes in this  
619 section constitutes a general reference under the doctrine of  
620 incorporation by reference.

621 (6) A person may petition the court to seek a sealing of his  
622 criminal history record, after having secured one previous  
623 expunction or sealing, under the following circumstances. Prior  
624 to petitioning the court for such relief, a person shall apply to  
625 the department to obtain a certificate of eligibility for a  
626 sealing of his criminal history record only if five years have  
627 passed without any subsequent arrests occurring since the date of  
628 the court order for the initial criminal history record  
629 expunction or sealing. All other provisions and requirements  
630 under this section apply when a person seeks a second sealing of  
631 his criminal history record.

632  
633 (Redesignate subsequent section.)

634  
635 ===== T I T L E A M E N D M E N T =====

636 And the title is amended as follows:

637 On line 11, after the semicolon  
638 insert:

639 creating s. 943.0561, F.S.; specifying legislative intent;  
640 provides that it is a first degree misdemeanor to

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641 disseminate certain criminal history records which have  
642 been sealed or expunged; providing a process to correct  
643 information on a criminal history record; provides  
644 immunity from civil liability; amending s. 943.0581, F.S.,  
645 permitting either the arresting agency or the agency where  
646 the warrant was issued to request an administrative  
647 expunction; amending s. 943.0585, F.S., requiring the  
648 Clerk of the Court to place information about the  
649 availability of criminal history sealing and expunction on  
650 his Internet web site, including a link to the Department  
651 of Law Enforcement's web pages related to such  
652 information; clarifying under what circumstances a person  
653 can legally deny an expunged criminal history record;  
654 authorizing disclosure of the contents of an expunged  
655 record upon receipt of a written, notarized request from  
656 the record subject; amending s. 943.059, F.S.; clarifying  
657 under what circumstances a person can legally deny a  
658 sealed criminal history record; providing that a person  
659 may petition the court to seek a second criminal history  
660 record sealing under certain circumstances;