

Bill No. SB 2152



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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: WD	.	
3/18/2008	.	
	.	
	.	

1 The Committee on Criminal Justice (Dockery) 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. Section 943.0561, Florida Statutes, is created
 8 to read:

9 943.0561 Unlawful dissemination of sealed or expunged
 10 criminal records by private sector third-party background
 11 screening companies.-

12 (1) The Legislature finds that issues of information
 13 quality in criminal history databases, whether commercial or
 14 state, require adequate privacy safeguards that provide
 15 individuals a meaningful opportunity to correct inaccurate or

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16 incomplete information before it has an adverse effect on an
17 employment or licensure opportunity. Providing a process for
18 appealing incorrect or incomplete records will enhance
19 individual protections for privacy and the fair use of the
20 information.

21 (2) It is unlawful for any person, business, corporation,
22 partnership, or other private entity to knowingly make
23 available, lend, donate, or sell any criminal history record
24 obtained from the Department of Law Enforcement or any local,
25 county, or state entity, which has been sealed or expunged or
26 otherwise made exempt from public dissemination pursuant to s.
27 943.059.

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

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

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

48 Section 2. Section 943.0581, Florida Statutes, is amended
49 to read:

50 943.0581 Administrative expunction.--

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

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

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

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70 state attorney or his or her designee of the judicial circuit in
71 which the arrest occurred.

72 (4) An application for administrative expunction shall
73 include ~~an affidavit executed by the chief of the law~~
74 ~~enforcement agency, sheriff, or department head of the state law~~
75 ~~enforcement agency in which the affiant verifies that he or she~~
76 ~~has reviewed the record of the arrest and that the arrest was~~
77 ~~contrary to law or was a mistake. The affidavit shall include~~
78 the date and time of the arrest, ~~the name of the arresting~~
79 ~~officer,~~ the name of the person arrested, ~~and~~ the crime or
80 crimes charged, and the offender based tracking system number.
81 The application shall be on the submitting agency's letterhead.

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

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

93 Section 3. Section 943.0585, Florida Statutes, is amended
94 to read:

95 943.0585 Court-ordered expunction of criminal history
96 records.--The courts of this state have jurisdiction over their
97 own procedures, including the maintenance, expunction, and

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98 correction of judicial records containing criminal history
99 information to the extent such procedures are not inconsistent
100 with the conditions, responsibilities, and duties established by
101 this section. Any court of competent jurisdiction may order a
102 criminal justice agency to expunge the criminal history record
103 of a minor or an adult who complies with the requirements of
104 this section. The court shall not order a criminal justice
105 agency to expunge a criminal history record until the person
106 seeking to expunge a criminal history record has applied for and
107 received a certificate of eligibility for expunction pursuant to
108 subsection (2). A criminal history record that relates to a
109 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
110 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
111 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
112 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
113 any violation specified as a predicate offense for registration
114 as a sexual predator pursuant to s. 775.21, without regard to
115 whether that offense alone is sufficient to require such
116 registration, or for registration as a sexual offender pursuant
117 to s. 943.0435, may not be expunged, without regard to whether
118 adjudication was withheld, if the defendant was found guilty of
119 or pled guilty or nolo contendere to the offense, or if the
120 defendant, as a minor, was found to have committed, or pled
121 guilty or nolo contendere to committing, the offense as a
122 delinquent act. The court may only order expunction of a
123 criminal history record pertaining to one arrest or one incident
124 of alleged criminal activity, except as provided in this
125 section. The court may, at its sole discretion, order the



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126 expunction of a criminal history record pertaining to more than
127 one arrest if the additional arrests directly relate to the
128 original arrest. If the court intends to order the expunction of
129 records pertaining to such additional arrests, such intent must
130 be specified in the order. A criminal justice agency may not
131 expunge any record pertaining to such additional arrests if the
132 order to expunge does not articulate the intention of the court
133 to expunge a record pertaining to more than one arrest. This
134 section does not prevent the court from ordering the expunction
135 of only a portion of a criminal history record pertaining to one
136 arrest or one incident of alleged criminal activity.

137 Notwithstanding any law to the contrary, a criminal justice
138 agency may comply with laws, court orders, and official requests
139 of other jurisdictions relating to expunction, correction, or
140 confidential handling of criminal history records or information
141 derived therefrom. This section does not confer any right to the
142 expunction of any criminal history record, and any request for
143 expunction of a criminal history record may be denied at the
144 sole discretion of the court.

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

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

150 (b) The petitioner's sworn statement attesting that the
151 petitioner:

152 1. Has never, prior to the date on which the petition is
153 filed, been adjudicated guilty of a criminal offense or

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154 comparable ordinance violation, or been adjudicated delinquent
155 for committing any felony or a misdemeanor specified in s.
156 943.051(3)(b).

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

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

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

171
172 Any person who knowingly provides false information on such
173 sworn statement to the court commits a felony of the third
174 degree, punishable as provided in s. 775.082, s. 775.083, or s.
175 775.084.

176 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to
177 petitioning the court to expunge a criminal history record, a
178 person seeking to expunge a criminal history record shall apply
179 to the department for a certificate of eligibility for
180 expunction. The department shall, by rule adopted pursuant to
181 chapter 120, establish procedures pertaining to the application



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182 for and issuance of certificates of eligibility for expunction.
183 A certificate of eligibility for expunction is valid for 12
184 months after the date stamped on the certificate when issued by
185 the department. After that time, the petitioner must reapply to
186 the department for a new certificate of eligibility. Eligibility
187 for a renewed certification of eligibility must be based on the
188 status of the applicant and the law in effect at the time of the
189 renewal application. The department shall issue a certificate of
190 eligibility for expunction to a person who is the subject of a
191 criminal history record if that person:

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

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

197 2. That an indictment, information, or other charging
198 document, if filed or issued in the case, was dismissed or nolle
199 prosequi by the state attorney or statewide prosecutor, or was
200 dismissed by a court of competent jurisdiction, and that none of
201 the charges related to the arrest or alleged criminal activity
202 to which the petition to expunge pertains resulted in a trial,
203 without regard to whether the outcome of the trial was other
204 than an adjudication of guilt.

205 3. That the criminal history record does not relate to a
206 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
207 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
208 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
209 893.135, s. 916.1075, a violation enumerated in s. 907.041, or

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210 any violation specified as a predicate offense for registration
211 as a sexual predator pursuant to s. 775.21, without regard to
212 whether that offense alone is sufficient to require such
213 registration, or for registration as a sexual offender pursuant
214 to s. 943.0435, where the defendant was found guilty of, or pled
215 guilty or nolo contendere to any such offense, or that the
216 defendant, as a minor, was found to have committed, or pled
217 guilty or nolo contendere to committing, such an offense as a
218 delinquent act, without regard to whether adjudication was
219 withheld.

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

223 (c) Has submitted to the department a certified copy of
224 the disposition of the charge to which the petition to expunge
225 pertains.

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

231 (e) Has not been adjudicated guilty of, or adjudicated
232 delinquent for committing, any of the acts stemming from the
233 arrest or alleged criminal activity to which the petition to
234 expunge pertains.

235 (f) Has never secured a prior sealing or expunction of a
236 criminal history record under this section, former s. 893.14,
237 former s. 901.33, or former s. 943.058, unless expunction is

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238 sought of a criminal history record previously sealed for 10
239 years pursuant to paragraph (h) and the record is otherwise
240 eligible for expunction.

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

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

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

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

262 (a) In judicial proceedings under this section, a copy of
263 the completed petition to expunge shall be served upon the
264 appropriate state attorney or the statewide prosecutor and upon
265 the arresting agency; however, it is not necessary to make any

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266 agency other than the state a party. The appropriate state
267 attorney or the statewide prosecutor and the arresting agency
268 may respond to the court regarding the completed petition to
269 expunge.

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

281 (c) For an order to expunge entered by a court prior to
282 July 1, 1992, the department shall notify the appropriate state
283 attorney or statewide prosecutor of an order to expunge which is
284 contrary to law because the person who is the subject of the
285 record has previously been convicted of a crime or comparable
286 ordinance violation or has had a prior criminal history record
287 sealed or expunged. Upon receipt of such notice, the appropriate
288 state attorney or statewide prosecutor shall take action, within
289 60 days, to correct the record and petition the court to void
290 the order to expunge. The department shall seal the record until
291 such time as the order is voided by the court.

292 (d) On or after July 1, 1992, the department or any other
293 criminal justice agency is not required to act on an order to

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294 expunge entered by a court when such order does not comply with
295 the requirements of this section. Upon receipt of such an order,
296 the department must notify the issuing court, the appropriate
297 state attorney or statewide prosecutor, the petitioner or the
298 petitioner's attorney, and the arresting agency of the reason
299 for noncompliance. The appropriate state attorney or statewide
300 prosecutor shall take action within 60 days to correct the
301 record and petition the court to void the order. No cause of
302 action, including contempt of court, shall arise against any
303 criminal justice agency for failure to comply with an order to
304 expunge when the petitioner for such order failed to obtain the
305 certificate of eligibility as required by this section or such
306 order does not otherwise comply with the requirements of this
307 section.

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



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

327 1. Is a candidate for employment with a criminal justice
328 agency;

329 2. Is a defendant in a criminal prosecution;

330 3. Concurrently or subsequently petitions for relief under
331 this section or s. 943.059;

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

333 5. Is seeking to be employed or licensed by or to contract
334 with the Department of Children and Family Services or the
335 Department of Juvenile Justice or to be employed or used by such
336 contractor or licensee in a sensitive position having direct
337 contact with children, the developmentally disabled, the aged,
338 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
339 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
340 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter
341 400, or chapter 429;

342 6. Is seeking to be employed or licensed by the Department
343 of Education, any district school board, any university
344 laboratory school, any charter school, any private or parochial
345 school, or any local governmental entity that licenses child
346 care facilities; or

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

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

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

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375 access authorization, or licensure decisions. Any person who
376 violates this paragraph commits a misdemeanor of the first
377 degree, punishable as provided in s. 775.082 or s. 775.083.

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

381 (5) STATUTORY REFERENCES.--Any reference to any other
382 chapter, section, or subdivision of the Florida Statutes in this
383 section constitutes a general reference under the doctrine of
384 incorporation by reference.

385 Section 4. Section 943.059, Florida Statutes, is amended
386 to read:

387 943.059 Court-ordered sealing of criminal history
388 records.--The courts of this state shall continue to have
389 jurisdiction over their own procedures, including the
390 maintenance, sealing, and correction of judicial records
391 containing criminal history information to the extent such
392 procedures are not inconsistent with the conditions,
393 responsibilities, and duties established by this section. Any
394 court of competent jurisdiction may order a criminal justice
395 agency to seal the criminal history record of a minor or an
396 adult who complies with the requirements of this section. The
397 court shall not order a criminal justice agency to seal a
398 criminal history record until the person seeking to seal a
399 criminal history record has applied for and received a
400 certificate of eligibility for sealing pursuant to subsection
401 (2). A criminal history record that relates to a violation of s.
402 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.

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403 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
404 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
405 916.1075, a violation enumerated in s. 907.041, or any violation
406 specified as a predicate offense for registration as a sexual
407 predator pursuant to s. 775.21, without regard to whether that
408 offense alone is sufficient to require such registration, or for
409 registration as a sexual offender pursuant to s. 943.0435, may
410 not be sealed, without regard to whether adjudication was
411 withheld, if the defendant was found guilty of or pled guilty or
412 nolo contendere to the offense, or if the defendant, as a minor,
413 was found to have committed or pled guilty or nolo contendere to
414 committing the offense as a delinquent act. The court may only
415 order sealing of a criminal history record pertaining to one
416 arrest or one incident of alleged criminal activity, except as
417 provided in this section. The court may, at its sole discretion,
418 order the sealing of a criminal history record pertaining to
419 more than one arrest if the additional arrests directly relate
420 to the original arrest. If the court intends to order the
421 sealing of records pertaining to such additional arrests, such
422 intent must be specified in the order. A criminal justice agency
423 may not seal any record pertaining to such additional arrests if
424 the order to seal does not articulate the intention of the court
425 to seal records pertaining to more than one arrest. This section
426 does not prevent the court from ordering the sealing of only a
427 portion of a criminal history record pertaining to one arrest or
428 one incident of alleged criminal activity. Notwithstanding any
429 law to the contrary, a criminal justice agency may comply with
430 laws, court orders, and official requests of other jurisdictions

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431 relating to sealing, correction, or confidential handling of
432 criminal history records or information derived therefrom. This
433 section does not confer any right to the sealing of any criminal
434 history record, and any request for sealing a criminal history
435 record may be denied at the sole discretion of the court.

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

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

441 (b) The petitioner's sworn statement attesting that the
442 petitioner:

443 1. Has never, prior to the date on which the petition is
444 filed, been adjudicated guilty of a criminal offense or
445 comparable ordinance violation, or been adjudicated delinquent
446 for committing any felony or a misdemeanor specified in s.
447 943.051(3)(b).

448 2. Has not been adjudicated guilty of or adjudicated
449 delinquent for committing any of the acts stemming from the
450 arrest or alleged criminal activity to which the petition to
451 seal pertains.

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

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

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460 Any person who knowingly provides false information on such
461 sworn statement to the court commits a felony of the third
462 degree, punishable as provided in s. 775.082, s. 775.083, or s.
463 775.084.

464 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
465 petitioning the court to seal a criminal history record, a
466 person seeking to seal a criminal history record shall apply to
467 the department for a certificate of eligibility for sealing. The
468 department shall, by rule adopted pursuant to chapter 120,
469 establish procedures pertaining to the application for and
470 issuance of certificates of eligibility for sealing. A
471 certificate of eligibility for sealing is valid for 12 months
472 after the date stamped on the certificate when issued by the
473 department. After that time, the petitioner must reapply to the
474 department for a new certificate of eligibility. Eligibility for
475 a renewed certification of eligibility must be based on the
476 status of the applicant and the law in effect at the time of the
477 renewal application. The department shall issue a certificate of
478 eligibility for sealing to a person who is the subject of a
479 criminal history record provided that such person:

480 (a) Has submitted to the department a certified copy of
481 the disposition of the charge to which the petition to seal
482 pertains.

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



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

491 (d) Has not been adjudicated guilty of or adjudicated
492 delinquent for committing any of the acts stemming from the
493 arrest or alleged criminal activity to which the petition to
494 seal pertains.

495 (e) Has never secured a prior sealing, except as provided
496 in subsection (6), or expunction of a criminal history record
497 under this section, former s. 893.14, former s. 901.33, or
498 former s. 943.058.

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

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

503 (a) In judicial proceedings under this section, a copy of
504 the completed petition to seal shall be served upon the
505 appropriate state attorney or the statewide prosecutor and upon
506 the arresting agency; however, it is not necessary to make any
507 agency other than the state a party. The appropriate state
508 attorney or the statewide prosecutor and the arresting agency
509 may respond to the court regarding the completed petition to
510 seal.

511 (b) If relief is granted by the court, the clerk of the
512 court shall certify copies of the order to the appropriate state
513 attorney or the statewide prosecutor and to the arresting



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514 agency. The arresting agency is responsible for forwarding the
515 order to any other agency to which the arresting agency
516 disseminated the criminal history record information to which
517 the order pertains. The department shall forward the order to
518 seal to the Federal Bureau of Investigation. The clerk of the
519 court shall certify a copy of the order to any other agency
520 which the records of the court reflect has received the criminal
521 history record from the court.

522 (c) For an order to seal entered by a court prior to July
523 1, 1992, the department shall notify the appropriate state
524 attorney or statewide prosecutor of any order to seal which is
525 contrary to law because the person who is the subject of the
526 record has previously been convicted of a crime or comparable
527 ordinance violation or has had a prior criminal history record
528 sealed, except as provided in subsection (6), or expunged. Upon
529 receipt of such notice, the appropriate state attorney or
530 statewide prosecutor shall take action, within 60 days, to
531 correct the record and petition the court to void the order to
532 seal. The department shall seal the record until such time as
533 the order is voided by the court.

534 (d) On or after July 1, 1992, the department or any other
535 criminal justice agency is not required to act on an order to
536 seal entered by a court when such order does not comply with the
537 requirements of this section. Upon receipt of such an order, the
538 department must notify the issuing court, the appropriate state
539 attorney or statewide prosecutor, the petitioner or the
540 petitioner's attorney, and the arresting agency of the reason
541 for noncompliance. The appropriate state attorney or statewide



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542 prosecutor shall take action within 60 days to correct the
543 record and petition the court to void the order. No cause of
544 action, including contempt of court, shall arise against any
545 criminal justice agency for failure to comply with an order to
546 seal when the petitioner for such order failed to obtain the
547 certificate of eligibility as required by this section or when
548 such order does not comply with the requirements of this
549 section.

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

554 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal
555 history record of a minor or an adult which is ordered sealed by
556 a court of competent jurisdiction pursuant to this section is
557 confidential and exempt from the provisions of s. 119.07(1) and
558 s. 24(a), Art. I of the State Constitution and is available only
559 to the person who is the subject of the record, to the subject's
560 attorney, to criminal justice agencies for their respective
561 criminal justice purposes, which include conducting a criminal
562 history background check for approval of firearms purchases or
563 transfers as authorized by state or federal law, or to those
564 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8.
565 for their respective licensing, access authorization, and
566 employment purposes.

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

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570 deny or fail to acknowledge the arrests and subsequent
571 dispositions covered by the sealed record, except when the
572 subject of the record:

573 1. Is a candidate for employment with a criminal justice
574 agency;

575 2. Is a defendant in a criminal prosecution;

576 3. Concurrently or subsequently petitions for relief under
577 this section or s. 943.0585;

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

579 5. Is seeking to be employed or licensed by or to contract
580 with the Department of Children and Family Services or the
581 Department of Juvenile Justice or to be employed or used by such
582 contractor or licensee in a sensitive position having direct
583 contact with children, the developmentally disabled, the aged,
584 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
585 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
586 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.
587 985.644, chapter 400, or chapter 429;

588 6. Is seeking to be employed or licensed by the Department
589 of Education, any district school board, any university
590 laboratory school, any charter school, any private or parochial
591 school, or any local governmental entity that licenses child
592 care facilities;

593 7. Is attempting to purchase a firearm from a licensed
594 importer, licensed manufacturer, or licensed dealer and is
595 subject to a criminal history background check under state or
596 federal law; or

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

600 (b) Subject to the exceptions in paragraph (a), a person
601 who has been granted a sealing under this section, former s.
602 893.14, former s. 901.33, or former s. 943.058 may not be held
603 under any provision of law of this state to commit perjury or to
604 be otherwise liable for giving a false statement by reason of
605 such person's failure to recite or acknowledge a sealed criminal
606 history record, including when asked on an employment
607 application.

608 (c) Information relating to the existence of a sealed
609 criminal record provided in accordance with the provisions of
610 paragraph (a) is confidential and exempt from the provisions of
611 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
612 except that the department shall disclose the sealed criminal
613 history record to the entities set forth in subparagraphs (a)1.,
614 4., 5., 6., and 8. for their respective licensing, access
615 authorization, and employment purposes. It is unlawful for any
616 employee of an entity set forth in subparagraph (a)1.,
617 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
618 subparagraph (a)8. to disclose information relating to the
619 existence of a sealed criminal history record of a person
620 seeking employment, access authorization, or licensure with such
621 entity or contractor, except to the person to whom the criminal
622 history record relates or to persons having direct
623 responsibility for employment, access authorization, or
624 licensure decisions. Any person who violates the provisions of



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625 this paragraph commits a misdemeanor of the first degree,
 626 punishable as provided in s. 775.082 or s. 775.083.

627 (5) STATUTORY REFERENCES.--Any reference to any other
 628 chapter, section, or subdivision of the Florida Statutes in this
 629 section constitutes a general reference under the doctrine of
 630 incorporation by reference.

631 (6) A person may petition the court to seek a sealing of his
 632 criminal history record, after having secured one previous
 633 expunction or sealing, under the following circumstances. Prior
 634 to petitioning the court for such relief, a person shall apply
 635 to the department to obtain a certificate of eligibility for a
 636 sealing of his criminal history record only if five years have
 637 passed without any subsequent arrests occurring since the date
 638 of the court order for the initial criminal history record
 639 expunction or sealing. All other provisions and requirements
 640 under this section apply when a person seeks a second sealing of
 641 his criminal history record.

642 Section 5. This act shall take effect July 1, 2008.

643
 644 ===== T I T L E A M E N D M E N T =====

645 And the title is amended as follows:

646 Delete everything before the enacting clause
 647 and insert:

648 A bill to be entitled
 649 An act relating to criminal history records; creating s.
 650 943.0561, F.S.; specifying legislative intent; provides
 651 that it is a first degree misdemeanor to disseminate
 652 certain criminal history records which have been sealed or

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653 expunged; providing a process to correct information on a
654 criminal history record; provides immunity from civil
655 liability; amending s. 943.0581, F.S., permitting either
656 the arresting agency or the agency where the warrant was
657 issued to request an administrative expunction; amending
658 s. 943.0585, F.S., requiring the Clerk of the Court to
659 place information about the availability of criminal
660 history sealing and expunction on his Internet web site,
661 including a link to the Department of Law Enforcement's
662 web pages related to such information; clarifying under
663 what circumstances a person can legally deny an expunged
664 criminal history record; authorizing disclosure of the
665 contents of an expunged record upon receipt of a written,
666 notarized request from the record subject; amending s.
667 943.059, F.S.; clarifying under what circumstances a
668 person can legally deny a sealed criminal history record;
669 providing that a person may petition the court to seek a
670 second criminal history record sealing under certain
671 circumstances; providing an effective date.