

By the Committees on Criminal Justice; Criminal Justice

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1 A bill to be entitled

2 An act relating to criminal justice; providing legislative  
3 intent; requiring state agencies and regulatory boards to  
4 submit to legislative officers and committees a report  
5 that states current restrictions on the employment of ex-  
6 offenders and possible alternatives that are compatible  
7 with protecting the public safety; requiring that such a  
8 report be submitted biennially; amending s. 112.011, F.S.;  
9 providing that a person may not be disqualified from  
10 receiving a license, permit, or certificate or from  
11 obtaining public employment on the grounds that the  
12 person's civil rights have not been restored; providing  
13 that a person is not required to secure the restoration of  
14 his or her civil rights or prove that his or her civil  
15 rights have been restored in order to receive a license,  
16 permit, or certificate or to obtain public employment;  
17 amending s. 760.10, F.S.; prohibiting an employer from  
18 requesting, making, or keeping certain criminal history  
19 records; prohibiting the criminal prosecution for perjury  
20 in certain circumstances; amending s. 943.0581, F.S.;  
21 authorizing the arresting agency or the agency where the  
22 warrant was issued to request an administrative  
23 expunction; amending s. 943.0585, F.S.; requiring the  
24 clerk of the court to place information about the  
25 availability of criminal history sealing and expunction on  
26 the court's Internet website and provide a link to the  
27 Department of Law Enforcement's website related to such  
28 information; clarifying under what circumstances a person  
29 may legally deny an expunged criminal history record;

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30 authorizing disclosure of the contents of an expunged  
31 record upon receipt of a written, notarized request from  
32 the record subject; amending s. 943.059, F.S.; clarifying  
33 under what circumstances a person may legally deny a  
34 sealed criminal history record; authorizing a person to  
35 petition the court to seek a second criminal history  
36 record sealing under certain circumstances; requiring the  
37 Office of Program Policy Analysis and Government  
38 Accountability to conduct a study; specifying the research  
39 questions for the study; requiring a report to be  
40 submitted to the Legislature; providing an effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Restrictions on the employment of ex-offenders;  
45 legislative intent; state agency reporting requirements.--

46 (1) The Legislature declares that it is the policy of this  
47 state to provide to prospective employees a clear statement of  
48 which crimes would disqualify ex-offenders from which  
49 occupations. It is the intent of the Legislature to make  
50 opportunities for employment available to ex-offenders so that  
51 they will be less likely to revert to criminal behavior, insofar  
52 as the employment of such persons does not detract from the  
53 safety of the public. The Legislature further declares that state  
54 agencies should clearly state all restrictions imposed by the  
55 agencies or by boards that regulate professions and occupations  
56 on employment and should make an effort to establish that each  
57 such restriction is as limited as possible while continuing to  
58 support the goal of public safety.

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59       (2) Each state agency, including, but not limited to,  
60 professional and occupational regulatory boards, shall, by  
61 December 31, 2008, submit to the President of the Senate, the  
62 Speaker of the House of Representatives, and the chairs of the  
63 appropriate legislative committees a report that includes:

64       (a) A list of all laws, rules, policies, and practices  
65 followed by the agency or imposed by the board which disqualify  
66 from employment persons who have been convicted of a crime and  
67 have completed any incarceration and restitution to which they  
68 have been sentenced for such a crime.

69       (b) The conclusions resulting from a review of these laws,  
70 rules, policies, and practices which the agency has conducted,  
71 including, for each such law, rule, policy, and practice,  
72 documentation of whether it is clearly stated in writing and is  
73 readily available to prospective employees, and a statement of  
74 any less restrictive way to protect the safety of the public  
75 while simultaneously providing employment opportunities for ex-  
76 offenders.

77       (c) If the restriction is based on a standard of good moral  
78 character, crimes or acts of moral turpitude, or crimes related  
79 to a specific occupation, proposed alternative wording of laws,  
80 rules, and policies which more precisely describes the basis for  
81 denial of employment.

82       (d) Proposed ways of removing barriers to the employment of  
83 ex-offenders which are not mandated by statute.

84       (e) Proposed statutory amendments that would reduce  
85 barriers to employment, render the remaining barriers optimally  
86 consistent among jobs that have very similar characteristics and  
87 require nearly identical degrees of trustworthiness and

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88 responsibility, and improve the clarity of requirements  
89 applicable to an ex-offender who seeks employment with a state  
90 agency or in an occupation regulated by a state board.

91 (3) Beginning in 2011, each state agency shall submit a  
92 report in accordance with subsection (2) biennially by December  
93 31 of each odd-numbered year.

94 Section 2. Section 112.011, Florida Statutes, is amended to  
95 read:

96 112.011 Disqualification for licensing and public  
97 employment based on criminal conviction ~~Felons; removal of~~  
98 ~~disqualifications for employment, exceptions.--~~

99 (1) (a) Except as provided in s. 775.16, a person may ~~shall~~  
100 not be disqualified from employment by the state, any of its  
101 agencies or political subdivisions, or any municipality solely  
102 because of a prior conviction for a crime. However, a person may  
103 be denied employment by the state, any of its agencies or  
104 political subdivisions, or any municipality by reason of the  
105 prior conviction for a crime if the crime was a felony or first  
106 degree misdemeanor and directly related to the position of  
107 employment sought.

108 (b) Except as provided in s. 775.16, a person ~~whose civil~~  
109 ~~rights have been restored shall not be disqualified to practice,~~  
110 ~~pursue, or engage in any occupation, trade, vocation, profession,~~  
111 ~~or business for which a license, permit, or certificate is~~  
112 ~~required to be issued by the state, any of its agencies or~~  
113 ~~political subdivisions, or any municipality solely because of a~~  
114 ~~prior conviction for a crime. However, a person whose civil~~  
115 ~~rights have been restored may be denied a license, permit, or~~  
116 certification to pursue, practice, or engage in an occupation,

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117 trade, vocation, profession, or business by reason of the prior  
118 conviction for a crime if the crime was a felony or first degree  
119 misdemeanor and directly related to the specific occupation,  
120 trade, vocation, profession, or business for which the license,  
121 permit, or certificate is sought.

122 (c) Notwithstanding any law to the contrary, a person may  
123 not be disqualified from receiving a license, permit, or  
124 certificate or from obtaining public employment on the grounds  
125 that a person's civil rights have not been restored. A person is  
126 not required to secure the restoration of his or her civil rights  
127 or prove that his or her civil rights have been restored in order  
128 to receive a license, permit, or certificate or to obtain public  
129 employment.

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

132 (b) This section does ~~shall~~ not apply ~~be applicable~~ to the  
133 employment practices of any fire department relating to the  
134 hiring of firefighters. An applicant for employment with any fire  
135 department who has ~~with~~ a prior felony conviction shall be  
136 excluded from employment for a period of 4 years after expiration  
137 of sentence or final release by the Parole Commission unless the  
138 applicant, prior to the expiration of the 4-year period, has  
139 received a full pardon or has had his or her civil rights  
140 restored.

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

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

148 Section 3. Subsection (1) of section 760.10, Florida  
149 Statutes, is amended to read:

150 760.10 Unlawful employment practices.--

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

152 (a) To discharge or to fail or refuse to hire any  
153 individual, or otherwise to discriminate against any individual  
154 with respect to compensation, terms, conditions, or privileges of  
155 employment, because of such individual's race, color, religion,  
156 sex, national origin, age, handicap, or marital status.

157 (b) To limit, segregate, or classify employees or  
158 applicants for employment in any way which would deprive or tend  
159 to deprive any individual of employment opportunities, or  
160 adversely affect any individual's status as an employee, because  
161 of such individual's race, color, religion, sex, national origin,  
162 age, handicap, or marital status.

163 (c) On and after July 1, 2009, with regard to an  
164 application for employment, to request any information, to make  
165 or keep a record of such information, to use any form of  
166 application or application blank that requests such information,  
167 or to exclude, limit, or otherwise discriminate against any  
168 person by reason of his or her failure to furnish such  
169 information through a written application or oral inquiry or  
170 otherwise regarding:

171 1. An arrest, detention, or disposition regarding any  
172 violation of law in which no conviction resulted;

173 2. A first and only conviction for any misdemeanor of the

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174 second degree; or

175 3. Any conviction of a misdemeanor if the date of such  
176 conviction or the completion of any period of incarceration  
177 resulting therefrom, whichever date is later, occurred 5 or more  
178 years prior to the date of such application for employment or  
179 such request for information, unless such person has been  
180 convicted of any offense within 5 years immediately preceding the  
181 date of such application for employment or such request for  
182 information.

183  
184 No applicant for employment shall be held under any provision of  
185 any law to be guilty of perjury or of otherwise giving a false  
186 statement by reason of his or her failure to recite or  
187 acknowledge such information as he or she has a right to withhold  
188 under this paragraph.

189 Section 4. Section 943.0581, Florida Statutes, is amended  
190 to read:

191 943.0581 Administrative expunction.--

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

197 (2) A law enforcement agency shall apply to the department  
198 in the manner prescribed by rule for the administrative  
199 expunction of any nonjudicial record of any arrest of a minor or  
200 an adult who is subsequently determined by the agency, at its  
201 discretion, or by the final order of a court of competent  
202 jurisdiction, to have been arrested contrary to law or by

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203 mistake.

204 (3) An adult or, in the case of a minor child, the parent  
205 or legal guardian of the minor child, may apply to the department  
206 in the manner prescribed by rule for the administrative  
207 expunction of any nonjudicial record of an arrest alleged to have  
208 been made contrary to law or by mistake, provided that the  
209 application is supported by the endorsement of the head of the  
210 arresting agency or his or her designee or the state attorney or  
211 his or her designee of the judicial circuit in which the arrest  
212 occurred.

213 (4) An application for administrative expunction shall  
214 include ~~an affidavit executed by the chief of the law enforcement~~  
215 ~~agency, sheriff, or department head of the state law enforcement~~  
216 ~~agency in which the affiant verifies that he or she has reviewed~~  
217 ~~the record of the arrest and that the arrest was contrary to law~~  
218 ~~or was a mistake. The affidavit shall include the date and time~~  
219 ~~of the arrest, the name of the arresting officer,~~ the name of the  
220 person arrested, and the crime or crimes charged, and the  
221 offender based tracking system number. The application shall be  
222 on the submitting agency's letterhead and signed by the head of  
223 the submitting agency or his or her designee.

224 (5) In the case of a person arrested on a warrant, capias,  
225 or pick-up order, the request for an administrative expunction  
226 may be made by the sheriff or his or her designee of the county  
227 where the warrant, capias, or pick-up order was issued or by the  
228 state attorney or his or her designee of the judicial circuit  
229 where the warrant, capias, or pick-up order was issued.

230 (6)~~(5)~~ No application or, endorsement, ~~or affidavit~~ made  
231 under this section shall be admissible as evidence in any



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232 | judicial or administrative proceeding or otherwise be construed  
233 | in any way as an admission of liability in connection with an  
234 | arrest.

235 |       Section 5. Section 943.0585, Florida Statutes, is amended  
236 | to read:

237 |       943.0585 Court-ordered expunction of criminal history  
238 | records.--The courts of this state have jurisdiction over their  
239 | own procedures, including the maintenance, expunction, and  
240 | correction of judicial records containing criminal history  
241 | information to the extent such procedures are not inconsistent  
242 | with the conditions, responsibilities, and duties established by  
243 | this section. Any court of competent jurisdiction may order a  
244 | criminal justice agency to expunge the criminal history record of  
245 | a minor or an adult who complies with the requirements of this  
246 | section. The court shall not order a criminal justice agency to  
247 | expunge a criminal history record until the person seeking to  
248 | expunge a criminal history record has applied for and received a  
249 | certificate of eligibility for expunction pursuant to subsection  
250 | (2). A criminal history record that relates to a violation of s.  
251 | 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
252 | 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
253 | 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
254 | 916.1075, a violation enumerated in s. 907.041, or any violation  
255 | specified as a predicate offense for registration as a sexual  
256 | predator pursuant to s. 775.21, without regard to whether that  
257 | offense alone is sufficient to require such registration, or for  
258 | registration as a sexual offender pursuant to s. 943.0435, may  
259 | not be expunged, without regard to whether adjudication was  
260 | withheld, if the defendant was found guilty of or pled guilty or

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261 nolo contendere to the offense, or if the defendant, as a minor,  
262 was found to have committed, or pled guilty or nolo contendere to  
263 committing, the offense as a delinquent act. The court may only  
264 order expunction of a criminal history record pertaining to one  
265 arrest or one incident of alleged criminal activity, except as  
266 provided in this section. The court may, at its sole discretion,  
267 order the expunction of a criminal history record pertaining to  
268 more than one arrest if the additional arrests directly relate to  
269 the original arrest. If the court intends to order the expunction  
270 of records pertaining to such additional arrests, such intent  
271 must be specified in the order. A criminal justice agency may not  
272 expunge any record pertaining to such additional arrests if the  
273 order to expunge does not articulate the intention of the court  
274 to expunge a record pertaining to more than one arrest. This  
275 section does not prevent the court from ordering the expunction  
276 of only a portion of a criminal history record pertaining to one  
277 arrest or one incident of alleged criminal activity.  
278 Notwithstanding any law to the contrary, a criminal justice  
279 agency may comply with laws, court orders, and official requests  
280 of other jurisdictions relating to expunction, correction, or  
281 confidential handling of criminal history records or information  
282 derived therefrom. This section does not confer any right to the  
283 expunction of any criminal history record, and any request for  
284 expunction of a criminal history record may be denied at the sole  
285 discretion of the court.

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

289 (a) A valid certificate of eligibility for expunction

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290 issued by the department pursuant to subsection (2).

291 (b) The petitioner's sworn statement attesting that the  
292 petitioner:

293 1. Has never, prior to the date on which the petition is  
294 filed, been adjudicated guilty of a criminal offense or  
295 comparable ordinance violation, or been adjudicated delinquent  
296 for committing any felony or a misdemeanor specified in s.  
297 943.051(3)(b).

298 2. Has not been adjudicated guilty of, or adjudicated  
299 delinquent for committing, any of the acts stemming from the  
300 arrest or alleged criminal activity to which the petition  
301 pertains.

302 3. Has never secured a prior sealing or expunction of a  
303 criminal history record under this section, former s. 893.14,  
304 former s. 901.33, or former s. 943.058, or from any jurisdiction  
305 outside the state, unless expunction is sought of a criminal  
306 history record previously sealed for 10 years pursuant to  
307 paragraph (2)(h) and the record is otherwise eligible for  
308 expunction.

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

312  
313 Any person who knowingly provides false information on such sworn  
314 statement to the court commits a felony of the third degree,  
315 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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319 | to the department for a certificate of eligibility for  
320 | expunction. The department shall, by rule adopted pursuant to  
321 | chapter 120, establish procedures pertaining to the application  
322 | for and issuance of certificates of eligibility for expunction. A  
323 | certificate of eligibility for expunction is valid for 12 months  
324 | after the date stamped on the certificate when issued by the  
325 | department. After that time, the petitioner must reapply to the  
326 | department for a new certificate of eligibility. Eligibility for  
327 | a renewed certification of eligibility must be based on the  
328 | status of the applicant and the law in effect at the time of the  
329 | renewal application. The department shall issue a certificate of  
330 | eligibility for expunction to a person who is the subject of a  
331 | criminal history record if that person:

332 |       (a) Has obtained, and submitted to the department, a  
333 | written, certified statement from the appropriate state attorney  
334 | or statewide prosecutor which indicates:

335 |           1. That an indictment, information, or other charging  
336 | document was not filed or issued in the case.

337 |           2. That an indictment, information, or other charging  
338 | document, if filed or issued in the case, was dismissed or nolle  
339 | prosequi by the state attorney or statewide prosecutor, or was  
340 | dismissed by a court of competent jurisdiction, and that none of  
341 | the charges related to the arrest or alleged criminal activity to  
342 | which the petition to expunge pertains resulted in a trial,  
343 | without regard to whether the outcome of the trial was other than  
344 | an adjudication of guilt.

345 |           3. That the criminal history record does not relate to a  
346 | violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s.  
347 | 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.

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348 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
349 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
350 any violation specified as a predicate offense for registration  
351 as a sexual predator pursuant to s. 775.21, without regard to  
352 whether that offense alone is sufficient to require such  
353 registration, or for registration as a sexual offender pursuant  
354 to s. 943.0435, where the defendant was found guilty of, or pled  
355 guilty or nolo contendere to any such offense, or that the  
356 defendant, as a minor, was found to have committed, or pled  
357 guilty or nolo contendere to committing, such an offense as a  
358 delinquent act, without regard to whether adjudication was  
359 withheld.

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

363 (c) Has submitted to the department a certified copy of the  
364 disposition of the charge to which the petition to expunge  
365 pertains.

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

371 (e) Has not been adjudicated guilty of, or adjudicated  
372 delinquent for committing, any of the acts stemming from the  
373 arrest or alleged criminal activity to which the petition to  
374 expunge pertains.

375 (f) Has never secured a prior sealing or expunction of a  
376 criminal history record under this section, former s. 893.14,

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377 former s. 901.33, or former s. 943.058, unless expunction is  
378 sought of a criminal history record previously sealed for 10  
379 years pursuant to paragraph (h) and the record is otherwise  
380 eligible for expunction.

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

384 (h) Has previously obtained a court order sealing the  
385 record under this section, former s. 893.14, former s. 901.33, or  
386 former s. 943.058 for a minimum of 10 years because adjudication  
387 was withheld or because all charges related to the arrest or  
388 alleged criminal activity to which the petition to expunge  
389 pertains were not dismissed prior to trial, without regard to  
390 whether the outcome of the trial was other than an adjudication  
391 of guilt. The requirement for the record to have previously been  
392 sealed for a minimum of 10 years does not apply when a plea was  
393 not entered or all charges related to the arrest or alleged  
394 criminal activity to which the petition to expunge pertains were  
395 dismissed prior to trial.

396  
397 Each clerk of court shall place information on his or her  
398 Internet website about the availability of criminal history  
399 sealing and expunction. This information shall include a link to  
400 the department's website for information and applications for  
401 sealing and expunging a criminal history record.

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

403 (a) In judicial proceedings under this section, a copy of  
404 the completed petition to expunge shall be served upon the  
405 appropriate state attorney or the statewide prosecutor and upon

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406 the arresting agency; however, it is not necessary to make any  
407 agency other than the state a party. The appropriate state  
408 attorney or the statewide prosecutor and the arresting agency may  
409 respond to the court regarding the completed petition to expunge.

410 (b) If relief is granted by the court, the clerk of the  
411 court shall certify copies of the order to the appropriate state  
412 attorney or the statewide prosecutor and the arresting agency.  
413 The arresting agency is responsible for forwarding the order to  
414 any other agency to which the arresting agency disseminated the  
415 criminal history record information to which the order pertains.  
416 The department shall forward the order to expunge to the Federal  
417 Bureau of Investigation. The clerk of the court shall certify a  
418 copy of the order to any other agency which the records of the  
419 court reflect has received the criminal history record from the  
420 court.

421 (c) For an order to expunge entered by a court prior to  
422 July 1, 1992, the department shall notify the appropriate state  
423 attorney or statewide prosecutor of an order to expunge which is  
424 contrary to law because the person who is the subject of the  
425 record has previously been convicted of a crime or comparable  
426 ordinance violation or has had a prior criminal history record  
427 sealed or expunged. Upon receipt of such notice, the appropriate  
428 state attorney or statewide prosecutor shall take action, within  
429 60 days, to correct the record and petition the court to void the  
430 order to expunge. The department shall seal the record until such  
431 time as the order is voided by the court.

432 (d) On or after July 1, 1992, the department or any other  
433 criminal justice agency is not required to act on an order to  
434 expunge entered by a court when such order does not comply with

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435 the requirements of this section. Upon receipt of such an order,  
436 the department must notify the issuing court, the appropriate  
437 state attorney or statewide prosecutor, the petitioner or the  
438 petitioner's attorney, and the arresting agency of the reason for  
439 noncompliance. The appropriate state attorney or statewide  
440 prosecutor shall take action within 60 days to correct the record  
441 and petition the court to void the order. No cause of action,  
442 including contempt of court, shall arise against any criminal  
443 justice agency for failure to comply with an order to expunge  
444 when the petitioner for such order failed to obtain the  
445 certificate of eligibility as required by this section or such  
446 order does not otherwise comply with the requirements of this  
447 section.

448 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
449 criminal history record of a minor or an adult which is ordered  
450 expunged by a court of competent jurisdiction pursuant to this  
451 section must be physically destroyed or obliterated by any  
452 criminal justice agency having custody of such record; except  
453 that any criminal history record in the custody of the department  
454 must be retained in all cases. A criminal history record ordered  
455 expunged that is retained by the department is confidential and  
456 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
457 of the State Constitution and not available to any person or  
458 entity except upon order of a court of competent jurisdiction. A  
459 criminal justice agency may retain a notation indicating  
460 compliance with an order to expunge.

461 (a) The person who is the subject of a criminal history  
462 record that is expunged under this section or under other  
463 provisions of law, including former s. 893.14, former s. 901.33,



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464 and former s. 943.058, may lawfully deny or fail to acknowledge  
465 the arrests and subsequent dispositions covered by the expunged  
466 record, except when the subject of the record:

467 1. Is a candidate for employment with a criminal justice  
468 agency;

469 2. Is a defendant in a criminal prosecution;

470 3. Concurrently or subsequently petitions for relief under  
471 this section or s. 943.059;

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

473 5. Is seeking to be employed or licensed by or to contract  
474 with the Department of Children and Family Services or the  
475 Department of Juvenile Justice or to be employed or used by such  
476 contractor or licensee in a sensitive position having direct  
477 contact with children, the developmentally disabled, the aged, or  
478 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
479 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
480 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter  
481 400, or chapter 429;

482 6. Is seeking to be employed or licensed by the Department  
483 of Education, any district school board, any university  
484 laboratory school, any charter school, any private or parochial  
485 school, or any local governmental entity that licenses child care  
486 facilities; or

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

490 (b) Subject to the exceptions in paragraph (a), a person  
491 who has been granted an expunction under this section, former s.  
492 893.14, former s. 901.33, or former s. 943.058 may not be held

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493 | under any provision of law of this state to commit perjury or to  
494 | be otherwise liable for giving a false statement by reason of  
495 | such person's failure to recite or acknowledge an expunged  
496 | criminal history record, including when asked on an employment  
497 | application.

498 |       (c) Information relating to the existence of an expunged  
499 | criminal history record which is provided in accordance with  
500 | paragraph (a) is confidential and exempt from the provisions of  
501 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
502 | except that the department shall disclose the existence of a  
503 | criminal history record ordered expunged to the entities set  
504 | forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
505 | respective licensing, access authorization, and employment  
506 | purposes, and to criminal justice agencies for their respective  
507 | criminal justice purposes. It is unlawful for any employee of an  
508 | entity set forth in subparagraph (a)1., subparagraph (a)4.,  
509 | subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to  
510 | disclose information relating to the existence of an expunged  
511 | criminal history record of a person seeking employment, access  
512 | authorization, or licensure with such entity or contractor,  
513 | except to the person to whom the criminal history record relates  
514 | or to persons having direct responsibility for employment, access  
515 | authorization, or licensure decisions. Any person who violates  
516 | this paragraph commits a misdemeanor of the first degree,  
517 | punishable as provided in s. 775.082 or s. 775.083.

518 |       (d) The contents of an expunged record may be disclosed by  
519 | the department upon the receipt of the written, notarized request  
520 | from the subject of the record.

521 |       (5) STATUTORY REFERENCES.--Any reference to any other

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522 chapter, section, or subdivision of the Florida Statutes in this  
523 section constitutes a general reference under the doctrine of  
524 incorporation by reference.

525 Section 6. Section 943.059, Florida Statutes, is amended to  
526 read:

527 943.059 Court-ordered sealing of criminal history  
528 records.--The courts of this state shall continue to have  
529 jurisdiction over their own procedures, including the  
530 maintenance, sealing, and correction of judicial records  
531 containing criminal history information to the extent such  
532 procedures are not inconsistent with the conditions,  
533 responsibilities, and duties established by this section. Any  
534 court of competent jurisdiction may order a criminal justice  
535 agency to seal the criminal history record of a minor or an adult  
536 who complies with the requirements of this section. The court  
537 shall not order a criminal justice agency to seal a criminal  
538 history record until the person seeking to seal a criminal  
539 history record has applied for and received a certificate of  
540 eligibility for sealing pursuant to subsection (2). A criminal  
541 history record that relates to a violation of s. 393.135, s.  
542 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
543 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.  
544 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a  
545 violation enumerated in s. 907.041, or any violation specified as  
546 a predicate offense for registration as a sexual predator  
547 pursuant to s. 775.21, without regard to whether that offense  
548 alone is sufficient to require such registration, or for  
549 registration as a sexual offender pursuant to s. 943.0435, may  
550 not be sealed, without regard to whether adjudication was

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551 withheld, if the defendant was found guilty of or pled guilty or  
552 nolo contendere to the offense, or if the defendant, as a minor,  
553 was found to have committed or pled guilty or nolo contendere to  
554 committing the offense as a delinquent act. The court may only  
555 order sealing of a criminal history record pertaining to one  
556 arrest or one incident of alleged criminal activity, except as  
557 provided in this section. The court may, at its sole discretion,  
558 order the sealing of a criminal history record pertaining to more  
559 than one arrest if the additional arrests directly relate to the  
560 original arrest. If the court intends to order the sealing of  
561 records pertaining to such additional arrests, such intent must  
562 be specified in the order. A criminal justice agency may not seal  
563 any record pertaining to such additional arrests if the order to  
564 seal does not articulate the intention of the court to seal  
565 records pertaining to more than one arrest. This section does not  
566 prevent the court from ordering the sealing of only a portion of  
567 a criminal history record pertaining to one arrest or one  
568 incident of alleged criminal activity. Notwithstanding any law to  
569 the contrary, a criminal justice agency may comply with laws,  
570 court orders, and official requests of other jurisdictions  
571 relating to sealing, correction, or confidential handling of  
572 criminal history records or information derived therefrom. This  
573 section does not confer any right to the sealing of any criminal  
574 history record, and any request for sealing a criminal history  
575 record may be denied at the sole discretion of the court.

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

579 (a) A valid certificate of eligibility for sealing issued

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580 | by the department pursuant to subsection (2).

581 |       (b) The petitioner's sworn statement attesting that the  
582 | petitioner:

583 |       1. Has never, prior to the date on which the petition is  
584 | filed, been adjudicated guilty of a criminal offense or  
585 | comparable ordinance violation, or been adjudicated delinquent  
586 | for committing any felony or a misdemeanor specified in s.  
587 | 943.051(3)(b).

588 |       2. Has not been adjudicated guilty of or adjudicated  
589 | delinquent for committing any of the acts stemming from the  
590 | arrest or alleged criminal activity to which the petition to seal  
591 | pertains.

592 |       3. Has never secured a prior sealing, except as provided in  
593 | subsection (6), or expunction of a criminal history record under  
594 | this section, former s. 893.14, former s. 901.33, former s.  
595 | 943.058, or from any jurisdiction outside the state.

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

599 |  
600 | Any person who knowingly provides false information on such sworn  
601 | statement to the court commits a felony of the third degree,  
602 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

603 |       (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
604 | petitioning the court to seal a criminal history record, a person  
605 | seeking to seal a criminal history record shall apply to the  
606 | department for a certificate of eligibility for sealing. The  
607 | department shall, by rule adopted pursuant to chapter 120,  
608 | establish procedures pertaining to the application for and

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609 issuance of certificates of eligibility for sealing. A  
610 certificate of eligibility for sealing is valid for 12 months  
611 after the date stamped on the certificate when issued by the  
612 department. After that time, the petitioner must reapply to the  
613 department for a new certificate of eligibility. Eligibility for  
614 a renewed certification of eligibility must be based on the  
615 status of the applicant and the law in effect at the time of the  
616 renewal application. The department shall issue a certificate of  
617 eligibility for sealing to a person who is the subject of a  
618 criminal history record provided that such person:

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

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

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

629 (d) Has not been adjudicated guilty of or adjudicated  
630 delinquent for committing any of the acts stemming from the  
631 arrest or alleged criminal activity to which the petition to seal  
632 pertains.

633 (e) Has never secured a prior sealing, except as provided  
634 in subsection (6), or expunction of a criminal history record  
635 under this section, former s. 893.14, former s. 901.33, or former  
636 s. 943.058.

637 (f) Is no longer under court supervision applicable to the

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638 disposition of the arrest or alleged criminal activity to which  
639 the petition to seal pertains.

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

641 (a) In judicial proceedings under this section, a copy of  
642 the completed petition to seal shall be served upon the  
643 appropriate state attorney or the statewide prosecutor and upon  
644 the arresting agency; however, it is not necessary to make any  
645 agency other than the state a party. The appropriate state  
646 attorney or the statewide prosecutor and the arresting agency may  
647 respond to the court regarding the completed petition to seal.

648 (b) If relief is granted by the court, the clerk of the  
649 court shall certify copies of the order to the appropriate state  
650 attorney or the statewide prosecutor and to the arresting agency.  
651 The arresting agency is responsible for forwarding the order to  
652 any other agency to which the arresting agency disseminated the  
653 criminal history record information to which the order pertains.  
654 The department shall forward the order to seal to the Federal  
655 Bureau of Investigation. The clerk of the court shall certify a  
656 copy of the order to any other agency which the records of the  
657 court reflect has received the criminal history record from the  
658 court.

659 (c) For an order to seal entered by a court prior to July  
660 1, 1992, the department shall notify the appropriate state  
661 attorney or statewide prosecutor of any order to seal which is  
662 contrary to law because the person who is the subject of the  
663 record has previously been convicted of a crime or comparable  
664 ordinance violation or has had a prior criminal history record  
665 sealed, except as provided in subsection (6), or expunged. Upon  
666 receipt of such notice, the appropriate state attorney or

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667 statewide prosecutor shall take action, within 60 days, to  
668 correct the record and petition the court to void the order to  
669 seal. The department shall seal the record until such time as the  
670 order is voided by the court.

671 (d) On or after July 1, 1992, the department or any other  
672 criminal justice agency is not required to act on an order to  
673 seal entered by a court when such order does not comply with the  
674 requirements of this section. Upon receipt of such an order, the  
675 department must notify the issuing court, the appropriate state  
676 attorney or statewide prosecutor, the petitioner or the  
677 petitioner's attorney, and the arresting agency of the reason for  
678 noncompliance. The appropriate state attorney or statewide  
679 prosecutor shall take action within 60 days to correct the record  
680 and petition the court to void the order. No cause of action,  
681 including contempt of court, shall arise against any criminal  
682 justice agency for failure to comply with an order to seal when  
683 the petitioner for such order failed to obtain the certificate of  
684 eligibility as required by this section or when such order does  
685 not comply with the requirements of this section.

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

690 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
691 history record of a minor or an adult which is ordered sealed by  
692 a court of competent jurisdiction pursuant to this section is  
693 confidential and exempt from the provisions of s. 119.07(1) and  
694 s. 24(a), Art. I of the State Constitution and is available only  
695 to the person who is the subject of the record, to the subject's



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696 attorney, to criminal justice agencies for their respective  
697 criminal justice purposes, which include conducting a criminal  
698 history background check for approval of firearms purchases or  
699 transfers as authorized by state or federal law, or to those  
700 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for  
701 their respective licensing, access authorization, and employment  
702 purposes.

703 (a) The subject of a criminal history record sealed under  
704 this section or under other provisions of law, including former  
705 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
706 deny or fail to acknowledge the arrests and subsequent  
707 dispositions covered by the sealed record, except when the  
708 subject of the record:

709 1. Is a candidate for employment with a criminal justice  
710 agency;

711 2. Is a defendant in a criminal prosecution;

712 3. Concurrently or subsequently petitions for relief under  
713 this section or s. 943.0585;

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

715 5. Is seeking to be employed or licensed by or to contract  
716 with the Department of Children and Family Services or the  
717 Department of Juvenile Justice or to be employed or used by such  
718 contractor or licensee in a sensitive position having direct  
719 contact with children, the developmentally disabled, the aged, or  
720 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
721 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
722 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.  
723 985.644, chapter 400, or chapter 429;

724 6. Is seeking to be employed or licensed by the Department

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725 of Education, any district school board, any university  
726 laboratory school, any charter school, any private or parochial  
727 school, or any local governmental entity that licenses child care  
728 facilities;

729 7. Is attempting to purchase a firearm from a licensed  
730 importer, licensed manufacturer, or licensed dealer and is  
731 subject to a criminal history background check under state or  
732 federal law; or

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

736 (b) Subject to the exceptions in paragraph (a), a person  
737 who has been granted a sealing under this section, former s.  
738 893.14, former s. 901.33, or former s. 943.058 may not be held  
739 under any provision of law of this state to commit perjury or to  
740 be otherwise liable for giving a false statement by reason of  
741 such person's failure to recite or acknowledge a sealed criminal  
742 history record, including when asked on an employment  
743 application.

744 (c) Information relating to the existence of a sealed  
745 criminal record provided in accordance with the provisions of  
746 paragraph (a) is confidential and exempt from the provisions of  
747 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
748 except that the department shall disclose the sealed criminal  
749 history record to the entities set forth in subparagraphs (a)1.,  
750 4., 5., 6., and 8. for their respective licensing, access  
751 authorization, and employment purposes. It is unlawful for any  
752 employee of an entity set forth in subparagraph (a)1.,  
753 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or

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754 subparagraph (a)8. to disclose information relating to the  
755 existence of a sealed criminal history record of a person seeking  
756 employment, access authorization, or licensure with such entity  
757 or contractor, except to the person to whom the criminal history  
758 record relates or to persons having direct responsibility for  
759 employment, access authorization, or licensure decisions. Any  
760 person who violates the provisions of this paragraph commits a  
761 misdemeanor of the first degree, punishable as provided in s.  
762 775.082 or s. 775.083.

763 (5) STATUTORY REFERENCES.--Any reference to any other  
764 chapter, section, or subdivision of the Florida Statutes in this  
765 section constitutes a general reference under the doctrine of  
766 incorporation by reference.

767 (6) SECOND SEALING OF CRIMINAL HISTORY RECORD.--A person  
768 may petition the court to seek a second sealing of his or her  
769 criminal history record after having secured one previous  
770 expunction or sealing only under the following circumstances.  
771 Before petitioning the court for such relief, the person must  
772 apply to the department to obtain a certificate of eligibility  
773 for the second sealing of his or her criminal history record. The  
774 department shall issue the certificate only if the person has not  
775 been arrested during the 5-year period following the date of the  
776 court order for the initial expunction or sealing of his or her  
777 criminal history record. All other provisions and requirements of  
778 this section apply when a person seeks a second sealing of his  
779 criminal history record.

780 Section 7. The Office of Program Policy Analysis and  
781 Government Accountability, in cooperation with the Department of  
782 Law Enforcement, shall:

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

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

789       (3) Assess whether an adequate process exists to allow the  
790 potential private employer or licensing entity to determine  
791 whether an applicant's response to an "arrest, conviction, or  
792 adjudication withheld" criminal history question on an  
793 application is truthful and complete.

794       (4) Assess the feasibility of establishing appropriate  
795 privacy safeguards to protect job or license applicants, such as  
796 providing informed consent and the opportunity to review a  
797 criminal history record before a job or licensing application is  
798 made, before the criminal history record is provided to the  
799 potential employer or licensing entity, and before adverse action  
800 is taken by the potential employer or licensing entity.

801       (5) Identify actions that could be taken to improve both  
802 the completeness of the criminal history record and the consumer  
803 readability of the criminal history record.

804  
805 The Office of Program Policy Analysis and Government  
806 Accountability shall report its findings to the President of the  
807 Senate and Speaker of the House of Representatives by February 1,  
808 2009.

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