

By the Committees on Governmental Operations; Criminal Justice;  
Criminal Justice; and Senator Lynn

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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 the Governor and legislative officers a report  
5 that states current restrictions on employment of ex-  
6 offenders and possible alternatives that are compatible  
7 with public safety; requiring that such report be  
8 submitted in 2011 and then every 8 years thereafter;  
9 amending s. 112.011, F.S.; providing that a person may not  
10 be disqualified from receiving a license, permit, or  
11 certificate or from obtaining public employment on the  
12 grounds that the person's civil rights have not been  
13 restored; providing that a person is not required to  
14 secure the restoration of his or her civil rights or prove  
15 that his or her civil rights have been restored in order  
16 to receive a license, permit, or certificate or to obtain  
17 public employment; amending s. 943.0581, F.S.; authorizing  
18 the arresting agency or the agency where the warrant was  
19 issued to request an administrative expunction; amending  
20 s. 943.0585, F.S.; requiring the clerk of the court to  
21 place information about the availability of criminal  
22 history sealing and expunction on the court's Internet  
23 website and provide a link to the Department of Law  
24 Enforcement's website related to such information;  
25 clarifying under what circumstances a person may legally  
26 deny an expunged criminal history record; authorizing  
27 disclosure of the contents of an expunged record upon  
28 receipt of a written, notarized request from the record  
29 subject; amending s. 943.059, F.S.; clarifying under what

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30 circumstances a person may legally deny a sealed criminal  
31 history record; authorizing a person to petition the court  
32 to seek a second criminal history record sealing under  
33 certain circumstances; requiring the Office of Program  
34 Policy Analysis and Government Accountability to conduct a  
35 study; specifying the research questions for the study;  
36 requiring a report to be submitted to the Legislature;  
37 providing an effective date.

38  
39 Be It Enacted by the Legislature of the State of Florida:

40  
41 Section 1. Restrictions on the employment of ex-offenders;  
42 legislative intent; state agency reporting requirements.--

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

56 (2) Each state agency, including, but not limited to,  
57 professional and occupational regulatory boards, shall, by  
58 December 31, 2008, submit to the Governor, the President of the

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59 Senate, and the Speaker of the House of Representatives an  
60 initial report that includes:

61 (a) A review of policies followed by the agency or imposed  
62 by the board which disqualify from employment or licensure  
63 persons who have been convicted of a crime and have completed any  
64 incarceration and restitution to which they have been sentenced  
65 for such a crime.

66 (b) The conclusions resulting from the review of these  
67 policies and a determination of whether the disqualifications are  
68 readily available to prospective employees and prospective  
69 licensees.

70 (c) If the restriction is based on a standard of good moral  
71 character or crimes or acts of moral turpitude, a determination  
72 of the merits of alternative policies and particular  
73 disqualifying offenses that may more precisely describe the basis  
74 for denial of employment or licensure.

75 (3) Beginning in 2011, each state agency shall submit a  
76 brief report in accordance with subsection (2) every 8 years by  
77 December of that year.

78 Section 2. Section 112.011, Florida Statutes, is amended to  
79 read:

80 112.011 Disqualification for licensing and public  
81 employment based on criminal conviction ~~Felons; removal of~~  
82 ~~disqualifications for employment, exceptions.--~~

83 (1) (a) Except as provided in s. 775.16, a person may ~~shall~~  
84 not be disqualified from employment by the state, any of its  
85 agencies or political subdivisions, or any municipality solely  
86 because of a prior conviction for a crime. However, a person may  
87 be denied employment by the state, any of its agencies or

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88 political subdivisions, or any municipality by reason of the  
89 prior conviction for a crime if the crime was a felony or first  
90 degree misdemeanor and directly related to the position of  
91 employment sought.

92 (b) Except as provided in s. 775.16, a person ~~whose civil~~  
93 ~~rights have been restored shall not be disqualified to practice,~~  
94 ~~pursue, or engage in any occupation, trade, vocation, profession,~~  
95 ~~or business for which a license, permit, or certificate is~~  
96 ~~required to be issued by the state, any of its agencies or~~  
97 ~~political subdivisions, or any municipality solely because of a~~  
98 ~~prior conviction for a crime. However, a person whose civil~~  
99 ~~rights have been restored~~ may be denied a license, permit, or  
100 certification to pursue, practice, or engage in an occupation,  
101 trade, vocation, profession, or business by reason of the prior  
102 conviction for a crime if the crime was a felony or first degree  
103 misdemeanor ~~and~~ directly related to or relevant to the standards  
104 normally associated with, or determined by the regulatory  
105 authority to be necessary for the protection of the public or  
106 other parties with, the specific occupation, trade, vocation,  
107 profession, or business for which the license, permit, or  
108 certificate is sought.

109 (c) Notwithstanding any law to the contrary, the status of  
110 a person's civil rights may not be considered a disqualification  
111 or grounds for denial of a license, permit, or certificate, or  
112 public employment. A person is not required to secure the  
113 restoration of his or her civil rights or prove that his or her  
114 civil rights have been restored in order to be considered for a  
115 license, permit, or certificate, or to be considered for public  
116 employment.

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

119           (b) This section does ~~shall~~ not apply ~~be applicable~~ to the  
120 employment practices of any fire department relating to the  
121 hiring of firefighters. An applicant for employment with any fire  
122 department who has ~~with~~ a prior felony conviction shall be  
123 excluded from employment for a period of 4 years after expiration  
124 of sentence or final release by the Parole Commission unless the  
125 applicant, prior to the expiration of the 4-year period, has  
126 received a full pardon or has had his or her civil rights  
127 restored.

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

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

135           Section 3. Section 943.0581, Florida Statutes, is amended  
136 to read:

137           943.0581 Administrative expunction.--

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

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

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146 an adult who is subsequently determined by the agency, at its  
147 discretion, or by the final order of a court of competent  
148 jurisdiction, to have been arrested contrary to law or by  
149 mistake.

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

159 (4) An application for administrative expunction shall  
160 include ~~an affidavit executed by the chief of the law enforcement~~  
161 ~~agency, sheriff, or department head of the state law enforcement~~  
162 ~~agency in which the affiant verifies that he or she has reviewed~~  
163 ~~the record of the arrest and that the arrest was contrary to law~~  
164 ~~or was a mistake. The affidavit shall include the date and time~~  
165 ~~of the arrest, the name of the arresting officer, the name of the~~  
166 ~~person arrested, and the crime or crimes charged, and the~~  
167 offender based tracking system number. The application shall be  
168 on the submitting agency's letterhead and signed by the head of  
169 the submitting agency or his or her designee.

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

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175 where the warrant, capias, or pick-up order was issued.

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

181 Section 4. Section 943.0585, Florida Statutes, is amended  
182 to read:

183 943.0585 Court-ordered expunction of criminal history  
184 records.--The courts of this state have jurisdiction over their  
185 own procedures, including the maintenance, expunction, and  
186 correction of judicial records containing criminal history  
187 information to the extent such procedures are not inconsistent  
188 with the conditions, responsibilities, and duties established by  
189 this section. Any court of competent jurisdiction may order a  
190 criminal justice agency to expunge the criminal history record of  
191 a minor or an adult who complies with the requirements of this  
192 section. The court shall not order a criminal justice agency to  
193 expunge a criminal history record until the person seeking to  
194 expunge a criminal history record has applied for and received a  
195 certificate of eligibility for expunction pursuant to subsection  
196 (2). A criminal history record that relates to a violation of s.  
197 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
198 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
199 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
200 916.1075, a violation enumerated in s. 907.041, or any violation  
201 specified as a predicate offense for registration as a sexual  
202 predator pursuant to s. 775.21, without regard to whether that  
203 offense alone is sufficient to require such registration, or for

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204 registration as a sexual offender pursuant to s. 943.0435, may  
205 not be expunged, without regard to whether adjudication was  
206 withheld, if the defendant was found guilty of or pled guilty or  
207 nolo contendere to the offense, or if the defendant, as a minor,  
208 was found to have committed, or pled guilty or nolo contendere to  
209 committing, the offense as a delinquent act. The court may only  
210 order expunction of a criminal history record pertaining to one  
211 arrest or one incident of alleged criminal activity, except as  
212 provided in this section. The court may, at its sole discretion,  
213 order the expunction of a criminal history record pertaining to  
214 more than one arrest if the additional arrests directly relate to  
215 the original arrest. If the court intends to order the expunction  
216 of records pertaining to such additional arrests, such intent  
217 must be specified in the order. A criminal justice agency may not  
218 expunge any record pertaining to such additional arrests if the  
219 order to expunge does not articulate the intention of the court  
220 to expunge a record pertaining to more than one arrest. This  
221 section does not prevent the court from ordering the expunction  
222 of only a portion of a criminal history record pertaining to one  
223 arrest or one incident of alleged criminal activity.

224 Notwithstanding any law to the contrary, a criminal justice  
225 agency may comply with laws, court orders, and official requests  
226 of other jurisdictions relating to expunction, correction, or  
227 confidential handling of criminal history records or information  
228 derived therefrom. This section does not confer any right to the  
229 expunction of any criminal history record, and any request for  
230 expunction of a criminal history record may be denied at the sole  
231 discretion of the court.

232 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each



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233 petition to a court to expunge a criminal history record is  
234 complete only when accompanied by:

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

237 (b) The petitioner's sworn statement attesting that the  
238 petitioner:

239 1. Has never, prior to the date on which the petition is  
240 filed, been adjudicated guilty of a criminal offense or  
241 comparable ordinance violation, or been adjudicated delinquent  
242 for committing any felony or a misdemeanor specified in s.  
243 943.051(3)(b).

244 2. Has not been adjudicated guilty of, or adjudicated  
245 delinquent for committing, any of the acts stemming from the  
246 arrest or alleged criminal activity to which the petition  
247 pertains.

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

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

258

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

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

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

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

283 2. That an indictment, information, or other charging  
284 document, if filed or issued in the case, was dismissed or nolle  
285 prosequi by the state attorney or statewide prosecutor, or was  
286 dismissed by a court of competent jurisdiction, and that none of  
287 the charges related to the arrest or alleged criminal activity to  
288 which the petition to expunge pertains resulted in a trial,  
289 without regard to whether the outcome of the trial was other than  
290 an adjudication of guilt.

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

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

309 (c) Has submitted to the department a certified copy of the  
310 disposition of the charge to which the petition to expunge  
311 pertains.

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

317 (e) Has not been adjudicated guilty of, or adjudicated  
318 delinquent for committing, any of the acts stemming from the  
319 arrest or alleged criminal activity to which the petition to

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320 expunge pertains.

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

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

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

342  
343 Each clerk of court shall place information on his or her  
344 Internet website about the availability of criminal history  
345 sealing and expunction. This information shall include a link to  
346 the department's website for information and applications for  
347 sealing and expunging a criminal history record.

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

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

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

367 (c) For an order to expunge entered by a court prior to  
368 July 1, 1992, the department shall notify the appropriate state  
369 attorney or statewide prosecutor of an order to expunge which is  
370 contrary to law because the person who is the subject of the  
371 record has previously been convicted of a crime or comparable  
372 ordinance violation or has had a prior criminal history record  
373 sealed or expunged. Upon receipt of such notice, the appropriate  
374 state attorney or statewide prosecutor shall take action, within  
375 60 days, to correct the record and petition the court to void the  
376 order to expunge. The department shall seal the record until such  
377 time as the order is voided by the court.

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

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

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

413 1. Is a candidate for employment with a criminal justice  
414 agency;

415 2. Is a defendant in a criminal prosecution;

416 3. Concurrently or subsequently petitions for relief under  
417 this section or s. 943.059;

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

419 5. Is seeking to be employed or licensed by or to contract  
420 with the Department of Children and Family Services or the  
421 Department of Juvenile Justice or to be employed or used by such  
422 contractor or licensee in a sensitive position having direct  
423 contact with children, the developmentally disabled, the aged, or  
424 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
425 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
426 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter  
427 400, or chapter 429;

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

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

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

444 (c) Information relating to the existence of an expunged  
445 criminal history record which is provided in accordance with  
446 paragraph (a) is confidential and exempt from the provisions of  
447 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
448 except that the department shall disclose the existence of a  
449 criminal history record ordered expunged to the entities set  
450 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
451 respective licensing, access authorization, and employment  
452 purposes, and to criminal justice agencies for their respective  
453 criminal justice purposes. It is unlawful for any employee of an  
454 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
455 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to  
456 disclose information relating to the existence of an expunged  
457 criminal history record of a person seeking employment, access  
458 authorization, or licensure with such entity or contractor,  
459 except to the person to whom the criminal history record relates  
460 or to persons having direct responsibility for employment, access  
461 authorization, or licensure decisions. Any person who violates  
462 this paragraph commits a misdemeanor of the first degree,  
463 punishable as provided in s. 775.082 or s. 775.083.

464 (d) The contents of an expunged record may be disclosed to



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465 the subject of the record by the department upon the receipt of  
466 the written, notarized request from the subject of the record.

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

471 Section 5. Section 943.059, Florida Statutes, is amended to  
472 read:

473 943.059 Court-ordered sealing of criminal history  
474 records.--The courts of this state shall continue to have  
475 jurisdiction over their own procedures, including the  
476 maintenance, sealing, and correction of judicial records  
477 containing criminal history information to the extent such  
478 procedures are not inconsistent with the conditions,  
479 responsibilities, and duties established by this section. Any  
480 court of competent jurisdiction may order a criminal justice  
481 agency to seal the criminal history record of a minor or an adult  
482 who complies with the requirements of this section. The court  
483 shall not order a criminal justice agency to seal a criminal  
484 history record until the person seeking to seal a criminal  
485 history record has applied for and received a certificate of  
486 eligibility for sealing pursuant to subsection (2). A criminal  
487 history record that relates to a violation of s. 393.135, s.  
488 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.  
489 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.  
490 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a  
491 violation enumerated in s. 907.041, or any violation specified as  
492 a predicate offense for registration as a sexual predator  
493 pursuant to s. 775.21, without regard to whether that offense

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

522 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each

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523 petition to a court to seal a criminal history record is complete  
524 only when accompanied by:

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

527 (b) The petitioner's sworn statement attesting that the  
528 petitioner:

529 1. Has never, prior to the date on which the petition is  
530 filed, been adjudicated guilty of a criminal offense or  
531 comparable ordinance violation, or been adjudicated delinquent  
532 for committing any felony or a misdemeanor specified in s.  
533 943.051(3)(b).

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

538 3. Has never secured a prior sealing, except as provided in  
539 subsection (6), or expunction of a criminal history record under  
540 this section, former s. 893.14, former s. 901.33, former s.  
541 943.058, or from any jurisdiction outside the state.

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

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

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

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

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

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

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

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

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

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581 | under this section, former s. 893.14, former s. 901.33, or former  
582 | s. 943.058.

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

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

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

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

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

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610 ordinance violation or has had a prior criminal history record  
611 sealed, except as provided in subsection (6), or expunged. Upon  
612 receipt of such notice, the appropriate state attorney or  
613 statewide prosecutor shall take action, within 60 days, to  
614 correct the record and petition the court to void the order to  
615 seal. The department shall seal the record until such time as the  
616 order is voided by the court.

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

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

636 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
637 history record of a minor or an adult which is ordered sealed by  
638 a court of competent jurisdiction pursuant to this section is

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639 confidential and exempt from the provisions of s. 119.07(1) and  
640 s. 24(a), Art. I of the State Constitution and is available only  
641 to the person who is the subject of the record, to the subject's  
642 attorney, to criminal justice agencies for their respective  
643 criminal justice purposes, which include conducting a criminal  
644 history background check for approval of firearms purchases or  
645 transfers as authorized by state or federal law, or to those  
646 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for  
647 their respective licensing, access authorization, and employment  
648 purposes.

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

655 1. Is a candidate for employment with a criminal justice  
656 agency;

657 2. Is a defendant in a criminal prosecution;

658 3. Concurrently or subsequently petitions for relief under  
659 this section or s. 943.0585;

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

661 5. Is seeking to be employed or licensed by or to contract  
662 with the Department of Children and Family Services or the  
663 Department of Juvenile Justice or to be employed or used by such  
664 contractor or licensee in a sensitive position having direct  
665 contact with children, the developmentally disabled, the aged, or  
666 the elderly as provided in s. 110.1127(3), s. 393.063, s.  
667 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

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668 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.  
669 985.644, chapter 400, or chapter 429;

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

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

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

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

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



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697 authorization, and employment purposes. It is unlawful for any  
698 employee of an entity set forth in subparagraph (a)1.,  
699 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or  
700 subparagraph (a)8. to disclose information relating to the  
701 existence of a sealed criminal history record of a person seeking  
702 employment, access authorization, or licensure with such entity  
703 or contractor, except to the person to whom the criminal history  
704 record relates or to persons having direct responsibility for  
705 employment, access authorization, or licensure decisions. Any  
706 person who violates the provisions of this paragraph commits a  
707 misdemeanor of the first degree, punishable as provided in s.  
708 775.082 or s. 775.083.

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

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

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726           Section 6. The Office of Program Policy Analysis and  
727 Government Accountability, in cooperation with the Department of  
728 Law Enforcement, shall:

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

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

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

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

747           (5) Identify actions that could be taken to improve both  
748 the completeness of the criminal history record and the consumer  
749 readability of the criminal history record.

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

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Section 7. This act shall take effect July 1, 2008.