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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. However, paragraph (c) does not apply to the issuance

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117 of a license for a concealed weapon or firearm or the purchasing
118 of a firearm pursuant to chapter 790.

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

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

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

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

137 Section 3. Section 943.0581, Florida Statutes, is amended
138 to read:

139 943.0581 Administrative expunction.--

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

145 (2) A law enforcement agency shall apply to the department

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146 in the manner prescribed by rule for the administrative
147 expunction of any nonjudicial record of any arrest of a minor or
148 an adult who is subsequently determined by the agency, at its
149 discretion, or by the final order of a court of competent
150 jurisdiction, to have been arrested contrary to law or by
151 mistake.

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

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

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

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175 where the warrant, capias, or pick-up order was issued or by the
176 state attorney or his or her designee of the judicial circuit
177 where the warrant, capias, or pick-up order was issued.

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

183 Section 4. Section 943.0585, Florida Statutes, is amended
184 to read:

185 943.0585 Court-ordered expunction of criminal history
186 records.--The courts of this state have jurisdiction over their
187 own procedures, including the maintenance, expunction, and
188 correction of judicial records containing criminal history
189 information to the extent such procedures are not inconsistent
190 with the conditions, responsibilities, and duties established by
191 this section. Any court of competent jurisdiction may order a
192 criminal justice agency to expunge the criminal history record of
193 a minor or an adult who complies with the requirements of this
194 section. The court shall not order a criminal justice agency to
195 expunge a criminal history record until the person seeking to
196 expunge a criminal history record has applied for and received a
197 certificate of eligibility for expunction pursuant to subsection
198 (2). A criminal history record that relates to a violation of s.
199 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
200 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
201 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
202 916.1075, a violation enumerated in s. 907.041, or any violation
203 specified as a predicate offense for registration as a sexual

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204 predator pursuant to s. 775.21, without regard to whether that
205 offense alone is sufficient to require such registration, or for
206 registration as a sexual offender pursuant to s. 943.0435, may
207 not be expunged, without regard to whether adjudication was
208 withheld, if the defendant was found guilty of or pled guilty or
209 nolo contendere to the offense, or if the defendant, as a minor,
210 was found to have committed, or pled guilty or nolo contendere to
211 committing, the offense as a delinquent act. The court may only
212 order expunction of a criminal history record pertaining to one
213 arrest or one incident of alleged criminal activity, except as
214 provided in this section. The court may, at its sole discretion,
215 order the expunction of a criminal history record pertaining to
216 more than one arrest if the additional arrests directly relate to
217 the original arrest. If the court intends to order the expunction
218 of records pertaining to such additional arrests, such intent
219 must be specified in the order. A criminal justice agency may not
220 expunge any record pertaining to such additional arrests if the
221 order to expunge does not articulate the intention of the court
222 to expunge a record pertaining to more than one arrest. This
223 section does not prevent the court from ordering the expunction
224 of only a portion of a criminal history record pertaining to one
225 arrest or one incident of alleged criminal activity.

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

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233 discretion of the court.

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

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

239 (b) The petitioner's sworn statement attesting that the
240 petitioner:

241 1. Has never, prior to the date on which the petition is
242 filed, been adjudicated guilty of a criminal offense or
243 comparable ordinance violation, or been adjudicated delinquent
244 for committing any felony or a misdemeanor specified in s.
245 943.051(3)(b).

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

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

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

260

261 Any person who knowingly provides false information on such sworn

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262 statement to the court commits a felony of the third degree,
263 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

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

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

285 2. That an indictment, information, or other charging
286 document, if filed or issued in the case, was dismissed or nolle
287 prosequi by the state attorney or statewide prosecutor, or was
288 dismissed by a court of competent jurisdiction, and that none of
289 the charges related to the arrest or alleged criminal activity to
290 which the petition to expunge pertains resulted in a trial,

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291 without regard to whether the outcome of the trial was other than
292 an adjudication of guilt.

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

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

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

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

319 (e) Has not been adjudicated guilty of, or adjudicated

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320 delinquent for committing, any of the acts stemming from the
321 arrest or alleged criminal activity to which the petition to
322 expunge pertains.

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

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

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

344

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

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349 sealing and expunging a criminal history record.

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

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

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

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

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

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

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

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407 criminal justice agency may retain a notation indicating
408 compliance with an order to expunge.

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

415 1. Is a candidate for employment with a criminal justice
416 agency;

417 2. Is a defendant in a criminal prosecution;

418 3. Concurrently or subsequently petitions for relief under
419 this section or s. 943.059;

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

421 5. Is seeking to be employed or licensed by or to contract
422 with the Department of Children and Family Services or the
423 Department of Juvenile Justice or to be employed or used by such
424 contractor or licensee in a sensitive position having direct
425 contact with children, the developmentally disabled, the aged, or
426 the elderly as provided in s. 110.1127(3), s. 393.063, s.
427 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
428 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter
429 400, or chapter 429;

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

435 7. Is seeking authorization from a Florida seaport

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436 identified in s. 311.09 for employment within or access to one or
437 more of such seaports pursuant to s. 311.12 or s. 311.125.

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

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

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465 punishable as provided in s. 775.082 or s. 775.083.

466 (d) The contents of an expunged record may be disclosed to
467 the subject of the record by the department upon the receipt of
468 the written, notarized request from the subject of the record.

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

473 Section 5. Section 943.059, Florida Statutes, is amended to
474 read:

475 943.059 Court-ordered sealing of criminal history
476 records.--The courts of this state shall continue to have
477 jurisdiction over their own procedures, including the
478 maintenance, sealing, and correction of judicial records
479 containing criminal history information to the extent such
480 procedures are not inconsistent with the conditions,
481 responsibilities, and duties established by this section. Any
482 court of competent jurisdiction may order a criminal justice
483 agency to seal the criminal history record of a minor or an adult
484 who complies with the requirements of this section. The court
485 shall not order a criminal justice agency to seal a criminal
486 history record until the person seeking to seal a criminal
487 history record has applied for and received a certificate of
488 eligibility for sealing pursuant to subsection (2). A criminal
489 history record that relates to a violation of s. 393.135, s.
490 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
491 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
492 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a
493 violation enumerated in s. 907.041, or any violation specified as

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

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523 record may be denied at the sole discretion of the court.

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

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

529 (b) The petitioner's sworn statement attesting that the
530 petitioner:

531 1. Has never, prior to the date on which the petition is
532 filed, been adjudicated guilty of a criminal offense or
533 comparable ordinance violation, or been adjudicated delinquent
534 for committing any felony or a misdemeanor specified in s.
535 943.051(3)(b).

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

540 3. Has never secured a prior sealing, except as provided in
541 subsection (6), or expunction of a criminal history record under
542 this section, former s. 893.14, former s. 901.33, former s.
543 943.058, or from any jurisdiction outside the state.

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

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

551 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to

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

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

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

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

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

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581 (e) Has never secured a prior sealing, except as provided
582 in subsection (6), or expunction of a criminal history record
583 under this section, former s. 893.14, former s. 901.33, or former
584 s. 943.058.

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

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

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

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

607 (c) For an order to seal entered by a court prior to July
608 1, 1992, the department shall notify the appropriate state
609 attorney or statewide prosecutor of any order to seal which is

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

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

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

638 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal

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

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

- 657 1. Is a candidate for employment with a criminal justice
658 agency;
- 659 2. Is a defendant in a criminal prosecution;
- 660 3. Concurrently or subsequently petitions for relief under
661 this section or s. 943.0585;
- 662 4. Is a candidate for admission to The Florida Bar;
- 663 5. Is seeking to be employed or licensed by or to contract
664 with the Department of Children and Family Services or the
665 Department of Juvenile Justice or to be employed or used by such
666 contractor or licensee in a sensitive position having direct
667 contact with children, the developmentally disabled, the aged, or

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668 the elderly as provided in s. 110.1127(3), s. 393.063, s.
669 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
670 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.
671 985.644, chapter 400, or chapter 429;

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

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

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

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

692 (c) Information relating to the existence of a sealed
693 criminal record provided in accordance with the provisions of
694 paragraph (a) is confidential and exempt from the provisions of
695 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
696 except that the department shall disclose the sealed criminal

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697 history record to the entities set forth in subparagraphs (a)1.,
698 4., 5., 6., and 8. for their respective licensing, access
699 authorization, and employment purposes. It is unlawful for any
700 employee of an entity set forth in subparagraph (a)1.,
701 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
702 subparagraph (a)8. to disclose information relating to the
703 existence of a sealed criminal history record of a person seeking
704 employment, access authorization, or licensure with such entity
705 or contractor, except to the person to whom the criminal history
706 record relates or to persons having direct responsibility for
707 employment, access authorization, or licensure decisions. Any
708 person who violates the provisions of this paragraph commits a
709 misdemeanor of the first degree, punishable as provided in s.
710 775.082 or s. 775.083.

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

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

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726 this section apply when a person seeks a second sealing of his
727 criminal history record.

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

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

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

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

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

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

752
753 The Office of Program Policy Analysis and Government
754 Accountability shall report its findings to the President of the

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755 Senate and the Speaker of the House of Representatives by
756 February 1, 2009.

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