

By Senator Wilson

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1 A bill to be entitled

2 An act relating to criminal records; amending s. 943.0515,
3 F.S.; requiring the Department of Law Enforcement to
4 notify certain specified agencies of the criminal records
5 of a minor which are expunged; requiring the arresting
6 agency, the county, and the department to notify those
7 entities that received the criminal records information;
8 requiring that criminal history records that are to be
9 expunged be physically destroyed or obliterated by the
10 criminal justice agency having physical custody of the
11 records; amending s. 943.0585, F.S.; prohibiting certain
12 criminal records from being expunged; providing that other
13 records may be expunged under certain circumstances;
14 providing that certain information be included in the
15 application for a certificate of eligibility for
16 expunction; prohibiting an agency, organization, or
17 company to which criminal history information was
18 disseminated from releasing the expunged information after
19 a specified period; amending s. 943.059, F.S.; prohibiting
20 certain criminal records from being sealed; providing that
21 other records may be sealed under certain circumstances;
22 requiring that certain information be included in the
23 application for a certificate of eligibility for sealing;
24 prohibiting an agency, organization, or company to which
25 criminal history information was disseminated from
26 releasing the sealed information after a specified period;
27 amending s. 943.0582, F.S.; conforming a cross-reference;
28 providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Present subsection (3) of section 943.0515,
33 Florida Statutes, is redesignated as subsection (5), and new
34 subsections (3) and (4) are added to that section, to read:

35 943.0515 Retention of criminal history records of minors.--

36 (3) The department shall notify the appropriate clerk of
37 the court, the state attorney or statewide prosecutor, the
38 county, and the arresting agency of any criminal history record
39 that is expunged under this section. The arresting agency shall
40 send the department's notification to any other agency to which
41 the arresting agency disseminated the criminal history record
42 information and to which the order pertains. The county shall
43 send the department's notification to any agency, organization,
44 or company to which the county disseminated the criminal history
45 information and to which the order pertains. The department shall
46 send the notification of expungement to the Federal Bureau of
47 Investigation. The clerk of the court shall certify a copy of the
48 department's notification to any other agency that has received
49 the criminal history record, as reflected in the records of the
50 court.

51 (4) Any criminal history record that is expunged by the
52 department under this section must be physically destroyed or
53 obliterated by any criminal justice agency that has custody of
54 the record, except that a criminal history record in the custody
55 of the department must be retained in all cases.

56 Section 2. Section 943.0585, Florida Statutes, is amended
57 to read:

58 943.0585 Court-ordered expunction of criminal history

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59 records.--The courts of this state have jurisdiction over their
60 own procedures, including the maintenance, expunction, and
61 correction of judicial records containing criminal history
62 information to the extent such procedures are not inconsistent
63 with the conditions, responsibilities, and duties established by
64 this section. Any court of competent jurisdiction may order a
65 criminal justice agency to expunge the criminal history record of
66 a minor or an adult who complies with the requirements of this
67 section. The court shall not order a criminal justice agency to
68 expunge a criminal history record until the person seeking to
69 expunge a criminal history record has applied for and received a
70 certificate of eligibility for expunction pursuant to subsection
71 (3) ~~(2)~~.

72 (1) PROHIBITION AGAINST EXPUNGING CERTAIN RECORDS.-- A
73 criminal history record that relates to a violation of s.
74 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
75 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
76 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
77 916.1075, a violation enumerated in s. 907.041, or any violation
78 specified as a predicate offense for registration as a sexual
79 predator pursuant to s. 775.21, without regard to whether that
80 offense alone is sufficient to require such registration, or for
81 registration as a sexual offender pursuant to s. 943.0435, may
82 not be expunged, ~~without regard to whether adjudication was~~
83 ~~withheld,~~ if the defendant was found guilty of or pled guilty or
84 nolo contendere to the offense, or if the defendant, as a minor,
85 was found to have committed, or pled guilty or nolo contendere to
86 committing, the offense as a delinquent act even if the
87 adjudication was withheld. The prohibition applies only to cases

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88 in which the defendant, including a minor, was found guilty of or
89 pled guilty or nolo contendere to the offense. In all other
90 instances involving the enumerated offenses in this subsection,
91 the record may be expunged if an indictment, information, or
92 other charging document was not filed or issued in the case or,
93 if filed or issued in the case, was dismissed or nolle prosequi
94 by the state attorney or statewide prosecutor or was dismissed by
95 a court of competent jurisdiction, or the person was found not
96 guilty or acquitted by a judge or jury. The court may only order
97 expunction of a criminal history record pertaining to one arrest
98 or one incident of alleged criminal activity, except as provided
99 in this section. The court may, at its sole discretion, order the
100 expunction of a criminal history record pertaining to more than
101 one arrest if the additional arrests directly relate to the
102 original arrest. If the court intends to order the expunction of
103 records pertaining to such additional arrests, such intent must
104 be specified in the order. A criminal justice agency may not
105 expunge any record pertaining to ~~such~~ additional arrests if the
106 order to expunge does not articulate the intention of the court
107 to expunge a record pertaining to more than one arrest. This
108 section does not prevent the court from ordering the expunction
109 of only a portion of a criminal history record pertaining to one
110 arrest or one incident of alleged criminal activity.
111 Notwithstanding any law to the contrary, a criminal justice
112 agency may comply with laws, court orders, and official requests
113 of other jurisdictions relating to expunction, correction, or
114 confidential handling of criminal history records or information
115 derived therefrom. This section does not confer any right to the
116 expunction of any criminal history record, and any request for

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117 expunction of a criminal history record may be denied at the sole
118 discretion of the court.

119 (2)~~(1)~~ PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each
120 petition to a court to expunge a criminal history record is
121 complete only when accompanied by:

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

124 (b) The petitioner's sworn statement attesting that the
125 petitioner:

126 1. Has never, prior to the date on which the petition is
127 filed, been adjudicated guilty of a criminal offense or
128 comparable ordinance violation, or been adjudicated delinquent
129 for committing any felony or a misdemeanor specified in s.
130 943.051(3)(b).

131 2. Has not been adjudicated guilty of, or adjudicated
132 delinquent for committing, any of the acts stemming from the
133 arrest or alleged criminal activity to which the petition
134 pertains.

135 3. Except as otherwise provided in this section, has never
136 secured a prior sealing or expunction of a criminal history
137 record under this section, former s. 893.14, former s. 901.33, or
138 former s. 943.058, or from any jurisdiction outside the state,
139 unless expunction is sought of a criminal history record
140 previously sealed for 10 years pursuant to paragraph (2)(h) and
141 the record is otherwise eligible for expunction.

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

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

149 (3)~~(2)~~ CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Before
150 ~~Prior to~~ petitioning the court to expunge a criminal history
151 record, a person seeking to expunge a criminal history record
152 shall apply to the department for a certificate of eligibility
153 for expunction. The department shall, by rule adopted pursuant to
154 chapter 120, establish procedures pertaining to the application
155 for and issuance of certificates of eligibility for expunction. A
156 certificate of eligibility for expunction is valid for 12 months
157 after the date stamped on the certificate when issued by the
158 department. After that time, the petitioner must reapply to the
159 department for a new certificate of eligibility. Eligibility for
160 a renewed certification of eligibility must be based on the
161 status of the applicant and the law in effect at the time of the
162 renewal application. The department shall issue a certificate of
163 eligibility for expunction to a person who is the subject of a
164 criminal history record if that person:

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

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

170 2. That an indictment, information, or other charging
171 document, if filed or issued in the case, was dismissed or nolle
172 prosequi by the state attorney or statewide prosecutor, ~~or was~~
173 dismissed by a court of competent jurisdiction, or that the
174 person was found not guilty or acquitted by a judge or jury, and

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175 that none of the charges related to the arrest or alleged
176 criminal activity to which the petition to expunge pertains
177 resulted in a trial, without regard to whether the outcome of the
178 trial was other than an adjudication of guilt.

179 3. That the criminal history record does not relate to a
180 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s.
181 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
182 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
183 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
184 any violation specified as a predicate offense for registration
185 as a sexual predator pursuant to s. 775.21, without regard to
186 whether that offense alone is sufficient to require such
187 registration, or for registration as a sexual offender pursuant
188 to s. 943.0435, where the defendant was found guilty of, or pled
189 guilty or nolo contendere to any such offense, or that the
190 defendant, as a minor, was found to have committed, or pled
191 guilty or nolo contendere to committing, such an offense as a
192 delinquent act, without regard to whether adjudication was
193 withheld.

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

197 (c) Has submitted to the department a certified copy of the
198 disposition of the charge to which the petition to expunge
199 pertains.

200 (d) Has never, prior to the date on which the application
201 for a certificate of eligibility is filed, been adjudicated
202 guilty of a criminal offense or comparable ordinance violation,
203 or been adjudicated delinquent for committing any felony or a

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204 | misdemeanor specified in s. 943.051(3)(b).

205 | (e) Has not been adjudicated guilty of, or adjudicated
206 | delinquent for committing, any of the acts stemming from the
207 | arrest or alleged criminal activity to which the petition to
208 | expunge pertains.

209 | (f) Has never secured a prior sealing or expunction of a
210 | criminal history record under this section, former s. 893.14,
211 | former s. 901.33, or former s. 943.058 involving an offense for
212 | which the defendant had been found guilty or pled guilty or nolo
213 | contendere, unless expunction is sought of a criminal history
214 | record previously sealed for 10 years pursuant to paragraph (h)
215 | and the record is otherwise eligible for expunction.

216 | (g) Is no longer under court supervision applicable to the
217 | disposition of the arrest or alleged criminal activity to which
218 | the petition to expunge pertains.

219 | (h) Has previously obtained a court order sealing the
220 | record under this section, former s. 893.14, former s. 901.33, or
221 | former s. 943.058 for a minimum of 10 years because adjudication
222 | was withheld or because all charges related to the arrest or
223 | alleged criminal activity to which the petition to expunge
224 | pertains were not dismissed prior to trial, without regard to
225 | whether the outcome of the trial was other than an adjudication
226 | of guilt. The requirement for the record to have previously been
227 | sealed for a minimum of 10 years does not apply when a plea was
228 | not entered or all charges related to the arrest or alleged
229 | criminal activity to which the petition to expunge pertains were
230 | dismissed prior to trial.

231 | (4)~~(3)~~ PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

232 | (a) In judicial proceedings under this section, a copy of

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233 | the completed petition to expunge shall be served upon the
234 | appropriate state attorney or the statewide prosecutor and upon
235 | the arresting agency; however, it is not necessary to make any
236 | agency other than the state a party. The appropriate state
237 | attorney or the statewide prosecutor and the arresting agency may
238 | respond to the court regarding the completed petition to expunge.

239 | (b) If relief is granted by the court, the clerk of the
240 | court shall certify copies of the order to the appropriate state
241 | attorney or the statewide prosecutor, the county, and the
242 | arresting agency. The arresting agency is responsible for
243 | forwarding the order to any other agency to which the arresting
244 | agency disseminated the criminal history record information to
245 | which the order pertains. The county is responsible for
246 | forwarding the order to any agency, organization, or company to
247 | which the county disseminated the criminal history information to
248 | which the order pertains. The department shall forward the order
249 | to expunge to the Federal Bureau of Investigation. The clerk of
250 | the court shall certify a copy of the order to any other agency
251 | which the records of the court reflect has received the criminal
252 | history record from the court.

253 | (c) For an order to expunge entered by a court prior to
254 | July 1, 1992, the department shall notify the appropriate state
255 | attorney or statewide prosecutor of an order to expunge which is
256 | contrary to law because the person who is the subject of the
257 | record has previously been convicted of a crime or comparable
258 | ordinance violation or has had a prior criminal history record
259 | sealed or expunged. Upon receipt of such notice, the appropriate
260 | state attorney or statewide prosecutor shall take action, within
261 | 60 days, to correct the record and petition the court to void the

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

264 (d) On or after July 1, 1992, the department or any other
265 criminal justice agency is not required to act on an order to
266 expunge entered by a court when such order does not comply with
267 the requirements of this section. Upon receipt of such an order,
268 the department must notify the issuing court, the appropriate
269 state attorney or statewide prosecutor, the petitioner or the
270 petitioner's attorney, and the arresting agency of the reason for
271 noncompliance. The appropriate state attorney or statewide
272 prosecutor shall take action within 60 days to correct the record
273 and petition the court to void the order. No cause of action,
274 including contempt of court, shall arise against any criminal
275 justice agency for failure to comply with an order to expunge
276 when the petitioner for such order failed to obtain the
277 certificate of eligibility as required by this section or such
278 order does not otherwise comply with the requirements of this
279 section.

280 (5)~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
281 criminal history record of a minor or an adult which is ordered
282 expunged by a court of competent jurisdiction pursuant to this
283 section must be physically destroyed or obliterated by any
284 criminal justice agency having custody of such record; except
285 that any criminal history record in the custody of the department
286 must be retained in all cases. A criminal history record ordered
287 expunged that is retained by the department is confidential and
288 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
289 of the State Constitution and not available to any person or
290 entity except upon order of a court of competent jurisdiction. A

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291 criminal justice agency may retain a notation indicating
292 compliance with an order to expunge.

293 (a) The person who is the subject of a criminal history
294 record that is expunged under this section or under other
295 provisions of law, including former s. 893.14, former s. 901.33,
296 and former s. 943.058, may lawfully deny or fail to acknowledge
297 the arrests covered by the expunged record, except when the
298 subject of the record:

299 1. Is a candidate for employment with a criminal justice
300 agency;

301 2. Is a defendant in a criminal prosecution;

302 3. Concurrently or subsequently petitions for relief under
303 this section or s. 943.059;

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

305 5. Is seeking to be employed or licensed by or to contract
306 with the Department of Children and Family Services or the
307 Department of Juvenile Justice or to be employed or used by such
308 contractor or licensee in a sensitive position having direct
309 contact with children, the developmentally disabled, the aged, or
310 the elderly as provided in s. 110.1127(3), s. 393.063, s.
311 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
312 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter
313 400, or chapter 429;

314 6. Is seeking to be employed or licensed by the Department
315 of Education, any district school board, any university
316 laboratory school, any charter school, any private or parochial
317 school, or any local governmental entity that licenses child care
318 facilities; or

319 7. Is seeking authorization from a Florida seaport

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

322 (b) Subject to the exceptions in paragraph (a), a person
323 who has been granted an expunction under this section, former s.
324 893.14, former s. 901.33, or former s. 943.058 may not be held
325 under any provision of law of this state to commit perjury or to
326 be otherwise liable for giving a false statement by reason of
327 such person's failure to recite or acknowledge an expunged
328 criminal history record.

329 (c) Information relating to the existence of an expunged
330 criminal history record which is provided in accordance with
331 paragraph (a) is confidential and exempt from the provisions of
332 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
333 except that the department shall disclose the existence of a
334 criminal history record ordered expunged to the entities set
335 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
336 respective licensing, access authorization, and employment
337 purposes, and to criminal justice agencies for their respective
338 criminal justice purposes. It is unlawful for any employee of an
339 entity set forth in subparagraph (a)1., subparagraph (a)4.,
340 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
341 disclose information relating to the existence of an expunged
342 criminal history record of a person seeking employment, access
343 authorization, or licensure with such entity or contractor,
344 except to the person to whom the criminal history record relates
345 or to persons having direct responsibility for employment, access
346 authorization, or licensure decisions. Any person who violates
347 this paragraph commits a misdemeanor of the first degree,
348 punishable as provided in s. 775.082 or s. 775.083.

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349 (d) An agency, organization, or company to which the
350 county, department, or arresting agency disseminated the criminal
351 history information and which has received the order expunging
352 the record may not release the expunged information to the public
353 after 30 days following the date that it receives the court order
354 expunging the record.

355 (6) ~~(5)~~ STATUTORY REFERENCES.--Any reference to any other
356 chapter, section, or subdivision of the Florida Statutes in this
357 section constitutes a general reference under the doctrine of
358 incorporation by reference.

359 Section 3. Section 943.059, Florida Statutes, is amended to
360 read:

361 943.059 Court-ordered sealing of criminal history
362 records.--The courts of this state shall continue to have
363 jurisdiction over their own procedures, including the
364 maintenance, sealing, and correction of judicial records
365 containing criminal history information to the extent such
366 procedures are not inconsistent with the conditions,
367 responsibilities, and duties established by this section. Any
368 court of competent jurisdiction may order a criminal justice
369 agency to seal the criminal history record of a minor or an adult
370 who complies with the requirements of this section. The court
371 shall not order a criminal justice agency to seal a criminal
372 history record until the person seeking to seal a criminal
373 history record has applied for and received a certificate of
374 eligibility for sealing pursuant to subsection (3) ~~(2)~~.

375 (1) PROHIBITION AGAINST SEALING CERTAIN RECORDS.--A
376 criminal history record that relates to a violation of s.
377 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.

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378 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
379 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
380 916.1075, a violation enumerated in s. 907.041, or any violation
381 specified as a predicate offense for registration as a sexual
382 predator pursuant to s. 775.21, without regard to whether that
383 offense alone is sufficient to require such registration, or for
384 registration as a sexual offender pursuant to s. 943.0435, may
385 not be sealed, ~~without regard to whether adjudication was~~
386 ~~withheld~~, if the defendant was found guilty of or pled guilty or
387 nolo contendere to the offense, or if the defendant, as a minor,
388 was found to have committed or pled guilty or nolo contendere to
389 committing the offense as a delinquent act even if the
390 adjudication was withheld. The prohibition applies only to cases
391 in which the defendant, including a minor, was found guilty of or
392 pled guilty or nolo contendere to the offense. In all other
393 instances involving the enumerated offenses in this subsection,
394 the record may be sealed if an indictment, information, or other
395 charging document was not filed or issued in the case or, if
396 filed or issued in the case, was dismissed or nolle prosequi by
397 the state attorney or statewide prosecutor or was dismissed by a
398 court of competent jurisdiction, or the person was found not
399 guilty or acquitted by a judge or jury. The court may only order
400 sealing of a criminal history record pertaining to one arrest or
401 one incident of alleged criminal activity, except as provided in
402 this section. The court may, at its sole discretion, order the
403 sealing of a criminal history record pertaining to more than one
404 arrest if the additional arrests directly relate to the original
405 arrest. If the court intends to order the sealing of records
406 pertaining to such additional arrests, such intent must be

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407 | specified in the order. A criminal justice agency may not seal
408 | any record pertaining to such additional arrests if the order to
409 | seal does not articulate the intention of the court to seal
410 | records pertaining to more than one arrest. This section does not
411 | prevent the court from ordering the sealing of only a portion of
412 | a criminal history record pertaining to one arrest or one
413 | incident of alleged criminal activity. Notwithstanding any law to
414 | the contrary, a criminal justice agency may comply with laws,
415 | court orders, and official requests of other jurisdictions
416 | relating to sealing, correction, or confidential handling of
417 | criminal history records or information derived therefrom. This
418 | section does not confer any right to the sealing of any criminal
419 | history record, and any request for sealing a criminal history
420 | record may be denied at the sole discretion of the court.

421 | (2)~~(1)~~ PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each
422 | petition to a court to seal a criminal history record is complete
423 | only when accompanied by:

424 | (a) A valid certificate of eligibility for sealing issued
425 | by the department pursuant to subsection (2).

426 | (b) The petitioner's sworn statement attesting that the
427 | petitioner:

428 | 1. Has never, prior to the date on which the petition is
429 | filed, been adjudicated guilty of a criminal offense or
430 | comparable ordinance violation, or been adjudicated delinquent
431 | for committing any felony or a misdemeanor specified in s.
432 | 943.051(3)(b).

433 | 2. Has not been adjudicated guilty of or adjudicated
434 | delinquent for committing any of the acts stemming from the
435 | arrest or alleged criminal activity to which the petition to seal

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436 | pertains.

437 | 3. Except as otherwise provided in this section, has never
438 | secured a prior sealing or expunction of a criminal history
439 | record under this section, former s. 893.14, former s. 901.33,
440 | former s. 943.058, or from any jurisdiction outside the state.

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

444 |

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

448 | ~~(3)~~~~(2)~~ CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
449 | petitioning the court to seal a criminal history record, a person
450 | seeking to seal a criminal history record shall apply to the
451 | department for a certificate of eligibility for sealing. The
452 | department shall, by rule adopted pursuant to chapter 120,
453 | establish procedures pertaining to the application for and
454 | issuance of certificates of eligibility for sealing. A
455 | certificate of eligibility for sealing is valid for 12 months
456 | after the date stamped on the certificate when issued by the
457 | department. After that time, the petitioner must reapply to the
458 | department for a new certificate of eligibility. Eligibility for
459 | a renewed certification of eligibility must be based on the
460 | status of the applicant and the law in effect at the time of the
461 | renewal application. The department shall issue a certificate of
462 | eligibility for sealing to a person who is the subject of a
463 | criminal history record provided that such person:

464 | (a) Has submitted to the department a certified copy of the

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465 disposition of the charge to which the petition to seal pertains.

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

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

474 (d) Has not been adjudicated guilty of or adjudicated
475 delinquent for committing any of the acts stemming from the
476 arrest or alleged criminal activity to which the petition to seal
477 pertains.

478 (e) Has never secured a prior sealing or expunction of a
479 criminal history record under this section, former s. 893.14,
480 former s. 901.33, or former s. 943.058 involving an offense for
481 which the defendant had been found guilty or pled guilty or nolo
482 contendere.

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

486 (4)~~(3)~~ PROCESSING OF A PETITION OR ORDER TO SEAL.--

487 (a) In judicial proceedings under this section, a copy of
488 the completed petition to seal shall be served upon the
489 appropriate state attorney or the statewide prosecutor and upon
490 the arresting agency; however, it is not necessary to make any
491 agency other than the state a party. The appropriate state
492 attorney or the statewide prosecutor and the arresting agency may
493 respond to the court regarding the completed petition to seal.

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494 (b) If relief is granted by the court, the clerk of the
495 court shall certify copies of the order to the appropriate state
496 attorney or the statewide prosecutor, the county, and ~~to~~ the
497 arresting agency. The arresting agency is responsible for
498 forwarding the order to any other agency to which the arresting
499 agency disseminated the criminal history record information to
500 which the order pertains. The county is responsible for
501 forwarding the order to any agency, organization, or company to
502 which the county disseminated the criminal history information to
503 which the order pertains. The department shall forward the order
504 to seal to the Federal Bureau of Investigation. The clerk of the
505 court shall certify a copy of the order to any other agency which
506 the records of the court reflect has received the criminal
507 history record from the court.

508 (c) For an order to seal entered by a court prior to July
509 1, 1992, the department shall notify the appropriate state
510 attorney or statewide prosecutor of any order to seal which is
511 contrary to law because the person who is the subject of the
512 record has previously been convicted of a crime or comparable
513 ordinance violation or has had a prior criminal history record
514 sealed or expunged. Upon receipt of such notice, the appropriate
515 state attorney or statewide prosecutor shall take action, within
516 60 days, to correct the record and petition the court to void the
517 order to seal. The department shall seal the record until such
518 time as the order is voided by the court.

519 (d) On or after July 1, 1992, the department or any other
520 criminal justice agency is not required to act on an order to
521 seal entered by a court when such order does not comply with the
522 requirements of this section. Upon receipt of such an order, the

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523 department must notify the issuing court, the appropriate state
524 attorney or statewide prosecutor, the petitioner or the
525 petitioner's attorney, and the arresting agency of the reason for
526 noncompliance. The appropriate state attorney or statewide
527 prosecutor shall take action within 60 days to correct the record
528 and petition the court to void the order. No cause of action,
529 including contempt of court, shall arise against any criminal
530 justice agency for failure to comply with an order to seal when
531 the petitioner for such order failed to obtain the certificate of
532 eligibility as required by this section or when such order does
533 not comply with the requirements of this section.

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

538 (f) An agency, organization, or company to which the
539 county, department, or arresting agency disseminated the criminal
540 history information and which has received the order sealing the
541 record may not release the sealed information to the public after
542 30 days following the date that it receives the court order
543 sealing the record.

544 ~~(5)(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
545 criminal history record of a minor or an adult which is ordered
546 sealed by a court of competent jurisdiction pursuant to this
547 section is confidential and exempt from the provisions of s.
548 119.07(1) and s. 24(a), Art. I of the State Constitution and is
549 available only to the person who is the subject of the record, to
550 the subject's attorney, to criminal justice agencies for their
551 respective criminal justice purposes, which include conducting a

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

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

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

564 2. Is a defendant in a criminal prosecution;

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

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

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

577 6. Is seeking to be employed or licensed by the Department
578 of Education, any district school board, any university
579 laboratory school, any charter school, any private or parochial
580 school, or any local governmental entity that licenses child care

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581 facilities;

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

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

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

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

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

615 (6)~~(5)~~ STATUTORY REFERENCES.--Any reference to any other
616 chapter, section, or subdivision of the Florida Statutes in this
617 section constitutes a general reference under the doctrine of
618 incorporation by reference.

619 Section 4. Paragraph (a) of subsection (2) of section
620 943.0582, Florida Statutes, is amended to read:

621 943.0582 Prearrest, postarrest, or teen court diversion
622 program expunction.--

623 (2) (a) As used in this section, the term "expunction" has
624 the same meaning ascribed in and effect as s. 943.0585, except
625 that:

626 1. The provisions of s. 943.0585(5) (a) ~~s. 943.0585(4) (a)~~ do
627 not apply, except that the criminal history record of a person
628 whose record is expunged pursuant to this section shall be made
629 available only to criminal justice agencies for the purpose of
630 determining eligibility for prearrest, postarrest, or teen court
631 diversion programs; when the record is sought as part of a
632 criminal investigation; or when the subject of the record is a
633 candidate for employment with a criminal justice agency. For all
634 other purposes, a person whose record is expunged under this
635 section may lawfully deny or fail to acknowledge the arrest and
636 the charge covered by the expunged record.

637 2. Records maintained by local criminal justice agencies in
638 the county in which the arrest occurred that are eligible for

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639 | expunction pursuant to this section shall be sealed as the term
640 | is used in s. 943.059.

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