

1 A bill to be entitled
 2 An act relating to sealing criminal history records;
 3 amending s. 943.059, F.S.; permitting the sealing of a
 4 criminal history record that relates to specified
 5 misdemeanor violations; defining terms; providing for a
 6 petition to seal; providing for a certificate of
 7 eligibility; providing an effective date.

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

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 11 Section 1. Section 943.059, Florida Statutes, is amended
 12 to read:

13 943.059 Court-ordered sealing of criminal history
 14 records.--

15 (1) REQUIREMENTS AND RESTRICTIONS.--The courts of this
 16 state shall continue to have jurisdiction over their own
 17 procedures, including the maintenance, sealing, and correction
 18 of judicial records containing criminal history information to
 19 the extent such procedures are not inconsistent with the
 20 conditions, responsibilities, and duties established by this
 21 section. Any court of competent jurisdiction may order a
 22 criminal justice agency to seal the criminal history record of a
 23 minor or an adult who complies with the requirements of this
 24 section. The court shall not order a criminal justice agency to
 25 seal a criminal history record until the person seeking to seal
 26 a criminal history record has applied for and received a
 27 certificate of eligibility for sealing pursuant to subsection
 28 (3) or subsection (5) ~~(2)~~. A criminal history record that

29 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
30 chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s.
31 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s.
32 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s.
33 907.041, or any violation specified as a predicate offense for
34 registration as a sexual predator pursuant to s. 775.21, without
35 regard to whether that offense alone is sufficient to require
36 such registration, or for registration as a sexual offender
37 pursuant to s. 943.0435, may not be sealed, without regard to
38 whether adjudication was withheld, if the defendant was found
39 guilty of or pled guilty or nolo contendere to the offense, or
40 if the defendant, as a minor, was found to have committed or
41 pled guilty or nolo contendere to committing the offense as a
42 delinquent act. The court may only order sealing of a criminal
43 history record pertaining to one arrest or one incident of
44 alleged criminal activity, except as provided in this section.
45 The court may, at its sole discretion, order the sealing of a
46 criminal history record pertaining to more than one arrest if
47 the additional arrests directly relate to the original arrest.
48 If the court intends to order the sealing of records pertaining
49 to such additional arrests, such intent must be specified in the
50 order. A criminal justice agency may not seal any record
51 pertaining to such additional arrests if the order to seal does
52 not articulate the intention of the court to seal records
53 pertaining to more than one arrest. This section does not
54 prevent the court from ordering the sealing of only a portion of
55 a criminal history record pertaining to one arrest or one
56 incident of alleged criminal activity. Notwithstanding any law

57 | to the contrary, a criminal justice agency may comply with laws,
 58 | court orders, and official requests of other jurisdictions
 59 | relating to sealing, correction, or confidential handling of
 60 | criminal history records or information derived therefrom. This
 61 | section does not confer any right to the sealing of any criminal
 62 | history record, and any request for sealing a criminal history
 63 | record may be denied at the sole discretion of the court.

64 | (2)~~(1)~~ PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Except
 65 | as provided in subsection (4), each petition to a court to seal
 66 | a criminal history record is complete only when accompanied by:

67 | (a) A valid certificate of eligibility for sealing issued
 68 | by the department pursuant to subsection (3) ~~(2)~~.

69 | (b) The petitioner's sworn statement attesting that the
 70 | petitioner:

71 | 1. Has never, prior to the date on which the petition is
 72 | filed, been adjudicated guilty of a criminal offense or
 73 | comparable ordinance violation, or been adjudicated delinquent
 74 | for committing any felony or a misdemeanor specified in s.
 75 | 943.051(3)(b).

76 | 2. Has not been adjudicated guilty of or adjudicated
 77 | delinquent for committing any of the acts stemming from the
 78 | arrest or alleged criminal activity to which the petition to
 79 | seal pertains.

80 | 3. Has never secured a prior sealing or expunction of a
 81 | criminal history record under this section, former s. 893.14,
 82 | former s. 901.33, former s. 943.058, or from any jurisdiction
 83 | outside the state.

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

87
88 Any person who knowingly provides false information on such
89 sworn statement to the court commits a felony of the third
90 degree, punishable as provided in s. 775.082, s. 775.083, or s.
91 775.084.

92 ~~(3)~~⁽²⁾ CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
93 petitioning the court to seal a criminal history record, a
94 person seeking to seal a criminal history record shall apply to
95 the department for a certificate of eligibility for sealing. The
96 department shall, by rule adopted pursuant to chapter 120,
97 establish procedures pertaining to the application for and
98 issuance of certificates of eligibility for sealing. A
99 certificate of eligibility for sealing is valid for 12 months
100 after the date stamped on the certificate when issued by the
101 department. After that time, the petitioner must reapply to the
102 department for a new certificate of eligibility. Eligibility for
103 a renewed certification of eligibility must be based on the
104 status of the applicant and the law in effect at the time of the
105 renewal application. Except as provided in subsection (5), the
106 department shall issue a certificate of eligibility for sealing
107 to a person who is the subject of a criminal history record
108 provided that such person:

109 (a) Has submitted to the department a certified copy of
110 the disposition of the charge to which the petition to seal
111 pertains.

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

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

120 (d) Has not been adjudicated guilty of or adjudicated
 121 delinquent for committing any of the acts stemming from the
 122 arrest or alleged criminal activity to which the petition to
 123 seal pertains.

124 (e) Has never secured a prior sealing or expunction of a
 125 criminal history record under this section, former s. 893.14,
 126 former s. 901.33, or former s. 943.058.

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

130 (4) PETITION TO SEAL A CRIMINAL HISTORY RECORD RELATING TO
 131 CERTAIN MISDEMEANORS.--

132 (a) For purposes of this subsection and subsection (5),
 133 the term "specially sealable misdemeanor" means a misdemeanor
 134 violation of s. 562.11(2), s. 562.111, s. 806.101, s. 806.13, s.
 135 s. 810.08, s. 810.09, s. 810.10, s. 810.11, s. 810.115, s.
 136 810.13, s. 823.01, s. 823.02, s. 856.011, s. 856.015, s. 870.02,
 137 or chapter 893 in which the petitioner was adjudicated guilty or
 138 delinquent.

139 (b) Each petition to a court to seal a criminal history
140 record that relates to a specially sealable misdemeanor is
141 complete only when accompanied by:

142 1. A valid certificate of eligibility for sealing issued
143 by the department pursuant to subsection (5).

144 2. The petitioner's sworn statement attesting that:

145 a. With the exception of being adjudicated guilty or
146 delinquent for committing a specially sealable misdemeanor to
147 which the petition to seal pertains, the petitioner has never,
148 prior to the date on which the petition is filed, been
149 adjudicated guilty of a criminal offense or comparable ordinance
150 violation or been adjudicated delinquent for committing any
151 felony or a misdemeanor specified in s. 943.051(3)(b).

152 b. The petitioner was adjudicated guilty or delinquent of
153 a specially sealable misdemeanor to which the petition pertains
154 more than 10 years prior to the date on which the petition is
155 filed.

156 c. The petitioner has never secured a prior sealing or
157 expunction of a criminal history record under this section,
158 former s. 893.14, former s. 901.33, or former s. 943.058, or
159 from any jurisdiction outside the state.

160 d. The petitioner is eligible for such a sealing to the
161 best of his or her knowledge or belief and does not have any
162 other petition to seal or any petition to expunge pending before
163 any court.

164
165 Any person who knowingly provides false information on such
166 sworn statement to the court commits a felony of the third

167 degree, punishable as provided in s. 775.082, s. 775.083, or s.
168 775.084.

169 (5) CERTIFICATE OF ELIGIBILITY FOR SEALING A CRIMINAL
170 HISTORY RECORD RELATING TO CERTAIN MISDEMEANORS.--Prior to
171 petitioning the court to seal a criminal history record relating
172 to a specially sealable misdemeanor, a person seeking to seal a
173 criminal history record shall apply to the department for a
174 certificate of eligibility for sealing. The department shall, by
175 rule adopted pursuant to chapter 120, establish procedures
176 pertaining to the application for and issuance of certificates
177 of eligibility for sealing. The department shall endeavor to
178 make forms and procedures as simple to use as possible in order
179 to facilitate applicants who are proceeding without assistance.
180 A certificate of eligibility for sealing is valid for 12 months
181 after the date stamped on the certificate when issued by the
182 department. After that time, the petitioner must reapply to the
183 department for a new certificate of eligibility. Eligibility for
184 a renewed certification of eligibility must be based on the
185 status of the applicant and the law in effect at the time of the
186 renewal application. The department shall issue a certificate of
187 eligibility for sealing to a person who is the subject of a
188 criminal history record provided that such person:

189 (a) Has submitted to the department a certified copy of
190 the disposition of the charge to which the petition to seal
191 pertains.

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

195 (c) With the exception of being adjudicated guilty or
 196 delinquent for committing a misdemeanor violation of a provision
 197 listed in paragraph (4) (a) to which the petition to seal
 198 pertains, has never, prior to the date on which the application
 199 for a certificate of eligibility is filed, been adjudicated
 200 guilty of a criminal offense or comparable ordinance violation
 201 or been adjudicated delinquent for committing any felony or a
 202 misdemeanor specified in s. 943.051(3) (b).

203 (d) Was adjudicated guilty or delinquent for a specially
 204 sealable misdemeanor to which the petition pertains more than 10
 205 years prior to the date on which the petition is filed.

206 (e) Has never secured a prior sealing or expunction of a
 207 criminal history record under this section, former s. 893.14,
 208 former s. 901.33, or former s. 943.058.

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

212 ~~(6)(3)~~ PROCESSING OF A PETITION OR ORDER TO SEAL.--

213 (a) In judicial proceedings under this section, a copy of
 214 the completed petition to seal shall be served upon the
 215 appropriate state attorney or the statewide prosecutor and upon
 216 the arresting agency; however, it is not necessary to make any
 217 agency other than the state a party. The appropriate state
 218 attorney or the statewide prosecutor and the arresting agency
 219 may respond to the court regarding the completed petition to
 220 seal.

221 (b) If relief is granted by the court, the clerk of the
 222 court shall certify copies of the order to the appropriate state

223 attorney or the statewide prosecutor and to the arresting
224 agency. The arresting agency is responsible for forwarding the
225 order to any other agency to which the arresting agency
226 disseminated the criminal history record information to which
227 the order pertains. The department shall forward the order to
228 seal to the Federal Bureau of Investigation. The clerk of the
229 court shall certify a copy of the order to any other agency
230 which the records of the court reflect has received the criminal
231 history record from the court.

232 (c) For an order to seal entered by a court prior to July
233 1, 1992, the department shall notify the appropriate state
234 attorney or statewide prosecutor of any order to seal which is
235 contrary to law because the person who is the subject of the
236 record has previously been convicted of a crime or comparable
237 ordinance violation or has had a prior criminal history record
238 sealed or expunged. Upon receipt of such notice, the appropriate
239 state attorney or statewide prosecutor shall take action, within
240 60 days, to correct the record and petition the court to void
241 the order to seal. The department shall seal the record until
242 such time as the order is voided by the court.

243 (d) On or after July 1, 1992, the department or any other
244 criminal justice agency is not required to act on an order to
245 seal entered by a court when such order does not comply with the
246 requirements of this section. Upon receipt of such an order, the
247 department must notify the issuing court, the appropriate state
248 attorney or statewide prosecutor, the petitioner or the
249 petitioner's attorney, and the arresting agency of the reason
250 for noncompliance. The appropriate state attorney or statewide

251 prosecutor shall take action within 60 days to correct the
252 record and petition the court to void the order. No cause of
253 action, including contempt of court, shall arise against any
254 criminal justice agency for failure to comply with an order to
255 seal when the petitioner for such order failed to obtain the
256 certificate of eligibility as required by this section or when
257 such order does not comply with the requirements of this
258 section.

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

263 (7)~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
264 criminal history record of a minor or an adult which is ordered
265 sealed by a court of competent jurisdiction pursuant to this
266 section is confidential and exempt from the provisions of s.
267 119.07(1) and s. 24(a), Art. I of the State Constitution and is
268 available only to the person who is the subject of the record,
269 to the subject's attorney, to criminal justice agencies for
270 their respective criminal justice purposes, which include
271 conducting a criminal history background check for approval of
272 firearms purchases or transfers as authorized by state or
273 federal law, or to those entities set forth in subparagraphs
274 (a)1., 4., 5., 6., and 8. for their respective licensing, access
275 authorization, and employment purposes.

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

279 deny or fail to acknowledge the arrests covered by the sealed
 280 record, except when the subject of the record:

- 281 1. Is a candidate for employment with a criminal justice
 282 agency;
- 283 2. Is a defendant in a criminal prosecution;
- 284 3. Concurrently or subsequently petitions for relief under
 285 this section or s. 943.0585;
- 286 4. Is a candidate for admission to The Florida Bar;
- 287 5. Is seeking to be employed or licensed by or to contract
 288 with the Department of Children and Family Services or the
 289 Department of Juvenile Justice or to be employed or used by such
 290 contractor or licensee in a sensitive position having direct
 291 contact with children, the developmentally disabled, the aged,
 292 or the elderly as provided in s. 110.1127(3), s. 393.063, s.
 293 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.
 294 409.175(2)(i), s. 415.102(4), s. 415.103, chapter 916, s.
 295 985.644, chapter 400, or chapter 429;
- 296 6. Is seeking to be employed or licensed by the Department
 297 of Education, any district school board, any university
 298 laboratory school, any charter school, any private or parochial
 299 school, or any local governmental entity that licenses child
 300 care facilities;
- 301 7. Is attempting to purchase a firearm from a licensed
 302 importer, licensed manufacturer, or licensed dealer and is
 303 subject to a criminal history background check under state or
 304 federal law; or

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

308 (b) Subject to the exceptions in paragraph (a), a person
309 who has been granted a sealing under this section, former s.
310 893.14, former s. 901.33, or former s. 943.058 may not be held
311 under any provision of law of this state to commit perjury or to
312 be otherwise liable for giving a false statement by reason of
313 such person's failure to recite or acknowledge a sealed criminal
314 history record.

315 (c) Information relating to the existence of a sealed
316 criminal record provided in accordance with the provisions of
317 paragraph (a) is confidential and exempt from the provisions of
318 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
319 except that the department shall disclose the sealed criminal
320 history record to the entities set forth in subparagraphs (a)1.,
321 4., 5., 6., and 8. for their respective licensing, access
322 authorization, and employment purposes. It is unlawful for any
323 employee of an entity set forth in subparagraph (a)1.,
324 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
325 subparagraph (a)8. to disclose information relating to the
326 existence of a sealed criminal history record of a person
327 seeking employment, access authorization, or licensure with such
328 entity or contractor, except to the person to whom the criminal
329 history record relates or to persons having direct
330 responsibility for employment, access authorization, or
331 licensure decisions. Any person who violates the provisions of

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332 | this paragraph commits a misdemeanor of the first degree,
333 | punishable as provided in s. 775.082 or s. 775.083.

334 | (8)~~(5)~~ STATUTORY REFERENCES.--Any reference to any other
335 | chapter, section, or subdivision of the Florida Statutes in this
336 | section constitutes a general reference under the doctrine of
337 | incorporation by reference.

338 | Section 2. This act shall take effect July 1, 2008.