

By Senator Wilson

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1 A bill to be entitled
2 An act relating to criminal justice; providing
3 legislative intent; requiring state agencies and
4 regulatory boards to prepare reports that identify and
5 evaluate restrictions on licensing and employment;
6 amending s. 112.011, F.S.; prohibiting state agencies
7 from denying an application for a license, permit,
8 certificate, or employment based on a person's lack of
9 civil rights; providing an exception; amending s.
10 943.0585, F.S.; clarifying under what circumstances a
11 person may legally deny the existence of an expunged
12 criminal history record; authorizing the disclosure of
13 the contents of an expunged record upon receipt of a
14 written, notarized request from the record subject;
15 requiring clerks of the court to post information
16 relating to procedures to seal or expunge criminal
17 history records on the clerk's website; amending s.
18 943.059, F.S.; clarifying under what circumstances a
19 person may legally deny the existence of a sealed
20 criminal history record; authorizing a court to seal a
21 criminal history record of a person who had a prior
22 criminal history record sealed or expunged; requiring
23 the Office of Program Policy Analysis and Government
24 Accountability to prepare a report of its findings
25 relating to the use of criminal history records in
26 licensing and employment decisions; providing an
27 effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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30
31 Section 1. Restrictions on the employment of ex-offenders;
32 legislative intent; state agency reporting requirements.-

33 (1) The Legislature declares that it is the goal of this
34 state to provide to prospective employees a clear statement of
35 which crimes would disqualify ex-offenders from which
36 occupations. It is the intent of the Legislature to make
37 opportunities for employment available to ex-offenders so that
38 they will be less likely to revert to criminal behavior, insofar
39 as the employment of such persons does not detract from the
40 safety of the public. The Legislature further declares that
41 state agencies should identify all restrictions imposed by the
42 agencies or by boards that regulate professions and occupations
43 on employment and should make an effort to define each
44 restriction as narrowly as possible while continuing to maintain
45 public safety.

46 (2) Each state agency, including, but not limited to,
47 professional and occupational regulatory boards, shall, by
48 December 31, 2010, and every 8 years thereafter, submit to the
49 Governor, the President of the Senate, and the Speaker of the
50 House of Representatives a report that includes:

51 (a) A list of all agency or board policies that disqualify
52 from employment or licensure persons who have been convicted of
53 a crime and have completed any incarceration and restitution to
54 which they have been sentenced for such a crime.

55 (b) A determination of whether the disqualifying policies
56 are readily available to prospective employers and licensees.

57 (c) The identification and evaluation of alternatives to
58 the disqualifying policies to promote the employment of ex-

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59 offenders and protect the public.

60 (d) An evaluation of whether the disqualifying polices are
61 too broad and whether crimes or acts of moral turpitude that
62 disqualify a person from licensure should be more specifically
63 or narrowly identified.

64 Section 2. Section 112.011, Florida Statutes, is amended to
65 read:

66 112.011 Disqualification from licensing and public
67 employment based on criminal conviction ~~Felons; removal of~~
68 ~~disqualifications for employment, exceptions.-~~

69 (1) (a) Except as provided in s. 775.16, a person may ~~shall~~
70 not be disqualified from employment by the state, any of its
71 agencies or political subdivisions, or any municipality solely
72 because of a prior conviction for a crime. However, a person may
73 be denied employment by the state, any of its agencies or
74 political subdivisions, or any municipality by reason of the
75 prior conviction for a crime if the crime was a felony or first
76 degree misdemeanor and directly related to the position of
77 employment sought.

78 (b) Except as provided in s. 775.16, a person ~~whose civil~~
79 ~~rights have been restored shall not be disqualified to practice,~~
80 ~~pursue, or engage in any occupation, trade, vocation,~~
81 ~~profession, or business for which a license, permit, or~~
82 ~~certificate is required to be issued by the state, any of its~~
83 ~~agencies or political subdivisions, or any municipality solely~~
84 ~~because of a prior conviction for a crime. However, a person~~
85 ~~whose civil rights have been restored~~ may be denied a license,
86 permit, or certification to pursue, practice, or engage in an
87 occupation, trade, vocation, profession, or business by reason

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88 of the prior conviction for a crime if the crime was a felony or
89 first degree misdemeanor relevant to the standards normally
90 associated with, or determined by the regulatory authority to be
91 necessary for the protection of the public or other parties for
92 and directly related to the specific occupation, trade,
93 vocation, profession, or business for which the license, permit,
94 or certificate is sought.

95 (c) Notwithstanding any law to the contrary, a state agency
96 may not deny an application for a license, permit, certificate,
97 or employment based on the applicant's lack of civil rights.
98 However, this paragraph does not apply to applications for a
99 license to carry a concealed weapon or firearm under chapter
100 790.

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

103 (b) This section shall not be applicable to the employment
104 practices of any fire department relating to the hiring of
105 firefighters. An applicant for employment with any fire
106 department who has ~~with~~ a prior felony conviction shall be
107 excluded from employment for a period of 4 years after
108 expiration of sentence or final release by the Parole Commission
109 unless the applicant, prior to the expiration of the 4-year
110 period, has received a full pardon or has had his or her civil
111 rights restored.

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

116 (3) Any complaint concerning the violation of this section

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117 shall be adjudicated in accordance with the procedures set forth
118 in chapter 120 for administrative and judicial review.

119 Section 3. Section 943.0585, Florida Statutes, is amended
120 to read:

121 943.0585 Court-ordered expunction of criminal history
122 records.—The courts of this state have jurisdiction over their
123 own procedures, including the maintenance, expunction, and
124 correction of judicial records containing criminal history
125 information to the extent such procedures are not inconsistent
126 with the conditions, responsibilities, and duties established by
127 this section. Any court of competent jurisdiction may order a
128 criminal justice agency to expunge the criminal history record
129 of a minor or an adult who complies with the requirements of
130 this section. The court shall not order a criminal justice
131 agency to expunge a criminal history record until the person
132 seeking to expunge a criminal history record has applied for and
133 received a certificate of eligibility for expunction pursuant to
134 subsection (2). A criminal history record that relates to a
135 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
136 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
137 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
138 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
139 any violation specified as a predicate offense for registration
140 as a sexual predator pursuant to s. 775.21, without regard to
141 whether that offense alone is sufficient to require such
142 registration, or for registration as a sexual offender pursuant
143 to s. 943.0435, may not be expunged, without regard to whether
144 adjudication was withheld, if the defendant was found guilty of
145 or pled guilty or nolo contendere to the offense, or if the

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146 defendant, as a minor, was found to have committed, or pled
147 guilty or nolo contendere to committing, the offense as a
148 delinquent act. The court may only order expunction of a
149 criminal history record pertaining to one arrest or one incident
150 of alleged criminal activity, except as provided in this
151 section. The court may, at its sole discretion, order the
152 expunction of a criminal history record pertaining to more than
153 one arrest if the additional arrests directly relate to the
154 original arrest. If the court intends to order the expunction of
155 records pertaining to such additional arrests, such intent must
156 be specified in the order. A criminal justice agency may not
157 expunge any record pertaining to such additional arrests if the
158 order to expunge does not articulate the intention of the court
159 to expunge a record pertaining to more than one arrest. This
160 section does not prevent the court from ordering the expunction
161 of only a portion of a criminal history record pertaining to one
162 arrest or one incident of alleged criminal activity.

163 Notwithstanding any law to the contrary, a criminal justice
164 agency may comply with laws, court orders, and official requests
165 of other jurisdictions relating to expunction, correction, or
166 confidential handling of criminal history records or information
167 derived therefrom. This section does not confer any right to the
168 expunction of any criminal history record, and any request for
169 expunction of a criminal history record may be denied at the
170 sole discretion of the court.

171 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
172 petition to a court to expunge a criminal history record is
173 complete only when accompanied by:

174 (a) A valid certificate of eligibility for expunction

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

176 (b) The petitioner's sworn statement attesting that the
177 petitioner:

178 1. Has never, prior to the date on which the petition is
179 filed, been adjudicated guilty of a criminal offense or
180 comparable ordinance violation, or been adjudicated delinquent
181 for committing any felony or a misdemeanor specified in s.
182 943.051(3)(b).

183 2. Has not been adjudicated guilty of, or adjudicated
184 delinquent for committing, any of the acts stemming from the
185 arrest or alleged criminal activity to which the petition
186 pertains.

187 3. Has never secured a prior sealing or expunction of a
188 criminal history record under this section, former s. 893.14,
189 former s. 901.33, or former s. 943.058, or from any jurisdiction
190 outside the state, unless expunction is sought of a criminal
191 history record previously sealed for 10 years pursuant to
192 paragraph (2)(h) and the record is otherwise eligible for
193 expunction.

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

197

198 Any person who knowingly provides false information on such
199 sworn statement to the court commits a felony of the third
200 degree, punishable as provided in s. 775.082, s. 775.083, or s.
201 775.084.

202 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
203 petitioning the court to expunge a criminal history record, a

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204 person seeking to expunge a criminal history record shall apply
205 to the department for a certificate of eligibility for
206 expunction. The department shall, by rule adopted pursuant to
207 chapter 120, establish procedures pertaining to the application
208 for and issuance of certificates of eligibility for expunction.
209 A certificate of eligibility for expunction is valid for 12
210 months after the date stamped on the certificate when issued by
211 the department. After that time, the petitioner must reapply to
212 the department for a new certificate of eligibility. Eligibility
213 for a renewed certification of eligibility must be based on the
214 status of the applicant and the law in effect at the time of the
215 renewal application. The department shall issue a certificate of
216 eligibility for expunction to a person who is the subject of a
217 criminal history record if that person:

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

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

223 2. That an indictment, information, or other charging
224 document, if filed or issued in the case, was dismissed or nolle
225 prosequi by the state attorney or statewide prosecutor, or was
226 dismissed by a court of competent jurisdiction, and that none of
227 the charges related to the arrest or alleged criminal activity
228 to which the petition to expunge pertains resulted in a trial,
229 without regard to whether the outcome of the trial was other
230 than an adjudication of guilt.

231 3. That the criminal history record does not relate to a
232 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,

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233 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
234 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
235 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
236 any violation specified as a predicate offense for registration
237 as a sexual predator pursuant to s. 775.21, without regard to
238 whether that offense alone is sufficient to require such
239 registration, or for registration as a sexual offender pursuant
240 to s. 943.0435, where the defendant was found guilty of, or pled
241 guilty or nolo contendere to any such offense, or that the
242 defendant, as a minor, was found to have committed, or pled
243 guilty or nolo contendere to committing, such an offense as a
244 delinquent act, without regard to whether adjudication was
245 withheld.

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

249 (c) Has submitted to the department a certified copy of the
250 disposition of the charge to which the petition to expunge
251 pertains.

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

257 (e) Has not been adjudicated guilty of, or adjudicated
258 delinquent for committing, any of the acts stemming from the
259 arrest or alleged criminal activity to which the petition to
260 expunge pertains.

261 (f) Has never secured a prior sealing or expunction of a

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262 criminal history record under this section, former s. 893.14,
263 former s. 901.33, or former s. 943.058, unless expunction is
264 sought of a criminal history record previously sealed for 10
265 years pursuant to paragraph (h) and the record is otherwise
266 eligible for expunction.

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

270 (h) Has previously obtained a court order sealing the
271 record under this section, former s. 893.14, former s. 901.33,
272 or former s. 943.058 for a minimum of 10 years because
273 adjudication was withheld or because all charges related to the
274 arrest or alleged criminal activity to which the petition to
275 expunge pertains were not dismissed prior to trial, without
276 regard to whether the outcome of the trial was other than an
277 adjudication of guilt. The requirement for the record to have
278 previously been sealed for a minimum of 10 years does not apply
279 when a plea was not entered or all charges related to the arrest
280 or alleged criminal activity to which the petition to expunge
281 pertains were dismissed prior to trial.

282 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

283 (a) In judicial proceedings under this section, a copy of
284 the completed petition to expunge shall be served upon the
285 appropriate state attorney or the statewide prosecutor and upon
286 the arresting agency; however, it is not necessary to make any
287 agency other than the state a party. The appropriate state
288 attorney or the statewide prosecutor and the arresting agency
289 may respond to the court regarding the completed petition to
290 expunge.

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291 (b) If relief is granted by the court, the clerk of the
292 court shall certify copies of the order to the appropriate state
293 attorney or the statewide prosecutor and the arresting agency.
294 The arresting agency is responsible for forwarding the order to
295 any other agency to which the arresting agency disseminated the
296 criminal history record information to which the order pertains.
297 The department shall forward the order to expunge to the Federal
298 Bureau of Investigation. The clerk of the court shall certify a
299 copy of the order to any other agency which the records of the
300 court reflect has received the criminal history record from the
301 court.

302 (c) For an order to expunge entered by a court prior to
303 July 1, 1992, the department shall notify the appropriate state
304 attorney or statewide prosecutor of an order to expunge which is
305 contrary to law because the person who is the subject of the
306 record has previously been convicted of a crime or comparable
307 ordinance violation or has had a prior criminal history record
308 sealed or expunged. Upon receipt of such notice, the appropriate
309 state attorney or statewide prosecutor shall take action, within
310 60 days, to correct the record and petition the court to void
311 the order to expunge. The department shall seal the record until
312 such time as the order is voided by the court.

313 (d) On or after July 1, 1992, the department or any other
314 criminal justice agency is not required to act on an order to
315 expunge entered by a court when such order does not comply with
316 the requirements of this section. Upon receipt of such an order,
317 the department must notify the issuing court, the appropriate
318 state attorney or statewide prosecutor, the petitioner or the
319 petitioner's attorney, and the arresting agency of the reason

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320 for noncompliance. The appropriate state attorney or statewide
321 prosecutor shall take action within 60 days to correct the
322 record and petition the court to void the order. No cause of
323 action, including contempt of court, shall arise against any
324 criminal justice agency for failure to comply with an order to
325 expunge when the petitioner for such order failed to obtain the
326 certificate of eligibility as required by this section or such
327 order does not otherwise comply with the requirements of this
328 section.

329 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
330 criminal history record of a minor or an adult which is ordered
331 expunged by a court of competent jurisdiction pursuant to this
332 section must be physically destroyed or obliterated by any
333 criminal justice agency having custody of such record; except
334 that any criminal history record in the custody of the
335 department must be retained in all cases. A criminal history
336 record ordered expunged that is retained by the department is
337 confidential and exempt from the provisions of s. 119.07(1) and
338 s. 24(a), Art. I of the State Constitution and not available to
339 any person or entity except upon order of a court of competent
340 jurisdiction. A criminal justice agency may retain a notation
341 indicating compliance with an order to expunge.

342 (a) The person who is the subject of a criminal history
343 record that is expunged under this section or under other
344 provisions of law, including former s. 893.14, former s. 901.33,
345 and former s. 943.058, may lawfully deny or fail to acknowledge
346 the arrests and subsequent dispositions covered by the expunged
347 record, except when the subject of the record:

348 1. Is a candidate for employment with a criminal justice

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349 agency;

350 2. Is a defendant in a criminal prosecution;

351 3. Concurrently or subsequently petitions for relief under
352 this section or s. 943.059;

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

354 5. Is seeking to be employed or licensed by or to contract
355 with the Department of Children and Family Services, the Agency
356 for Health Care Administration, the Agency for Persons with
357 Disabilities, or the Department of Juvenile Justice or to be
358 employed or used by such contractor or licensee in a sensitive
359 position having direct contact with children, the
360 developmentally disabled, the aged, or the elderly as provided
361 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
362 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),
363 chapter 916, s. 985.644, chapter 400, or chapter 429;

364 6. Is seeking to be employed or licensed by the Department
365 of Education, any district school board, any university
366 laboratory school, any charter school, any private or parochial
367 school, or any local governmental entity that licenses child
368 care facilities; or

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

372 (b) Subject to the exceptions in paragraph (a), a person
373 who has been granted an expunction under this section, former s.
374 893.14, former s. 901.33, or former s. 943.058 may not be held
375 under any provision of law of this state to commit perjury or to
376 be otherwise liable for giving a false statement by reason of
377 such person's failure to recite or acknowledge an expunged

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378 criminal history record, including a failure to recite or
379 acknowledge on an employment application.

380 (c) Information relating to the existence of an expunged
381 criminal history record which is provided in accordance with
382 paragraph (a) is confidential and exempt from the provisions of
383 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
384 except that the department shall disclose the existence of a
385 criminal history record ordered expunged to the entities set
386 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
387 respective licensing, access authorization, and employment
388 purposes, and to criminal justice agencies for their respective
389 criminal justice purposes. It is unlawful for any employee of an
390 entity set forth in subparagraph (a)1., subparagraph (a)4.,
391 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
392 disclose information relating to the existence of an expunged
393 criminal history record of a person seeking employment, access
394 authorization, or licensure with such entity or contractor,
395 except to the person to whom the criminal history record relates
396 or to persons having direct responsibility for employment,
397 access authorization, or licensure decisions. Any person who
398 violates this paragraph commits a misdemeanor of the first
399 degree, punishable as provided in s. 775.082 or s. 775.083.

400 (d) The department may disclose the contents of an expunged
401 record to the subject of the record upon the receipt of a
402 written, notarized request from the subject of the record.

403 (5) Each website for the office of a clerk of court must
404 include information relating to procedures to seal or expunge
405 criminal history records. This information must include the link
406 to related information on the website of the department.

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407 (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
408 chapter, section, or subdivision of the Florida Statutes in this
409 section constitutes a general reference under the doctrine of
410 incorporation by reference.

411 Section 4. Section 943.059, Florida Statutes, is amended to
412 read:

413 943.059 Court-ordered sealing of criminal history records.—
414 The courts of this state shall continue to have jurisdiction
415 over their own procedures, including the maintenance, sealing,
416 and correction of judicial records containing criminal history
417 information to the extent such procedures are not inconsistent
418 with the conditions, responsibilities, and duties established by
419 this section. Any court of competent jurisdiction may order a
420 criminal justice agency to seal the criminal history record of a
421 minor or an adult who complies with the requirements of this
422 section. The court shall not order a criminal justice agency to
423 seal a criminal history record until the person seeking to seal
424 a criminal history record has applied for and received a
425 certificate of eligibility for sealing pursuant to subsection
426 (2). A criminal history record that relates to a violation of s.
427 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
428 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
429 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
430 916.1075, a violation enumerated in s. 907.041, or any violation
431 specified as a predicate offense for registration as a sexual
432 predator pursuant to s. 775.21, without regard to whether that
433 offense alone is sufficient to require such registration, or for
434 registration as a sexual offender pursuant to s. 943.0435, may
435 not be sealed, without regard to whether adjudication was

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436 withheld, if the defendant was found guilty of or pled guilty or
437 nolo contendere to the offense, or if the defendant, as a minor,
438 was found to have committed or pled guilty or nolo contendere to
439 committing the offense as a delinquent act. The court may only
440 order sealing of a criminal history record pertaining to one
441 arrest or one incident of alleged criminal activity, except as
442 provided in this section. The court may, at its sole discretion,
443 order the sealing of a criminal history record pertaining to
444 more than one arrest if the additional arrests directly relate
445 to the original arrest. If the court intends to order the
446 sealing of records pertaining to such additional arrests, such
447 intent must be specified in the order. A criminal justice agency
448 may not seal any record pertaining to such additional arrests if
449 the order to seal does not articulate the intention of the court
450 to seal records pertaining to more than one arrest. This section
451 does not prevent the court from ordering the sealing of only a
452 portion of a criminal history record pertaining to one arrest or
453 one incident of alleged criminal activity. Notwithstanding any
454 law to the contrary, a criminal justice agency may comply with
455 laws, court orders, and official requests of other jurisdictions
456 relating to sealing, correction, or confidential handling of
457 criminal history records or information derived therefrom. This
458 section does not confer any right to the sealing of any criminal
459 history record, and any request for sealing a criminal history
460 record may be denied at the sole discretion of the court.

461 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
462 petition to a court to seal a criminal history record is
463 complete only when accompanied by:

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

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465 by the department pursuant to subsection (2).

466 (b) The petitioner's sworn statement attesting that the
467 petitioner:

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

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

477 3. Has never secured a prior sealing, except as provided in
478 subsection (6), or expunction of a criminal history record under
479 this section, former s. 893.14, former s. 901.33, former s.
480 943.058, or from any jurisdiction outside the state.

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

484

485 Any person who knowingly provides false information on such
486 sworn statement to the court commits a felony of the third
487 degree, punishable as provided in s. 775.082, s. 775.083, or s.
488 775.084.

489 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
490 petitioning the court to seal a criminal history record, a
491 person seeking to seal a criminal history record shall apply to
492 the department for a certificate of eligibility for sealing. The
493 department shall, by rule adopted pursuant to chapter 120,

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494 establish procedures pertaining to the application for and
495 issuance of certificates of eligibility for sealing. A
496 certificate of eligibility for sealing is valid for 12 months
497 after the date stamped on the certificate when issued by the
498 department. After that time, the petitioner must reapply to the
499 department for a new certificate of eligibility. Eligibility for
500 a renewed certification of eligibility must be based on the
501 status of the applicant and the law in effect at the time of the
502 renewal application. The department shall issue a certificate of
503 eligibility for sealing to a person who is the subject of a
504 criminal history record provided that such person:

505 (a) Has submitted to the department a certified copy of the
506 disposition of the charge to which the petition to seal
507 pertains.

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

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

516 (d) Has not been adjudicated guilty of or adjudicated
517 delinquent for committing any of the acts stemming from the
518 arrest or alleged criminal activity to which the petition to
519 seal pertains.

520 (e) Has never secured a prior sealing, except as provided
521 in subsection (6), or expunction of a criminal history record
522 under this section, former s. 893.14, former s. 901.33, or

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523 former s. 943.058.

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

527 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

528 (a) In judicial proceedings under this section, a copy of
529 the completed petition to seal shall be served upon the
530 appropriate state attorney or the statewide prosecutor and upon
531 the arresting agency; however, it is not necessary to make any
532 agency other than the state a party. The appropriate state
533 attorney or the statewide prosecutor and the arresting agency
534 may respond to the court regarding the completed petition to
535 seal.

536 (b) If relief is granted by the court, the clerk of the
537 court shall certify copies of the order to the appropriate state
538 attorney or the statewide prosecutor and to the arresting
539 agency. The arresting agency is responsible for forwarding the
540 order to any other agency to which the arresting agency
541 disseminated the criminal history record information to which
542 the order pertains. The department shall forward the order to
543 seal to the Federal Bureau of Investigation. The clerk of the
544 court shall certify a copy of the order to any other agency
545 which the records of the court reflect has received the criminal
546 history record from the court.

547 (c) For an order to seal entered by a court prior to July
548 1, 1992, the department shall notify the appropriate state
549 attorney or statewide prosecutor of any order to seal which is
550 contrary to law because the person who is the subject of the
551 record has previously been convicted of a crime or comparable

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552 ordinance violation or has had a prior criminal history record
553 sealed, except as provided in subsection (6), or expunged. Upon
554 receipt of such notice, the appropriate state attorney or
555 statewide prosecutor shall take action, within 60 days, to
556 correct the record and petition the court to void the order to
557 seal. The department shall seal the record until such time as
558 the order is voided by the court.

559 (d) On or after July 1, 1992, the department or any other
560 criminal justice agency is not required to act on an order to
561 seal entered by a court when such order does not comply with the
562 requirements of this section. Upon receipt of such an order, the
563 department must notify the issuing court, the appropriate state
564 attorney or statewide prosecutor, the petitioner or the
565 petitioner's attorney, and the arresting agency of the reason
566 for noncompliance. The appropriate state attorney or statewide
567 prosecutor shall take action within 60 days to correct the
568 record and petition the court to void the order. No cause of
569 action, including contempt of court, shall arise against any
570 criminal justice agency for failure to comply with an order to
571 seal when the petitioner for such order failed to obtain the
572 certificate of eligibility as required by this section or when
573 such order does not comply with the requirements of this
574 section.

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

579 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
580 history record of a minor or an adult which is ordered sealed by

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581 a court of competent jurisdiction pursuant to this section is
582 confidential and exempt from the provisions of s. 119.07(1) and
583 s. 24(a), Art. I of the State Constitution and is available only
584 to the person who is the subject of the record, to the subject's
585 attorney, to criminal justice agencies for their respective
586 criminal justice purposes, which include conducting a criminal
587 history background check for approval of firearms purchases or
588 transfers as authorized by state or federal law, to judges in
589 the state courts system for the purpose of assisting them in
590 their case-related decisionmaking responsibilities, as set forth
591 in s. 943.053(5), or to those entities set forth in
592 subparagraphs (a)1., 4., 5., 6., and 8. for their respective
593 licensing, access authorization, and employment purposes.

594 (a) The subject of a criminal history record sealed under
595 this section or under other provisions of law, including former
596 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
597 deny or fail to acknowledge the arrests and subsequent
598 dispositions covered by the sealed record, except when the
599 subject of the record:

- 600 1. Is a candidate for employment with a criminal justice
601 agency;
- 602 2. Is a defendant in a criminal prosecution;
- 603 3. Concurrently or subsequently petitions for relief under
604 this section or s. 943.0585;
- 605 4. Is a candidate for admission to The Florida Bar;
- 606 5. Is seeking to be employed or licensed by or to contract
607 with the Department of Children and Family Services, the Agency
608 for Health Care Administration, the Agency for Persons with
609 Disabilities, or the Department of Juvenile Justice or to be

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610 employed or used by such contractor or licensee in a sensitive
611 position having direct contact with children, the
612 developmentally disabled, the aged, or the elderly as provided
613 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
614 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
615 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

616 6. Is seeking to be employed or licensed by the Department
617 of Education, any district school board, any university
618 laboratory school, any charter school, any private or parochial
619 school, or any local governmental entity that licenses child
620 care facilities;

621 7. Is attempting to purchase a firearm from a licensed
622 importer, licensed manufacturer, or licensed dealer and is
623 subject to a criminal history background check under state or
624 federal law; or

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

628 (b) Subject to the exceptions in paragraph (a), a person
629 who has been granted a sealing under this section, former s.
630 893.14, former s. 901.33, or former s. 943.058 may not be held
631 under any provision of law of this state to commit perjury or to
632 be otherwise liable for giving a false statement by reason of
633 such person's failure to recite or acknowledge a sealed criminal
634 history record, including failure to recite or acknowledge on an
635 employment application.

636 (c) Information relating to the existence of a sealed
637 criminal record provided in accordance with the provisions of
638 paragraph (a) is confidential and exempt from the provisions of

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639 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
640 except that the department shall disclose the sealed criminal
641 history record to the entities set forth in subparagraphs (a)1.,
642 4., 5., 6., and 8. for their respective licensing, access
643 authorization, and employment purposes. It is unlawful for any
644 employee of an entity set forth in subparagraph (a)1.,
645 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
646 subparagraph (a)8. to disclose information relating to the
647 existence of a sealed criminal history record of a person
648 seeking employment, access authorization, or licensure with such
649 entity or contractor, except to the person to whom the criminal
650 history record relates or to persons having direct
651 responsibility for employment, access authorization, or
652 licensure decisions. Any person who violates the provisions of
653 this paragraph commits a misdemeanor of the first degree,
654 punishable as provided in s. 775.082 or s. 775.083.

655 (5) STATUTORY REFERENCES.—Any reference to any other
656 chapter, section, or subdivision of the Florida Statutes in this
657 section constitutes a general reference under the doctrine of
658 incorporation by reference.

659 (6) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING
660 OR EXPUNCTION.—A court may seal a person's criminal history
661 record after a prior criminal history record has been sealed or
662 expunged only if the person obtains a certificate from the
663 department to seal the criminal history record. The department
664 shall issue the certificate only if the person has not been
665 arrested during the 5-year period following the date of the
666 court order for the initial expunction or sealing of his or her
667 criminal history record. All other provisions and requirements

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668 of this section apply to an application to seal a criminal
669 history record after a prior criminal history record has been
670 sealed or expunged.

671 Section 5. (1) The Office of Program Policy Analysis and
672 Government Accountability, in cooperation with the Department of
673 Law Enforcement, shall:

674 (a) Assess current safeguards for the accuracy of the
675 criminal history data contained in the Department of Law
676 Enforcement's Computerized Criminal History (CCH) database.

677 (b) Assess the current process available to potential
678 private employers or licensing agencies to whether an applicant
679 has a criminal history.

680 (c) Assess whether an adequate process exists to allow a
681 potential private employer or licensing agency to determine
682 whether an applicant's response to an "arrest, conviction, or
683 adjudication withheld" criminal history question on an
684 application is truthful and complete.

685 (d) Assess the feasibility of establishing privacy
686 safeguards to protect job or license applicants, such as
687 requiring informed consent and providing an opportunity to
688 review a criminal history record before a job or licensing
689 application is made, before the criminal history record is
690 provided to the potential employer or licensing entity, or
691 before adverse action is taken by the potential employer or
692 licensing entity.

693 (e) Identify actions that to improve the completeness of
694 the criminal history record and the consumer readability of the
695 criminal history record.

696 (2) The Office of Program Policy Analysis and Government

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697 Accountability shall report its findings to the President of the
698 Senate and the Speaker of the House of Representatives by
699 February 1, 2010.

700 Section 6. This act shall take effect July 1, 2009.