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1                   A bill to be entitled  
2           An act relating to criminal justice; providing a short  
3           title; providing legislative intent; requiring state  
4           agencies and regulatory boards to prepare reports that  
5           identify and evaluate restrictions on licensing and  
6           employment; amending s. 112.011, F.S.; prohibiting  
7           state agencies from denying an application for a  
8           license, permit, certificate, or employment based on a  
9           person's lack of civil rights; providing an exception;  
10          amending s. 768.096, F.S.; requiring an employer to  
11          review the results of a criminal background  
12          investigation; requiring an employer not to place an  
13          employee who has a criminal record in a position where  
14          conduct similar to the employee's past criminal  
15          conduct would be facilitated; requiring an employer to  
16          determine that the criminal background investigation  
17          does not demonstrate that the employee is unsuitable  
18          for the particular work to be performed or the context  
19          of the employment in general; amending s. 943.0585,  
20          F.S.; clarifying under what circumstances a person may  
21          legally deny the existence of an expunged criminal  
22          history record; authorizing the disclosure of the  
23          contents of an expunged record upon receipt of a  
24          written, notarized request from the record subject;  
25          requiring clerks of the court to post information  
26          relating to procedures to seal or expunge criminal  
27          history records on the clerk's website; amending s.  
28          943.059, F.S.; clarifying under what circumstances a  
29          person may legally deny the existence of a sealed

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30 criminal history record; authorizing a court to seal a  
31 criminal history record of a person who had a prior  
32 criminal history record sealed or expunged; providing  
33 an effective date.

34  
35 Be It Enacted by the Legislature of the State of Florida:

36  
37 Section 1. This act may be cited as the "Keep Florida  
38 Working Act."

39 Section 2. Restrictions on the employment of ex-offenders;  
40 legislative intent; state agency reporting requirements.-

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

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

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

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

65       (c) The identification and evaluation of alternatives to  
66 the disqualifying policies to promote the employment of ex-  
67 offenders and protect the public.

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

72       Section 3. Section 112.011, Florida Statutes, is amended to  
73 read:

74       112.011 Disqualification from licensing and public  
75 employment based on criminal conviction ~~Felons; removal of~~  
76 ~~disqualifications for employment, exceptions.-~~

77       (1) (a) Except as provided in s. 775.16, a person may ~~shall~~  
78 not be disqualified from employment by the state, any of its  
79 agencies or political subdivisions, or any municipality solely  
80 because of a prior conviction for a crime. However, a person may  
81 be denied employment by the state, any of its agencies or  
82 political subdivisions, or any municipality by reason of the  
83 prior conviction for a crime if the crime was a felony or first  
84 degree misdemeanor and directly related to the position of  
85 employment sought.

86       (b) Except as provided in s. 775.16, a person ~~whose civil~~  
87 ~~rights have been restored shall not be disqualified to practice,~~

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88 ~~pursue, or engage in any occupation, trade, vocation,~~  
89 ~~profession, or business for which a license, permit, or~~  
90 ~~certificate is required to be issued by the state, any of its~~  
91 ~~agencies or political subdivisions, or any municipality solely~~  
92 ~~because of a prior conviction for a crime. However, a person~~  
93 ~~whose civil rights have been restored~~ may be denied a license,  
94 permit, or certification to pursue, practice, or engage in an  
95 occupation, trade, vocation, profession, or business by reason  
96 of the prior conviction for a crime if the crime was a felony or  
97 first degree misdemeanor relevant to the standards normally  
98 associated with, or determined by the regulatory authority to be  
99 necessary for the protection of the public or other parties for  
100 ~~and directly related to~~ the specific occupation, trade,  
101 vocation, profession, or business for which the license, permit,  
102 or certificate is sought.

103 (c) Notwithstanding any law to the contrary, a state agency  
104 may not deny an application for a license, permit, certificate,  
105 or employment based on the applicant's lack of civil rights.  
106 However, this paragraph does not apply to applications for a  
107 license to carry a concealed weapon or firearm under chapter  
108 790.

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

111 (b) This section shall not be applicable to the employment  
112 practices of any fire department relating to the hiring of  
113 firefighters. An applicant for employment with any fire  
114 department who has ~~with~~ a prior felony conviction shall be  
115 excluded from employment for a period of 4 years after  
116 expiration of sentence or final release by the Parole Commission

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117 unless the applicant, prior to the expiration of the 4-year  
118 period, has received a full pardon or has had his or her civil  
119 rights restored.

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

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

127 Section 4. Section 768.096, Florida Statutes, is amended to  
128 read:

129 768.096 Employer presumption against negligent hiring.—

130 (1) In a civil action for the death of, or injury or damage  
131 to, a third person caused by the intentional tort of an  
132 employee, such employee's employer is presumed not to have been  
133 negligent in hiring such employee if, before hiring the  
134 employee, the employer conducted a background investigation of  
135 the prospective employee and the investigation did not reveal  
136 any information that reasonably demonstrated the unsuitability  
137 of the prospective employee for the particular work to be  
138 performed or for the context of the employment in general. A  
139 background investigation under this section must include:

140 (a) Obtaining a criminal background investigation on the  
141 prospective employee under subsection (2);

142 (b) Making a reasonable effort to contact references and  
143 former employers of the prospective employee concerning the  
144 suitability of the prospective employee for employment;

145 (c) Requiring the prospective employee to complete a job

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146 application form that includes questions concerning whether he  
147 or she has ever been convicted of a crime, including details  
148 concerning the type of crime, the date of conviction and the  
149 penalty imposed, and whether the prospective employee has ever  
150 been a defendant in a civil action for intentional tort,  
151 including the nature of the intentional tort and the disposition  
152 of the action;

153 (d) Obtaining, with written authorization from the  
154 prospective employee, a check of the driver's license record of  
155 the prospective employee if such a check is relevant to the work  
156 the employee will be performing and if the record can reasonably  
157 be obtained; and ~~or~~

158 (e) Interviewing the prospective employee.

159 (2) To satisfy the criminal-background-investigation  
160 requirement of this section, an employer must request and obtain  
161 from the Department of Law Enforcement a check of the  
162 information as reported and reflected in the Florida Crime  
163 Information Center system as of the date of the request. The  
164 employer must review and consider the results of the criminal  
165 background investigation and, if the prospective employee has  
166 engaged in past criminal conduct, ensure that the employee will  
167 not be assigned to particular work that would place the employee  
168 in a position where conduct that is similar to the employee's  
169 past criminal conduct is facilitated and determine that,  
170 notwithstanding the past criminal conduct of the employee, any  
171 information revealed by the investigation did not otherwise  
172 demonstrate the unsuitability of the employee for the particular  
173 work to be performed or context of the employment in general.

174 (3) The election by an employer not to conduct the

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175 investigation specified in subsection (1) does not raise any  
176 presumption that the employer failed to use reasonable care in  
177 hiring an employee.

178 Section 5. Section 943.0585, Florida Statutes, is amended  
179 to read:

180 943.0585 Court-ordered expunction of criminal history  
181 records.—The courts of this state have jurisdiction over their  
182 own procedures, including the maintenance, expunction, and  
183 correction of judicial records containing criminal history  
184 information to the extent such procedures are not inconsistent  
185 with the conditions, responsibilities, and duties established by  
186 this section. Any court of competent jurisdiction may order a  
187 criminal justice agency to expunge the criminal history record  
188 of a minor or an adult who complies with the requirements of  
189 this section. The court shall not order a criminal justice  
190 agency to expunge a criminal history record until the person  
191 seeking to expunge a criminal history record has applied for and  
192 received a certificate of eligibility for expunction pursuant to  
193 subsection (2). A criminal history record that relates to a  
194 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
195 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
196 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
197 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
198 any violation specified as a predicate offense for registration  
199 as a sexual predator pursuant to s. 775.21, without regard to  
200 whether that offense alone is sufficient to require such  
201 registration, or for registration as a sexual offender pursuant  
202 to s. 943.0435, may not be expunged, without regard to whether  
203 adjudication was withheld, if the defendant was found guilty of

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204 or pled guilty or nolo contendere to the offense, or if the  
205 defendant, as a minor, was found to have committed, or pled  
206 guilty or nolo contendere to committing, the offense as a  
207 delinquent act. The court may only order expunction of a  
208 criminal history record pertaining to one arrest or one incident  
209 of alleged criminal activity, except as provided in this  
210 section. The court may, at its sole discretion, order the  
211 expunction of a criminal history record pertaining to more than  
212 one arrest if the additional arrests directly relate to the  
213 original arrest. If the court intends to order the expunction of  
214 records pertaining to such additional arrests, such intent must  
215 be specified in the order. A criminal justice agency may not  
216 expunge any record pertaining to such additional arrests if the  
217 order to expunge does not articulate the intention of the court  
218 to expunge a record pertaining to more than one arrest. This  
219 section does not prevent the court from ordering the expunction  
220 of only a portion of a criminal history record pertaining to one  
221 arrest or one incident of alleged criminal activity.

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

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



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

235 (b) The petitioner's sworn statement attesting that the  
236 petitioner:

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

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

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

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

256  
257 Any person who knowingly provides false information on such  
258 sworn statement to the court commits a felony of the third  
259 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
260 775.084.

261 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to

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

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

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

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

290 3. That the criminal history record does not relate to a

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291 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
292 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
293 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
294 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
295 any violation specified as a predicate offense for registration  
296 as a sexual predator pursuant to s. 775.21, without regard to  
297 whether that offense alone is sufficient to require such  
298 registration, or for registration as a sexual offender pursuant  
299 to s. 943.0435, where the defendant was found guilty of, or pled  
300 guilty or nolo contendere to any such offense, or that the  
301 defendant, as a minor, was found to have committed, or pled  
302 guilty or nolo contendere to committing, such an offense as a  
303 delinquent act, without regard to whether adjudication was  
304 withheld.

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

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

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

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

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

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

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

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

342 (a) In judicial proceedings under this section, a copy of  
343 the completed petition to expunge shall be served upon the  
344 appropriate state attorney or the statewide prosecutor and upon  
345 the arresting agency; however, it is not necessary to make any  
346 agency other than the state a party. The appropriate state  
347 attorney or the statewide prosecutor and the arresting agency  
348 may respond to the court regarding the completed petition to

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349 expunge.

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

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

372 (d) On or after July 1, 1992, the department or any other  
373 criminal justice agency is not required to act on an order to  
374 expunge entered by a court when such order does not comply with  
375 the requirements of this section. Upon receipt of such an order,  
376 the department must notify the issuing court, the appropriate  
377 state attorney or statewide prosecutor, the petitioner or the

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378 petitioner's attorney, and the arresting agency of the reason  
379 for noncompliance. The appropriate state attorney or statewide  
380 prosecutor shall take action within 60 days to correct the  
381 record and petition the court to void the order. No cause of  
382 action, including contempt of court, shall arise against any  
383 criminal justice agency for failure to comply with an order to  
384 expunge when the petitioner for such order failed to obtain the  
385 certificate of eligibility as required by this section or such  
386 order does not otherwise comply with the requirements of this  
387 section.

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

401 (a) The person who is the subject of a criminal history  
402 record that is expunged under this section or under other  
403 provisions of law, including former s. 893.14, former s. 901.33,  
404 and former s. 943.058, may lawfully deny or fail to acknowledge  
405 the arrests and subsequent dispositions covered by the expunged  
406 record, except when the subject of the record:

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- 407           1. Is a candidate for employment with a criminal justice  
408 agency;
- 409           2. Is a defendant in a criminal prosecution;
- 410           3. Concurrently or subsequently petitions for relief under  
411 this section or s. 943.059;
- 412           4. Is a candidate for admission to The Florida Bar;
- 413           5. Is seeking to be employed or licensed by or to contract  
414 with the Department of Children and Family Services, the Agency  
415 for Health Care Administration, the Agency for Persons with  
416 Disabilities, or the Department of Juvenile Justice or to be  
417 employed or used by such contractor or licensee in a sensitive  
418 position having direct contact with children, the  
419 developmentally disabled, the aged, or the elderly as provided  
420 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
421 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),  
422 chapter 916, s. 985.644, chapter 400, or chapter 429;
- 423           6. Is seeking to be employed or licensed by the Department  
424 of Education, any district school board, any university  
425 laboratory school, any charter school, any private or parochial  
426 school, or any local governmental entity that licenses child  
427 care facilities; or
- 428           7. Is seeking authorization from a Florida seaport  
429 identified in s. 311.09 for employment within or access to one  
430 or more of such seaports pursuant to s. 311.12 or s. 311.125.
- 431           (b) Subject to the exceptions in paragraph (a), a person  
432 who has been granted an expunction under this section, former s.  
433 893.14, former s. 901.33, or former s. 943.058 may not be held  
434 under any provision of law of this state to commit perjury or to  
435 be otherwise liable for giving a false statement by reason of

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436 such person's failure to recite or acknowledge an expunged  
437 criminal history record, including a failure to recite or  
438 acknowledge on an employment application.

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

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

462 (5) INFORMATION.—Each website for the office of a clerk of  
463 court must include information relating to procedures to seal or  
464 expunge criminal history records. This information must include



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465 the link to related information on the website of the  
466 department.

467 (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other  
468 chapter, section, or subdivision of the Florida Statutes in this  
469 section constitutes a general reference under the doctrine of  
470 incorporation by reference.

471 Section 6. Section 943.059, Florida Statutes, is amended to  
472 read:

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

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

521 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each  
522 petition to a court to seal a criminal history record is

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523 complete only when accompanied by:

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

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

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

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

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

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

544

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

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

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

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

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

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

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

580 (e) Has never secured a prior sealing, except as provided

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581 in subsection (6), or expunction of a criminal history record  
582 under this section, former s. 893.14, former s. 901.33, or  
583 former s. 943.058.

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

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

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

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

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

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

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

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

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639 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
640 history record of a minor or an adult which is ordered sealed by  
641 a court of competent jurisdiction pursuant to this section is  
642 confidential and exempt from the provisions of s. 119.07(1) and  
643 s. 24(a), Art. I of the State Constitution and is available only  
644 to the person who is the subject of the record, to the subject's  
645 attorney, to criminal justice agencies for their respective  
646 criminal justice purposes, which include conducting a criminal  
647 history background check for approval of firearms purchases or  
648 transfers as authorized by state or federal law, to judges in  
649 the state courts system for the purpose of assisting them in  
650 their case-related decisionmaking responsibilities, as set forth  
651 in s. 943.053(5), or to those entities set forth in  
652 subparagraphs (a)1., 4., 5., 6., and 8. for their respective  
653 licensing, access authorization, and employment purposes.

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

- 660 1. Is a candidate for employment with a criminal justice  
661 agency;
- 662 2. Is a defendant in a criminal prosecution;
- 663 3. Concurrently or subsequently petitions for relief under  
664 this section or s. 943.0585;
- 665 4. Is a candidate for admission to The Florida Bar;
- 666 5. Is seeking to be employed or licensed by or to contract  
667 with the Department of Children and Family Services, the Agency

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668 for Health Care Administration, the Agency for Persons with  
669 Disabilities, or the Department of Juvenile Justice or to be  
670 employed or used by such contractor or licensee in a sensitive  
671 position having direct contact with children, the  
672 developmentally disabled, the aged, or the elderly as provided  
673 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
674 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
675 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

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

681 7. Is attempting to purchase a firearm from a licensed  
682 importer, licensed manufacturer, or licensed dealer and is  
683 subject to a criminal history background check under state or  
684 federal law; or

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

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

696 (c) Information relating to the existence of a sealed



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697 criminal record provided in accordance with the provisions of  
698 paragraph (a) is confidential and exempt from the provisions of  
699 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
700 except that the department shall disclose the sealed criminal  
701 history record to the entities set forth in subparagraphs (a)1.,  
702 4., 5., 6., and 8. for their respective licensing, access  
703 authorization, and employment purposes. It is unlawful for any  
704 employee of an entity set forth in subparagraph (a)1.,  
705 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or  
706 subparagraph (a)8. to disclose information relating to the  
707 existence of a sealed criminal history record of a person  
708 seeking employment, access authorization, or licensure with such  
709 entity or contractor, except to the person to whom the criminal  
710 history record relates or to persons having direct  
711 responsibility for employment, access authorization, or  
712 licensure decisions. Any person who violates the provisions of  
713 this paragraph commits a misdemeanor of the first degree,  
714 punishable as provided in s. 775.082 or s. 775.083.

715 (5) STATUTORY REFERENCES.—Any reference to any other  
716 chapter, section, or subdivision of the Florida Statutes in this  
717 section constitutes a general reference under the doctrine of  
718 incorporation by reference.

719 (6) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING  
720 OR EXPUNCTION.—A court may seal a person's criminal history  
721 record after a prior criminal history record has been sealed or  
722 expunged only if the person obtains a certificate from the  
723 department to seal the criminal history record. The department  
724 shall issue the certificate only if the person has not been  
725 arrested during the 5-year period following the date of the

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726 court order for the initial expunction or sealing of his or her  
727 criminal history record. All other provisions and requirements  
728 of this section apply to an application to seal a criminal  
729 history record after a prior criminal history record has been  
730 sealed or expunged.

731 Section 7. This act shall take effect July 1, 2009.