

CS/HB 541

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1 A bill to be entitled

2 An act relating to sealing and expunging criminal history  
3 records; amending s. 943.0585, F.S.; authorizing a court  
4 to expunge a criminal history record of a person who had a  
5 prior criminal history record sealed or expunged in  
6 certain circumstances; amending s. 943.059, F.S.;  
7 authorizing a court to seal a criminal history record of a  
8 person who had a prior criminal history record sealed or  
9 expunged in certain circumstances; providing an effective  
10 date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Section 943.0585, Florida Statutes, is amended  
15 to read:

16 943.0585 Court-ordered expunction of criminal history  
17 records.—The courts of this state have jurisdiction over their  
18 own procedures, including the maintenance, expunction, and  
19 correction of judicial records containing criminal history  
20 information to the extent such procedures are not inconsistent  
21 with the conditions, responsibilities, and duties established by  
22 this section. Any court of competent jurisdiction may order a  
23 criminal justice agency to expunge the criminal history record  
24 of a minor or an adult who complies with the requirements of  
25 this section. The court shall not order a criminal justice  
26 agency to expunge a criminal history record until the person  
27 seeking to expunge a criminal history record has applied for and  
28 received a certificate of eligibility for expunction pursuant to

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 subsection (2). A criminal history record that relates to a  
30 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
31 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
32 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
33 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
34 any violation specified as a predicate offense for registration  
35 as a sexual predator pursuant to s. 775.21, without regard to  
36 whether that offense alone is sufficient to require such  
37 registration, or for registration as a sexual offender pursuant  
38 to s. 943.0435, may not be expunged, without regard to whether  
39 adjudication was withheld, if the defendant was found guilty of  
40 or pled guilty or nolo contendere to the offense, or if the  
41 defendant, as a minor, was found to have committed, or pled  
42 guilty or nolo contendere to committing, the offense as a  
43 delinquent act. The court may only order expunction of a  
44 criminal history record pertaining to one arrest or one incident  
45 of alleged criminal activity, except as provided in this  
46 section. The court may, at its sole discretion, order the  
47 expunction of a criminal history record pertaining to more than  
48 one arrest if the additional arrests directly relate to the  
49 original arrest. If the court intends to order the expunction of  
50 records pertaining to such additional arrests, such intent must  
51 be specified in the order. A criminal justice agency may not  
52 expunge any record pertaining to such additional arrests if the  
53 order to expunge does not articulate the intention of the court  
54 to expunge a record pertaining to more than one arrest. This  
55 section does not prevent the court from ordering the expunction  
56 of only a portion of a criminal history record pertaining to one

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

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

69 |       (a) A valid certificate of eligibility for expunction  
70 | issued by the department pursuant to subsection (2).

71 |       (b) The petitioner's sworn statement attesting that the  
72 | petitioner:

73 |       1. Has never, prior to the date on which the petition is  
74 | filed, been adjudicated guilty of a criminal offense or  
75 | comparable ordinance violation, or been adjudicated delinquent  
76 | for committing any felony or a misdemeanor specified in s.  
77 | 943.051(3)(b).

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

82 |       3. Has never secured a prior sealing or expunction, except  
83 | as provided in subsection (5) and s. 943.059(5), of a criminal  
84 | history record under this section, former s. 893.14, former s.

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85 901.33, or former s. 943.058, or from any jurisdiction outside  
86 the state, unless expunction is sought of a criminal history  
87 record previously sealed for 10 years pursuant to paragraph  
88 (2)(h) and the record is otherwise eligible for expunction.

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

92

93 Any person who knowingly provides false information on such  
94 sworn statement to the court commits a felony of the third  
95 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
96 775.084.

97 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
98 petitioning the court to expunge a criminal history record, a  
99 person seeking to expunge a criminal history record shall apply  
100 to the department for a certificate of eligibility for  
101 expunction. The department shall, by rule adopted pursuant to  
102 chapter 120, establish procedures pertaining to the application  
103 for and issuance of certificates of eligibility for expunction.  
104 A certificate of eligibility for expunction is valid for 12  
105 months after the date stamped on the certificate when issued by  
106 the department. After that time, the petitioner must reapply to  
107 the department for a new certificate of eligibility. Eligibility  
108 for a renewed certification of eligibility must be based on the  
109 status of the applicant and the law in effect at the time of the  
110 renewal application. The department shall issue a certificate of  
111 eligibility for expunction to a person who is the subject of a  
112 criminal history record if that person:

113 (a) Has obtained, and submitted to the department, a  
 114 written, certified statement from the appropriate clerk of court  
 115 ~~state attorney or statewide prosecutor~~ which indicates:

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

118 2. That an indictment, information, or other charging  
 119 document, if filed or issued in the case, was dismissed or nolle  
 120 prosequi by the state attorney or statewide prosecutor, or was  
 121 dismissed by a court of competent jurisdiction, and that none of  
 122 the charges related to the arrest or alleged criminal activity  
 123 to which the petition to expunge pertains resulted in a trial,  
 124 without regard to whether the outcome of the trial was other  
 125 than an adjudication of guilt.

126 3. That the criminal history record does not relate to a  
 127 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 128 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
 129 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
 130 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
 131 any violation specified as a predicate offense for registration  
 132 as a sexual predator pursuant to s. 775.21, without regard to  
 133 whether that offense alone is sufficient to require such  
 134 registration, or for registration as a sexual offender pursuant  
 135 to s. 943.0435, where the defendant was found guilty of, or pled  
 136 guilty or nolo contendere to any such offense, or that the  
 137 defendant, as a minor, was found to have committed, or pled  
 138 guilty or nolo contendere to committing, such an offense as a  
 139 delinquent act, without regard to whether adjudication was  
 140 withheld.

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

144 (c) Has submitted to the department a certified copy of  
 145 the disposition of the charge to which the petition to expunge  
 146 pertains.

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

152 (e) Has not been adjudicated guilty of, or adjudicated  
 153 delinquent for committing, any of the acts stemming from the  
 154 arrest or alleged criminal activity to which the petition to  
 155 expunge pertains.

156 (f) Has never secured a prior sealing or expunction,  
 157 except as provided in subsection (5) and s. 943.059(5), of a  
 158 criminal history record under this section, former s. 893.14,  
 159 former s. 901.33, or former s. 943.058, unless expunction is  
 160 sought of a criminal history record previously sealed for 10  
 161 years pursuant to paragraph (h) and the record is otherwise  
 162 eligible for expunction.

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

166 (h) Has previously obtained a court order sealing the  
 167 record under this section, former s. 893.14, former s. 901.33,  
 168 or former s. 943.058 for a minimum of 10 years because

169 adjudication was withheld or because all charges related to the  
170 arrest or alleged criminal activity to which the petition to  
171 expunge pertains were not dismissed prior to trial, without  
172 regard to whether the outcome of the trial was other than an  
173 adjudication of guilt. The requirement for the record to have  
174 previously been sealed for a minimum of 10 years does not apply  
175 when a plea was not entered or all charges related to the arrest  
176 or alleged criminal activity to which the petition to expunge  
177 pertains were dismissed prior to trial.

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

179 (a) In judicial proceedings under this section, a copy of  
180 the completed petition to expunge shall be served upon the  
181 appropriate state attorney or the statewide prosecutor and upon  
182 the arresting agency; however, it is not necessary to make any  
183 agency other than the state a party. The appropriate state  
184 attorney or the statewide prosecutor and the arresting agency  
185 may respond to the court regarding the completed petition to  
186 expunge.

187 (b) If relief is granted by the court, the clerk of the  
188 court shall certify copies of the order to the appropriate state  
189 attorney or the statewide prosecutor and the arresting agency.  
190 The arresting agency is responsible for forwarding the order to  
191 any other agency to which the arresting agency disseminated the  
192 criminal history record information to which the order pertains.  
193 The department shall forward the order to expunge to the Federal  
194 Bureau of Investigation. The clerk of the court shall certify a  
195 copy of the order to any other agency which the records of the  
196 court reflect has received the criminal history record from the

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197 court.

198 (c) For an order to expunge entered by a court prior to  
199 July 1, 1992, the department shall notify the appropriate state  
200 attorney or statewide prosecutor of an order to expunge which is  
201 contrary to law because the person who is the subject of the  
202 record has previously been convicted of a crime or comparable  
203 ordinance violation or has had a prior criminal history record  
204 sealed or expunged, except as provided in subsection (5) and s.  
205 943.059(5). Upon receipt of such notice, the appropriate state  
206 attorney or statewide prosecutor shall take action, within 60  
207 days, to correct the record and petition the court to void the  
208 order to expunge. The department shall seal the record until  
209 such time as the order is voided by the court.

210 (d) On or after July 1, 1992, the department or any other  
211 criminal justice agency is not required to act on an order to  
212 expunge entered by a court when such order does not comply with  
213 the requirements of this section. Upon receipt of such an order,  
214 the department must notify the issuing court, the appropriate  
215 state attorney or statewide prosecutor, the petitioner or the  
216 petitioner's attorney, and the arresting agency of the reason  
217 for noncompliance. The appropriate state attorney or statewide  
218 prosecutor shall take action within 60 days to correct the  
219 record and petition the court to void the order. No cause of  
220 action, including contempt of court, shall arise against any  
221 criminal justice agency for failure to comply with an order to  
222 expunge when the petitioner for such order failed to obtain the  
223 certificate of eligibility as required by this section or such  
224 order does not otherwise comply with the requirements of this



225 section.

226 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
 227 criminal history record of a minor or an adult which is ordered  
 228 expunged by a court of competent jurisdiction pursuant to this  
 229 section must be physically destroyed or obliterated by any  
 230 criminal justice agency having custody of such record; except  
 231 that any criminal history record in the custody of the  
 232 department must be retained in all cases. A criminal history  
 233 record ordered expunged that is retained by the department is  
 234 confidential and exempt from the provisions of s. 119.07(1) and  
 235 s. 24(a), Art. I of the State Constitution and not available to  
 236 any person or entity except upon order of a court of competent  
 237 jurisdiction. A criminal justice agency may retain a notation  
 238 indicating compliance with an order to expunge.

239 (a) The person who is the subject of a criminal history  
 240 record that is expunged under this section or under other  
 241 provisions of law, including former s. 893.14, former s. 901.33,  
 242 and former s. 943.058, may lawfully deny or fail to acknowledge  
 243 the arrests covered by the expunged record, except when the  
 244 subject of the record:

- 245 1. Is a candidate for employment with a criminal justice  
 246 agency;
- 247 2. Is a defendant in a criminal prosecution;
- 248 3. Concurrently or subsequently petitions for relief under  
 249 this section or s. 943.059;
- 250 4. Is a candidate for admission to The Florida Bar;
- 251 5. Is seeking to be employed or licensed by or to contract  
 252 with the Department of Children and Family Services, the Agency

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253 for Health Care Administration, the Agency for Persons with  
254 Disabilities, or the Department of Juvenile Justice or to be  
255 employed or used by such contractor or licensee in a sensitive  
256 position having direct contact with children, the  
257 developmentally disabled, the aged, or the elderly as provided  
258 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
259 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),  
260 chapter 916, s. 985.644, chapter 400, or chapter 429;

261 6. Is seeking to be employed or licensed by the Department  
262 of Education, any district school board, any university  
263 laboratory school, any charter school, any private or parochial  
264 school, or any local governmental entity that licenses child  
265 care facilities; or

266 7. Is seeking authorization from a seaport listed in s.  
267 311.09 for employment within or access to one or more of such  
268 seaports pursuant to s. 311.12.

269 (b) Subject to the exceptions in paragraph (a), a person  
270 who has been granted an expunction under this section, former s.  
271 893.14, former s. 901.33, or former s. 943.058 may not be held  
272 under any provision of law of this state to commit perjury or to  
273 be otherwise liable for giving a false statement by reason of  
274 such person's failure to recite or acknowledge an expunged  
275 criminal history record.

276 (c) Information relating to the existence of an expunged  
277 criminal history record which is provided in accordance with  
278 paragraph (a) is confidential and exempt from the provisions of  
279 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
280 except that the department shall disclose the existence of a

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281 criminal history record ordered expunged to the entities set  
282 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their  
283 respective licensing, access authorization, and employment  
284 purposes, and to criminal justice agencies for their respective  
285 criminal justice purposes. It is unlawful for any employee of an  
286 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
287 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to  
288 disclose information relating to the existence of an expunged  
289 criminal history record of a person seeking employment, access  
290 authorization, or licensure with such entity or contractor,  
291 except to the person to whom the criminal history record relates  
292 or to persons having direct responsibility for employment,  
293 access authorization, or licensure decisions. Any person who  
294 violates this paragraph commits a misdemeanor of the first  
295 degree, punishable as provided in s. 775.082 or s. 775.083.

296 (5) EXPUNCTION OF CRIMINAL HISTORY RECORD AFTER PRIOR  
297 SEALING OR EXPUNCTION.—

298 (a) A court may expunge a person's criminal history record  
299 after a prior criminal history record has been sealed or  
300 expunged only if the person obtains a certificate from the  
301 department to expunge the criminal history record. The  
302 department shall issue the certificate for a second expunction  
303 only if:

304 1. The person has had only one prior expunction of his or  
305 her criminal history record under this section or one prior  
306 expunction following the sealing of the same arrest or alleged  
307 criminal activity that was expunged;

308 2. The person has not been arrested in this state during

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309 the 10-year period prior to the date on which the application  
 310 for the certificate is filed; and

311 3. The person has not previously sealed or expunged a  
 312 criminal history record that involved the same offense to which  
 313 the petition to expunge pertains.

314 (b) All other provisions and requirements of this section  
 315 apply to an application to expunge a second criminal history  
 316 record.

317 (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other  
 318 chapter, section, or subdivision of the Florida Statutes in this  
 319 section constitutes a general reference under the doctrine of  
 320 incorporation by reference.

321 Section 2. Section 943.059, Florida Statutes, is amended  
 322 to read:

323 943.059 Court-ordered sealing of criminal history  
 324 records.—The courts of this state shall continue to have  
 325 jurisdiction over their own procedures, including the  
 326 maintenance, sealing, and correction of judicial records  
 327 containing criminal history information to the extent such  
 328 procedures are not inconsistent with the conditions,  
 329 responsibilities, and duties established by this section. Any  
 330 court of competent jurisdiction may order a criminal justice  
 331 agency to seal the criminal history record of a minor or an  
 332 adult who complies with the requirements of this section. The  
 333 court shall not order a criminal justice agency to seal a  
 334 criminal history record until the person seeking to seal a  
 335 criminal history record has applied for and received a  
 336 certificate of eligibility for sealing pursuant to subsection

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337 (2). A criminal history record that relates to a violation of s.  
338 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
339 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
340 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
341 916.1075, a violation enumerated in s. 907.041, or any violation  
342 specified as a predicate offense for registration as a sexual  
343 predator pursuant to s. 775.21, without regard to whether that  
344 offense alone is sufficient to require such registration, or for  
345 registration as a sexual offender pursuant to s. 943.0435, may  
346 not be sealed, without regard to whether adjudication was  
347 withheld, if the defendant was found guilty of or pled guilty or  
348 nolo contendere to the offense, or if the defendant, as a minor,  
349 was found to have committed or pled guilty or nolo contendere to  
350 committing the offense as a delinquent act. The court may only  
351 order sealing of a criminal history record pertaining to one  
352 arrest or one incident of alleged criminal activity, except as  
353 provided in this section. The court may, at its sole discretion,  
354 order the sealing of a criminal history record pertaining to  
355 more than one arrest if the additional arrests directly relate  
356 to the original arrest. If the court intends to order the  
357 sealing of records pertaining to such additional arrests, such  
358 intent must be specified in the order. A criminal justice agency  
359 may not seal any record pertaining to such additional arrests if  
360 the order to seal does not articulate the intention of the court  
361 to seal records pertaining to more than one arrest. This section  
362 does not prevent the court from ordering the sealing of only a  
363 portion of a criminal history record pertaining to one arrest or  
364 one incident of alleged criminal activity. Notwithstanding any

365 law to the contrary, a criminal justice agency may comply with  
 366 laws, court orders, and official requests of other jurisdictions  
 367 relating to sealing, correction, or confidential handling of  
 368 criminal history records or information derived therefrom. This  
 369 section does not confer any right to the sealing of any criminal  
 370 history record, and any request for sealing a criminal history  
 371 record may be denied at the sole discretion of the court.

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

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

377 (b) The petitioner's sworn statement attesting that the  
 378 petitioner:

379 1. Has never, prior to the date on which the petition is  
 380 filed, been adjudicated guilty of a criminal offense or  
 381 comparable ordinance violation, or been adjudicated delinquent  
 382 for committing any felony or a misdemeanor specified in s.  
 383 943.051(3)(b).

384 2. Has not been adjudicated guilty of or adjudicated  
 385 delinquent for committing any of the acts stemming from the  
 386 arrest or alleged criminal activity to which the petition to  
 387 seal pertains.

388 3. Has never secured a prior sealing or expunction, except  
 389 as provided in subsection (5), of a criminal history record  
 390 under this section, former s. 893.14, former s. 901.33, former  
 391 s. 943.058, or from any jurisdiction outside the state.

392 4. Is eligible for such a sealing to the best of his or

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393 her knowledge or belief and does not have any other petition to  
394 seal or any petition to expunge pending before any court.

395

396 Any person who knowingly provides false information on such  
397 sworn statement to the court commits a felony of the third  
398 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
399 775.084.

400 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to  
401 petitioning the court to seal a criminal history record, a  
402 person seeking to seal a criminal history record shall apply to  
403 the department for a certificate of eligibility for sealing. The  
404 department shall, by rule adopted pursuant to chapter 120,  
405 establish procedures pertaining to the application for and  
406 issuance of certificates of eligibility for sealing. A  
407 certificate of eligibility for sealing is valid for 12 months  
408 after the date stamped on the certificate when issued by the  
409 department. After that time, the petitioner must reapply to the  
410 department for a new certificate of eligibility. Eligibility for  
411 a renewed certification of eligibility must be based on the  
412 status of the applicant and the law in effect at the time of the  
413 renewal application. The department shall issue a certificate of  
414 eligibility for sealing to a person who is the subject of a  
415 criminal history record provided that such person:

416 (a) Has submitted to the department a certified copy of  
417 the disposition of the charge to which the petition to seal  
418 pertains.

419 (b) Remits a \$75 processing fee to the department for  
420 placement in the Department of Law Enforcement Operating Trust

421 Fund, unless such fee is waived by the executive director.

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

427 (d) Has not been adjudicated guilty of or adjudicated  
 428 delinquent for committing any of the acts stemming from the  
 429 arrest or alleged criminal activity to which the petition to  
 430 seal pertains.

431 (e) Has never secured a prior sealing or expunction,  
 432 except as provided in subsection (5), of a criminal history  
 433 record under this section, former s. 893.14, former s. 901.33,  
 434 or former s. 943.058.

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

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

439 (a) In judicial proceedings under this section, a copy of  
 440 the completed petition to seal shall be served upon the  
 441 appropriate state attorney or the statewide prosecutor and upon  
 442 the arresting agency; however, it is not necessary to make any  
 443 agency other than the state a party. The appropriate state  
 444 attorney or the statewide prosecutor and the arresting agency  
 445 may respond to the court regarding the completed petition to  
 446 seal.

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



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449 attorney or the statewide prosecutor and to the arresting  
450 agency. The arresting agency is responsible for forwarding the  
451 order to any other agency to which the arresting agency  
452 disseminated the criminal history record information to which  
453 the order pertains. The department shall forward the order to  
454 seal to the Federal Bureau of Investigation. The clerk of the  
455 court shall certify a copy of the order to any other agency  
456 which the records of the court reflect has received the criminal  
457 history record from the court.

458 (c) For an order to seal entered by a court prior to July  
459 1, 1992, the department shall notify the appropriate state  
460 attorney or statewide prosecutor of any order to seal which is  
461 contrary to law because the person who is the subject of the  
462 record has previously been convicted of a crime or comparable  
463 ordinance violation or has had a prior criminal history record  
464 sealed or expunged, except as provided in subsection (5). Upon  
465 receipt of such notice, the appropriate state attorney or  
466 statewide prosecutor shall take action, within 60 days, to  
467 correct the record and petition the court to void the order to  
468 seal. The department shall seal the record until such time as  
469 the order is voided by the court.

470 (d) On or after July 1, 1992, the department or any other  
471 criminal justice agency is not required to act on an order to  
472 seal entered by a court when such order does not comply with the  
473 requirements of this section. Upon receipt of such an order, the  
474 department must notify the issuing court, the appropriate state  
475 attorney or statewide prosecutor, the petitioner or the  
476 petitioner's attorney, and the arresting agency of the reason

477 | for noncompliance. The appropriate state attorney or statewide  
478 | prosecutor shall take action within 60 days to correct the  
479 | record and petition the court to void the order. No cause of  
480 | action, including contempt of court, shall arise against any  
481 | criminal justice agency for failure to comply with an order to  
482 | seal when the petitioner for such order failed to obtain the  
483 | certificate of eligibility as required by this section or when  
484 | such order does not comply with the requirements of this  
485 | section.

486 |       (e) An order sealing a criminal history record pursuant to  
487 | this section does not require that such record be surrendered to  
488 | the court, and such record shall continue to be maintained by  
489 | the department and other criminal justice agencies.

490 |       (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
491 | history record of a minor or an adult which is ordered sealed by  
492 | a court of competent jurisdiction pursuant to this section is  
493 | confidential and exempt from the provisions of s. 119.07(1) and  
494 | s. 24(a), Art. I of the State Constitution and is available only  
495 | to the person who is the subject of the record, to the subject's  
496 | attorney, to criminal justice agencies for their respective  
497 | criminal justice purposes, which include conducting a criminal  
498 | history background check for approval of firearms purchases or  
499 | transfers as authorized by state or federal law, to judges in  
500 | the state courts system for the purpose of assisting them in  
501 | their case-related decisionmaking responsibilities, as set forth  
502 | in s. 943.053(5), or to those entities set forth in  
503 | subparagraphs (a)1., 4., 5., 6., and 8. for their respective  
504 | licensing, access authorization, and employment purposes.

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505 (a) The subject of a criminal history record sealed under  
 506 this section or under other provisions of law, including former  
 507 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 508 deny or fail to acknowledge the arrests covered by the sealed  
 509 record, except when the subject of the record:

510 1. Is a candidate for employment with a criminal justice  
 511 agency;

512 2. Is a defendant in a criminal prosecution;

513 3. Concurrently or subsequently petitions for relief under  
 514 this section or s. 943.0585;

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

516 5. Is seeking to be employed or licensed by or to contract  
 517 with the Department of Children and Family Services, the Agency  
 518 for Health Care Administration, the Agency for Persons with  
 519 Disabilities, or the Department of Juvenile Justice or to be  
 520 employed or used by such contractor or licensee in a sensitive  
 521 position having direct contact with children, the  
 522 developmentally disabled, the aged, or the elderly as provided  
 523 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.  
 524 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
 525 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

526 6. Is seeking to be employed or licensed by the Department  
 527 of Education, any district school board, any university  
 528 laboratory school, any charter school, any private or parochial  
 529 school, or any local governmental entity that licenses child  
 530 care facilities;

531 7. Is attempting to purchase a firearm from a licensed  
 532 importer, licensed manufacturer, or licensed dealer and is

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533 subject to a criminal history check under state or federal law;  
534 or

535 8. Is seeking authorization from a Florida seaport  
536 identified in s. 311.09 for employment within or access to one  
537 or more of such seaports pursuant to s. 311.12.

538 (b) Subject to the exceptions in paragraph (a), a person  
539 who has been granted a sealing under this section, former s.  
540 893.14, former s. 901.33, or former s. 943.058 may not be held  
541 under any provision of law of this state to commit perjury or to  
542 be otherwise liable for giving a false statement by reason of  
543 such person's failure to recite or acknowledge a sealed criminal  
544 history record.

545 (c) Information relating to the existence of a sealed  
546 criminal record provided in accordance with the provisions of  
547 paragraph (a) is confidential and exempt from the provisions of  
548 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
549 except that the department shall disclose the sealed criminal  
550 history record to the entities set forth in subparagraphs (a)1.,  
551 4., 5., 6., and 8. for their respective licensing, access  
552 authorization, and employment purposes. It is unlawful for any  
553 employee of an entity set forth in subparagraph (a)1.,  
554 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or  
555 subparagraph (a)8. to disclose information relating to the  
556 existence of a sealed criminal history record of a person  
557 seeking employment, access authorization, or licensure with such  
558 entity or contractor, except to the person to whom the criminal  
559 history record relates or to persons having direct  
560 responsibility for employment, access authorization, or

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561 licensure decisions. Any person who violates the provisions of  
562 this paragraph commits a misdemeanor of the first degree,  
563 punishable as provided in s. 775.082 or s. 775.083.

564 (5) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING  
565 OR EXPUNCTION.—

566 (a) A court may seal a person's criminal history record  
567 after a prior criminal history record has been sealed or  
568 expunged only if the person obtains a certificate from the  
569 department to seal the criminal history record. The department  
570 shall issue the certificate for a second sealing only if:

571 1. The person has had only one prior expunction or sealing  
572 of his or her criminal history record under s. 943.0585 or this  
573 section or one prior expunction following the sealing of the  
574 same arrest or alleged criminal activity that was expunged;

575 2. The person has not been arrested in this state during  
576 the 5-year period prior to the date on which the application for  
577 the certificate is filed; and

578 3. The person has not previously sealed or expunged a  
579 criminal history record that involved the same offense to which  
580 the petition to seal pertains.

581 (b) All other provisions and requirements of this section  
582 apply to an application to seal a second criminal history  
583 record.

584 (6) ~~(5)~~ STATUTORY REFERENCES.—Any reference to any other  
585 chapter, section, or subdivision of the Florida Statutes in this  
586 section constitutes a general reference under the doctrine of  
587 incorporation by reference.

588 Section 3. This act shall take effect July 1, 2010.