

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 for ex-offenders; amending s. 112.011, F.S.;
7 prohibiting state agencies from denying an application for
8 a 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 review
11 the results of a criminal background investigation;
12 requiring an employer not to place an employee who has a
13 criminal record in a position where conduct similar to the
14 employee's past criminal conduct would be facilitated;
15 requiring an employer to determine that the criminal
16 background investigation does not demonstrate that the
17 employee is unsuitable for the particular work to be
18 performed or the context of the employment in general;
19 amending s. 943.0585, F.S.; clarifying under what
20 circumstances a person may legally deny the existence of
21 an expunged criminal history record; authorizing the
22 disclosure of the contents of an expunged record upon
23 receipt of a written, notarized request from the record
24 subject; requiring clerks of the court to post information
25 relating to procedures to seal or expunge criminal history
26 records on the clerk's website; amending s. 943.059, F.S.;
27 clarifying under what circumstances a person may legally
28 deny the existence of a sealed criminal history record;

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

32

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

34

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

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

39 (1) The Legislature declares that a goal of this state is
 40 to clearly identify the occupations from which ex-offenders are
 41 disqualified based on their specific offenses. The Legislature
 42 intends to make employment opportunities available to ex-
 43 offenders in a manner that encourages them to become productive
 44 members of society and preserves the safety of the public. To
 45 this end, all state agencies shall identify all restrictions
 46 imposed by the agencies or by boards that regulate professions
 47 and occupations on employment and must attempt to define each
 48 restriction as narrowly as possible while continuing to maintain
 49 public safety.

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

55 (a) A list of all agency or board policies that disqualify
 56 from employment or licensure persons who have been convicted of

57 a crime and have completed any incarceration and restitution to
 58 which they have been sentenced for such a crime.

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

61 (c) The identification and evaluation of alternatives to
 62 the disqualifying policies to promote the employment of ex-
 63 offenders and protect the public.

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

68 Section 3. Section 112.011, Florida Statutes, is amended
 69 to read:

70 112.011 Disqualification from licensing and public
 71 employment based on criminal conviction ~~Felons; removal of~~
 72 ~~disqualifications for employment, exceptions.-~~

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

82 (b) Except as provided in s. 775.16, a person ~~whose civil~~
 83 ~~rights have been restored shall not be disqualified to practice,~~
 84 ~~pursue, or engage in any occupation, trade, vocation,~~

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

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

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

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

113 unless the applicant, before ~~prior to~~ the expiration of the 4-
 114 year period, has received a full pardon or has had his or her
 115 civil rights restored.

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

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

123 Section 4. Section 768.096, Florida Statutes, is amended
 124 to read:

125 768.096 Employer presumption against negligent hiring.—

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

136 (a) Obtaining a criminal background investigation on the
 137 prospective employee under subsection (2);

138 (b) Making a reasonable effort to contact references and
 139 former employers of the prospective employee concerning the
 140 suitability of the prospective employee for employment;

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141 (c) Requiring the prospective employee to complete a job
142 application form that includes questions concerning whether he
143 or she has ever been convicted of a crime, including details
144 concerning the type of crime, the date of conviction and the
145 penalty imposed, and whether the prospective employee has ever
146 been a defendant in a civil action for intentional tort,
147 including the nature of the intentional tort and the disposition
148 of the action;

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

154 (e) Interviewing the prospective employee.

155 (2) To satisfy the criminal-background-investigation
156 requirement of this section, an employer must request and obtain
157 from the Department of Law Enforcement a check of the
158 information as reported and reflected in the Florida Crime
159 Information Center system as of the date of the request. The
160 employer must review and consider the results of the criminal
161 background investigation. If the prospective employee has
162 engaged in past criminal conduct, the employer must ensure that
163 the employee will not be assigned to particular work that will
164 place the employee in a position in which conduct that is
165 similar to the employee's past criminal conduct is facilitated.
166 The employer must also determine that, notwithstanding the past
167 criminal conduct of the employee, any information revealed by
168 the investigation did not otherwise demonstrate the

169 unsuitability of the employee for the particular work to be
 170 performed or the context of the employment in general.

171 (3) The election by an employer not to conduct the
 172 investigation specified in subsection (1) does not raise any
 173 presumption that the employer failed to use reasonable care in
 174 hiring an employee.

175 Section 5. Section 943.0585, Florida Statutes, is amended
 176 to read:

177 943.0585 Court-ordered expunction of criminal history
 178 records.—The courts of this state have jurisdiction over their
 179 own procedures, including the maintenance, expunction, and
 180 correction of judicial records containing criminal history
 181 information to the extent such procedures are not inconsistent
 182 with the conditions, responsibilities, and duties established by
 183 this section. Any court of competent jurisdiction may order a
 184 criminal justice agency to expunge the criminal history record
 185 of a minor or an adult who complies with the requirements of
 186 this section. The court may ~~shall~~ not order a criminal justice
 187 agency to expunge a criminal history record until the person
 188 seeking to expunge a criminal history record has applied for and
 189 received a certificate of eligibility for expunction pursuant to
 190 subsection (2). A criminal history record that relates to a
 191 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 192 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 193 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 194 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 195 any violation specified as a predicate offense for registration
 196 as a sexual predator pursuant to s. 775.21, without regard to

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197 whether that offense alone is sufficient to require such
198 registration, or for registration as a sexual offender pursuant
199 to s. 943.0435, may not be expunged, without regard to whether
200 adjudication was withheld, if the defendant was found guilty of
201 or pled guilty or nolo contendere to the offense, or if the
202 defendant, as a minor, was found to have committed, or pled
203 guilty or nolo contendere to committing, the offense as a
204 delinquent act. The court may only order expunction of a
205 criminal history record pertaining to one arrest or one incident
206 of alleged criminal activity, except as provided in this
207 section. The court may, at its sole discretion, order the
208 expunction of a criminal history record pertaining to more than
209 one arrest if the additional arrests directly relate to the
210 original arrest. If the court intends to order the expunction of
211 records pertaining to such additional arrests, such intent must
212 be specified in the order. A criminal justice agency may not
213 expunge any record pertaining to such additional arrests if the
214 order to expunge does not articulate the intention of the court
215 to expunge a record pertaining to more than one arrest. This
216 section does not prevent the court from ordering the expunction
217 of only a portion of a criminal history record pertaining to one
218 arrest or one incident of alleged criminal activity.
219 Notwithstanding any law to the contrary, a criminal justice
220 agency may comply with laws, court orders, and official requests
221 of other jurisdictions relating to expunction, correction, or
222 confidential handling of criminal history records or information
223 derived therefrom. This section does not confer any right to the
224 expunction of any criminal history record, and any request for

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225 expunction of a criminal history record may be denied at the
 226 sole discretion of the court.

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

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

232 (b) The petitioner's sworn statement attesting that the
 233 petitioner:

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

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

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

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

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

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

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

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

280 2. That an indictment, information, or other charging

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

288 3. That the criminal history record does not relate to a
289 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
290 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
291 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
292 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
293 any violation specified as a predicate offense for registration
294 as a sexual predator pursuant to s. 775.21, without regard to
295 whether that offense alone is sufficient to require such
296 registration, or for registration as a sexual offender pursuant
297 to s. 943.0435, where the defendant was found guilty of, or pled
298 guilty or nolo contendere to any such offense, or that the
299 defendant, as a minor, was found to have committed, or pled
300 guilty or nolo contendere to committing, such an offense as a
301 delinquent act, without regard to whether adjudication was
302 withheld.

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

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

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

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

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

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

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

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337 | arrest or alleged criminal activity to which the petition to
338 | expunge pertains were dismissed before ~~prior to~~ trial.

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

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

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

359 | (c) For an order to expunge entered by a court before
360 | ~~prior to~~ July 1, 1992, the department shall notify the
361 | appropriate state attorney or statewide prosecutor of an order
362 | to expunge which is contrary to law because the person who is
363 | the subject of the record has previously been convicted of a
364 | crime or comparable ordinance violation or has had a prior

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365 criminal history record sealed or expunged. Upon receipt of such
 366 notice, the appropriate state attorney or statewide prosecutor
 367 shall take action, within 60 days, to correct the record and
 368 petition the court to void the order to expunge. The department
 369 shall seal the record until such time as the order is voided by
 370 the court.

371 (d) On or after July 1, 1992, the department or any other
 372 criminal justice agency is not required to act on an order to
 373 expunge entered by a court when such order does not comply with
 374 the requirements of this section. Upon receipt of such an order,
 375 the department must notify the issuing court, the appropriate
 376 state attorney or statewide prosecutor, the petitioner or the
 377 petitioner's attorney, and the arresting agency of the reason
 378 for noncompliance. The appropriate state attorney or statewide
 379 prosecutor shall take action within 60 days to correct the
 380 record and petition the court to void the order. A ~~No~~ cause of
 381 action, including contempt of court, does not ~~shall~~ arise
 382 against any criminal justice agency for failure to comply with
 383 an order to expunge if ~~when~~ the petitioner for such order failed
 384 to obtain the certificate of eligibility as required by this
 385 section or such order does not otherwise comply with the
 386 requirements of this section.

387 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 388 criminal history record of a minor or an adult which is ordered
 389 expunged by a court of competent jurisdiction pursuant to this
 390 section must be physically destroyed or obliterated by any
 391 criminal justice agency having custody of such record; except
 392 that any criminal history record in the custody of the

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393 department must be retained in all cases. A criminal history
394 record ordered expunged that is retained by the department is
395 confidential and exempt from the provisions of s. 119.07(1) and
396 s. 24(a), Art. I of the State Constitution and not available to
397 any person or entity except upon order of a court of competent
398 jurisdiction. A criminal justice agency may retain a notation
399 indicating compliance with an order to expunge.

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

- 406 1. Is a candidate for employment with a criminal justice
407 agency;
- 408 2. Is a defendant in a criminal prosecution;
- 409 3. Concurrently or subsequently petitions for relief under
410 this section or s. 943.059;
- 411 4. Is a candidate for admission to The Florida Bar;
- 412 5. Is seeking to be employed or licensed by or to contract
413 with the Department of Children and Family Services, the Agency
414 for Health Care Administration, the Agency for Persons with
415 Disabilities, or the Department of Juvenile Justice or to be
416 employed or used by such contractor or licensee in a sensitive
417 position having direct contact with children, the
418 developmentally disabled, the aged, or the elderly as provided
419 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
420 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),

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421 chapter 916, s. 985.644, chapter 400, or chapter 429;

422 6. Is seeking to be employed or licensed by the Department
423 of Education, any district school board, any university
424 laboratory school, any charter school, any private or parochial
425 school, or any local governmental entity that licenses child
426 care facilities; or

427 7. Is seeking authorization from a seaport listed in s.
428 311.09 for employment within or access to one or more of such
429 seaports pursuant to s. 311.12.

430 (b) Subject to the exceptions in paragraph (a), a person
431 who has been granted an expunction under this section, former s.
432 893.14, former s. 901.33, or former s. 943.058 may not be held
433 under any provision of law of this state to commit perjury or to
434 be otherwise liable for giving a false statement by reason of
435 such person's failure to recite or acknowledge an expunged
436 criminal history record, including a failure to recite or
437 acknowledge on an employment application.

438 (c) Information relating to the existence of an expunged
439 criminal history record which is provided in accordance with
440 paragraph (a) is confidential and exempt from the provisions of
441 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
442 except that the department shall disclose the existence of a
443 criminal history record ordered expunged to the entities set
444 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
445 respective licensing, access authorization, and employment
446 purposes, and to criminal justice agencies for their respective
447 criminal justice purposes. It is unlawful for any employee of an
448 entity set forth in subparagraph (a)1., subparagraph (a)4.,

449 | subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
 450 | disclose information relating to the existence of an expunged
 451 | criminal history record of a person seeking employment, access
 452 | authorization, or licensure with such entity or contractor,
 453 | except to the person to whom the criminal history record relates
 454 | or to persons having direct responsibility for employment,
 455 | access authorization, or licensure decisions. Any person who
 456 | violates this paragraph commits a misdemeanor of the first
 457 | degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

466 | (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
 467 | chapter, section, or subdivision of the Florida Statutes in this
 468 | section constitutes a general reference under the doctrine of
 469 | incorporation by reference.

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

472 | 943.059 Court-ordered sealing of criminal history
 473 | records.—The courts of this state shall continue to have
 474 | jurisdiction over their own procedures, including the
 475 | maintenance, sealing, and correction of judicial records
 476 | containing criminal history information to the extent such

477 | procedures are not inconsistent with the conditions,
 478 | responsibilities, and duties established by this section. Any
 479 | court of competent jurisdiction may order a criminal justice
 480 | agency to seal the criminal history record of a minor or an
 481 | adult who complies with the requirements of this section. The
 482 | court may ~~shall~~ not order a criminal justice agency to seal a
 483 | criminal history record until the person seeking to seal a
 484 | 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
 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

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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
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, before ~~prior to~~ the date on which the
529 petition is filed, been adjudicated guilty of a criminal offense
530 or comparable ordinance violation, or been adjudicated
531 delinquent for committing any felony or a misdemeanor specified
532 in s. 943.051(3)(b).

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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
538 in subsection (6), or expunction of a criminal history record
539 under this section, former s. 893.14, former s. 901.33, former
540 s. 943.058, or from any jurisdiction outside the state.

541 4. Is eligible for such a sealing to the best of his or
542 her knowledge or belief and does not have any other petition to
543 seal 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.—Before ~~Prior~~
550 ~~to~~ petitioning the court to seal a criminal history record, a
551 person seeking to seal a criminal history record shall apply to
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
 566 the 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, before ~~prior to~~ the date on which the
 572 application for a certificate of eligibility is filed, been
 573 adjudicated guilty of a criminal offense or comparable ordinance
 574 violation, or been adjudicated delinquent for committing any
 575 felony or a 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
 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

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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 before ~~prior~~
608 ~~to~~ July 1, 1992, the department shall notify the appropriate
609 state attorney or statewide prosecutor of any order to seal
610 which is contrary to law because the person who is the subject
611 of the record has previously been convicted of a crime or
612 comparable ordinance violation or has had a prior criminal
613 history record sealed, except as provided in subsection (6), or
614 expunged. Upon receipt of such notice, the appropriate state
615 attorney or statewide prosecutor shall take action, within 60
616 days, to correct the record and petition the court to void the

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617 order to seal. The department shall seal the record until such
618 time as 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 if ~~when~~ such order does not comply with
622 the requirements of this section. Upon receipt of such an order,
623 the department must notify the issuing court, the appropriate
624 state 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. A ~~No~~ cause of
629 action, including contempt of court, does not ~~shall~~ arise
630 against any criminal justice agency for failure to comply with
631 an order to seal if ~~when~~ the petitioner for such order failed to
632 obtain the certificate of eligibility as required by this
633 section or if ~~when~~ such order does not comply with the
634 requirements of this 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.

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

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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
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

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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 check under state or federal law;
 684 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.

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
 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
 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

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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, 2010.