

By Senator Smith

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

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30 of a sealed criminal history record; authorizing a
31 court to seal a criminal history record of a person
32 who had a prior criminal history record sealed or
33 expunged; providing 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 "Jim King Keep
38 Florida 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 a goal of this state is
42 to clearly identify the occupations from which ex-offenders are
43 disqualified based on their specific offenses. The Legislature
44 intends to make employment opportunities available to ex-
45 offenders in a manner that encourages them to become productive
46 members of society and preserves the safety of the public. To
47 this end, all state agencies shall identify all restrictions on
48 employment imposed by the agencies or by boards that regulate
49 professions and occupations and attempt to define each
50 restriction as narrowly as possible while continuing to maintain
51 public safety.

52 (2) Each state agency, including, but not limited to,
53 professional and occupational regulatory boards, shall, by
54 December 31, 2011, and every 8 years thereafter, submit to the
55 Governor, the President of the Senate, and the Speaker of the
56 House of Representatives a report that includes:

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

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

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

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

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

70 Section 3. Section 112.011, Florida Statutes, is amended to
71 read:

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

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

84 (b) Except as provided in s. 775.16, a person ~~whose civil~~
85 ~~rights have been restored shall not be disqualified to practice,~~
86 ~~pursue, or engage in any occupation, trade, vocation,~~
87 ~~profession, or business for which a license, permit, or~~

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

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

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

109 (b) This section does ~~shall~~ not apply ~~be applicable~~ to the
110 employment practices of any fire department relating to the
111 hiring of firefighters. An applicant for employment with any
112 fire department who has ~~with~~ a prior felony conviction shall be
113 excluded from employment for a period of 4 years after
114 expiration of sentence or final release by the Parole Commission
115 unless the applicant, before ~~prior to~~ the expiration of the 4-
116 year period, has received a full pardon or has had his or her

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117 civil rights restored.

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

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

125 Section 4. Section 768.096, Florida Statutes, is amended to
126 read:

127 768.096 Employer presumption against negligent hiring.—

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

138 (a) Obtaining a criminal background investigation on the
139 prospective employee under subsection (2);

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

143 (c) Requiring the prospective employee to complete a job
144 application form that includes questions concerning whether he
145 or she has ever been convicted of a crime, including details

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146 concerning the type of crime, the date of conviction and the
147 penalty imposed, and whether the prospective employee has ever
148 been a defendant in a civil action for intentional tort,
149 including the nature of the intentional tort and the disposition
150 of the action;

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

156 (e) Interviewing the prospective employee.

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

173 (3) The election by an employer not to conduct the
174 investigation specified in subsection (1) does not raise any

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175 presumption that the employer failed to use reasonable care in
176 hiring an employee.

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

179 943.0585 Court-ordered expunction of criminal history
180 records.—The courts of this state have jurisdiction over their
181 own procedures, including the maintenance, expunction, and
182 correction of judicial records containing criminal history
183 information to the extent such procedures are not inconsistent
184 with the conditions, responsibilities, and duties established by
185 this section. Any court of competent jurisdiction may order a
186 criminal justice agency to expunge the criminal history record
187 of a minor or an adult who complies with the requirements of
188 this section. The court may ~~shall~~ not order a criminal justice
189 agency to expunge a criminal history record until the person
190 seeking to expunge a criminal history record has applied for and
191 received a certificate of eligibility for expunction pursuant to
192 subsection (2). A criminal history record that relates to a
193 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
194 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
195 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
196 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
197 any violation specified as a predicate offense for registration
198 as a sexual predator pursuant to s. 775.21, without regard to
199 whether that offense alone is sufficient to require such
200 registration, or for registration as a sexual offender pursuant
201 to s. 943.0435, may not be expunged, without regard to whether
202 adjudication was withheld, if the defendant was found guilty of
203 or pled guilty or nolo contendere to the offense, or if the

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

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

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

232 (a) A valid certificate of eligibility for expunction

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

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

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

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

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

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

255
256 Any person who knowingly provides false information on such
257 sworn statement to the court commits a felony of the third
258 degree, punishable as provided in s. 775.082, s. 775.083, or s.
259 775.084.

260 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Before ~~Prior~~
261 ~~to~~ petitioning the court to expunge a criminal history record, a

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

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

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

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

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

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

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

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

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

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

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

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320 criminal history record under this section, former s. 893.14,
321 former s. 901.33, or former s. 943.058, unless expunction is
322 sought of a criminal history record previously sealed for 10
323 years pursuant to paragraph (h) and the record is otherwise
324 eligible for expunction.

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

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

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

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

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

360 (c) For an order to expunge entered by a court before ~~prior~~
361 ~~to~~ July 1, 1992, the department shall notify the appropriate
362 state attorney or statewide prosecutor of an order to expunge
363 which is contrary to law because the person who is the subject
364 of the record has previously been convicted of a crime or
365 comparable ordinance violation or has had a prior criminal
366 history record sealed or expunged. Upon receipt of such notice,
367 the appropriate state attorney or statewide prosecutor shall
368 take action, within 60 days, to correct the record and petition
369 the court to void the order to expunge. The department shall
370 seal the record until such time as the order is voided by the
371 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. A ~~No~~ cause of
382 action, including contempt of court, does not shall arise
383 against any criminal justice agency for failure to comply with
384 an order to expunge if ~~when~~ the petitioner for such order failed
385 to obtain the certificate of eligibility as required by this
386 section or such order does not otherwise comply with the
387 requirements of this 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(5),
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 seaport listed in s.
429 311.09 for employment within or access to one or more of such
430 seaports pursuant to s. 311.12.
- 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 may ~~shall~~ not order a criminal justice agency
483 to seal a criminal history record until the person seeking to
484 seal 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, 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).

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.—Before ~~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, 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

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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 before ~~prior to~~
608 July 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 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.

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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(5), 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

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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, 2011.