

By Senator Rodriguez

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1 A bill to be entitled
2 An act relating to determining bail; amending s.
3 903.046, F.S.; specifying the purpose of a bail
4 determination; creating a presumption for the release
5 of arrested individuals while they await trial;
6 requiring the release of individuals on their own
7 recognizance if they do not pose a substantial risk of
8 flight or harm to the community; authorizing a court
9 to impose reasonable nonmonetary bail conditions for
10 pretrial release; requiring a court to consider
11 certain factors and follow specific guidelines when
12 determining whether to release a defendant on
13 nonmonetary conditions; amending s. 907.041, F.S.;
14 revising legislative intent; deleting provisions
15 relating to a prohibition of release on nonmonetary
16 conditions under certain supervision; prohibiting a
17 court from granting pretrial release for a person
18 charged with a dangerous crime under certain
19 circumstances; revising the list of offenses that are
20 defined as dangerous crimes; deleting provisions
21 relating to certain offenses committed by a defendant
22 for which a court is authorized to order pretrial
23 detention after a court's review; specifying that a
24 state attorney must show the need for pretrial
25 detention by a certain standard of evidence; requiring
26 a court to make certain written findings and
27 conclusions in a pretrial detention order; deleting a
28 provision relating to a legislative finding; deleting
29 a provision requiring a court to order pretrial

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30 detention under certain circumstances if the court
31 makes certain findings; amending s. 790.065, F.S.;
32 conforming a cross-reference; reenacting ss. 943.0585
33 and 943.059, F.S., relating to court-ordered
34 expunction of criminal history records and court-
35 ordered sealing of criminal history records,
36 respectively, to incorporate the amendment made to s.
37 907.041, F.S., in references thereto; providing an
38 effective date.

39
40 Be It Enacted by the Legislature of the State of Florida:

41
42 Section 1. Section 903.046, Florida Statutes, is amended to
43 read:

44 903.046 Nonmonetary bail determinations and pretrial
45 release ~~Purpose of and criteria for bail determination.~~

46 (1) The purpose of a nonmonetary bail determination in
47 criminal proceedings is to ensure the appearance of the criminal
48 defendant at subsequent proceedings and to protect the community
49 against the risk of danger from the criminal defendant.

50 (2) An individual is presumed innocent until proven guilty,
51 and thus, there is a presumption that an individual arrested for
52 allegedly committing a crime will be released while he or she
53 awaits trial.

54 (3) An individual who does not pose a substantial risk of
55 flight or harm to the community must be released on his or her
56 own recognizance.

57 (4) Additionally, a court may impose only reasonable
58 nonmonetary bail conditions on a defendant's pretrial release,

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59 as monetary bail creates a system where indigent persons are
60 confined to jail simply because they cannot afford bail and
61 wealthier individuals are able to remain in the community simply
62 because they have access to sufficient funds. The right to be
63 free from confinement should not be determined based on an
64 individual's financial ability to post bail ~~The purpose of a~~
65 ~~bail determination in criminal proceedings is to ensure the~~
66 ~~appearance of the criminal defendant at subsequent proceedings~~
67 ~~and to protect the community against unreasonable danger from~~
68 ~~the criminal defendant.~~

69 (5) ~~(2)~~ When determining whether to release a defendant on
70 nonmonetary bail or other conditions, and what ~~that bail or~~
71 those conditions may be, the court shall ~~consider~~:

72 (a) Consider the nature and circumstances of the offense
73 charged.

74 (b) Consider the weight of the evidence against the
75 defendant.

76 (c) Consider the defendant's family ties, length of
77 residence in the community, employment history, financial
78 resources, and mental condition.

79 (d) Consider the defendant's past and present conduct,
80 including any record of convictions, previous flight to avoid
81 prosecution, or failure to appear at court proceedings. ~~However,~~
82 ~~any defendant who had failed to appear on the day of any~~
83 ~~required court proceeding in the case at issue, but who had~~
84 ~~later voluntarily appeared or surrendered, shall not be eligible~~
85 ~~for a recognizance bond; and any defendant who failed to appear~~
86 ~~on the day of any required court proceeding in the case at issue~~
87 ~~and who was later arrested shall not be eligible for a~~

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88 ~~recognizance bond or for any form of bond which does not require~~
89 ~~a monetary undertaking or commitment equal to or greater than~~
90 ~~\$2,000 or twice the value of the monetary commitment or~~
91 ~~undertaking of the original bond, whichever is greater.~~
92 Notwithstanding anything in this section, the court has
93 discretion in determining conditions of release if the defendant
94 proves that circumstances beyond his or her control ~~for~~ resulted
95 in the failure to appear. ~~This section may not be construed as~~
96 ~~imposing additional duties or obligations on a governmental~~
97 ~~entity related to monetary bonds.~~

98 (e) Consider the nature and probability of danger which the
99 defendant's release poses to the community.

100 (f) ~~The source of funds used to post bail or procure an~~
101 ~~appearance bond, particularly whether the proffered funds, real~~
102 ~~property, property, or any proposed collateral or bond premium~~
103 ~~may be linked to or derived from the crime alleged to have been~~
104 ~~committed or from any other criminal or illicit activities. The~~
105 ~~burden of establishing the noninvolvement in or nonderivation~~
106 ~~from criminal or other illicit activity of such proffered funds,~~
107 ~~real property, property, or any proposed collateral or bond~~
108 ~~premium falls upon the defendant or other person proffering them~~
109 ~~to obtain the defendant's release.~~

110 ~~(g)~~ Consider whether the defendant is already on release
111 pending resolution of another criminal proceeding or on
112 probation, parole, or other release pending completion of a
113 sentence.

114 (h) ~~The street value of any drug or controlled substance~~
115 ~~connected to or involved in the criminal charge. It is the~~
116 ~~finding and intent of the Legislature that crimes involving~~

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117 ~~drugs and other controlled substances are of serious social~~
118 ~~concern, that the flight of defendants to avoid prosecution is~~
119 ~~of similar serious social concern, and that frequently such~~
120 ~~defendants are able to post monetary bail using the proceeds of~~
121 ~~their unlawful enterprises to defeat the social utility of~~
122 ~~pretrial bail. Therefore, the courts should carefully consider~~
123 ~~the utility and necessity of substantial bail in relation to the~~
124 ~~street value of the drugs or controlled substances involved.~~

125 (g)~~(i)~~ Consider the nature and probability of intimidation
126 and danger to victims.

127 (h)~~(j)~~ Consider whether there is probable cause to believe
128 that the defendant committed a new crime while on pretrial
129 release.

130 (i)~~(k)~~ Consider any other facts that the court considers
131 relevant.

132 (j)~~(l)~~ Consider whether the crime charged is a violation of
133 chapter 874 or alleged to be subject to enhanced punishment
134 under chapter 874 or reclassification under s. 843.22. If any
135 such violation is charged against a defendant or if the
136 defendant is charged with a crime that is alleged to be subject
137 to such enhancement or reclassification, he or she is not
138 eligible for release on bail or surety bond until the first
139 appearance on the case in order to ensure the full participation
140 of the prosecutor and the protection of the public.

141 (k)~~(m)~~ Consider whether the defendant, other than a
142 defendant whose only criminal charge is a misdemeanor offense
143 under chapter 316, is required to register as a sexual offender
144 under s. 943.0435 or a sexual predator under s. 775.21; and, if
145 so, he or she is not eligible for release on bail or surety bond

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146 until the first appearance on the case in order to ensure the
147 full participation of the prosecutor and the protection of the
148 public.

149 (1) Impose the least restrictive conditions or combination
150 of conditions necessary to reasonably assure the appearance of
151 the accused, the safety of any person or the community, and the
152 integrity of judicial proceedings.

153 Section 2. Subsections (1) and (3) and paragraphs (a), (b),
154 (c), (g), (i), and (l) of subsection (4) of section 907.041,
155 Florida Statutes, are amended to read:

156 907.041 Pretrial detention and release.—

157 (1) LEGISLATIVE INTENT.—It is the policy of this state that
158 persons who pose committing serious criminal offenses, posing a
159 threat to the safety of the community which cannot be
160 sufficiently mitigated by nonmonetary conditions of release or
161 the integrity of the judicial process, or failing to appear at
162 trial be detained upon arrest. In contrast However, persons not
163 posing a threat to the safety of the community found to meet
164 specified criteria shall be released until under certain
165 conditions until proceedings are concluded and adjudication has
166 been determined. The Legislature finds that this policy of
167 pretrial detention and release will assure the detention of
168 those persons posing a threat to society while reducing the
169 costs for incarceration by releasing, until trial, those persons
170 not considered a danger to the community who meet certain
171 criteria. It is the intent of the Legislature that the primary
172 consideration for detaining an individual is whether the
173 individual presents a be the protection of the community from
174 risk of physical harm to persons.

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175 (3) RELEASE ON NONMONETARY CONDITIONS.—

176 ~~(a) It is the intent of the Legislature that individuals~~
177 ~~arrested for a crime who do not pose a threat to the safety of~~
178 ~~the community shall be released to create a presumption in favor~~
179 ~~of release on nonmonetary conditions while they await trial for~~
180 ~~any person who is granted pretrial release unless such person is~~
181 ~~charged with a dangerous crime as defined in subsection (4).~~
182 ~~Such person shall be released on monetary conditions if it is~~
183 ~~determined that such monetary conditions are necessary to assure~~
184 ~~the presence of the person at trial or at other proceedings, to~~
185 ~~protect the community from risk of physical harm to persons, to~~
186 ~~assure the presence of the accused at trial, or to assure the~~
187 ~~integrity of the judicial process.~~

188 ~~(b) No person shall be released on nonmonetary conditions~~
189 ~~under the supervision of a pretrial release service, unless the~~
190 ~~service certifies to the court that it has investigated or~~
191 ~~otherwise verified:~~

192 ~~1. The circumstances of the accused's family, employment,~~
193 ~~financial resources, character, mental condition, and length of~~
194 ~~residence in the community;~~

195 ~~2. The accused's record of convictions, of appearances at~~
196 ~~court proceedings, of flight to avoid prosecution, or of failure~~
197 ~~to appear at court proceedings; and~~

198 ~~3. Other facts necessary to assist the court in its~~
199 ~~determination of the indigency of the accused and whether she or~~
200 ~~he should be released under the supervision of the service.~~

201 (4) PRETRIAL DETENTION.—

202 (a) A person charged with a dangerous crime, as defined in
203 paragraph (b), may not be granted pretrial release at a first

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204 appearance hearing; however, the court may release the accused
 205 person on electronic monitoring or on recognizance bond if the
 206 findings on the record of facts and circumstances warrant such a
 207 release.

208 (b) As used in this subsection, "dangerous crime" means any
 209 of the following:

210 1. ~~Arson;~~

211 2. Aggravated assault with a deadly weapon;

212 ~~2.3.~~ Aggravated battery;

213 ~~4. Illegal use of explosives;~~

214 ~~3.5.~~ Child abuse or aggravated child abuse;

215 ~~4.6. Abuse of an elderly person or disabled adult, or~~

216 Aggravated abuse of an elderly person or a disabled adult;

217 ~~5.7.~~ Aircraft piracy;

218 ~~6.8.~~ Kidnapping;

219 ~~7.9.~~ Homicide;

220 ~~8.10.~~ Manslaughter;

221 ~~9.11.~~ Sexual battery;

222 ~~10.12.~~ Armed robbery;

223 ~~11.13.~~ Carjacking;

224 ~~12.14.~~ Lewd, lascivious, or indecent assault or act upon or
 225 in presence of a child under the age of 16 years;

226 ~~13.15.~~ Sexual activity with a child, who is 12 years of age
 227 or older but less than 18 years of age, by or at solicitation of
 228 a person in familial or custodial authority;

229 ~~14.16.~~ Armed burglary of an occupied ~~a~~ dwelling, structure,
 230 or conveyance;

231 ~~15.17.~~ Stalking and aggravated stalking;

232 ~~16.18.~~ An act of domestic violence as defined in s. 741.28;

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233 ~~17.19.~~ Home invasion robbery;

234 ~~18.20.~~ An act of terrorism as defined in s. 775.30; and

235 ~~21. Manufacturing any substances in violation of chapter~~

236 ~~893;~~

237 ~~22. Attempting or conspiring to commit any such crime; and~~

238 ~~19.23.~~ Human trafficking.

239 ~~(b) No person charged with a dangerous crime shall be~~

240 ~~granted nonmonetary pretrial release at a first appearance~~

241 ~~hearing; however, the court shall retain the discretion to~~

242 ~~release an accused on electronic monitoring or on recognizance~~

243 ~~bond if the findings on the record of facts and circumstances~~

244 ~~warrant such a release.~~

245 (c) The court may order pretrial detention if it finds a

246 substantial probability, based on a defendant's past and present

247 patterns of behavior, the criteria in s. 903.046, and any other

248 relevant facts, that any of the following circumstances exist:

249 1. The defendant has previously violated conditions of

250 release and that no further conditions of release are reasonably

251 likely to assure the defendant's appearance at subsequent

252 proceedings;

253 2. The defendant, with the intent to obstruct the judicial

254 process, has threatened, intimidated, or injured any victim,

255 potential witness, juror, or judicial officer, or has attempted

256 or conspired to do so, and that no condition of release will

257 reasonably prevent the obstruction of the judicial process;

258 ~~3. The defendant is charged with trafficking in controlled~~

259 ~~substances as defined by s. 893.135, that there is a substantial~~

260 ~~probability that the defendant has committed the offense, and~~

261 ~~that no conditions of release will reasonably assure the~~

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262 ~~defendant's appearance at subsequent criminal proceedings;~~

263 ~~4. The defendant is charged with DUI manslaughter, as~~
264 ~~defined by s. 316.193, and that there is a substantial~~
265 ~~probability that the defendant committed the crime and that the~~
266 ~~defendant poses a threat of harm to the community; conditions~~
267 ~~that would support a finding by the court pursuant to this~~
268 ~~subparagraph that the defendant poses a threat of harm to the~~
269 ~~community include, but are not limited to, any of the following:~~

270 ~~a. The defendant has previously been convicted of any crime~~
271 ~~under s. 316.193, or of any crime in any other state or~~
272 ~~territory of the United States that is substantially similar to~~
273 ~~any crime under s. 316.193;~~

274 ~~b. The defendant was driving with a suspended driver~~
275 ~~license when the charged crime was committed; or~~

276 ~~e. The defendant has previously been found guilty of, or~~
277 ~~has had adjudication of guilt withheld for, driving while the~~
278 ~~defendant's driver license was suspended or revoked in violation~~
279 ~~of s. 322.34;~~

280 ~~3.5.~~ The defendant poses the threat of harm to the
281 community. The court may so conclude, if it finds that the
282 defendant is presently charged with a dangerous crime as defined
283 in paragraph (b), that there is a substantial probability that
284 the defendant committed the ~~such~~ crime, that the factual
285 circumstances of the crime indicate a disregard for the safety
286 of the community, and that there are no conditions of release
287 reasonably sufficient to protect the community from the risk of
288 physical harm to persons;

289 ~~4.6.~~ The defendant was on probation, parole, or other
290 release pending completion of sentence or on pretrial release

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291 for a dangerous crime at the time the current offense was
292 committed;

293 ~~5.7.~~ The defendant has violated one or more conditions of
294 pretrial release or bond for the offense currently before the
295 court and the violation, in the discretion of the court,
296 supports a finding that no conditions of release can reasonably
297 protect the community from risk of physical harm to persons or
298 assure the presence of the accused at trial; or

299 ~~6.a.8.a.~~ The defendant has ever been sentenced pursuant to
300 s. 775.082(9) or s. 775.084 as a prison releasee reoffender,
301 habitual violent felony offender, three-time violent felony
302 offender, or violent career criminal, or the state attorney
303 files a notice seeking that the defendant be sentenced pursuant
304 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
305 habitual violent felony offender, three-time violent felony
306 offender, or violent career criminal;

307 b. There is a substantial probability that the defendant
308 committed the offense; and

309 c. There are no conditions of release that can reasonably
310 protect the community from risk of physical harm or ensure the
311 presence of the accused at trial.

312 (g) The state attorney has the burden of showing the need
313 for pretrial detention by clear and convincing evidence.

314 (i) The pretrial detention order of the court shall be
315 based solely upon evidence produced at the hearing and shall
316 contain written findings of fact and conclusions of law to
317 support it. ~~The order shall be made either in writing or orally~~
318 ~~on the record.~~ The court shall render its findings within 24
319 hours after ~~of~~ the pretrial detention hearing.

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320 ~~(1) The Legislature finds that a person who manufactures~~
321 ~~any substances in violation of chapter 893 poses a threat of~~
322 ~~harm to the community and that the factual circumstances of such~~
323 ~~a crime indicate a disregard for the safety of the community.~~
324 ~~The court shall order pretrial detention if the court finds that~~
325 ~~there is a substantial probability that a defendant charged with~~
326 ~~manufacturing any substances in violation of chapter 893~~
327 ~~committed such a crime and if the court finds that there are no~~
328 ~~conditions of release reasonably sufficient to protect the~~
329 ~~community from the risk of physical harm to persons.~~

330 Section 3. Paragraph (c) of subsection (2) of section
331 790.065, Florida Statutes, is amended to read:

332 790.065 Sale and delivery of firearms.—

333 (2) Upon receipt of a request for a criminal history record
334 check, the Department of Law Enforcement shall, during the
335 licensee's call or by return call, forthwith:

336 (c)1. Review any records available to it to determine
337 whether the potential buyer or transferee has been indicted or
338 has had an information filed against her or him for an offense
339 that is a felony under either state or federal law, or, as
340 mandated by federal law, has had an injunction for protection
341 against domestic violence entered against the potential buyer or
342 transferee under s. 741.30, has had an injunction for protection
343 against repeat violence entered against the potential buyer or
344 transferee under s. 784.046, or has been arrested for a
345 dangerous crime as specified in s. 907.041(4)(b) ~~s.~~

346 ~~907.041(4)(a)~~ or for any of the following enumerated offenses:

347 a. Criminal anarchy under ss. 876.01 and 876.02.

348 b. Extortion under s. 836.05.

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- 349 c. Explosives violations under s. 552.22(1) and (2).
350 d. Controlled substances violations under chapter 893.
351 e. Resisting an officer with violence under s. 843.01.
352 f. Weapons and firearms violations under this chapter.
353 g. Treason under s. 876.32.
354 h. Assisting self-murder under s. 782.08.
355 i. Sabotage under s. 876.38.
356 j. Stalking or aggravated stalking under s. 784.048.

357

358 If the review indicates any such indictment, information, or
359 arrest, the department shall provide to the licensee a
360 conditional nonapproval number.

361 2. Within 24 working hours, the department shall determine
362 the disposition of the indictment, information, or arrest and
363 inform the licensee as to whether the potential buyer is
364 prohibited from receiving or possessing a firearm. For purposes
365 of this paragraph, "working hours" means the hours from 8 a.m.
366 to 5 p.m. Monday through Friday, excluding legal holidays.

367 3. The office of the clerk of court, at no charge to the
368 department, shall respond to any department request for data on
369 the disposition of the indictment, information, or arrest as
370 soon as possible, but in no event later than 8 working hours.

371 4. The department shall determine as quickly as possible
372 within the allotted time period whether the potential buyer is
373 prohibited from receiving or possessing a firearm.

374 5. If the potential buyer is not so prohibited, or if the
375 department cannot determine the disposition information within
376 the allotted time period, the department shall provide the
377 licensee with a conditional approval number.

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378 6. If the buyer is so prohibited, the conditional
379 nonapproval number shall become a nonapproval number.

380 7. The department shall continue its attempts to obtain the
381 disposition information and may retain a record of all approval
382 numbers granted without sufficient disposition information. If
383 the department later obtains disposition information which
384 indicates:

385 a. That the potential buyer is not prohibited from owning a
386 firearm, it shall treat the record of the transaction in
387 accordance with this section; or

388 b. That the potential buyer is prohibited from owning a
389 firearm, it shall immediately revoke the conditional approval
390 number and notify local law enforcement.

391 8. During the time that disposition of the indictment,
392 information, or arrest is pending and until the department is
393 notified by the potential buyer that there has been a final
394 disposition of the indictment, information, or arrest, the
395 conditional nonapproval number shall remain in effect.

396 Section 4. For the purpose of incorporating the amendment
397 made by this act to section 907.041, Florida Statutes, in a
398 reference thereto, section 943.0585, Florida Statutes, is
399 reenacted to read:

400 943.0585 Court-ordered expunction of criminal history
401 records.—The courts of this state have jurisdiction over their
402 own procedures, including the maintenance, expunction, and
403 correction of judicial records containing criminal history
404 information to the extent such procedures are not inconsistent
405 with the conditions, responsibilities, and duties established by
406 this section. Any court of competent jurisdiction may order a

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407 criminal justice agency to expunge the criminal history record
408 of a minor or an adult who complies with the requirements of
409 this section. The court shall not order a criminal justice
410 agency to expunge a criminal history record until the person
411 seeking to expunge a criminal history record has applied for and
412 received a certificate of eligibility for expunction pursuant to
413 subsection (2) or subsection (5). A criminal history record that
414 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
415 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
416 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
417 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
418 s. 907.041, or any violation specified as a predicate offense
419 for registration as a sexual predator pursuant to s. 775.21,
420 without regard to whether that offense alone is sufficient to
421 require such registration, or for registration as a sexual
422 offender pursuant to s. 943.0435, may not be expunged, without
423 regard to whether adjudication was withheld, if the defendant
424 was found guilty of or pled guilty or nolo contendere to the
425 offense, or if the defendant, as a minor, was found to have
426 committed, or pled guilty or nolo contendere to committing, the
427 offense as a delinquent act. The court may only order expunction
428 of a criminal history record pertaining to one arrest or one
429 incident of alleged criminal activity, except as provided in
430 this section. The court may, at its sole discretion, order the
431 expunction of a criminal history record pertaining to more than
432 one arrest if the additional arrests directly relate to the
433 original arrest. If the court intends to order the expunction of
434 records pertaining to such additional arrests, such intent must
435 be specified in the order. A criminal justice agency may not

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436 expunge any record pertaining to such additional arrests if the
437 order to expunge does not articulate the intention of the court
438 to expunge a record pertaining to more than one arrest. This
439 section does not prevent the court from ordering the expunction
440 of only a portion of a criminal history record pertaining to one
441 arrest or one incident of alleged criminal activity.

442 Notwithstanding any law to the contrary, a criminal justice
443 agency may comply with laws, court orders, and official requests
444 of other jurisdictions relating to expunction, correction, or
445 confidential handling of criminal history records or information
446 derived therefrom. This section does not confer any right to the
447 expunction of any criminal history record, and any request for
448 expunction of a criminal history record may be denied at the
449 sole discretion of the court.

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

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

455 (b) The petitioner's sworn statement attesting that the
456 petitioner:

457 1. Has never, prior to the date on which the petition is
458 filed, been adjudicated guilty of a criminal offense or
459 comparable ordinance violation, or been adjudicated delinquent
460 for committing any felony or a misdemeanor specified in s.
461 943.051(3)(b).

462 2. Has not been adjudicated guilty of, or adjudicated
463 delinquent for committing, any of the acts stemming from the
464 arrest or alleged criminal activity to which the petition

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465 pertains.

466 3. Has never secured a prior sealing or expunction of a
467 criminal history record under this section, s. 943.059, former
468 s. 893.14, former s. 901.33, or former s. 943.058, unless
469 expunction is sought of a criminal history record previously
470 sealed for 10 years pursuant to paragraph (2) (h) and the record
471 is otherwise eligible for expunction.

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

475
476 Any person who knowingly provides false information on such
477 sworn statement to the court commits a felony of the third
478 degree, punishable as provided in s. 775.082, s. 775.083, or s.
479 775.084.

480 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
481 petitioning the court to expunge a criminal history record, a
482 person seeking to expunge a criminal history record shall apply
483 to the department for a certificate of eligibility for
484 expunction. The department shall, by rule adopted pursuant to
485 chapter 120, establish procedures pertaining to the application
486 for and issuance of certificates of eligibility for expunction.
487 A certificate of eligibility for expunction is valid for 12
488 months after the date stamped on the certificate when issued by
489 the department. After that time, the petitioner must reapply to
490 the department for a new certificate of eligibility. Eligibility
491 for a renewed certification of eligibility must be based on the
492 status of the applicant and the law in effect at the time of the
493 renewal application. The department shall issue a certificate of

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494 eligibility for expunction to a person who is the subject of a
495 criminal history record if that person:

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

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

501 2. That an indictment, information, or other charging
502 document, if filed or issued in the case, was dismissed or nolle
503 prosequi by the state attorney or statewide prosecutor, or was
504 dismissed by a court of competent jurisdiction, and that none of
505 the charges related to the arrest or alleged criminal activity
506 to which the petition to expunge pertains resulted in a trial,
507 without regard to whether the outcome of the trial was other
508 than an adjudication of guilt.

509 3. That the criminal history record does not relate to a
510 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
511 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
512 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
513 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
514 or any violation specified as a predicate offense for
515 registration as a sexual predator pursuant to s. 775.21, without
516 regard to whether that offense alone is sufficient to require
517 such registration, or for registration as a sexual offender
518 pursuant to s. 943.0435, where the defendant was found guilty
519 of, or pled guilty or nolo contendere to any such offense, or
520 that the defendant, as a minor, was found to have committed, or
521 pled guilty or nolo contendere to committing, such an offense as
522 a delinquent act, without regard to whether adjudication was

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523 withheld.

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

527 (c) Has submitted to the department a certified copy of the
528 disposition of the charge to which the petition to expunge
529 pertains.

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

535 (e) Has not been adjudicated guilty of, or adjudicated
536 delinquent for committing, any of the acts stemming from the
537 arrest or alleged criminal activity to which the petition to
538 expunge pertains.

539 (f) Has never secured a prior sealing or expunction of a
540 criminal history record under this section, s. 943.059, former
541 s. 893.14, former s. 901.33, or former s. 943.058, unless
542 expunction is sought of a criminal history record previously
543 sealed for 10 years pursuant to paragraph (h) and the record is
544 otherwise eligible for expunction.

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

548 (h) Has previously obtained a court order sealing the
549 record under this section, former s. 893.14, former s. 901.33,
550 or former s. 943.058 for a minimum of 10 years because
551 adjudication was withheld or because all charges related to the

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552 arrest or alleged criminal activity to which the petition to
553 expunge pertains were not dismissed prior to trial, without
554 regard to whether the outcome of the trial was other than an
555 adjudication of guilt. The requirement for the record to have
556 previously been sealed for a minimum of 10 years does not apply
557 when a plea was not entered or all charges related to the arrest
558 or alleged criminal activity to which the petition to expunge
559 pertains were dismissed prior to trial.

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

561 (a) In judicial proceedings under this section, a copy of
562 the completed petition to expunge shall be served upon the
563 appropriate state attorney or the statewide prosecutor and upon
564 the arresting agency; however, it is not necessary to make any
565 agency other than the state a party. The appropriate state
566 attorney or the statewide prosecutor and the arresting agency
567 may respond to the court regarding the completed petition to
568 expunge.

569 (b) If relief is granted by the court, the clerk of the
570 court shall certify copies of the order to the appropriate state
571 attorney or the statewide prosecutor and the arresting agency.
572 The arresting agency is responsible for forwarding the order to
573 any other agency to which the arresting agency disseminated the
574 criminal history record information to which the order pertains.
575 The department shall forward the order to expunge to the Federal
576 Bureau of Investigation. The clerk of the court shall certify a
577 copy of the order to any other agency which the records of the
578 court reflect has received the criminal history record from the
579 court.

580 (c) For an order to expunge entered by a court prior to

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581 July 1, 1992, the department shall notify the appropriate state
582 attorney or statewide prosecutor of an order to expunge which is
583 contrary to law because the person who is the subject of the
584 record has previously been convicted of a crime or comparable
585 ordinance violation or has had a prior criminal history record
586 sealed or expunged. Upon receipt of such notice, the appropriate
587 state attorney or statewide prosecutor shall take action, within
588 60 days, to correct the record and petition the court to void
589 the order to expunge. The department shall seal the record until
590 such time as the order is voided by the court.

591 (d) On or after July 1, 1992, the department or any other
592 criminal justice agency is not required to act on an order to
593 expunge entered by a court when such order does not comply with
594 the requirements of this section. Upon receipt of such an order,
595 the department must notify the issuing court, the appropriate
596 state attorney or statewide prosecutor, the petitioner or the
597 petitioner's attorney, and the arresting agency of the reason
598 for noncompliance. The appropriate state attorney or statewide
599 prosecutor shall take action within 60 days to correct the
600 record and petition the court to void the order. No cause of
601 action, including contempt of court, shall arise against any
602 criminal justice agency for failure to comply with an order to
603 expunge when the petitioner for such order failed to obtain the
604 certificate of eligibility as required by this section or such
605 order does not otherwise comply with the requirements of this
606 section.

607 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
608 criminal history record of a minor or an adult which is ordered
609 expunged by a court of competent jurisdiction pursuant to this

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610 section must be physically destroyed or obliterated by any
611 criminal justice agency having custody of such record; except
612 that any criminal history record in the custody of the
613 department must be retained in all cases. A criminal history
614 record ordered expunged that is retained by the department is
615 confidential and exempt from the provisions of s. 119.07(1) and
616 s. 24(a), Art. I of the State Constitution and not available to
617 any person or entity except upon order of a court of competent
618 jurisdiction. A criminal justice agency may retain a notation
619 indicating compliance with an order to expunge.

620 (a) The person who is the subject of a criminal history
621 record that is expunged under this section or under other
622 provisions of law, including former s. 893.14, former s. 901.33,
623 and former s. 943.058, may lawfully deny or fail to acknowledge
624 the arrests covered by the expunged record, except when the
625 subject of the record:

- 626 1. Is a candidate for employment with a criminal justice
627 agency;
- 628 2. Is a defendant in a criminal prosecution;
- 629 3. Concurrently or subsequently petitions for relief under
630 this section, s. 943.0583, or s. 943.059;
- 631 4. Is a candidate for admission to The Florida Bar;
- 632 5. Is seeking to be employed or licensed by or to contract
633 with the Department of Children and Families, the Division of
634 Vocational Rehabilitation within the Department of Education,
635 the Agency for Health Care Administration, the Agency for
636 Persons with Disabilities, the Department of Health, the
637 Department of Elderly Affairs, or the Department of Juvenile
638 Justice or to be employed or used by such contractor or licensee

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639 in a sensitive position having direct contact with children, the
640 disabled, or the elderly;

641 6. Is seeking to be employed or licensed by the Department
642 of Education, any district school board, any university
643 laboratory school, any charter school, any private or parochial
644 school, or any local governmental entity that licenses child
645 care facilities;

646 7. Is seeking to be licensed by the Division of Insurance
647 Agent and Agency Services within the Department of Financial
648 Services; or

649 8. Is seeking to be appointed as a guardian pursuant to s.
650 744.3125.

651 (b) Subject to the exceptions in paragraph (a), a person
652 who has been granted an expunction under this section, former s.
653 893.14, former s. 901.33, or former s. 943.058 may not be held
654 under any provision of law of this state to commit perjury or to
655 be otherwise liable for giving a false statement by reason of
656 such person's failure to recite or acknowledge an expunged
657 criminal history record.

658 (c) Information relating to the existence of an expunged
659 criminal history record which is provided in accordance with
660 paragraph (a) is confidential and exempt from the provisions of
661 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
662 except that the department shall disclose the existence of a
663 criminal history record ordered expunged to the entities set
664 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their
665 respective licensing, access authorization, and employment
666 purposes, and to criminal justice agencies for their respective
667 criminal justice purposes. It is unlawful for any employee of an

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668 entity set forth in subparagraph (a)1., subparagraph (a)4.,
669 subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or
670 subparagraph (a)8. to disclose information relating to the
671 existence of an expunged criminal history record of a person
672 seeking employment, access authorization, or licensure with such
673 entity or contractor, except to the person to whom the criminal
674 history record relates or to persons having direct
675 responsibility for employment, access authorization, or
676 licensure decisions. Any person who violates this paragraph
677 commits a misdemeanor of the first degree, punishable as
678 provided in s. 775.082 or s. 775.083.

679 (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the
680 eligibility requirements prescribed in paragraph (1)(b) and
681 subsection (2), the department shall issue a certificate of
682 eligibility for expunction under this subsection to a person who
683 is the subject of a criminal history record if that person:

684 (a) Has obtained, and submitted to the department, on a
685 form provided by the department, a written, certified statement
686 from the appropriate state attorney or statewide prosecutor
687 which states whether an information, indictment, or other
688 charging document was not filed or was dismissed by the state
689 attorney, or dismissed by the court, because it was found that
690 the person acted in lawful self-defense pursuant to the
691 provisions related to justifiable use of force in chapter 776.

692 (b) Each petition to a court to expunge a criminal history
693 record pursuant to this subsection is complete only when
694 accompanied by:

695 1. A valid certificate of eligibility for expunction issued
696 by the department pursuant to this subsection.

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697 2. The petitioner's sworn statement attesting that the
698 petitioner is eligible for such an expunction to the best of his
699 or her knowledge or belief.

700
701 Any person who knowingly provides false information on such
702 sworn statement to the court commits a felony of the third
703 degree, punishable as provided in s. 775.082, s. 775.083, or s.
704 775.084.

705 (c) This subsection does not confer any right to the
706 expunction of a criminal history record, and any request for
707 expunction of a criminal history record may be denied at the
708 discretion of the court.

709 (d) Subsections (3) and (4) shall apply to expunction
710 ordered under this subsection.

711 (e) The department shall, by rule adopted pursuant to
712 chapter 120, establish procedures pertaining to the application
713 for and issuance of certificates of eligibility for expunction
714 under this subsection.

715 (6) 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 Section 5. For the purpose of incorporating the amendment
720 made by this act to section 907.041, Florida Statutes, in a
721 reference thereto, section 943.059, Florida Statutes, is
722 reenacted to read:

723 943.059 Court-ordered sealing of criminal history records.—
724 The courts of this state shall continue to have jurisdiction
725 over their own procedures, including the maintenance, sealing,

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726 and correction of judicial records containing criminal history
727 information to the extent such procedures are not inconsistent
728 with the conditions, responsibilities, and duties established by
729 this section. Any court of competent jurisdiction may order a
730 criminal justice agency to seal the criminal history record of a
731 minor or an adult who complies with the requirements of this
732 section. The court shall not order a criminal justice agency to
733 seal a criminal history record until the person seeking to seal
734 a criminal history record has applied for and received a
735 certificate of eligibility for sealing pursuant to subsection
736 (2). A criminal history record that relates to a violation of s.
737 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
738 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
739 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
740 s. 916.1075, a violation enumerated in s. 907.041, or any
741 violation specified as a predicate offense for registration as a
742 sexual predator pursuant to s. 775.21, without regard to whether
743 that offense alone is sufficient to require such registration,
744 or for registration as a sexual offender pursuant to s.
745 943.0435, may not be sealed, without regard to whether
746 adjudication was withheld, if the defendant was found guilty of
747 or pled guilty or nolo contendere to the offense, or if the
748 defendant, as a minor, was found to have committed or pled
749 guilty or nolo contendere to committing the offense as a
750 delinquent act. The court may only order sealing of a criminal
751 history record pertaining to one arrest or one incident of
752 alleged criminal activity, except as provided in this section.
753 The court may, at its sole discretion, order the sealing of a
754 criminal history record pertaining to more than one arrest if

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755 the additional arrests directly relate to the original arrest.
756 If the court intends to order the sealing of records pertaining
757 to such additional arrests, such intent must be specified in the
758 order. A criminal justice agency may not seal any record
759 pertaining to such additional arrests if the order to seal does
760 not articulate the intention of the court to seal records
761 pertaining to more than one arrest. This section does not
762 prevent the court from ordering the sealing of only a portion of
763 a criminal history record pertaining to one arrest or one
764 incident of alleged criminal activity. Notwithstanding any law
765 to the contrary, a criminal justice agency may comply with laws,
766 court orders, and official requests of other jurisdictions
767 relating to sealing, correction, or confidential handling of
768 criminal history records or information derived therefrom. This
769 section does not confer any right to the sealing of any criminal
770 history record, and any request for sealing a criminal history
771 record may be denied at the sole discretion of the court.

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

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

777 (b) The petitioner's sworn statement attesting that the
778 petitioner:

779 1. Has never, prior to the date on which the petition is
780 filed, been adjudicated guilty of a criminal offense or
781 comparable ordinance violation, or been adjudicated delinquent
782 for committing any felony or a misdemeanor specified in s.
783 943.051(3)(b).

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784 2. Has not been adjudicated guilty of or adjudicated
785 delinquent for committing any of the acts stemming from the
786 arrest or alleged criminal activity to which the petition to
787 seal pertains.

788 3. Has never secured a prior sealing or expunction of a
789 criminal history record under this section, s. 943.0585, former
790 s. 893.14, former s. 901.33, or former s. 943.058.

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

794
795 Any person who knowingly provides false information on such
796 sworn statement to the court commits a felony of the third
797 degree, punishable as provided in s. 775.082, s. 775.083, or s.
798 775.084.

799 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
800 petitioning the court to seal a criminal history record, a
801 person seeking to seal a criminal history record shall apply to
802 the department for a certificate of eligibility for sealing. The
803 department shall, by rule adopted pursuant to chapter 120,
804 establish procedures pertaining to the application for and
805 issuance of certificates of eligibility for sealing. A
806 certificate of eligibility for sealing is valid for 12 months
807 after the date stamped on the certificate when issued by the
808 department. After that time, the petitioner must reapply to the
809 department for a new certificate of eligibility. Eligibility for
810 a renewed certification of eligibility must be based on the
811 status of the applicant and the law in effect at the time of the
812 renewal application. The department shall issue a certificate of

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813 eligibility for sealing to a person who is the subject of a
814 criminal history record provided that such person:

815 (a) Has submitted to the department a certified copy of the
816 disposition of the charge to which the petition to seal
817 pertains.

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

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

826 (d) Has not been adjudicated guilty of or adjudicated
827 delinquent for committing any of the acts stemming from the
828 arrest or alleged criminal activity to which the petition to
829 seal pertains.

830 (e) Has never secured a prior sealing or expunction of a
831 criminal history record under this section, s. 943.0585, former
832 s. 893.14, former s. 901.33, or former s. 943.058.

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

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

837 (a) In judicial proceedings under this section, a copy of
838 the completed petition to seal shall be served upon the
839 appropriate state attorney or the statewide prosecutor and upon
840 the arresting agency; however, it is not necessary to make any
841 agency other than the state a party. The appropriate state

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842 attorney or the statewide prosecutor and the arresting agency
843 may respond to the court regarding the completed petition to
844 seal.

845 (b) If relief is granted by the court, the clerk of the
846 court shall certify copies of the order to the appropriate state
847 attorney or the statewide prosecutor and to the arresting
848 agency. The arresting agency is responsible for forwarding the
849 order to any other agency to which the arresting agency
850 disseminated the criminal history record information to which
851 the order pertains. The department shall forward the order to
852 seal to the Federal Bureau of Investigation. The clerk of the
853 court shall certify a copy of the order to any other agency
854 which the records of the court reflect has received the criminal
855 history record from the court.

856 (c) For an order to seal entered by a court prior to July
857 1, 1992, the department shall notify the appropriate state
858 attorney or statewide prosecutor of any order to seal which is
859 contrary to law because the person who is the subject of the
860 record has previously been convicted of a crime or comparable
861 ordinance violation or has had a prior criminal history record
862 sealed or expunged. Upon receipt of such notice, the appropriate
863 state attorney or statewide prosecutor shall take action, within
864 60 days, to correct the record and petition the court to void
865 the order to seal. The department shall seal the record until
866 such time as the order is voided by the court.

867 (d) On or after July 1, 1992, the department or any other
868 criminal justice agency is not required to act on an order to
869 seal entered by a court when such order does not comply with the
870 requirements of this section. Upon receipt of such an order, the

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871 department must notify the issuing court, the appropriate state
872 attorney or statewide prosecutor, the petitioner or the
873 petitioner's attorney, and the arresting agency of the reason
874 for noncompliance. The appropriate state attorney or statewide
875 prosecutor shall take action within 60 days to correct the
876 record and petition the court to void the order. No cause of
877 action, including contempt of court, shall arise against any
878 criminal justice agency for failure to comply with an order to
879 seal when the petitioner for such order failed to obtain the
880 certificate of eligibility as required by this section or when
881 such order does not comply with the requirements of this
882 section.

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

887 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
888 history record of a minor or an adult which is ordered sealed by
889 a court pursuant to this section is confidential and exempt from
890 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
891 Constitution and is available only to the person who is the
892 subject of the record, to the subject's attorney, to criminal
893 justice agencies for their respective criminal justice purposes,
894 which include conducting a criminal history background check for
895 approval of firearms purchases or transfers as authorized by
896 state or federal law, to judges in the state courts system for
897 the purpose of assisting them in their case-related
898 decisionmaking responsibilities, as set forth in s. 943.053(5),
899 or to those entities set forth in subparagraphs (a)1., 4., 5.,

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900 6., 8., 9., and 10. for their respective licensing, access
901 authorization, and employment purposes.

902 (a) The subject of a criminal history record sealed under
903 this section or under other provisions of law, including former
904 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
905 deny or fail to acknowledge the arrests covered by the sealed
906 record, except when the subject of the record:

- 907 1. Is a candidate for employment with a criminal justice
908 agency;
- 909 2. Is a defendant in a criminal prosecution;
- 910 3. Concurrently or subsequently petitions for relief under
911 this section, s. 943.0583, or s. 943.0585;
- 912 4. Is a candidate for admission to The Florida Bar;
- 913 5. Is seeking to be employed or licensed by or to contract
914 with the Department of Children and Families, the Division of
915 Vocational Rehabilitation within the Department of Education,
916 the Agency for Health Care Administration, the Agency for
917 Persons with Disabilities, the Department of Health, the
918 Department of Elderly Affairs, or the Department of Juvenile
919 Justice or to be employed or used by such contractor or licensee
920 in a sensitive position having direct contact with children, the
921 disabled, or the elderly;
- 922 6. Is seeking to be employed or licensed by the Department
923 of Education, a district school board, a university laboratory
924 school, a charter school, a private or parochial school, or a
925 local governmental entity that licenses child care facilities;
- 926 7. Is attempting to purchase a firearm from a licensed
927 importer, licensed manufacturer, or licensed dealer and is
928 subject to a criminal history check under state or federal law;

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929 8. Is seeking to be licensed by the Division of Insurance
930 Agent and Agency Services within the Department of Financial
931 Services;

932 9. Is seeking to be appointed as a guardian pursuant to s.
933 744.3125; or

934 10. Is seeking to be licensed by the Bureau of License
935 Issuance of the Division of Licensing within the Department of
936 Agriculture and Consumer Services to carry a concealed weapon or
937 concealed firearm. This subparagraph applies only in the
938 determination of an applicant's eligibility under s. 790.06.

939 (b) Subject to the exceptions in paragraph (a), a person
940 who has been granted a sealing under this section, former s.
941 893.14, former s. 901.33, or former s. 943.058 may not be held
942 under any provision of law of this state to commit perjury or to
943 be otherwise liable for giving a false statement by reason of
944 such person's failure to recite or acknowledge a sealed criminal
945 history record.

946 (c) Information relating to the existence of a sealed
947 criminal record provided in accordance with the provisions of
948 paragraph (a) is confidential and exempt from the provisions of
949 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
950 except that the department shall disclose the sealed criminal
951 history record to the entities set forth in subparagraphs (a)1.,
952 4., 5., 6., 8., 9., and 10. for their respective licensing,
953 access authorization, and employment purposes. An employee of an
954 entity set forth in subparagraph (a)1., subparagraph (a)4.,
955 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
956 subparagraph (a)9., or subparagraph (a)10. may not disclose
957 information relating to the existence of a sealed criminal

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958 history record of a person seeking employment, access
959 authorization, or licensure with such entity or contractor,
960 except to the person to whom the criminal history record relates
961 or to persons having direct responsibility for employment,
962 access authorization, or licensure decisions. A person who
963 violates the provisions of this paragraph commits a misdemeanor
964 of the first degree, punishable as provided in s. 775.082 or s.
965 775.083.

966 (5) STATUTORY REFERENCES.—Any reference to any other
967 chapter, section, or subdivision of the Florida Statutes in this
968 section constitutes a general reference under the doctrine of
969 incorporation by reference.

970 Section 6. This act shall take effect July 1, 2018.