

1 A bill to be entitled
 2 An act relating to criminal history records; amending s.
 3 943.0585, F.S.; providing a short title; authorizing a
 4 court to expunge a criminal history record of a person who
 5 had a prior criminal history record sealed or expunged in
 6 certain circumstances; providing a person may lawfully
 7 deny or fail to acknowledge the arrests and subsequent
 8 dispositions of an expunged record under certain
 9 circumstances; providing a person may fail to recite or
 10 acknowledge an expunged criminal history record on an
 11 employment application; requiring the department to
 12 disclose the contents of an expunged record to the subject
 13 of the record upon the subject's request; requiring the
 14 clerk of court to include links related to sealing and
 15 expunction procedures and related information on the
 16 department's website; amending s. 943.059, F.S.;
 17 authorizing a court to seal a criminal history record of a
 18 person who had a prior criminal history record sealed or
 19 expunged in certain circumstances; providing a person to
 20 lawfully deny or fail to acknowledge the arrests and
 21 subsequent dispositions of a sealed record under certain
 22 circumstances; providing a person may fail to recite or
 23 acknowledge a sealed criminal history record on an
 24 employment application; providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. This act may be cited as the "Jim King Keep

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29 Florida Working Act."

30 Section 2. Section 943.0585, Florida Statutes, is amended
31 to read:

32 943.0585 Court-ordered expunction of criminal history
33 records.—The courts of this state have jurisdiction over their
34 own procedures, including the maintenance, expunction, and
35 correction of judicial records containing criminal history
36 information to the extent such procedures are not inconsistent
37 with the conditions, responsibilities, and duties established by
38 this section. Any court of competent jurisdiction may order a
39 criminal justice agency to expunge the criminal history record
40 of a minor or an adult who complies with the requirements of
41 this section. The court shall not order a criminal justice
42 agency to expunge a criminal history record until the person
43 seeking to expunge a criminal history record has applied for and
44 received a certificate of eligibility for expunction pursuant to
45 subsection (2). A criminal history record that relates to a
46 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
47 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
48 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
49 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
50 any violation specified as a predicate offense for registration
51 as a sexual predator pursuant to s. 775.21, without regard to
52 whether that offense alone is sufficient to require such
53 registration, or for registration as a sexual offender pursuant
54 to s. 943.0435, may not be expunged, without regard to whether
55 adjudication was withheld, if the defendant was found guilty of
56 or pled guilty or nolo contendere to the offense, or if the

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57 | defendant, as a minor, was found to have committed, or pled
58 | guilty or nolo contendere to committing, the offense as a
59 | delinquent act. The court may only order expunction of a
60 | criminal history record pertaining to one arrest or one incident
61 | of alleged criminal activity, except as provided in this
62 | section. The court may, at its sole discretion, order the
63 | expunction of a criminal history record pertaining to more than
64 | one arrest if the additional arrests directly relate to the
65 | original arrest. If the court intends to order the expunction of
66 | records pertaining to such additional arrests, such intent must
67 | be specified in the order. A criminal justice agency may not
68 | expunge any record pertaining to such additional arrests if the
69 | order to expunge does not articulate the intention of the court
70 | to expunge a record pertaining to more than one arrest. This
71 | section does not prevent the court from ordering the expunction
72 | of only a portion of a criminal history record pertaining to one
73 | arrest or one incident of alleged criminal activity.

74 | Notwithstanding any law to the contrary, a criminal justice
75 | agency may comply with laws, court orders, and official requests
76 | of other jurisdictions relating to expunction, correction, or
77 | confidential handling of criminal history records or information
78 | derived therefrom. This section does not confer any right to the
79 | expunction of any criminal history record, and any request for
80 | expunction of a criminal history record may be denied at the
81 | sole discretion of the court.

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

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

87 (b) The petitioner's sworn statement attesting that the
 88 petitioner:

89 1. Has never, prior to the date on which the petition is
 90 filed, been adjudicated guilty of a criminal offense or
 91 comparable ordinance violation, or been adjudicated delinquent
 92 for committing any felony or a misdemeanor specified in s.
 93 943.051(3)(b).

94 2. Has not been adjudicated guilty of, or adjudicated
 95 delinquent for committing, any of the acts stemming from the
 96 arrest or alleged criminal activity to which the petition
 97 pertains.

98 3. Has never secured a prior sealing or expunction, except
 99 as provided in subsection (5) and s. 943.059(5), of a criminal
 100 history record under this section, former s. 893.14, former s.
 101 901.33, or former s. 943.058, or from any jurisdiction outside
 102 the state, unless expunction is sought of a criminal history
 103 record previously sealed for 10 years pursuant to paragraph
 104 (2)(h) and the record is otherwise eligible for expunction.

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

108
 109 Any person who knowingly provides false information on such
 110 sworn statement to the court commits a felony of the third
 111 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 112 775.084.

113 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
 114 petitioning the court to expunge a criminal history record, a
 115 person seeking to expunge a criminal history record shall apply
 116 to the department for a certificate of eligibility for
 117 expunction. The department shall, by rule adopted pursuant to
 118 chapter 120, establish procedures pertaining to the application
 119 for and issuance of certificates of eligibility for expunction.
 120 A certificate of eligibility for expunction is valid for 12
 121 months after the date stamped on the certificate when issued by
 122 the department. After that time, the petitioner must reapply to
 123 the department for a new certificate of eligibility. Eligibility
 124 for a renewed certification of eligibility must be based on the
 125 status of the applicant and the law in effect at the time of the
 126 renewal application. The department shall issue a certificate of
 127 eligibility for expunction to a person who is the subject of a
 128 criminal history record if that person:

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

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

134 2. That an indictment, information, or other charging
 135 document, if filed or issued in the case, was dismissed or nolle
 136 prosequi by the state attorney or statewide prosecutor, or was
 137 dismissed by a court of competent jurisdiction, and that none of
 138 the charges related to the arrest or alleged criminal activity
 139 to which the petition to expunge pertains resulted in a trial,
 140 without regard to whether the outcome of the trial was other

141 than an adjudication of guilt.

142 3. That the criminal history record does not relate to a
 143 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 144 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 145 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 146 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 147 any violation specified as a predicate offense for registration
 148 as a sexual predator pursuant to s. 775.21, without regard to
 149 whether that offense alone is sufficient to require such
 150 registration, or for registration as a sexual offender pursuant
 151 to s. 943.0435, where the defendant was found guilty of, or pled
 152 guilty or nolo contendere to any such offense, or that the
 153 defendant, as a minor, was found to have committed, or pled
 154 guilty or nolo contendere to committing, such an offense as a
 155 delinquent act, without regard to whether adjudication was
 156 withheld.

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

160 (c) Has submitted to the department a certified copy of
 161 the disposition of the charge to which the petition to expunge
 162 pertains.

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

168 (e) Has not been adjudicated guilty of, or adjudicated

169 delinquent for committing, any of the acts stemming from the
 170 arrest or alleged criminal activity to which the petition to
 171 expunge pertains.

172 (f) Has never secured a prior sealing or expunction,
 173 except as provided in subsection (5) and s. 943.059(5), of a
 174 criminal history record under this section, former s. 893.14,
 175 former s. 901.33, or former s. 943.058, unless expunction is
 176 sought of a criminal history record previously sealed for 10
 177 years pursuant to paragraph (h) and the record is otherwise
 178 eligible for expunction.

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

182 (h) Has previously obtained a court order sealing the
 183 record under this section, former s. 893.14, former s. 901.33,
 184 or former s. 943.058 for a minimum of 10 years because
 185 adjudication was withheld or because all charges related to the
 186 arrest or alleged criminal activity to which the petition to
 187 expunge pertains were not dismissed prior to trial, without
 188 regard to whether the outcome of the trial was other than an
 189 adjudication of guilt. The requirement for the record to have
 190 previously been sealed for a minimum of 10 years does not apply
 191 when a plea was not entered or all charges related to the arrest
 192 or alleged criminal activity to which the petition to expunge
 193 pertains were dismissed prior to trial.

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

195 (a) In judicial proceedings under this section, a copy of
 196 the completed petition to expunge shall be served upon the

197 appropriate state attorney or the statewide prosecutor and upon
198 the arresting agency; however, it is not necessary to make any
199 agency other than the state a party. The appropriate state
200 attorney or the statewide prosecutor and the arresting agency
201 may respond to the court regarding the completed petition to
202 expunge.

203 (b) If relief is granted by the court, the clerk of the
204 court shall certify copies of the order to the appropriate state
205 attorney or the statewide prosecutor and the arresting agency.
206 The arresting agency is responsible for forwarding the order to
207 any other agency to which the arresting agency disseminated the
208 criminal history record information to which the order pertains.
209 The department shall forward the order to expunge to the Federal
210 Bureau of Investigation. The clerk of the court shall certify a
211 copy of the order to any other agency which the records of the
212 court reflect has received the criminal history record from the
213 court.

214 (c) For an order to expunge entered by a court prior to
215 July 1, 1992, the department shall notify the appropriate state
216 attorney or statewide prosecutor of an order to expunge which is
217 contrary to law because the person who is the subject of the
218 record has previously been convicted of a crime or comparable
219 ordinance violation or has had a prior criminal history record
220 sealed or expunged, except as provided in subsection (5) and s.
221 943.059(5). Upon receipt of such notice, the appropriate state
222 attorney or statewide prosecutor shall take action, within 60
223 days, to correct the record and petition the court to void the
224 order to expunge. The department shall seal the record until

225 such time as the order is voided by the court.

226 (d) On or after July 1, 1992, the department or any other
 227 criminal justice agency is not required to act on an order to
 228 expunge entered by a court when such order does not comply with
 229 the requirements of this section. Upon receipt of such an order,
 230 the department must notify the issuing court, the appropriate
 231 state attorney or statewide prosecutor, the petitioner or the
 232 petitioner's attorney, and the arresting agency of the reason
 233 for noncompliance. The appropriate state attorney or statewide
 234 prosecutor shall take action within 60 days to correct the
 235 record and petition the court to void the order. No cause of
 236 action, including contempt of court, shall arise against any
 237 criminal justice agency for failure to comply with an order to
 238 expunge when the petitioner for such order failed to obtain the
 239 certificate of eligibility as required by this section or such
 240 order does not otherwise comply with the requirements of this
 241 section.

242 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 243 criminal history record of a minor or an adult which is ordered
 244 expunged by a court of competent jurisdiction pursuant to this
 245 section must be physically destroyed or obliterated by any
 246 criminal justice agency having custody of such record; except
 247 that any criminal history record in the custody of the
 248 department must be retained in all cases. A criminal history
 249 record ordered expunged that is retained by the department is
 250 confidential and exempt from the provisions of s. 119.07(1) and
 251 s. 24(a), Art. I of the State Constitution and not available to
 252 any person or entity except upon order of a court of competent

253 jurisdiction. A criminal justice agency may retain a notation
 254 indicating compliance with an order to expunge.

255 (a) The person who is the subject of a criminal history
 256 record that is expunged under this section or under other
 257 provisions of law, including former s. 893.14, former s. 901.33,
 258 and former s. 943.058, may lawfully deny or fail to acknowledge
 259 the arrests and subsequent dispositions covered by the expunged
 260 record, except when the subject of the record:

- 261 1. Is a candidate for employment with a criminal justice
 262 agency;
- 263 2. Is a defendant in a criminal prosecution;
- 264 3. Concurrently or subsequently petitions for relief under
 265 this section or s. 943.059;
- 266 4. Is a candidate for admission to The Florida Bar;
- 267 5. Is seeking to be employed or licensed by or to contract
 268 with the Department of Children and Family Services, the Agency
 269 for Health Care Administration, the Agency for Persons with
 270 Disabilities, or the Department of Juvenile Justice or to be
 271 employed or used by such contractor or licensee in a sensitive
 272 position having direct contact with children, the
 273 developmentally disabled, the aged, or the elderly as provided
 274 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 275 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),
 276 chapter 916, s. 985.644, chapter 400, or chapter 429;
- 277 6. Is seeking to be employed or licensed by the Department
 278 of Education, any district school board, any university
 279 laboratory school, any charter school, any private or parochial
 280 school, or any local governmental entity that licenses child

281 care facilities; or

282 7. Is seeking authorization from a seaport listed in s.
 283 311.09 for employment within or access to one or more of such
 284 seaports pursuant to s. 311.12.

285 (b) Subject to the exceptions in paragraph (a), a person
 286 who has been granted an expunction under this section, former s.
 287 893.14, former s. 901.33, or former s. 943.058 may not be held
 288 under any provision of law of this state to commit perjury or to
 289 be otherwise liable for giving a false statement by reason of
 290 such person's failure to recite or acknowledge an expunged
 291 criminal history record, including failure to recite or
 292 acknowledge on an employment application.

293 (c) Information relating to the existence of an expunged
 294 criminal history record which is provided in accordance with
 295 paragraph (a) is confidential and exempt from the provisions of
 296 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 297 except that the department shall disclose the existence of a
 298 criminal history record ordered expunged to the entities set
 299 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
 300 respective licensing, access authorization, and employment
 301 purposes, and to criminal justice agencies for their respective
 302 criminal justice purposes. It is unlawful for any employee of an
 303 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 304 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
 305 disclose information relating to the existence of an expunged
 306 criminal history record of a person seeking employment, access
 307 authorization, or licensure with such entity or contractor,
 308 except to the person to whom the criminal history record relates

309 or to persons having direct responsibility for employment,
 310 access authorization, or licensure decisions. Any person who
 311 violates this paragraph commits a misdemeanor of the first
 312 degree, punishable as provided in s. 775.082 or s. 775.083.

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

316 (5) EXPUNCTION OF CRIMINAL HISTORY RECORD AFTER PRIOR
 317 SEALING OR EXPUNCTION.—

318 (a) A court may expunge a person's criminal history record
 319 after a prior criminal history record has been sealed or
 320 expunged only if the person obtains a certificate from the
 321 department to expunge the criminal history record. The
 322 department shall issue the certificate for a second expunction
 323 only if:

324 1. The person has had only one prior expunction of his or
 325 her criminal history record under this section or one prior
 326 expunction following the sealing of the same arrest or alleged
 327 criminal activity that was expunged;

328 2. The person has not been arrested in this state during
 329 the 10-year period prior to the date on which the application
 330 for the certificate is filed; and

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

334 (b) All other provisions and requirements of this section
 335 apply to an application to expunge a second criminal history
 336 record.

337 (6) INFORMATION.— Each website for the office of a clerk
 338 of court must include information relating to procedures to seal
 339 of expunge criminal history records. This information must
 340 include the link to related information on the website of the
 341 department.

342 (7)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
 343 chapter, section, or subdivision of the Florida Statutes in this
 344 section constitutes a general reference under the doctrine of
 345 incorporation by reference.

346 Section 3. Section 943.059, Florida Statutes, is amended
 347 to read:

348 943.059 Court-ordered sealing of criminal history
 349 records.—The courts of this state shall continue to have
 350 jurisdiction over their own procedures, including the
 351 maintenance, sealing, and correction of judicial records
 352 containing criminal history information to the extent such
 353 procedures are not inconsistent with the conditions,
 354 responsibilities, and duties established by this section. Any
 355 court of competent jurisdiction may order a criminal justice
 356 agency to seal the criminal history record of a minor or an
 357 adult who complies with the requirements of this section. The
 358 court shall not order a criminal justice agency to seal a
 359 criminal history record until the person seeking to seal a
 360 criminal history record has applied for and received a
 361 certificate of eligibility for sealing pursuant to subsection
 362 (2). A criminal history record that relates to a violation of s.
 363 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 364 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter

365 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 366 916.1075, a violation enumerated in s. 907.041, or any violation
 367 specified as a predicate offense for registration as a sexual
 368 predator pursuant to s. 775.21, without regard to whether that
 369 offense alone is sufficient to require such registration, or for
 370 registration as a sexual offender pursuant to s. 943.0435, may
 371 not be sealed, without regard to whether adjudication was
 372 withheld, if the defendant was found guilty of or pled guilty or
 373 nolo contendere to the offense, or if the defendant, as a minor,
 374 was found to have committed or pled guilty or nolo contendere to
 375 committing the offense as a delinquent act. The court may only
 376 order sealing of a criminal history record pertaining to one
 377 arrest or one incident of alleged criminal activity, except as
 378 provided in this section. The court may, at its sole discretion,
 379 order the sealing of a criminal history record pertaining to
 380 more than one arrest if the additional arrests directly relate
 381 to the original arrest. If the court intends to order the
 382 sealing of records pertaining to such additional arrests, such
 383 intent must be specified in the order. A criminal justice agency
 384 may not seal any record pertaining to such additional arrests if
 385 the order to seal does not articulate the intention of the court
 386 to seal records pertaining to more than one arrest. This section
 387 does not prevent the court from ordering the sealing of only a
 388 portion of a criminal history record pertaining to one arrest or
 389 one incident of alleged criminal activity. Notwithstanding any
 390 law to the contrary, a criminal justice agency may comply with
 391 laws, court orders, and official requests of other jurisdictions
 392 relating to sealing, correction, or confidential handling of

393 criminal history records or information derived therefrom. This
 394 section does not confer any right to the sealing of any criminal
 395 history record, and any request for sealing a criminal history
 396 record may be denied at the sole discretion of the court.

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

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

402 (b) The petitioner's sworn statement attesting that the
 403 petitioner:

404 1. Has never, prior to the date on which the petition is
 405 filed, been adjudicated guilty of a criminal offense or
 406 comparable ordinance violation, or been adjudicated delinquent
 407 for committing any felony or a misdemeanor specified in s.
 408 943.051(3)(b).

409 2. Has not been adjudicated guilty of or adjudicated
 410 delinquent for committing any of the acts stemming from the
 411 arrest or alleged criminal activity to which the petition to
 412 seal pertains.

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

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

420

421 Any person who knowingly provides false information on such
 422 sworn statement to the court commits a felony of the third
 423 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 424 775.084.

425 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
 426 petitioning the court to seal a criminal history record, a
 427 person seeking to seal a criminal history record shall apply to
 428 the department for a certificate of eligibility for sealing. The
 429 department shall, by rule adopted pursuant to chapter 120,
 430 establish procedures pertaining to the application for and
 431 issuance of certificates of eligibility for sealing. A
 432 certificate of eligibility for sealing is valid for 12 months
 433 after the date stamped on the certificate when issued by the
 434 department. After that time, the petitioner must reapply to the
 435 department for a new certificate of eligibility. Eligibility for
 436 a renewed certification of eligibility must be based on the
 437 status of the applicant and the law in effect at the time of the
 438 renewal application. The department shall issue a certificate of
 439 eligibility for sealing to a person who is the subject of a
 440 criminal history record provided that such person:

441 (a) Has submitted to the department a certified copy of
 442 the disposition of the charge to which the petition to seal
 443 pertains.

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

447 (c) Has never, prior to the date on which the application
 448 for a certificate of eligibility is filed, been adjudicated

449 guilty of a criminal offense or comparable ordinance violation,
 450 or been adjudicated delinquent for committing any felony or a
 451 misdemeanor specified in s. 943.051(3)(b).

452 (d) Has not been adjudicated guilty of or adjudicated
 453 delinquent for committing any of the acts stemming from the
 454 arrest or alleged criminal activity to which the petition to
 455 seal pertains.

456 (e) Has never secured a prior sealing or expunction,
 457 except as provided in subsection (5), of a criminal history
 458 record under this section, former s. 893.14, former s. 901.33,
 459 or former s. 943.058.

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

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

464 (a) In judicial proceedings under this section, a copy of
 465 the completed petition to seal shall be served upon the
 466 appropriate state attorney or the statewide prosecutor and upon
 467 the arresting agency; however, it is not necessary to make any
 468 agency other than the state a party. The appropriate state
 469 attorney or the statewide prosecutor and the arresting agency
 470 may respond to the court regarding the completed petition to
 471 seal.

472 (b) If relief is granted by the court, the clerk of the
 473 court shall certify copies of the order to the appropriate state
 474 attorney or the statewide prosecutor and to the arresting
 475 agency. The arresting agency is responsible for forwarding the
 476 order to any other agency to which the arresting agency

477 disseminated the criminal history record information to which
 478 the order pertains. The department shall forward the order to
 479 seal to the Federal Bureau of Investigation. The clerk of the
 480 court shall certify a copy of the order to any other agency
 481 which the records of the court reflect has received the criminal
 482 history record from the court.

483 (c) For an order to seal entered by a court prior to July
 484 1, 1992, the department shall notify the appropriate state
 485 attorney or statewide prosecutor of any order to seal which is
 486 contrary to law because the person who is the subject of the
 487 record has previously been convicted of a crime or comparable
 488 ordinance violation or has had a prior criminal history record
 489 sealed or expunged, except as provided in subsection (5). Upon
 490 receipt of such notice, the appropriate state attorney or
 491 statewide prosecutor shall take action, within 60 days, to
 492 correct the record and petition the court to void the order to
 493 seal. The department shall seal the record until such time as
 494 the order is voided by the court.

495 (d) On or after July 1, 1992, the department or any other
 496 criminal justice agency is not required to act on an order to
 497 seal entered by a court when such order does not comply with the
 498 requirements of this section. Upon receipt of such an order, the
 499 department must notify the issuing court, the appropriate state
 500 attorney or statewide prosecutor, the petitioner or the
 501 petitioner's attorney, and the arresting agency of the reason
 502 for noncompliance. The appropriate state attorney or statewide
 503 prosecutor shall take action within 60 days to correct the
 504 record and petition the court to void the order. No cause of

505 | action, including contempt of court, shall arise against any
 506 | criminal justice agency for failure to comply with an order to
 507 | seal when the petitioner for such order failed to obtain the
 508 | certificate of eligibility as required by this section or when
 509 | such order does not comply with the requirements of this
 510 | section.

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

515 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 516 | history record of a minor or an adult which is ordered sealed by
 517 | a court of competent jurisdiction pursuant to this section is
 518 | confidential and exempt from the provisions of s. 119.07(1) and
 519 | s. 24(a), Art. I of the State Constitution and is available only
 520 | to the person who is the subject of the record, to the subject's
 521 | attorney, to criminal justice agencies for their respective
 522 | criminal justice purposes, which include conducting a criminal
 523 | history background check for approval of firearms purchases or
 524 | transfers as authorized by state or federal law, to judges in
 525 | the state courts system for the purpose of assisting them in
 526 | their case-related decisionmaking responsibilities, as set forth
 527 | in s. 943.053(5), or to those entities set forth in
 528 | subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 529 | licensing, access authorization, and employment purposes.

530 | (a) The subject of a criminal history record sealed under
 531 | this section or under other provisions of law, including former
 532 | s. 893.14, former s. 901.33, and former s. 943.058, may lawfully

533 deny or fail to acknowledge the arrests and subsequent
 534 dispositions covered by the sealed record, except when the
 535 subject of the record:

- 536 1. Is a candidate for employment with a criminal justice
 537 agency;
- 538 2. Is a defendant in a criminal prosecution;
- 539 3. Concurrently or subsequently petitions for relief under
 540 this section or s. 943.0585;
- 541 4. Is a candidate for admission to The Florida Bar;
- 542 5. Is seeking to be employed or licensed by or to contract
 543 with the Department of Children and Family Services, the Agency
 544 for Health Care Administration, the Agency for Persons with
 545 Disabilities, or the Department of Juvenile Justice or to be
 546 employed or used by such contractor or licensee in a sensitive
 547 position having direct contact with children, the
 548 developmentally disabled, the aged, or the elderly as provided
 549 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
 550 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
 551 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;
- 552 6. Is seeking to be employed or licensed by the Department
 553 of Education, any district school board, any university
 554 laboratory school, any charter school, any private or parochial
 555 school, or any local governmental entity that licenses child
 556 care facilities;
- 557 7. Is attempting to purchase a firearm from a licensed
 558 importer, licensed manufacturer, or licensed dealer and is
 559 subject to a criminal history check under state or federal law;
 560 or

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

564 (b) Subject to the exceptions in paragraph (a), a person
565 who has been granted a sealing under this section, former s.
566 893.14, former s. 901.33, or former s. 943.058 may not be held
567 under any provision of law of this state to commit perjury or to
568 be otherwise liable for giving a false statement by reason of
569 such person's failure to recite or acknowledge a sealed criminal
570 history record, including failure to recite or acknowledge on an
571 employment application.

572 (c) Information relating to the existence of a sealed
573 criminal record provided in accordance with the provisions of
574 paragraph (a) is confidential and exempt from the provisions of
575 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
576 except that the department shall disclose the sealed criminal
577 history record to the entities set forth in subparagraphs (a)1.,
578 4., 5., 6., and 8. for their respective licensing, access
579 authorization, and employment purposes. It is unlawful for any
580 employee of an entity set forth in subparagraph (a)1.,
581 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
582 subparagraph (a)8. to disclose information relating to the
583 existence of a sealed criminal history record of a person
584 seeking employment, access authorization, or licensure with such
585 entity or contractor, except to the person to whom the criminal
586 history record relates or to persons having direct
587 responsibility for employment, access authorization, or
588 licensure decisions. Any person who violates the provisions of

589 | this paragraph commits a misdemeanor of the first degree,
 590 | punishable as provided in s. 775.082 or s. 775.083.

591 | (5) SEALING OF CRIMINAL HISTORY RECORD AFTER PRIOR SEALING
 592 | OR EXPUNCTION.—

593 | (a) A court may seal a person's criminal history record
 594 | after a prior criminal history record has been sealed or
 595 | expunged only if the person obtains a certificate from the
 596 | department to seal the criminal history record. The department
 597 | shall issue the certificate for a second sealing only if:

598 | 1. The person has had only one prior expunction or sealing
 599 | of his or her criminal history record under s. 943.0585 or this
 600 | section or one prior expunction following the sealing of the
 601 | same arrest or alleged criminal activity that was expunged;

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

605 | 3. The person has not previously sealed or expunged a
 606 | criminal history record that involved the same offense to which
 607 | the petition to seal pertains.

608 | (b) All other provisions and requirements of this section
 609 | apply to an application to seal a second criminal history
 610 | record.

611 | (6)-(5) STATUTORY REFERENCES.—Any reference to any other
 612 | chapter, section, or subdivision of the Florida Statutes in this
 613 | section constitutes a general reference under the doctrine of
 614 | incorporation by reference.

615 | Section 4. This act shall take effect July 1, 2010.