

House Bill No. 391

An act relating to the Department of Law Enforcement; creating s. 943.0543, F.S.; requiring that the department provide qualified entities that provide care, treatment, or other services for children, the elderly, or individuals with disabilities access to criminal history information; requiring compliance with certain federal laws; providing for fees; providing for the disclosure of criminal history records that are not exempt from disclosure under the public records law; requiring the department to establish a database of entities qualified to obtain criminal history information; providing certain exemptions from liability; providing rulemaking authority; creating s. 943.0543, F.S.; ratifying the National Crime Prevention and Privacy Compact; requiring that the executive director of the department administer the compact; creating s. 943.0544, F.S.; authorizing the department to develop and operate the Criminal Justice Network; providing for the department to regulate access to the network; authorizing the department to accept services in lieu of fees or other charges; authorizing the department to enter into agreements with private entities for the purpose of managing and disseminating criminal justice information; providing rulemaking authority; amending ss. 943.0585, 943.059, F.S., relating to the court-ordered expunction and sealing of criminal history records; providing that references to any chapter, section, or subdivision in the section constitute a general reference under the doctrine of incorporation by reference; clarifying certain requirements for a petition to expunge or seal a criminal history record; repealing s. 943.051(5), F.S., relating to the department's authority to contract with other agencies and private entities for the management and dissemination of criminal justice information; authorizing the Administration Commission to increase positions within the department following notice and public hearing; amending s. 790.065, F.S., relating to the sale and delivery of firearms; postponing the expiration of that section; providing for modification, or suspension of collection, of fees for criminal history checks; amending s. 943.053, F.S.; amending s. 943.053, F.S.; providing each office of the Public Defender on-line access to criminal records which are not exempt from disclosure and not confidential under law; providing an effective date.

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

Section 1. Section 943.0542, Florida Statutes, is created to read:

943.0542 Access to criminal history information provided by the department to qualified entities.—

(1) As used in this section, the term:

(a) “Care” means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(b) "Qualified entity" means a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care-placement services, including a business or organization that licenses or certifies others to provide care or care-placement services.

(2)(a) A qualified entity must register with the department before submitting a request for screening under this section. Each such request must be voluntary and conform to the requirements established in the National Child Protection Act of 1993, as amended. As a part of the registration, the qualified entity must agree to comply with state and federal law and must so indicate by signing an agreement approved by the department. The department may periodically audit qualified entities to ensure compliance with federal law and this section.

(b) A qualified entity shall submit to the department a request for screening an employee or volunteer or person applying to be an employee or volunteer on a completed fingerprint card, with a signed waiver allowing the release of state and national criminal history record information to the qualified entity.

(c) Each such request must be accompanied by a fee, which shall approximate the actual cost of producing the record information, as provided in s. 943.053, plus the amount required by the Federal Bureau of Investigation for the national criminal history check in compliance with the National Child Protection Act of 1993, as amended.

(d) Any current or prospective employee or volunteer who is subject to a request for screening must indicate to the qualified entity submitting the request the name and address of each qualified entity that has submitted a previous request for screening regarding that employee or volunteer.

(3) The department shall provide directly to the qualified entity the state criminal history records that are not exempt from disclosure under chapter 119 or otherwise confidential under law. A person who is the subject of a state criminal history record may challenge the record only as provided in s. 943.056.

(4) The national criminal history data is available to qualified entities to use only for the purpose of screening employees and volunteers or persons applying to be an employee or volunteer with a qualified entity. The department shall provide this national criminal history record information directly to the qualified entity as authorized by the written waiver required for submission of a request to the department.

(5) The determination whether the criminal history record shows that the employee or volunteer has been convicted of or is under pending indictment for any crime that bears upon the fitness of the employee or volunteer to have responsibility for the safety and well-being of children, the elderly, or disabled persons shall solely be made by the qualified entity. This section does not require the department to make such a determination on behalf of any qualified entity.

(6) The qualified entity must notify in writing the person of his or her right to obtain a copy of any background screening report, including the criminal history records, if any, contained in the report, and of the person's right to challenge the accuracy and completeness of any information contained in any such report and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the qualified entity reviewing the criminal history information. A qualified entity that is required by law to apply screening criteria, including any right to contest or request an exemption from disqualification, shall apply such screening criteria to the state and national criminal history record information received from the department for those persons subject to the required screening.

(7) The department may establish a database of registered qualified entities and make this data available free of charge to all registered qualified entities. The database must include, at a minimum, the name, address, and phone number of each qualified entity.

(8) A qualified entity is not liable for damages solely for failing to obtain the information authorized under this section with respect to an employee or volunteer. The state, any political subdivision of the state, or any agency, officer, or employee of the state or a political subdivision is not liable for damages for providing the information requested under this section.

(9) The department has authority to adopt rules to implement this section.

Section 2. Section 943.0543, Florida Statutes, is created to read:

943.0543 National Crime Prevention and Privacy Compact; ratification and implementation.—

(1) In order to facilitate the authorized interstate exchange of criminal history information for noncriminal justice purposes, including, but not limited to, background checks for the licensing and screening of employees and volunteers under the National Child Protection Act of 1993, as amended, and to implement the National Crime Prevention and Privacy Compact, 42 U.S.C. s. 14616, the Legislature approves and ratifies the compact. The executive director of the Department of Law Enforcement shall execute the compact on behalf of the state.

(2) The department is the repository of criminal history records for purposes of the compact and shall do all things necessary or incidental to carrying out the compact.

(3) The executive director of the department, or the director's designee, is the state's compact officer and shall administer the compact within the state. The department may adopt rules and establish procedures for the cooperative exchange of criminal history records between the state and Federal Government for use in noncriminal justice cases.

(4) The state's ratification of the compact remains in effect until legislation is enacted which specifically renounces the compact.

(5) This compact and this section do not affect or abridge the obligations and responsibilities of the department under other provisions of this chapter, including s. 943.053, and does not alter or amend the manner, direct or otherwise, in which the public is afforded access to criminal history records under state law.

Section 3. Section 943.0544, Florida Statutes, is created to read:

943.0544 Criminal justice information network and information management.—

(1) The department may develop, implement, maintain, and manage innovative, progressive, and effective methods of serving the information-management needs of criminal justice agencies, and may take necessary steps to promote the efficient and cost-effective use of such information.

(2) The department may develop, implement, maintain, manage, and operate the Criminal Justice Network, which shall be an intraagency information and data-sharing network for use by the state's criminal justice agencies. The department, in consultation with the Criminal and Juvenile Justice Information Systems Council, shall determine and regulate access to the Criminal Justice Network by the state's criminal justice agencies.

(3) In addition, the department may authorize entities that offer or provide a product, program, or service determined by the department to be of substantial value to the criminal justice information needs of the state's criminal justice agencies a special limited presence on the network under terms, conditions, and limitations established by the department after consultation with the Criminal and Juvenile Justice Information Systems Council.

(4) In carrying out its duties under this section, the department may enter into contracts; conduct pilot studies and projects; assess and collect fees, commissions, royalties, or other charges from entities approved for special presence on the Criminal Justice Network in consideration for such presence. The department may enter into agreements by which products, programs, or services of value to the department or the information needs of criminal justice agencies are provided in lieu of all or a part of a fee, commission, royalty, or charge that might otherwise be assessed by the department upon an entity granted special limited presence as provided in this subsection.

(5) The department may enter into an agreement with any entity to facilitate the department's responsibilities for receiving, maintaining, managing, processing, allowing access to, and disseminating criminal justice information, intelligence, data, or criminal history records and information, or to otherwise accomplish the duties and responsibilities related to information and records as defined in this chapter. The department may enter into agreements by which products, programs, or services of value to the department or the information needs of criminal justice agencies are provided in lieu of all or part of a fee, commission, royalty, or charge that might be otherwise assessed by the department upon an entity entering into an

agreement with the department. Any entity under contract with the department to perform all or part of the department's information functions or duties shall, as specified in the contract, be performing such functions or duties as a criminal justice agency for purposes of handling, collecting, managing, or disseminating criminal justice information, intelligence, data, histories, and other records. Disclosure of such information to an entity under such a contract does not waive any confidentiality or exemption from disclosure under s. 119.07 or any other applicable law.

(6) The department may adopt rules to administer this section. Except as otherwise specified in this section, this section does not alter or limit the powers and duties of the department established under this chapter.

Section 4. For the purpose of incorporating all amendments made prior to the effective date of this act to the chapters, sections, or subdivisions of Florida Statutes referenced in section 943.0585, Florida Statutes, 1998 Supplement, which amendments have not been incorporated by reference thereto, section 943.0585, Florida Statutes, 1998 Supplement, is reenacted and amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions

relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

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

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

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

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

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

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state.

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

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

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

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

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

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney

or statewide prosecutor, or was dismissed by a court of competent jurisdiction.

3. That the criminal history record does not relate to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

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

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

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

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

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

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

(h) Is not required to wait a minimum of 10 years prior to being eligible for an expunction of such records because all charges related to the arrest or criminal activity to which the petition to expunge pertains were dismissed prior to trial, adjudication, or the withholding of adjudication. Otherwise, such criminal history record must be sealed under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for at least 10 years before such record is eligible for expunction.

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

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

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prose-

cutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains. The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

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

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

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

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

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

2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s. 402.302(3) ~~s. 402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.1075(4), s. 985.407, or chapter 400; or
6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity that licenses child care facilities.

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

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

Section 5. For the purpose of incorporating all amendments made prior to the effective date of this act to the chapters, sections, or subdivisions of Florida Statutes referenced in section 943.059, Florida Statutes, 1998 Supplement, which amendments have not been incorporated by reference

thereto, section 943.059, Florida Statutes, 1998 Supplement, is reenacted and amended to read:

943.059 Court-ordered sealing of criminal history records.—The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041 may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

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

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

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

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

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

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

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

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

(2) **CERTIFICATE OF ELIGIBILITY FOR SEALING.**—Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

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

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

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

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

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

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

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

(a) In judicial proceedings under this section, a copy of the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not

necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.

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

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

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

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

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective criminal justice purposes, or to those entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes.

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

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s. 402.302(3) ~~s. 402.302(8)~~, s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.103, s. 985.407, or chapter 400; or
6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity which licenses child care facilities.

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

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., and 6. for their respective licensing and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

Section 6. Subsection (5) of section 943.051, Florida Statutes, as amended by section 6 of chapter 98-94, Laws of Florida, is repealed.

Section 7. In order to meet added demand for the release of criminal history information created by this act, the Department of Law Enforcement may file an application with the Executive Office of the Governor certifying that there are no authorized positions available for addition, deletion, or transfer within the agency and recommending an increase in the number of positions. The Administration Commission may, after a public hearing, authorize an increase in the number of positions in excess of the amount established by the Legislature. Any request under this section is subject to the notice and review procedures set forth in section 216.177, Florida Statutes.

Section 8. Subsection (14) of section 790.065, Florida Statutes, as created by section 1 of chapter 93-197, Laws of Florida, is amended to read:

790.065 Sale and delivery of firearms.—

(14) This section is repealed effective June 1, 2000 ~~October 1, 1999~~.

Section 9. Subsection (1) of section 790.065, Florida Statutes, 1998 Supplement, is amended to read:

790.065 Sale and delivery of firearms.—

(1) A licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver from her or his inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until she or he has:

(a) Obtained a completed form from the potential buyer or transferee, which form shall have been promulgated by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and has inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

(b) Collected a fee from the potential buyer for processing the criminal history check of the potential buyer. The fee shall be established by the Department of Law Enforcement and may not exceed \$8 per transaction. The Department of Law Enforcement may reduce, or suspend collection of, the fee to reflect payment received from the Federal Government applied to the cost of maintaining the criminal history check system established by this section as a means of facilitating or supplementing the National Instant Criminal Background Check System. The Department of Law Enforcement shall, by rule, establish procedures for the fees to be transmitted by the licensee to the Department of Law Enforcement. All such fees shall be deposited into the Department of Law Enforcement Operating Trust Fund, but shall be segregated from all other funds deposited into such trust fund and must be accounted for separately. Such segregated funds must not be used for any purpose other than the operation of the criminal history checks

required by this section. The Department of Law Enforcement, each year prior to February 1, shall make a full accounting of all receipts and expenditures of such funds to the President of the Senate, the Speaker of the House of Representatives, the majority and minority leaders of each house of the Legislature, and the chairs of the appropriations committees of each house of the Legislature. In the event that the cumulative amount of funds collected exceeds the cumulative amount of expenditures by more than \$2.5 million, excess funds may be used for the purpose of purchasing soft body armor for law enforcement officers.

(c) Requested, by means of a toll-free telephone call, the Department of Law Enforcement to conduct a check of the information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems as of the date of the request.

(d) Received a unique approval number for that inquiry from the Department of Law Enforcement, and recorded the date and such number on the consent form.

However, if the person purchasing, or receiving delivery of, the firearm is a holder of a valid concealed weapons or firearms license pursuant to the provisions of s. 790.06 or holds an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), the provisions of this subsection do not apply.

Section 10. Subsections (6), (7), and (8) of section 943.053, Florida Statutes, 1998 Supplement, are renumbered as subsections (7), (8), and (9), respectively, and a new subsection (6) is added to said section, to read:

943.053 Dissemination of criminal justice information; fees.—

(6) Notwithstanding any other provision of law, the department shall provide to each office of the Public Defender on-line access to criminal records of this state which are not exempt from disclosure under chapter 119 or confidential under law. Such access shall be used solely in support of the duties of a public defender as provided in s. 27.51 or of any attorney specially assigned as authorized in s. 27.53 in the representation of any person who is determined indigent as provided in s. 27.52. The costs of establishing and maintaining such on-line access shall be borne by the office to which the access has been provided.

Section 11. This act shall take effect July 1, 1999.

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.