CHAPTER 2001-127

Council Substitute for House Bill No. 1425

An act relating to law enforcement; amending s. 943.031, F.S.; renaming the Florida Violent Crime Council as the Florida Violent Crime and Drug Control Council; revising membership; providing circumstances for additional meetings; prescribing the duties and responsibilities of the Florida Violent Crime and Drug Control Council; providing statutory limits on funding of investigative efforts by the council; authorizing the Victim and Witness Protection Review Committee to conduct meetings by teleconference under certain circumstances; amending s. 943.17, F.S.; conforming a reference; amending s. 943.042, F.S.; renaming the Violent Crime Emergency Account as the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account; revising provisions relating to use of emergency supplemental funds; clarifying limits on disbursement of funds for certain purposes; requiring the Department of Law Enforcement to adopt rules pertaining to certain investigations; requiring reports by recipient agencies; providing circumstances for limitation or termination of funding or return of funds by recipient agencies; amending s. 943.0585, F.S., relating to court-ordered expunction of certain criminal history records; adding sexual offenses that require an offender to register with the state to the list of excluded offenses; amending s. 943.059, F.S., relating to court-ordered sealing of certain criminal history records; adding offenses relating to sexual offenses that require an offender to register with the state to the list of excluded offenses; amending s. 943.325, F.S.; permitting collection of approved biological specimens other than blood for purposes of DNA testing; permitting collection of specimens from certain persons who have never been incarcerated; limiting liability; authorizing use of force to collect specimens under certain circumstances; amending s. 760.40, F.S., to conform to changes made by s. 943.325, F.S.; creating s. 843.167, F.S.; prohibiting the interception of police communications for certain purposes; prohibiting disclosure of police communications; providing presumptions; providing penalties; amending s. 943.053, F.S.; providing clarification of the manner in which the Department of Law Enforcement determines the actual cost of producing criminal history information; creating s. 943.0582, F.S.; providing for prearrest, postarrest, or teen court diversion program expunction under certain circumstances; providing definitions; providing for retroactive effect; amending s. 985.3065, F.S.; providing for postarrest diversion programs; providing for expunction of certain records pursuant to s. 943.0582, F.S.; providing an effective date.

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

Section 1. Section 943.031, Florida Statutes, is amended to read:

943.031 Florida Violent Crime <u>and Drug Control</u> Council.—The Legislature finds that there is a need to develop and implement a statewide strategy

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to address violent criminal activity and drug control efforts by state and local law enforcement agencies, including investigations of illicit money laundering. In recognition of this need, the Florida Violent Crime and Drug Control Council is created within the department. The council shall serve in an advisory capacity to the department.

(1) MEMBERSHIP.—The council shall consist of 14 ~~12~~ members, as follows:

(a) The Attorney General or a designate.

(b) A designate of the executive director of the Department of Law Enforcement.

(c) The secretary of the Department of Corrections or a designate.

(d) The Secretary of Juvenile Justice or a designate.

(e) The Commissioner of Education or a designate.

(f) The president of the Florida Network of Victim/Witness Services, Inc., or a designate.

(g) The director of the Office of Drug Control within the Executive Office of the Governor, or a designate.

(h) The Comptroller, or a designate.

(i)~~(g)~~ Six members appointed by the Governor, consisting of two sheriffs, two chiefs of police, one medical examiner, and one state attorney or their designates.

The Governor, when making appointments under this subsection, must take into consideration representation by geography, population, ethnicity, and other relevant factors to ensure that the membership of the council is representative of the state at large. Designates appearing on behalf of a council member who is unable to attend a meeting of the council are empowered to vote on issues before the council to the same extent the designating council member is so empowered.

(2) TERMS OF MEMBERSHIP; OFFICERS; COMPENSATION; STAFF.—

(a) Members appointed by the Governor shall be appointed for terms of 2 years. The other members are standing members of the council. In no event shall a member serve beyond the time he or she ceases to hold the office or employment which was the basis for appointment to the council. In the event of a vacancy, an appointment to fill the vacancy shall be only for the unexpired term.

(b) The Legislature finds that the council serves a legitimate state, county, and municipal purpose and that service on the council is consistent with a member's principal service in a public office or employment. Membership on the council does not disqualify a member from holding any other

public office or being employed by a public entity, except that no member of the Legislature shall serve on the council.

(c) The members of the council shall elect a chair and a vice chair every 2 years, to serve for a 2-year term. As deemed appropriate, other officers may be elected by the members.

(d) Members of the council or their designates shall serve without compensation but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061. Reimbursements made pursuant to this paragraph may ~~shall~~ be paid from either the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund or from other appropriations provided to the department by the Legislature in the General Appropriations Act.

(e) The department shall provide the council with staff necessary to assist the council in the performance of its duties.

(3) MEETINGS.—The council must meet at least semiannually. Additional meetings may be held when it is determined ~~deemed appropriate~~ by the chair that extraordinary circumstances require an additional meeting of the council ~~or a majority of the council members~~. A majority of the members of the council constitutes a quorum.

(4) DUTIES OF COUNCIL.—The council shall provide advice and make recommendations, as necessary, to the executive director of the department.

(a) The council may advise the executive director on the feasibility of undertaking initiatives which include, but are not limited to, the following:

1. Establishing a program which provides grants to criminal justice agencies that develop and implement effective violent crime prevention and investigative programs and which provides grants to law enforcement agencies for the purpose of drug control and illicit money laundering investigative efforts or task force efforts that are determined by the council to significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333, subject to the limitations provided in this section. The grant program may ~~shall~~ include an innovations grant program to provide startup funding for new initiatives by local and state law enforcement agencies to combat violent crime or to implement drug control or illicit money laundering investigative efforts or task force efforts by law enforcement agencies, including, but not limited to, initiatives such as:

a. Providing ~~Provision of~~ enhanced community-oriented policing.

b. Providing ~~Provision of~~ additional undercover officers and other investigative officers to assist with violent crime investigations in emergency situations.

c. Providing funding for multiagency or statewide drug control or illicit money laundering investigative efforts or task force efforts that cannot be reasonably funded completely by alternative sources and that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.

~~2. Creating a criminal justice research and behavioral science center. The center shall provide key support to local law enforcement agencies undertaking unique or emergency violent crime investigations, including the mobilization of special task forces to directly target violent crime in specific areas.~~

2.~~3.~~ Expanding the use of automated fingerprint identification systems at the state and local level.

3.~~4.~~ Identifying methods to prevent violent crime.

4. Identifying methods to enhance multiagency or statewide drug control or illicit money laundering investigative efforts or task force efforts that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333.

5. Enhancing criminal justice training programs which address violent crime, drug control, or illicit money laundering investigative techniques or efforts.

6. Developing and promoting crime prevention services and educational programs that serve the public, including, but not limited to:

a. Enhanced victim and witness counseling services that also provide crisis intervention, information referral, transportation, and emergency financial assistance.

b. A well-publicized rewards program for the apprehension and conviction of criminals who perpetrate violent crimes.

7. Enhancing information sharing and assistance in the criminal justice community by expanding the use of community partnerships and community policing programs. Such expansion may include the use of civilian employees or volunteers to relieve law enforcement officers of clerical work in order to enable the officers to concentrate on street visibility within the community.

(b) ~~Additionally,~~ The council shall:

1. Receive periodic reports from ~~Advise the executive director on the creation of~~ regional violent crime investigation and statewide drug control

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strategy implementation coordinating teams which relate to violent crime trends or the investigative needs or successes in the regions, factors and trends relevant to the implementation of the statewide drug strategy, and the results of drug control and illicit money laundering investigative efforts funded in part by the council.

2. Maintain and utilize ~~Develop~~ criteria for the disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund or other appropriations provided to the Department of Law Enforcement by the Legislature in the General Appropriations Act. The criteria shall allow for the advancement of funds as approved by the council.

3. Review and approve all requests for disbursement of funds from the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund and from other appropriations provided to the department by the Legislature in the General Appropriations Act. An expedited approval procedure shall be established for rapid disbursement of funds in violent crime emergency situations.

~~4. Advise the executive director on the development of a statewide violent crime information system.~~

(5) REPORTS.—The council shall report annually on its activities, on or before December 30 of each calendar year, to the executive director, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the Senate and House committees having principal jurisdiction over criminal law ~~chairs of the Committees on Criminal Justice in both chambers~~. Comments and responses of the executive director to the report are to be included ~~must respond to the annual report and any other recommendations of the council in writing. All written responses must be forwarded to the council members, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the Committees on Criminal Justice in both chambers.~~

(6) VICTIM AND WITNESS PROTECTION REVIEW COMMITTEE.—

(a) The Victim and Witness Protection Review Committee is created within the Florida Violent Crime and Drug Control Council, consisting of the statewide prosecutor or a state attorney, a sheriff, a chief of police, and the designee of the executive director of the Department of Law Enforcement. The committee shall be appointed from the membership of the council by the chair of the council after the chair has consulted with the executive director of the Department of Law Enforcement. Committee members shall meet in conjunction with the meetings of the council.

(b) The committee shall:

1. Maintain and utilize ~~Develop~~ criteria for disbursing funds to reimburse law enforcement agencies for costs associated with providing victim and witness protective or temporary relocation services.

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2. Review and approve or deny, in whole or in part, all reimbursement requests submitted by law enforcement agencies.

(c) The lead law enforcement agency providing victim or witness protective or temporary relocation services pursuant to the provisions of s. 914.25 may submit a request for reimbursement to the Victim and Witness Protection Review Committee in a format approved by the committee. The lead law enforcement agency shall submit such reimbursement request on behalf of all law enforcement agencies that cooperated in providing protective or temporary relocation services related to a particular criminal investigation or prosecution. As part of the reimbursement request, the lead law enforcement agency must indicate how any reimbursement proceeds will be distributed among the agencies that provided protective or temporary relocation services.

(d) The committee, in its discretion, may use funds available to the committee to provide all or partial reimbursement to the lead law enforcement agency for such costs, or may decline to provide any reimbursement.

(e) The committee may conduct its meeting by teleconference or conference phone calls when the chair of the committee finds that the need for reimbursement is such that delaying until the next scheduled council meeting will adversely affect the requesting agency's ability to provide the protection services.

(7) CONFIDENTIALITY; EXEMPTED PORTIONS OF COUNCIL MEETINGS AND RECORDS.—

(a)1. The Legislature finds that during limited portions of the meetings of the Florida Violent Crime and Drug Control Council it is necessary that the council be presented with and discuss details, information, and documents related to active criminal investigations or matters constituting active criminal intelligence, as those concepts are defined by s. 119.011. These presentations and discussions are necessary for the council to make its funding decisions as required by the Legislature. The Legislature finds that to reveal the contents of documents containing active criminal investigative or intelligence information or to allow active criminal investigative or active criminal intelligence matters to be discussed in a meeting open to the public negatively impacts the ability of law enforcement agencies to efficiently continue their investigative or intelligence gathering activities. The Legislature finds that information coming before the council that pertains to active criminal investigations or intelligence should remain confidential and exempt from public disclosure. The Legislature finds that the Florida Violent Crime and Drug Control Council may, by declaring only those portions of council meetings in which active criminal investigative or active criminal intelligence information is to be presented or discussed closed to the public, assure an appropriate balance between the policy of this state that meetings be public and the policy of this state to facilitate efficient law enforcement efforts.

2. The Legislature finds that it is a public necessity that portions of the meetings of the Florida Violent Crime and Drug Control Council be closed when the confidential details, information, and documents related to active

criminal investigations or matters constituting active criminal intelligence are discussed. The Legislature further finds that it is no less a public necessity that portions of public records generated at closed council meetings, such as tape recordings, minutes, and notes, memorializing the discussions regarding such confidential details, information, and documents related to active criminal investigations or matters constituting active criminal intelligence, also shall be held confidential.

(b) The Florida Violent Crime and Drug Control Council shall be considered a "criminal justice agency" within the definition of s. 119.011(4).

(c)1. The Florida Violent Crime and Drug Control Council may close portions of meetings during which the council will hear or discuss active criminal investigative information or active criminal intelligence information, and such portions of meetings shall be exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution, provided that the following conditions are met:

a. The chair of the council shall advise the council at a public meeting that, in connection with the performance of a council duty, it is necessary that the council hear or discuss active criminal investigative information or active criminal intelligence information.

b. The chair's declaration of necessity for closure and the specific reasons for such necessity shall be stated in writing in a document that shall be a public record and shall be filed with the official records of the council.

c. The entire closed session shall be recorded. The recording shall include the times of commencement and termination of the closed session, all discussion and proceedings, and the names of all persons present. No portion of the session shall be off the record. Such recording shall be maintained by the council, and is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the criminal investigative information or criminal intelligence information that justifies closure ceases to be active, at which time the portion of the record related to the no longer active information or intelligence shall be open for public inspection and copying.

The exemption in this paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

2. Only members of the council, Department of Law Enforcement staff supporting the council's function, and other persons whose presence has been authorized by chair of the council shall be allowed to attend the exempted portions of the council meetings. The council shall assure that any closure of its meetings as authorized by this section is limited so that the general policy of this state in favor of public meetings is maintained.

(d) Those portions of any public record, such as a tape recording, minutes, and notes, generated during that portion of a Florida Violent Crime

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and Drug Control Council meeting which is closed to the public pursuant to this section, which contain information relating to active criminal investigations or matters constituting active criminal intelligence, are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such criminal investigative information or criminal intelligence information ceases to be active. The exemptions in this paragraph are subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2002, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsection (5) of section 943.17, Florida Statutes, is amended to read:

943.17 Basic recruit, advanced, and career development training programs; participation; cost; evaluation.—The commission shall, by rule, design, implement, maintain, evaluate, and revise job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses. The rules shall include, but are not limited to, a methodology to assess relevance of the subject matter to the job, student performance, and instructor competency.

(5) The commission, in consultation with the Florida Violent Crime and Drug Control Council, shall establish standards for basic and advanced training programs for law enforcement officers in the subjects of investigating and preventing violent crime. After January 1, 1995, every basic skills course required in order for law enforcement officers to obtain initial certification must include training on violent crime prevention and investigations.

Section 3. Section 943.042, Florida Statutes, is amended to read:

943.042 Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund.—

(1) There is created a Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund. The account shall be used to provide emergency supplemental funds to:

(a) State and local law enforcement agencies which are involved in complex and lengthy violent crime investigations, or matching funding to multiagency or statewide drug control or illicit money laundering investigative efforts or task force efforts that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant illicit money laundering investigative effort, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council established under s. 397.333;

(b) State and local law enforcement agencies which are involved in violent crime investigations which constitute a significant emergency within the state; or

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(c) Counties which demonstrate a significant hardship or an inability to cover extraordinary expenses associated with a violent crime trial.

(2) In consultation with the Florida Violent Crime and Drug Control Council, the department must maintain ~~promulgate~~ rules which, at minimum, address the following:

(a) Criteria for determining what constitutes a complex and lengthy violent crime investigation for the purpose of this section.

(b) Criteria for determining those violent crime investigations which constitute a significant emergency within the state for the purpose of this section.

(c) Criteria for determining the circumstances under which counties may receive emergency supplemental funds for extraordinary expenses associated with a violent crime trial under this section.

(d) Guidelines which establish a $100,000 maximum limit ~~limits~~ on the amount that may be disbursed on a single investigation and a $200,000 maximum limit on funds that may be provided to a single agency during the agency's fiscal year.

(e) Procedures for law enforcement agencies to use when applying for funds, including certification by the head of the agency that a request complies with the requirements established by the council.

(f) Annual evaluation and audit of the trust fund.

(3) With regard to the funding of drug control or illicit money laundering investigative efforts or task force efforts, the department shall adopt rules which, at a minimum, address the following:

(a) Criteria for determining what constitutes a multiagency or statewide drug control or illicit money laundering investigative effort or task force effort eligible to seek funding under this section.

(b) Criteria for determining whether a multiagency or statewide investigation or task force effort significantly contributes to achieving the state's goals and strategies.

(c) Limitations upon the amount that may be disbursed yearly to a single multiagency or statewide drug control or illicit money laundering investigation or task force effort.

(d) Procedures to utilize when applying for funds, including a required designation of the amount of matching funds being provided by the task force or participating agencies and a signed commitment by the head of each agency seeking funds that funds so designated will be utilized as represented if council funding is provided.

(e) Requirements to expend funds provided by the council in the manner authorized by the council, and a method of accounting for the receipt, use, and disbursement of any funds expended in drug control or illicit money

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laundering investigative efforts or task force efforts funded in part under the authority of this section.

(f) Requirements for reporting by recipient agencies on the performance and accomplishments secured by the investigative or task force efforts, including a requirement that the reports demonstrate how the state's drug control goals and strategies have been promoted by the efforts, and how other investigative goals have been met, including arrests made by such efforts, results of prosecutions based on such arrests, impact upon organized criminal enterprise structures by reason of such efforts, property or currency seizures made, illicit money laundering operations disrupted or otherwise impacted, forfeiture of assets by reason of such efforts, and anticipated or actual utilization of assets received by reason of a forfeiture based in whole or in part upon an investigation funded in whole or in part by council funds.

(4)~~(3)~~(a) Except as permitted in this section, a disbursement from ~~for~~ the Violent Crime Investigative Emergency and Drug Control Strategy Implementation Account shall not be used to supplant existing appropriations of state and local law enforcement agencies and counties or to otherwise fund expenditures that are ordinary or reasonably predictable for the operation of a state or local law enforcement agency.

(b) The moneys placed in the account shall consist of appropriations from the Legislature or moneys received from any other public or private source. Any local law enforcement agency that acquires funds pursuant to the Florida Contraband Forfeiture Act or any other forfeiture action is authorized to donate a portion of such funds to the account.

(c) Upon a finding by a majority of the members of the council, any unexcused failure by recipient agencies or task forces to utilize funds in the manner authorized by this section and the Florida Violent Crime and Drug Control Council, or to timely provide required accounting records, reports, or other information requested by the council or by the department related to funding requested or provided, shall:

1. Constitute a basis for a demand by the council for the immediate return of all or any portion of funds previously provided to the recipient by the council; and

2. Result in termination or limitation of any pending funding by the council under this section,

and may, upon specific direction of a majority of the council, result in disqualification of the involved agencies or task forces from consideration for additional or future funding for investigative efforts as described in this section for a period of not more than 2 years following the council's action. The council, through the department, is authorized to pursue any collection remedies necessary if a recipient agency fails to return funds as demanded.

Section 4. Section 943.0585, Florida Statutes, is 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 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, 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, 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 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, 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, 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 prosecutor 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(15), s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(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. Section 943.059, Florida Statutes, is 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 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, 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, 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, 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(15), s. 394.4572(1), s. 397.451, s. 402.302(3), 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. Section 943.325, Florida Statutes, is amended to read:

943.325 Blood or other biological specimen testing for DNA analysis.—

(1)(a) Any person who is convicted or was previously convicted in this state for any offense or attempted offense defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s. 810.02, s. 812.133, or s. 812.135 and who is either:

1. Still incarcerated, or

2. No longer incarcerated, or has never been incarcerated, yet ~~but~~ is within the confines of the legal state boundaries and is on probation, community control, parole, conditional release, control release, or any other court-ordered supervision,

shall be required to submit two specimens of blood or other biological specimens approved by the Department of Law Enforcement to a Department of Law Enforcement designated testing facility as directed by the department.

(b) For the purpose of this section, the term "any person" shall include both juveniles and adults committed to or under the supervision of the Department of Corrections or the Department of Juvenile Justice or committed to a county jail.

(2) The withdrawal of blood for purposes of this section shall be performed in a medically approved manner using a collection kit provided by, or accepted by, the Department of Law Enforcement and only by or under the supervision of a physician, registered nurse, licensed practical nurse, ~~or~~ duly licensed medical personnel, or other trained and competent personnel.

The collection of other approved biological specimens shall be performed by any person using a collection kit provided by, or accepted by, the Department of Law Enforcement in a manner approved by the department, as directed in the kit, or as otherwise found to be acceptable by the department.

(3) Upon a conviction of any person for any offense under paragraph (1)(a) which results in the commitment of the offender to a county jail, correctional facility, or juvenile facility, the entity responsible for the facility shall assure that the blood specimens or other biological specimens required by this section and approved by the Department of Law Enforcement are promptly secured and transmitted to the Department of Law Enforcement. If the person is not incarcerated following such conviction, the person may not be released from the custody of the court or released pursuant to a bond or surety until the blood specimens or other approved biological specimens required by this section have been taken. The chief judge of each circuit shall, in conjunction with the sheriff or other entity that maintains the county jail, assure implementation of a method to promptly collect required blood specimens or other approved biological specimens and forward the specimens to the Department of Law Enforcement. The Department of Law Enforcement, in conjunction with the sheriff, the courts, the Department of Corrections, and the Department of Juvenile Justice, shall develop a statewide protocol for securing the blood specimens or other approved biological specimens of any person required to provide specimens under this section. Personnel at the jail, correctional facility, or juvenile facility shall implement the protocol as part of the regular processing of offenders.

(4) If any blood specimens or other approved biological specimens submitted to the Department of Law Enforcement under this section are found to be unacceptable for analysis and use or cannot be used by the department in the manner required by this section, the Department of Law Enforcement may require that another set of blood specimens or other approved biological specimens be taken as set forth in subsection (11).

(5) The Department of Law Enforcement shall provide the specimen vials, mailing tubes, labels, or other appropriate containers and instructions for the collection of blood specimens or other approved biological specimens. The specimens shall thereafter be forwarded to the designated testing facility for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample.

(6) In addition to the specimens required to be submitted under this section, the Department of Law Enforcement may receive and utilize other blood specimens or other approved biological specimens. Any ~~The~~ analysis, when completed, shall be entered into the automated database maintained by the Department of Law Enforcement for such purpose, as provided in this section, and shall not be included in the state central criminal justice information repository.

(7) The results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies as defined in s. 943.045(10), at the request of the agency. Otherwise, such information is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(8) The Department of Law Enforcement and the statewide criminal laboratory analysis system shall establish, implement, and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA (deoxyribonucleic acid) and other biological molecules. The system shall be available to all criminal justice agencies.

(9) The Department of Law Enforcement shall:

(a) Receive, process, and store blood specimen samples or other approved biological specimen samples and the data derived therefrom furnished pursuant to subsection (1), ~~or~~ pursuant to a requirement of supervision imposed by the court or the Parole Commission with respect to a person convicted of any offense specified in subsection (1), or as specified in subsection (6).

(b) Collect, process, maintain, and disseminate information and records pursuant to this section.

(c) Strive to maintain or disseminate only accurate and complete records.

(d) Adopt rules prescribing the proper procedure for state and local law enforcement and correctional agencies to collect and submit blood specimen samples and other approved biological specimen samples pursuant to this section.

(10)(a) The court shall include in the judgment of conviction for an offense specified in this section, or a finding that a person described in subsection (1) violated a condition of probation, community control, or any other court-ordered supervision, an order stating that blood specimens or other approved biological specimens are required to be drawn or collected by the appropriate agency in a manner consistent with this section and, unless the convicted person lacks the ability to pay, the person shall reimburse the appropriate agency for the cost of drawing and transmitting the blood specimens or collecting and transmitting other approved biological specimens to the Florida Department of Law Enforcement. The reimbursement payment may be deducted from any existing balance in the inmate's bank account. If the account balance is insufficient to cover the cost of drawing and transmitting the blood specimens or collecting and transmitting other approved biological specimens to the Florida Department of Law Enforcement, 50 percent of each deposit to the account must be withheld until the total amount owed has been paid. If the judgment places the convicted person on probation, community control, or any other court-ordered supervision, the court shall order the convicted person to submit to the drawing of the blood specimens or the collecting of other approved biological specimens as a condition of the probation, community control, or other court-ordered supervision. For the purposes of a person who is on probation, community control, or any other court-ordered supervision, the collection requirement must be based upon a court order, or as otherwise provided by the person in the absence of a court order. If the judgment sentences the convicted person to time served, the court shall order the convicted person to submit to the drawing of the blood specimens or the collecting of other approved biological specimens as a condition of such sentence.

(b) The appropriate agency shall cause the specimens to be drawn or collected as soon as practical after conviction but, in the case of any person ordered to serve a term of incarceration as part of the sentence, the specimen shall be drawn or collected as soon as practical after the receipt of the convicted person by the custodial facility. For the purpose of this section, the appropriate agency shall be the Department of Corrections whenever the convicted person is committed to the legal and physical custody of the department. Conviction information contained in the offender information system of the Department of Corrections shall be sufficient to determine applicability under this section. The appropriate agency shall be the sheriff or officer in charge of the county correctional facility whenever the convicted person is placed on probation, community control, or any other court-ordered supervision or form of supervised release or is committed to the legal and physical custody of a county correctional facility.

(c) Any person previously convicted of an offense specified in this section, or a crime which, if committed in this state, would be an offense specified in this section, and who is also subject to the registration requirement imposed by s. 775.13, shall be subject to the collection requirement of this section when the appropriate agency described in this section verifies the identification information of the person. The collection requirement of this section does not apply to a person as described in s. 775.13(5).

(d) For the purposes of this section, conviction shall include a finding of guilty, or entry of a plea of nolo contendere or guilty, regardless of adjudication or, in the case of a juvenile, the finding of delinquency.

(e) If necessary, the state or local law enforcement or correctional agency having authority over the person subject to the sampling under this section shall assist in the procedure. The law enforcement or correctional officer so assisting may use reasonable force if necessary to require such person to submit to the withdrawal of blood specimens or the collection of other approved biological specimens. Any such ~~The~~ withdrawal or collection shall be performed in a reasonable manner. A hospital, clinical laboratory, medical clinic, or similar medical institution; a physician, certified paramedic, registered nurse, licensed practical nurse, or other personnel authorized by a hospital to draw blood; a licensed clinical laboratory director, supervisor, technologist, or technician; or any other person who assists a law enforcement officer is not civilly or criminally liable as a result of withdrawing blood specimens according to accepted medical standards when requested to do so by a law enforcement officer or any personnel of a jail, correctional facility, or juvenile detention facility, regardless of whether the convicted person resisted the drawing of blood specimens. A person other than the subject required to provide the biological specimens who collects or assists in the collection of approved specimens other than blood is not civilly or criminally liable if a collection kit provided by, or accepted by, the Department of Law Enforcement is utilized and the collection is done in a manner approved by the department, as directed in the kit, or is performed in an otherwise reasonable manner.

(f) If a judgment fails to order the convicted person to submit to the drawing of the blood specimens or the collecting of other approved biological

specimens as mandated by this section, the state attorney may seek an amended order from the sentencing court mandating the submission of blood specimens or other approved biological specimens in compliance with this section. As an alternative, the department, a state attorney, the Department of Corrections, or any law enforcement agency may seek a court order to secure the blood specimens or other approved biological specimens as authorized in subsection (11).

(11) If the Department of Law Enforcement determines that a convicted person who is required to submit blood specimens or other approved biological specimens under this section has not provided the specimens, the department, a state attorney, or any law enforcement agency may apply to the circuit court for an order that authorizes taking the convicted person into custody for the purpose of securing the required specimens. The court shall issue the order upon a showing of probable cause. Following issuance of the order, the convicted person shall be transported to a location acceptable to the agency that has custody of the person, the blood specimens or other approved biological specimens shall be withdrawn or collected in a reasonable manner, and the person shall be released if there is no other reason to justify retaining the person in custody. An agency acting under authority of an order under this section may, in lieu of transporting the convicted person to a collection site, secure the blood specimens or other approved biological specimens at the location of the convicted person in a reasonable manner. If the convicted person resists providing the specimens, reasonable force may be utilized to secure the specimens and any person utilizing such force to secure the specimens or reasonably assisting in the securing of the specimens is not civilly or criminally liable for actions taken. The agency that takes the convicted person into custody may, but is not required to, transport the person back to the location where the person was taken into custody.

(12) Unless the convicted person has been declared indigent by the court, the convicted person shall pay the actual costs of collecting the blood specimens or other approved biological specimens required under this section.

(13) If a court, a law enforcement agency, or the Department of Law Enforcement fails to strictly comply with this section or to abide by a statewide protocol for collecting blood specimens or other approved biological specimens, such failure is not grounds for challenging the validity of the collection or the use of a specimen, and evidence based upon or derived from the collected blood specimens or other approved biological specimens may not be excluded by a court.

Section 7. Subsection (2) of section 760.40, Florida Statutes, is amended to read:

760.40 Genetic testing; informed consent; confidentiality.—

(2)(a) Except for purposes of criminal prosecution, except for purposes of determining paternity as provided in s. 742.12(1), and except for purposes of acquiring specimens from persons convicted of certain offenses or as otherwise provided in s. 943.325, DNA analysis may be performed only with the informed consent of the person to be tested, and the results of such DNA

analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested. Such information held by a public entity is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A person who violates paragraph (a) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. Section 843.167, Florida Statutes, is created to read:

843.167 Unlawful use of police communications; enhanced penalties.—

(1) A person may not:

(a) Intercept any police radio communication by use of a scanner or any other means for the purpose of using that communication to assist in committing a crime or to escape from or avoid detection, arrest, trial, conviction, or punishment in connection with the commission of such crime.

(b) Divulge the existence, contents, substance, purport, effect, or meaning of a police radio communication to any person he or she knows to be a suspect in the commission of a crime with the intent that the suspect may escape from or avoid detention, arrest, trial, conviction, or punishment.

(2) Any person who is charged with a crime and who, during the time such crime was committed, possessed or used a police scanner or similar device capable of receiving police radio transmissions is presumed to have violated paragraph (1)(a).

(3) The penalty for a crime that is committed by a person who violates paragraph (1)(a) shall be enhanced as follows:

(a) A misdemeanor of the second degree shall be punished as if it were a misdemeanor of the first degree.

(b) A misdemeanor of the first degree shall be punished as if it were a felony of the third degree.

(c) A felony of the third degree shall be punished as if it were a felony of the second degree.

(d) A felony of the second degree shall be punished as if it were a felony of the first degree.

(e) A felony of the first degree shall be punished as if it were a life felony.

(4) Any person who violates paragraph (1)(b) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Subsection (3) of section 943.053, Florida Statutes, is amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3) Criminal history information, including information relating to minors, compiled by the Criminal Justice Information Program from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge and, otherwise, to governmental agencies not qualified as criminal justice agencies on an approximate-cost basis. After providing the program with all known identifying information, persons in the private sector may be provided criminal history information upon tender of fees as established and in the manner prescribed by rule of the Department of Law Enforcement. Such fees shall approximate the actual cost of producing the record information. As used in this subsection, the department's determination of actual cost shall take into account the total cost of creating, storing, maintaining, updating, retrieving, improving, and providing criminal history information in a centralized, automated database, including personnel, technology, and infrastructure expenses. Actual cost shall be computed on a fee-per-record basis, and any access to criminal history information by the private sector as provided in this subsection shall be assessed the per-record fee without regard to the quantity or category of criminal history record information requested. Fees may be waived by the executive director of the Department of Law Enforcement for good cause shown.

Section 10. Section 943.0582, Florida Statutes, is created to read:

943.0582 Prearrest, postarrest, or teen court diversion program expunction.—

(1) Notwithstanding any law dealing generally with the preservation and destruction of public records, the department may provide, by rule adopted pursuant to chapter 120, for the expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors as authorized by s. 985.3065.

(2) As used in this section, the term "expunction" shall have the same meaning and effect as in s. 943.0585, except that:

(a) The provisions of s. 943.0585(4)(a) shall not apply, except that the criminal history record of a person whose record is expunged pursuant to this section shall be made available only to criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest or teen court diversion programs, when the record is sought as part of a criminal investigation, or when the subject of the record is a candidate for employment with a criminal justice agency. For all other purposes, a person whose record is expunged pursuant to this section may lawfully deny or fail to acknowledge the arrest or charge covered by the expunged record.

(b) Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section shall be sealed as the term is used in s. 943.059.

(3) As used in this section, the term "nonviolent misdemeanor" includes simple assault or battery when prearrest or postarrest diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

(4) The department shall expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if that minor:

(a) Submits an application for prearrest or postarrest diversion expunction, on a form promulgated by the department, signed by the minor's parent or legal guardian or by the minor if he or she has reached the age of majority at the time of applying.

(b) Submits the application for prearrest or postarrest diversion expunction no later than 6 months after completion of the diversion program.

(c) Submits to the department, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program and that participation in the program is strictly limited to minors arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.

(d) Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.

(e) Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of "domestic violence" as that term is defined in s. 741.28.

(f) Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.

(5) The department is authorized to charge a $75 processing fee for each request received for prearrest or postarrest diversion program expunction, for placement in the Department of Law Enforcement Operating Trust Fund, unless such fee is waived by the executive director.

(6) This section shall operate retroactively to permit the expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program on or after July 1, 2000, provided that, in the case of a minor whose completion of the program occurred before the effective date of this act, the application for prearrest or postarrest diversion expunction is submitted no later than 6 months after the effective date of this act.

(7) Expunction or sealing granted pursuant to this section shall not preclude the minor who receives such relief from petitioning for the expunction or sealing of a later criminal history record as provided for in ss. 943.0585 and 943.059, provided he or she is otherwise eligible under those sections.

Section 11. Section 985.3065, Florida Statutes, is amended to read:

985.3065 Prearrest or postarrest diversion programs.—

(1) A law enforcement agency or school district, in cooperation with the state attorney, may establish a prearrest or postarrest diversion program.

(2) As part of the prearrest or postarrest diversion program, a child who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for not more than 90 days. If the child fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for a period that may not exceed 90 days.

(3) The prearrest or postarrest diversion program may, upon agreement of the agencies that establish the program, provide for the expunction of the nonjudicial arrest record of a minor who successfully completes such a program pursuant to s. 943.0582.

Section 12. This act shall take effect July 1, 2001.

Approved by the Governor May 31, 2001.

Filed in Office Secretary of State May 31, 2001.

CODING: Words stricken are deletions; words underlined are additions.