

House Bill No. 7113

An act relating to the Department of Law Enforcement; amending s. 943.05, F.S.; providing that if fingerprints submitted to the Department of Law Enforcement for background screening are identified with the fingerprints of a person having a criminal history record, the department may make the fingerprints available for all purposes and uses authorized for arrest fingerprint cards; amending s. 943.053, F.S.; clarifying provisions relating to the fees charged for requests for criminal history information; amending s. 943.0542, F.S.; authorizing a qualified entity requesting screening information concerning an employee or volunteer, or a person applying to be an employee or volunteer, to submit the request electronically; requiring the qualified entity to maintain a signed waiver allowing the release of the state and national criminal history record information to the qualified entity; revising provisions relating to the fees for such screenings; amending s. 943.0581, F.S.; revising the information to be included in an application for an administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake; permitting specified officials to make an application for an administrative expunction; amending s. 943.0585, F.S.; providing additional circumstances in which a person may not lawfully deny or fail to acknowledge the arrests covered by an expunged criminal history record; amending s. 943.059, F.S.; providing that sealed criminal history records may be available to judges in the state courts system for specified purposes; providing additional circumstances in which a person may not lawfully deny or fail to acknowledge the arrests covered by a sealed criminal history record; amending s. 943.06, F.S.; adding the Secretary of Children and Family Services, or the secretary's designated assistant, to the Criminal and Juvenile Justice Information Systems Council; amending s. 943.08, F.S.; revising the duties of the Criminal and Juvenile Justice Information Systems Council; amending s. 943.081, F.S.; specifying and clarifying the principles adopted by the Criminal and Juvenile Justice Information Systems Council as the guiding principles for the management of public safety system information technology resources; authorizing creation of a citizen support organization for Florida Missing Children's Day by the Department of Law Enforcement to provide assistance, funding, and promotional support for activities authorized for that day; providing for duties and functions of the support organization; authorizing the department to fix and collect charges for the rental of facilities and properties managed by the department and providing for deposit and use of moneys collected; providing that the support organization is not a lobbyist; providing for the use and management of department property; providing for an annual audit; providing an effective date.

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

Section 1. Subsection (3) is added to section 943.05, Florida Statutes, to read:

943.05 Criminal Justice Information Program; duties; crime reports.—

(3) If fingerprints submitted to the department for background screening, whether retained or not, are identified with the fingerprints of a person having a criminal history record, such fingerprints may thereafter be available for all purposes and uses authorized for arrest fingerprint cards, including, but not limited to, entry into the statewide automated fingerprint identification system to augment or replace the fingerprints that identify the criminal history record.

Section 2. Paragraph (b) of subsection (3) of section 943.053, Florida Statutes, is amended to read:

943.053 Dissemination of criminal justice information; fees.—

(3)

(b) The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is \$23 per name submitted, except that the fee for vendors of the Department of Children and Family Services, the Department of Juvenile Justice, and the Department of Elderly Affairs shall be \$8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services shall be \$15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, shall be \$18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

Section 3. Paragraphs (b) and (c) of subsection (2) of section 943.0542, Florida Statutes, are amended to read:

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

(2)

(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, or the request may be submitted electronically. The qualified entity must maintain, with a signed waiver allowing the release of the state and national criminal history record information to the qualified entity.

(c) Each such request must be accompanied by a fee for a statewide criminal history check by the department established by, which shall approximate the actual cost of producing the record information, as provided in s. 943.053, plus the amount currently prescribed 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.

Section 4. Section 943.0581, Florida Statutes, is amended to read:

943.0581 Administrative expunction.—

(1) Notwithstanding any law dealing generally with the preservation and destruction of public records, the department may ~~adopt a provide,~~ by rule ~~adopted~~ pursuant to chapter 120, for the administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.

(2) A law enforcement agency shall apply to the department in the manner prescribed by rule for the administrative expunction of any nonjudicial record of any arrest of a minor or an adult who is subsequently determined by the agency, at its discretion, or by the final order of a court of competent jurisdiction, to have been arrested contrary to law or by mistake.

(3) An adult or, in the case of a minor child, the parent or legal guardian of the minor child, may apply to the department in the manner prescribed by rule for the administrative expunction of any nonjudicial record of an arrest alleged to have been made contrary to law or by mistake, provided that the application is supported by the endorsement of the head of the arresting agency or his or her designee or the state attorney of the judicial circuit in which the arrest occurred or his or her designee.

(4) An application for administrative expunction shall include ~~an affidavit executed by the chief of the law enforcement agency, sheriff, or department head of the state law enforcement agency in which the affiant verifies that he or she has reviewed the record of the arrest and that the arrest was contrary to law or was a mistake. The affidavit shall include the date and time of the arrest, the name of the arresting officer, the name of the person arrested, the offender-based tracking system (OBTS) number, and the crime or crimes charged. The application shall be on the submitting agency's letterhead and shall be signed by the head of the submitting agency or his or her designee.~~

(5) If the person was arrested on a warrant, capias, or pick-up order, a request for an administrative expunction may be made by the sheriff of the county in which the warrant, capias, or pick-up order was issued or his or her designee or by the state attorney of the judicial circuit in which the warrant, capias, or pick-up order was issued or his or her designee.

~~(6)(5) An~~ No application or, endorsement, ~~or affidavit made~~ under this section is not shall be admissible as evidence in any judicial or administrative proceeding or otherwise be construed in any way as an admission of liability in connection with an arrest.

Section 5. Paragraph (a) of subsection (4) of 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. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, 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.

(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, the Agency for Health Care Administration, the Agency for Persons with Disabilities, 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, s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), chapter 916, s. 985.644, chapter 400, or chapter 429;
6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or
7. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12 or s. 311.125.

Section 6. Subsection (4) of 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. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, 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.

(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, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., and 8. for their respective licensing, access authorization, 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, the Agency for Health Care Administration, the Agency for Persons with Disabilities, 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, 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, chapter 916, s. 985.644, chapter 400, or chapter 429;

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

7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history background check under state or federal law; or

8. Is seeking authorization from a Florida seaport identified in s. 311.09 for employment within or access to one or more of such seaports pursuant to s. 311.12 or s. 311.125.

(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., 6., and 8. for their respective licensing, access authorization, and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or subparagraph (a)8. to disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, 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, access authorization, 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.

Section 7. Subsection (1) of section 943.06, Florida Statutes, is amended to read:

943.06 Criminal and Juvenile Justice Information Systems Council.—There is created a Criminal and Juvenile Justice Information Systems Council within the department.

(1) The council shall be composed of 15 14 members, consisting of the Attorney General or a designated assistant; the executive director of the Department of Law Enforcement or a designated assistant; the secretary of the Department of Corrections or a designated assistant; the chair of the Parole Commission or a designated assistant; the Secretary of Juvenile

Justice or a designated assistant; the executive director of the Department of Highway Safety and Motor Vehicles or a designated assistant; ~~the Secretary of Children and Family Services or a designated assistant;~~ the State Courts Administrator or a designated assistant; 1 public defender appointed by the Florida Public Defender Association, Inc.; 1 state attorney appointed by the Florida Prosecuting Attorneys Association, Inc.; and 5 members, to be appointed by the Governor, consisting of 2 sheriffs, 2 police chiefs, and 1 clerk of the circuit court.

Section 8. Section 943.08, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 943.08, F.S., for present text.)

943.08 Duties; Criminal and Juvenile Justice Information Systems Council.—

(1) The council shall facilitate the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies.

(2) The council shall adopt uniform information-exchange standards, methodologies, and best practices, applying national standards and models when appropriate, in order to guide local and state criminal justice agencies when procuring, implementing, or modifying information systems.

(3) The council shall provide statewide oversight and support the development of plans and policies relating to public safety information systems in order to facilitate the effective identification, standardization, access, sharing, integrating, and coordinating of criminal and juvenile justice data among federal, state, and local agencies. The council shall make recommendations addressing each of the following:

(a) Privacy of data.

(b) Security of systems.

(c) Functional and information-sharing standards.

(d) Accuracy, timeliness, and completeness of data.

(e) Access to data and systems.

(f) Transmission of data and information.

(g) Dissemination of information.

(h) Training.

(i) Other areas that effect the sharing of criminal and juvenile justice information and other public safety system information.

(4) The council shall provide oversight to the operation of the Criminal Justice Network (CJNet) for which the department shall serve as custodial

manager pursuant to s. 943.0544. Criminal justice agencies participating in the Criminal Justice Network shall adhere to CJNet standards and policies.

Section 9. Section 943.081, Florida Statutes, is amended to read:

943.081 Public safety system information technology resources; guiding principles.—The following guiding principles adopted by the Criminal and Juvenile Justice Information Systems Council are hereby adopted as guiding principles for the management of public safety system information technology resources:

(1) Cooperative planning by public safety system entities is a prerequisite for the effective development of systems to enable sharing of data.

(2) The planning process, as well as coordination of development efforts, should identify and include all principals from the outset.

(3) Public safety system entities should be committed to maximizing information sharing and moving away from proprietary positions taken relative to data they capture and maintain.

(4) Public safety system entities should maximize public access to data and, in so doing, should specifically implement guidelines and practices that address while complying with legitimate security, privacy, and confidentiality requirements.

(5) Public safety system entities should strive for electronic sharing of information ~~via networks versus a reliance on magnetic and other media.~~

(6) The practice by public safety system entities of charging each other for data should, insofar as possible, be eliminated. Further, when the capture of data for mutual benefit can be accomplished, the costs for the development, capture, and network for access to that data should be shared.

(7) The redundant capture of data should, insofar as possible, be eliminated. Redundant capture of data should be discouraged unless there is a specific business need for it.

(8) Public safety systems should adhere to information-exchange standards approved by the council.

(9) The council should adopt where possible applicable national standards for data exchange.

~~(8) With respect to statewide databases:~~

~~(a) Only data that can best be compiled, preserved, and shared through a central database should be captured at the state level.~~

~~(b) Remote access to distributed databases should be considered and provided for, instead of central repositories.~~

~~(c) Statistical data that may be required infrequently or on a one-time basis should be captured via sampling or other methods.~~

~~(d) Only data that are auditable, or that otherwise can be determined to be accurate, valid, and reliable should be maintained.~~

~~(9) Methods of sharing data among different protocols must be developed without requiring major redesign or replacement of individual systems.~~

Section 10. Citizen support organization for Florida Missing Children's Day.—

(1) The Department of Law Enforcement may establish a citizen support organization to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day under s. 683.23, Florida Statutes.

(2) As used in this section, the term "citizen support organization" means an organization that is:

(a) A Florida corporation not for profit incorporated under chapter 617, Florida Statutes, and approved by the Department of State.

(b) Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures to or for the direct or indirect benefit of the department in furtherance of Florida Missing Children's Day.

(3) The citizen support organization is not a registered lobbyist within the meaning of s. 11.045, Florida Statutes.

(4) The citizen support organization is specifically authorized to collect and expend funds to be used for awards; public awareness and awards ceremonies, workshops, and other meetings, including distribution materials for public education and awareness; travel; Internet and web-hosting services; administrative costs, including personnel costs; costs of audits; and costs of facilities rental.

(5) The activities of the citizen support organization must be determined by the department to be consistent with the goals and mission of the department and in the best interests of the state and approved in writing by the department to operate for the direct or indirect benefit of the department. The approval shall be given in a letter of agreement from the department.

(6)(a) The department may fix and collect charges for the rental of facilities and properties managed by the department and may permit, without charge, appropriate use of administrative services, property, and facilities of the department by the citizen support organization, subject to this section. The use must be directly in keeping with the approved purposes of the citizen support organization and may not be made at times or places that would unreasonably interfere with opportunities for the public to use such facilities for established purposes. Any money received from rentals of facilities and properties managed by the department may be held in the Operating Trust Fund of the department or in a separate depository account in the

name of the citizen support organization and subject to the provisions of the letter of agreement with the department. The letter of agreement must provide that any funds held in the separate depository account in the name of the citizen support organization must revert to the department if the citizen support organization is no longer approved by the department to operate in the best interests of the state.

(b) The department may adopt rules with which a citizen support organization must comply in order to use department administrative services, property, or facilities.

(c) The department may not permit the use of any administrative services, property, or facilities of the state by a citizen support organization that does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

(7) The citizen support organization shall provide for an independent annual financial audit in accordance with s. 215.981, Florida Statutes. Copies of the audit shall be provided to the department, the Office of Policy and Budget in the Executive Office of the Governor, and the Florida Cabinet.

Section 11. This act shall take effect July 1, 2008.

Approved by the Governor June 30, 2008.

Filed in Office Secretary of State June 30, 2008.