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Overview - FLORIDA ; _____ Revised Statutes Annotated

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privacy and security of criminal justice information.

FLORIDA

943.02 Definitions

For the purpose of this chapter:

(1) "Department" means the Department of Law Enforcement.

(2) "Executive director" means the executive director of the Department of Law Enforcement.

Laws 1974, c. 74-386, § 2, eff. Aug. 1, 1974. Amended by Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978.

943.03 Department of Law Enforcement

(1) The executive director shall have served at least five (5) years as a police executive or possess training and experience in police affairs or public administration and shall be a bona fide resident of the state. It shall be the duty of the executive director to supervise, direct, coordinate, and administer all activities of the department and to exercise the duties prescribed for the State Law Enforcement Coordinator under Part VII of Chapter 23, known as the Florida Mutual Aid Act.

(2) The department shall employ such administrative, clerical, technical, and professional personnel, including division directors as hereinafter provided, as may be required, at salaries to be established by the department, to perform such duties as the department may prescribe.

(3) Pursuant to chapter 120, the department shall adopt the rules and regulations deemed necessary to carry out its duties and responsibilities under this chapter.

(4) The department may make and enter into all contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as the department may determine are necessary, expedient, or incidental to the performance of its duties or the execution of its power under this chapter. However, nothing in this chapter shall authorize the employment of private investigative personnel by contract to conduct investigations.

(5)(a) The department shall be governed by all laws regulating the purchase of supplies and equipment as other state agencies and may enter into contracts with other state agencies to make photographs and photostats, to transmit information by teletype, and to perform all those services consonant with the purpose of this chapter.

(b) It may use without charge the technical personnel and equipment of any state agency.

(6) The powers herein enumerated, or set forth in other parts of this chapter, shall be deemed an exercise of the state police power for the protection of the welfare, health, peace, safety, and morals of the people and shall be liberally construed.

(7) The Department of Legal Affairs shall be the legal advisor to and shall represent the department.

(8) The department may accept for any of its purposes and functions under this chapter any and all donations of property, real, personal, or mixed, and grants of money, from any governmental unit or public agency or from any institution, person, firm, or corporation. Such moneys shall be deposited, disbursed, and administered in a trust fund as provided by law.

(9) The department shall make an annual report of its activities to the governor and to the legislature and include in such report its recommendations for additional legislation.

(10) The department shall establish headquarters in Tallahassee. The Department of General Services shall furnish the department with proper and adequate housing for its operation.

Laws 1974, c. 74-386, § 3, eff. Aug. 1, 1974.

FLORIDA

943.04 Division of Criminal Investigation; creation; investigative and related authority

(1) There is created a Division of Criminal Investigation within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed by the department upon the recommendation of the executive director. It shall be the duty of the director to supervise, direct, coordinate, and administer all activities of the division.

(2)(a) Under appropriate rules and regulations adopted by the department, or upon written order of the Governor or by direction of the Legislature acting by a concurrent resolution, and at the direction of the executive director, the Division of Criminal Investigation may investigate violations of any of the criminal laws of the state, and shall have authority to bear arms, make arrests and apply for, serve and execute search warrants, arrest warrants, subpoenas and other process of the court.

(b) Investigations may also be conducted in connection with the faithful execution and effective enforcement of the laws of the state with reference to organized crime, vice, racketeering, rioting, inciting to riot and insurrection, and, upon specific direction by the governor in writing to the executive director, the misconduct, in connection with their official duties, of public officials and employees and of officials and members of public corporations and authorities subject to suspension or removal by the governor.

(c) All investigators employed by the department shall be considered peace officers for all purposes. The executive director shall have the authority to designate the person occupying any appropriate position within the department as a peace officer, if such person is qualified under the department's personnel regulations relating to agents, and all persons thus employed by the department shall be considered peace officers for all purposes and shall be entitled to the privileges, protection, and benefits of ss. 112.19, 121.051, 122.34, and 870.05.

(3) Whenever it shall appear to the department that there is cause for the prosecution of a crime, the department shall refer the evidence of such crime to the officials authorized to conduct the prosecution.

Laws 1974, c. 74-386, § 4, eff. Aug. 1, 1974. Amended by Laws 1976, c. 76-247, § 5, eff. July 1, 1976; Laws 1977, c. 77-127, § 1, eff. June 7, 1977; Laws 1977, c. 77-174, § 1, eff. Aug. 2, 1977; Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978; Laws 1979, c. 79-8, § 34, eff. Aug. 5, 1979.

943.045 Definitions

The following words and phrases as used in ss. 943.045-943.08 shall have the following meanings:

(1) "Criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal justice information.

(2) "Administration of criminal justice" means performing functions of detection; apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders by governmental agencies. The administration of criminal justice includes criminal identification activities and the collection, processing, storage, and dissemination of criminal justice information by governmental agencies.

(3) "Criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, identification record information, and wanted persons record information. The term shall not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term shall not include criminal intelligence information or criminal investigative information.

(4) "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as fingerprint records, if the information does not indicate involvement of the person in the criminal justice system.

(5) "Criminal intelligence information" means information collected by a criminal justice agency with respect to an identifiable person or group in an effort to anticipate, prevent, or monitor possible criminal activity.

(6) "Criminal investigative information" means information about an identifiable person or group, compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific criminal act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators, informants, or any type of surveillance.

(7) "Record" means any and all documents, writings, computer memory, and microfilm, and any other form in which facts are memorialized, irrespective of whether such record is an official record, public record, or admissible record or is merely a copy thereof.

(8) "Comparable ordinance violation" means a violation of an ordinance having all the essential elements of a statutory misdemeanor or felony.

FLORIDA

(9) "Disposition" means details relating to the termination of an individual criminal defendant's relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probation, paroles, and releases from correctional institutions.

(10) "Criminal justice agency" means:

(a) A court; or

(b) A governmental agency or subunit thereof which performs the administration of criminal justice pursuant to a statute or rule of court and which allocates a substantial part of its annual budget to the administration of criminal justice.

(11) "Dissemination" means the transmission of information, whether orally or in writing.

(12) "Research or statistical project" means any program, project, or component the purpose of which is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular area. The term does not include intelligence, investigative, or other information-gathering activities in which information is obtained for purposes directly related to enforcement of the criminal laws.

(13) "Expunction of a criminal history record" means the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction.

(14) "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.

(15) "Adjudicated guilty" means that a person has been found guilty and that the court has not withheld an adjudication of guilt.

(16) "Criminal intelligence information system" means a system, including the equipment, facilities, procedures, agreement, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal intelligence information.

(17) "Criminal investigative information system" means a system, including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal investigative information.

(18) "Criminal history record" means any nonjudicial record maintained by a criminal justice agency containing criminal history information.

History.—s 6, ch 74-386, s 4, ch 78-323, s 1, ch 80-409, ss 2, 3, ch 81-10, s 1, ch 82-46, s 2, ch 83-265, ss 1, 6, 7, ch 87-177, s 5, ch 91-429, s 1, ch 92-73, s 88, ch 94-209

Note.—Former s 943.07

1943.05 Division of Criminal Justice Information Systems; duties; crime reports.—

(1) There is created a Division of Criminal Justice Information Systems within the Department of Law Enforcement. The division shall be supervised by a director who shall be employed upon the recommendation of the executive director.

(2) The division shall:

(a) Establish and maintain a communication system capable of transmitting criminal justice information to and between criminal justice agencies.

(b) Establish, implement, and maintain a statewide automated fingerprint identification system capable of, but not limited to, reading, classifying, matching, and storing fingerprints, rolled fingerprints, and latent fingerprints. The system shall be available to every criminal justice agency that is responsible for the administration of criminal justice.

(c) Initiate a crime information system which shall be responsible for:

1. Preparing and disseminating semiannual reports to the Governor, the Legislature, all criminal justice agencies, and, upon request, the public. Each report shall include, but not be limited to, types of crime reported, offenders, arrests, and victims.

2. Upon request, providing other states and federal criminal justice agencies with Florida crime data. Where

convenient, such data shall conform to definitions established by the requesting agencies.

3. In cooperation with other criminal justice agencies, developing and maintaining an offender-based transaction system.

(d) Adopt rules to effectively and efficiently implement, administer, manage, maintain, and use the automated fingerprint identification system and uniform offense reports and arrest reports. The rules shall be considered minimum requirements and shall not preclude a criminal justice agency from implementing its own enhancements.

(e) Establish, implement, and maintain a Domestic and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies relating to domestic violence injunctions and repeat violence injunctions issued by the courts throughout the state. Such information must include, but is not limited to, information as to the existence and status of any such injunction for verification purposes.

(f) Establish, implement, and maintain a system for transmitting to and between criminal justice agencies information about writs of bodily attachment issued in connection with a court-ordered child support obligation. Such information shall include, but not be limited to, information necessary to identify the respondents and serve the writs.

Section 4. This act shall take effect October 1, 1996.

Approved by the Governor May 21, 1996.

Filed in Office Secretary of State May 21, 1996.

943.051 Criminal justice information; collection and storage; fingerprinting.—

(1) The Division of Criminal Justice Information Systems, acting as the state's central criminal justice information repository, shall:

(a) Collect, process, store, maintain, and disseminate criminal justice information and records necessary to the operation of the criminal justice information system of the department.

(b) Develop systems that inform one criminal justice agency of the criminal justice information held or maintained by other criminal justice agencies.

(2) Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance by a state, county, municipal, or other law enforcement agency shall be fingerprinted, and such fingerprints shall be submitted to the department. Exceptions to this requirement for specified misdemeanors or comparable ordinance violations may be made by the department by rule.

(3)(a) A minor who is charged with or found to have committed an offense that would be a felony if committed by an adult shall be fingerprinted and the fingerprints shall be submitted to the department.

(b) A minor who is charged with or found to have committed the following misdemeanors shall be fingerprinted and the fingerprints shall be submitted to the department:

1. Assault, as defined in s. 784.011.
 2. Battery, as defined in s. 784.03.
 3. Carrying a concealed weapon, as defined in s. 790.01(1).
 4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).
 5. Child abuse, as defined in s. 827.04(2).
 6. Negligent treatment of children, as defined in s. 827.05.
 7. Assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b).
 8. Open carrying of a weapon, as defined in s. 790.053.
 9. Exposure of sexual organs, as defined in s. 800.03.
 10. Unlawful possession of a firearm, as defined in s. 790.22(5).
 11. Cruelty to animals, as defined in s. 828.12(1).
 12. Arson, as defined in s. 806.031(1).
- (4) Fingerprints shall be used as the basis for criminal history records.

reports, as provided by this section, to the division. The disposition report shall be developed by the division and shall include the offender-based transaction system number.

(1) Each law enforcement officer or booking officer shall include on the arrest fingerprint card the offender-based transaction system number.

(2) Each clerk of the court shall submit the uniform dispositions to the division or in a manner acceptable to the division. The report shall be submitted at least once a month and, when acceptable by the division, may be submitted in an automated format. The disposition report is mandatory for dispositions relating to adult offenders only.

(3)(a) The Department of Corrections shall submit information to the division relating to the receipt or discharge of any person who is sentenced to a state correctional institution.

(b) The Department of Juvenile Justice shall submit information to the division relating to the receipt or discharge of any minor who is found to have committed an offense that would be a felony if committed by an adult, or is found to have committed a misdemeanor specified in s. 943.051(3), and is committed to the custody of the Department of Juvenile Justice.

(4) Each sheriff or unit of government or agent thereof shall submit information to the division relating to the receipt or discharge of any person who is sentenced to a jail facility.

History.—s. 4, ch. 80-409, s. 3, ch. 85-224, s. 3, ch. 86-187, s. 3, ch. 87-177, s. 91, ch. 94-209.

943.0515 Retention of criminal history records of minors.—

(1)(a) The Division of Criminal Justice Information Systems shall retain the criminal history record of a minor who is classified as a serious or habitual juvenile offender under chapter 39 for 5 years after the date the offender reaches 21 years of age, at which time the record shall be expunged unless it meets the criteria of paragraph (2)(a) or paragraph (2)(b).

(b) If the minor is not classified as a serious or habitual juvenile under chapter 39, the division shall retain his criminal history record for 5 years after the date he reaches 19 years of age, at which time the record shall be expunged unless it meets the criteria of paragraph (2)(a) or paragraph (2)(b).

(2)(a) If a person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed, the person's record as a minor must be merged with the person's adult criminal history record and must be retained as a part of the person's adult record.

(b) If, at any time, a minor is adjudicated as an adult for a forcible felony, the minor's criminal history record prior to the time of his adjudication as an adult must be merged with his record as an adjudicated adult. That portion of the criminal history record which relates to the minor's offenses prior to his adjudication as an adult may only be released as provided under s. 943.054(4).

History.—s. 90, ch. 94-209.

943.052 Disposition reporting.—The division shall, by rule, establish procedures and a format for each criminal justice agency to monitor its records and submit

943.0525 Criminal justice information systems; use by state and local agencies.—

As a condition of participating in any criminal justice information system established by the division or of receiving criminal justice information, state and local agencies shall be required to execute appropriate user agreements and to comply with applicable federal laws and regulations, this chapter, and rules of the department. The division shall, by rule, adopt a user agreement which shall include, but not be limited to, compliance with the provisions of s. 943.052. The user agreement between the department and the criminal justice agency shall include conspicuous language that any criminal justice agency's failure to comply with laws, rules, and the user agreement shall constitute grounds for immediate termination of services. The department shall terminate the services to the criminal justice agency until the agency is in compliance. However, the department shall not terminate access to wanted persons or wanted property record information services to a law enforcement agency.

History.—s. 2, ch. 80-409, s. 495, ch. 81-259; s. 4, ch. 86-187.

943.053 Dissemination of criminal justice information; fees.—

(1) The Department of Law Enforcement shall disseminate criminal justice information only in accordance with federal and state laws, regulations, and rules.

(2) Criminal justice information derived from federal criminal justice information systems or criminal justice information systems of other states shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency.

FLORIDA

(3) Criminal history information, including information relating to juveniles, compiled by the Division of Criminal Justice Information Systems 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 division with all known identifying information, persons in the private sector may be provided criminal history information upon tender of fees as established by rule of the Department of Law Enforcement. Such fees shall approximate the actual cost of producing the record information. Fees may be waived by the Executive Director of the Department of Law Enforcement for good cause shown.

(4) The division shall provide, free of charge, a minor's criminal history record to a criminal justice agency that requests such record for criminal justice purposes. The division shall provide, on an approximate-cost basis, a minor's criminal history record to a governmental agency that requests such record for purposes of screening an applicant for employment or licensing under s. 39.001, s. 39.076, s. 110.1127, s. 242.335, s. 393.0655, s. 394.457, s. 397.451, s. 400.512, s. 402.305, or s. 409.175. In addition, the division shall provide, on an approximate-cost basis, a minor's criminal history record to a school principal who requests such information. The school principal may release information in a minor's criminal history record only to the assistant principal and the minor's guidance counselor and teachers.

(5) Criminal justice information provided by the Department of Law Enforcement shall be used only for the purpose stated in the request.

(6) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, the sheriff of any county that has contracted with a private entity to operate a county detention facility pursuant to the provisions of s. 951.062 shall provide that private entity, in a timely manner, copies of the Florida criminal history records for its inmates. The sheriff may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1).

(7) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, the Department of Corrections shall provide, in a timely manner, copies of the Florida criminal history records for inmates housed in a private state correctional facility to the private entity under contract to operate the facility pursuant to the provisions of s. 944.105 or s. 957.03. The department may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1).

History.—s. 5, ch. 80-409, s. 1, ch. 94-168, s. 92, ch. 94-209

943.0535 Aliens, felony records.

Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing an alien, for the conviction of a felony, to any state or county institution which is supported, wholly or in part, by public funds, it shall be the duty of the clerk of such court to furnish without charge a certified copy of the complaint, information, or indictment and the judgment and sentence and any other record pertaining to the case of the convicted alien.

943.054 Exchange of federal criminal history records and information.

(1) Criminal history information derived from any United States Department of Justice criminal justice information system is available:

(a) To criminal justice agencies for criminal justice purposes.

(b) Pursuant to applicable federal laws and regulations for use in connection with licensing or local or state employment or for such other uses only as authorized by federal or state laws which have been approved by the United States Attorney General or his designee. When no active prosecution of the charge is known to be pending, arrest data more than 1 year old is not disseminated unless accompanied by information relating to the disposition of that arrest.

FLORIDA

(c) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(2) The exchange of federal criminal history information is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(3) A criminal justice agency may refer to federal criminal history records and disclosure to the public factual information concerning the status of an investigation; the apprehension, arrest, release, or prosecution of an individual; the adjudication of charges; or the correctional status of an individual when such disclosure is reasonably contemporaneous with the event to which the information relates.

(4) PROVISIONS OF THIS SECTION ARE REQUIRED BY THE FEDERAL GOVERNMENT AS A CONDITION OF UTILIZING THE DEPARTMENT OF JUSTICE CRIMINAL HISTORY RECORD INFORMATION SYSTEMS. CONSEQUENTLY, THESE EXEMPTIONS ARE NOT SUBJECT TO THE OPEN GOVERNMENT SUNSET REVIEW ACT IN ACCORDANCE WITH SECTION 119.14.

943.055 Records and audit.

(1) Criminal justice agencies disseminating criminal justice information derived from a Department of Law Enforcement criminal justice information system shall maintain a record of dissemination in accordance with rules promulgated by the Department of Law Enforcement.

(2) The Division of Criminal Justice Information Systems shall arrange for any audits of state and local criminal justice agencies necessary to assure compliance with federal laws and regulations, this chapter, and rules of the Department of Law Enforcement pertaining to the establishment, operation, security, and maintenance of criminal justice information systems.

FLORIDA

943.056 Access to, review and challenge of, criminal history records.

(1) For purposes of verification of the accuracy and completeness of a criminal history record, the Department of Law Enforcement shall provide such record for review upon verification, by fingerprints, of the identity of the requesting person. If a minor, or the parent or legal guardian of a minor, requests a copy of the minor's criminal history record, the Department of Law Enforcement shall provide such copy for review upon verification, by fingerprints, of the identity of the minor. The providing of such record shall not require the payment of any fees, except those provided for by federal regulations.

(2) Criminal justice agencies subject to chapter 120 shall be subject to hearings regarding those portions of criminal history records for which the agency served as originator. When it is determined what the record should contain in order to be complete and accurate, the Division of Criminal Justice Information Systems shall be advised and shall conform state and federal records to the corrected criminal history record information.

(3) Criminal justice agencies not subject to chapter 120 shall be subject to administrative proceedings for challenges to criminal history record information in accordance with rules established by the Department of Law Enforcement.

(4) Upon request, an individual whose record has been corrected shall be given the names of all known noncriminal justice agencies to which the data has been given. The correcting agency shall notify all known criminal justice recipients of the corrected information, and those agencies shall modify their records to conform to the corrected record.

FLORIDA

943.057 Access to criminal justice information for research or statistical purposes. The Department of Law Enforcement may provide by rule for access to and dissemination and use of criminal justice information for research or statistical purposes. All requests for records or information in the criminal justice information systems of the department shall require the requesting individual or entity to enter into an appropriate privacy and security agreement which provides that the requesting individual or entity shall comply with all laws and rules governing the use of criminal justice information for research or statistical purposes. The department may charge a fee for the production of criminal justice information hereunder. Such fee shall approximate the actual cost of production. This section shall not be construed to require the release of confidential information or to require the department to accommodate requests which would disrupt ongoing operations beyond the extent required by section 119.07. [A] THIS EXEMPTION IF SUBJECT TO THE OPEN GOVERNMENT SUNSET REVIEW ACT IN ACCORDANCE WITH SECTION 119.14. [A]

943.0575 Public access to records.

Nothing in this act shall be construed to restrict or condition public access to records as provided by s. 119.07.

943.058 Criminal history record expunction or sealing

(1) Notwithstanding statutes dealing more generally with the preservation and destruction of public records, the Department of Law Enforcement, in consultation with the Department of State, may provide, by rule adopted pursuant to chapter 120, for the administrative expunction of any nonjudicial record of arrest made contrary to law or by mistake or when the record no longer serves a useful purpose.

(2) The courts of this state shall continue to have jurisdiction over their own procedures, including the keeping, sealing, expunction, or correction of judicial records containing criminal history information. The courts may order the sealing or expunction of any other criminal history record provided:

(a) The person who is the subject of the record has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation;

(b) The person who is the subject of the record has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the records expunction petition pertains;

(c) The person who is the subject of the record has not secured a prior records expunction or sealing under this section, former s. 893.14, or former s. 901.33; and

(d) Such record has been sealed under this section, former s. 893.14, or former s. 901.33 for at least 10 years; except that, this condition shall not apply in any instance in which an indictment or information was not filed against the person who is the subject of the record.

(3) Notwithstanding subsection (2), criminal history records maintained by the Department of Law Enforcement may be ordered expunged only upon a specific finding by a circuit court of unusual circumstances requiring the exercise of the extraordinary equitable powers of the court. Upon a finding that the criteria set out in paragraphs (2)(a)-(c) have been met, the records maintained by the department may be ordered sealed by any court of competent jurisdiction; and thereafter such records and other records sealed pursuant to this section, former s. 893.14, former s. 901.33, or similar laws, shall be nonpublic records, available only to the subject, his attorney, or to criminal justice agencies for their respective criminal justice purposes. An order sealing criminal history records pursuant to this subsection shall not be construed to require that the records be surrendered to the court, and such records shall continue to be maintained by the department.

(4) In judicial proceedings under subsections (2) and (3), it shall not be necessary to make any agency other than the state a party. The appropriate state attorney shall be served with the petition and shall respond after a review of the petitioner's entire multistate criminal history record. If relief is granted, the clerk of the court shall certify copies of the order to the prosecutor and to the arresting agency. The arresting agency shall be responsible for forwarding the order to the Department of Law Enforcement and to any other agency to which the arresting agency itself disseminated the criminal history record information within the purview of the order. The Department of Law Enforcement shall forward the order to all agencies, including the Federal Bureau of Investigation, to which it disseminated the affected criminal history information. The clerk of the court shall certify a copy of the order to any other agency which the records of the clerk reflect has received the affected criminal history information from the court. A notation indicat-

FLORIDA

ing compliance with an order to expunge may be retained for use thereafter only to confirm the expunction upon inquiry of the ordering court.

(5) Notwithstanding other laws to the contrary, a criminal justice agency may honor laws, court orders, and official requests of other jurisdictions relating to expunction, sealing, correction or confidential handling of criminal history records or information derived therefrom.

(6) The effect of expunction or sealing of criminal history records under this section or other provisions of law, including former ss. S93.14 and 901.33, shall be as follows:

(a) When all criminal history records, including the records maintained by the Department of Law Enforcement and the courts, have been expunged, the subject of such records shall be restored, in the full and unreserved contemplation of the law, to the status occupied before the arrest, indictment, information, or judicial proceedings covered by the expunged record.

(b) When all criminal history records, except for records retained under seal by the courts or the Department of Law Enforcement, have been expunged, the subject of such records may lawfully deny or fail to acknowledge the events covered by the expunged or sealed records except in the following circumstances:

1. When the person who is the subject of the record is a candidate for employment with a criminal justice agency;

2. When the person who is the subject of the record is a defendant in a criminal prosecution;

3. When the person who is the subject of the record subsequently petitions for relief under this section; or

4. When the person who is the subject of the record is a candidate for admission to The Florida Bar.

The courts or the Department of Law Enforcement may refer to and disseminate information contained in sealed records in any of these circumstances. Subject to the exceptions stated herein, no person as to whom an expunction or sealing has been accomplished shall be held thereafter under any provision of law of this state to be guilty of perjury or to be otherwise liable for giving a false statement by reason of such person's failure to recite or acknowledge expunged or sealed criminal history records.

(7) An order or request to expunge or seal a criminal history record shall be deemed an order or request to seek the expunction or sealing of such record by all other agencies and persons known to have received it.

(8) Each petition to a court for sealing or expunction of criminal history records shall be complete only when accompanied by the petitioner's sworn statement that, to the best of his knowledge and belief, he is eligible for such a sealing or expunction.

Added by Laws 1980, c. 80-409, § 11, eff. Oct. 1, 1980.

943.0581 Administrative expunction. Notwithstanding [A] ANY [A] [D] provisions of statutory <D> law dealing generally with the preservation and destruction of public records, the department may provide, by rule adopted pursuant to chapter 120, for the administrative expunction of any nonjudicial record of [A] AN [A] arrest [A] OF A MINOR OR AN ADULT [A] made contrary to law or by mistake.

943.0585. Court-ordered expunction of criminal history records

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

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

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

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

1. Has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

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

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

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

FLORIDA

pending before any court.

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

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

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

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

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction.

3. That the criminal history record does not relate to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or 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 previously been adjudicated guilty of a criminal offense or comparable ordinance violation or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

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

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

FLORIDA

(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 non-compliance. 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. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(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 events 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 Health and Rehabilitative Services 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. 39.076, s. 110.1127(3), s. 393.063(14), s. 394.4572(1) 394.455(20), s. 397.451, s. 402.302(8), s. 402.313(3), s. 409.175(2)(h), s. 415.102(4), s. 415.1075(4), 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

FLORIDA

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. 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.

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. 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.

FLORIDA

Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

943.059. Court-ordered sealing of criminal history records

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

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

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

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

1. Has never previously been adjudicated guilty of a criminal offense or comparable ordinance violation.

2. Has not been adjudicated guilty of any of the charges stemming from the arrest or alleged criminal activity to which the petition pertains.

FLORIDA

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 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 previously been adjudicated guilty of a criminal offense or comparable ordinance violation.

(d) Has not been adjudicated guilty of any of the charges 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. A cause of action does not arise against any criminal justice agency for failure to comply with an order to seal 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. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

(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 Health and Rehabilitative 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. 39.076, s. 110.1127(3), s. 393.063(14), s. 394.4572(1) ~~394.455(20)~~, s. 397.451, s. 402.302(8), s. 402.313(3), s. 409.175(2)(h), s. 415.102(4), s. 415.103, 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.

Section 54. Section 394.471, Florida Statutes, and sections 394.477 and 394.478, Florida Statutes, as amended by chapter 95-148, Laws of Florida, are repealed.

Section 55. For the 1996-1997 fiscal year only, the department shall develop a competitive proposal, in consultation with the Division of Purchasing of the Department of Management Services pursuant to part I of chapter 287, for the purpose of outsourcing the physical-plant operation of facilities owned or leased by the department in at least two service districts, as determined by the department and approved by the Executive Office of the Governor. For purposes of this subsection, the "operation" of such facilities means the management and maintenance of the facilities required for the successful operation of the department, including existing and future physical plants owned or leased by the department. Management and maintenance activities include the maximization of energy efficiency, the management and oversight of existing facilities-related contracts, the development and implementation of sound facilities-management procedures and processes, the optimization of utility usage and real property allocation, and the development and implementation of operational design improvements with the goal of enhancing customer service. Pursuant to s. 216.181, the department may realign fiscal year 1996-1997 budget categories that are used for facilities-management purposes to pay for outsourcing contract activities, including the preparation of a competitive request for proposals and the evaluation of bids, and to reallocate expected facilities-related savings to other departmental activities. In no case shall the cost of outsourcing these activities exceed departmental expenditure levels for equivalent facilities management, operation, and maintenance activities. After 1 year of implementation, the department shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of the legislative appropriations committees, and the minority leaders of both houses which fully assesses the outsourcing effort, including any savings achieved or anticipated. This subsection is repealed on July 1, 1997.

Section 56. This act shall take effect October 1, 1996.

Approved by the Governor May 15, 1996.

Filed in Office Secretary of State May 15, 1996.

FLORIDA

5. Is seeking to be employed or licensed by or to contract with the Department of Health and Rehabilitative 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. 39.076, s. 110.1127(3), s. 393.063(14), s. 394.455(20), s. 397.451, s. 402.302(8), s. 402.313(3), s. 409.175(2)(h), s. 415.102(4), s. 415.103, 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 existence of a 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. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

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 ~~14~~ ¹³ 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~~ ^{chairman} 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 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~~ ⁷ members, to be appointed by the Governor, consisting of ~~2~~ ² sheriffs, ~~2~~ ² police chiefs, ~~1~~ ¹ public defender, ~~1~~ ¹ state attorney, and 1 clerk of the circuit court.

(2) Members appointed by the Governor shall be appointed for terms of 4 years. No appointive member shall serve beyond the time he ceases to hold the office or employment by reason of which he was eligible for appointment to the council. Any member appointed to fill a vacancy occurring because of death, resignation, or ineligibility for membership shall serve only for the unexpired term of his predecessor or until a successor is appointed and qualifies. Any member who, without cause, fails to attend two consecutive meetings may be removed by the Governor.

(3) The council shall annually elect its chairman and other officers. The council shall meet semiannually or at the call of its chairman, at the request of a majority of its membership, at the request of the department, or at such times as may be prescribed by its rules. A majority of the members of the council constitutes a quorum, and action by a majority of the council shall be official.

(4) Membership on the council shall 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. The Legislature finds that the council serves a 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.

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 review proposed rules and operating policies and procedures, and amendments thereto, of the Division of Criminal Justice Information Systems and make recommendations to the executive director which shall be represented in the meeting minutes of the council. In addition, the council shall review proposed policies, rules, and procedures relating to the information system of the Department of Juvenile Justice and make recommendations to the Secretary of Juvenile Justice or designated assistant who shall attend council meetings. ~~The council shall also facilitate the identification, standardization, sharing, and coordination of criminal and juvenile justice data among federal, state, and local agencies.~~ Those recommendations shall relate to the following areas:

~~(a)(1)~~ The management control of criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the department.

~~(b)(2)~~ The installation and operation of criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems by the department and the exchange of such information with other criminal justice agencies of this state and other states, including federal agencies.

(3) The operation and maintenance of computer hardware and software within criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the department.

(4) The operation, maintenance, and use of an automated fingerprint identification system, including interfacing with existing automated systems.

(5) The physical security of the system, to prevent unauthorized disclosure of information contained in the system and to ensure that the criminal justice information in the system is currently and accurately revised to include subsequently revised information.

(6) The security of the system, to ensure that criminal justice information, criminal intelligence information, and criminal investigative information will be collected, processed, stored, and disseminated in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid by unauthorized individuals or agencies.

(7) The purging, expunging, or sealing of criminal justice information upon order of a court of competent jurisdiction or when authorized by law.

(8) The dissemination of criminal justice information to persons or agencies not associated with criminal justice when such dissemination is authorized by law.

(9) The access to criminal justice information maintained by any criminal justice agency by any person about whom such information is maintained for the purpose of challenge, correction, or addition of explanatory material.

(10) The training, which may be provided pursuant to s. 943.25, of employees of the department and other state and local criminal justice agencies in the proper use and control of criminal justice information.

(11) The characteristics, structures, and linkages needed to allow the access and utilization of information among the various state, local, private, and federal agencies, organizations, and institutions in the criminal and juvenile justice system, including, but not limited to, recommendations regarding:

(a) The management control and administration of juvenile justice data and information.

(b) The installation and operation of local area networks.

(c) The installation and operation of statewide area networks.

(d) Electronic mail and file transport.

(e) The operation and maintenance of hardware and software.

(f) Access to juvenile justice information.

(g) The security and integrity of the information system.

(h) Training of information system users and user groups.

(12) Such other areas as relate to the collection, processing, storage, and dissemination of criminal justice information, criminal intelligence information, and criminal justice investigative information, including the development of criteria, policies, and procedures for the standardization of criminal justice data and electronic transmission of such data.

History.—s. 6, ch. 74-386; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 13, ch. 80-409; ss. 2, 3, ch. 81-10; s. 1, ch. 82-46; s. 2, ch. 83-265; s. 5, ch. 85-224; ss. 5, 6, 7, ch. 87-177; s. 5, ch. 91-429; s. 1, ch. 94-99; s. 33, ch. 95-267

**CHAPTER 119
PUBLIC RECORDS**

- 119.01 General state policy on public records. retention schedules established by the records and information management program of the Division of Library and Information Services of the Department of State.
- 119.011 Definitions.
- 119.0115 Videotapes and video signals; exemption from chapter.
- 119.012 Records made public by public fund use.
- 119.02 Penalty.
- 119.021 Custodian designated.
- 119.031 Keeping records in safe places; copying or repairing certified copies.
- 119.041 Destruction of records regulated.
- 119.05 Disposition of records at end of official's term.
- 119.06 Demanding custody.
- 119.07 Inspection, examination, and duplication of records; exemptions.
- 119.072 Criminal intelligence or investigative information obtained from out-of-state agencies.
- 119.08 Photographing public records.
- 119.083 Definitions; copyright of data processing software created by governmental agencies; fees; prohibited contracts.
- 119.085 Remote electronic access to public records.
- 119.09 Assistance of the Division of Library and Information Services, records and information management program, of the Department of State.
- 119.092 Registration by federal employer's registration number.
- 119.10 Violation of chapter; penalties.
- 119.105 Protection of victims of crimes or accidents.
- 119.11 Accelerated hearing; immediate compliance.
- 119.12 Attorney's fees.
- 119.15 Legislative review of exemptions from public meeting and public records requirements.

119.01 General state policy on public records.—

(1) It is the policy of this state that all state, county, and municipal records shall be open for personal inspection by any person.

(2) The Legislature finds that, given advancements in technology, providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, then such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

(3) The Legislature finds that providing access to public records is a duty of each agency and that automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must ensure reasonable access to records electronically maintained.

(4) Each agency shall establish a program for the disposal of records that do not have sufficient legal, fiscal, administrative, or archival value in accordance with

79. Work papers and inter-office memoranda, records subject to inspection

Written appraisal report obtained by county in connection with negotiations for proposed acquisition of property for a landfill site constituted a "public record," even if transaction had not been completed, and must be made available for inspection under this chapter providing for examination and inspection of public records, notwithstanding fact that disclosure of contents of appraisal during negotiations would be harmful to the county. *Gannett Co., Inc. v. Goldtrap*, App., 302 So.2d 174 (1974).

Work papers, work sheets, and papers used in making arithmetic computations or notes, or inter-office correspondence on items or matters under examination, etc., all for the benefit of the auditor, are not "public records" within the purview of this section and access to such information should be denied the public as a matter of public policy. *Op. Atty. Gen.*, 066-88, Sept. 15, 1966.

Temporary records, maps, plats, cards and memoranda, or writings, from which the permanent or final tax assessment roll is prepared, are in the nature of work sheets and are not classified as public records, and,

therefore, would not be subject to the personal inspection of a citizen of Florida as authorized by this section; however, the records, maps, plats, cards and writings of a permanent nature, used from year to year in the preparation of successive tax assessment rolls could be classified as public records and open for public inspection. *Op. Atty. Gen.*, 061-102, June 29, 1961.

80. Private organizations, records subject to inspection

The legislature, in creating the governmental, hospital authority lessor, provided that the agreement to lease was to be consistent with this section and § 286.011, and this included the disclosure provisions so as to require the nonprofit private lessee to disclose its records and make them available to the public under the Public Records Law (this chapter). *Cape Coral Medical Center, Inc. v. News-Press Pub. Co., Inc.*, App., 390 So.2d 1216 (1980).

Public access to financial records of nonpublic organizations in which membership consists solely of elected and appointed officials is not required under the public record laws of Chapter 119. *Op. Atty. Gen.*, 072-184, June 2, 1972.

119.011 Definitions

For the purpose of this chapter:

(1) "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

(2) "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

(3)(a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons

FLORIDA

collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

(b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime;
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.07 (3) (h);
3. The time, date, and location of the incident and of the arrest;
4. The crime charged;
5. Documents given or required by law or agency rule to be given to the person arrested; and
6. Informations and indictments except as provided in s. 905.26.

(d) The word "active" shall have the following meaning:

1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.

2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

(4) "Criminal justice agency" means any law enforcement agency, court, or prosecutor. The term also includes any other agency charged by law with criminal law enforcement duties, or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active crim-

FLORIDA

inal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act,¹ during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties.

¹ Section 895.01 et seq.

119.0115 Videotapes and video signals; exemption from chapter

Any videotape or video signal which, under an agreement with an agency, is produced, made, or received by, or is in the custody of, a federally licensed radio or television station or its agent is exempt from this chapter.

119.012 Records made public by public fund use

If public funds are expended by an agency defined in s. 119.011(2) in payment of dues or membership contributions to any person, corporation, foundation, trust, association, group, or other organization, then all the financial, business and membership records pertaining to the public agency from which or on whose behalf the payments are made, of the person, corporation, foundation, trust, association, group, or organization to whom such payments are made shall be public records and subject to the provisions of s. 119.07.

119.02 Penalty

Any public official who shall violate the provisions of s. 119.07(1) shall be subject to suspension and removal or impeachment and, in addition, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

FLORIDA

119.031 Keeping records in safe places; copying or repairing certified copies

Insofar as practicable, custodians of public records shall keep them in fireproof and waterproof safes, vaults or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any state, county or municipal records are in need of repair, restoration or rebinding, the head of such state agency, department, board or commission, the board of county commissioners of such county or the governing body of such municipality may authorize that the records in need of repair, restoration or rebinding be removed from the building or office in which such records are ordinarily kept for the length of time required to repair, restore or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force and effect of the original.

119.04 Repealed by Laws 1969, c. 69-353, § 59

119.041 Destruction of records regulated

No public official may mutilate, destroy, sell, loan or otherwise dispose of any public record without the consent of the Division of Archives, History and Records Management of the Department of State.

119.05 Disposition of records at end of official's term

Whoever has the custody of any public records shall, at the expiration of his term of office, deliver to his successor, or if there be none, to the Division of Archives, History and Records Management of the Department of State, all records, books, writings, letters and documents kept or received by him in the transaction of his official business.

119.06 Demanding custody

Whoever is entitled to the custody of public records shall demand them from any person having illegal possession of them, who shall forthwith deliver the same to him. Any person unlawfully possessing public records shall upon demand of any person and within 10 days deliver such records to their lawful custodian unless just cause exists for failing to deliver such records.

—S. O. CH. 67-120; S. 733, CH. 30-147.

119.07 Inspection, examination, and duplication of records; exemptions.—

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. The custodian shall furnish a copy or a certified copy of the record upon payment of the fee prescribed by law or, if a fee is not prescribed by law, for duplicated copies of not more than 14 inches by 8½ inches, upon payment of not more than 15 cents per one-sided copy, and for all other copies, upon payment of the actual cost of duplication of the record. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. For purposes of this section, duplicated copies shall mean new copies produced by duplicating, as defined in s. 283.30. The phrase "actual cost of duplication" means the cost of the material and supplies used to duplicate the record, but it does not include the labor cost or overhead cost associated with such duplication. However, the charge for copies of county maps or aerial photographs supplied by county constitutional officers may also include a reasonable charge for the labor and overhead associated with their duplication. Unless otherwise provided by law, the fees to be charged for duplication of public records shall be collected, deposited, and accounted for in the manner prescribed for other operating funds of the agency. An agency may charge up to \$1 per copy for a certified copy of a public record.

(b) If the nature or volume of public records requested to be inspected, examined, or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both. "Information technol-

ogy resources" shall have the same meaning as in s. 282.303(13).

(c) When ballots are produced under this section for inspection or examination, no persons other than the supervisor of elections or the supervisor's employees shall touch the ballots. The supervisor of elections shall make a reasonable effort to notify all candidates by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(2)(a) A person who has custody of a public record and who asserts that an exemption provided in subsection (3) or in a general or special law applies to a particular public record or part of such record shall delete or excise from the record only that portion of the record with respect to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and examination. If the person who has custody of a public record contends that the record or part of it is exempt from inspection and examination, he or she shall state the basis of the exemption which he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute, and, if requested by the person seeking the right under this subsection to inspect, examine, or copy the record, he or she shall state in writing and with particularity the reasons for the conclusion that the record is exempt.

(b) In any civil action in which an exemption to subsection (1) is asserted, if the exemption is alleged to exist under or by virtue of paragraph (c), paragraph (d), paragraph (e), paragraph (k), paragraph (l), or paragraph (o) of subsection (3), the public record or part thereof in question shall be submitted to the court for an inspection in camera. If an exemption is alleged to exist under or by virtue of paragraph (b) of subsection (3), an inspection in camera will be discretionary with the court. If the court finds that the asserted exemption is not applicable, it shall order the public record or part thereof in question to be immediately produced for inspection, examination, or copying as requested by the person seeking such access.

(c) Even if an assertion is made by the custodian of a public record that a requested record is not a public record subject to public inspection and examination under subsection (1), the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request requesting the right to inspect, examine, or copy the record was served on or otherwise made to the custodian of the record by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian shall not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(d) The absence of a civil action instituted for the purpose stated in paragraph (c) will not relieve the custodian of the duty to maintain the record as a public record if the record is in fact a public record subject to pub-

lic inspection and examination under subsection (1) and will not otherwise excuse or exonerate the custodian from any unauthorized or unlawful disposition of such record.

(3)(a) Examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. A person who has taken such an examination shall have the right to review his or her own completed examination.

(b) Active criminal intelligence information and active criminal investigative information are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(c) Any information revealing the identity of a confidential informant or a confidential source is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(d) Any information revealing surveillance techniques or procedures or personnel is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. Any comprehensive inventory of state and local law enforcement resources compiled pursuant to part I, chapter 23, and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to emergencies, as defined in s. 252.34(3), are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution and unavailable for inspection, except by personnel authorized by a state or local law enforcement agency, the office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Department of Community Affairs as having an official need for access to the inventory or comprehensive policies or plans.

(e) Any information revealing undercover personnel of any criminal justice agency is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(f) Any criminal intelligence information or criminal investigative information including the photograph, name, address, or other fact or information which reveals the identity of the victim of the crime of sexual battery as defined in chapter 794; the identity of the victim of the crime of lewd, lascivious, or indecent assault upon or in the presence of a child, as defined in chapter 800; or the identity of the victim of the crime of child abuse as defined by chapter 827 and any criminal intelligence information or criminal investigative information or other criminal record, including those portions of court records and court proceedings, which may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 794, chapter 800, or chapter 827, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(g) Any criminal intelligence information or criminal investigative information which reveals the personal assets of the victim of a crime, other than property

stolen or destroyed during the commission of the crime, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(h) All criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(i)1. The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Health and Rehabilitative Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from the provisions of subsection (1). The home addresses, telephone numbers, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from subsection (1). The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1). The home addresses, telephone numbers, social security numbers, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from subsection (1) and s. 24(a), Art. I of the State Constitution. The home addresses and home telephone numbers of county and municipal code inspectors and code enforcement officers are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. These exemptions are subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

2. An agency that is the custodian of the personal information specified in subparagraph 1. and that is not

the employer of the officer, employee, justice, judge, or other person specified in subparagraph 1. shall maintain the confidentiality of the personal information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for confidentiality to the custodial agency.

(j) Any information provided to an agency of state government or to an agency of a political subdivision of the state for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(k) Any information revealing the substance of a confession of a person arrested is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution, until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition.

(l)1. A public record which was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until the conclusion of the litigation or adversarial administrative proceedings. For purposes of capital collateral litigation as set forth in s. 27.7001, the Attorney General's office is entitled to claim this exemption for those public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

2. This exemption is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney. When asserting the right to withhold a public record pursuant to this paragraph, the agency shall identify the potential parties to any such criminal or civil litigation or adversarial administrative proceedings. If a court finds that the document or other record has been improperly withheld under this paragraph, the party seeking access to such document or record shall be awarded reasonable attorney's fees and costs in addition to any other remedy ordered by the court.

(m) Sealed bids or proposals received by an agency pursuant to invitations to bid or requests for proposals are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of a decision or intended decision pursuant to s. 120.53(5)(a) or within 10 days after bid or proposal opening, whichever is earlier.

(n) When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain all appraisals, other reports relating to value, offers, and counteroffers must be in writing and are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency, at which time the exemption shall expire. The agency shall not finally accept the offer for a period of 30 days in order to allow public review of the transaction. The agency may give conditional acceptance to any option or offer subject only to final acceptance by the agency after the 30-day review period. If a valid option contract is not executed, or if a written offer to sell is not conditionally accepted by the agency, then the exemption from the provisions of this chapter shall expire at the conclusion of the condemnation litigation of the subject property. An agency of the executive branch may exempt title information, including names and addresses of property owners whose property is subject to acquisition by purchase or through the exercise of the power of eminent domain, from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution to the same extent as appraisals, other reports relating to value, offers, and counteroffers. For the purpose of this paragraph, "option contract" means an agreement of an agency of the executive branch of state government to purchase real property subject to final agency approval. This paragraph shall have no application to other exemptions from the provisions of subsection (1) which are contained in other provisions of law and shall not be construed to be an express or implied repeal thereof.

(o) Data processing software obtained by an agency under a licensing agreement which prohibits its disclosure and which software is a trade secret, as defined in s. 812.081, and agency-produced data processing software which is sensitive are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. The designation of agency-produced software as sensitive shall not prohibit an agency head from sharing or exchanging such software with another public agency. As used in this paragraph:

1. "Data processing software" has the same meaning as in s. 282.303(8).
2. "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:
 - a. Collect, process, store, and retrieve information which is exempt from the provisions of subsection (1);
 - b. Collect, process, store, and retrieve financial management information of the agency, such as payroll and accounting records; or
 - c. Control and direct access authorizations and security measures for automated systems.

(p) All complaints and other records in the custody of any unit of local government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, marital status, sale or rental of housing, the provision of brokerage services,

or the financing of housing are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision shall not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency which is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section. This paragraph shall not be construed to modify or repeal any special or local act.

(q) All complaints and other records in the custody of any agency in the executive branch of state government which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding. This provision shall not affect any function or activity of the Florida Commission on Human Relations. Any state or federal agency which is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section.

(r) All records supplied by a telecommunications company, as defined by s. 364.02, to a state or local governmental agency which contain the name, address, and telephone number of subscribers are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(s) Any document which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. Any information not otherwise held confidential or exempt from the provisions of s. 119.07(1) which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution, upon written request by the victim, which must include official verification that an applicable crime has occurred. Such information shall cease to be exempt 5 years after the receipt of the written request. Any state or federal agency which is authorized to have access to such documents by any

provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section.

(t) Any financial statement which an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(u) Where the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(v) Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

(w)1. If certified pursuant to subparagraph 2., an investigatory record of the Chief Inspector General within the Executive Office of the Governor or of the employee designated by an agency head as the agency inspector general under s. 112.3189 is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until the investigation ceases to be active, or a report detailing the investigation is provided to the Governor or the agency head, or 60 days from the inception of the investigation for which the record was made or received, whichever first occurs. Investigatory records are those records which are related to the investigation of an alleged, specific act or omission or other wrongdoing, with respect to an identifiable person or group of persons, based on information compiled by the Chief Inspector General or by an agency inspector general, as named under the provisions of s. 112.3189, in the course of an investigation. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

2. The Governor, in the case of the Chief Inspector General, or agency head, in the case of an employee designated as the agency inspector general under s. 112.3189, may certify such investigatory records require an exemption to protect the integrity of the investigation or avoid unwarranted damage to an individual's good name or reputation. The certification shall specify the nature and purpose of the investigation and shall be kept with the exempt records and made public when the records are made public.

3. The provisions of this paragraph do not apply to whistle-blower investigations conducted pursuant to the provisions of ss. 112.3187, 112.3188, 112.3189, and 112.31895.

(x) The social security numbers of all current and former agency employees which numbers are contained in agency employment records are exempt from subsec-

tion (1) and exempt from s. 24(a), Art. I of the State Constitution. As used in this paragraph, the term "agency" means an agency as defined in s. 119.011.

(y) The audit report of an internal auditor prepared for or on behalf of a unit of local government becomes a public record when the audit becomes final. As used in this paragraph, "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law. An audit becomes final when the audit report is presented to the unit of local government. Audit workpapers and notes related to such audit report are confidential and exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution until the audit is completed and the audit report becomes final.

(4) The exemptions provided for by this section are subject to the Open Government Sunset Review Act in accordance with 's. 119.14.

(5) Nothing in this section shall be construed to exempt from subsection (1) a public record which was made a part of a court file and which is not specifically closed by order of court, except as provided in paragraphs (c), (d), (e), (k), (l), and (o) of subsection (3) and except information or records which may reveal the identity of a person who is a victim of a sexual offense as provided in paragraph (f) of subsection (3).

(6) An exemption from this section does not imply an exemption from or exception to s. 286.011. The exemption from or exception to s. 286.011 must be expressly provided.

(7) Nothing in subsection (3) or any other general or special law shall limit the access of the Auditor General or any state, county, municipal, university, board of community college, school district, or special district internal auditor to public records when such auditor states in writing that such records are needed for a properly authorized audit or investigation. Such auditor shall maintain the confidentiality of any public records that are confidential or exempt from the provisions of subsection (1) and shall be subject to the same penalties as the custodians of those public records for violating confidentiality.

(8)(a) Any person or organization, including the Department of Health and Rehabilitative Services, may petition the court for an order making public the records of the Department of Health and Rehabilitative Services that pertain to investigations of alleged abuse, neglect, abandonment, or exploitation of a child, a disabled adult, or an elderly person. The court shall determine if good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interest of the disabled adult, elderly person, or child who is the focus of the investigation, and in the case of the child, the interest of that child's siblings, together with the privacy right of other persons identified in the reports against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the

actions of the Department of Health and Rehabilitative Services and the court system in providing disabled adults, elderly persons, and children of this state with the protections enumerated in ss. 415.101 and 415.502. However, nothing in this subsection shall contravene the provisions of ss. 415.51 and 415.107, which protect the name of any person reporting the abuse, neglect, or exploitation of a child, a disabled adult, or an elderly person.

(b)1. In cases involving the death of a disabled adult or an elderly person as the result of abuse, neglect, or exploitation, there shall be a presumption that the best interest of the disabled adult or elderly person and the public interest will be served by full public disclosure of the circumstances of the investigation of the death and any other investigation concerning the disabled adult or elderly person.

2. In cases involving the death of a child as the result of abuse, neglect, or abandonment, there shall be a presumption that the best interest of the child and the child's siblings and the public interest will be served by full public disclosure of the circumstances of the investigation of the death of the child and any other investigation concerning the child and the child's siblings.

(c) In cases involving serious bodily injury to a child, a disabled adult or an elderly person, the Department of Health and Rehabilitative Services may petition the court for an order for the immediate public release of records of the department which pertain to the investigation of abuse, neglect, abandonment, or exploitation of the child, disabled adult, or elderly person who suffered serious bodily injury. The petition must be personally served upon the child, disabled adult, or elderly person, the child's parents or guardian, the legal guardian of that person, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, abandonment, or exploitation. The court must determine if good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, from the date the department filed the petition with the court. If the court has neither granted nor denied the petition within the 24-hour time period, the department may release to the public summary information including:

1. A confirmation that an investigation has been conducted concerning the alleged victim.

2. The dates and brief description of procedural activities undertaken during the department's investigation.

3. The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceedings, and the rulings of the court.

The summary information may not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the disabled adult or elderly person or child who is the focus of the investigation and, in the case of the child, the interests of that child's siblings, together with the privacy rights of other persons identified in the reports against the public inter-

FLORIDA

est for access to public records. However, nothing in this paragraph shall contravene the provisions of ss. 415.51 and 415.107, which protect the name of any person reporting abuse, neglect, or exploitation of a child, a disabled adult, or an elderly person.

(d) In cases involving the death of a child or a disabled adult or an elderly person, the Department of Health and Rehabilitative Services may petition the court for an order for the immediate public release of records of the department which pertain to the investigation of abuse, neglect, abandonment, or exploitation of the child, disabled adult, or elderly person who died. The department must personally serve the petition upon the child's parents or guardian, the legal guardian of the disabled adult or elderly person, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, abandonment, or exploitation. The court must determine if good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, from the date the department filed the petition with the court. If the court has neither granted nor denied the petition within the 24-hour time period, the department may release to the public summary information including:

1. A confirmation that an investigation has been conducted concerning the alleged victim.
2. The dates and brief description of procedural activities undertaken during the department's investigation.
3. The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceedings, and the ruling of the court.

In making a determination to release confidential information, the court shall balance the best interests of the disabled adult or elderly person or child who is the focus of the investigation and, in the case of the child, the interest of that child's siblings, together with the privacy right of other persons identified in the reports against the public interest. However, nothing in this paragraph shall contravene the provisions of ss. 415.51 and 415.107, which protect the name of any person reporting abuse, neglect, or exploitation of a child, a disabled adult, or an elderly person.

(e) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of and other identifying information with respect to any person identified in any unfounded report or proposed confirmed report or report closed without classification, or in any report that has not yet been classified pursuant to s. 415.1045(7) or 2s. 415.504(4), until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, neglect, or abandonment.

(9) The provisions of this section are not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution or in collateral postconviction proceedings. This section may not be used by any inmate as the basis for failing to timely litigate any postconviction action.

Section 5. Subsections (3), (4), (5), and (6) of section 921.141, Florida Statutes, are amended to read:

**119.072 Criminal intelligence or investigative information
obtained from out-of-state agencies**

Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency.

119.08 Photographing public records

(1) In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public record, instruments or documents, any person shall hereafter have the right of access to said records, documents or instruments for the purpose of making photographs of the same while in the possession, custody and control of the lawful custodian thereof, or his authorized deputy.

(2) Such work shall be done under the supervision of the lawful custodian of the said records, who shall have the right to adopt and enforce reasonable rules governing the said work. Said work shall, where possible, be done in the room where the said records, documents or instruments are by law kept, but if the same in the judgment of the lawful custodian of the said records, documents or instruments be impossible or impracticable, then the said work shall be done in such other room or place as nearly adjacent to the room where the said records, documents and instruments are kept as determined by the lawful custodian thereof.

(3) Where the providing of another room or place is necessary, the expense of providing the same shall be paid by the person desiring to photograph the said records, instruments or documents. While the said work hereinbefore mentioned is in progress, the lawful custodian of said records may charge the person desiring to make the said photographs for the services of a deputy of the lawful custodian of said records, documents or instruments to supervise the same, or for the services of the said lawful custodian of the same in so doing at a rate of compensation to be agreed upon by the person desiring to make the said photographs and the custodian of the said records, documents or instruments, or in case the same fail to agree as to the said charge, then by the lawful custodian thereof.

the office of such custodian. Op. Atty.Gen., 057-280, Sept. 17, 1957.

Though former § 119.03 (see, now, this section) seemed to authorize custodian of public records to agree with persons procuring microfilm negatives of public records as to compensation to be paid therefor, compensation to be charged should be approved by board of county commissioners, and compensation should be such as would fully compensate custodian for his time, for use of county facilities and equipment, and electricity and other things necessary. Id.

Where abstract companies or title companies use electricity of county for operation of electrical equipment to photograph public records in office of clerk of circuit court, a reasonable fee may be collected from such companies for the electricity used. Op. Atty.Gen., 057-240, Aug. 12, 1957.

3. Court records and files—in general

A Florida citizen or a Florida corporation, acting through its representatives, if also Florida citizens, may, pursuant to this section, photograph worthless check affidavits or warrants on file in the office of a justice of the peace, under such rules and upon payment of such compensation as may be prescribed by the custodian thereof. Op. Atty.Gen., 072-413, Nov. 29, 1972.

4. — Juvenile court records

Subject to the approval of the records screening board, which board was empowered by former § 119.04 (now, this section) to specify which records shall be photographed prior to their destruction, the juvenile courts had authority to destroy all records pertaining to a child, except the records which permanently sever the custody of a child from its parents, which records must be preserved permanently as required by subsection 2 of § 39.12. Op. Atty.Gen., 062-56, April 20, 1962.

5. Insurance rate information

Under former § 119.03, (see, now, this section) the representatives of one insurance company could be allowed to make photographs of the rate information filed with the commissioner by another company in compliance with former § 630.03 (see, now, chapter 627, part 1). Op. Atty. Gen., 1952, p. 658.

6. Maps and plats

Maps and plats purchased and used by the tax assessing offices do not become public property for general reproduction, sale and use so long as the copyright or common law rights remain. Op. Atty.Gen., 060-112, June 30, 1960.

119.09 Assistance of the Division of Archives, History and Records Management of the Department of State

The Division of Archives, History and Records Management of the Department of State shall have the right to examine into the condition of public records and shall give advice and assistance to public officials in the solution of their problems of preserving, creating, filing and making available the public records in their custody. When requested by the division, public officials shall assist the division in the preparation of an inclusive inventory of public records in their custody to which shall be attached a schedule, approved by the head of the governmental unit or agency having custody of the records and the division, establishing a time period for the retention or disposal of each

FLORIDA

series of records. Upon the completion of the inventory and schedule, the division shall (subject to the availability of necessary space, staff and other facilities for such purposes) make available space in its records center for the filing of semicurrent records so scheduled and in its archives for noncurrent records of permanent value and shall render such other assistance as needed, including the microfilming of records so scheduled.

119.092 Registration by federal employer's registration number

Each state agency which registers or licenses corporations, partnerships, or other business entities shall include, by July 1, 1978, within its numbering system, the federal employer's identification number of each corporation, partnership, or other business entity registered or licensed by it. Any state agency may maintain a dual numbering system in which the federal employer's identification number or the state agency's own number is the primary identification number; however, the records of such state agency shall be designed in such a way that the record of any business entity is subject to direct location by the federal employer's identification number. The Department of State shall keep a registry of federal employer's identification numbers of all business entities, registered with the Division of Corporations, which registry of numbers may be used by all state agencies.

119.10 Violation of chapter a misdemeanor

Any person willfully and knowingly violating any of the provisions of this chapter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

119.11 Accelerated hearing; immediate compliance

(1) Whenever an action is filed to enforce the provisions of this chapter, the court shall set an immediate hearing, giving the case priority over other pending cases.

(2) Whenever a court orders an agency to open its records for inspection in accordance with this chapter, the agency shall comply with such order within 48 hours, unless otherwise provided by the court issuing such order, or unless the appellate court issues a stay order within such 48-hour period. The filing of a notice of appeal shall not operate as an automatic stay.

(3) A stay order shall not be issued unless the court determines that there is substantial probability that opening the records for inspection will result in significant damage.

119.12 Attorney's fees

(1) Whenever an action has been filed against an agency to enforce the provisions of this chapter and the court determines that such agency unreasonably refused to permit public records to be inspected, the court shall assess a reasonable attorney's fee against such agency.

(2) Whenever an agency appeals a court order requiring it to permit inspection of records pursuant to this chapter and such order is affirmed, the court shall assess a reasonable attorney's fee for the appeal against such agency.

FLORIDA

Florida Rules

CRIME INFORMATION BUREAU

CH. 11C-4

RULES OF THE DEPARTMENT OF LAW ENFORCEMENT

DIVISION OF CRIMINAL JUSTICE INFORMATION SYSTEMS

CHAPTER 11C-4 CRIME INFORMATION BUREAU; CRIMINAL HISTORY RECORDS; FINGERPRINTING AND REPORTS

11C-4.01	Bureau Chief.
11C-4.02	Duties of Bureau.
11C-4.03	Arrest Fingerprint Card Submission.
11C-4.04	Identification Manual.
11C-4.05	Deceased Notification Submission.
11C-4.06	Final Disposition Reporting.
11C-4.07	Juvenile Offender Fingerprinting; Records.

11C-4.01 Bureau Chief. The Crime Information Bureau is supervised by a Bureau Chief under the direction of the Division Director, Executive Director and the Governor and Florida Cabinet.
Specific Authority 120.53, 943.03, 943.05 FS. Law Implemented 20.04, 20.05, 20.201, 120.53, 943.03, 943.05 FS. History—New 11-28-75.

11C-4.02 Duties of Bureau.

(1) The Crime Information Bureau maintains criminal histories as to non-juvenile offenders in Florida.

(2) It serves as a screening point for dissemination of criminal history record information contained in the files of the Florida Crime Information Center and the National Crime Information Center.

(3) It expunges or seals individual records of criminal history pursuant to federal and state law and regulations and carries out orders of court in this regard.

(4) It maintains a non-public juvenile file for identification purposes only and a confiscated weapons file for audit purposes only.

(5) When authorized by law and federal regulations, it assists licensing and regulatory agencies in the screening of applicants for licenses, permits, and the like.

Specific Authority 120.53, 943.03, 943.05 FS. Ch. 1, Title 28, U. S. C. and C. F. R. Law Implemented 20.201, 120.53, 943.03, 943.05 FS. Ch. 1, Title 28, U. S. C. and C. F. R. History—New 11-28-75, Amended 6-27-78.

11C-4.03 Arrest Fingerprint Card Submission. In order for the Department to properly carry out those mandates in Section 943.05, Florida Statutes, pertaining to the establishment and maintenance of criminal histories based on positive identification using fingerprint comparison, all law enforcement agencies of the State shall take the following action on all misdemeanor and felony arrests made:

(1) Complete at the time of arrest, as outlined in the Department's Identification Manual and on forms provided by the Department, a criminal arrest fingerprint card.

(2) Submit on a daily basis all completed fingerprint cards to the Department, attention: Crime Information Bureau, using procedures as outlined under the "Single Fingerprint Card Submission Program", in the Department's Identification Manual.

(3) The only exceptions to the foregoing requirements shall be that charges regarding drunkenness and minor traffic offenses as well as charges made the subject of a field citation under statutes such as Section 901.28, Florida Statutes, need not be submitted to the Department unless, of course, the arresting agency requires a criminal history check or major charges are associated with such charges.

(4) Charges regarding "minor traffic offenses" do not include:

- (a) Driving while intoxicated;
- (b) Leaving the scene of an accident;
- (c) Fleecing or attempting to elude a police officer;
- (d) Making a false accident report;
- (e) Reckless driving;
- (f) Other offenses against the traffic and motor vehicle laws which have not been decriminalized.

Specific Authority 943.03, 943.05 FS. Law Implemented 943.05 FS. History—New 6-24-76, Amended 6-27-78

11C-4.04 Identification Manual.

(1) The Department publishes an Identification Manual to assist and advise agencies in the taking and proper submission of fingerprint cards. The Identification Manual also contains exhibits of other forms that can be used by local agencies in submitting and requesting criminal history record information.

(2) The criminal justice community shall be provided with updates and/or changes to the Identification Manual by the Department as they are needed.

Specific Authority 120.53, 943.03, 943.05 FS. Law

Implemented 120.53, 943.05 FS. History—New 6-24-76, Amended 6-27-78.

11C-4.05 Deceased Notification Submission.

(1) The cognizant law enforcement agency shall submit a set of fingerprints on unknown deceased individuals to the Department for the purpose of positive identification.

(2) If agencies are unable to print the deceased or furnish a previous set of prints, they shall submit to the Department of F. B. I. R-88 Death Notification form, furnishing as much information on the deceased as possible. *Specific Authority 943.03, 943.05 FS. Law Implemented 943.05 FS. History—New 6-24-76.*

11C-4.06 Final Disposition Reporting.

(1) In order for the Department to properly carry out those mandates set forth in sections 943.05, Chapter 1, Title 28, Part 20, C. F. R. and 42 U. S. C. 3371 in regard to the establishment and maintenance of current, complete, and accurate criminal histories, agencies, offices and officers in the Florida criminal justice community shall, to the maximum extent feasible, submit disposition data on criminal arrests, pretrial dispositions, trials, sentencing, confinement, parole and probation.

(2) Agencies, offices, and officers in the Florida criminal justice community operating a manual system for the submission of disposition data shall report such data in the following manner:

(a) Agencies, officers, and offices shall, to the maximum extent feasible, submit disposition data to the Department for each arrest as soon as the charge(s) receive a final disposition. Responsibility for completing and forwarding the final disposition report to the Department may reside with an arresting agency, prosecuting authority or clerk of the court, according to arrangements agreed upon by appropriate authorities within each county or municipality.

(3) Agencies, offices, and officers in the Florida criminal justice community possessing the technical requirements to collect, process, store, and disseminate disposition data in an automated information management system may submit disposition information to the Department in an automated format as approved by the Director of the Division of Criminal Justice Information Systems.

(4) Although interim transactions (i.e., turned over to, held for, pending) should be indicated in the designated area of the fingerprint card but not made the subject of a disposition report, it is essential that final disposition reports as more fully described in Chapter 1, Title 28, C. F. R. 20.3(e), be submitted within 90 days after the final disposition occurs.

(5) If within 180 days after an arrest no disposition report to the Department has been made, the Department shall notify the arresting agency and request a disposition report. The arresting agency may forward the notice to the agency responsible for responding to the Department's request according to arrangements agreed upon by appropriate authorities within each county or municipality. Thereafter the responsible agency shall provide such disposition report within 30 days.

Specific Authority 943.03, 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.052 FS (1980 Supp.). History—New 6-24-76, Amended 11-12-81.

11C-4.065 Orders of Executive Clemency; Disposition.

(1) When it appears that an individual has obtained any form of executive clemency by order of the Governor and the cabinet, such clemency shall be treated by the Department as a final disposition. It shall be the responsibility of the individual to forward to the Department a copy of the order together with a fingerprint card for assurance of positive identification.

(2) Individuals seeking expunction of affected criminal history records based upon unconditional or full pardons must first obtain the appropriate circuit court order as provided by applicable Florida law. It shall be responsibility of the individual to forward to the Department those documents identified in subsection (1) of this section.

Specific Authority 943.03, 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.058 FS (1980 Supp.). History—New 11-12-81.

11C-4.07 Juvenile Offender Fingerprinting; Records.

(1) Notwithstanding other provisions of this rule chapter, minors shall be fingerprinted and processed in accordance with this rule and Chapter 39, Florida Statutes.

(2) Irrespective of the gravity of an alleged offense, fingerprints of minors shall not be used to create an adult criminal history or arrest record unless and until the minor is transferred for prosecution as an adult in accordance with Section 39.02 and 39.09, Florida Statutes.

(3) Fingerprint cards and records relating to juvenile offenders and delinquent children shall not be open for public inspection except as authorized by Chapter 39, Florida Statutes, and shall not be commingled with fingerprint cards and records relating to adult offenders.

(4) Upon discovery that fingerprints of an alleged or adjudicated juvenile offender or delinquent have been mistakenly or improperly filed or forwarded to the Department of Law Enforcement for processing and retention as adult criminal history records or upon discovery that fingerprints of an adult have mistakenly or improperly been processed or filed as those of an alleged or adjudicated juvenile offender or delinquent, the agency making such discovery shall initiate corrective steps to insure that the requirements of law, including those contained in these rules, have been met. These corrective steps may appropriately include, but are not necessarily limited to:

(a) Fingerprinting or refingerprinting of subjects still in custody;

(b) Notification to all agencies known to have improperly received the information or to have received improper information or instructions;

(c) Removal of fingerprint cards and records from the adult criminal record system and files and reentry of such information into

the juvenile offender system and files (or vice versa);

(d) Transfer of fingerprint cards and records from one agency to another;

(e) Expunction of annotations and other cross-references to meet the requirements of law or to comply with orders of court;

(f) Commencement of judicial proceedings necessary to accomplish any of the foregoing or to otherwise correct the mistake.

(5) This rule shall not be deemed authority for noncompliance with orders of court regarding juvenile offender records or adult criminal history records. However, when it appears that in formulating orders in regard to juvenile offender or adult criminal history records, the court has been misinformed, then the court or prosecutor shall be so advised and clarification of the order shall be requested. Thereafter, action shall be taken in accordance

with the order as modified, rescinded or affirmed. If no clarification is forthcoming within a reasonable time, action shall be taken in accordance with the original order.

(6) Because of the sensitivity of these matters, steps should be taken to ascertain the validity of correspondence. To this end, officers in charge of agencies are urged to attend to these matters personally or to designate in advance those officers who will otherwise attend to these matters on their behalf. The exchange of sample signatures is recommended.

Specific Authority 943.03(3), 943.05(2)(a) FS. Law Implemented 39.02(5)(a), 39.03(6), 39.09(2), 39.12, 943.05(2)(a), 943.08(1), 943.08(3), 943.08(4), 943.08(5), 943.08(7) FS. Ch. 1, Title 28, Section 20.21(d), C. F. R., 1969 AGO 277 No. 070-75. History—New 12-9-76.

**RULES
OF THE
DEPARTMENT OF LAW
ENFORCEMENT**

**DIVISION OF CRIMINAL JUSTICE
INFORMATION SYSTEMS**

**CHAPTER 11C-5
CRIMINAL JUSTICE INFORMATION
SYSTEMS COUNCIL**

- 11C-5.01 Creation, Membership, Terms, Compensation.
- 11C-5.02 Powers and Duties of Council.

11C-5.01 Creation, Membership, Terms, Compensation.

(1) The Criminal Justice Information Systems Council is created within the Department of Law Enforcement.

(2) The membership is comprised of the Attorney General or a designated assistant, the Secretary of The Department of Corrections; the Chairman of the Parole and Probation Commission, the State Courts Administrator, and six other members appointed by the Governor, consisting of two sheriffs, two police chiefs, one public defender and one state attorney.

(3) The terms and compensation of the members, the method of electing a chairman and other officers, etc. are described with particularity in section 943.06, Florida Statutes.

Specific Authority 120.53, 943.03, 943.05 FS. Law Implemented 943.08 FS. History—New 11-28-75, Amended 11-12-81.

11C-5.02 Powers and Duties of Council.
The Council shall review operating policies and procedures and make recommendations to the Executive Director of the Department of Law Enforcement relating to:

(1) The management control of criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the Department of Law Enforcement;

(2) The installation of criminal justice information systems, and criminal intelligence information systems, and criminal investigative information systems by the Department of Law Enforcement and the exchange of information by such systems

within the state and with similar systems and criminal justice agencies in other states and in the Federal Government;

(3) The exchange of criminal justice information and criminal intelligence information and the operation of criminal justice information systems and criminal intelligence information systems, both interstate and intrastate;

(4) The operation and maintenance of computer hardware and software within criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems maintained by the Department;

(5) The physical security of the system, to prevent unauthorized disclosure of information contained in the system and to insure that the criminal justice information in the system is currently and accurately revised to include subsequently revised information;

(6) The security of the system, to insure that criminal justice information, criminal intelligence information, and criminal investigative information will be collected, processed, stored, and disseminated in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid by unauthorized individuals or agencies;

(7) The purging or sealing of criminal justice information upon order of court of competent jurisdiction or when required by law;

(8) The dissemination of criminal justice information to persons or agencies outside the criminal justice community if authorized by law;

(9) The access to criminal justice information maintained for the purpose of challenge, correction, or addition of explanatory material;

(10) The training of employees of the Department and other state and local criminal justice agencies in the proper use and control of criminal justice information; and

(11) Such other areas as may relate to the collection, processing, storage, and dissemination of criminal justice information, criminal intelligence information, and criminal investigative information.

Specific Authority 120.53, 943.03 FS, 943.05 FS (1980 Supp.). Law Implemented 943.08 FS (1980 Supp.). History—New 11-28-75, Amended 11-12-81.

**RULES
OF THE
DEPARTMENT OF LAW
ENFORCEMENT**

**DIVISION OF CRIMINAL JUSTICE
INFORMATION SYSTEMS**

**CHAPTER 11C-6
CRIMINAL HISTORY RECORDS
DISSEMINATION POLICY**

- 11C-6.01 Posture of Department and Other Agencies.
11C-6.02 Present Policy.
11C-6.03 System Security and Public Access.
11C-6.04 Procedures for Requesting Criminal History Records.

11C-6.01 Posture of Department and Other Agencies.

(1) The Department receives funding from the Law Enforcement Assistance Administration of the U. S. Department of Justice and is therefore subject to federal regulations contained in Ch. 1, Title 28, Subpart 20B, C. F. R.

(2) The Department utilizes the services of U. S. Department of Justice criminal history record information systems and therefore must abide by and demand adherence to federal dissemination policy when using such services. The federal policy is contained in Ch. 1, Title 28, Subpart 20C, C. F. R.

(3) Most criminal justice agencies and some non-criminal justice agencies in Florida are themselves similarly situated. Moreover, any person or agency receiving criminal justice information directly from this Department or indirectly through any of these other agencies is subject to Ch. 1, Title 28, Subpart 20B, C. F. R., and will additionally be subject to Ch. 1, Title 28, Subpart 20C, if such information was derived from the criminal justice information systems of the United States Department of Justice.

Specific Authority 120.53, 943.03 FS. Ch. 1, Title 28, Part 20, C. F. R. Law Implemented 120.53, 943.05 FS. Ch. 1, Title 28, Part 20, C. F. R. History—New 6-24-76.

11C-6.02 Present Policy.

(1) Pending legislative or judicial direction to the contrary and to the maximum extent that it may act consistent with Chapter 119, Florida Statutes, the Department adopts by reference the definitions contained in Ch. 1, Title 28, Subpart 20A, C. F. R., and will make and

hereby authorized disseminations to the fullest extent authorized under Ch. 1, Title 28, Subpart 20B and Ch. 1, Title 28, Subpart 20C, C. F. R., also incorporated herein by reference.

(2) Ch. 1, Title 28, Part 20, C. F. R., was published in the Federal Register, Vol. 40, No. 98, dated Tuesday, May 20, 1975. Significant amendments thereto were published in the Federal Register, Vol. 41, No. 55, dated Friday, March 19, 1976. These regulations have been filed with The Florida Department of State.

(3) In order for the Department to respond to requests for Florida criminal history information, the person or entity who wishes to review or secure such information shall provide to the Department the subject's full name and approximate age or date of birth. If available, the social security number, completed fingerprint card, and any other identifiers shall be provided.

Specific Authority 943.03, 943.05 FS. Law Implemented 943.05, 943.08 FS. Ch. 1, Title 28, Part 20, Sections 20.20, 20.21 and 20.33, C. F. R. History—New 6-24-76.

11C-6.03 System Security and Public Access.

(1) Not all criminal history records contained in or available through the record systems of the Florida Department of Law Enforcement are available to the public under the Florida Public Records Law. (e.g., records sealed under Section 893.14, F. S., or derived from the Federal Bureau of Investigation criminal history record systems). And because federal and state privacy and security laws, rules and regulations preclude members of the public from personally making searches of the criminal history systems and records of the department, searches for criminal history records shall be conducted only by personnel of the department and those criminal justice agencies having access thereto through secure remote terminals.

(2) Personnel conducting such searches shall insure that copies of records made available to the public contain no information deemed confidential by law.

(3) Depending upon whether the request for a record check is in writing or accompanied by a properly executed fingerprint card and upon the results of the record check, the letter of request, fingerprint card, and/or record will be returned bearing one of the following notations:

(a) "Subject identical with subject of attached Florida Department of Law Enforcement record number _____."

(b) "Based on the information provided,

subject of attached Florida Department of Law Enforcement record number(s) _____, may be the same as your subject."

(c) "Because the information provided is inadequate, the subject inquired upon cannot be associated with any individual having a record in the criminal history record systems of the Florida Department of Law Enforcement."

(d) "Based upon the information provided, you are advised that the subject has no criminal history records in the systems of the Florida Department of Law Enforcement."

(4) Copies of records made available to the public pursuant to the Florida Public Records Law shall be prominently annotated to indicate whether the record is based upon positive identification using fingerprints and shall be signed and dated by the processing technician.

(5) The public is advised that criminal history record checks conducted without the use of fingerprint identification procedures are unreliable. Moreover, the record provided may be inaccurate or incomplete due to the failure of an agency to make a report or because portions of the record are sealed, have been expunged, or are otherwise unavailable except to certain law enforcement or criminal justice agencies under state or federal law.
Specific Authority 120.53(1), 943.03(3), 943.05(2) FS. Law Implemented 119.07, 120.53(1), 943.05(2), 943.08(3), 943.08(5), 943.08(7) FS. Ch. 1, Title 28, Section 20.21(f), C. F. R. History—New 12-9-76.

ANNOTATIONS

Public access

Investigatory records and materials compiled by State Attorney's Office prior to trial of criminal case pursuant to its statutory investigatory or prosecutorial duties, F. S. A. §§ 27.02, 27.03, 27.04, 27.255, are confidential pursuant to "police secrets" rule and therefore exempted from public inspection under Public Records Law, prior to and following prosecution and final judgment unless such information or materials become part of public record of trial, where such records and materials contain information which, if released publicly, would burden effective law enforcement. "Police secrets" rule does not exempt records such as arrest records, autopsy reports, business records, copies of informations and indictments, and like. These records are public records subject to public inspection under F. S. A. Ch. 119, unless specific exemption exists by statute. Op. Atty. Gen., 076-156, August, 1976.

11C-6.04 Procedures for Requesting Criminal History Records.

(1) Requests for Florida criminal history records contained in the systems of the Florida Department of Law Enforcement are to be directed to the following address:

Florida Department of Law Enforcement
 Post Office Box 1489, Tallahassee, Florida
 32302

Attn: Crime Information Bureau

(2) The request will be subject to processing in the following declining order of priorities:

(a) Requests from law enforcement and criminal justice agencies for criminal justice purposes, including criminal justice agency applicant processing;

(b) Requests for a personal record review pursuant to 11C-8.01, FAC;

(c) Requests from the Judicial Qualifications Commission, the Governor, and the President of the Senate relating to the appointment of officers;

(d) Requests from non-criminal justice agencies having specific statutory authority to receive this information;

(e) Requests from other governmental agencies relying upon the Public Records Law (Ch. 119, F. S.);

(f) Requests from private individuals relying upon the Public Records law.

(3) There shall be no charge for producing records under subsections 11C-6.04(2)(a) through 11C-6.04(2)(c). A duplicating fee of \$2. shall be charged for each subject inquired upon under subsections 11C-6.04(2)(d) through 11C-6.04(2)(f) unless the Executive Director of the Department determines that dissemination of the record in the premises would be in the interest of law enforcement or criminal justice or if the fee is otherwise legally waivable.

(4) The duplication fee of \$2. shall not be deemed tendered by a non-governmental agency until actual receipt and acceptance thereof by the department. Personal checks will not be accepted.

Specific Authority 120.53(1), 943.03(3), 943.05(2) FS. Law Implemented 114.05(2), 119.07, 943.03(5)(a), 942.05(2), 943.08(5), 943.08(7) FS. 524(b) Pub. L. 93-83; Ch. 1, Title 28, Section 20.21(g)(1), C. F. R., Art. V, Section 12(e), Art. IV, Section 1(a), Fla. Const. History—New 12-30-76.

FLORIDA

THE FULL TEXT OF THE PROPOSED RULE AMENDMENT IS:

11C-6.04 Procedures for Requesting Criminal History Records.

(1) Requests for Florida criminal history records contained in the systems of the Florida Department of Law Enforcement are to be directed to the following address:

Florida Department of Law Enforcement

Division of Criminal Justice Information Systems

Post Office Box 1489

Tallahassee, Florida 32302

[Attn: Crime Information Bureau]

(2) No Change

(3) There shall be no charge for [producing records] conducting record checks under subsections 11C-6.04 (2) (a) through 11C-6.04 (2) (c). A [duplicating] processing fee of [\$2.] \$5. shall be charged for each subject inquired upon under subsections 11C-6.04 (2) (d) through 11C-6.04 (2) (f) unless the Executive Director of the Department determines that [dissemination of the record in the premises] conducting the record check would be in the interest of law enforcement or criminal justice or if the fee is otherwise legally [waiverable.] waivable.

(4) The [duplication] processing fee of [\$2.] \$5. shall not be deemed tendered by a non-governmental agency until actual receipt and acceptance thereof by the Department. Personal checks will not be accepted.

Specific Authority 120.53(1), 943.03(3), 943.05(2), F.S.

Law Implemented 114.05(2), 119.07, 943.03(5)(a), 943.05(2),

943.08(5), 943.08(7), F.S. 524(b) Pub. L. 93-83, Ch 1, Title 28,

Section 20.21(g)(1), D.F.R., Art. V, Section 12(e), Art. IV,

Section 1(a), Fla. Const. History - New 12-30-76, Amended

CH. 11C-6

DEPARTMENT OF LAW ENFORCEMENT

**RULES
OF THE
DEPARTMENT OF LAW
ENFORCEMENT**

**DIVISION OF CRIMINAL JUSTICE
INFORMATION SYSTEMS**

**CHAPTER 11C-6
CRIMINAL HISTORY RECORDS
DISSEMINATION POLICY**

- 11C-6.05 Access to Criminal Justice Information for Research or Statistical Purposes.
- 11C-6.06 Facsimile Transmission.
- 11C-6.07 Record Validation.
- 11C-6.08 User Agreements.

11C-6.05 Access to Criminal Justice Information for Research or Statistical Purposes.

(1) Each request of the Department of Law Enforcement for criminal justice information for research or statistical purposes shall be processed through the Director's Office of the Division of Criminal Justice Information Systems.

(2) All requests shall be made in writing and directed to:

Florida Department of Law Enforcement
Division of Criminal Justice Information Systems
Director's Office
Post Office Box 1489
Tallahassee, Florida 32302

(a) A request shall contain the name, address, and telephone number of the applicant; a brief description of the project; the type of criminal justice information desired; and the intended use for the criminal justice information.

(3) Requests shall be processed on a priority basis for:

- (a) Criminal Justice Agencies;
- (b) Other government agencies with statutory authority to conduct research or statistical projects to advance knowledge in the administration of criminal justice;
- (c) Noncriminal Justice Government Agencies;
- (d) Private Corporations and private individuals.

(4) The request will be evaluated by the Director of the Division of Criminal Justice Information Systems or his designated assistant for the feasibility of complying.

(5) If criminal justice information cannot be provided to the applicant as requested,

written notice will be forwarded to the applicant within 21 days after receipt of the request, explaining why it is not possible.

(6) If the request can be met, written notice will be forwarded to the applicant within 21 days after receipt of the request along with a systems request form and a privacy and security agreement.

(a) The systems request form is prepared by the Division of Criminal Justice Information Systems and is to be utilized by the applicant to describe the type of information desired from the Department's criminal justice information system.

(b) The privacy and security agreement is prepared by the Division of Criminal Justice Information Systems and is to be utilized by the Division to assure that criminal justice information disseminated for use in a research or statistical project is used only for the purpose stated in the original request.

(7) The privacy and security agreement and systems request form should be completed and returned to the Division of Criminal Justice Information Systems. The Division will complete the request as soon as practical upon receipt of the documents. At which time, the information can be obtained in person or will be forwarded to the applicant.

(8) Criminal justice information which has been sealed upon order of a court of competent jurisdiction will be disseminated in accordance with applicable law.

(9) Each applicant requesting criminal justice information for research or statistical purposes shall be assessed a fee based on:

(a) Procedures as described in subsection 11C-6.04(3), F. A. C., or

(b) Data processing support requirements including but not limited to:

1. Salaries of required computer programming personnel, at the overtime rate, to develop and validate an extraction program;
2. Extraction time required to obtain the criminal justice information from the computer file(s) or for other special processing requirements; and
3. Print time required to reproduce the criminal justice information in hardcopy form. *Specific Authority 943.03, 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.057 FS(1980 Supp.). History—New 11-12-81.*

11C-6.06 Facsimile Transmission.

(1) The Division of Criminal Justice Information Systems shall accept facsimile transmission only from criminal justice agencies.

(2) The Division shall accept for processing, transmissions of documents which

meet the following criteria:

(a) Finger print cards of unknown deceased persons, amnesia victims, and suspected missing persons or wanted persons;

(b) Documents requiring immediate attention, where delay due to routine mailing and processing would adversely impact operations within the requesting agency. Such documents may include, but are not limited to, fingerprint cards, photographs, and court orders.

(3) An agency submitting a transmission to the Division shall bear all costs for the transmission.

(4) The Division shall respond to a facsimile transmission by contacting the requesting agency by one of the following means, as deemed appropriate by the operator:

(a) Telephone;

(b) On-line telecommunications;

(c) Facsimile transmission of a document.

(5) When submitting transmissions to the FBI, the Division shall adhere to all policies and regulations established by the FBI for the use of the facsimile transmission system.

(6) A record of all transmissions received and sent by the Division shall be maintained by the Crime Information Bureau.

(7) The facsimile transmission equipment maintained by the Division shall be placed in a secure location. Access will be restricted to specifically designated personnel.

Specific Authority 943.03(3), 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.05(2)(a) FS (1980 Supp.). History—New 11-12-81.

11C-6.07 Record Validation. In order for the Department of Law Enforcement to carry out its duties as designated state control agency and to comply with pertinent requirements of the United States Department of Justice, the Department of Law Enforcement carries out a program for the validation of information and records entered into the Florida Crime Information Center/National Crime Information Center systems. The records subject to periodic validation include records relating to stolen vehicles and other goods, wanted persons and missing persons. The specific procedures for validation are as follows:

(1) Three (3) times each year, validation reports will be produced by the Florida Crime Information Center and supplied to each agency participating in the Florida Crime Information Center and, through it, with the National Crime Information Center.

(2) Upon receipt of the validation report, each agency will review its records to insure that:

(a) All records which are no longer current have been removed from FCIC and all records remaining in the system are valid and active;

(b) All records contain all available information;

(c) The information contained in each of the records is accurate.

(3) The letter of certification, signed by the head of the agency, attesting to the completion of the validation process must be returned to the Department within 31 days after receipt of the validation report.

(4) In the event that an agency fails to comply with the requirements of this rule, federal regulations provide that the FCIC and NCIC may proceed to remove any or all of the noncomplying agency's records from the state and national information system files.

Specific Authority 943.03(3), 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.05(2)(b) FS (1980 Supp.). History—New 11-12-81.

11C-6.08 User Agreements.

(1) In accordance with federal regulations and pursuant to state statute, the Department of Law Enforcement has entered into an agreement with the United States Department of Justice wherein the Department has agreed to comply with all federal statutes, regulations and policies of the National Crime Information Center (NCIC) and to serve as state control terminal agency for all Florida criminal justice agencies participating in, and exchanging records and information through, the NCIC. All criminal justice agencies in Florida participating in the Florida Crime Information Center of the Department of Law Enforcement and, through it, with the NCIC are required to execute appropriate user agreements.

(2) User agreements executed between criminal justice agencies in Florida and the Department of Law Enforcement typically include, but are not necessarily limited to, the following terms and conditions:

(a) Fiscal arrangements between the User and the Department of Law Enforcement;

(b) User acknowledgement of pertinent state and federal laws, regulations, and established operating procedures relating to privacy and security of records and information, interagency cooperation and assistance, liability for errors and omissions, system data entry, retrieval, validations and confirmation, and employee screening and training; and

(c) Other provisions ordinarily found in contracts between governmental agencies and necessary to protect the respective interests of the contracting agencies.

Specific Authority 943.03(3), 943.05(2)(c) FS (1980 Supp.). Law Implemented 943.0525 FS (1980 Supp.). History—New 11-12-81.

**CHAPTER 11C-7
CRIMINAL HISTORY RECORDS;
EXPUNCTION AND SEALING POLICY AND
PROCEDURES**

- 11C-7.001 Policy Governing Court-Ordered Expunction and Sealing. (Repealed)
- 11C-7.002 Procedure on Court-Ordered Expunctions. (Repealed)
- 11C-7.003 Administrative Expunction. (Repealed)
- 11C-7.0035 Administrative Expunction. (Repealed)
- 11C-7.004 Federal Criminal History Records. (Repealed)
- 11C-7.005 Policies Governing Court-Ordered Expunctions and Sealings.
- 11C-7.006 Procedures on Court-Ordered Expunctions.
- 11C-7.007 Procedures on Court-Ordered Sealings.
- 11C-7.008 Administrative Expunction Procedures.

11C-7.001 Policy Governing Court-Ordered Expunction and Sealing.
Specific Authority 943.03, 943.05(2)(e) FS. Law Implemented 943.058 FS. History—New 6-24-76. Amended 11-12-81. Formerly 11C-7.01. Repealed 8-3-92.

11C-7.002 Procedure on Court-Ordered Expunctions.
Specific Authority 943.03, 943.05, 943.058 FS. Law Implemented. 943.058 FS. History—New 6-24-76. Amended 11-12-81. Formerly 11C-7.02. Repealed 8-3-92.

11C-7.003 Administrative Expunction.
Specific Authority 943.03, 943.05, 943.08 FS., Ch. 1, Title 28, Part 20, C. F. R. Law Implemented 943.03, 943.05, 943.08 FS., Ch. 1, Title 28, Part 20, C. F. R., 42 U. S. C. 3771(b). History—New 6-24-76. Repealed 12-9-76. Formerly 11C-7.03.

11C-7.0035 Administrative Expunction.
Specific Authority 943.03, 943.05(2)(e) FS. Law Implemented 943.058 FS. History—New 11-12-81. Formerly 11C-7.035. Repealed 8-3-92.

11C-7.004 Federal Criminal History Records.
Specific Authority 943.03, 943.05, 943.08 FS., Ch. 1, Title 28, Part 20, C. F. R. Law Implemented 943.05, 943.08 FS., Ch. 1, Title 28, Part 10, C. F. R. History—New 6-24-76. Formerly 11C-7.04. Repealed 8-3-92.

11C-7.005 Policies Governing Court-Ordered Expunctions and Sealings.

(1) Persons seeking relief under the expunge and seal law must specify to the court whether they are petitioning for an expunge or a seal order. Expunction and sealing are distinct, separate forms of relief and should not be confused or combined.

(a) Expunction of a criminal history record means the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the Florida Department of Law Enforcement must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for

sealing and expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction.

(b) Sealing of a criminal history record means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein.

(2) If the court order indicates expunge and/or seal or gives no clear indication as to which action is to be taken with respect to the criminal history record, the Department will not act on the order. Upon the receipt of such an order, the Department will notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or his attorney, and the arresting agency of the reason for noncompliance as set forth in ss. 943.0585(3)(d) and 943.059(3)(d), F.S.
Specific Authority 943.03, 943.0585, 943.059 FS. Law Implemented 943.0585, 943.059 FS. History—New 8-5-92.

11C-7.006 Procedures on Court-Ordered Expunctions.

(1) Prior to petitioning the court to expunge a criminal history record, the subject must apply to the Department for a certificate of eligibility for expunction. The application for the certificate of eligibility must include:

(a) A money order, cashier's check, or certified check for \$75.00 made payable to the Florida Department of Law Enforcement. This processing fee is non-refundable, regardless of the results of the certification review. A fee waiver may be granted by the Executive Director of the Department upon submission of a written request and in his determination that the waiver is in the best interests of criminal justice.

(b) A completed Application for Certification of Eligibility. The subject must complete section A of the application. The Application for Certification of Eligibility (form number FDLE 40-021, effective July 1, 1992), incorporated here by reference, may be obtained from:

1. The Clerk of the Court, or
2. Florida Department of Law Enforcement Expunge Section
Post Office Box 1489
Tallahassee, Florida 32302
Telephone Number: (904) 488-4762

(c) A written, certified statement from the appropriate state attorney or statewide prosecutor which meets the requirements set forth in ss. 943.0585(2)(a), F.S. The appropriate state attorney or statewide prosecutor should complete section B of the Application for Certification of Eligibility and have it certified.

(d) A legible set of fingerprints recorded on an FBI Applicant Fingerprint Card (FD-258). The fingerprinting must be done by a law enforcement agency. The law enforcement agency fingerprinting the subject should place the following statement in the "Reason Fingerprinted" section on the card "Application for Certification of Eligibility for

Expunction: The subject must pay any fees required by the law enforcement agency for providing this service. If a copy of the Applicant Fingerprint Card is needed, it may be obtained from:

1. The Clerk of the Court, or
2. Florida Department of Law Enforcement
Expunge Section
Post Office Box 1489
Tallahassee, Florida 32302
Telephone Number: (904) 488-4762

(e) A certified copy of the disposition of the charge to which the petition to expunge pertains. The subject should obtain this document from the Clerk of the Court in the appropriate jurisdiction. The subject must pay any fees required by the Clerk of the Court for providing this service.

(2) The complete application packet should be mailed or delivered to Accounting and Budgeting, Florida Department of Law Enforcement, Post Office Box 1489, Tallahassee, Florida 32302. The following notation should be placed on the envelope: "ATTENTION EXPUNGE SECTION."

(3) If the application packet is incomplete, the Department will not process it. The incomplete packet, along with the processing fee, will be returned to the subject with an indication as to the reason for non-acceptance. It will be the subject's responsibility to obtain the missing information and return the complete packet to the Department.

(4) If the application packet is complete, the Department will review the submitted information and the subject's criminal history record to determine if the specified record meets the requirements for expungement, which are listed in s. 943.0585, F.S. Questions regarding the status of the review should be directed to the Expunge Section at (904) 488-4762.

(5) The Department will send the subject, via certified mail, return receipt requested, a Certificate of Eligibility (form number FDLE 40-022, effective July 1, 1992), incorporated here by reference, if the specified criminal history record meets the requirements for expunction. If the specified criminal history record does not meet the requirements for expunction, the Department will send the subject, via certified mail, return receipt requested, a letter stating the reason for ineligibility.

(a) If the specified criminal history record does not meet the requirements for expungement, it cannot be expunged.

(b) If the specified criminal history record is eligible for expungement, the subject may then petition the court to expunge the record. The subject must provide the court with the Certificate of Eligibility and other documents and information required by the statutes and the court.

(6) The order of the court as to an expunction of criminal history records should specify the agencies to which it applies, including this Department, and should be directed to the appropriate state attorney or the statewide prosecutor and the law enforcement agency which made the arrest and

forwarded the arrest information to the Department. The court should provide the Certificate of Eligibility to the arresting agency along with the certified court order.

(7) Upon receipt of a certified court order to expunge a criminal history record, the arresting agency shall:

(a) Make a positive association between the individual and the arrest covered by the court order and the arrest record generated by it;

(b) Forward the Certificate of Eligibility, a certified copy of the court order, and a letter of transmittal to the Department. The letter of transmittal shall make specific reference to identifying information, including:

1. Name;
2. Alias, Maiden Name(s);
3. Sex;
4. Race;
5. Date of Birth;
6. Social Security Number (If Available);
7. Date of Arrest;
8. Arrest Number and Original Charges;
9. FDLE Number and FBI Number (If Known).

The letter of transmittal shall be signed by the chief law enforcement officer of the agency or his authorized designee.

(8) The Department will not act on an order to expunge if such order does not comply with the requirements of the statutes. Upon receipt of such an order, the Department will notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or his attorney, and the arresting agency of the reason for noncompliance as set forth in ss. 943.0585(3)(d), F.S.

(9) If an arrest was made in Florida solely on the basis of an alleged offense against the laws of a non-Florida jurisdiction, and if under the laws of such other jurisdiction the person arrested is entitled to and has taken the necessary steps to accomplish the expunction of the criminal history record generated from the arrest in such other jurisdiction, the Department shall honor any official request for expunction of that part of the Florida criminal history record.

Specific Authority: 943.03, 943.0585, F.S. Law Implemented: 943.0585, F.S. History—New 8-5-92.

IIC-7.007 Procedures on Court-Ordered Sealings.

(1) Prior to petitioning the court to seal a criminal history record, the subject must apply to the Department for a certificate of eligibility for sealing. The application for the certificate of eligibility must include:

(a) A money order, cashier's check, or certified check for \$75.00 made payable to the Florida Department of Law Enforcement. This processing fee is non-refundable, regardless of the results of the certification review. A fee waiver may be granted by the Executive Director of the Department upon submission of a written request and in his determination that the waiver is in the best interests of criminal justice.

V. 6, p. 122-1

CRIMINAL HISTORY RECORDS; EXPUNCTION

(R. 8/92)

11C-7.007

(b) A completed Application for Certification of Eligibility. The subject should complete section A of the application. The Application for Certification of Eligibility (form number FDLE 40-021, effective July 1, 1992), incorporated here by reference, may be obtained from:

1. The Clerk of the Court, or
2. Florida Department of Law Enforcement
Expunge Section
Post Office Box 1489
Tallahassee, Florida 32302
Telephone Number: (904) 488-4762

(c) A legible set of fingerprints recorded on an FBI Applicant Fingerprint Card (FD-258). The fingerprinting must be done by a law enforcement agency. The law enforcement agency fingerprinting the subject should place the following statement in the "Reason Fingerprinted" section on the card: "Application For Certification Of Eligibility For Sealing." The subject must pay any fees required by the law enforcement agency for providing this service. If a copy of the Applicant Fingerprint Card is needed, it may be obtained from:

1. The Clerk of the Court, or
2. Florida Department of Law Enforcement
Expunge Section
Post Office Box 1489
Tallahassee, Florida 32302
Telephone Number: (904) 488-4762

(d) A certified copy of the disposition of the charge to which the petition to seal pertains. The subject should obtain this document from the Clerk of the Court in the appropriate jurisdiction. The subject must pay any fees required by the Clerk of the Court for providing this service.

(2) The complete application packet should be mailed or delivered to Accounting and Budgeting, Florida Department of Law Enforcement, Post Office Box 1489, Tallahassee, Florida 32302. The following notation should be placed on the envelope: "ATTENTION EXPUNGE SECTION."

(3) If the application packet is incomplete, the Department will not process it. The incomplete packet, along with the processing fee, will be returned to the subject with an indication as to the reason for non-acceptance. It will be the subject's responsibility to obtain the missing information and return the complete packet to the Department.

(4) If the application packet is complete, the Department will review the submitted information and the subject's criminal history record to determine if the specified record meets the requirements for sealing, which are listed in s. 943.059, F.S. Questions regarding the status of the review should be directed to the Expunge Section at (904) 488-4762.

(5) The Department will send the subject, via certified mail, return receipt requested, a Certificate of Eligibility (form number FDLE 40-022, effective July 1, 1992), incorporated here by reference, if the specified criminal history record meets the requirements for sealing. If the specified criminal history record does not meet the requirements for sealing, the Department will send

the subject, via certified mail, return receipt requested, a letter stating the reason for ineligibility.

(a) If the specified criminal history record does not meet the requirements for sealing, it cannot be sealed.

(b) If the specified criminal history record is eligible for sealing, the subject may then petition the court to seal the record. The subject must provide the court with the Certificate of Eligibility and other documents and information required by the statutes and the court.

(6) The order of the court as to a sealing of criminal history records should specify the agencies to which it applies, including this Department, and should be directed to the appropriate state attorney or the statewide prosecutor and the law enforcement agency which made the arrest and forwarded the arrest information to the Department. The court should provide the Certificate of Eligibility to the arresting agency along with the certified court order.

(7) Upon receipt of a certified court order to seal a criminal history record, the arresting agency shall:

(a) Make a positive association between the individual and the arrest covered by the court order and the arrest record generated by it;

(b) Forward the Certificate of Eligibility, a certified copy of the court order, and a letter of transmittal to the Department. The letter of transmittal shall make specific reference to identifying information, including:

1. Name;
2. Alias/Maiden Names;
3. Sex;
4. Race;
5. Date of Birth;
6. Social Security Number (If Available);
7. Date of Arrest;
8. Arrest Number and Original Charges;
9. FDLE Number and FBI Number (If Known).

The letter of transmittal shall be signed by the chief law enforcement officer of the agency or his authorized designee.

(8) The Department will not act on an order to seal if such order does not comply with the requirements of the statutes. Upon the receipt of such an order, the Department will notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or his attorney, and the arresting agency of the reason for noncompliance as set forth in ss. 943.059(3)(d), F.S.

(9) If an arrest was made in Florida solely on the basis of an alleged offense against the laws of a non-Florida jurisdiction, and if under the laws of such other jurisdiction the person arrested is entitled to and has taken the necessary steps to accomplish the sealing of the criminal history record generated from the arrest in such other jurisdiction, the Department shall honor any official request for sealing of that part of the Florida criminal history record

Specific Authority 943.03, 943.059 FS. Law Implemented 943.059 FS. History—New 8-5-92.

11C-7.008 Administrative Expunction Procedures.

(1) Non-judicial records of arrest made contrary to law or by mistake will be administratively expunged by the Department.

(2) Arrest records which are mistakenly or improperly forwarded to the Department for processing and retention as criminal history records will be administratively expunged by the Department.

(3) If the chief law enforcement officer of the arresting agency in Florida requests an administrative expunction as to a particular record of an arrest made by the agency, the Department shall comply provided that the request is in writing, on agency letterhead, and signed by the chief law enforcement officer or his authorized designee.

(4) Written documents related to administrative expunctions shall make specific reference to identifying information, including:

- (a) Name
 - (b) Alias Maiden Name(s)
 - (c) Sex
 - (d) Race
 - (e) Date of Birth
 - (f) Social Security Number (If Available)
 - (g) Date of Arrest
 - (h) Arrest Number and Original Charges
 - (i) FDLE Number and FBI Number (If Applicable and Known)
 - (j) Reason For Administrative Expunction
- (5) An individual may request that the chief law enforcement officer of the arresting agency request an administrative expunction pursuant to this section. The procedures by which an individual may secure an administrative correction of the criminal history record pertaining to the individual are set out in Chapter 11C-8, F. A. C.

Specific Authority 943.03, 943.05(2)(e), 943.0581 FS. Law Implemented 943.0581 FS. History—New 8-5-92.

**RULES
OF THE
DEPARTMENT OF LAW
ENFORCEMENT**

**DIVISION OF CRIMINAL JUSTICE
INFORMATION SYSTEMS**

**CHAPTER 11C-8
CRIMINAL HISTORY RECORD;
REVIEW AND CORRECTION**

11C-8.01 Review Procedures.

11C-8.01 Review Procedures.

(1) Any individual wishing to review his criminal history record must submit a request in writing to a local law enforcement agency and should specifically indicate whether a multistate (FBI/NCIC) check is desired.

(2) The individual must then be fingerprinted by a local law enforcement agency for identification purposes. The fingerprint card will contain all required identifying data and a conspicuous notation that the card is submitted in order to provide positive identification for a personal record review.

(3) Requests and completed fingerprint cards received by local law enforcement agencies will then be mailed by the local law enforcement agency to the Department.

(4) The fingerprint card will be processed by the Department and if a positive fingerprint identification is established against an existing criminal history record, a single copy of the record, the submitted fingerprint card, and the original letter of request will be returned to the local law enforcement agency. If no arrest record is found in the Florida Crime Information Center/Computerized Criminal History System, the fingerprint card and the letter of request will be so stamped on the reverse side and will be returned to the local law enforcement agency forwarding same.

(5) The Department will mail a letter to the requesting individual advising him that a copy of his criminal history record, if any, has been mailed to the local law enforcement agency.

(6) It will then be the responsibility of the individual requesting said record to personally call for such record at that local law enforcement agency. It will be the responsibility of the local law enforcement agency to determine that the person reviewing the criminal history record is the same person that was fingerprinted by that agency. A statement will be placed on each criminal history record or fingerprint card returned by the Department which states, "Released to (subject's name) Date (date released) by (releasing agency)". This statement must be completed by the local law enforcement agency that delivers the record to the individual.

(7) If after reviewing his record, the individual feels that the record is incorrect or incomplete, it is his responsibility to contact the agency submitting that part of the record in question. It then will be the responsibility of that agency to determine the merit of the assertion, to make any and all corrections or deletions that may be required, and to notify the Department of any corrections or deletions.

CRIMINAL HISTORY RECORD; REVIEW; CORRECTION CHL 11C-8

RULES
OF THE
DEPARTMENT OF LAW
ENFORCEMENT

DIVISION OF CRIMINAL JUSTICE
INFORMATION SYSTEMS

CHAPTER 11C-8
CRIMINAL HISTORY RECORD;
REVIEW AND CORRECTION

11C-8.01 Review Procedures.

11C-8.01 Review Procedures.

(8) If, after an individual reviews his own criminal history record as authorized in Rule 11C-8.01, F. A. C., the agency and the individual are unable to resolve their differences as to what that portion of the person's record ought to contain and if, more particularly, the agency responsible for the portion of the record in issue refuses to correct its own records or to advise the Florida Department of Law Enforcement to correct or supplement the state records in accordance with the individual's wishes, then the administrative review procedures set out in 11C-8.01(9) or 11C-8.01(10), as appropriate, shall be followed.

(9) If the agency responsible for the portion of the record in issue is subject to the Florida Administrative Procedures Act Chapter 120, Florida Statutes, the individual may initiate and the agency shall submit itself to administrative adjudication and judicial review of the issue in accordance with the act, and Section 943.056(2), F. S.

(10) If the agency responsible for the portion of the record in issue is not subject to the Florida Administrative Procedures Act, the individual shall petition the agency in writing to convene a special hearing panel for the purpose of conducting an informal hearing. Such panel shall consist of one panelist nominated by the individual, one panelist nominated by the agency and a presiding panelist mutually agreeable to the other two panelists. If within ten days after the petition is filed no third panelist has been agreed upon or has agreed to serve, a third member of the panel will be appointed by the Executive Director, Florida Department of Law Enforcement. Thereafter:

(a) Within twenty days after the petition is filed, the agency shall make written answer to the allegations in the petition, attaching thereto copies of such official records as it deems

necessary to support its refusal or to controvert the petitioner's allegations.

(b) Within thirty days after the petition is filed, the special hearing panel shall convene at a place provided by the agency and at such time as is not inconvenient to the members of the panel, the agency and the individual.

(c) The special hearing panel shall consider the petition, answer, other written documents, official records, oral arguments, and such other information or testimony as either the agency or the individual deems pertinent, material or relevant. The special hearing panel may request and the agency and individual shall provide such additional non-privileged affidavits, statements, answers to interrogatories and copies of documents and records as are necessary to the resolution of the issues.

(d) The individual shall have the burden of proving by substantial competent evidence that the criminal history record information contained in the agency's records or submitted by the agency to the Florida Department of Law Enforcement is incorrect or incomplete. However, upon failure of the agency to answer the petition, to answer the individual's interrogatives or reasonable requests for other non-privileged written materials or copies of records, or to otherwise proceed in good faith hereunder, the burden shall shift to the agency.

(e) The special hearing panel, after consideration of all evidence and materials submitted to it and upon the agreement of at least two panelists, shall make tentative written findings of fact and law and make a tentative but specific finding as to how the individual's record ought to be corrected or supplemented, if at all, and shall certify its findings to the individual and the agency. Default and summary findings are authorized in the event either party unreasonably refuses to proceed in good faith hereunder.

(f) Within ten days of receipt of the tentative findings, the individual or agency shall serve their written exceptions upon the other party and each member of the panel. Thereafter, the panel shall reconvene for the purpose of considering only the prior record, the written exceptions, timely written responses thereto, and such additional evidence as any member of the panel may demand of either the agency or the individual. The tentative findings described in 11C-8.02(10)(e) may be modified as a majority of the members of the panel may deem appropriate, and shall become the final administrative findings of fact and law. If no written exceptions are filed within ten days of

the party's receipt of the tentative findings, the tentative findings shall become the final administrative findings of fact and law. The special panel shall be deemed to have concluded its business when its final findings are certified to the agency, the individual, and the Florida Department of Law Enforcement. The record of proceedings hereunder shall be retained by the presiding panelist but may be copied by either party as necessary for appropriate review.

(g) A party who has been adversely affected by the findings of the special hearing panel may, within ten days of receipt of the final administrative findings of fact and law, petition the Executive Director of the Department of Law Enforcement for review of such findings. Review by the Executive Director shall be confined to the record transmitted. In the event no such petition is filed by either party, the agency and the Department of Law Enforcement shall conform their respective criminal history records in accordance with the final findings of the panel.

(h) The Executive Director, upon review of the record shall make known his findings to the individual, the agency, and the presiding panelist in writing within thirty days after the filing of the petition for review. In the event the Executive Director is in agreement with the final findings of the special hearing panel, he shall so state and may adopt said findings; however, should the Executive Director reach a contrary result, he shall state with specificity

the reason therefor.

(i) If fifteen days after rendition of the Executive Director's final findings, neither the agency nor the individual have notified the Florida Department of Law Enforcement of its filing of suit to seek judicial review, the agency and the Department shall forthwith conform their respective criminal history records in accordance with the Executive Director's findings. In the event timely notice is received that judicial review has been initiated, the records in issue shall remain unchanged pending the outcome of the judicial review.

(11) Proceedings under subpart 11C-8.02(10) shall be as informal as fairness and principles of due process will allow. No evidence shall be rejected or deemed inadmissible merely because it is not best evidence, is hearsay, is not in proper form, or is not predicated or formally introduced as the rules of evidence would dictate in judicial proceedings. However, the special hearing panel may disregard or discount evidence which is without credibility, materiality, pertinency, or relevancy. As the interests of justice and fairness may require, it may counsel and assist in the presentation of a more effective case by either party. The panel shall synopsise its own rulings and oral testimony before it and reduce it to writing.

Specific Authority 943.03(3) FS. Law Implemented 943.056 FS (1980 Supp.). History—New 6-24-76, Amended 11-12-81.

FLORIDA

Opinion of Attorney General

PUBLIC RECORDS

AVAILABILITY OF ARREST RECORDS

To: *William A. Troelstrup, Commissioner, Department of Criminal Law Enforcement, Tallahassee*

Prepared by: *Sharyn L. Smith, Assistant Attorney General*

QUESTIONS:

1. Is Ch. 119, F. S., the Public Records Law, applicable to the criminal history records (rap sheets) compiled and maintained in the computers of FDCLE?

2. Assuming an affirmative response to question 1, does Ch. 119 qualify as the type of Public Records Law described in Ch. 1, 28 C.F.R., 20b and commentary thereto so as to authorize dissemination of "nonconviction data"?

3. Should Ch. 119 be read *in pari materia* with Ch. 1, 28 C.F.R., 20b, *supra*, so that, for example, the requesting party might be required to execute an agreement wherein the purpose of the request and identity of the requester is stated and it is agreed that the information derived shall only be used for the purpose for which requested, etc., consistent with such regulations?

4. Having in mind that the practice of searching for criminal histories without use of fingerprint identification procedures is fraught with dangers and that the subjects of these records may have a privacy interest or are owed some duty of care, could Ch. 119 be offended if the information was withheld until the requesting party complied with the

above conditions, and, additionally, provided enough identifying information on the subject so as to eliminate all but one possible record?

SUMMARY:

Chapter 119, F. S., Florida's Public Records Law, is applicable to criminal history information compiled and maintained by the Florida Department of Criminal Law Enforcement.

Chapter 119, F. S., qualifies as the type of public records law described in 28 C.F.R. s. 20 and commentary thereto so as to authorize dissemination of nonconviction as well as conviction data.

Chapter 119, F. S., should not be read *in pari materia* with 28 C.F.R. s. 20b, since the state public records law does not permit a custodian of public documents to require a person to execute an agreement for purposes of ascertaining the identity of the requester and the purpose for such request in the absence of a state statute authorizing the same.

The United States Supreme Court decision in *Paul v. Davis*, 424 U.S. 693 (1976), has apparently foreclosed the possibility that a federal constitutional privacy interest exists in relation to state dissemination of nonconviction arrest data.

Your questions are apparently prompted, in part, by recent activity at both the state and federal levels concerning the question of access to criminal history information. On May 20, 1975, regulations were published in the Federal Register, 40 Fed. Reg. 11714, which related to the collection, storage, and dissemination of criminal history record information. Hearings were held during December 1975 to consider comments from interested parties on the limitations placed on dissemination of criminal history information to noncriminal justice agencies. The purpose of these hearings was to determine whether the regulations, as they were drafted, appropriately balanced the public's right to know with the individual's right to privacy.

Upon examining the regulations proposed by the Department of Justice, Law Enforcement Assistance Administration, a number of states, including Florida, objected to the restrictions placed on dissemination of criminal history information insofar as the same conflicted with state law governing access to state records. On January 6, 1976, the Governor and Cabinet, as head of the Florida Department of Criminal Law Enforcement, adopted a resolution urging the Department of Justice, Law Enforcement Assistance Administration, to adopt rules recognizing the State of Florida's right to make criminal history information a matter of state public record pursuant to Ch. 119, F. S., the Public Records Law, without running the risk of incurring a fine of up to \$10,000 or the loss of Law Enforcement Assistance Administration funds.

FLORIDA

As a result of the objections raised by Florida and other states, the federal regulations were modified to recognize that access to state and local public records is an area that should appropriately be left to regulation by the states.

The regulations were drawn in order to implement s. 524(b) of the Crime Control Act of 1973 which provides in pertinent part:

All criminal history information collected, stored and disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein: The Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, and maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information to obtain a copy of it for the purpose of challenge or correction.

The dispute between the states and the federal government centered on whether access mandated pursuant to state or local public records laws was a "lawful purpose" as contemplated by the federal act set forth above. The amended regulations, 41 Fed. Reg.

11714, proposed March 19, 1976, 28 C.F.R. s. 20.1-20.28, now provide that conviction data may be disseminated without limitation and that criminal history record information relating to the offense for which an individual is currently within the criminal justice system may be disseminated without limitations. Insofar as nonconviction record information is concerned, the regulations now provide that after December 31, 1977, most noncriminal justice access would require authorization pursuant to a statute, ordinance, executive order, court rule, decision, or order. The regulations no longer require express authority authorizing access to such information. Such a requirement can now be construed from a general requirement in a statute or order. A state public records law which has been interpreted by a state to require that criminal history information, including nonconviction data, be made available to the public is an example of such a general requirement. Determinations as to the purposes for which dissemination of criminal history record information is authorized by state law, executive order, local ordinance, court rule, decision, or order are left to the appropriate state or local officials.

It should also be noted that, prior to the amendments, the regulations contained a requirement that criminal history record information in court records of public judicial proceedings be accessed on a chronological basis. As amended, the regulations are inapplicable to records of public judicial proceedings whether accessed on a chronological or alphabetical basis.

On the basis of this background information, your questions will now be addressed.

AS TO QUESTION 1:

Pursuant to Ch. 119, F. S., records of arrest have been considered matters of public record which are subject to public inspection and examination. See, e.g., *Grays v. State*, 217 So.2d 133 (3 D.C.A. Fla., 1969); *Malone v. State*, 222 So.2d 769 (3 D.C.A. Fla., 1969); *Williams v. State*, 285 So.2d 13 (Fla. 1973); AGO's 057-157, 072-168, 073-166, 075-9, and 076-156. The "police secrets" rule recognized in the cases and opinions previously cited does not make records of arrest confidential. Similarly, I am unaware of any general or special law which prohibits or limits access to such information. There are, however, statutes which do serve to make certain arrest information confidential. See, e.g., ss. 39.03(6)(a) and 39.12(3)-(4) and AGO's 070-113 and 070-75 relating to records of juvenile offenses; s. 905.26, concerning disclosure of the finding of an indictment against a person not in custody until the person has been arrested. In the absence of such a statutory provision, arrest information compiled by FDCLE is subject to s. 119.07(1).

AS TO QUESTION 2:

As contemplated by the federal regulations, Ch. 119, F. S., constitutes a state public records law which has been construed to authorize dissemination of arrest information. Pursuant to 28 C.F.R. s. 20.21(b)(2), after December 31, 1977, dissemination of *nonconviction data* is limited to, *inter alia*, individuals and agencies authorized to receive such information by *statutes, ordinance, executive order, or court rule, decision, or orders* as construed by appropriate state or local officials of agencies. Accordingly, your question is answered in the affirmative.

FLORIDA

AS TO QUESTION 3:

It has been consistently held that Ch. 119, F. S., does not require a citizen to demonstrate a particular or special interest in a record as a condition to obtaining access to public documents. Thus, mere curiosity or commercial purposes do not vest in either the courts or the custodian discretion to deny inspection. See *State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905), holding that abstract companies may copy public documents from the clerk's office for their own use and sell such copies to the public for a profit. Chapter 119 concerns itself solely with what may be disclosed and not to whom, in the absence of a particular statute setting forth such a special requirement for inspection. Accord *State ex rel. Davidson v. Couch*, 156 So. 297 (Fla. 1934), in which the court noted that one does not have to be a taxpayer or have a "special interest" in public documents to inspect them, and *Warden v. Bennett*, 340 So.2d 977, 978 (2 D.C.A. Fla., 1977), holding that a person need not show a special interest or proper motive or purpose in order to inspect public records. Also see AGO's 074-113, in which it was stated that a private person may inspect, copy, and/or photograph worthless check affidavits without demonstrating a personal interest therein, and AGO 073-167, which held that a person

may inspect records maintained by the abandoned property section of the Department of Banking and Finance without being required to show a special interest in such inspection.

Accordingly, a person who demands access to arrest records which are public records under Ch. 119, F. S., cannot be required as a condition of inspection to execute an agreement such as that contemplated by your third question.

AS TO QUESTION 4:

Since the answer to your third question is in the negative, it would appear that your fourth question is now moot. I would note, however, that in *Paul v. Davis*, 424 U. S. 693 (1976), the United States Supreme Court refused to recognize that the dissemination by the police of defamatory nonconviction arrest information violated an individual's right to privacy. As one federal court has recognized, the court's decision in *Paul* appears to have cut short the full development of nascent doctrines which sought some accommodation between values of individual privacy and the recordkeeping responsibilities of the executive branch. *Hammons v. Scott*, 423 F.Supp. 618 (N.D. Calif. 1976); *Hammons v. Scott*, 423 F.Supp. 625 (N.D. Calif. 1976). The issue of what, if any, restraints should be imposed upon the practices of public agencies regarding the maintenance and dissemination of arrest records of persons who were never convicted of the crime for which they were arrested has concerned numerous courts. See, e.g., *Utz v. Crellinane*, 520 F.2d 467 (D.C. Cir. 1975); *Tarlton v. Saxbe*, 507 F.2d 1116 (D.C. Cir. 1974); *Menard v. Saxbe*, 498 F.2d 1017 (D.C. Cir. 1974); *Menard v. Mitchell*, 430 F.2d 486 (D.C. Cir. 1970); *United States v. Dooley*, 364 F.Supp. 74 (E.D. Pa. 1973); *United States v. Kalish*, 271 F.Supp. 968 (D.P.R. 1967); see also, *Davidson v. Dill*, 503 P.2d 157 (Colo. 1972); *Eddy v. Moore*, 487 P.2d 211 (Wash. 1971). The decision in *Paul* suggests that the constitutional right to privacy claim underlying the above decisions would not be adopted by the United States Supreme Court.

Accordingly, the question of access to arrest records is a matter not of federal constitutional law but rather state statutory law, and the conditions which may be imposed as a precondition inspection must either be found in Ch. 119, F. S., or in other applicable state statutes.



STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

October 1, 1990

The Honorable Ronald A. Silver
Chairman, Committee on Criminal Justice
Florida House of Representative
18 House Office Building
Tallahassee, Florida 32399-1300

INFORMATION COPY

90-80

Dear Representative Silver:

You ask substantially the following question:

Does s. 119.07(3)(z), F.S. (1990 Supp.), exempt police reports and other records which are generated, as opposed to received by, a public agency?

In sum, I am of the opinion:

Section 119.07(3)(z), F.S. (1990 Supp.), does not exempt police reports and other records which are generated by a public agency.

Section 4, Ch. 90-211, Laws of Florida, added paragraph (aa) to s. 119.07(3), F.S. Renumbered as s. 119.07(3)(z), it provides:

Any document which reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime, is exempt from the provisions of subsection (1). Any state or federal agency which is authorized to have access to such documents by any provision of law shall be granted such access in the furtherance of such agency's statutory duties, notwithstanding the provisions of this section. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14. (e.s.)

The Honorable Ronald A. Silver
Page Two

90-80

Section 119.07(3)(z), F.S. (1990 Supp.), became effective October 1, 1990.¹

You state that it was the intent of drafters of the amendment to exempt only those documents which are received by an agency that regularly receives information about crime victims, such as the Bureau of Crimes Compensation and Victim Witness Services, and not to exempt those documents generated by law enforcement agencies. However, in light of the apparent uncertainty that exists with respect to the scope of this exemption, you state that it is necessary to determine whether amendatory language may be desirable.

It is a basic principle of statutory construction that a statute should be construed so as to ascertain and give effect to the intent of the Legislature as expressed in the statute.² However, the intent of the Legislature is to be determined primarily from the language of the statute.³ Thus, in determining the legislative intent, a court will look to the plain language of the statute.⁴

Section 119.07(3)(z), F.S. (1990 Supp.), provides that any document revealing certain victim information which is received by an agency that regularly receives information from or concerning crime victims is exempt from s. 119.07(1), F.S.⁵ "Agency" is defined for purposes of Ch. 119, F.S.⁶ The term "regularly," however, is not defined within the statute or chapter.

Where not defined by statute, words of common usage when used in a statute should be construed in their plain and ordinary sense.⁷ The term "regularly" has been defined as suggesting a practice; it implies uniformity, continuity, consistency and method. The term excludes isolated, unusual, occasional or casual transactions or use.⁸

A law enforcement agency, as an agency whose primary responsibility is the prevention and detection of crime and the enforcement of the penal, criminal, traffic or highway laws of this state, routinely receives information concerning victims of crime in carrying out its duties. A law enforcement agency, therefore, would appear to qualify as an "agency that regularly receives information from or concerning the victims of crime." I find nothing in the plain language of s. 119.07(3)(z), F.S. (1990 Supp.), which limits the exemption contained therein to documents received by agencies such as the Bureau of Crimes Compensation and Victim Witness Services.

The Honorable Ronald A. Silver
Page Three

90-80

The exemption contained in s. 119.07(3)(z), F.S. (1990 Supp.), however, only applies to documents received by such agencies, not agency generated documents. The distinction between records received and records made by an agency is recognized elsewhere in Ch. 119, F.S. Section 119.011(1), in defining the term "Public records" for purposes of Ch. 119, F.S., refers to "all documents . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." (e.s.) Had the term "made" and the term "received" been considered synonymous by the Legislature, there would have been no need to use both terms.

Moreover, s. 119.07(3)(z), F.S. (1990 Supp.), does not refer to information received by the agency but to the document received by the agency which contains certain victim information.¹⁰ It is, therefore, the document which is exempt from the provisions of s. 119.07(1), F.S.

Therefore, I am of the opinion that s. 119.07(3)(z), F.S. (1990 Supp.), exempts documents which reveal the identity, home or employment address or telephone number, or personal assets of a crime victim when such document is received by an agency which regularly receives information from or concerning crime victims. The exemption, however, applies only to the document which the agency receives and does not include agency generated documents, such as police reports.

Such an interpretation would appear to be consistent with the provisions of Ch. 90-280, Laws of Florida, also enacted during the 1990 Legislative Session.¹¹ Section 1 of Ch. 90-280 creates s. 119.105, F.S., to provide:

Police reports are public records except as otherwise made exempt or confidential by general or special law. Every person is allowed to examine nonexempt or nonconfidential police reports. No person who inspects or copies police reports for the purpose of obtaining the names and addresses of the victims of crimes or accidents shall use any information contained therein for any commercial solicitation of the victims or relatives of the victims of the reported crimes or accidents. Nothing herein shall prohibit the publication of such information by any news media or the use of such information for any other data collection or analysis purposes.

The Honorable Ronald A. Silver
Page Four

90-80

Section 119.105, F.S. (1990 Supp.), thus recognizes that police reports are public records and prohibits the use of information relating to a crime victim's name and address obtained in such records for commercial solicitation of the crime victims or their relatives.

Sincerely,


Robert A. Butterworth
Attorney General

RAB/tjw

¹ See, s. 19, Ch. 90-211, Laws of Florida, providing that except as otherwise provided therein, the act shall take effect October 1, 1990.

² See, e.g., City of Tampa v. Thatcher Glass Corporation, 445 So.2d 578 (Fla. 1984).

³ See, St. Petersburg Bank & Trust Co. v. Hamm, 414 So.2d 1071 (Fla. 1982); S.R.G. Corporation v. Department of Revenue, 365 So.2d 687 (Fla. 1978).

⁴ Thayer v. State, 335 So.2d 815 (Fla. 1976).

⁵ See, s. 119.07(1), F.S., which provides in part that every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee. The statute further provides for the furnishing of copies of such records upon payment of the fees for duplication as set forth therein.

⁶ See, s. 119.011(2), F.S., defining "Agency" for purposes of Ch. 119, F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

The Honorable Ronald A. Silver
Page Five

90-80

⁷ See, e.g., *Citizens of State v. Public Service Commission*, 425 So.2d 534 (Fla. 1982); *Southeastern Fisheries Association, Inc. v. Department of Natural Resources*, 453 So.2d 1351 (Fla. 1984) (where statute does not specifically define words of common usage, such words must be given their plain and ordinary meaning).

⁸ See, 76 C.J.S. Regularly pp. 609-610; and see, *Black's Law Dictionary Regularly* p. 1451 (4th rev. ed. 1968); *Webster's Third New International Dictionary Regular* p. 1913 (unabridged ed. 1981) (a steady occurrence; recurring).

⁹ See, *Terrinoni v. Westward Ho!*, 418 So.2d 1143 (1 D.C.A. Fla., 1982) (statutory language is not to be assumed to be superfluous; statute must be construed to give meaning to all words and phrases contained within the statute); *City of Pompano Beach v. Capalbo*, 455 So.2d 468 (4 D.C.A. Fla., 1984).

¹⁰ See generally, *Black's Law Dictionary Document* p. 568 (4th rev. ed. 1968) (an instrument on which is recorded, by means of letters, figures, or marks, matter which may be evidentially used; in this sense the term applies to writings); *Webster's Third New International Dictionary Document* p. 666 (unabridged ed. 1981) (an original or official paper relied on as the basis, proof, or support of something).

¹¹ See, *State ex rel. School Board of Martin County v. Department of Education*, 317 So.2d 68 (Fla. 1975) (it is to be presumed that different statutes on the same subject passed at the same session of the Legislature are imbued by the same spirit and they should be construed in light of each other); *Markham v. Blount*, 175 So.2d 526 (Fla. 1965).

CHAPTER 943. DEPARTMENT OF LAW ENFORCEMENT [NEW]

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|---|--|
| <p>Sec.
943.01 Short title.
943.02 Definitions.
943.03 Department of Law Enforcement.
943.04 Division of Criminal Investigation: creation; investigative and related authority.
943.05 Division of Criminal Justice Information Systems: duties; crime reports.
943.051 Criminal justice information: collection and storage; fingerprinting.
943.052 Disposition reporting.
943.053 Dissemination of criminal justice information; fees.
943.054 Exchange of federal criminal history records and information.
943.055 Records and audit.
943.056 Access to review and challenge of: criminal history records.
943.057 Access to criminal justice information for research or statistical purposes.
943.0575 Public access to records.
943.058 Criminal history record expunction or sealing.
943.06 Criminal Justice Information Systems Council.
943.07 Renumbered.
943.08 Duties: Criminal Justice Information Systems Council.
943.09 Division of Standards and Training.
943.10 Definitions: ss. 943.09-943.24.
943.11 Police Standards and Training Commission: creation; membership; meetings; compensation.
943.12 Special powers: law enforcement officer training.
943.13 Law enforcement officers: qualifications for employment.
943.14 Law enforcement training programs: private police schools; certificates and diplomas; exemptions; injunction proceedings.
943.145 Certification and decertification of law enforcement officers; grounds; investigations and reports; hearings; exceptions [New].
943.15 Reimbursement of employing agency by the department.
943.16 Payment of tuition by employing agency.
943.17 Inservice training and promotion; participation, grants.</p> | <p>Sec.
943.18 Compensation and benefits study: report, recommendation.
943.19 Saving clause.
943.20 Qualifications and standards above minimum.
943.21 Exception: elected officers.
943.22 Salary incentive program for local and state law enforcement officers.
943.23 Notice of employment; inactive status; reinstatement.
943.24 Intent.
943.25 Advanced training; program; costs; funding.
943.26 Division of Local Law Enforcement Assistance.
943.27, 943.28 Repealed.
943.29 Division of Staff Services.
943.31 Legislative intent.
943.32 Statewide criminal analysis laboratory system.
943.33 State operated criminal analysis laboratories.
943.34 Powers and duties of department in relation to state operated laboratories.
943.35 Matching funds for existing laboratories.
943.36 Submission of annual budget.
943.37 Option to become state-operated laboratory; operational control.
943.38 Creation of Crime Laboratory Council.
943.39 Crime Laboratory Council: organization; meetings; compensation.
943.40 Duties of Crime Laboratory Council.
943.405 Prevention of crimes against the elderly.
943.41 Short title; definition.
943.42 Unlawful to transport; conceal, or possess contraband articles; use of vessel, motor vehicle, or aircraft.
943.43 Forfeiture of vessel, motor vehicle, aircraft, other personal property, or contraband article; exceptions [New].
943.44 Forfeiture proceedings.
943.46 Short title.
943.461 Definitions.
943.462 Prohibited activities and defense.
943.463 Criminal penalties and alternative fines.
943.464 Civil remedies.
943.465 Civil investigative subpoenas.</p> |
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943.01 Short title

This chapter shall be known as the "Department of Law Enforcement Act of 1974."

Laws 1974, c. 74-386, § 1, eff. Aug. 1, 1974. Amended by Laws 1978, c. 78-347, § 2, eff. Oct. 1, 1978.