

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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4		.	

ORIGINAL STAMP BELOW

Representative(s) Reddick and Ball offered the following:

**Amendment**

On page 62, between lines 21 and 22 of the bill

insert:

Section 49. Sections 49. and 50. may be cited as the "Nathan McCall and Anderson C. Hill, II, Forgiveness Act."

Section 50. Section 943.059, Florida Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a

1 criminal history record until the person seeking to seal a  
2 criminal history record has applied for and received a  
3 certificate of eligibility for sealing pursuant to subsection  
4 (2). A criminal history record that relates to a violation of  
5 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,  
6 s. 893.135, or a violation enumerated in s. 907.041 may not be  
7 sealed, without regard to whether adjudication was withheld,  
8 if the defendant was found guilty of or pled guilty or nolo  
9 contendere to the offense, or if the defendant, as a minor,  
10 was found to have committed or pled guilty or nolo contendere  
11 to committing the offense as a delinquent act. The court may  
12 only order sealing of a criminal history record pertaining to  
13 one arrest or one incident of alleged criminal activity,  
14 except as provided in this section. The court may, at its sole  
15 discretion, order the sealing of a criminal history record  
16 pertaining to more than one arrest if the additional arrests  
17 directly relate to the original arrest except as provided in  
18 subsection (3). If the court intends to order the sealing of  
19 records pertaining to such additional arrests, such intent  
20 must be specified in the order. A criminal justice agency may  
21 not seal any record pertaining to such additional arrests if  
22 the order to seal does not articulate the intention of the  
23 court to seal records pertaining to more than one arrest.  
24 This section does not prevent the court from ordering the  
25 sealing of only a portion of a criminal history record  
26 pertaining to one arrest or one incident of alleged criminal  
27 activity. Notwithstanding any law to the contrary, a criminal  
28 justice agency may comply with laws, court orders, and  
29 official requests of other jurisdictions relating to sealing,  
30 correction, or confidential handling of criminal history  
31 records or information derived therefrom. This section does

1 not confer any right to the sealing of any criminal history  
2 record, and any request for sealing a criminal history record  
3 may be denied at the sole discretion of the court.

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

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

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

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

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

19 3. Has never secured a prior sealing or expunction of  
20 a criminal history record under this section, former s.  
21 893.14, former s. 901.33, former s. 943.058, or from any  
22 jurisdiction outside the state.

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

27  
28 Subparagraphs 1., 2. and 3. do not apply and are not necessary  
29 if a person has obtained a certificate pursuant to subsection  
30 (3).

31

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

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

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

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

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

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

29 (e) Has never secured a prior sealing or expunction of  
30 a criminal history record under this section, former s.  
31 893.14, former s. 901.33, or former s. 943.058.

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

4           (3) ALTERNATE CERTIFICATE FOR ELIGIBILITY FOR  
5 SEALING. Notwithstanding subsection (2), the department  
6 shall, by rule adopted pursuant to chapter 120, establish  
7 procedures pertaining to the application for and issuance of  
8 certificates of eligibility for sealing for a person who meets  
9 all of the following requirements:

10           (a) Each of the offenses for which sealing of the  
11 criminal history record is sought is a third degree felony or  
12 a misdemeanor for which the person was arrested, convicted, or  
13 had adjudication withheld. This section does not apply to  
14 records of the following offenses which shall not be sealed  
15 pursuant to this subsection:

16           1. Offenses for driving under the influence as defined  
17 in s. 316.193.

18           2. Offenses of domestic violence.

19           (b) The person has never been convicted, or received a  
20 withhold of adjudication, or been adjudicated delinquent for  
21 any of the following offenses:

22           1. All capital felonies, life felonies, felonies of  
23 the first degree, or felonies of the second degree.

24           2. Any violation of chapter 794, chapter 800, chapter  
25 827, chapter 839, and s. 847.0145.

26           (c) The person was under 20 years of age when the  
27 person last committed an offense for which the person was  
28 convicted or received an adjudication withheld.

29           (d) The person is 25 years of age or older at the  
30 time the expunction is sought.

31           (e) The person has not committed a criminal offense

1 from the time the person became 20 years of age to the time  
2 the person became 25 years of age or until the person applied  
3 for sealing, whichever is a longer period of time.

4 (f) The person had not been confined in a detention  
5 facility, jail, prison, or other correctional facility as the  
6 result of a sentence for a criminal offense when the person  
7 was between 20 and 25 years of age, regardless of the age of  
8 the offender when the sentence was imposed.

9 (g) The person has remitted a \$75 processing fee to  
10 the department for placement in the Department of Law  
11 Enforcement Operating Trust Fund, unless such fee is waived by  
12 the executive director.

13 (h) The person is not under court supervision for  
14 criminal activity and the person does not have a pending  
15 criminal charge.

16 (4)(3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

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

25 (b) If relief is granted by the court, the clerk of  
26 the court shall certify copies of the order to the appropriate  
27 state attorney or the statewide prosecutor and to the  
28 arresting agency. The arresting agency is responsible for  
29 forwarding the order to any other agency to which the  
30 arresting agency disseminated the criminal history record  
31 information to which the order pertains. The department shall

1 forward the order to seal to the Federal Bureau of  
2 Investigation. The clerk of the court shall certify a copy of  
3 the order to any other agency which the records of the court  
4 reflect has received the criminal history record from the  
5 court.

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

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

1 required by this section or when such order does not comply  
2 with the requirements of this section.

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

8 ~~(5)(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A  
9 criminal history record of a minor or an adult which is  
10 ordered sealed by a court of competent jurisdiction pursuant  
11 to this section is confidential and exempt from the provisions  
12 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
13 and is available only to the person who is the subject of the  
14 record, to the subject's attorney, to criminal justice  
15 agencies for their respective criminal justice purposes, or to  
16 those entities set forth in subparagraphs (a)1., 4., 5., and  
17 6. for their respective licensing and employment purposes.

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

- 23 1. Is a candidate for employment with a criminal  
24 justice agency;
- 25 2. Is a defendant in a criminal prosecution;
- 26 3. Concurrently or subsequently petitions for relief  
27 under this section or s. 943.0585;
- 28 4. Is a candidate for admission to The Florida Bar;
- 29 5. Is seeking to be employed or licensed by or to  
30 contract with the Department of Health and Rehabilitative  
31 Services or the Department of Juvenile Justice or to be



1 employed or used by such contractor or licensee in a sensitive  
2 position having direct contact with children, the  
3 developmentally disabled, the aged, or the elderly as provided  
4 in s. 39.076, s. 110.1127(3), s. 393.063(14), s. 394.4572(1),  
5 s. 397.451, s. 402.302(8), s. 402.313(3), s. 409.175(2)(i), s.  
6 415.102(4), s. 415.103, or chapter 400; or

7           6. Is seeking to be employed or licensed by the Office  
8 of Teacher Education, Certification, Staff Development, and  
9 Professional Practices of the Department of Education, any  
10 district school board, or any local governmental entity which  
11 licenses child care facilities.

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

19           (c) Information relating to the existence of a sealed  
20 criminal record provided in accordance with the provisions of  
21 paragraph (a) is confidential and exempt from the provisions  
22 of s. 119.07(1) and s. 24(a), Art. I of the State  
23 Constitution, except that the department shall disclose the  
24 sealed criminal history record to the entities set forth in  
25 subparagraphs (a)1., 4., 5., and 6. for their respective  
26 licensing and employment purposes. It is unlawful for any  
27 employee of an entity set forth in subparagraph (a)1.,  
28 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.  
29 to disclose information relating to the existence of a sealed  
30 criminal history record of a person seeking employment or  
31 licensure with such entity or contractor, except to the person

1 to whom the criminal history record relates or to persons  
2 having direct responsibility for employment or licensure  
3 decisions. Any person who violates the provisions of this  
4 paragraph commits a misdemeanor of the first degree,  
5 punishable as provided in s. 775.082 or s. 775.083.

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7

8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 5 , line 3,

11

12 after the semicolon, insert :

13 creating the "Nathan McCall and Anderson C.  
14 Hill, II, Forgiveness Act"; amending s.  
15 943.059, F.S.; providing exception to  
16 limitation that sealing may only be related to  
17 one arrest or arrests related to original  
18 arrest; providing alternative procedure for  
19 eligibility for sealing; providing for adoption  
20 of rules by the Department of Law Enforcement;  
21 requiring that sealing is limited to third  
22 degree felonies and misdemeanors; requires that  
23 offenses to be sealed are not a violation of s.  
24 316.193, or domestic violence; authorizes  
25 sealing only if person never convicted or  
26 received adjudication withheld for a second  
27 degree felony or higher degree felony, and  
28 never committed any violation of chapters 794,  
29 800, 827, 839, and s. 847.0145; provides  
30 additional requirements for sealing including a  
31 \$75.00 processing fee;