

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 The Committee on Governmental Rules & Regulations offered the
12 following:

14 **Amendment (with title amendment)**

15 Remove from the bill: Everything after the enacting clause
16
17 and insert in lieu thereof:

18 Section 1. This act may be cited as the "Nathan McCall
19 and Anderson C. Hill, II, Forgiveness Act."

20 Section 2. Section 943.059, Florida Statutes, is
21 amended to read:

22 943.059 Court-ordered sealing of criminal history
23 records.--The courts of this state shall continue to have
24 jurisdiction over their own procedures, including the
25 maintenance, sealing, and correction of judicial records
26 containing criminal history information to the extent such
27 procedures are not inconsistent with the conditions,
28 responsibilities, and duties established by this section. Any
29 court of competent jurisdiction may order a criminal justice
30 agency to seal the criminal history record of a minor or an
31 adult who complies with the requirements of this section. The

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

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

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

1 records or information derived therefrom. This section does
2 not confer any right to the sealing of any criminal history
3 record, and any request for sealing a criminal history record
4 may be denied at the sole discretion of the court.

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

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

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

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

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

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

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

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29 Subparagraphs 1., 2. and 3. do not apply and are not necessary
30 if a person has obtained a certificate pursuant to subsection
31 (3).

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

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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 or adjudicated delinquent for committing a felony or a misdemeanor specified in s. 943.051(3)(b).

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

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

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

1 893.14, former s. 901.33, or former s. 943.058.

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

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

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

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

19 2. Offenses of domestic violence.

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

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

25 2. Any violation of chapter 794, chapter 800, chapter
26 827, chapter 839, and s. 847.0145.

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

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

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

1 (e) The person has not committed a criminal offense
2 from the time the person became 20 years of age to the time
3 the person became 25 years of age or until the person applied
4 for sealing, whichever is a longer period of time.

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

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

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

17 ~~(4)~~(3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

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

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

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

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

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

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

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

1 order failed to obtain the certificate of eligibility as
2 required by this section or when such order does not comply
3 with the requirements of this section.

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

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

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

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

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

1 Services or the Department of Juvenile Justice or to be
2 employed or used by such contractor or licensee in a sensitive
3 position having direct contact with children, the
4 developmentally disabled, the aged, or the elderly as provided
5 in s. 39.076, s. 110.1127(3), s. 393.063(14), s. 394.4572(1),
6 s. 397.451, s. 402.302(8), s. 402.313(3), s. 409.175(2)(i), s.
7 415.102(4), s. 415.103, or chapter 400; or

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

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

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

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

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

7 Section 3. This act shall take effect July 1 of the
8 year in which enacted.

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

12 And the title is amended as follows:

13 On page ,
14 remove from the title of the bill:

15

16 and insert in lieu thereof:

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

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

1 additional requirements for sealing including a
2 \$75.00 processing fee; providing an effective
3 date.
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