

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

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

The Committee on Crime & Punishment offered the following:

Amendment (with title amendment)

On page 1, line 23, through page 3, line 14,
remove from the bill: all of said lines

and insert in lieu thereof:

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

Section 2. Section 943.0585, Florida Statutes, is amended to read: 943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a

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

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

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

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

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

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

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

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

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

29

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

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1 (3).

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

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

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

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

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

26 3. That the criminal history record does not relate to
27 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
28 chapter 839, s. 893.135, or a violation enumerated in s.
29 907.041, where the defendant was found guilty of, or pled
30 guilty or nolo contendere to any such offense, or that the
31 defendant, as a minor, was found to have committed, or pled

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1 guilty or nolo contendere to committing, such an offense as a
2 delinquent act, without regard to whether adjudication was
3 withheld.

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

7 (c) Has submitted to the department a certified copy
8 of the disposition of the charge to which the petition to
9 expunge pertains.

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

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

18 (f) Has never secured a prior sealing or expunction of
19 a criminal history record under this section, former s.
20 893.14, former s. 901.33, or former s. 943.058.

21 (g) Is no longer under court supervision applicable to
22 the disposition of the arrest or alleged criminal activity to
23 which the petition to expunge pertains.

24 (h) Is not required to wait a minimum of 10 years
25 prior to being eligible for an expunction of such records
26 because all charges related to the arrest or criminal activity
27 to which the petition to expunge pertains were dismissed prior
28 to trial, adjudication, or the withholding of adjudication.
29 Otherwise, such criminal history record must be sealed under
30 this section, former s. 893.14, former s. 901.33, or former s.
31 943.058 for at least 10 years before such record is eligible

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1 for expunction.

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

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

14 1. Offenses for driving under the influence as
15 defined in s. 316.193.

16 2. Offenses of domestic violence.

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

20 1. All capital felonies, life felonies, felonies of
21 the first degree, or felonies of the second degree.

22 2. Any violation of chapter 794, chapter 800, chapter
23 827, chapter 839, and s. 847.0145.

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

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

29 (e) The person has not committed a criminal offense
30 from the time the person became 20 years of age to the time
31 the person became 25 years of age or until the person applied

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1 for expungement, whichever is a longer period of time.

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

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

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

14 (4)(3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

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

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

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1 agency which the records of the court reflect has received the
2 criminal history record from the court.

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

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

31 (5)~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD

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1 EXPUNCTION.--Any criminal history record of a minor or an
2 adult which is ordered expunged by a court of competent
3 jurisdiction pursuant to this section must be physically
4 destroyed or obliterated by any criminal justice agency having
5 custody of such record; except that any criminal history
6 record in the custody of the department must be retained in
7 all cases. A criminal history record ordered expunged that is
8 retained by the department is confidential and exempt from the
9 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
10 Constitution and not available to any person or entity except
11 upon order of a court of competent jurisdiction. A criminal
12 justice agency may retain a notation indicating compliance
13 with an order to expunge.

14 (a) The person who is the subject of a criminal
15 history record that is expunged under this section or under
16 other provisions of law, including former s. 893.14, former s.
17 901.33, and former s. 943.058, may lawfully deny or fail to
18 acknowledge the arrests covered by the expunged record, except
19 when the subject of the record:

- 20 1. Is a candidate for employment with a criminal
21 justice agency;
- 22 2. Is a defendant in a criminal prosecution;
- 23 3. Concurrently or subsequently petitions for relief
24 under this section or s. 943.059;
- 25 4. Is a candidate for admission to The Florida Bar;
- 26 5. Is seeking to be employed or licensed by or to
27 contract with the Department of Health and Rehabilitative
28 Services or to be employed or used by such contractor or
29 licensee in a sensitive position having direct contact with
30 children, the developmentally disabled, the aged, or the
31 elderly as provided in s. 39.076, s. 110.1127(3), s.

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1 393.063(14), s. 394.4572(1), s. 397.451, s. 402.302(8), s.
2 402.313(3), s. 409.175(2)(i), s. 415.102(4), s. 415.1075(4),
3 or chapter 400; or

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

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

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

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1 direct responsibility for employment or licensure decisions.
2 Any person who violates this paragraph commits a misdemeanor
3 of the first degree, punishable as provided in s. 775.082 or
4 s. 775.083.

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

8 And the title is amended as follows:

9 On page 1, line 5, through page 1, line 18,
10 remove from the title of the bill: all of said lines

11

12 and insert in lieu thereof:

13 amending s. 943.0585, F.S.; providing exception
14 to limitation that expunction may only be
15 related to one arrest or arrests related to
16 original arrest; providing alternative
17 procedure for eligibility for expunction;
18 providing for adoption of rules by the
19 Department of Law Enforcement; requiring that
20 expunction is limited to third degree felonies
21 and misdemeanors; requires that offenses to be
22 expunged are not a violation of s. 316.193, or
23 domestic violence; permits expunction only if
24 person never convicted or received adjudication
25 withheld for a second degree felony or higher
26 degree felony, and never committed any
27 violation of chapters 794, 800, 827, 839, and
28 s. 847.0145; provides additional requirements
29 for expunction including a \$75.00 processing
30 fee; providing an effective date.

31