

By Representatives Cantens, Villalobos, Barreiro and Kyle

1                                   A bill to be entitled  
2           An act relating to pretrial detention;  
3           providing a short title; amending s. 907.041,  
4           F.S.; revising criteria for pretrial detention;  
5           permitting the court to order pretrial  
6           detention under specified circumstances when it  
7           finds a substantial probability that a  
8           defendant committed the charged crime of DUI  
9           manslaughter as defined by s. 316.193, F.S.,  
10          relating to driving under the influence, and  
11          that the defendant poses the threat of harm to  
12          the community; specifying certain conditions  
13          that would support a finding that the defendant  
14          poses the threat of harm to the community;  
15          deleting requirement for additional court  
16          findings for pretrial detention; permitting  
17          pretrial detention for any violation of  
18          conditions of pretrial release or bond which,  
19          in the discretion of the court, supports a  
20          finding that no condition of release can  
21          reasonably protect the community from physical  
22          harm, assure the presence of the accused at  
23          trial, or assure the integrity of the judicial  
24          process; deleting limitation upon detention  
25          period when detention is based on threat of  
26          harm to the community; authorizing a court to  
27          detain a defendant at a bail hearing without  
28          separate hearing or motion for pretrial  
29          detention; authorizing the state to orally move  
30          for pretrial detention any time the defendant  
31          is before the court for a bail hearing;

1 providing for construction; reenacting s.  
2 790.065(2)(c), F.S., relating to sale and  
3 delivery of firearms, s. 943.0585, F.S.,  
4 relating to court-ordered expunction of  
5 criminal history records, and s. 943.059, F.S.,  
6 relating to court-ordered sealing of criminal  
7 history records, to incorporate said amendment  
8 in references; repealing Rules 3.131 and 3.132,  
9 Florida Rules of Criminal Procedure, relating  
10 to pretrial release and pretrial detention, to  
11 the extent of inconsistency with the act;  
12 amending s. 903.31, F.S.; providing for  
13 cancellation of bond under certain  
14 circumstances; providing an effective date.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
18 Section 1. This act may be cited as the "Trooper  
19 Robert Smith Act."

20 Section 2. Section 907.041, Florida Statutes, is  
21 amended to read:

22 907.041 Pretrial detention and release.--

23 (1) LEGISLATIVE INTENT.--It is the policy of this  
24 state that persons committing serious criminal offenses,  
25 posing a threat to the safety of the community or the  
26 integrity of the judicial process, or failing to appear at  
27 trial be detained upon arrest. However, persons found to meet  
28 specified criteria shall be released under certain conditions  
29 until proceedings are concluded and adjudication has been  
30 determined. The Legislature finds that this policy of pretrial  
31 detention and release will assure the detention of those

1 persons posing a threat to society while reducing the costs  
2 for incarceration by releasing, until trial, those persons not  
3 considered a danger to the community who meet certain  
4 criteria. It is the intent of the Legislature that the  
5 primary consideration be the protection of the community from  
6 risk of physical harm to persons.

7 (2) RULES OF PROCEDURE.--Procedures for pretrial  
8 release determinations shall be governed by rules adopted by  
9 the Supreme Court.

10 (3) RELEASE ON NONMONETARY CONDITIONS.--It is the  
11 intent of the Legislature to create a presumption in favor of  
12 release on nonmonetary conditions for any person who is  
13 granted pretrial release. Such person shall be released on  
14 monetary conditions only if it is determined that such  
15 monetary conditions are necessary to assure the presence of  
16 the person at trial or at other proceedings, to protect the  
17 community from risk of physical harm to persons, to assure the  
18 presence of the accused at trial, or to assure the integrity  
19 of the judicial process.

20 (4) PRETRIAL DETENTION.--

21 (a) As used in this subsection, "dangerous crime"  
22 means any of the following:

- 23 1. Arson;
- 24 2. Aggravated assault;
- 25 3. Aggravated battery;
- 26 4. Illegal use of explosives;
- 27 5. Child abuse or aggravated child abuse;
- 28 6. Abuse of an elderly person or disabled adult, or  
29 aggravated abuse of an elderly person or disabled adult;
- 30 7. Hijacking;
- 31 8. Kidnapping;

- 1           9. Homicide;  
2           10. Manslaughter;  
3           11. Sexual battery;  
4           12. Robbery;  
5           13. Carjacking;  
6           14. Lewd, lascivious, or indecent assault or act upon  
7 or in presence of a child under the age of 16 years;  
8           15. Sexual activity with a child, who is 12 years of  
9 age or older but less than 18 years of age, by or at  
10 solicitation of person in familial or custodial authority;  
11           16. Burglary of a dwelling;  
12           17. Stalking and aggravated stalking;  
13           18. Act of domestic violence as defined in s. 741.28;  
14 and  
15           19. Attempting or conspiring to commit any such crime;  
16 and home-invasion robbery.  
17           (b) The court may order pretrial detention if it finds  
18 a substantial probability, based on a defendant's past and  
19 present patterns of behavior, the criteria in s. 903.046, and  
20 any other relevant facts, that any of the following  
21 circumstances exist:  
22           1. The defendant has previously violated conditions of  
23 release and that no further conditions of release are  
24 reasonably likely to assure the defendant's appearance at  
25 subsequent proceedings;  
26           2. The defendant, with the intent to obstruct the  
27 judicial process, has threatened, intimidated, or injured any  
28 victim, potential witness, juror, or judicial officer, or has  
29 attempted or conspired to do so, and that no condition of  
30 release will reasonably prevent the obstruction of the  
31 judicial process;

1           3. The defendant is charged with trafficking in  
2 controlled substances as defined by s. 893.135, that there is  
3 a substantial probability that the defendant has committed the  
4 offense, and that no conditions of release will reasonably  
5 assure the defendant's appearance at subsequent criminal  
6 proceedings; ~~or~~

7           4. The defendant is charged with DUI manslaughter, as  
8 defined by s. 316.193, and that there is a substantial  
9 probability that the defendant committed the crime and that  
10 the defendant poses the threat of harm to the community;  
11 conditions that would support a finding by the court pursuant  
12 to this subparagraph that the defendant poses the threat of  
13 harm to the community include, but are not limited to, any of  
14 the following:

15           a. The defendant has previously been convicted of any  
16 crime under s. 316.193, or of any crime in any other state or  
17 territory of the United States that is substantially similar  
18 to any crime under s. 316.193;

19           b. The defendant was driving with a suspended driver's  
20 license when the charged crime was committed; or

21           c. The defendant's driver's license has been suspended  
22 at least two times prior to the commission of the charged  
23 crime;

24           ~~5.4.~~ The defendant poses the threat of harm to the  
25 community. The court may so conclude if it finds that the  
26 defendant is presently charged with a dangerous crime, that  
27 there is a substantial probability that the defendant  
28 committed such crime, that the factual circumstances of the  
29 crime indicate a disregard for the safety of the community,  
30 and that there are no conditions of release reasonably  
31 sufficient to protect the community from the risk of physical

1 ~~harm to persons. In addition, the court must find that at~~  
2 ~~least one of the following conditions is present:~~  
3       ~~a. The defendant has previously been convicted of a~~  
4 ~~crime punishable by death or life imprisonment.~~  
5       ~~b. The defendant has been convicted of a dangerous~~  
6 ~~crime within the 10 years immediately preceding the date of~~  
7 ~~his or her arrest for the crime presently charged.~~  
8       6.c. The defendant was ~~is~~ on probation, parole, or  
9 other release pending completion of sentence or on pretrial  
10 release for a dangerous crime at the time of the current  
11 offense was committed; or arrest.  
12       7. The defendant has violated one or more conditions  
13 of pretrial release or bond for the offense currently before  
14 the court and the violation, in the discretion of the court,  
15 supports a finding that no conditions of release can  
16 reasonably protect the community from risk of physical harm to  
17 persons or assure the presence of the accused at trial.  
18       (c) When a person charged with a crime for which  
19 pretrial detention could be ordered is arrested, the arresting  
20 agency shall promptly notify the state attorney of the arrest  
21 and shall provide the state attorney with such information as  
22 the arresting agency has obtained relative to:  
23       1. The nature and circumstances of the offense  
24 charged;  
25       2. The nature of any physical evidence seized and the  
26 contents of any statements obtained from the defendant or any  
27 witness;  
28       3. The defendant's family ties, residence, employment,  
29 financial condition, and mental condition; and  
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1           4. The defendant's past conduct and present conduct,  
2 including any record of convictions, previous flight to avoid  
3 prosecution, or failure to appear at court proceedings.

4           (d) When a person charged with a crime for which  
5 pretrial detention could be ordered is arrested, the arresting  
6 agency may detain such defendant, prior to the filing by the  
7 state attorney of a motion seeking pretrial detention, for a  
8 period not to exceed 24 hours.

9           (e) ~~The court shall order detention only after a~~  
10 ~~pretrial detention hearing.~~ The pretrial detention hearing  
11 shall be held within 5 days of the filing by the state  
12 attorney of a complaint to seek pretrial detention. The  
13 defendant may request a continuance. No continuance shall be  
14 for longer than 5 days unless there are extenuating  
15 circumstances. The defendant may be detained pending the  
16 hearing. The state attorney shall be entitled to one  
17 continuance for good cause.

18           (f) The state attorney has the burden of showing the  
19 need for pretrial detention.

20           (g) The defendant is entitled to be represented by  
21 counsel, to present witnesses and evidence, and to  
22 cross-examine witnesses. The court may admit relevant  
23 evidence without complying with the rules of evidence, but  
24 evidence secured in violation of the United States  
25 Constitution or the Constitution of the State of Florida shall  
26 not be admissible. No testimony by the defendant shall be  
27 admissible to prove guilt at any other judicial proceeding,  
28 but such testimony may be admitted in an action for perjury,  
29 based upon the defendant's statements made at the pretrial  
30 detention hearing, or for impeachment.

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1           (h) The pretrial detention order of the court shall be  
2 based solely upon evidence produced at the hearing and shall  
3 contain findings of fact and conclusions of law to support it.  
4 The order shall be made either in writing or orally on the  
5 record. The court shall render its findings within 24 hours of  
6 the pretrial detention hearing.

7           ~~(i) If ordered detained pending trial pursuant to~~  
8 ~~subparagraph (b)4., the defendant may not be held for more~~  
9 ~~than 90 days. Failure of the state to bring the defendant to~~  
10 ~~trial within that time shall result in the defendant's release~~  
11 ~~from detention, subject to any conditions of release, unless~~  
12 ~~the trial delay was requested or caused by the defendant or~~  
13 ~~his or her counsel.~~

14           (i)(j) A defendant convicted at trial following the  
15 issuance of a pretrial detention order shall have credited to  
16 his or her sentence, if imprisonment is imposed, the time the  
17 defendant was held under the order, pursuant to s. 921.161.

18           (j)(k) The defendant shall be entitled to dissolution  
19 of the pretrial detention order whenever the court finds that  
20 a subsequent event has eliminated the basis for detention.

21           (k) Nothing in this section shall be construed to  
22 require the filing of a motion for pretrial detention as a  
23 condition precedent to detaining the defendant if the  
24 defendant is brought before the court for a bail hearing.  
25 Notwithstanding paragraph (e), the state may orally move for  
26 pretrial detention any time a defendant is before the court  
27 for a bail hearing.

28           Section 3. For the purpose of incorporating the  
29 amendment to section 907.041, Florida Statutes, in references  
30 thereto, the following sections or subdivisions of Florida  
31



1 Statutes, or Florida Statutes, 1998 Supplement, are reenacted  
2 to read:

3 790.065 Sale and delivery of firearms.--

4 (2) Upon receipt of a request for a criminal history  
5 record check, the Department of Law Enforcement shall, during  
6 the licensee's call or by return call, forthwith:

7 (c)1. Review any records available to it to determine  
8 whether the potential buyer or transferee has been indicted or  
9 has had an information filed against her or him for an offense  
10 that is a felony under either state or federal law, or, as  
11 mandated by federal law, has had an injunction for protection  
12 against domestic violence entered against the potential buyer  
13 or transferee under s. 741.30, has had an injunction for  
14 protection against repeat violence entered against the  
15 potential buyer or transferee under s. 784.046, or has been  
16 arrested for a dangerous crime as specified in s.

17 907.041(4)(a) or for any of the following enumerated offenses:

- 18 a. Criminal anarchy under ss. 876.01 and 876.02.  
19 b. Extortion under s. 836.05.  
20 c. Explosives violations under s. 552.22(1) and (2).  
21 d. Controlled substances violations under chapter 893.  
22 e. Resisting an officer with violence under s. 843.01.  
23 f. Weapons and firearms violations under this chapter.  
24 g. Treason under s. 876.32.  
25 h. Assisting self-murder under s. 782.08.  
26 i. Sabotage under s. 876.38.  
27 j. Stalking or aggravated stalking under s. 784.048.

28  
29 If the review indicates any such indictment, information, or  
30 arrest, the department shall provide to the licensee a  
31 conditional nonapproval number.

1           2. Within 24 working hours, the department shall  
2 determine the disposition of the indictment, information, or  
3 arrest and inform the licensee as to whether the potential  
4 buyer is prohibited from receiving or possessing a firearm.  
5 For purposes of this paragraph, "working hours" means the  
6 hours from 8 a.m. to 5 p.m. Monday through Friday, excluding  
7 legal holidays.

8           3. The office of the clerk of court, at no charge to  
9 the department, shall respond to any department request for  
10 data on the disposition of the indictment, information, or  
11 arrest as soon as possible, but in no event later than 8  
12 working hours.

13           4. The department shall determine as quickly as  
14 possible within the allotted time period whether the potential  
15 buyer is prohibited from receiving or possessing a firearm.

16           5. If the potential buyer is not so prohibited, or if  
17 the department cannot determine the disposition information  
18 within the allotted time period, the department shall provide  
19 the licensee with a conditional approval number.

20           6. If the buyer is so prohibited, the conditional  
21 nonapproval number shall become a nonapproval number.

22           7. The department shall continue its attempts to  
23 obtain the disposition information and may retain a record of  
24 all approval numbers granted without sufficient disposition  
25 information. If the department later obtains disposition  
26 information which indicates:

27           a. That the potential buyer is not prohibited from  
28 owning a firearm, it shall treat the record of the transaction  
29 in accordance with this section; or

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1           b. That the potential buyer is prohibited from owning  
2 a firearm, it shall immediately revoke the conditional  
3 approval number and notify local law enforcement.

4           8. During the time that disposition of the indictment,  
5 information, or arrest is pending and until the department is  
6 notified by the potential buyer that there has been a final  
7 disposition of the indictment, information, or arrest, the  
8 conditional nonapproval number shall remain in effect.

9           943.0585 Court-ordered expunction of criminal history  
10 records.--The courts of this state have jurisdiction over  
11 their own procedures, including the maintenance, expunction,  
12 and correction of judicial records containing criminal history  
13 information to the extent such procedures are not inconsistent  
14 with the conditions, responsibilities, and duties established  
15 by this section. Any court of competent jurisdiction may  
16 order a criminal justice agency to expunge the criminal  
17 history record of a minor or an adult who complies with the  
18 requirements of this section. The court shall not order a  
19 criminal justice agency to expunge a criminal history record  
20 until the person seeking to expunge a criminal history record  
21 has applied for and received a certificate of eligibility for  
22 expunction pursuant to subsection (2). A criminal history  
23 record that relates to a violation of chapter 794, s. 800.04,  
24 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a  
25 violation enumerated in s. 907.041 may not be expunged,  
26 without regard to whether adjudication was withheld, if the  
27 defendant was found guilty of or pled guilty or nolo  
28 contendere to the offense, or if the defendant, as a minor,  
29 was found to have committed, or pled guilty or nolo contendere  
30 to committing, the offense as a delinquent act. The court may  
31 only order expunction of a criminal history record pertaining

1 to one arrest or one incident of alleged criminal activity,  
2 except as provided in this section. The court may, at its sole  
3 discretion, order the expunction of a criminal history record  
4 pertaining to more than one arrest if the additional arrests  
5 directly relate to the original arrest. If the court intends  
6 to order the expunction of records pertaining to such  
7 additional arrests, such intent must be specified in the  
8 order. A criminal justice agency may not expunge any record  
9 pertaining to such additional arrests if the order to expunge  
10 does not articulate the intention of the court to expunge a  
11 record pertaining to more than one arrest. This section does  
12 not prevent the court from ordering the expunction of only a  
13 portion of a criminal history record pertaining to one arrest  
14 or one incident of alleged criminal activity. Notwithstanding  
15 any law to the contrary, a criminal justice agency may comply  
16 with laws, court orders, and official requests of other  
17 jurisdictions relating to expunction, correction, or  
18 confidential handling of criminal history records or  
19 information derived therefrom. This section does not confer  
20 any right to the expunction of any criminal history record,  
21 and any request for expunction of a criminal history record  
22 may be denied at the sole discretion of the court.

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

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

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

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

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

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

7           3. Has never secured a prior sealing or expunction of  
8 a criminal history record under this section, former s.  
9 893.14, former s. 901.33, or former s. 943.058, or from any  
10 jurisdiction outside the state.

11           4. Is eligible for such an expunction to the best of  
12 his or her knowledge or belief and does not have any other  
13 petition to expunge or any petition to seal pending before any  
14 court.

15  
16 Any person who knowingly provides false information on such  
17 sworn statement to the court commits a felony of the third  
18 degree, punishable as provided in s. 775.082, s. 775.083, or  
19 s. 775.084.

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

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

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

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

10           3. That the criminal history record does not relate to  
11 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,  
12 chapter 839, s. 893.135, or a violation enumerated in s.  
13 907.041, where the defendant was found guilty of, or pled  
14 guilty or nolo contendere to any such offense, or that the  
15 defendant, as a minor, was found to have committed, or pled  
16 guilty or nolo contendere to committing, such an offense as a  
17 delinquent act, without regard to whether adjudication was  
18 withheld.

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

22           (c) Has submitted to the department a certified copy  
23 of the disposition of the charge to which the petition to  
24 expunge pertains.

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

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

3 (f) Has never secured a prior sealing or expunction of  
4 a criminal history record under this section, former s.  
5 893.14, former s. 901.33, or former s. 943.058.

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

9 (h) Is not required to wait a minimum of 10 years  
10 prior to being eligible for an expunction of such records  
11 because all charges related to the arrest or criminal activity  
12 to which the petition to expunge pertains were dismissed prior  
13 to trial, adjudication, or the withholding of adjudication.  
14 Otherwise, such criminal history record must be sealed under  
15 this section, former s. 893.14, former s. 901.33, or former s.  
16 943.058 for at least 10 years before such record is eligible  
17 for expunction.

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

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

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

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

7 (c) For an order to expunge entered by a court prior  
8 to July 1, 1992, the department shall notify the appropriate  
9 state attorney or statewide prosecutor of an order to expunge  
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 expunge. The  
17 department shall seal the record until such time as the order  
18 is voided 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 expunge 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 expunge when the petitioner for such



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

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

18 (a) The person who is the subject of a criminal  
19 history record that is expunged under this section or under  
20 other provisions of law, including former s. 893.14, former s.  
21 901.33, and former s. 943.058, may lawfully deny or fail to  
22 acknowledge the arrests covered by the expunged record, except  
23 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. 943.059;
- 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 Children and Family Services

1 or the Department of Juvenile Justice or to be employed or  
2 used by such contractor or licensee in a sensitive position  
3 having direct contact with children, the developmentally  
4 disabled, the aged, or the elderly as provided in s.  
5 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.  
6 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
7 415.1075(4), s. 985.407, 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 that  
12 licenses child care facilities.  
13         (b) Subject to the exceptions in paragraph (a), a  
14 person who has been granted an expunction 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 an  
19 expunged criminal history record.  
20         (c) Information relating to the existence of an  
21 expunged criminal history record which is provided in  
22 accordance with paragraph (a) is confidential and exempt from  
23 the provisions of s. 119.07(1) and s. 24(a), Art. I of the  
24 State Constitution, except that the department shall disclose  
25 the existence of a criminal history record ordered expunged to  
26 the entities set forth in subparagraphs (a)1., 4., 5., and 6.  
27 for their respective licensing and employment purposes, and to  
28 criminal justice agencies for their respective criminal  
29 justice purposes. It is unlawful for any employee of an  
30 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
31 subparagraph (a)5., or subparagraph (a)6. to disclose

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

9           943.059 Court-ordered sealing of criminal history  
10 records.--The courts of this state shall continue to have  
11 jurisdiction over their own procedures, including the  
12 maintenance, sealing, and correction of judicial records  
13 containing criminal history information to the extent such  
14 procedures are not inconsistent with the conditions,  
15 responsibilities, and duties established by this section. Any  
16 court of competent jurisdiction may order a criminal justice  
17 agency to seal the criminal history record of a minor or an  
18 adult who complies with the requirements of this section. The  
19 court shall not order a criminal justice agency to seal a  
20 criminal history record until the person seeking to seal a  
21 criminal history record has applied for and received a  
22 certificate of eligibility for sealing pursuant to subsection  
23 (2). A criminal history record that relates to a violation of  
24 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,  
25 s. 893.135, or a violation enumerated in s. 907.041 may not be  
26 sealed, without regard to whether adjudication was withheld,  
27 if the defendant was found guilty of or pled guilty or nolo  
28 contendere to the offense, or if the defendant, as a minor,  
29 was found to have committed or pled guilty or nolo contendere  
30 to committing the offense as a delinquent act. The court may  
31 only order sealing of a criminal history record pertaining to

1 one arrest or one incident of alleged criminal activity,  
2 except as provided in this section. The court may, at its sole  
3 discretion, order the sealing of a criminal history record  
4 pertaining to more than one arrest if the additional arrests  
5 directly relate to the original arrest. If the court intends  
6 to order the sealing of records pertaining to such additional  
7 arrests, such intent must be specified in the order. A  
8 criminal justice agency may not seal any record pertaining to  
9 such additional arrests if the order to seal does not  
10 articulate the intention of the court to seal records  
11 pertaining to more than one arrest. This section does not  
12 prevent the court from ordering the sealing of only a portion  
13 of a criminal history record pertaining to one arrest or one  
14 incident of alleged criminal activity. Notwithstanding any law  
15 to the contrary, a criminal justice agency may comply with  
16 laws, court orders, and official requests of other  
17 jurisdictions relating to sealing, correction, or confidential  
18 handling of criminal history records or information derived  
19 therefrom. This section does not confer any right to the  
20 sealing of any criminal history record, and any request for  
21 sealing a criminal history record may be denied at the sole  
22 discretion of the court.

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

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

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

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

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

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

7           3. Has never secured a prior sealing or expunction of  
8 a criminal history record under this section, former s.  
9 893.14, former s. 901.33, former s. 943.058, or from any  
10 jurisdiction outside the state.

11           4. Is eligible for such a sealing to the best of his  
12 or her knowledge or belief and does not have any other  
13 petition to seal or any petition to expunge pending before any  
14 court.

15  
16 Any person who knowingly provides false information on such  
17 sworn statement to the court commits a felony of the third  
18 degree, punishable as provided in s. 775.082, s. 775.083, or  
19 s. 775.084.

20           (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
21 petitioning the court to seal a criminal history record, a  
22 person seeking to seal a criminal history record shall apply  
23 to the department for a certificate of eligibility for  
24 sealing. The department shall, by rule adopted pursuant to  
25 chapter 120, establish procedures pertaining to the  
26 application for and issuance of certificates of eligibility  
27 for sealing. The department shall issue a certificate of  
28 eligibility for sealing to a person who is the subject of a  
29 criminal history record provided that such person:

30  
31

1 (a) Has submitted to the department a certified copy  
2 of the disposition of the charge to which the petition to seal  
3 pertains.

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

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

15 (e) Has never secured a prior sealing or expunction of  
16 a criminal history record under this section, former s.  
17 893.14, former s. 901.33, or former s. 943.058.

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

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

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

30 (b) If relief is granted by the court, the clerk of  
31 the court shall certify copies of the order to the appropriate

1 state attorney or the statewide prosecutor and to the  
2 arresting agency. The arresting agency is responsible for  
3 forwarding the order to any other agency to which the  
4 arresting agency disseminated the criminal history record  
5 information to which the order pertains. The department shall  
6 forward the order to seal to the Federal Bureau of  
7 Investigation. The clerk of the court shall certify a copy of  
8 the order to any other agency which the records of the court  
9 reflect has received the criminal history record from the  
10 court.

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

23 (d) On or after July 1, 1992, the department or any  
24 other criminal justice agency is not required to act on an  
25 order to seal entered by a court when such order does not  
26 comply with the requirements of this section. Upon receipt of  
27 such an order, the department must notify the issuing court,  
28 the appropriate state attorney or statewide prosecutor, the  
29 petitioner or the petitioner's attorney, and the arresting  
30 agency of the reason for noncompliance. The appropriate state  
31 attorney or statewide prosecutor shall take action within 60

1 days to correct the record and petition the court to void the  
2 order. No cause of action, including contempt of court, shall  
3 arise against any criminal justice agency for failure to  
4 comply with an order to seal when the petitioner for such  
5 order failed to obtain the certificate of eligibility as  
6 required by this section or when such order does not comply  
7 with the requirements of this section.

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

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

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

- 28 1. Is a candidate for employment with a criminal  
29 justice agency;  
30 2. Is a defendant in a criminal prosecution;

31



1           3. Concurrently or subsequently petitions for relief  
2 under this section or s. 943.0585;

3           4. Is a candidate for admission to The Florida Bar;

4           5. Is seeking to be employed or licensed by or to  
5 contract with the Department of Children and Family Services  
6 or the Department of Juvenile Justice or to be employed or  
7 used by such contractor or licensee in a sensitive position  
8 having direct contact with children, the developmentally  
9 disabled, the aged, or the elderly as provided in s.

10 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.  
11 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
12 415.103, s. 985.407, or chapter 400; or

13           6. Is seeking to be employed or licensed by the Office  
14 of Teacher Education, Certification, Staff Development, and  
15 Professional Practices of the Department of Education, any  
16 district school board, or any local governmental entity which  
17 licenses child care facilities.

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

25           (c) Information relating to the existence of a sealed  
26 criminal record provided in accordance with the provisions of  
27 paragraph (a) is confidential and exempt from the provisions  
28 of s. 119.07(1) and s. 24(a), Art. I of the State  
29 Constitution, except that the department shall disclose the  
30 sealed criminal history record to the entities set forth in  
31 subparagraphs (a)1., 4., 5., and 6. for their respective

1 licensing and employment purposes. It is unlawful for any  
2 employee of an entity set forth in subparagraph (a)1.,  
3 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.  
4 to disclose information relating to the existence of a sealed  
5 criminal history record of a person seeking employment or  
6 licensure with such entity or contractor, except to the person  
7 to whom the criminal history record relates or to persons  
8 having direct responsibility for employment or licensure  
9 decisions. Any person who violates the provisions of this  
10 paragraph commits a misdemeanor of the first degree,  
11 punishable as provided in s. 775.082 or s. 775.083.

12 Section 4. Rules 3.131 and 3.132, Florida Rules of  
13 Criminal Procedure, are hereby repealed to the extent that  
14 they are inconsistent with this act.

15 Section 5. Section 903.31, Florida Statutes, is  
16 amended to read:

17 903.31 Canceling the bond.--

18 (1) Within 10 business days after the conditions of a  
19 bond have been satisfied or the forfeiture discharged or  
20 remitted, the court shall order the bond canceled and, if the  
21 surety has attached a certificate of cancellation to the  
22 original bond, shall furnish an executed certificate of  
23 cancellation to the surety without cost. An adjudication of  
24 guilt or innocence of the defendant shall satisfy the  
25 conditions of the bond. The original appearance bond shall  
26 not be construed to guarantee deferred sentences, appearance  
27 during or after a presentence investigation, appearance during  
28 or after appeals, conduct during or appearance after admission  
29 to a pretrial intervention program, payment of fines, or  
30 attendance at educational or rehabilitation facilities the  
31 court otherwise provides in the judgment.

1       (2) In any case where no formal charges have been  
2 brought against defendant within 365 days after arrest, the  
3 court shall order the bond canceled unless good cause is shown  
4 by the state.

5           Section 6. This act shall take effect October 1, 1999,  
6 except that section 4 shall take effect only if this act is  
7 passed by the affirmative vote of two-thirds of the membership  
8 of each house of the Legislature.

9  
10                           \*\*\*\*\*

11   HOUSE SUMMARY

12           Revises criteria for pretrial detention. Permits the  
13 court to order pretrial detention under specified  
14 circumstances when it finds a substantial probability  
15 that a defendant charged with DUI manslaughter committed  
16 the crime and that the defendant poses the threat of harm  
17 to the community. Specifies certain conditions that would  
18 support the finding that the defendant poses the threat  
19 of harm to the community. Deletes a requirement for  
20 additional court findings for pretrial detention.  
21 Provides that a court may detain a defendant after a bail  
22 hearing without separate hearing or motion for pretrial  
23 detention if the court finds that no conditions of  
24 release can protect the community from harm or assure the  
25 defendant's presence at trial. Removes limitation upon  
26 detention period when detention is based on threat of  
27 harm to the community. Authorizes a court to detain a  
28 defendant at a bail hearing without separate hearing or  
29 motion for pretrial detention and authorizes the state to  
30 orally move for pretrial detention any time the defendant  
31 is before the court for a bail hearing. Reenacts various  
statutory provisions to incorporate changes made by the  
act in references. Repeals Rules 3.131 and 3.132, Florida  
Rules of Criminal Procedure, relating to pretrial release  
and pretrial detention, to the extent that they are  
inconsistent with the act. Provides for cancellation of  
bond when no formal charges are brought against the  
defendant within one year after arrest.