

Bill No. CS for SB 748

Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Diaz-Balart moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. <u>This act may be cited as the "Trooper</u>		
18	<u>Robert Smith Act."</u>		
19	Section 2. Section 907.041, Florida Statutes, is		
20	amended to read:		
21	907.041 Pretrial detention and release.--		
22	(1) LEGISLATIVE INTENT.--It is the policy of this		
23	state that persons committing serious criminal offenses,		
24	posing a threat to the safety of the community or the		
25	integrity of the judicial process, or failing to appear at		
26	trial be detained upon arrest. However, persons found to meet		
27	specified criteria shall be released under certain conditions		
28	until proceedings are concluded and adjudication has been		
29	determined. The Legislature finds that this policy of pretrial		
30	detention and release will assure the detention of those		
31	persons posing a threat to society while reducing the costs		

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

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

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

19 (4) PRETRIAL DETENTION.--

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

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

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

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

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

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

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

20 c. The defendant has previously been found guilty of,
21 or has had adjudication of guilt withheld for, driving while
22 the defendant's driver's license was suspended or revoked in
23 violation of s. 322.34;

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

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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) Due to the dangerous or violent nature of the~~
19 ~~offenses described in paragraphs (a) and (b), public funds may~~
20 ~~not be used to subsidize release of a person charged with such~~
21 ~~an offense.~~

22 ~~(d)(c) When a person charged with a crime for which~~
23 ~~pretrial detention could be ordered is arrested, the arresting~~
24 ~~agency shall promptly notify the state attorney of the arrest~~
25 ~~and shall provide the state attorney with such information as~~
26 ~~the arresting agency has obtained relative to:~~

27 1. The nature and circumstances of the offense
28 charged;

29 2. The nature of any physical evidence seized and the
30 contents of any statements obtained from the defendant or any
31 witness;

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1 3. The defendant's family ties, residence, employment,
2 financial condition, and mental condition; and

3 4. The defendant's past conduct and present conduct,
4 including any record of convictions, previous flight to avoid
5 prosecution, or failure to appear at court proceedings.

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

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

20 (g)~~(f)~~ The state attorney has the burden of showing
21 the need for pretrial detention.

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

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1 detention hearing, or for impeachment.

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

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

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

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

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

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

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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.

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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

30 b. That the potential buyer is prohibited from owning
31 a firearm, it shall immediately revoke the conditional

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1 approval number and notify local law enforcement.

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

7 943.0585 Court-ordered expunction of criminal history
8 records.--The courts of this state have jurisdiction over
9 their own procedures, including the maintenance, expunction,
10 and correction of judicial records containing criminal history
11 information to the extent such procedures are not inconsistent
12 with the conditions, responsibilities, and duties established
13 by this section. Any court of competent jurisdiction may
14 order a criminal justice agency to expunge the criminal
15 history record of a minor or an adult who complies with the
16 requirements of this section. The court shall not order a
17 criminal justice agency to expunge a criminal history record
18 until the person seeking to expunge a criminal history record
19 has applied for and received a certificate of eligibility for
20 expunction pursuant to subsection (2). A criminal history
21 record that relates to a violation of chapter 794, s. 800.04,
22 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
23 violation enumerated in s. 907.041 may not be expunged,
24 without regard to whether adjudication was withheld, if the
25 defendant was found guilty of or pled guilty or nolo
26 contendere to the offense, or if the defendant, as a minor,
27 was found to have committed, or pled guilty or nolo contendere
28 to committing, the offense as a delinquent act. The court may
29 only order expunction of a criminal history record pertaining
30 to one arrest or one incident of alleged criminal activity,
31 except as provided in this section. The court may, at its sole

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

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

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

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

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

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1 document was not filed or issued in the case.

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

6 3. That the criminal history record does not relate to
7 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
8 chapter 839, s. 893.135, or a violation enumerated in s.
9 907.041, where the defendant was found guilty of, or pled
10 guilty or nolo contendere to any such offense, or that the
11 defendant, as a minor, was found to have committed, or pled
12 guilty or nolo contendere to committing, such an offense as a
13 delinquent act, without regard to whether adjudication was
14 withheld.

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

18 (c) Has submitted to the department a certified copy
19 of the disposition of the charge to which the petition to
20 expunge pertains.

21 (d) 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 (e) 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 expunge pertains.

29 (f) 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.

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

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

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

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

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

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1 criminal history record from the court.

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

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

30 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
31 criminal history record of a minor or an adult which is

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

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

- 19 1. Is a candidate for employment with a criminal
20 justice agency;
- 21 2. Is a defendant in a criminal prosecution;
- 22 3. Concurrently or subsequently petitions for relief
23 under this section or s. 943.059;
- 24 4. Is a candidate for admission to The Florida Bar;
- 25 5. Is seeking to be employed or licensed by or to
26 contract with the Department of Children and Family Services
27 or the Department of Juvenile Justice or to be employed or
28 used by such contractor or licensee in a sensitive position
29 having direct contact with children, the developmentally
30 disabled, the aged, or the elderly as provided in s.
31 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.

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1 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
2 415.1075(4), s. 985.407, or chapter 400; or

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

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

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

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1 Any person who violates this paragraph commits a misdemeanor
2 of the first degree, punishable as provided in s. 775.082 or
3 s. 775.083.

4 943.059 Court-ordered sealing of criminal history
5 records.--The courts of this state shall continue to have
6 jurisdiction over their own procedures, including the
7 maintenance, sealing, and correction of judicial records
8 containing criminal history information to the extent such
9 procedures are not inconsistent with the conditions,
10 responsibilities, and duties established by this section. Any
11 court of competent jurisdiction may order a criminal justice
12 agency to seal the criminal history record of a minor or an
13 adult who complies with the requirements of this section. The
14 court shall not order a criminal justice agency to seal a
15 criminal history record until the person seeking to seal a
16 criminal history record has applied for and received a
17 certificate of eligibility for sealing pursuant to subsection
18 (2). A criminal history record that relates to a violation of
19 chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839,
20 s. 893.135, or a violation enumerated in s. 907.041 may not be
21 sealed, without regard to whether adjudication was withheld,
22 if the defendant was found guilty of or pled guilty or nolo
23 contendere to the offense, or if the defendant, as a minor,
24 was found to have committed or pled guilty or nolo contendere
25 to committing the offense as a delinquent act. The court may
26 only order sealing of a criminal history record pertaining to
27 one arrest or one incident of alleged criminal activity,
28 except as provided in this section. The court may, at its sole
29 discretion, order the sealing of a criminal history record
30 pertaining to more than one arrest if the additional arrests
31 directly relate to the original arrest. If the court intends

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

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

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

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

25 1. 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 2. Has not been adjudicated guilty of or adjudicated
30 delinquent for committing any of the acts stemming from the
31 arrest or alleged criminal activity to which the petition to

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1 seal pertains.

2 3. Has never secured a prior sealing or expunction of
3 a criminal history record under this section, former s.
4 893.14, former s. 901.33, former s. 943.058, or from any
5 jurisdiction outside the state.

6 4. Is eligible for such a sealing to the best of his
7 or her knowledge or belief and does not have any other
8 petition to seal or any petition to expunge pending before any
9 court.

10

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

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

25 (a) Has submitted to the department a certified copy
26 of the disposition of the charge to which the petition to seal
27 pertains.

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

31 (c) Has never previously been adjudicated guilty of a

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1 criminal offense or comparable ordinance violation or
2 adjudicated delinquent for committing a felony or a
3 misdemeanor specified in s. 943.051(3)(b).

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

8 (e) Has never secured a prior sealing or expunction of
9 a criminal history record under this section, former s.
10 893.14, former s. 901.33, or former s. 943.058.

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

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

15 (a) In judicial proceedings under this section, a copy
16 of the completed petition to seal 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 seal.

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 to the
26 arresting agency. The arresting agency is responsible for
27 forwarding the order to any other agency to which the
28 arresting agency disseminated the criminal history record
29 information to which the order pertains. The department shall
30 forward the order to seal to the Federal Bureau of
31 Investigation. The clerk of the court shall certify a copy of

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1 the order to any other agency which the records of the court
2 reflect has received the criminal history record from the
3 court.

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

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

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

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

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

- 21 1. Is a candidate for employment with a criminal
22 justice agency;
- 23 2. Is a defendant in a criminal prosecution;
- 24 3. Concurrently or subsequently petitions for relief
25 under this section or s. 943.0585;
- 26 4. Is a candidate for admission to The Florida Bar;
- 27 5. Is seeking to be employed or licensed by or to
28 contract with the Department of Children and Family Services
29 or the Department of Juvenile Justice or to be employed or
30 used by such contractor or licensee in a sensitive position
31 having direct contact with children, the developmentally

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1 disabled, the aged, or the elderly as provided in s.
2 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
3 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
4 415.103, s. 985.407, or chapter 400; or

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

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

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

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1 decisions. Any person who violates the provisions of this
2 paragraph commits a misdemeanor of the first degree,
3 punishable as provided in s. 775.082 or s. 775.083.

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

7 Section 5. Section 903.31, Florida Statutes, is
8 amended to read:

9 903.31 Canceling the bond.--

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

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

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

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

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6

 A bill to be entitled

7

 An act relating to pretrial detention;

8

 providing a short title; amending s. 907.041,

9

 F.S.; revising criteria for pretrial detention;

10

 permitting the court to order pretrial

11

 detention under specified circumstances when it

12

 finds a substantial probability that a

13

 defendant committed the charged crime of DUI

14

 manslaughter as defined by s. 316.193, F.S.,

15

 relating to driving under the influence, and

16

 that the defendant poses the threat of harm to

17

 the community; specifying certain conditions

18

 that would support a finding that the defendant

19

 poses the threat of harm to the community;

20

 deleting requirement for additional court

21

 findings for pretrial detention; permitting

22

 pretrial detention for any violation of

23

 conditions of pretrial release or bond which,

24

 in the discretion of the court, supports a

25

 finding that no condition of release can

26

 reasonably protect the community from physical

27

 harm, assure the presence of the accused at

28

 trial, or assure the integrity of the judicial

29

 process; deleting limitation upon detention

30

 period when detention is based on threat of

31

 harm to the community; authorizing a court to

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1 detain a defendant at a bail hearing without
2 separate hearing or motion for pretrial
3 detention; authorizing the state to orally move
4 for pretrial detention any time the defendant
5 is before the court for a bail hearing;
6 providing for construction; reenacting s.
7 790.065(2)(c), F.S., relating to sale and
8 delivery of firearms, s. 943.0585, F.S.,
9 relating to court-ordered expunction of
10 criminal history records, and s. 943.059, F.S.,
11 relating to court-ordered sealing of criminal
12 history records, to incorporate said amendment
13 in references; repealing Rules 3.131 and 3.132,
14 Florida Rules of Criminal Procedure, relating
15 to pretrial release and pretrial detention, to
16 the extent of inconsistency with the act;
17 amending s. 903.31, F.S.; providing for
18 cancellation of bond under certain
19 circumstances; providing an effective date.

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