

By Senators Diaz-Balart, Horne, Silver and Meek

37-97A-99

See HB

1 A bill to be entitled

2 An act relating to pretrial detention; amending

3 s. 907.041, F.S.; permitting the court to order

4 pretrial detention under specified

5 circumstances when it finds a substantial

6 probability that a defendant committed the

7 charged crime of DUI manslaughter as defined by

8 s. 316.193, F.S., relating to driving under the

9 influence, and that the defendant poses the

10 threat of harm to the community; specifying

11 certain conditions that would support a finding

12 that the defendant poses the threat of harm to

13 the community; reenacting s. 790.065(2)(c),

14 F.S., relating to sale and delivery of

15 firearms, s. 943.0585, F.S., relating to

16 court-ordered expunction of criminal history

17 records, and s. 943.059, F.S., relating to

18 court-ordered sealing of criminal history

19 records, to incorporate such amendment in

20 references; providing an effective date.

21

22 Be It Enacted by the Legislature of the State of Florida:

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24 Section 1. Section 907.041, Florida Statutes, is

25 amended to read:

26 907.041 Pretrial detention and release.--

27 (1) LEGISLATIVE INTENT.--It is the policy of this

28 state that persons committing serious criminal offenses,

29 posing a threat to the safety of the community or the

30 integrity of the judicial process, or failing to appear at

31 trial be detained upon arrest. However, persons found to meet

1 specified criteria shall be released under certain conditions
2 until proceedings are concluded and adjudication has been
3 determined. The Legislature finds that this policy of pretrial
4 detention and release will assure the detention of those
5 persons posing a threat to society while reducing the costs
6 for incarceration by releasing, until trial, those persons not
7 considered a danger to the community who meet certain
8 criteria. It is the intent of the Legislature that the
9 primary consideration be the protection of the community from
10 risk of physical harm to persons.

11 (2) RULES OF PROCEDURE.--Procedures for pretrial
12 release determinations shall be governed by rules adopted by
13 the Supreme Court.

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

24 (4) PRETRIAL DETENTION.--

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

- 27 1. Arson;
- 28 2. Aggravated assault;
- 29 3. Aggravated battery;
- 30 4. Illegal use of explosives;
- 31 5. Child abuse or aggravated child abuse;

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

1 attempted or conspired to do so, and that no condition of
2 release will reasonably prevent the obstruction of the
3 judicial process;

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

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

18 a. The defendant has previously been convicted of any
19 crime under s. 316.193, or of any crime in any other state or
20 the United States which is substantially similar to any crime
21 under s. 316.193;

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

24 c. The defendant's driver's license has been suspended
25 at least two times prior to the commission of the charged
26 crime; or

27 ~~5.4.~~ The defendant poses the threat of harm to the
28 community. The court may so conclude if it finds that the
29 defendant is presently charged with a dangerous crime, that
30 there is a substantial probability that the defendant
31 committed such crime, that the factual circumstances of the

1 crime indicate a disregard for the safety of the community,
2 and that there are no conditions of release reasonably
3 sufficient to protect the community from the risk of physical
4 harm to persons. In addition, the court must find that at
5 least one of the following conditions is present:

6 a. The defendant has previously been convicted of a
7 crime punishable by death or life imprisonment.

8 b. The defendant has been convicted of a dangerous
9 crime within the 10 years immediately preceding the date of
10 his or her arrest for the crime presently charged.

11 c. The defendant is on probation, parole, or other
12 release pending completion of sentence or on pretrial release
13 for a dangerous crime at the time of the current arrest.

14 (c) When a person charged with a crime for which
15 pretrial detention could be ordered is arrested, the arresting
16 agency shall promptly notify the state attorney of the arrest
17 and shall provide the state attorney with such information as
18 the arresting agency has obtained relative to:

19 1. The nature and circumstances of the offense
20 charged;

21 2. The nature of any physical evidence seized and the
22 contents of any statements obtained from the defendant or any
23 witness;

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

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

29 (d) When a person charged with a crime for which
30 pretrial detention could be ordered is arrested, the arresting
31 agency may detain such defendant, prior to the filing by the

1 state attorney of a motion seeking pretrial detention, for a
2 period not to exceed 24 hours.

3 (e) The court shall order detention only after a
4 pretrial detention hearing. The hearing shall be held within
5 5 days of the filing by the state attorney of a complaint to
6 seek pretrial detention. The defendant may request a
7 continuance. No continuance shall be for longer than 5 days
8 unless there are extenuating circumstances. The defendant may
9 be detained pending the hearing. The state attorney shall be
10 entitled to one continuance for good cause.

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

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

24 (h) The pretrial detention order of the court shall be
25 based solely upon evidence produced at the hearing and shall
26 contain findings of fact and conclusions of law to support it.
27 The order shall be made either in writing or orally on the
28 record. The court shall render its findings within 24 hours of
29 the pretrial detention hearing.

30 (i) If ordered detained pending trial pursuant to
31 subparagraph (b)4., the defendant may not be held for more

1 than 90 days. Failure of the state to bring the defendant to
2 trial within that time shall result in the defendant's release
3 from detention, subject to any conditions of release, unless
4 the trial delay was requested or caused by the defendant or
5 his or her counsel.

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

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

13 Section 2. For the purpose of incorporating the
14 amendment to section 907.041, Florida Statutes, in references
15 thereto, paragraph (c) of subsection (2) of section 790.065,
16 Florida Statutes, 1998 Supplement, is reenacted to read:

17 790.065 Sale and delivery of firearms.--

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

21 (c)1. Review any records available to it to determine
22 whether the potential buyer or transferee has been indicted or
23 has had an information filed against her or him for an offense
24 that is a felony under either state or federal law, or, as
25 mandated by federal law, has had an injunction for protection
26 against domestic violence entered against the potential buyer
27 or transferee under s. 741.30, has had an injunction for
28 protection against repeat violence entered against the
29 potential buyer or transferee under s. 784.046, or has been
30 arrested for a dangerous crime as specified in s.
31 907.041(4)(a) or for any of the following enumerated offenses:

- 1 a. Criminal anarchy under ss. 876.01 and 876.02.
- 2 b. Extortion under s. 836.05.
- 3 c. Explosives violations under s. 552.22(1) and (2).
- 4 d. Controlled substances violations under chapter 893.
- 5 e. Resisting an officer with violence under s. 843.01.
- 6 f. Weapons and firearms violations under this chapter.
- 7 g. Treason under s. 876.32.
- 8 h. Assisting self-murder under s. 782.08.
- 9 i. Sabotage under s. 876.38.
- 10 j. Stalking or aggravated stalking under s. 784.048.

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12 If the review indicates any such indictment, information, or
13 arrest, the department shall provide to the licensee a
14 conditional nonapproval number.

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

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

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

30 5. If the potential buyer is not so prohibited, or if
31 the department cannot determine the disposition information

1 within the allotted time period, the department shall provide
2 the licensee with a conditional approval number.

3 6. If the buyer is so prohibited, the conditional
4 nonapproval number shall become a nonapproval number.

5 7. The department shall continue its attempts to
6 obtain the disposition information and may retain a record of
7 all approval numbers granted without sufficient disposition
8 information. If the department later obtains disposition
9 information which indicates:

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

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

16 8. During the time that disposition of the indictment,
17 information, or arrest is pending and until the department is
18 notified by the potential buyer that there has been a final
19 disposition of the indictment, information, or arrest, the
20 conditional nonapproval number shall remain in effect.

21 Section 3. For the purpose of incorporating the
22 amendment to section 907.041, Florida Statutes, in references
23 thereto, section 943.0585, Florida Statutes, 1998 Supplement,
24 is reenacted to read:

25 943.0585 Court-ordered expunction of criminal history
26 records.--The courts of this state have jurisdiction over
27 their own procedures, including the maintenance, expunction,
28 and correction of judicial records containing criminal history
29 information to the extent such procedures are not inconsistent
30 with the conditions, responsibilities, and duties established
31 by this section. Any court of competent jurisdiction may

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

1 with laws, court orders, and official requests of other
2 jurisdictions relating to expunction, correction, or
3 confidential handling of criminal history records or
4 information derived therefrom. This section does not confer
5 any right to the expunction of any criminal history record,
6 and any request for expunction of a criminal history record
7 may be denied at the sole discretion of the court.

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

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

13 (b) The petitioner's sworn statement attesting that
14 the petitioner:

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

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

23 3. Has never secured a prior sealing or expunction of
24 a criminal history record under this section, former s.
25 893.14, former s. 901.33, or former s. 943.058, or from any
26 jurisdiction outside the state.

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

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

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

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

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

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

24 3. That the criminal history record does not relate to
25 a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071,
26 chapter 839, s. 893.135, or a violation enumerated in s.
27 907.041, where the defendant was found guilty of, or pled
28 guilty or nolo contendere to any such offense, or that the
29 defendant, as a minor, was found to have committed, or pled
30 guilty or nolo contendere to committing, such an offense as a
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1 delinquent act, without regard to whether adjudication was
2 withheld.

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

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

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

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

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

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

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

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

2 (a) In judicial proceedings under this section, a copy
3 of the completed petition to expunge shall be served upon the
4 appropriate state attorney or the statewide prosecutor and
5 upon the arresting agency; however, it is not necessary to
6 make any agency other than the state a party. The appropriate
7 state attorney or the statewide prosecutor and the arresting
8 agency may respond to the court regarding the completed
9 petition to expunge.

10 (b) If relief is granted by the court, the clerk of
11 the court shall certify copies of the order to the appropriate
12 state attorney or the statewide prosecutor and the arresting
13 agency. The arresting agency is responsible for forwarding the
14 order to any other agency to which the arresting agency
15 disseminated the criminal history record information to which
16 the order pertains. The department shall forward the order to
17 expunge to the Federal Bureau of Investigation. The clerk of
18 the court shall certify a copy of the order to any other
19 agency which the records of the court reflect has received the
20 criminal history record from the court.

21 (c) For an order to expunge entered by a court prior
22 to July 1, 1992, the department shall notify the appropriate
23 state attorney or statewide prosecutor of an order to expunge
24 which is contrary to law because the person who is the subject
25 of the record has previously been convicted of a crime or
26 comparable ordinance violation or has had a prior criminal
27 history record sealed or expunged. Upon receipt of such
28 notice, the appropriate state attorney or statewide prosecutor
29 shall take action, within 60 days, to correct the record and
30 petition the court to void the order to expunge. The

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1 department shall seal the record until such time as the order
2 is voided by the court.

3 (d) On or after July 1, 1992, the department or any
4 other criminal justice agency is not required to act on an
5 order to expunge entered by a court when such order does not
6 comply with the requirements of this section. Upon receipt of
7 such an order, the department must notify the issuing court,
8 the appropriate state attorney or statewide prosecutor, the
9 petitioner or the petitioner's attorney, and the arresting
10 agency of the reason for noncompliance. The appropriate state
11 attorney or statewide prosecutor shall take action within 60
12 days to correct the record and petition the court to void the
13 order. No cause of action, including contempt of court, shall
14 arise against any criminal justice agency for failure to
15 comply with an order to expunge when the petitioner for such
16 order failed to obtain the certificate of eligibility as
17 required by this section or such order does not otherwise
18 comply with the requirements of this section.

19 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any
20 criminal history record of a minor or an adult which is
21 ordered expunged by a court of competent jurisdiction pursuant
22 to this section must be physically destroyed or obliterated by
23 any criminal justice agency having custody of such record;
24 except that any criminal history record in the custody of the
25 department must be retained in all cases. A criminal history
26 record ordered expunged that is retained by the department is
27 confidential and exempt from the provisions of s. 119.07(1)
28 and s. 24(a), Art. I of the State Constitution and not
29 available to any person or entity except upon order of a court
30 of competent jurisdiction. A criminal justice agency may

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1 retain a notation indicating compliance with an order to
2 expunge.

3 (a) The person who is the subject of a criminal
4 history record that is expunged under this section or under
5 other provisions of law, including former s. 893.14, former s.
6 901.33, and former s. 943.058, may lawfully deny or fail to
7 acknowledge the arrests covered by the expunged record, except
8 when the subject of the record:

- 9 1. Is a candidate for employment with a criminal
10 justice agency;
- 11 2. Is a defendant in a criminal prosecution;
- 12 3. Concurrently or subsequently petitions for relief
13 under this section or s. 943.059;
- 14 4. Is a candidate for admission to The Florida Bar;
- 15 5. Is seeking to be employed or licensed by or to
16 contract with the Department of Children and Family Services
17 or the Department of Juvenile Justice or to be employed or
18 used by such contractor or licensee in a sensitive position
19 having direct contact with children, the developmentally
20 disabled, the aged, or the elderly as provided in s.
21 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
22 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
23 415.1075(4), s. 985.407, or chapter 400; or
- 24 6. Is seeking to be employed or licensed by the Office
25 of Teacher Education, Certification, Staff Development, and
26 Professional Practices of the Department of Education, any
27 district school board, or any local governmental entity that
28 licenses child care facilities.

29 (b) Subject to the exceptions in paragraph (a), a
30 person who has been granted an expunction under this section,
31 former s. 893.14, former s. 901.33, or former s. 943.058 may

1 not be held under any provision of law of this state to commit
2 perjury or to be otherwise liable for giving a false statement
3 by reason of such person's failure to recite or acknowledge an
4 expunged criminal history record.

5 (c) Information relating to the existence of an
6 expunged criminal history record which is provided in
7 accordance with paragraph (a) is confidential and exempt from
8 the provisions of s. 119.07(1) and s. 24(a), Art. I of the
9 State Constitution, except that the department shall disclose
10 the existence of a criminal history record ordered expunged to
11 the entities set forth in subparagraphs (a)1., 4., 5., and 6.
12 for their respective licensing and employment purposes, and to
13 criminal justice agencies for their respective criminal
14 justice purposes. It is unlawful for any employee of an
15 entity set forth in subparagraph (a)1., subparagraph (a)4.,
16 subparagraph (a)5., or subparagraph (a)6. to disclose
17 information relating to the existence of an expunged criminal
18 history record of a person seeking employment or licensure
19 with such entity or contractor, except to the person to whom
20 the criminal history record relates or to persons having
21 direct responsibility for employment or licensure decisions.
22 Any person who violates this paragraph commits a misdemeanor
23 of the first degree, punishable as provided in s. 775.082 or
24 s. 775.083.

25 Section 4. For the purpose of incorporating the
26 amendment to section 907.041, Florida Statutes, in references
27 thereto, section 943.059, Florida Statutes, 1998 Supplement,
28 is reenacted to read:

29 943.059 Court-ordered sealing of criminal history
30 records.--The courts of this state shall continue to have
31 jurisdiction over their own procedures, including the

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

1 prevent the court from ordering the sealing of only a portion
2 of a criminal history record pertaining to one arrest or one
3 incident of alleged criminal activity. Notwithstanding any law
4 to the contrary, a criminal justice agency may comply with
5 laws, court orders, and official requests of other
6 jurisdictions relating to sealing, correction, or confidential
7 handling of criminal history records or information derived
8 therefrom. This section does not confer any right to the
9 sealing of any criminal history record, and any request for
10 sealing a criminal history record may be denied at the sole
11 discretion of the court.

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

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

17 (b) The petitioner's sworn statement attesting that
18 the petitioner:

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

23 2. Has not been adjudicated guilty of or adjudicated
24 delinquent for committing any of the acts stemming from the
25 arrest or alleged criminal activity to which the petition to
26 seal pertains.

27 3. Has never secured a prior sealing or expunction of
28 a criminal history record under this section, former s.
29 893.14, former s. 901.33, former s. 943.058, or from any
30 jurisdiction outside the state.

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

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

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

20 (a) Has submitted to the department a certified copy
21 of the disposition of the charge to which the petition to seal
22 pertains.

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

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

30 (d) Has not been adjudicated guilty of or adjudicated
31 delinquent for committing any of the acts stemming from the

1 arrest or alleged criminal activity to which the petition to
2 seal pertains.

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

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

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

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

30 (c) For an order to seal entered by a court prior to
31 July 1, 1992, the department shall notify the appropriate

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

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

27 (e) An order sealing a criminal history record
28 pursuant to this section does not require that such record be
29 surrendered to the court, and such record shall continue to be
30 maintained by the department and other criminal justice
31 agencies.

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

11 (a) The subject of a criminal history record sealed
12 under this section or under other provisions of law, including
13 former s. 893.14, former s. 901.33, and former s. 943.058, may
14 lawfully deny or fail to acknowledge the arrests covered by
15 the sealed record, except when the subject of the record:

- 16 1. Is a candidate for employment with a criminal
17 justice agency;
- 18 2. Is a defendant in a criminal prosecution;
- 19 3. Concurrently or subsequently petitions for relief
20 under this section or s. 943.0585;
- 21 4. Is a candidate for admission to The Florida Bar;
- 22 5. Is seeking to be employed or licensed by or to
23 contract with the Department of Children and Family Services
24 or the Department of Juvenile Justice or to be employed or
25 used by such contractor or licensee in a sensitive position
26 having direct contact with children, the developmentally
27 disabled, the aged, or the elderly as provided in s.
28 110.1127(3), s. 393.063(14), s. 394.4572(1), s. 397.451, s.
29 402.302(8), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
30 415.103, s. 985.407, or chapter 400; or

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

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

13 (c) Information relating to the existence of a sealed
14 criminal record provided in accordance with the provisions of
15 paragraph (a) is confidential and exempt from the provisions
16 of s. 119.07(1) and s. 24(a), Art. I of the State
17 Constitution, except that the department shall disclose the
18 sealed criminal history record to the entities set forth in
19 subparagraphs (a)1., 4., 5., and 6. for their respective
20 licensing and employment purposes. It is unlawful for any
21 employee of an entity set forth in subparagraph (a)1.,
22 subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6.
23 to disclose information relating to the existence of a sealed
24 criminal history record of a person seeking employment or
25 licensure with such entity or contractor, except to the person
26 to whom the criminal history record relates or to persons
27 having direct responsibility for employment or licensure
28 decisions. Any person who violates the provisions of this
29 paragraph commits a misdemeanor of the first degree,
30 punishable as provided in s. 775.082 or s. 775.083.

31 Section 5. This act shall take effect October 1, 1999.

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LEGISLATIVE SUMMARY

Permits the court to order pretrial detention under specified circumstances when it finds a substantial probability that a defendant charged with DUI manslaughter committed the crime and that the defendant poses the threat of harm to the community. Specifies certain conditions that would support the finding that the defendant poses the threat of harm to the community. Reenacts various statutory provisions to incorporate changes made by the act in references.