

By Senator Diaz-Balart

37-79-00

1 A bill to be entitled
2 An act relating to DUI manslaughter; 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 a
10 threat of harm to the community; specifying
11 certain conditions that would support a finding
12 that the defendant poses a threat of harm to
13 the community; reenacting s. 790.065(2)(c),
14 F.S.; including DUI manslaughter as an offense
15 that renders a person ineligible to obtain a
16 firearm; reenacting ss. 943.0585, 943.059 F.S.,
17 relating to court-ordered expunction and
18 sealing of criminal history records; providing
19 that the offense of DUI manslaughter may not be
20 expunged or sealed if the defendant was found
21 guilty of or pled guilty or nolo contendere to
22 the offense, regardless of adjudication;
23 providing an effective date.

24

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

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27 Section 1. Section 907.041, Florida Statutes, is
28 amended to read:

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29 907.041 Pretrial detention and release.--

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30 (1) LEGISLATIVE INTENT.--It is the policy of this
31 state that persons committing serious criminal offenses,

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

14 (2) RULES OF PROCEDURE.--Procedures for pretrial
15 release determinations shall be governed by rules adopted by
16 the Supreme Court.

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

27 (4) PRETRIAL DETENTION.--

28 (a) As used in this subsection, the term "dangerous
29 crime" means any of the following:

- 30 1. Arson;
- 31 2. Aggravated assault;

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

3 2. The defendant, with the intent to obstruct the
4 judicial process, has threatened, intimidated, or injured any
5 victim, potential witness, juror, or judicial officer, or has
6 attempted or conspired to do so, and that no condition of
7 release will reasonably prevent the obstruction of the
8 judicial process.~~†~~

9 3. The defendant is charged with trafficking in
10 controlled substances as defined by s. 893.135, that there is
11 a substantial probability that the defendant has committed the
12 offense, and that no conditions of release will reasonably
13 assure the defendant's appearance at subsequent criminal
14 proceedings.~~† or~~

15 4. The defendant is charged with DUI manslaughter, as
16 defined by s. 316.193, and that there is a substantial
17 probability that the defendant committed the crime and that
18 the defendant poses the threat of harm to the community.
19 Conditions that would support a finding by the court under
20 this subparagraph that the defendant poses the threat of harm
21 to the community include, but are not limited to:

22 a. The defendant has previously been convicted of any
23 crime under s. 316.193, or of any crime in any other state or
24 the United States which is substantially similar to any crime
25 under s. 316.193;

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

28 c. The defendant's driver's license has been suspended
29 at least two times prior to the commission of the charged
30 crime.

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1 5.4. The defendant poses the threat of harm to the
2 community. The court may so conclude if it finds that the
3 defendant is presently charged with a dangerous crime, that
4 there is a substantial probability that the defendant
5 committed such crime, that the factual circumstances of the
6 crime indicate a disregard for the safety of the community,
7 and that there are no conditions of release reasonably
8 sufficient to protect the community from the risk of physical
9 harm to persons. In addition, the court must find that at
10 least one of the following conditions is present:

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

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

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

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

24 1. The nature and circumstances of the offense
25 charged;

26 2. The nature of any physical evidence seized and the
27 contents of any statements obtained from the defendant or any
28 witness;

29 3. The defendant's family ties, residence, employment,
30 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 hearing shall be held within
11 5 days after ~~of~~ the filing by the state attorney of a
12 complaint to seek pretrial detention. The defendant may
13 request a continuance. A ~~No~~ continuance may not ~~shall~~ be for
14 longer than 5 days unless there are extenuating circumstances.
15 The defendant may be detained pending the hearing. The state
16 attorney is ~~shall be~~ entitled to one continuance for good
17 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 is
26 ~~shall not be~~ admissible. ~~No~~ Testimony by the defendant is not
27 ~~shall be~~ admissible to prove guilt at any other judicial
28 proceeding, but such testimony may be admitted in an action
29 for perjury, based upon the defendant's statements made at the
30 pretrial 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
6 after ~~of~~ 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 (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 (k) The defendant is ~~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 Section 2. For the purpose of incorporating the
22 amendment to section 907.041, Florida Statutes, in references
23 thereto, paragraph (c) of subsection (2) of section 790.065,
24 Florida Statutes, is reenacted to read:

25 790.065 Sale and delivery of firearms.--

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

29 (c)1. Review any records available to it to determine
30 whether the potential buyer or transferee has been indicted or
31 has had an information filed against her or him for an offense

1 that is a felony under either state or federal law, or, as
2 mandated by federal law, has had an injunction for protection
3 against domestic violence entered against the potential buyer
4 or transferee under s. 741.30, has had an injunction for
5 protection against repeat violence entered against the
6 potential buyer or transferee under s. 784.046, or has been
7 arrested for a dangerous crime as specified in s.

8 907.041(4)(a) or for any of the following enumerated offenses:

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

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20 If the review indicates any such indictment, information, or
21 arrest, the department shall provide to the licensee a
22 conditional nonapproval number.

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

30 3. The office of the clerk of court, at no charge to
31 the department, shall respond to any department request for

1 data on the disposition of the indictment, information, or
2 arrest as soon as possible, but in no event later than 8
3 working hours.

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

7 5. If the potential buyer is not so prohibited, or if
8 the department cannot determine the disposition information
9 within the allotted time period, the department shall provide
10 the licensee with a conditional approval number.

11 6. If the buyer is so prohibited, the conditional
12 nonapproval number shall become a nonapproval number.

13 7. The department shall continue its attempts to
14 obtain the disposition information and may retain a record of
15 all approval numbers granted without sufficient disposition
16 information. If the department later obtains disposition
17 information which indicates:

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

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

24 8. During the time that disposition of the indictment,
25 information, or arrest is pending and until the department is
26 notified by the potential buyer that there has been a final
27 disposition of the indictment, information, or arrest, the
28 conditional nonapproval number shall remain in effect.

29 Section 3. For the purpose of incorporating the
30 amendment to section 907.041, Florida Statutes, in references
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1 thereto, section 943.0585, Florida Statutes, is reenacted to
2 read:

3 943.0585 Court-ordered expunction of criminal history
4 records.--The courts of this state have jurisdiction over
5 their own procedures, including the maintenance, expunction,
6 and correction of judicial records containing criminal history
7 information to the extent such procedures are not inconsistent
8 with the conditions, responsibilities, and duties established
9 by this section. Any court of competent jurisdiction may
10 order a criminal justice agency to expunge the criminal
11 history record of a minor or an adult who complies with the
12 requirements of this section. The court shall not order a
13 criminal justice agency to expunge a criminal history record
14 until the person seeking to expunge a criminal history record
15 has applied for and received a certificate of eligibility for
16 expunction pursuant to subsection (2). A criminal history
17 record that relates to a violation of chapter 794, s. 800.04,
18 s. 817.034, s. 827.071, chapter 839, s. 893.135, or a
19 violation enumerated in s. 907.041 may not be expunged,
20 without regard to whether adjudication was withheld, if the
21 defendant was found guilty of or pled guilty or nolo
22 contendere to the offense, or if the defendant, as a minor,
23 was found to have committed, or pled guilty or nolo contendere
24 to committing, the offense as a delinquent act. The court may
25 only order expunction of a criminal history record pertaining
26 to one arrest or one incident of alleged criminal activity,
27 except as provided in this section. The court may, at its sole
28 discretion, order the expunction of a criminal history record
29 pertaining to more than one arrest if the additional arrests
30 directly relate to the original arrest. If the court intends
31 to order the expunction of records pertaining to such

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

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

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

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

24 1. Has never, prior to the date on which the petition
25 is filed, been adjudicated guilty of a criminal offense or
26 comparable ordinance violation or adjudicated delinquent for
27 committing a felony or a misdemeanor specified in s.
28 943.051(3)(b).

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

3 3. 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, or from any
6 jurisdiction outside the state.

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

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

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

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

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

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

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

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

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

20 (d) Has never, prior to the date on which the
21 application for a certificate of eligibility is filed, been
22 adjudicated guilty of a criminal offense or comparable
23 ordinance violation or adjudicated delinquent for committing a
24 felony or a 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.

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

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

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

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

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

1 disabled, the aged, or the elderly as provided in s.
2 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
3 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
4 415.1075(4), 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 that
9 licenses child care facilities.

10 (b) Subject to the exceptions in paragraph (a), a
11 person who has been granted an expunction 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 an
16 expunged criminal history record.

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

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

6 (5) STATUTORY REFERENCES.--Any reference to any other
7 chapter, section, or subdivision of the Florida Statutes in
8 this section constitutes a general reference under the
9 doctrine of incorporation by reference.

10 Section 4. For the purpose of incorporating the
11 amendment to section 907.041, Florida Statutes, in references
12 thereto, section 943.059, Florida Statutes, is reenacted to
13 read:

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

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

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

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

3 (b) The petitioner's sworn statement attesting that
4 the petitioner:

5 1. Has never, prior to the date on which the petition
6 is filed, been adjudicated guilty of a criminal offense or
7 comparable ordinance violation or adjudicated delinquent for
8 committing a felony or a misdemeanor specified in s.
9 943.051(3)(b).

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

14 3. Has never secured a prior sealing or expunction of
15 a criminal history record under this section, former s.
16 893.14, former s. 901.33, former s. 943.058, or from any
17 jurisdiction outside the state.

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

22
23 Any person who knowingly provides false information on such
24 sworn statement to the court commits a felony of the third
25 degree, punishable as provided in s. 775.082, s. 775.083, or
26 s. 775.084.

27 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
28 petitioning the court to seal a criminal history record, a
29 person seeking to seal a criminal history record shall apply
30 to the department for a certificate of eligibility for
31 sealing. The department shall, by rule adopted pursuant to

1 chapter 120, establish procedures pertaining to the
2 application for and issuance of certificates of eligibility
3 for sealing. The department shall issue a certificate of
4 eligibility for sealing to a person who is the subject of a
5 criminal history record provided that such person:

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

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

12 (c) Has never, prior to the date on which the
13 application for a certificate of eligibility is filed, been
14 adjudicated guilty of a criminal offense or comparable
15 ordinance violation or adjudicated delinquent for committing a
16 felony or a misdemeanor specified in s. 943.051(3)(b).

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

21 (e) Has never secured a prior sealing or expunction of
22 a criminal history record under this section, former s.
23 893.14, former s. 901.33, or former s. 943.058.

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

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

28 (a) In judicial proceedings under this section, a copy
29 of the completed petition to seal shall be served upon the
30 appropriate state attorney or the statewide prosecutor and
31 upon the arresting agency; however, it is not necessary to

1 make any agency other than the state a party. The appropriate
2 state attorney or the statewide prosecutor and the arresting
3 agency may respond to the court regarding the completed
4 petition to seal.

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

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

29 (d) On or after July 1, 1992, the department or any
30 other criminal justice agency is not required to act on an
31 order to seal entered by a court when such order does not

1 comply with the requirements of this section. Upon receipt of
2 such an order, the department must notify the issuing court,
3 the appropriate state attorney or statewide prosecutor, the
4 petitioner or the petitioner's attorney, and the arresting
5 agency of the reason for noncompliance. The appropriate state
6 attorney or statewide prosecutor shall take action within 60
7 days to correct the record and petition the court to void the
8 order. No cause of action, including contempt of court, shall
9 arise against any criminal justice agency for failure to
10 comply with an order to seal when the petitioner for such
11 order failed to obtain the certificate of eligibility as
12 required by this section or when such order does not comply
13 with the requirements of this section.

14 (e) An order sealing a criminal history record
15 pursuant to this section does not require that such record be
16 surrendered to the court, and such record shall continue to be
17 maintained by the department and other criminal justice
18 agencies.

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

29 (a) The subject of a criminal history record sealed
30 under this section or under other provisions of law, including
31 former s. 893.14, former s. 901.33, and former s. 943.058, may

1 lawfully deny or fail to acknowledge the arrests covered by
2 the sealed record, except when the subject of the record:
3 1. Is a candidate for employment with a criminal
4 justice agency;
5 2. Is a defendant in a criminal prosecution;
6 3. Concurrently or subsequently petitions for relief
7 under this section or s. 943.0585;
8 4. Is a candidate for admission to The Florida Bar;
9 5. Is seeking to be employed or licensed by or to
10 contract with the Department of Children and Family Services
11 or the Department of Juvenile Justice or to be employed or
12 used by such contractor or licensee in a sensitive position
13 having direct contact with children, the developmentally
14 disabled, the aged, or the elderly as provided in s.
15 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
16 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
17 415.103, s. 985.407, or chapter 400; or
18 6. Is seeking to be employed or licensed by the Office
19 of Teacher Education, Certification, Staff Development, and
20 Professional Practices of the Department of Education, any
21 district school board, or any local governmental entity which
22 licenses child care facilities.
23 (b) Subject to the exceptions in paragraph (a), a
24 person who has been granted a sealing under this section,
25 former s. 893.14, former s. 901.33, or former s. 943.058 may
26 not be held under any provision of law of this state to commit
27 perjury or to be otherwise liable for giving a false statement
28 by reason of such person's failure to recite or acknowledge a
29 sealed criminal history record.
30 (c) Information relating to the existence of a sealed
31 criminal record provided in accordance with the provisions of

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

17 (5) STATUTORY REFERENCES.--Any reference to any other
18 chapter, section, or subdivision of the Florida Statutes in
19 this section constitutes a general reference under the
20 doctrine of incorporation by reference.

21 Section 5. This act shall take effect October 1, 2000.
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24 SENATE SUMMARY

25 Permits the court to order pretrial detention under specified
26 circumstances when it finds a substantial probability that a
27 defendant charged with DUI manslaughter committed the crime
28 and that the defendant poses a threat of harm to the
29 community. Specifies certain conditions that would support the
30 finding that the defendant poses a threat of harm to the
31 community. Reenacts various statutory provisions to
incorporate changes made by the act. Requires that a potential
buyer of a firearm who has been arrested for DUI manslaughter
be issued a conditional nonapproval number. Provides that the
offense of DUI manslaughter may not be expunged or sealed if
the defendant was found guilty of or pled guilty or nolo
contendere to the offense, regardless of adjudication.