

By Senator Diaz-Balart

37-80A-00

See HB

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

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

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

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

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

22 907.041 Pretrial detention and release.--

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

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

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

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

20 (4) PRETRIAL DETENTION.--

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

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

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

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

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

1 | ~~harm to persons; In addition, the court must find that at~~
2 | ~~least one of the following conditions is present:~~
3 | ~~a. The defendant has previously been convicted of a~~
4 | ~~crime punishable by death or life imprisonment.~~
5 | ~~b. The defendant has been convicted of a dangerous~~
6 | ~~crime within the 10 years immediately preceding the date of~~
7 | ~~his or her arrest for the crime presently charged.~~
8 | 6.c. The defendant was ~~is~~ on probation, parole, or
9 | other release pending completion of sentence or on pretrial
10 | release for a dangerous crime at the time ~~of~~ the current
11 | offense was committed; or arrest.
12 | 7. The defendant has violated one or more conditions
13 | of pretrial release or bond for the offense currently before
14 | the court and the violation, in the discretion of the court,
15 | supports a finding that no conditions of release can
16 | reasonably protect the community from risk of physical harm to
17 | persons or assure the presence of the accused at trial.
18 | (c) When a person charged with a crime for which
19 | pretrial detention could be ordered is arrested, the arresting
20 | agency shall promptly notify the state attorney of the arrest
21 | and shall provide the state attorney with such information as
22 | the arresting agency has obtained relative to:
23 | 1. The nature and circumstances of the offense
24 | charged;
25 | 2. The nature of any physical evidence seized and the
26 | contents of any statements obtained from the defendant or any
27 | witness;
28 | 3. The defendant's family ties, residence, employment,
29 | financial condition, and mental condition; and
30 |
31 |

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

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

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

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

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

31

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

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

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

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

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

28 Section 3. For the purpose of incorporating the
29 amendment to section 907.041, Florida Statutes, in references
30 thereto, paragraph (c) of subsection (2) of section 790.065,
31 Florida Statutes, is reenacted to read:

1 790.065 Sale and delivery of firearms.--
2 (2) Upon receipt of a request for a criminal history
3 record check, the Department of Law Enforcement shall, during
4 the licensee's call or by return call, forthwith:
5 (c)1. Review any records available to it to determine
6 whether the potential buyer or transferee has been indicted or
7 has had an information filed against her or him for an offense
8 that is a felony under either state or federal law, or, as
9 mandated by federal law, has had an injunction for protection
10 against domestic violence entered against the potential buyer
11 or transferee under s. 741.30, has had an injunction for
12 protection against repeat violence entered against the
13 potential buyer or transferee under s. 784.046, or has been
14 arrested for a dangerous crime as specified in s.
15 907.041(4)(a) or for any of the following enumerated offenses:
16 a. Criminal anarchy under ss. 876.01 and 876.02.
17 b. Extortion under s. 836.05.
18 c. Explosives violations under s. 552.22(1) and (2).
19 d. Controlled substances violations under chapter 893.
20 e. Resisting an officer with violence under s. 843.01.
21 f. Weapons and firearms violations under this chapter.
22 g. Treason under s. 876.32.
23 h. Assisting self-murder under s. 782.08.
24 i. Sabotage under s. 876.38.
25 j. Stalking or aggravated stalking under s. 784.048.
26
27 If the review indicates any such indictment, information, or
28 arrest, the department shall provide to the licensee a
29 conditional nonapproval number.
30 2. Within 24 working hours, the department shall
31 determine the disposition of the indictment, information, or

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

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

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

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

18 6. If the buyer is so prohibited, the conditional
19 nonapproval number shall become a nonapproval number.

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

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

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

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

6 Section 4. For the purpose of incorporating the
7 amendment to section 907.041, Florida Statutes, in references
8 thereto, section 943.0585, Florida Statutes, is reenacted to
9 read:

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

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

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

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

29 (b) The petitioner's sworn statement attesting that
30 the petitioner:
31

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

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

10 3. Has never secured a prior sealing or expunction of
11 a criminal history record under this section, former s.
12 893.14, former s. 901.33, or former s. 943.058, or from any
13 jurisdiction outside the state.

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

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

23 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior
24 to petitioning the court to expunge a criminal history record,
25 a person seeking to expunge a criminal history record shall
26 apply to the department for a certificate of eligibility for
27 expunction. The department shall, by rule adopted pursuant to
28 chapter 120, establish procedures pertaining to the
29 application for and issuance of certificates of eligibility
30 for expunction. The department shall issue a certificate of
31

1 eligibility for expunction to a person who is the subject of a
2 criminal history record if that person:

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

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

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

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

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

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

27 (d) Has never, prior to the date on which the
28 application for a certificate of eligibility is filed, been
29 adjudicated guilty of a criminal offense or comparable
30 ordinance violation or adjudicated delinquent for committing a
31 felony or a misdemeanor specified in s. 943.051(3)(b).

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

5 (f) Has never secured a prior sealing or expunction of
6 a criminal history record under this section, former s.
7 893.14, former s. 901.33, or former s. 943.058.

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

11 (h) Is not required to wait a minimum of 10 years
12 prior to being eligible for an expunction of such records
13 because all charges related to the arrest or criminal activity
14 to which the petition to expunge pertains were dismissed prior
15 to trial, adjudication, or the withholding of adjudication.
16 Otherwise, such criminal history record must be sealed under
17 this section, former s. 893.14, former s. 901.33, or former s.
18 943.058 for at least 10 years before such record is eligible
19 for expunction.

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

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

29 (b) If relief is granted by the court, the clerk of
30 the court shall certify copies of the order to the appropriate
31 state attorney or the statewide prosecutor and the arresting

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

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

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

1 arise against any criminal justice agency for failure to
2 comply with an order to expunge when the petitioner for such
3 order failed to obtain the certificate of eligibility as
4 required by this section or such order does not otherwise
5 comply with the requirements of this section.

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

20 (a) The person who is the subject of a criminal
21 history record that is expunged under this section or under
22 other provisions of law, including former s. 893.14, former s.
23 901.33, and former s. 943.058, may lawfully deny or fail to
24 acknowledge the arrests covered by the expunged record, except
25 when the subject of the record:

- 26 1. Is a candidate for employment with a criminal
27 justice agency;
28 2. Is a defendant in a criminal prosecution;
29 3. Concurrently or subsequently petitions for relief
30 under this section or s. 943.059;
31 4. Is a candidate for admission to The Florida Bar;

1 5. Is seeking to be employed or licensed by or to
2 contract with the Department of Children and Family Services
3 or the Department of Juvenile Justice or to be employed or
4 used by such contractor or licensee in a sensitive position
5 having direct contact with children, the developmentally
6 disabled, the aged, or the elderly as provided in s.
7 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
8 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
9 415.1075(4), s. 985.407, or chapter 400; or

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

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

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

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

11 (5) STATUTORY REFERENCES.--Any reference to any other
12 chapter, section, or subdivision of the Florida Statutes in
13 this section constitutes a general reference under the
14 doctrine of incorporation by reference.

15 Section 5. For the purpose of incorporating the
16 amendment to section 907.041, Florida Statutes, in references
17 thereto, section 943.059, Florida Statutes, is reenacted to
18 read:

19 943.059 Court-ordered sealing of criminal history
20 records.--The courts of this state shall continue to have
21 jurisdiction over their own procedures, including the
22 maintenance, sealing, and correction of judicial records
23 containing criminal history information to the extent such
24 procedures are not inconsistent with the conditions,
25 responsibilities, and duties established by this section. Any
26 court of competent jurisdiction may order a criminal justice
27 agency to seal the criminal history record of a minor or an
28 adult who complies with the requirements of this section. The
29 court shall not order a criminal justice agency to seal a
30 criminal history record until the person seeking to seal a
31 criminal history record has applied for and received a

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

1 sealing a criminal history record may be denied at the sole
2 discretion of the court.

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

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

8 (b) The petitioner's sworn statement attesting that
9 the petitioner:

10 1. Has never, prior to the date on which the petition
11 is filed, been adjudicated guilty of a criminal offense or
12 comparable ordinance violation or adjudicated delinquent for
13 committing a felony or a misdemeanor specified in s.
14 943.051(3)(b).

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

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

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

27
28 Any person who knowingly provides false information on such
29 sworn statement to the court commits a felony of the third
30 degree, punishable as provided in s. 775.082, s. 775.083, or
31 s. 775.084.

1 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to
2 petitioning the court to seal a criminal history record, a
3 person seeking to seal a criminal history record shall apply
4 to the department for a certificate of eligibility for
5 sealing. The department shall, by rule adopted pursuant to
6 chapter 120, establish procedures pertaining to the
7 application for and issuance of certificates of eligibility
8 for sealing. The department shall issue a certificate of
9 eligibility for sealing to a person who is the subject of a
10 criminal history record provided that such person:

11 (a) Has submitted to the department a certified copy
12 of the disposition of the charge to which the petition to seal
13 pertains.

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 never, prior to the date on which the
18 application for a certificate of eligibility is filed, been
19 adjudicated guilty of a criminal offense or comparable
20 ordinance violation or adjudicated delinquent for committing a
21 felony or a misdemeanor specified in s. 943.051(3)(b).

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

26 (e) Has never secured a prior sealing or expunction of
27 a criminal history record under this section, former s.
28 893.14, former s. 901.33, or former s. 943.058.

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

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

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

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 to the
13 arresting agency. The arresting agency is responsible for
14 forwarding the order to any other agency to which the
15 arresting agency disseminated the criminal history record
16 information to which the order pertains. The department shall
17 forward the order to seal to the Federal Bureau of
18 Investigation. The clerk of the court shall certify a copy of
19 the order to any other agency which the records of the court
20 reflect has received the criminal history record from the
21 court.

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

1 shall seal the record until such time as the order is voided
2 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 seal 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 seal when the petitioner for such
16 order failed to obtain the certificate of eligibility as
17 required by this section or when such order does not comply
18 with the requirements of this section.

19 (e) An order sealing a criminal history record
20 pursuant to this section does not require that such record be
21 surrendered to the court, and such record shall continue to be
22 maintained by the department and other criminal justice
23 agencies.

24 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A
25 criminal history record of a minor or an adult which is
26 ordered sealed by a court of competent jurisdiction pursuant
27 to this section is confidential and exempt from the provisions
28 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution
29 and is available only to the person who is the subject of the
30 record, to the subject's attorney, to criminal justice
31 agencies for their respective criminal justice purposes, or to

1 those entities set forth in subparagraphs (a)1., 4., 5., and
2 6. for their respective licensing and employment purposes.

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

- 8 1. Is a candidate for employment with a criminal
9 justice agency;
- 10 2. Is a defendant in a criminal prosecution;
- 11 3. Concurrently or subsequently petitions for relief
12 under this section or s. 943.0585;
- 13 4. Is a candidate for admission to The Florida Bar;
- 14 5. Is seeking to be employed or licensed by or to
15 contract with the Department of Children and Family Services
16 or the Department of Juvenile Justice or to be employed or
17 used by such contractor or licensee in a sensitive position
18 having direct contact with children, the developmentally
19 disabled, the aged, or the elderly as provided in s.
20 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.
21 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
22 415.103, s. 985.407, or chapter 400; or
- 23 6. Is seeking to be employed or licensed by the Office
24 of Teacher Education, Certification, Staff Development, and
25 Professional Practices of the Department of Education, any
26 district school board, or any local governmental entity which
27 licenses child care facilities.

28 (b) Subject to the exceptions in paragraph (a), a
29 person who has been granted a sealing under this section,
30 former s. 893.14, former s. 901.33, or former s. 943.058 may
31 not be held under any provision of law of this state to commit

1 perjury or to be otherwise liable for giving a false statement
2 by reason of such person's failure to recite or acknowledge a
3 sealed criminal history record.

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

22 (5) STATUTORY REFERENCES.--Any reference to any other
23 chapter, section, or subdivision of the Florida Statutes in
24 this section constitutes a general reference under the
25 doctrine of incorporation by reference.

26 Section 6. Rules 3.131 and 3.132, Florida Rules of
27 Criminal Procedure, are repealed to the extent that they are
28 inconsistent with this act.

29 Section 7. Section 903.31, Florida Statutes, is
30 amended to read:

31 903.31 Canceling the bond.--

1 (1) Within 10 business days after the conditions of a
2 bond have been satisfied or the forfeiture discharged or
3 remitted, the court shall order the bond canceled and, if the
4 surety has attached a certificate of cancellation to the
5 original bond, shall furnish an executed certificate of
6 cancellation to the surety without cost. An adjudication of
7 guilt or innocence of the defendant shall satisfy the
8 conditions of the bond. The original appearance bond shall
9 expire 36 months after such bond has been posted for the
10 release of the defendant from custody. This subsection does
11 not apply to cases in which a bond has been declared
12 forfeited.

13 (2) The original appearance bond shall not be
14 construed to guarantee deferred sentences, appearance during
15 or after a presentence investigation, appearance during or
16 after appeals, conduct during or appearance after admission to
17 a pretrial intervention program, payment of fines, or
18 attendance at educational or rehabilitation facilities the
19 court otherwise provides in the judgment. If the original
20 appearance bond has been forfeited or revoked, the bond shall
21 not be reinstated without approval from the surety on the
22 original bond.

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

27 Section 8. This act shall take effect October 1, 2000,
28 except that section 6 shall take effect only if this act is
29 passed by the affirmative vote of two-thirds of the membership
30 of each house of the Legislature.

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LEGISLATIVE SUMMARY

Revises criteria for pretrial detention. 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. Deletes a requirement for additional court findings for pretrial detention. Provides that a court may detain a defendant after a bail hearing without separate hearing or motion for pretrial detention if the court finds that no conditions of release can protect the community from harm or assure the defendant's presence at trial. Removes limitation upon detention period when detention is based on threat of harm to the community. Authorizes a court to detain a defendant at a bail hearing without separate hearing or motion for pretrial detention and authorizes the state to orally move for pretrial detention any time the defendant is before the court for a bail hearing. Reenacts various statutory provisions to incorporate changes made by the act in references. Repeals Rules 3.131 and 3.132, Florida Rules of Criminal Procedure, relating to pretrial release and pretrial detention, to the extent that they are inconsistent with the act. Provides for cancellation of bond when no formal charges are brought against the defendant within one year after arrest.