

By Representative Cantens

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 that there is a substantial  
9 probability that the defendant committed the crime and that  
10 the defendant poses a threat of harm to the community;  
11 conditions that would support a finding by the court pursuant  
12 to this subparagraph that the defendant poses a threat of harm  
13 to the community include, but are not limited to, any of the  
14 following:

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

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

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

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

1 sufficient to protect the community from the risk of physical  
2 harm to persons. ~~In addition, the court must find that at~~  
3 ~~least one of the following conditions is present:~~

4 ~~a. The defendant has previously been convicted of a~~  
5 ~~crime punishable by death or life imprisonment.~~

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

9 ~~6.c.~~ The defendant was ~~is~~ on probation, parole, or  
10 other release pending completion of sentence or on pretrial  
11 release for a dangerous crime at the time ~~of~~ the current  
12 offense was committed; or arrest.

13 7. The defendant has violated one or more conditions  
14 of pretrial release or bond for the offense currently before  
15 the court and the violation, in the discretion of the court,  
16 supports a finding that no conditions of release can  
17 reasonably protect the community from risk of physical harm to  
18 persons or assure the presence of the accused at trial.

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

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.

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

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

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

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

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

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

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

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

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

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

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

1           2. 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  
4 pertains.

5           3. 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, or from any  
8 jurisdiction outside the state.

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

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

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

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

31

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

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



1 required by this section or such order does not otherwise  
2 comply with the requirements of this section.

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

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

- 23 1. Is a candidate for employment with a criminal  
24 justice agency;
- 25 2. Is a defendant in a criminal prosecution;
- 26 3. Concurrently or subsequently petitions for relief  
27 under this section or s. 943.059;
- 28 4. Is a candidate for admission to The Florida Bar;
- 29 5. Is seeking to be employed or licensed by or to  
30 contract with the Department of Children and Family Services  
31 or the Department of Juvenile Justice or to be employed or

1 used by such contractor or licensee in a sensitive position  
2 having direct contact with children, the developmentally  
3 disabled, the aged, or the elderly as provided in s.  
4 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
5 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
6 415.1075(4), s. 985.407, or chapter 400; or  
7         6. Is seeking to be employed or licensed by the Office  
8 of Teacher Education, Certification, Staff Development, and  
9 Professional Practices of the Department of Education, any  
10 district school board, or any local governmental entity that  
11 licenses child care facilities.  
12         (b) Subject to the exceptions in paragraph (a), a  
13 person who has been granted an expunction under this section,  
14 former s. 893.14, former s. 901.33, or former s. 943.058 may  
15 not be held under any provision of law of this state to commit  
16 perjury or to be otherwise liable for giving a false statement  
17 by reason of such person's failure to recite or acknowledge an  
18 expunged criminal history record.  
19         (c) Information relating to the existence of an  
20 expunged criminal history record which is provided in  
21 accordance with paragraph (a) is confidential and exempt from  
22 the provisions of s. 119.07(1) and s. 24(a), Art. I of the  
23 State Constitution, except that the department shall disclose  
24 the existence of a criminal history record ordered expunged to  
25 the entities set forth in subparagraphs (a)1., 4., 5., and 6.  
26 for their respective licensing and employment purposes, and to  
27 criminal justice agencies for their respective criminal  
28 justice purposes. It is unlawful for any employee of an  
29 entity set forth in subparagraph (a)1., subparagraph (a)4.,  
30 subparagraph (a)5., or subparagraph (a)6. to disclose  
31 information relating to the existence of an expunged criminal

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

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

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

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

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

29 (a) A certificate of eligibility for sealing issued by  
30 the department pursuant to subsection (2).  
31

1 (b) The petitioner's sworn statement attesting that  
2 the petitioner:

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

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

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

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

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

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

1 for sealing. The department shall issue a certificate of  
2 eligibility for sealing to a person who is the subject of a  
3 criminal history record provided that such person:

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

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

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

15 (d) 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 (e) 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, or former s. 943.058.

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

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

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

1 agency may respond to the court regarding the completed  
2 petition to seal.

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

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

27 (d) On or after July 1, 1992, the department or any  
28 other criminal justice agency is not required to act on an  
29 order to seal entered by a court when such order does not  
30 comply with the requirements of this section. Upon receipt of  
31 such an order, the department must notify the issuing court,

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

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

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

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



- 1           1. Is a candidate for employment with a criminal  
2 justice agency;
- 3           2. Is a defendant in a criminal prosecution;
- 4           3. Concurrently or subsequently petitions for relief  
5 under this section or s. 943.0585;
- 6           4. Is a candidate for admission to The Florida Bar;
- 7           5. Is seeking to be employed or licensed by or to  
8 contract with the Department of Children and Family Services  
9 or the Department of Juvenile Justice or to be employed or  
10 used by such contractor or licensee in a sensitive position  
11 having direct contact with children, the developmentally  
12 disabled, the aged, or the elderly as provided in s.  
13 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
14 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
15 415.103, s. 985.407, or chapter 400; or
- 16           6. Is seeking to be employed or licensed by the Office  
17 of Teacher Education, Certification, Staff Development, and  
18 Professional Practices of the Department of Education, any  
19 district school board, or any local governmental entity which  
20 licenses child care facilities.
- 21           (b) Subject to the exceptions in paragraph (a), a  
22 person who has been granted a sealing under this section,  
23 former s. 893.14, former s. 901.33, or former s. 943.058 may  
24 not be held under any provision of law of this state to commit  
25 perjury or to be otherwise liable for giving a false statement  
26 by reason of such person's failure to recite or acknowledge a  
27 sealed criminal history record.
- 28           (c) Information relating to the existence of a sealed  
29 criminal record provided in accordance with the provisions of  
30 paragraph (a) is confidential and exempt from the provisions  
31 of s. 119.07(1) and s. 24(a), Art. I of the State

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

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

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

22 Section 5. Section 903.31, Florida Statutes, is  
23 amended to read:

24 903.31 Canceling the bond.--

25 (1) Within 10 business days after the conditions of a  
26 bond have been satisfied or the forfeiture discharged or  
27 remitted, the court shall order the bond canceled and, if the  
28 surety has attached a certificate of cancellation to the  
29 original bond, shall furnish an executed certificate of  
30 cancellation to the surety without cost. An adjudication of  
31 guilt or innocence of the defendant shall satisfy the

1 conditions of the bond. The original appearance bond shall  
2 expire 36 months after such bond has been posted for the  
3 release of the defendant from custody. This subsection does  
4 not apply to cases in which a bond has been declared  
5 forfeited.

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

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

20 Section 6. This act shall take effect October 1, 2000,  
21 except that section 4 shall take effect only if this act is  
22 passed by the affirmative vote of two-thirds of the membership  
23 of each house of the Legislature.  
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HOUSE 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.