

By Senator Klein

28-710A-02

1                                   A bill to be entitled  
2           An act relating to investigative incident  
3           reports; amending s. 943.045, F.S.; defining  
4           the term "investigative incident report";  
5           creating s. 943.0595, F.S.; authorizing a court  
6           to order that an investigative incident report  
7           be sealed by the criminal justice agency that  
8           makes the report; providing requirements for  
9           the petition to seal an investigative incident  
10          report; requiring a certification of  
11          eligibility issued by the Department of Law  
12          Enforcement; requiring that the department  
13          adopt rules governing the issuance of  
14          certificates of eligibility; requiring that a  
15          petition to seal a report be served on the  
16          agency that prepared the report; requiring that  
17          an order to seal a report be forwarded to any  
18          agency that received the investigative incident  
19          report to which the order pertains; providing  
20          that an agency need not comply with an order to  
21          seal if the order does not comply with the  
22          requirements for sealing; requiring the  
23          Department of Law Enforcement to notify the  
24          court of the noncompliance; providing that  
25          there is not a cause of action against an  
26          agency that does seal a record if the  
27          petitioner failed to comply with the  
28          requirements for sealing; providing that a  
29          person who is the subject of an investigative  
30          incident report may lawfully deny or fail to  
31          acknowledge an incident that is the subject of

1 a sealed report; specifying certain exceptions;  
2 providing an effective date.  
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4 Be It Enacted by the Legislature of the State of Florida:  
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6 Section 1. Subsection (19) is added to section  
7 943.045, Florida Statutes, to read:

8 943.045 Definitions; ss. 943.045-943.08.--The  
9 following words and phrases as used in ss. 943.045-943.08  
10 shall have the following meanings:

11 (19) "Investigative incident report" means any  
12 nonjudicial record maintained by a criminal justice agency  
13 which documents criminal investigative activity and the  
14 results of such activity, including, but not limited to, the  
15 facts and circumstances relating to alleged or suspected  
16 criminal activity, and for which there is a final decision by  
17 the criminal justice agency that an arrest will not be made  
18 and criminal charges will not be filed with respect to the  
19 alleged or suspected activity under investigation which is the  
20 subject of the report. The term does not include a criminal  
21 history record.

22 Section 2. Section 943.0595, Florida Statutes, is  
23 created to read:

24 943.0595 Court-ordered sealing of investigative  
25 incident reports.--The courts of this state shall continue to  
26 have jurisdiction over their own procedures, including the  
27 maintenance, sealing, and correction of judicial records  
28 containing information derived from or which duplicates  
29 investigative incident reports to the extent such procedures  
30 are not inconsistent with the conditions, responsibilities,  
31 and duties established in this section. Any court of competent

1 jurisdiction may order a criminal justice agency to seal an  
2 investigative incident report if a minor or an adult who is  
3 the subject or one of the subjects of the report complies with  
4 the requirements of this section. The court may not order a  
5 criminal justice agency to seal an investigative incident  
6 report until the person seeking to seal the report has applied  
7 for and received a certificate of eligibility for sealing  
8 pursuant to subsection (2). The court may order only the  
9 sealing of an investigative incident report pertaining to a  
10 single incident of alleged or suspected criminal activity,  
11 except as provided in this section. The court may order the  
12 sealing of an investigative incident report pertaining to more  
13 than one incident of alleged or suspected criminal activity if  
14 the additional incidents directly relate to the original  
15 incident. If the court intends to order the sealing of reports  
16 pertaining to any additional incidents, such intent must be  
17 specified in the order. A criminal justice agency may not seal  
18 any report pertaining to additional incidents if the order to  
19 seal does not articulate the intention of the court to seal  
20 reports pertaining to more than one incident. This section  
21 does not prevent the court from ordering the sealing of only a  
22 portion of an investigative incident report pertaining to one  
23 incident of alleged or suspected criminal activity.  
24 Notwithstanding any law to the contrary, a criminal justice  
25 agency may comply with laws, court orders, and official  
26 requests of other jurisdictions relating to the sealing, the  
27 correcting, or the confidential handling of investigative  
28 incident reports or information derived from investigative  
29 incident reports. This section does not confer any right to  
30 the sealing of an investigative incident report, and any  
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1 request for sealing a report may be denied at the sole  
2 discretion of the court.

3 (1) PETITION TO SEAL AN INVESTIGATIVE INCIDENT  
4 REPORT.--Each petition to a court to seal an investigative  
5 incident report is 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 arrested, charged, or prosecuted as a  
16 result of any incident reported in the investigative incident  
17 report.

18 3. Has not secured a prior sealing of an investigative  
19 incident report under this section or a prior expunction or  
20 sealing of a criminal history record under s. 943.0585, s.  
21 943.059, former s. 893.14, former s. 901.33, or former s.  
22 943.058, or from any 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 an investigative incident report or any  
26 petition to seal or expunge a criminal history record which is  
27 pending before any court.

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

3 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
4 petitioning the court to seal an investigative incident  
5 report, the person seeking to seal the report shall apply to  
6 the department for a certificate of eligibility for sealing an  
7 investigative incident report. The department shall, by rule  
8 adopted under chapter 120, establish procedures pertaining to  
9 the application for and issuance of certificates of  
10 eligibility for sealing investigative incident reports. The  
11 department shall issue a certificate of eligibility for  
12 sealing to a person who is the subject of an investigative  
13 incident report if that person:

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

17 (b) 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 (c) Has never secured a prior sealing of an  
23 investigative incident report under this section or a prior  
24 expunction or sealing of a criminal history record under s.  
25 943.0585, s. 943.059, former s. 893.14, former s. 901.33, or  
26 former s. 943.058.

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

28 (a) In judicial proceedings under this section, a copy  
29 of the completed petition to seal shall be served upon the  
30 agency that prepared the investigative incident report. The  
31 agency that prepared the report may respond to the court by

1 showing good cause why the petition to seal the report should  
2 not be granted. Failure to respond constitutes acquiescence in  
3 the sealing of the investigative incident report by the agency  
4 that prepared the report.

5 (b) If relief is granted by the court, the clerk of  
6 the court shall certify copies of the order to the agency that  
7 prepared the report. That agency shall forward the order to  
8 the department in all cases and to any agency to which the  
9 originating agency disseminated the investigative incident  
10 report to which the order pertains.

11 (c) The agency that prepared the investigative  
12 incident report or any other criminal justice agency is not  
13 required to act on an order to seal entered by a court when  
14 such order does not comply with the requirements of this  
15 section. Upon receipt of such an order, the department must  
16 notify the issuing court, the agency that prepared the report,  
17 and the petitioner or the petitioner's attorney of the reason  
18 for noncompliance. The agency that prepared the report shall  
19 take action within 60 days to petition the court to void the  
20 order. There is not a cause of action, including contempt of  
21 court, against any criminal justice agency for failure to  
22 comply with an order to seal when the petitioner for such  
23 order failed to obtain the certificate of eligibility as  
24 required by this section or when the order does not comply  
25 with the requirements of this section.

26 (d) An order sealing an investigative incident report  
27 pursuant to this section does not require that the report be  
28 surrendered to the court, and the report shall continue to be  
29 maintained by the agency that prepared the report and other  
30 criminal justice agencies.

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1           (4) EFFECT OF SEALING AN INVESTIGATIVE INCIDENT  
2 REPORT.--

3           (a) The subject of an investigative incident report  
4 sealed under this section may lawfully deny or fail to  
5 acknowledge the incidents covered by the sealed report except  
6 when the subject of the report:

7           1. Is a candidate for employment with a criminal  
8 justice agency;

9           2. Is a defendant in a criminal prosecution;

10           3. Concurrently or subsequently petitions for relief  
11 under this section, s. 943.0585, or s. 943.059;

12           4. Is a candidate for admission to The Florida Bar;

13           5. Is seeking to be employed or licensed by or to  
14 contract with the Department of Children and Family Services  
15 or the Department of Juvenile Justice or to be employed or  
16 used by such contractor or licensee in a sensitive position  
17 having direct contact with children, the developmentally  
18 disabled, the aged, or the elderly as provided in s.  
19 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
20 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.  
21 415.103, s. 985.407, or chapter 400; or

22           6. Is seeking to be employed or licensed by the Office  
23 of Teacher Education, Certification, Staff Development, and  
24 Professional Practices of the Department of Education, any  
25 district school board, or any local governmental entity that  
26 licenses child care facilities.

27           (b) Subject to the exceptions in paragraph (a), a  
28 person who has been granted a sealing under this section may  
29 not be held under any provision of law of this state to commit  
30 perjury or to be otherwise liable for giving a false statement  
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1 by reason of such person's failure to recite or acknowledge a  
2 sealed investigative incident report.

3 Section 3. This act shall take effect October 1, 2002.

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SENATE SUMMARY

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Provides a procedure under which a court may order the sealing of an investigative incident report. Requires that the Department of Law Enforcement must issue a certification of eligibility before the court may seal a report. Requires that a petition to seal a report be served on the agency that prepared the report. Provides that an agency need not comply with an order to seal a report if the court does not comply with the requirements for sealing. Provides that a person who is the subject of an investigative incident report may lawfully deny or fail to acknowledge an incident that is the subject of a sealed report. Provides that a person may deny the incidents covered by a sealed report except when that person is a candidate for employment with a criminal justice agency, a defendant in a criminal prosecution, or a candidate for admission to The Florida Bar, or is seeking employment or licensing in a profession having direct contact with children, the developmentally disabled, or the elderly. (See bill for details.)