

Bill No. CS for SB 2288

Amendment No.      Barcode 805948

| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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Senator Klein moved the following amendment:

**Senate Amendment (with title amendment)**

On page 27, between lines 22 and 23,

insert:

Section 13. Subsection (19) is added to section 943.045, Florida Statutes, to read:

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

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

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1 history record.

2 Section 14. Section 943.0595, Florida Statutes, is  
3 created to read:

4 943.0595 Court-ordered sealing of investigative  
5 incident reports.--The courts of this state shall continue to  
6 have jurisdiction over their own procedures, including the  
7 maintenance, sealing, and correction of judicial records  
8 containing information derived from or which duplicates  
9 investigative incident reports to the extent such procedures  
10 are not inconsistent with the conditions, responsibilities,  
11 and duties established in this section. Any court of competent  
12 jurisdiction may order a criminal justice agency to seal an  
13 investigative incident report if a minor or an adult who is  
14 the subject or one of the subjects of the report complies with  
15 the requirements of this section. The court may not order a  
16 criminal justice agency to seal an investigative incident  
17 report until the person seeking to seal the report has applied  
18 for and received a certificate of eligibility for sealing  
19 pursuant to subsection (2). The court may order only the  
20 sealing of an investigative incident report pertaining to a  
21 single incident of alleged or suspected criminal activity,  
22 except as provided in this section. The court may, in its sole  
23 discretion, order the sealing of an investigative incident  
24 report pertaining to more than one incident of alleged or  
25 suspected criminal activity if the additional incidents  
26 directly relate to the original incident. If the court intends  
27 to order the sealing of reports pertaining to any additional  
28 incidents, such intent must be specified in the order. A  
29 criminal justice agency may not seal any report pertaining to  
30 additional incidents if the order to seal does not articulate  
31 the intention of the court to seal reports pertaining to more

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

13 (1) PETITION TO SEAL AN INVESTIGATIVE INCIDENT  
14 REPORT.--Each petition to a court to seal an investigative  
15 incident report is complete only when accompanied by:

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

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

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

25 2. Has not been arrested, charged, or prosecuted as a  
26 result of any incident reported in the investigative incident  
27 report.

28 3. Has never secured a prior sealing of an  
29 investigative incident report under this section or a prior  
30 expunction or sealing of a criminal history record under s.  
31 943.0585, s. 943.059, former s. 893.14, former s. 901.33, or

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1 former s. 943.058, or from any jurisdiction outside the state.

2 4. Is eligible for such a sealing to the best of his  
3 or her knowledge or belief and does not have any other  
4 petition to seal an investigative incident report or any  
5 petition to seal or expunge a criminal history record which is  
6 pending before any court.

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

12 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
13 petitioning the court to seal an investigative incident  
14 report, the person seeking to seal the report shall apply to  
15 the department for a certificate of eligibility for sealing an  
16 investigative incident report. The department shall, by rule  
17 adopted under chapter 120, establish procedures pertaining to  
18 the application for and issuance of certificates of  
19 eligibility for sealing investigative incident reports. The  
20 department shall issue a certificate of eligibility for  
21 sealing to a person who is the subject of an investigative  
22 incident report if that person:

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

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

31 (c) Has not been arrested, charged, or prosecuted as a

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1 result of any incident reported in the investigative incident  
2 report.

3 (d) Has never secured a prior sealing of an  
4 investigative incident report under this section or a prior  
5 expunction or sealing of a criminal history record under s.  
6 943.0585, s. 943.059, former s. 893.14, former s. 901.33, or  
7 former s. 943.058.

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

9 (a) In judicial proceedings under this section, a copy  
10 of the completed petition to seal shall be served upon the  
11 agency that prepared the investigative incident report. The  
12 agency that prepared the report may respond to the court by  
13 showing good cause why the petition to seal the report should  
14 not be granted. Failure to respond constitutes acquiescence in  
15 the sealing of the investigative incident report by the agency  
16 that prepared the report.

17 (b) If relief is granted by the court, the clerk of  
18 the court shall certify copies of the order to the agency that  
19 prepared the report. That agency shall forward the order to  
20 the department in all cases and to any agency to which the  
21 originating agency disseminated the investigative incident  
22 report to which the order pertains.

23 (c) The agency that prepared the investigative  
24 incident report or any other criminal justice agency is not  
25 required to act on an order to seal entered by a court when  
26 such order does not comply with the requirements of this  
27 section. Upon receipt of such an order, the department must  
28 notify the issuing court, the agency that prepared the report,  
29 and the petitioner or the petitioner's attorney of the reason  
30 for noncompliance. The agency that prepared the report shall  
31 take action within 60 days to petition the court to void the

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1 order. A cause of action, including contempt of court, may not  
 2 arise against any criminal justice agency for failure to  
 3 comply with an order to seal when the petitioner for such  
 4 order failed to obtain the certificate of eligibility as  
 5 required by this section or when the order does not comply  
 6 with the requirements of this section.

7 (d) An order sealing an investigative incident report  
 8 pursuant to this section does not require that the report be  
 9 surrendered to the court, and the report shall continue to be  
 10 maintained by the agency that prepared the report and other  
 11 criminal justice agencies.

12 (4) EFFECT OF SEALING AN INVESTIGATIVE INCIDENT  
 13 REPORT.--

14 (a) The subject of an investigative incident report  
 15 sealed under this section may lawfully deny or fail to  
 16 acknowledge the incidents covered by the sealed report except  
 17 when the subject of the report:

18 1. Is a candidate for employment with a criminal  
 19 justice agency;

20 2. Is a defendant in a criminal prosecution;

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

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

24 5. Is seeking to be employed or licensed by or to  
 25 contract with the Department of Children and Family Services  
 26 or the Department of Juvenile Justice or to be employed or  
 27 used by such contractor or licensee in a sensitive position  
 28 having direct contact with children, the developmentally  
 29 disabled, the aged, or the elderly as provided in s.

30 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s.  
 31 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.

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1 415.103, s. 985.407, or chapter 400; or  
 2 6. Is seeking to be employed or licensed by the Office  
 3 of Teacher Education, Certification, Staff Development, and  
 4 Professional Practices of the Department of Education, any  
 5 district school board, or any local governmental entity that  
 6 licenses child care facilities.

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

13  
14 (Redesignate subsequent sections.)

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17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 On page 2, line 12, after the semicolon,

20  
21 insert:

22 amending s. 943.045, F.S.; defining the term  
 23 "investigative incident report"; creating s.  
 24 943.0595, F.S.; authorizing a court to order  
 25 that an investigative incident report be sealed  
 26 by the criminal justice agency that makes the  
 27 report; providing requirements for the petition  
 28 to seal an investigative incident report;  
 29 requiring a certification of eligibility issued  
 30 by the Department of Law Enforcement; requiring  
 31 that the department adopt rules governing the

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1 issuance of certificates of eligibility;  
2 requiring that a petition to seal a report be  
3 served on the agency that prepared the report;  
4 requiring that an order to seal a report be  
5 forwarded to any agency that received the  
6 investigative incident report to which the  
7 order pertains; providing that an agency need  
8 not comply with an order to seal if the order  
9 does not comply with the requirements for  
10 sealing; requiring the Department of Law  
11 Enforcement to notify the court of the  
12 noncompliance; providing that there is not a  
13 cause of action against an agency that does  
14 seal a record if the petitioner failed to  
15 comply with the requirements for sealing;  
16 providing that a person who is the subject of  
17 an investigative incident report may lawfully  
18 deny or fail to acknowledge an incident that is  
19 the subject of a sealed report; specifying  
20 certain exceptions;

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