

By Senator Smith

5-560-02

1                                   A bill to be entitled  
2           An act relating to pretrial detention; amending  
3           s. 907.041, F.S.; redefining the term  
4           "dangerous crime" for purposes of provisions  
5           governing pretrial detention to include certain  
6           acts involving terrorism; prohibiting the court  
7           from releasing a defendant before trial without  
8           bond if the defendant is charged with an act of  
9           terrorism, making terroristic threats, or  
10          obstructing the prosecution of terrorism;  
11          providing certain exceptions; reenacting ss.  
12          790.065(2)(c), 943.0585, 943.059, F.S.,  
13          relating to the sale and delivery of firearms  
14          and the court-ordered expunction and sealing of  
15          criminal-history records, to incorporate the  
16          amendment to s. 907.041, F.S., in references  
17          thereto; providing an effective date.

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

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21           Section 1. Subsection (4) of section 907.041, Florida  
22 Statutes, is amended to read:

23           907.041 Pretrial detention and release.--

24           (4) PRETRIAL DETENTION.--

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

- 27           1. Arson;
- 28           2. Aggravated assault;
- 29           3. Aggravated battery;
- 30           4. Illegal use of explosives;
- 31           5. Child abuse or aggravated child abuse;

- 1           6. Abuse of an elderly person or disabled adult, or  
2 aggravated abuse of an elderly person or disabled adult;  
3           7. Aircraft piracy ~~Hijacking~~;  
4           8. Kidnapping;  
5           9. Homicide;  
6           10. Manslaughter;  
7           11. Sexual battery;  
8           12. Robbery;  
9           13. Carjacking;  
10           14. Lewd, lascivious, or indecent assault or act upon  
11 or in presence of a child under the age of 16 years;  
12           15. Sexual activity with a child, who is 12 years of  
13 age or older but less than 18 years of age, by or at  
14 solicitation of person in familial or custodial authority;  
15           16. Burglary of a dwelling;  
16           17. Stalking and aggravated stalking;  
17           18. Act of domestic violence as defined in s. 741.28;  
18 ~~and~~  
19           19. Home-invasion robbery;  
20           20. An act of terrorism;  
21           21. Making terroristic threats;  
22           22. Obstructing the prosecution of terrorism; and  
23           ~~23.19. Attempting or conspiring to commit any such~~  
24 ~~crime; and home-invasion robbery.~~  
25           (b) No person charged with a dangerous crime shall be  
26 granted nonmonetary pretrial release at a first appearance  
27 hearing; however, the court shall retain the discretion to  
28 release an accused on electronic monitoring or on recognizance  
29 bond if the findings on the record of facts and circumstances  
30 warrant such a release.  
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1 (c) The court may order pretrial detention if it finds  
2 a substantial probability, based on a defendant's past and  
3 present patterns of behavior, the criteria in s. 903.046, and  
4 any other relevant facts, that any of the following  
5 circumstances exists:

6 1. The defendant has previously violated conditions of  
7 release and that no further conditions of release are  
8 reasonably likely to assure the defendant's appearance at  
9 subsequent proceedings;

10 2. The defendant, with the intent to obstruct the  
11 judicial process, has threatened, intimidated, or injured any  
12 victim, potential witness, juror, or judicial officer, or has  
13 attempted or conspired to do so, and that no condition of  
14 release will reasonably prevent the obstruction of the  
15 judicial process;

16 3. The defendant is charged with trafficking in  
17 controlled substances as defined by s. 893.135, that there is  
18 a substantial probability that the defendant has committed the  
19 offense, and that no conditions of release will reasonably  
20 assure the defendant's appearance at subsequent criminal  
21 proceedings; or

22 4. The defendant is charged with DUI manslaughter, as  
23 defined by s. 316.193, and that there is a substantial  
24 probability that the defendant committed the crime and that  
25 the defendant poses a threat of harm to the community;  
26 conditions that would support a finding by the court pursuant  
27 to this subparagraph that the defendant poses a threat of harm  
28 to the community include, but are not limited to, any of the  
29 following:

30 a. The defendant has previously been convicted of any  
31 crime under s. 316.193, or of any crime in any other state or

1 territory of the United States that is substantially similar  
2 to any crime under s. 316.193;

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

5 c. The defendant has previously been found guilty of,  
6 or has had adjudication of guilt withheld for, driving while  
7 the defendant's driver's license was suspended or revoked in  
8 violation of s. 322.34;

9 5. The defendant poses the threat of harm to the  
10 community. The court may so conclude, if it finds that the  
11 defendant is presently charged with a dangerous crime, that  
12 there is a substantial probability that the defendant  
13 committed such crime, that the factual circumstances of the  
14 crime indicate a disregard for the safety of the community,  
15 and that there are no conditions of release reasonably  
16 sufficient to protect the community from the risk of physical  
17 harm to persons.

18 6. The defendant was on probation, parole, or other  
19 release pending completion of sentence or on pretrial release  
20 for a dangerous crime at the time the current offense was  
21 committed; or

22 7. The defendant has violated one or more conditions  
23 of pretrial release or bond for the offense currently before  
24 the court and the violation, in the discretion of the court,  
25 supports a finding that no conditions of release can  
26 reasonably protect the community from risk of physical harm to  
27 persons or assure the presence of the accused at trial.

28 (d) When a person charged with a crime for which  
29 pretrial detention could be ordered is arrested, the arresting  
30 agency shall promptly notify the state attorney of the arrest  
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1 and shall provide the state attorney with such information as  
2 the arresting agency has obtained relative to:

3 1. The nature and circumstances of the offense  
4 charged;

5 2. The nature of any physical evidence seized and the  
6 contents of any statements obtained from the defendant or any  
7 witness;

8 3. The defendant's family ties, residence, employment,  
9 financial condition, and mental condition; and

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

13 (e) When a person charged with a crime for which  
14 pretrial detention could be ordered is arrested, the arresting  
15 agency may detain such defendant, prior to the filing by the  
16 state attorney of a motion seeking pretrial detention, for a  
17 period not to exceed 24 hours.

18 (f) The pretrial detention hearing shall be held  
19 within 5 days of the filing by the state attorney of a  
20 complaint to seek pretrial detention. The defendant may  
21 request a continuance. No continuance shall be for longer  
22 than 5 days unless there are extenuating circumstances. The  
23 defendant may be detained pending the hearing. The state  
24 attorney shall be entitled to one continuance for good cause.

25 (g) The state attorney has the burden of showing the  
26 need for pretrial detention.

27 (h) The defendant is entitled to be represented by  
28 counsel, to present witnesses and evidence, and to  
29 cross-examine witnesses. The court may admit relevant  
30 evidence without complying with the rules of evidence, but  
31 evidence secured in violation of the United States

1 Constitution or the Constitution of the State of Florida shall  
2 not be admissible. No testimony by the defendant shall be  
3 admissible to prove guilt at any other judicial proceeding,  
4 but such testimony may be admitted in an action for perjury,  
5 based upon the defendant's statements made at the pretrial  
6 detention hearing, or for impeachment.

7 (i) The pretrial detention order of the court shall be  
8 based solely upon evidence produced at the hearing and shall  
9 contain findings of fact and conclusions of law to support it.  
10 The order shall be made either in writing or orally on the  
11 record. The court shall render its findings within 24 hours of  
12 the pretrial detention hearing.

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

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

20 Section 2. For the purpose of incorporating the  
21 amendment made by this act to section 907.041, Florida  
22 Statutes, in a reference thereto, paragraph (c) of subsection  
23 (2) of section 790.065, Florida Statutes, is reenacted to  
24 read:

25 790.065 Sale and delivery of firearms.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 Section 3. For the purpose of incorporating the  
30 amendment made by this act to section 907.041, Florida

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1 Statutes, in a reference thereto, section 943.0585, Florida  
2 Statutes, is reenacted to read:  
3           943.0585 Court-ordered expunction of criminal history  
4 records.--The courts of this state have jurisdiction over  
5 their own procedures, including the maintenance, expunction,  
6 and correction of judicial records containing criminal history  
7 information to the extent such procedures are not inconsistent  
8 with the conditions, responsibilities, and duties established  
9 by this section. Any court of competent jurisdiction may order  
10 a criminal justice agency to expunge the criminal history  
11 record of a minor or an adult who complies with the  
12 requirements of this section. The court shall not order a  
13 criminal justice agency to expunge a criminal history record  
14 until the person seeking to expunge a criminal history record  
15 has applied for and received a certificate of eligibility for  
16 expunction pursuant to subsection (2). A criminal history  
17 record that relates to a violation of s. 787.025, chapter 794,  
18 s. 796.03, s. 800.04, s. 817.034, s. 825.1025, s. 827.071,  
19 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
20 893.135, or a violation enumerated in s. 907.041 may not be  
21 expunged, without regard to whether adjudication was withheld,  
22 if the defendant was found guilty of or pled guilty or nolo  
23 contendere to the offense, or if the defendant, as a minor,  
24 was found to have committed, or pled guilty or nolo contendere  
25 to committing, the offense as a delinquent act. The court may  
26 only order expunction of a criminal history record pertaining  
27 to one arrest or one incident of alleged criminal activity,  
28 except as provided in this section. The court may, at its sole  
29 discretion, order the expunction of a criminal history record  
30 pertaining to more than one arrest if the additional arrests  
31 directly relate to the original arrest. If the court intends

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

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

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

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

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

30 2. Has not been adjudicated guilty of, or adjudicated  
31 delinquent for committing, any of the acts stemming from the

1 arrest or alleged criminal activity to which the petition  
2 pertains.

3 3. Has never secured a prior sealing or expunction of  
4 a criminal history record under this section, former s.  
5 893.14, former s. 901.33, or former s. 943.058, or from any  
6 jurisdiction outside the state.

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

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

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

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

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

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

5           3. That the criminal history record does not relate to  
6 a violation of s. 787.025, chapter 794, s. 796.03, s. 800.04,  
7 s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133,  
8 s. 847.0135, s. 847.0145, s. 893.135, or a violation  
9 enumerated in s. 907.041, where the defendant was found guilty  
10 of, or pled guilty or nolo contendere to any such offense, or  
11 that the defendant, as a minor, was found to have committed,  
12 or pled guilty or nolo contendere to committing, such an  
13 offense as a delinquent act, without regard to whether  
14 adjudication was withheld.

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

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

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

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

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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

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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.  
6 985.407, 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 entity  
29 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 Section 4. For the purpose of incorporating the  
13 amendment made by this act to section 907.041, Florida  
14 Statutes, in a reference thereto, section 943.059, Florida  
15 Statutes, is reenacted to read:

16 943.059 Court-ordered sealing of criminal history  
17 records.--The courts of this state shall continue to have  
18 jurisdiction over their own procedures, including the  
19 maintenance, sealing, and correction of judicial records  
20 containing criminal history information to the extent such  
21 procedures are not inconsistent with the conditions,  
22 responsibilities, and duties established by this section. Any  
23 court of competent jurisdiction may order a criminal justice  
24 agency to seal the criminal history record of a minor or an  
25 adult who complies with the requirements of this section. The  
26 court shall not order a criminal justice agency to seal a  
27 criminal history record until the person seeking to seal a  
28 criminal history record has applied for and received a  
29 certificate of eligibility for sealing pursuant to subsection  
30 (2). A criminal history record that relates to a violation of  
31 s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 817.034, s.

1 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,  
2 s. 847.0145, s. 893.135, or a violation enumerated in s.  
3 907.041 may not be sealed, without regard to whether  
4 adjudication was withheld, if the defendant was found guilty  
5 of or pled guilty or nolo contendere to the offense, or if the  
6 defendant, as a minor, was found to have committed or pled  
7 guilty or nolo contendere to committing the offense as a  
8 delinquent act. The court may only order sealing of a criminal  
9 history record pertaining to one arrest or one incident of  
10 alleged criminal activity, except as provided in this section.  
11 The court may, at its sole discretion, order the sealing of a  
12 criminal history record pertaining to more than one arrest if  
13 the additional arrests directly relate to the original arrest.  
14 If the court intends to order the sealing of records  
15 pertaining to such additional arrests, such intent must be  
16 specified in the order. A criminal justice agency may not seal  
17 any record pertaining to such additional arrests if the order  
18 to seal does not articulate the intention of the court to seal  
19 records pertaining to more than one arrest. This section does  
20 not prevent the court from ordering the sealing of only a  
21 portion of a criminal history record pertaining to one arrest  
22 or one incident of alleged criminal activity. Notwithstanding  
23 any law to the contrary, a criminal justice agency may comply  
24 with laws, court orders, and official requests of other  
25 jurisdictions relating to sealing, correction, or confidential  
26 handling of criminal history records or information derived  
27 therefrom. This section does not confer any right to the  
28 sealing of any criminal history record, and any request for  
29 sealing a criminal history record may be denied at the sole  
30 discretion of the court.

31

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

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

6           (b) The petitioner's sworn statement attesting that  
7 the petitioner:

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

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

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

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

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

30           (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
31 petitioning the court to seal a criminal history record, a

1 person seeking to seal a criminal history record shall apply  
2 to the department for a certificate of eligibility for  
3 sealing. The department shall, by rule adopted pursuant to  
4 chapter 120, establish procedures pertaining to the  
5 application for and issuance of certificates of eligibility  
6 for sealing. The department shall issue a certificate of  
7 eligibility for sealing to a person who is the subject of a  
8 criminal history record provided that such person:

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

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

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

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

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

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

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

31

1           (a) In judicial proceedings under this section, a copy  
2 of the completed petition to seal shall be served upon the  
3 appropriate state attorney or the statewide prosecutor and  
4 upon the arresting agency; however, it is not necessary to  
5 make any agency other than the state a party. The appropriate  
6 state attorney or the statewide prosecutor and the arresting  
7 agency may respond to the court regarding the completed  
8 petition to seal.

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

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

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 5. This act shall take effect October 1, 2002.  
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SENATE SUMMARY

Provides that a defendant who is charged with an act of terrorism, making terroristic threats, or obstructing the prosecution of terrorism may not be granted nonmonetary pretrial release, except that the court may release the defendant on electronic monitoring or on recognizance bond if the court finds that facts and circumstances warrant such release.