

By Senator Smith

14-924-04

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.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
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
31

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.

28
29 Any person who knowingly provides false information on the
30 sworn statement to the court commits a felony of the third
31

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

26 (d) An order sealing an investigative incident report
27 pursuant to this section may 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.

31

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
31

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, 2004.
4

5 *****

6 SENATE SUMMARY

7 Provides a procedure under which a court may order the
8 sealing of an investigative incident report. Requires
9 that the Department of Law Enforcement must issue a
10 certification of eligibility before the court may seal a
11 report. Requires that a petition to seal a report be
12 served on the agency that prepared the report. Provides
13 that an agency need not comply with an order to seal a
14 report if the court does not comply with the requirements
15 for sealing. Provides that a person who is the subject of
16 an investigative incident report may lawfully deny or
17 fail to acknowledge an incident that is the subject of a
18 sealed report. Provides that a person may deny the
19 incidents covered by a sealed report except when that
20 person is a candidate for employment with a criminal
21 justice agency, a defendant in a criminal prosecution, or
22 a candidate for admission to The Florida Bar, or is
23 seeking employment or licensing in a profession having
24 direct contact with children, the developmentally
25 disabled, or the elderly. (See bill for details.)
26
27
28
29
30
31