

1 A bill to be entitled
2 An act relating to determining bail; amending s.
3 903.046, F.S.; specifying the purpose of a bail
4 determination; creating a presumption for the release
5 of defendants awaiting trial; requiring the release of
6 defendants on their own recognizance if they do not
7 pose a substantial risk of flight or harm to the
8 community; authorizing a court to impose reasonable
9 nonmonetary bail conditions for pretrial release;
10 requiring a court to consider certain factors and
11 follow a specific guideline when determining whether
12 to release a defendant on pretrial release conditions;
13 requiring imposition of the least restrictive
14 conditions necessary to reasonably assure the
15 appearance of the defendant, safety, and the integrity
16 of judicial proceedings; amending s. 907.041, F.S.;
17 revising legislative intent; deleting provisions
18 relating to a prohibition of release on nonmonetary
19 conditions under certain supervision; prohibiting a
20 court from granting pretrial release for a defendant
21 charged with a dangerous crime under certain
22 circumstances; revising the offenses that are deemed
23 to be dangerous crimes; deleting provisions relating
24 to certain offenses committed by a defendant for which
25 a court is authorized to order pretrial detention

26 after a court's review; specifying that a state
 27 attorney must show the need for pretrial detention by
 28 a certain standard of evidence; requiring a court to
 29 make certain written findings and conclusions in a
 30 pretrial detention order; deleting a provision
 31 relating to a legislative finding; deleting a
 32 provision requiring a court to order pretrial
 33 detention under certain circumstances if the court
 34 makes certain findings; amending s. 790.065, F.S.;
 35 revising a cross-reference; reenacting ss. 943.0585
 36 and 943.059, F.S., relating to court-ordered
 37 expunction of criminal history records and court-
 38 ordered sealing of criminal history records,
 39 respectively, to incorporate the amendment made to s.
 40 907.041, F.S., in references thereto; providing an
 41 effective date.

42
 43 Be It Enacted by the Legislature of the State of Florida:

44
 45 Section 1. Section 903.046, Florida Statutes, is amended
 46 to read:

47 903.046 Bail determinations and pretrial release ~~Purpose~~
 48 ~~of and criteria for bail determination.~~-

49 (1) The purpose of bail determination in criminal
 50 proceedings is to ensure the appearance of a criminal defendant

51 at subsequent proceedings and to protect the community against
 52 the risk of danger from the criminal defendant.

53 (2) Defendants are presumed innocent until proven guilty,
 54 and, thus, there is a presumption that defendants will be
 55 released while they await trial.

56 (3) Defendants who do not pose a substantial risk of
 57 flight or harm to the community shall be released on their own
 58 recognizance.

59 (4) Additionally, a court may impose reasonable
 60 nonmonetary bail conditions on a defendant's pretrial release,
 61 as monetary bail creates a system in which indigent defendants
 62 who cannot afford bail are confined to jail and wealthier
 63 defendants who can afford bail are able to remain in the
 64 community. The right to be free from confinement should not be
 65 determined based on a person's financial ability to post bail

66 ~~(1) The purpose of a bail determination in criminal proceedings~~
 67 ~~is to ensure the appearance of the criminal defendant at~~
 68 ~~subsequent proceedings and to protect the community against~~
 69 ~~unreasonable danger from the criminal defendant.~~

70 (5)(2) When determining whether to release a defendant on
 71 pretrial release ~~bail or other~~ conditions, and what ~~that bail or~~
 72 those conditions may be, the court shall ~~consider~~:

73 (a) Consider the nature and circumstances of the offense
 74 charged.

75 (b) Consider the weight of the evidence against the

76 defendant.

77 (c) Consider the defendant's family ties, length of
78 residence in the community, employment history, financial
79 resources, and mental condition.

80 (d) Consider the defendant's past and present conduct,
81 including any record of convictions, previous flight to avoid
82 prosecution, or failure to appear at court proceedings. ~~However,~~
83 ~~any defendant who had failed to appear on the day of any~~
84 ~~required court proceeding in the case at issue, but who had~~
85 ~~later voluntarily appeared or surrendered, shall not be eligible~~
86 ~~for a recognizance bond; and any defendant who failed to appear~~
87 ~~on the day of any required court proceeding in the case at issue~~
88 ~~and who was later arrested shall not be eligible for a~~
89 ~~recognizance bond or for any form of bond which does not require~~
90 ~~a monetary undertaking or commitment equal to or greater than~~
91 ~~\$2,000 or twice the value of the monetary commitment or~~
92 ~~undertaking of the original bond, whichever is greater.~~

93 Notwithstanding anything in this section, the court has
94 discretion in determining conditions of release if the defendant
95 proves that circumstances beyond his or her control resulted in
96 ~~for~~ the failure to appear. ~~This section may not be construed as~~
97 ~~imposing additional duties or obligations on a governmental~~
98 ~~entity related to monetary bonds.~~

99 (e) Consider the nature and probability of danger which
100 the defendant's release poses to the community.

101 ~~(f) The source of funds used to post bail or procure an~~
102 ~~appearance bond, particularly whether the proffered funds, real~~
103 ~~property, property, or any proposed collateral or bond premium~~
104 ~~may be linked to or derived from the crime alleged to have been~~
105 ~~committed or from any other criminal or illicit activities. The~~
106 ~~burden of establishing the noninvolvement in or nonderivation~~
107 ~~from criminal or other illicit activity of such proffered funds,~~
108 ~~real property, property, or any proposed collateral or bond~~
109 ~~premium falls upon the defendant or other person proffering them~~
110 ~~to obtain the defendant's release.~~

111 (f)(g) Consider whether the defendant is already on
112 release pending resolution of another criminal proceeding or on
113 probation, parole, or other release pending completion of a
114 sentence.

115 ~~(h) The street value of any drug or controlled substance~~
116 ~~connected to or involved in the criminal charge. It is the~~
117 ~~finding and intent of the Legislature that crimes involving~~
118 ~~drugs and other controlled substances are of serious social~~
119 ~~concern, that the flight of defendants to avoid prosecution is~~
120 ~~of similar serious social concern, and that frequently such~~
121 ~~defendants are able to post monetary bail using the proceeds of~~
122 ~~their unlawful enterprises to defeat the social utility of~~
123 ~~pretrial bail. Therefore, the courts should carefully consider~~
124 ~~the utility and necessity of substantial bail in relation to the~~
125 ~~street value of the drugs or controlled substances involved.~~

126 (g)~~(i)~~ Consider the nature and probability of intimidation
127 and danger to victims.

128 (h)~~(j)~~ Consider whether there is probable cause to believe
129 that the defendant committed a new crime while on pretrial
130 release.

131 (i)~~(k)~~ Consider any other facts that the court considers
132 relevant.

133 (j)~~(l)~~ Consider whether the crime charged is a violation
134 of chapter 874 or alleged to be subject to enhanced punishment
135 under chapter 874 or reclassification under s. 843.22. If any
136 such violation is charged against a defendant or if the
137 defendant is charged with a crime that is alleged to be subject
138 to such enhancement or reclassification, he or she is not
139 eligible for release on bail or surety bond until the first
140 appearance on the case in order to ensure the full participation
141 of the prosecutor and the protection of the public.

142 (k)~~(m)~~ Consider whether the defendant, other than a
143 defendant whose only criminal charge is a misdemeanor offense
144 under chapter 316, is required to register as a sexual offender
145 under s. 943.0435 or a sexual predator under s. 775.21; and, if
146 so, he or she is not eligible for release on bail or surety bond
147 until the first appearance on the case in order to ensure the
148 full participation of the prosecutor and the protection of the
149 public.

150 (l) Impose the least restrictive conditions or combination

151 of conditions necessary to reasonably assure the appearance of
152 the defendant, the safety of any person or the community, and
153 the integrity of judicial proceedings.

154 Section 2. Subsections (1) and (3) and paragraphs (a),
155 (b), (c), (g), (i), and (l) of subsection (4) of section
156 907.041, Florida Statutes, are amended to read:

157 907.041 Pretrial detention and release.—

158 (1) LEGISLATIVE INTENT.—It is the policy of this state
159 that persons who pose ~~committing serious criminal offenses,~~
160 ~~posing~~ a threat to the safety of the community ~~or the integrity~~
161 ~~of the judicial process, or failing to appear at trial~~ be
162 detained upon arrest, if such threat cannot be sufficiently
163 mitigated by nonmonetary conditions of release. In contrast
164 ~~However,~~ persons who do not pose a threat to the safety of the
165 community found to meet specified criteria shall be released
166 until ~~under certain conditions until proceedings are concluded~~
167 ~~and~~ adjudication has been determined. The Legislature finds that
168 this policy of pretrial detention and release will ensure ~~assure~~
169 the detention of those persons posing a threat to society while
170 reducing the costs for incarceration by releasing, until trial,
171 those persons not considered a danger to the community ~~who meet~~
172 ~~certain criteria.~~ It is the intent of the Legislature that the
173 primary consideration for detaining a defendant is whether the
174 defendant presents a ~~be the protection of the community from~~
175 risk of physical harm to persons.

176 (3) RELEASE ON NONMONETARY CONDITIONS.—

177 ~~(a)~~ It is the intent of the Legislature that defendants
178 who do not pose a threat to the safety of the community shall be
179 released to create a presumption in favor of release on
180 nonmonetary conditions while such defendants await trial for any
181 person who is granted pretrial release unless such person is
182 charged with a dangerous crime as defined in subsection (4).
183 Such person shall be released on monetary conditions if it is
184 determined that such monetary conditions are necessary to assure
185 the presence of the person at trial or at other proceedings, to
186 protect the community from risk of physical harm to persons, to
187 assure the presence of the accused at trial, or to assure the
188 integrity of the judicial process.

189 ~~(b)~~ No person shall be released on nonmonetary conditions
190 under the supervision of a pretrial release service, unless the
191 service certifies to the court that it has investigated or
192 otherwise verified:

193 1. ~~The circumstances of the accused's family, employment,~~
194 ~~financial resources, character, mental condition, and length of~~
195 ~~residence in the community;~~

196 2. ~~The accused's record of convictions, of appearances at~~
197 ~~court proceedings, of flight to avoid prosecution, or of failure~~
198 ~~to appear at court proceedings; and~~

199 3. ~~Other facts necessary to assist the court in its~~
200 ~~determination of the indigency of the accused and whether she or~~

201 ~~he should be released under the supervision of the service.~~

202 (4) PRETRIAL DETENTION.—

203 (a) A defendant charged with a dangerous crime may not be
 204 granted pretrial release at a first appearance hearing; however,
 205 the court may release the defendant on electronic monitoring or
 206 on recognizance bond if the findings on the record of facts and
 207 circumstances warrant such a release.

208 (b) As used in this subsection, "dangerous crime" means
 209 any of the following:

- 210 ~~1. Arson;~~
- 211 1.2. Aggravated assault with a deadly weapon;
- 212 2.3. Aggravated battery;
- 213 ~~4. Illegal use of explosives;~~
- 214 3.5. Child abuse or aggravated child abuse;
- 215 ~~4.6. Abuse of an elderly person or disabled adult, or~~
 216 Aggravated abuse of an elderly person or disabled adult;
- 217 5.7. Aircraft piracy;
- 218 6.8. Kidnapping;
- 219 7.9. Homicide;
- 220 8.10. Manslaughter;
- 221 9.11. Sexual battery;
- 222 10.12. Armed robbery;
- 223 11.13. Carjacking;
- 224 12.14. Lewd, lascivious, or indecent assault or act upon
 225 or in presence of a child under the age of 16 years;

226 ~~13.15.~~ Sexual activity with a child, who is 12 years of
 227 age or older but less than 18 years of age, by or at
 228 solicitation of a person in familial or custodial authority;
 229 ~~14.16.~~ Armed burglary of an occupied a dwelling,
 230 structure, or conveyance;
 231 ~~15.17.~~ Stalking and aggravated stalking;
 232 ~~16.18.~~ Act of domestic violence as defined in s. 741.28;
 233 ~~17.19.~~ Home invasion robbery;
 234 ~~18.20.~~ Act of terrorism as defined in s. 775.30; and
 235 ~~21. Manufacturing any substances in violation of chapter~~
 236 ~~893;~~
 237 ~~22. Attempting or conspiring to commit any such crime; and~~
 238 ~~19.23.~~ Human trafficking.
 239 ~~(b) No person charged with a dangerous crime shall be~~
 240 ~~granted nonmonetary pretrial release at a first appearance~~
 241 ~~hearing; however, the court shall retain the discretion to~~
 242 ~~release an accused on electronic monitoring or on recognizance~~
 243 ~~bond if the findings on the record of facts and circumstances~~
 244 ~~warrant such a release.~~
 245 (c) The court may order pretrial detention if it finds a
 246 substantial probability, based on a defendant's past and present
 247 patterns of behavior, the criteria in s. 903.046, and any other
 248 relevant facts, that any of the following circumstances exist:
 249 1. The defendant has previously violated conditions of
 250 release and that no further conditions of release are reasonably

251 likely to ensure ~~assure~~ the defendant's appearance at subsequent
252 proceedings;

253 2. The defendant, with the intent to obstruct the judicial
254 process, has threatened, intimidated, or injured any victim,
255 potential witness, juror, or judicial officer, or has attempted
256 or conspired to do so, and that no condition of release will
257 reasonably prevent the obstruction of the judicial process;

258 ~~3. The defendant is charged with trafficking in controlled~~
259 ~~substances as defined by s. 893.135, that there is a substantial~~
260 ~~probability that the defendant has committed the offense, and~~
261 ~~that no conditions of release will reasonably assure the~~
262 ~~defendant's appearance at subsequent criminal proceedings;~~

263 ~~4. The defendant is charged with DUI manslaughter, as~~
264 ~~defined by s. 316.193, and that there is a substantial~~
265 ~~probability that the defendant committed the crime and that the~~
266 ~~defendant poses a threat of harm to the community; conditions~~
267 ~~that would support a finding by the court pursuant to this~~
268 ~~subparagraph that the defendant poses a threat of harm to the~~
269 ~~community include, but are not limited to, any of the following:~~

270 ~~a. The defendant has previously been convicted of any~~
271 ~~crime under s. 316.193, or of any crime in any other state or~~
272 ~~territory of the United States that is substantially similar to~~
273 ~~any crime under s. 316.193;~~

274 ~~b. The defendant was driving with a suspended driver~~
275 ~~license when the charged crime was committed; or~~

276 ~~e. The defendant has previously been found guilty of, or~~
277 ~~has had adjudication of guilt withheld for, driving while the~~
278 ~~defendant's driver license was suspended or revoked in violation~~
279 ~~of s. 322.34;~~

280 3.5. The defendant poses the threat of harm to the
281 community. The court may so conclude, if it finds that the
282 defendant is presently charged with a dangerous crime, that
283 there is a substantial probability that the defendant committed
284 such crime, that the factual circumstances of the crime indicate
285 a disregard for the safety of the community, and that there are
286 no conditions of release reasonably sufficient to protect the
287 community from the risk of physical harm to persons;

288 4.6. The defendant was on probation, parole, or other
289 release pending completion of sentence or on pretrial release
290 for a dangerous crime at the time the current offense was
291 committed;

292 5.7. The defendant has violated one or more conditions of
293 pretrial release or bond for the offense currently before the
294 court and the violation, in the discretion of the court,
295 supports a finding that no conditions of release can reasonably
296 protect the community from risk of physical harm to persons or
297 assure the presence of the accused at trial; or

298 6.a.8.a. The defendant has ever been sentenced pursuant to
299 s. 775.082(9) or s. 775.084 as a prison releasee reoffender,
300 habitual violent felony offender, three-time violent felony

301 offender, or violent career criminal, or the state attorney
 302 files a notice seeking that the defendant be sentenced pursuant
 303 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
 304 habitual violent felony offender, three-time violent felony
 305 offender, or violent career criminal;

306 b. There is a substantial probability that the defendant
 307 committed the offense; and

308 c. There are no conditions of release that can reasonably
 309 protect the community from risk of physical harm or ensure the
 310 presence of the accused at trial.

311 (g) The state attorney has the burden of showing the need
 312 for pretrial detention by clear and convincing evidence.

313 (i) The pretrial detention order of the court shall be
 314 based solely upon evidence produced at the hearing and shall
 315 contain written findings of fact and conclusions of law to
 316 support it. ~~The order shall be made either in writing or orally~~
 317 ~~on the record.~~ The court shall render its findings within 24
 318 hours of the pretrial detention hearing.

319 ~~(l) The Legislature finds that a person who manufactures~~
 320 ~~any substances in violation of chapter 893 poses a threat of~~
 321 ~~harm to the community and that the factual circumstances of such~~
 322 ~~a crime indicate a disregard for the safety of the community.~~
 323 ~~The court shall order pretrial detention if the court finds that~~
 324 ~~there is a substantial probability that a defendant charged with~~
 325 ~~manufacturing any substances in violation of chapter 893~~

326 ~~committed such a crime and if the court finds that there are no~~
 327 ~~conditions of release reasonably sufficient to protect the~~
 328 ~~community from the risk of physical harm to persons.~~

329 Section 3. Paragraph (c) of subsection (2) of section
 330 790.065, Florida Statutes, is amended to read:

331 790.065 Sale and delivery of firearms.—

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

335 (c)1. Review any records available to it to determine
 336 whether the potential buyer or transferee has been indicted or
 337 has had an information filed against her or him for an offense
 338 that is a felony under either state or federal law, or, as
 339 mandated by federal law, has had an injunction for protection
 340 against domestic violence entered against the potential buyer or
 341 transferee under s. 741.30, has had an injunction for protection
 342 against repeat violence entered against the potential buyer or
 343 transferee under s. 784.046, or has been arrested for a
 344 dangerous crime as specified in s. 907.041(4)(b) ~~907.041(4)(a)~~
 345 or for any of the following enumerated offenses:

- 346 a. Criminal anarchy under ss. 876.01 and 876.02.
- 347 b. Extortion under s. 836.05.
- 348 c. Explosives violations under s. 552.22(1) and (2).
- 349 d. Controlled substances violations under chapter 893.
- 350 e. Resisting an officer with violence under s. 843.01.

- 351 f. Weapons and firearms violations under this chapter.
- 352 g. Treason under s. 876.32.
- 353 h. Assisting self-murder under s. 782.08.
- 354 i. Sabotage under s. 876.38.
- 355 j. Stalking or aggravated stalking under s. 784.048.

356
 357 If the review indicates any such indictment, information, or
 358 arrest, the department shall provide to the licensee a
 359 conditional nonapproval number.

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

366 3. The office of the clerk of court, at no charge to the
 367 department, shall respond to any department request for data on
 368 the disposition of the indictment, information, or arrest as
 369 soon as possible, but in no event later than 8 working hours.

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

373 5. If the potential buyer is not so prohibited, or if the
 374 department cannot determine the disposition information within
 375 the allotted time period, the department shall provide the

376 licensee with a conditional approval number.

377 6. If the buyer is so prohibited, the conditional
378 nonapproval number shall become a nonapproval number.

379 7. The department shall continue its attempts to obtain
380 the disposition information and may retain a record of all
381 approval numbers granted without sufficient disposition
382 information. If the department later obtains disposition
383 information which indicates:

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

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

390 8. During the time that disposition of the indictment,
391 information, or arrest is pending and until the department is
392 notified by the potential buyer that there has been a final
393 disposition of the indictment, information, or arrest, the
394 conditional nonapproval number shall remain in effect.

395 Section 4. For the purpose of incorporating the amendment
396 made by this act to section 907.041, Florida Statutes, in a
397 reference thereto, section 943.0585, Florida Statutes, is
398 reenacted to read:

399 943.0585 Court-ordered expunction of criminal history
400 records.—The courts of this state have jurisdiction over their

401 own procedures, including the maintenance, expunction, and
402 correction of judicial records containing criminal history
403 information to the extent such procedures are not inconsistent
404 with the conditions, responsibilities, and duties established by
405 this section. Any court of competent jurisdiction may order a
406 criminal justice agency to expunge the criminal history record
407 of a minor or an adult who complies with the requirements of
408 this section. The court shall not order a criminal justice
409 agency to expunge a criminal history record until the person
410 seeking to expunge a criminal history record has applied for and
411 received a certificate of eligibility for expunction pursuant to
412 subsection (2) or subsection (5). A criminal history record that
413 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
414 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
415 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
416 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
417 s. 907.041, or any violation specified as a predicate offense
418 for registration as a sexual predator pursuant to s. 775.21,
419 without regard to whether that offense alone is sufficient to
420 require such registration, or for registration as a sexual
421 offender pursuant to s. 943.0435, may not be expunged, without
422 regard to whether adjudication was withheld, if the defendant
423 was found guilty of or pled guilty or nolo contendere to the
424 offense, or if the defendant, as a minor, was found to have
425 committed, or pled guilty or nolo contendere to committing, the

426 offense as a delinquent act. The court may only order expunction
427 of a criminal history record pertaining to one arrest or one
428 incident of alleged criminal activity, except as provided in
429 this section. The court may, at its sole discretion, order the
430 expunction of a criminal history record pertaining to more than
431 one arrest if the additional arrests directly relate to the
432 original arrest. If the court intends to order the expunction of
433 records pertaining to such additional arrests, such intent must
434 be specified in the order. A criminal justice agency may not
435 expunge any record pertaining to such additional arrests if the
436 order to expunge does not articulate the intention of the court
437 to expunge a record pertaining to more than one arrest. This
438 section does not prevent the court from ordering the expunction
439 of only a portion of a criminal history record pertaining to one
440 arrest or one incident of alleged criminal activity.

441 Notwithstanding any law to the contrary, a criminal justice
442 agency may comply with laws, court orders, and official requests
443 of other jurisdictions relating to expunction, correction, or
444 confidential handling of criminal history records or information
445 derived therefrom. This section does not confer any right to the
446 expunction of any criminal history record, and any request for
447 expunction of a criminal history record may be denied at the
448 sole discretion of the court.

449 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
450 petition to a court to expunge a criminal history record is

451 complete only when accompanied by:

452 (a) A valid certificate of eligibility for expunction
453 issued by the department pursuant to subsection (2).

454 (b) The petitioner's sworn statement attesting that the
455 petitioner:

456 1. Has never, prior to the date on which the petition is
457 filed, been adjudicated guilty of a criminal offense or
458 comparable ordinance violation, or been adjudicated delinquent
459 for committing any felony or a misdemeanor specified in s.
460 943.051(3)(b).

461 2. Has not been adjudicated guilty of, or adjudicated
462 delinquent for committing, any of the acts stemming from the
463 arrest or alleged criminal activity to which the petition
464 pertains.

465 3. Has never secured a prior sealing or expunction of a
466 criminal history record under this section, s. 943.059, former
467 s. 893.14, former s. 901.33, or former s. 943.058, unless
468 expunction is sought of a criminal history record previously
469 sealed for 10 years pursuant to paragraph (2)(h) and the record
470 is otherwise eligible for expunction.

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

474

475 Any person who knowingly provides false information on such

476 sworn statement to the court commits a felony of the third
477 degree, punishable as provided in s. 775.082, s. 775.083, or s.
478 775.084.

479 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
480 petitioning the court to expunge a criminal history record, a
481 person seeking to expunge a criminal history record shall apply
482 to the department for a certificate of eligibility for
483 expunction. The department shall, by rule adopted pursuant to
484 chapter 120, establish procedures pertaining to the application
485 for and issuance of certificates of eligibility for expunction.
486 A certificate of eligibility for expunction is valid for 12
487 months after the date stamped on the certificate when issued by
488 the department. After that time, the petitioner must reapply to
489 the department for a new certificate of eligibility. Eligibility
490 for a renewed certification of eligibility must be based on the
491 status of the applicant and the law in effect at the time of the
492 renewal application. The department shall issue a certificate of
493 eligibility for expunction to a person who is the subject of a
494 criminal history record if that person:

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

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

500 2. That an indictment, information, or other charging

501 document, if filed or issued in the case, was dismissed or nolle
502 prosequi by the state attorney or statewide prosecutor, or was
503 dismissed by a court of competent jurisdiction, and that none of
504 the charges related to the arrest or alleged criminal activity
505 to which the petition to expunge pertains resulted in a trial,
506 without regard to whether the outcome of the trial was other
507 than an adjudication of guilt.

508 3. That the criminal history record does not relate to a
509 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
510 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
511 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
512 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
513 or any violation specified as a predicate offense for
514 registration as a sexual predator pursuant to s. 775.21, without
515 regard to whether that offense alone is sufficient to require
516 such registration, or for registration as a sexual offender
517 pursuant to s. 943.0435, where the defendant was found guilty
518 of, or pled guilty or nolo contendere to any such offense, or
519 that the defendant, as a minor, was found to have committed, or
520 pled guilty or nolo contendere to committing, such an offense as
521 a delinquent act, without regard to whether adjudication was
522 withheld.

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

526 (c) Has submitted to the department a certified copy of
527 the disposition of the charge to which the petition to expunge
528 pertains.

529 (d) Has never, prior to the date on which the application
530 for a certificate of eligibility is filed, been adjudicated
531 guilty of a criminal offense or comparable ordinance violation,
532 or been adjudicated delinquent for committing any felony or a
533 misdemeanor specified in s. 943.051(3)(b).

534 (e) Has not been adjudicated guilty of, or adjudicated
535 delinquent for committing, any of the acts stemming from the
536 arrest or alleged criminal activity to which the petition to
537 expunge pertains.

538 (f) Has never secured a prior sealing or expunction of a
539 criminal history record under this section, s. 943.059, former
540 s. 893.14, former s. 901.33, or former s. 943.058, unless
541 expunction is sought of a criminal history record previously
542 sealed for 10 years pursuant to paragraph (h) and the record is
543 otherwise eligible for expunction.

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

547 (h) Has previously obtained a court order sealing the
548 record under this section, former s. 893.14, former s. 901.33,
549 or former s. 943.058 for a minimum of 10 years because
550 adjudication was withheld or because all charges related to the

551 arrest or alleged criminal activity to which the petition to
552 expunge pertains were not dismissed prior to trial, without
553 regard to whether the outcome of the trial was other than an
554 adjudication of guilt. The requirement for the record to have
555 previously been sealed for a minimum of 10 years does not apply
556 when a plea was not entered or all charges related to the arrest
557 or alleged criminal activity to which the petition to expunge
558 pertains were dismissed prior to trial.

559 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

560 (a) In judicial proceedings under this section, a copy of
561 the completed petition to expunge shall be served upon the
562 appropriate state attorney or the statewide prosecutor and upon
563 the arresting agency; however, it is not necessary to make any
564 agency other than the state a party. The appropriate state
565 attorney or the statewide prosecutor and the arresting agency
566 may respond to the court regarding the completed petition to
567 expunge.

568 (b) If relief is granted by the court, the clerk of the
569 court shall certify copies of the order to the appropriate state
570 attorney or the statewide prosecutor and the arresting agency.
571 The arresting agency is responsible for forwarding the order to
572 any other agency to which the arresting agency disseminated the
573 criminal history record information to which the order pertains.
574 The department shall forward the order to expunge to the Federal
575 Bureau of Investigation. The clerk of the court shall certify a

576 | copy of the order to any other agency which the records of the
577 | court reflect has received the criminal history record from the
578 | court.

579 | (c) For an order to expunge entered by a court prior to
580 | July 1, 1992, the department shall notify the appropriate state
581 | attorney or statewide prosecutor of an order to expunge which is
582 | contrary to law because the person who is the subject of the
583 | record has previously been convicted of a crime or comparable
584 | ordinance violation or has had a prior criminal history record
585 | sealed or expunged. Upon receipt of such notice, the appropriate
586 | state attorney or statewide prosecutor shall take action, within
587 | 60 days, to correct the record and petition the court to void
588 | the order to expunge. The department shall seal the record until
589 | such time as the order is voided by the court.

590 | (d) On or after July 1, 1992, the department or any other
591 | criminal justice agency is not required to act on an order to
592 | expunge entered by a court when such order does not comply with
593 | the requirements of this section. Upon receipt of such an order,
594 | the department must notify the issuing court, the appropriate
595 | state attorney or statewide prosecutor, the petitioner or the
596 | petitioner's attorney, and the arresting agency of the reason
597 | for noncompliance. The appropriate state attorney or statewide
598 | prosecutor shall take action within 60 days to correct the
599 | record and petition the court to void the order. No cause of
600 | action, including contempt of court, shall arise against any

601 criminal justice agency for failure to comply with an order to
 602 expunge when the petitioner for such order failed to obtain the
 603 certificate of eligibility as required by this section or such
 604 order does not otherwise comply with the requirements of this
 605 section.

606 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 607 criminal history record of a minor or an adult which is ordered
 608 expunged by a court of competent jurisdiction pursuant to this
 609 section must be physically destroyed or obliterated by any
 610 criminal justice agency having custody of such record; except
 611 that any criminal history record in the custody of the
 612 department must be retained in all cases. A criminal history
 613 record ordered expunged that is retained by the department is
 614 confidential and exempt from the provisions of s. 119.07(1) and
 615 s. 24(a), Art. I of the State Constitution and not available to
 616 any person or entity except upon order of a court of competent
 617 jurisdiction. A criminal justice agency may retain a notation
 618 indicating compliance with an order to expunge.

619 (a) The person who is the subject of a criminal history
 620 record that is expunged under this section or under other
 621 provisions of law, including former s. 893.14, former s. 901.33,
 622 and former s. 943.058, may lawfully deny or fail to acknowledge
 623 the arrests covered by the expunged record, except when the
 624 subject of the record:

625 1. Is a candidate for employment with a criminal justice

- 626 agency;
- 627 2. Is a defendant in a criminal prosecution;
- 628 3. Concurrently or subsequently petitions for relief under
629 this section, s. 943.0583, or s. 943.059;
- 630 4. Is a candidate for admission to The Florida Bar;
- 631 5. Is seeking to be employed or licensed by or to contract
632 with the Department of Children and Families, the Division of
633 Vocational Rehabilitation within the Department of Education,
634 the Agency for Health Care Administration, the Agency for
635 Persons with Disabilities, the Department of Health, the
636 Department of Elderly Affairs, or the Department of Juvenile
637 Justice or to be employed or used by such contractor or licensee
638 in a sensitive position having direct contact with children, the
639 disabled, or the elderly;
- 640 6. Is seeking to be employed or licensed by the Department
641 of Education, any district school board, any university
642 laboratory school, any charter school, any private or parochial
643 school, or any local governmental entity that licenses child
644 care facilities;
- 645 7. Is seeking to be licensed by the Division of Insurance
646 Agent and Agency Services within the Department of Financial
647 Services; or
- 648 8. Is seeking to be appointed as a guardian pursuant to s.
649 744.3125.
- 650 (b) Subject to the exceptions in paragraph (a), a person

651 | who has been granted an expunction under this section, former s.
652 | 893.14, former s. 901.33, or former s. 943.058 may not be held
653 | under any provision of law of this state to commit perjury or to
654 | be otherwise liable for giving a false statement by reason of
655 | such person's failure to recite or acknowledge an expunged
656 | criminal history record.

657 | (c) Information relating to the existence of an expunged
658 | criminal history record which is provided in accordance with
659 | paragraph (a) is confidential and exempt from the provisions of
660 | s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
661 | except that the department shall disclose the existence of a
662 | criminal history record ordered expunged to the entities set
663 | forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their
664 | respective licensing, access authorization, and employment
665 | purposes, and to criminal justice agencies for their respective
666 | criminal justice purposes. It is unlawful for any employee of an
667 | entity set forth in subparagraph (a)1., subparagraph (a)4.,
668 | subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or
669 | subparagraph (a)8. to disclose information relating to the
670 | existence of an expunged criminal history record of a person
671 | seeking employment, access authorization, or licensure with such
672 | entity or contractor, except to the person to whom the criminal
673 | history record relates or to persons having direct
674 | responsibility for employment, access authorization, or
675 | licensure decisions. Any person who violates this paragraph

676 | commits a misdemeanor of the first degree, punishable as
677 | provided in s. 775.082 or s. 775.083.

678 | (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the
679 | eligibility requirements prescribed in paragraph (1)(b) and
680 | subsection (2), the department shall issue a certificate of
681 | eligibility for expunction under this subsection to a person who
682 | is the subject of a criminal history record if that person:

683 | (a) Has obtained, and submitted to the department, on a
684 | form provided by the department, a written, certified statement
685 | from the appropriate state attorney or statewide prosecutor
686 | which states whether an information, indictment, or other
687 | charging document was not filed or was dismissed by the state
688 | attorney, or dismissed by the court, because it was found that
689 | the person acted in lawful self-defense pursuant to the
690 | provisions related to justifiable use of force in chapter 776.

691 | (b) Each petition to a court to expunge a criminal history
692 | record pursuant to this subsection is complete only when
693 | accompanied by:

694 | 1. A valid certificate of eligibility for expunction
695 | issued by the department pursuant to this subsection.

696 | 2. The petitioner's sworn statement attesting that the
697 | petitioner is eligible for such an expunction to the best of his
698 | or her knowledge or belief.

699 |
700 | Any person who knowingly provides false information on such

701 sworn statement to the court commits a felony of the third
 702 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 703 775.084.

704 (c) This subsection does not confer any right to the
 705 expunction of a criminal history record, and any request for
 706 expunction of a criminal history record may be denied at the
 707 discretion of the court.

708 (d) Subsections (3) and (4) shall apply to expunction
 709 ordered under this subsection.

710 (e) The department shall, by rule adopted pursuant to
 711 chapter 120, establish procedures pertaining to the application
 712 for and issuance of certificates of eligibility for expunction
 713 under this subsection.

714 (6) STATUTORY REFERENCES.—Any reference to any other
 715 chapter, section, or subdivision of the Florida Statutes in this
 716 section constitutes a general reference under the doctrine of
 717 incorporation by reference.

718 Section 5. For the purpose of incorporating the amendment
 719 made by this act to section 907.041, Florida Statutes, in a
 720 reference thereto, section 943.059, Florida Statutes, is
 721 reenacted to read:

722 943.059 Court-ordered sealing of criminal history
 723 records.—The courts of this state shall continue to have
 724 jurisdiction over their own procedures, including the
 725 maintenance, sealing, and correction of judicial records

726 containing criminal history information to the extent such
727 procedures are not inconsistent with the conditions,
728 responsibilities, and duties established by this section. Any
729 court of competent jurisdiction may order a criminal justice
730 agency to seal the criminal history record of a minor or an
731 adult who complies with the requirements of this section. The
732 court shall not order a criminal justice agency to seal a
733 criminal history record until the person seeking to seal a
734 criminal history record has applied for and received a
735 certificate of eligibility for sealing pursuant to subsection
736 (2). A criminal history record that relates to a violation of s.
737 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
738 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
739 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
740 s. 916.1075, a violation enumerated in s. 907.041, or any
741 violation specified as a predicate offense for registration as a
742 sexual predator pursuant to s. 775.21, without regard to whether
743 that offense alone is sufficient to require such registration,
744 or for registration as a sexual offender pursuant to s.
745 943.0435, may not be sealed, without regard to whether
746 adjudication was withheld, if the defendant was found guilty of
747 or pled guilty or nolo contendere to the offense, or if the
748 defendant, as a minor, was found to have committed or pled
749 guilty or nolo contendere to committing the offense as a
750 delinquent act. The court may only order sealing of a criminal

751 history record pertaining to one arrest or one incident of
752 alleged criminal activity, except as provided in this section.
753 The court may, at its sole discretion, order the sealing of a
754 criminal history record pertaining to more than one arrest if
755 the additional arrests directly relate to the original arrest.
756 If the court intends to order the sealing of records pertaining
757 to such additional arrests, such intent must be specified in the
758 order. A criminal justice agency may not seal any record
759 pertaining to such additional arrests if the order to seal does
760 not articulate the intention of the court to seal records
761 pertaining to more than one arrest. This section does not
762 prevent the court from ordering the sealing of only a portion of
763 a criminal history record pertaining to one arrest or one
764 incident of alleged criminal activity. Notwithstanding any law
765 to the contrary, a criminal justice agency may comply with laws,
766 court orders, and official requests of other jurisdictions
767 relating to sealing, correction, or confidential handling of
768 criminal history records or information derived therefrom. This
769 section does not confer any right to the sealing of any criminal
770 history record, and any request for sealing a criminal history
771 record may be denied at the sole discretion of the court.

772 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
773 petition to a court to seal a criminal history record is
774 complete only when accompanied by:

775 (a) A valid certificate of eligibility for sealing issued

776 by the department pursuant to subsection (2).

777 (b) The petitioner's sworn statement attesting that the
778 petitioner:

779 1. Has never, prior to the date on which the petition is
780 filed, been adjudicated guilty of a criminal offense or
781 comparable ordinance violation, or been adjudicated delinquent
782 for committing any felony or a misdemeanor specified in s.
783 943.051(3)(b).

784 2. Has not been adjudicated guilty of or adjudicated
785 delinquent for committing any of the acts stemming from the
786 arrest or alleged criminal activity to which the petition to
787 seal pertains.

788 3. Has never secured a prior sealing or expunction of a
789 criminal history record under this section, s. 943.0585, former
790 s. 893.14, former s. 901.33, or former s. 943.058.

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

794

795 Any person who knowingly provides false information on such
796 sworn statement to the court commits a felony of the third
797 degree, punishable as provided in s. 775.082, s. 775.083, or s.
798 775.084.

799 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
800 petitioning the court to seal a criminal history record, a

801 person seeking to seal a criminal history record shall apply to
802 the department for a certificate of eligibility for sealing. The
803 department shall, by rule adopted pursuant to chapter 120,
804 establish procedures pertaining to the application for and
805 issuance of certificates of eligibility for sealing. A
806 certificate of eligibility for sealing is valid for 12 months
807 after the date stamped on the certificate when issued by the
808 department. After that time, the petitioner must reapply to the
809 department for a new certificate of eligibility. Eligibility for
810 a renewed certification of eligibility must be based on the
811 status of the applicant and the law in effect at the time of the
812 renewal application. The department shall issue a certificate of
813 eligibility for sealing to a person who is the subject of a
814 criminal history record provided that such person:

815 (a) Has submitted to the department a certified copy of
816 the disposition of the charge to which the petition to seal
817 pertains.

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

821 (c) Has never, prior to the date on which the application
822 for a certificate of eligibility is filed, been adjudicated
823 guilty of a criminal offense or comparable ordinance violation,
824 or been adjudicated delinquent for committing any felony or a
825 misdemeanor specified in s. 943.051(3)(b).

826 (d) Has not been adjudicated guilty of or adjudicated
827 delinquent for committing any of the acts stemming from the
828 arrest or alleged criminal activity to which the petition to
829 seal pertains.

830 (e) Has never secured a prior sealing or expunction of a
831 criminal history record under this section, s. 943.0585, former
832 s. 893.14, former s. 901.33, or former s. 943.058.

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

836 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.—

837 (a) In judicial proceedings under this section, a copy of
838 the completed petition to seal shall be served upon the
839 appropriate state attorney or the statewide prosecutor and upon
840 the arresting agency; however, it is not necessary to make any
841 agency other than the state a party. The appropriate state
842 attorney or the statewide prosecutor and the arresting agency
843 may respond to the court regarding the completed petition to
844 seal.

845 (b) If relief is granted by the court, the clerk of the
846 court shall certify copies of the order to the appropriate state
847 attorney or the statewide prosecutor and to the arresting
848 agency. The arresting agency is responsible for forwarding the
849 order to any other agency to which the arresting agency
850 disseminated the criminal history record information to which

851 the order pertains. The department shall forward the order to
852 seal to the Federal Bureau of Investigation. The clerk of the
853 court shall certify a copy of the order to any other agency
854 which the records of the court reflect has received the criminal
855 history record from the court.

856 (c) For an order to seal entered by a court prior to July
857 1, 1992, the department shall notify the appropriate state
858 attorney or statewide prosecutor of any order to seal which is
859 contrary to law because the person who is the subject of the
860 record has previously been convicted of a crime or comparable
861 ordinance violation or has had a prior criminal history record
862 sealed or expunged. Upon receipt of such notice, the appropriate
863 state attorney or statewide prosecutor shall take action, within
864 60 days, to correct the record and petition the court to void
865 the order to seal. The department shall seal the record until
866 such time as the order is voided by the court.

867 (d) On or after July 1, 1992, the department or any other
868 criminal justice agency is not required to act on an order to
869 seal entered by a court when such order does not comply with the
870 requirements of this section. Upon receipt of such an order, the
871 department must notify the issuing court, the appropriate state
872 attorney or statewide prosecutor, the petitioner or the
873 petitioner's attorney, and the arresting agency of the reason
874 for noncompliance. The appropriate state attorney or statewide
875 prosecutor shall take action within 60 days to correct the

876 record and petition the court to void the order. No cause of
877 action, including contempt of court, shall arise against any
878 criminal justice agency for failure to comply with an order to
879 seal when the petitioner for such order failed to obtain the
880 certificate of eligibility as required by this section or when
881 such order does not comply with the requirements of this
882 section.

883 (e) An order sealing a criminal history record pursuant to
884 this section does not require that such record be surrendered to
885 the court, and such record shall continue to be maintained by
886 the department and other criminal justice agencies.

887 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
888 history record of a minor or an adult which is ordered sealed by
889 a court pursuant to this section is confidential and exempt from
890 the provisions of s. 119.07(1) and s. 24(a), Art. I of the State
891 Constitution and is available only to the person who is the
892 subject of the record, to the subject's attorney, to criminal
893 justice agencies for their respective criminal justice purposes,
894 which include conducting a criminal history background check for
895 approval of firearms purchases or transfers as authorized by
896 state or federal law, to judges in the state courts system for
897 the purpose of assisting them in their case-related
898 decisionmaking responsibilities, as set forth in s. 943.053(5),
899 or to those entities set forth in subparagraphs (a)1., 4., 5.,
900 6., 8., 9., and 10. for their respective licensing, access

901 authorization, and employment purposes.

902 (a) The subject of a criminal history record sealed under
903 this section or under other provisions of law, including former
904 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
905 deny or fail to acknowledge the arrests covered by the sealed
906 record, except when the subject of the record:

907 1. Is a candidate for employment with a criminal justice
908 agency;

909 2. Is a defendant in a criminal prosecution;

910 3. Concurrently or subsequently petitions for relief under
911 this section, s. 943.0583, or s. 943.0585;

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

913 5. Is seeking to be employed or licensed by or to contract
914 with the Department of Children and Families, the Division of
915 Vocational Rehabilitation within the Department of Education,
916 the Agency for Health Care Administration, the Agency for
917 Persons with Disabilities, the Department of Health, the
918 Department of Elderly Affairs, or the Department of Juvenile
919 Justice or to be employed or used by such contractor or licensee
920 in a sensitive position having direct contact with children, the
921 disabled, or the elderly;

922 6. Is seeking to be employed or licensed by the Department
923 of Education, a district school board, a university laboratory
924 school, a charter school, a private or parochial school, or a
925 local governmental entity that licenses child care facilities;

926 7. Is attempting to purchase a firearm from a licensed
 927 importer, licensed manufacturer, or licensed dealer and is
 928 subject to a criminal history check under state or federal law;

929 8. Is seeking to be licensed by the Division of Insurance
 930 Agent and Agency Services within the Department of Financial
 931 Services;

932 9. Is seeking to be appointed as a guardian pursuant to s.
 933 744.3125; or

934 10. Is seeking to be licensed by the Bureau of License
 935 Issuance of the Division of Licensing within the Department of
 936 Agriculture and Consumer Services to carry a concealed weapon or
 937 concealed firearm. This subparagraph applies only in the
 938 determination of an applicant's eligibility under s. 790.06.

939 (b) Subject to the exceptions in paragraph (a), a person
 940 who has been granted a sealing under this section, former s.
 941 893.14, former s. 901.33, or former s. 943.058 may not be held
 942 under any provision of law of this state to commit perjury or to
 943 be otherwise liable for giving a false statement by reason of
 944 such person's failure to recite or acknowledge a sealed criminal
 945 history record.

946 (c) Information relating to the existence of a sealed
 947 criminal record provided in accordance with the provisions of
 948 paragraph (a) is confidential and exempt from the provisions of
 949 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 950 except that the department shall disclose the sealed criminal

951 history record to the entities set forth in subparagraphs (a)1.,
952 4., 5., 6., 8., 9., and 10. for their respective licensing,
953 access authorization, and employment purposes. An employee of an
954 entity set forth in subparagraph (a)1., subparagraph (a)4.,
955 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
956 subparagraph (a)9., or subparagraph (a)10. may not disclose
957 information relating to the existence of a sealed criminal
958 history record of a person seeking employment, access
959 authorization, or licensure with such entity or contractor,
960 except to the person to whom the criminal history record relates
961 or to persons having direct responsibility for employment,
962 access authorization, or licensure decisions. A person who
963 violates the provisions of this paragraph commits a misdemeanor
964 of the first degree, punishable as provided in s. 775.082 or s.
965 775.083.

966 (5) STATUTORY REFERENCES.—Any reference to any other
967 chapter, section, or subdivision of the Florida Statutes in this
968 section constitutes a general reference under the doctrine of
969 incorporation by reference.

970 Section 6. This act shall take effect July 1, 2018.