

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill prohibits the expunction or sealing of certain criminal history records. The bill will allow FDLE access to records indicating that someone has been committed to a mental institution for the purpose of determining whether the person is prohibited by federal law from purchasing a firearm. The bill increases the amount of time that protective services can be provided to a witness or victim who is at risk of harm upon certification by the state attorney or statewide prosecutor. The bill requires the clerk of court to submit disposition information to FDLE relating to minor offenders. The bill authorizes FDLE to keep fingerprints of law enforcement officers and other criminal justice agency employees on file for the purpose of checking incoming arrest information against these fingerprint records. The bill provides immunity from civil liability for damages when an agency responds in good faith to a request to publicly release information relating to a missing child, commonly known as an Amber Alert.

Promote personal responsibility: The bill will allow FDLE to determine whether a person is prohibited by federal law from purchasing a firearm based on commitment to a mental institution. The bill prohibits using the name or emblem of FDLE for improper purposes.

B. EFFECT OF PROPOSED CHANGES:

Sale and delivery of firearms (Section 1): Federal law provides that it is unlawful for any person to sell a firearm to any person knowing or having reasonable cause to believe that such person has been adjudicated as a mental defective or has been committed to any mental institution.¹ Before a licensed firearm dealer can sell or deliver a firearm to another person, the dealer is required to contact the Florida Department of Law Enforcement who then conducts a records check on the potential buyer.² The department is required to review criminal history records to determine if the potential buyer has been convicted of a felony or other enumerated offense. The department notifies the dealer if the check of the potential buyer discloses any disqualifying information. The department does not have access to information relating to whether a potential buyer has been adjudicated mentally defective or committed to a mental institution. As such, this information is not part of the department's record check.

HB 645 amends s. 790.065, F.S. to require the department to compile and maintain an automated database of person who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.³ The bill requires the clerks of court to submit these records to the department within one month of the adjudication or commitment. The bill provides a procedure by which an individual can request that the department delete a mental health record in certain circumstances. The bill authorizes the department to disclose the mental health data to agencies of the federal government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose the information to the Department of Agriculture and Consumer Services for determining eligibility for issuance of a concealed weapons or firearms license. If a potential buyer appeals a nonapproval based on the mental health records, the clerks of court and mental institutions must, upon request, provide information to help determine whether the potential buyer is the same person as the subject of the record. Any identifying information that is provided to FDLE which is confidential or exempt from disclosure, must retain such confidential or exempt status when transferred to FDLE.

¹ 18 U.S.C. 922(d)(4)

² See s. 790.065, F.S.

³ The bill defines the terms "adjudicated mentally defective" and "committed to a mental institution".

Protective services for certain victims and witnesses (Section 2): Section 914.25, F.S. provides that upon certification from a state attorney or the statewide prosecutor that a victim or witness who is critical to a criminal investigation or prosecution is at risk of harm, law enforcement may provide protective services. If the victim or witness needs to be temporarily relocated, the state attorney or statewide prosecutor must notify FDLE who coordinates the temporary relocation. Protective services, including temporary relocation may be provided for up to one year or until the risk giving rise to the certification has diminished, whichever occurs sooner. The state attorney or statewide prosecutor can recertify a victim or witness at risk of harm for an additional year. The lead law enforcement agency who provides protective services may seek reimbursement for expenses from the Victim and Witness Protection Review Committee which is part of the Florida Violent Crime and Drug Control Council that serves in an advisory capacity to FDLE.⁴

HB 645 amends this section to provide that at the end of the first certification year, the prosecutor may recertify the victim at risk for an additional year or until the risk giving rise to the certification has diminished, whichever occurs first. Certification may be renewed annually to allow a maximum of 4 years of eligibility for protective services. The bill provides that the section does not prevent any agency from providing protective services at the agency's expense beyond the four year maximum period but that the agency cannot seek reimbursement for any additional expenditures from the Victim and Witness Protection Review Committee.

Missing child reports (Section 3): FDLE maintains the Missing Children Information Clearinghouse (MCIC) which is a central repository of information regarding missing children. In cooperation with several other state agencies, FDLE administers the Amber Alert program to aid in the recovery of missing children. The purpose of the program is to broadcast information relating to a missing or abducted child believed to be in danger to the public, through the use of radio and television broadcasts, road signs and lottery machines. A Missing Child Alert can be issued in cases in which the criteria for the issuance of an Amber Alert has not been met. Currently, there is no statutory language which governs the program.

HB 645 amends s. 937.021, F.S. which relates to missing child reports to provide that upon receiving a request to release Amber Alert or Missing Child Alert information, any agency, employee, individual or entity is immune from civil liability for damages for complying in good faith with the request. The bill also provides that a person is presumed to have acted in good faith in releasing information pertaining to the missing child. The presumption of good faith is not overcome if a technical or clerical error is made or if the alert information is incomplete because the information received from the local law enforcement agency was incomplete or incorrect. The bill further provides that there is no duty to release the alert information and the decision to release the information is discretionary with the agency receiving the information.

Trust funds (Sections 4 & 5) Section 938.07, F.S. provides that a court cost of \$135 shall be added to any fine for driving under the influence or boating under the influence. This money is statutorily divided as follows: \$25 dollars is to be deposited in the Emergency Medical Services Trust Fund; \$60 is to be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund and; \$50 is to be deposited in the Criminal Justice Standards and Training Trust Fund of FDLE to be used for operational expenses in conducting the statewide criminal analysis laboratory system established in statute.⁵ In audit report number 03-042, released in October 2002, the Auditor General reported that, contrary to section 938.07, F.S., FDLE was placing the \$50 portion of DUI court costs in its Operating Trust Fund rather than in the Criminal Justice Standards and Training Trust Fund. In an October 2005 audit, the Auditor

⁴ See s. 943.031(6) which establishes the Victim and Witness Protection Review Committee within the Florida Violent Crime and Drug Control Council. The committee maintains criteria for disbursing funds to reimburse law enforcement agencies for witness protection costs and reviews and approves or denies reimbursement requests. The lead agency must provide a plan for how the funds would be distributed among any agencies that cooperated in providing protective services.

⁵ Section 943.32, F.S. establishes a statewide criminal analysis laboratory system to be composed of state operated laboratories under the jurisdiction of FDLE and locally funded laboratories in Broward, Dade, Indian River, Monroe, Palm Beach and Pinellas Counties as well as such other laboratories as render criminal analysis laboratory services to criminal justice agencies in the state.

General noted “continued noncompliance with this law.”⁶ HB 645 provides that the \$50 to FDLE shall be deposited in FDLE’s Operating Trust Fund rather than the Criminal Justice Standards and Training Trust Fund.

Section 938.27, F.S. provides that in all criminal cases, convicted persons are liable for payment of investigative costs incurred by law enforcement agencies. Investigative costs which are recovered must be returned to the agency which incurred the expense and deposited into that agency’s operating trust fund. HB 645 amends this section to provide that investigative costs recovered on behalf of FDLE shall be deposited in the department’s Forfeiture and Investigative Support Trust Fund established in s. 943.362, F.S.

Disposition reporting (Section 6): FDLE maintains the Criminal Justice Information Program which acts as the state’s central criminal justice information repository. Law enforcement agencies are required to submit arrest information to FDLE. Section 943.052, F.S. requires each clerk of court to submit disposition information to FDLE.⁷ This information would indicate, for example, whether a person had been acquitted or convicted of the offense for which they were arrested. The section provides that disposition reports must be submitted at least once a month and provides that the report is mandatory for dispositions relating to adult offenders only. HB 645 provides that, beginning July 1, 2008, a disposition report for each disposition relating to a minor offender will be mandatory.

Fingerprint submission for criminal history background checks (Sections 7 and 10): Section 943.13, F.S. provides minimum qualifications for a person employed as a law enforcement or correctional officer. A person who has been convicted of any felony or a misdemeanor involving perjury or false statement is not eligible to be an officer. An employing agency is required to conduct a fingerprint based criminal history background check as a condition of employment of an officer. The employing agency keeps the processed fingerprints on file. FDLE does not retain the fingerprints. As a result, unless the agency later resubmits the fingerprints, they are not subsequently checked to ensure that the officer has not been arrested for or convicted of a disqualifying criminal offense. HB 645 amends s. 943.13, F.S. to require that beginning July 1, 2005, FDLE must retain and enter into the statewide automated fingerprint identification system all fingerprints of officers submitted as required by this section and all fingerprints of officers which are submitted to the department for any other reason. FDLE will then search all arrest fingerprint cards against the fingerprints of the officers submitted as required by this section and report to the employing agency if an fingerprint from an arrest card is identified as matching an officer’s fingerprints. By January 1, 2007, an officer whose fingerprints are not retained by the FDLE must be re-fingerprinted and the fingerprints must be forwarded to FDLE.

HB 645 amends s. 943.053, F.S. to provide that if a criminal justice agency is authorized to conduct a criminal background check on an agency employee (other than an officer), the agency may submit the employees fingerprint identification information to FDLE who will then retain this information and will search all arrest fingerprint cards against the fingerprints of the agency employees as described above.

Expunction and sealing of records (Sections 8 & 9): Current law provides for sealing or expunction of criminal history records in limited circumstances. See generally, ss. 943.0585 and 943.059, F.S. The arrested individual must apply with FDLE for a certificate of eligibility for sealing or expunction and pay a \$75 fee. A record may not be sealed or expunged if the person was adjudicated guilty of the offense. Criminal history records relating to certain offenses such as sexual battery or drug trafficking may not

⁶ See, Report No. 2005-042, Department of Law Enforcement, Criminal Justice Standards and Training Trust Fund and Accountability for Evidence and Seized Property, Operational Audit.

⁷ See also, Rule 11C-4.006, F.A.C.; Section 943.045(9), F.S. defines the term “disposition” to mean “details relating to the termination of an individual criminal defendant’s relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probations, paroles, and releases from correctional institutions.”

be expunged or sealed if the defendant was found guilty or pled guilty, even if adjudication was withheld.⁸ Even if FDLE grants an individual a certificate of eligibility, sealing or expunction is not automatic - the court may deny the petition. An individual may only have one arrest (and related proceedings) sealed, and then later expunged, in his or her lifetime.

The arresting agency keeps possession of a sealed record, but the record is confidential and exempt from the public records laws.⁹ A sealed record does not appear on a criminal history search requested by a member of the public, but is still available for review by the arrested person and by certain government agencies for specific purposes. The arresting agency must physically destroy an expunged record.¹⁰ FDLE does not destroy an expunged record, but keeps a copy of the record as a confidential and exempt record.

An individual who has had an arrest sealed or expunged may lawfully deny the arrest in most circumstances. The FDLE record of an expunged criminal history record is still available to certain government entities for specific purposes.¹¹

HB 645 makes several changes to the statutes relating to sealing and expunging of criminal history records. The bill expands the list of offenses that cannot be sealed or expunged to include voyeurism¹² and also includes offenses specified as predicate offenses for registration as a sexual predator, a sexual offender, or as a career criminal offender.¹³ This will result in the offenses of false imprisonment and luring or enticing a child and certain offenses related to pornography being ineligible for sealing or expunction.

HB 645 also provides that a certificate of eligibility for sealing or expunction is valid for 12 months after the date it is issued by FDLE. After that time, the petitioner must reapply to the department for a new certificate of eligibility. The bill also clarifies that eligibility for a renewed certification will be based on the law in effect and the status of the applicant at the time of the most recent application.

HB 645 adds to the list of exceptions to the general rule that a person may lawfully deny or fail to acknowledge arrests covered by a sealed record to include a person who is attempting to purchase a firearm. Current law provides that a sealed record can be provided to a criminal justice agency for their respective criminal justice purposes. The bill clarifies that a "criminal justice purpose" includes conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law.

Current law provides that a person is not required to wait a minimum of 10 years prior to being eligible for an expunction when the charges were dismissed prior to trial, adjudication or withholding of adjudication. Otherwise, the criminal history record must be sealed for at least ten years before such record is eligible for expunction. HB 645 amends this criteria to provide that the department may issue a certificate of eligibility for expunction if the person has previously obtained a court order sealing the record for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest were not dismissed prior to trial, regardless of whether the outcome of the trial was other than an adjudication of guilt. The requirement for the record to have previously been sealed for a minimum of 10 years does not apply when a plea was not entered or all charges related to the arrest or to which the petition to expunge pertains were dismissed prior to trial. In short, under the provisions of

⁸ Offenses in this category include numerous sex crimes, plus communications fraud, offenses by public employees, drug trafficking, or violation of pretrial release conditions.

⁹ Section 943.059(4), F.S.

¹⁰ Section 943.0585(4), F.S.

¹¹ A record that is sealed or expunged is provided to the appropriate state or local government agency should the arrested person apply for: employment with a criminal justice agency, admission to the Florida Bar, employment with the Department of Children and Families or the Department of Juvenile Justice if the individual will be in a sensitive position (whether employed by agency or by a contractor), or employment in a school or day care center.

¹² s. 810.14, F.S.

¹³ See ss. 775.21, 943.0435 and 775.26, F.S.

the bill, unless the charges were dismissed prior to trial, the record cannot be sealed unless 10 years has elapsed since the record was sealed. If the person went to trial and was acquitted or if the person was convicted but adjudication was withheld or if the person pled guilty or nolo contendere and adjudication was withheld, the record must be sealed for 10 years before it can be expunged. [As under current law, a record cannot be sealed or expunged if it resulted in an adjudication of guilt either by way of a plea or after a trial.]

Officer training (Section 11 & 12): As a condition of employment, a law enforcement officer must complete a basic skills training program. Every 4 years, an officer is required to have 40 hours of continued training.¹⁴ Sections 943.171 through 943.17295, F.S. require training in a number of specific areas such as victims assistance, juvenile sexual offender investigations, and domestic violence cases. Section 943.1715, F.S. provides that each basic skills course must include a minimum of 8 hours training in “interpersonal skills with diverse populations.” Section 943.1716, F.S. mandates that a continued education course must contain 8 hours of instruction in the subject of interpersonal skills relating to diverse populations, with an emphasis on the awareness of cultural differences. HB 645 retains the requirement that basic skills training and continued education training contain instruction in the subject of interpersonal skills relating to diverse populations but removes the requirement that a minimum of 8 hours training be given in that subject.

Criminal justice selection centers (Sections 13 & 14) Florida has selection centers throughout the state that evaluate criminal justice applicants for employment with agencies in the region. The centers are each under the direction and control of a postsecondary public school or a criminal justice agency.¹⁵ Section 943.2569, F.S. requires that each center provide for an annual financial audit and a management letter. However, a postsecondary public school or criminal justice agency that administers a center is required to conduct these annual financial audits pursuant to section 11.45(2)(c), F.S. or s. 218.39(1), F.S. A recent Auditor General report suggested that the need for a separate audit requirement in s. 943.2569, F.S. is not apparent.¹⁶ HB 645 repeals s. 943.2569, thereby deleting the separate audit requirement. The bill also amends s. 943.257, F.S. to clarify the oversight role of FDLE’s Criminal Justice Standards and Training Commission and the center’s advisory board over the centers.

Public assistance fraud (Section 15): Section 943.401, F.S. provides that FDLE must investigate fraud in public assistance made under the provisions of chapter 409 or 414. The references to these sections are outdated because functions that were previously handled by the Department of Health and Rehabilitative Services are now located in other state agencies that do not come under the provisions of chapter 409 or 414. The bill clarifies this reference. Currently, all public assistance recipients must first give the agency administering the assistance consent to make inquiry of past and present employers and financial records. The bill includes the Agency for Workforce Innovation in the list of agencies because this agency now administers subsidized child day care under the School Readiness program.

Purchasing promotional materials (Section 16): The bill provides that, in addition to expenditures otherwise authorized by law, the department is authorized to expend not more than \$5,000 annually to “purchase and distribute promotional materials or items that serve to advance with dignity and integrity the goodwill of this state and the department and to provide basic refreshments” at meetings of the department with representatives from other governmental entities.

Unauthorized use of FDLE emblems or names (Section 17): Section 843.085, F.S. makes it a first degree misdemeanor for an unauthorized person to wear law enforcement insignia in a manner that could deceive a reasonable person into believing that it is authorized by a law enforcement agency. The bill creates an unnumbered section of statute which provides that whoever, without the written

¹⁴ s. 943.135, F.S.

¹⁵ s. 943.256, F.S.

¹⁶ Report No. 2005-042, pages 7-8.

permission of the executive director, knowingly uses the words "Florida Department of Law Enforcement", "F.D.L.E.", "FDLE", or Florida Capitol police or who uses a department logo or emblem in connection with any publication or production in a manner reasonably calculated to convey the impression that such publication or production is approved, endorsed or authorized by the department, commits a first degree misdemeanor. The bill provides that a violation of the section may be enjoined upon suit by the department or the Department of Legal Affairs upon complaint filed in any court of competent jurisdiction.

C. SECTION DIRECTORY:

Section 1: Amends s. 790.065, F.S. relating to sale and delivery of firearms to provide that FDLE will review records to determine if person has been adjudicated mentally defective or has been committed to a mental institution; requires clerks of court to submit information to FDLE.

Section 2. Amends s. 914.25, F.S. to allow for recertification that victim or witness requires protective services or relocation; provides that up to 4 years of protective services may be eligible for reimbursement.

Section 3. Amends s. 937.021, F.S. to provide immunity from civil liability for transmission of Amber Alert/Missing Child Alert when acting in faith; provides for presumption of good faith and that presumption is not overcome in certain circumstances; provides that section does not create a duty to release alert.

Section 4. Amends s. 938.07 to redesignate \$50 DUI court cost from Criminal Justice Standard and Training Trust Fund to Operational Trust Fund.

Section 5. Amends s. 938.27, F.S. to redesignate investigative court costs recovered on behalf of FDLE from agency operational trust fund to Forfeiture and Investigative Support Trust Fund.

Section 6. Amends s. 943.052, F.S. to require clerks of court to submit disposition reports relating to minor offenders to Criminal Justice Information Program.

Section 7. Amends s. 943.053, F.S. to authorize FDLE to retain fingerprints of criminal justice agency employees submitted by agency for purpose of checking against arrest fingerprint cards; requires FDLE to inform agency if arrest record is identified as belonging to agency employee.

Section 8. Amends s. 943.0585, F.S. relating to court-ordered expunction of criminal history records; prohibits expunction of certain records; provides that certificate of eligibility for expunction is valid for 12 months after issued by FDLE; allows for reapplication to the department for a new certificate of eligibility.

Section 9. Amends s. 943.059, F.S. relating to court-ordered sealing of criminal history records; prohibiting expunction of certain records; provides that certificate of eligibility is valid for 12 months after issued by FDLE; allows for reapplication to the department for a new certificate of eligibility; provides that sealed records can be used in conducting criminal history background check for approval of firearms purchases; provides that person may not deny or fail to acknowledge sealed record when attempting to purchase a firearm.

Section 10. Amends s. 943.13, F.S. to authorize FDLE to retain fingerprints of officers for purpose of checking against arrest fingerprint cards; requires FDLE to inform agency if arrest record is identified as belonging to officer.

Section 11. Amends s. 943.1715, F.S. to remove requirement for specific number of hours of basic skills training relating to interpersonal skills in diverse populations.

Section 12. Amends s. 943.1716, F.S. to remove requirement for specific number of hours of continued employment training relating to interpersonal skills in diverse populations.

Section 13. Repeals s. 943.2569, F.S. relating to audit of criminal justice selection centers.

Section 14. Amends s. 943.257, F.S. relating to oversight of criminal justice selection centers.

Section 15. Amends s. 943.401, F.S. to clarify FDLE's jurisdiction to investigate public assistance fraud.

Section 16. Authorizes FDLE to purchase up to \$5,000 worth of goodwill and promotional materials.

Section 17. Prohibits unauthorized use of FDLE emblem or name.

Section 18. Provides effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments below

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires the clerks of the court to provide information relating to juvenile disposition and to adjudications of mental defectiveness or commitments to mental institutions to the FDLE. This may have an indeterminate fiscal impact on the clerks of court.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill will require FDLE to create a system to collect information submitted by the clerks of court on adjudications of mental defectiveness or commitments to mental institutions. FDLE estimates that the system will cost \$126,600 to create.

FDLE also intends to charge a \$6 retention fee when an agency elects to have FDLE retain the fingerprints of non-sworn agency personnel as provided for in section 7 of the bill. FDLE does not intend to charge this fee for the retention of fingerprints of law enforcement or correctional officers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 645 requires the clerks of court to provide certain information to FDLE. Although this will increase the responsibilities of clerk staff, it appears likely that the aggregate impact on counties would be insignificant

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 7 of the bill amends s. 943.053, F.S. to provide that FDLE shall adopt rules setting the amount of the fee to be imposed upon a criminal justice agency who submits fingerprints of agency employees. It also requires FDLE to adopt rules for establishing procedures for retaining the fingerprints and disseminating search results to a submitting agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 8 and 9 of this bill provide that criminal history records that relate to certain criminal offenses cannot be expunged or sealed. Specifically, the bill includes "any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, as a sexual offender pursuant to s. 943.0435, or *as a career offender pursuant to s. 775.26*" in the list of offenses that cannot be expunged or sealed, even if adjudication was withheld. However, s. 775.26, relating to career offender registration, does not include a list of enumerated offenses. Instead, it defines the term career offender as applying to a person who had been sentenced as a habitual violent felony offender, violent career criminal or under the "3-Strikes" law. As such, the reference to the career offender statute may need clarification.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES