

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Judiciary Committee

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BILL: CS/CS/SB 544

INTRODUCER: Judiciary Committee, Criminal Justice Committee, and Senator Fasano

SUBJECT: Department of Law Enforcement

DATE: February 17, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<b>Fav/CS</b>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>JA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill makes numerous changes to the laws of relevance to the duties of or affecting the Florida Department of Law Enforcement (FDLE). Features of the bill include, but are not limited to, the following:

- Requiring the Florida Department of Law Enforcement to compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. The clerks of court must submit these records to the FDLE within one month of the rendition of the adjudication or commitment.
- Increasing the amount of time that protective services can be provided to a witness or victim who is at risk of harm upon certification by a state attorney or the statewide prosecutor.
- Deleting a requirement for law enforcement agencies and the FDLE to create reports documenting the sale of forfeited property.
- Providing immunity from civil liability for damages when an agency, employee, individual, or entity responds in good faith to a request from a law enforcement agency to publicly release information relating to a missing child, commonly known as an Amber Alert.
- Providing that the \$50 that the FDLE receives from the \$135 in court costs for driving under the influence or boating under the influence be deposited in the FDLE's Operating Trust Fund.
- Requiring that investigative costs recovered on the FDLE's behalf be deposited in the FDLE's Forfeiture and Investigative Support Trust Fund.

- Requiring the Criminal Justice Information Program to, as authorized by law, retain fingerprints submitted by criminal justice and noncriminal justice agencies to the FDLE for a criminal history background screening in a manner provided by rule and enter the fingerprints in the statewide automated fingerprint identification system. Agencies may participate in the search process by paying an annual fee to the FDLE, which can be waived or reduced by the executive director of the FDLE for good cause shown. There is no fee charged to criminal justice agencies for criminal justice purposes.
- Providing that the clerks of the court must submit disposition reports relating to offenders who are minors to the Criminal Justice Information Program.
- Requiring the FDLE to make online access to Florida criminal justice information available to each judge in the state courts.
- Providing that a criminal justice agency that is authorized to conduct a criminal background check on an agency employee (other than an officer) may submit the employee's fingerprint identification information to the FDLE to obtain state and national criminal history information. The FDLE shall retain this information and search all arrest fingerprint cards against the fingerprints of the agency employee.
- Providing that a criminal history check, whether an initial check or a renewal check, must include a Florida criminal history provided by the FDLE. Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request. When a national criminal history check is required or authorized by state law, the national criminal history check must be submitted by and through the FDLE unless otherwise required by federal law.
- Expanding the list of offenses that cannot be sealed or expunged to include voyeurism and also include offenses specified as predicate offenses for registration as a sexual predator or a sexual offender. 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.
- Requiring that the FDLE retain and enter into the statewide automated fingerprint identification system all fingerprints of officers. The FDLE must search all arrest fingerprint cards against the fingerprints of the officers submitted and report to the employing agency if a fingerprint from an arrest card is identified as matching an officer's fingerprints. An officer whose fingerprints are not retained by the FDLE must be reprinted and the fingerprints must be forwarded to the FDLE.
- Authorizing the FDLE to spend 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.
- Punishing as a first-degree misdemeanor the unauthorized and knowing use of the words "Florida Department of Law Enforcement," "F.D.L.E.," "FDLE," or "Florida Capitol Police," or the use of a department logo or emblem in connection with any publication or production in a manner reasonably calculated to convey the impression.

This bill substantially amends the following sections of the Florida Statutes: 68.07, 790.065, 914.25, 932.7055, 937.021, 938.07, 938.27, 943.05, 943.052, 943.053, 943.0585, 943.059, 943.13, 943.1715, 943.1716, 943.257, and 943.401. This bill also repeals section 943.2569, Florida Statutes, and creates unnumbered sections of the Florida Statutes.

## II. Present Situation:

### **Sale and Delivery of Firearms**

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.<sup>1</sup> 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 (FDLE), which then conducts a records check on the potential buyer.<sup>2</sup> The FDLE is required to review criminal history records to determine if the potential buyer has been convicted of a felony or other enumerated offense. The FDLE notifies the dealer if the records check of the potential buyer discloses any disqualifying information. The FDLE does not have access to information relating to whether a potential buyer has been adjudicated mentally defective or committed to a mental institution. Therefore, this information is not part of the FDLE's record check.

### **Protective Services for Certain Victims and Witnesses**

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 the statewide prosecutor must notify the FDLE, which then 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 the statewide prosecutor can recertify a victim or witness at risk of harm for an additional year. The lead law enforcement agency that 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 the FDLE.<sup>3</sup>

### **Missing Child Reports**

The 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, the FDLE administers the Amber Alert program to aid in the recovery of missing children. The purpose of this program is to broadcast to the public information relating to a missing or abducted child believed to be in danger 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 have not been met.

### **Trust Funds**

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 (DUI/BUI). This money is statutorily divided as follows: \$25 is to be deposited in the Emergency Medical Services Trust Fund; \$60 is to be

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<sup>1</sup> 18 U.S.C. 922(d)(4).

<sup>2</sup> See s. 790.065, F.S.

<sup>3</sup> See s. 943.031(6), F.S., 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 are to be distributed among any agencies that cooperate in providing protective services.

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 the FDLE to be used for operational expenses in conducting the statewide criminal analysis laboratory system established in statute.<sup>4</sup> In audit report number 03-042, which was released in October 2002, the Auditor General reported that, contrary to s. 938.07, F.S., the 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 General noted “continued noncompliance with this law.”<sup>5</sup>

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 that are recovered must be returned to the agency that incurred the expense and deposited into that agency’s operating trust fund.

### **Disposition Reporting**

The FDLE maintains the Criminal Justice Information Program, which acts as Florida’s central criminal justice information repository. Law enforcement agencies are required to submit arrest information to the FDLE. Section 943.052, F.S., requires each clerk of court to submit disposition information to the FDLE.<sup>6</sup> This information indicates, for example, whether a person had been acquitted or convicted of the offense for which he or she was 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 only to adult offenders.

### **Name Change Petitions**

Section 68.07, F.S., provides that a petition for a change of a person’s name must include a *copy* of the petitioner’s fingerprints taken by a law enforcement agency, unless a former name is being restored. After the filing of a final judgment granting a name change, the clerk is required to send a report to the FDLE. The report must contain a copy of the petitioner’s fingerprints in addition to other information.

### **Fingerprint Submission for Criminal History Background Checks**

Section 943.13, F.S., provides minimum qualifications for a person employed as a law enforcement officer 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

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<sup>4</sup> Section 943.32, F.S., establishes a statewide criminal analysis laboratory system to be composed of state operated laboratories under the jurisdiction of the FDLE and locally funded laboratories in Broward, Dade, Indian River, Monroe, Palm Beach, and Pinellas Counties, as well as other laboratories that render criminal analysis laboratory services to criminal justice agencies in Florida.

<sup>5</sup> See Auditor General, *Department of Law Enforcement: Criminal Justice Standards and Training Trust Fund and Accountability for Evidence and Seized Property, Operational Audit*, Report No. 2005-042, 7 (October 2004).

<sup>6</sup> See also Rule 11C-4.006, F.A.C., and s. 943.045(9), F.S. Section 943.045(9), F.S., defines the term “disposition” as “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.”

condition of employment of an officer. The employing agency keeps the processed fingerprints on file. The FDLE does not retain the fingerprints. Therefore, 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.

### **Expunction and Sealing of Records**

Current law provides for the sealing or expunction of criminal history records in limited circumstances.<sup>7</sup> The arrested individual must apply to the 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 be expunged or sealed if the defendant was found guilty or pled guilty, even if adjudication was withheld.<sup>8</sup> Even if the 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.<sup>9</sup> 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.<sup>10</sup> The FDLE does not destroy an expunged record; it 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 governmental entities for specific purposes.<sup>11</sup>

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 10 years before such record is eligible for expunction.

### **Officer Training**

As a condition of employment, a law enforcement officer must complete a basic skills training program. Every four years, an officer is required to have 40 hours of continued training.<sup>12</sup> 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 eight hours

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<sup>7</sup> See generally ss. 943.0585 and 943.059, F.S.

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

<sup>9</sup> Section 943.059(4), F.S.

<sup>10</sup> Section 943.0585(4), F.S.

<sup>11</sup> 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; employment in a sensitive position (whether employed by an agency or by a contractor); or employment in a school or day care center.

<sup>12</sup> Section 943.135, F.S.

training in “interpersonal skills with diverse populations.” Section 943.1716, F.S., mandates that a continued education course must contain eight hours of instruction in the subject of interpersonal skills relating to diverse populations, with an emphasis on the awareness of cultural differences.

### **Criminal Justice Selection Centers**

There are several selection centers throughout Florida, which evaluate criminal justice applicants for employment with agencies in the region. Each center is under the direction and control of a postsecondary public school or a criminal justice agency.<sup>13</sup> 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 s. 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.<sup>14</sup>

### **Public Assistance Fraud**

Section 943.401, F.S., provides that the FDLE must investigate fraud in public assistance provided under ch. 409, F.S., or ch. 414, F.S. The references to these chapters are outdated because functions that were previously handled by the former Department of Health and Rehabilitative Services are now located in other state agencies that do not come under the provisions of ch. 409, F.S., or ch. 414, F.S.

### **Unauthorized Wearing of Law Enforcement Insignia**

Section 843.085, F.S., provides that it is 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 its display is authorized by a law enforcement agency.

## **III. Effect of Proposed Changes:**

This bill makes numerous changes to statutes related to various duties of the Florida Department of Law Enforcement (FDLE). The issues addressed by the bill will be discussed in detail below.

### **Background Checks to Transfer a Firearm (Section 1)**

Effective February 1, 2007, the Florida Department of Law Enforcement (FDLE) must compile and maintain an automated database of persons who are prohibited by federal law from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.<sup>15</sup> The clerks of court must submit these records to the FDLE within one month after the adjudication or commitment is rendered.

The bill provides that an individual can request that the FDLE delete a mental health record in certain circumstances. The FDLE is authorized to disclose the mental health data to federal or state agencies for use in determining the lawfulness of a firearm sale or transfer. The FDLE may also disclose the information to the Department of Agriculture and Consumer Services for

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<sup>13</sup> Section 943.256, F.S.

<sup>14</sup> Auditor General, *supra* note 5, at 7-8.

<sup>15</sup> The bill defines the terms “adjudicated mentally defective” and “committed to a mental institution.”

determining eligibility for issuance of a concealed weapons license or concealed firearms license.

If a potential buyer appeals a non-approval based on mental health records, the clerks of court and mental institutions must, upon request by the FDLE, provide information to help determine whether the potential buyer is the same person as the subject of the record. That information, if confidential or exempt from public records law, remains confidential or exempt when transferred to the FDLE.

### **Protective Services for Victims and Witnesses (Section 2)**

The bill provides that certain victims and witnesses may be certified on an annual basis for up to four years of protective services. An agency may provide protective services at the agency's expense beyond the four-year maximum period, but cannot seek reimbursement for any additional expenditures from the Victim and Witness Protection Review Committee. The bill does not specify the source of the funds to provide protective services beyond the four-year period.

### **Reports on Forfeited Property (Section 3)**

The bill deletes a requirement for law enforcement agencies to report to the FDLE the receipt of forfeited property. The bill further deletes a requirement for the FDLE to compile the reports from the law enforcement agencies into a report to the Legislature.

### **Amber Alert & Missing Child Alert Immunity (Section 4)**

The bill provides that, upon receiving a request to release Amber Alert or Missing Child Alert information from the law enforcement agency having jurisdiction over the missing or endangered child, an agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in releasing information pertaining to the missing child. This presumption is not overcome if a technical or clerical error is made by an agency, individual, or entity acting at the request of the local law enforcement agency having jurisdiction 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 no duty exists to release the alert information.

### **Court Costs for Driving or Boating Under the Influence (Section 5)**

The bill provides that the \$50 that the FDLE receives from the \$135 DUI/BUI court costs be deposited in the FDLE's Operating Trust Fund instead of the Criminal Justice Standards and Training Trust Fund.

### **Deposit of Investigative Costs (Section 6)**

The bill provides that investigative costs recovered on the FDLE's behalf be deposited in the FDLE's Forfeiture and Investigative Support Trust Fund instead of the FDLE operating trust fund.

**Background Checks on Criminal and Noncriminal Justice Agency Employees (Section 7)**

The bill requires the Criminal Justice Information Program to retain fingerprints submitted by criminal justice and noncriminal justice agencies for background checks of employees in the statewide automated fingerprint identification system. The bill further provides that fingerprints taken during arrests may be searched against all fingerprints retained in the statewide automated fingerprint identification system. However, the retention of fingerprints and authorization to search retained fingerprints is allowed when authorized by other law. The process described in the bill appears to be designed to enable the FDLE to notify agencies when their employees are arrested. The bill further provides that fees for agencies to participate in the arrest notification process may be waived for good cause.

**Disposition Reports for Minor Offenders (Section 8)**

The bill provides that, beginning July 1, 2008, the clerks of the court must submit disposition reports relating to offenders who are minors to the Criminal Justice Information Program.

**Name Change Fingerprints (Section 9)**

The bill requires that name change petitions must include a “set” of the petitioner’s fingerprints rather than a “copy” (the current statutory wording).

**Judicial Access to Electronic Criminal Records (Section 10)**

The bill provides that the FDLE shall make online access to Florida criminal justice information available to each judge in the state courts system for the purpose of assisting judges in their case-related decisionmaking responsibilities. This access is free. Sealed records received by the courts remain confidential and exempt from public disclosure. Information provided may be used only for official court business for which it was requested and may not be further disseminated.

**Fingerprint Retention of Criminal Justice Agency Employees (Section 10)**

A criminal justice agency that is authorized to conduct a criminal background check on an agency employee (other than an officer certified by the Criminal Justice Standards and Training Commission) may submit the employee’s fingerprint identification information to the FDLE to obtain state and national criminal history information. Effective January 15, 2007, the FDLE must retain this information and search all arrest fingerprint cards against the fingerprints of the agency employee.

**Criminal History Checks (Section 10)**

When a criminal history check or a duty to disclose the absence of a criminal history check is mandated by state law or when a privilege or benefit is conferred by state law in return for exercising an option of conducting a criminal history check, the check, whether an initial check or a renewal check, must include a Florida criminal history provided by the FDLE. Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request.



When a national criminal history check is required or authorized by state law, the national criminal history check must be submitted by and through the FDLE in the manner established by the FDLE for such checks, unless otherwise required by federal law.

The fee for criminal history information, as established by state law, or in the case of national checks, by the federal government, shall be borne by the person or entity submitting the request or as provided by law.

Criminal history information provided by another governmental entity of the state or a private entity may not be substituted for criminal history information provided by the FDLE if the check or duty to disclose the absence of a check is required by statute or is made a condition of a privilege or benefit by law.

### **Expunction & Sealing of Criminal History Records (Sections 11 & 12)**

The bill expands the list of offenses that cannot be sealed or expunged to include voyeurism<sup>16</sup> and predicate offenses for registration as a sexual predator or a sexual offender.<sup>17</sup> 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.

The bill provides that a certificate of eligibility for sealing or expunction is valid for 12 months after the date stamped on the certificate when issued by the FDLE. Existing certificates of eligibility have no expiration date. After expiration of the certificate, the petitioner must reapply to the FDLE for a new certificate of eligibility. The bill further provides that eligibility for a renewed certificate is based on the law in effect and the status of the applicant at the time of the renewal application.

Under current law, even though expunged and sealed criminal history records are confidential and exempt, these records are available to “criminal justice agencies for their respective criminal justice purposes.” With respect to a sealed record, the bill indicates that the term “criminal justice purposes” includes conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law. (Information relating to the existence of expunged records and sealed records is available to certain entities for licensing, access authorization, and employment purposes.)

With some exceptions, the law provides that a person may lawfully deny or fail to acknowledge arrests covered by an expunged or sealed record. Relevant to expunged records and sealed records, the bill provides an exception to this general rule if the person is seeking authorization from a Florida seaport for employment within or access to one or more seaports. Relevant to sealed records, the bill also provides an exception to the general rule if the person is attempting to purchase a firearm.

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<sup>16</sup> Section 810.14, F.S.

<sup>17</sup> See ss. 775.21 and 943.0435, F.S.

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 10 years before such record is eligible for expunction. These criteria are amended to provide that the FDLE 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 summary, unless the charges were dismissed prior to trial, the record cannot be sealed unless 10 years have elapsed since the record was sealed. If the person went to trial and was acquitted, was convicted but adjudication was withheld, or 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.)

### **Retention of Fingerprints of Law Enforcement Officers** (Section 13)

Beginning January 15, 2007, the bill requires the FDLE to retain and enter into the statewide automated fingerprint identification system the fingerprints of all law enforcement officers. The FDLE shall search all arrest fingerprint cards against the fingerprints of the officers submitted and report to the employing agency if a fingerprint from an arrest card is identified as matching an officer's fingerprints. By January 1, 2008, an officer whose fingerprints are not retained by the FDLE must be reprinted, and the fingerprints must be forwarded to the FDLE for processing and retention.

### **Diversity Training** (Sections 14 & 15)

The bill retains the requirement that law enforcement officers receive diversity training. The minimum eight hour requirement, however, is eliminated.

### **Annual Audits of Criminal Justice Selection Centers** (Sections 16 & 17)

Section 943.2569, F.S., requires that each criminal justice selection 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 s. 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.<sup>18</sup> The bill repeals s. 943.2569, F.S., and thus deletes the separate audit requirement.

The bill amends s. 943.257, F.S., to clarify the oversight role of the FDLE's Criminal Justice Standards and Training Commission (CJSTC) and the criminal justice selection center's advisory board over a Criminal Justice Selection Center. The CJSTC or the board may inspect and copy any documents from the center as required for each of these entities to carry out their oversight

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<sup>18</sup> Auditor General, *supra* note 5, at 8.

responsibilities. Documents include information and documents related to applicant evaluations and center expenditures. The CJSTC or board may also inspect and copy internal audits by or on behalf of the center (independent audits are already addressed in current law).

#### **Authority to Investigate Public Assistance Fraud (Section 18)**

The bill amends s. 943.401, F.S., to clarify the FDLE's jurisdiction to investigate public assistance fraud.<sup>19</sup>

#### **Goodwill and Promotional Materials (Section 19)**

The bill authorizes FDLE to spend 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.

#### **Use of FDLE Names and Emblems (Section 20)**

The bill provides that whoever, without the written permission of the executive director of the FDLE, 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<sup>20</sup> that such publication or production is approved, endorsed, or authorized by the department, commits a first-degree misdemeanor. The bill provides that the FDLE and the Department of Legal Affairs can seek injunctions against unauthorized use of the names and logo.

#### **Effective Date (Section 21)**

The bill takes effect on July 1, 2006, except as otherwise provided therein.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>19</sup> The section deletes obsolete references. Additionally, the law currently requires all public assistance recipients to give the agency administering the assistance consent to make inquiry of past and present employers and financial records. The section 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.

<sup>20</sup> In *Sult v. State*, 906 So. 2d 1013 (Fla. 2005), the Florida Supreme held that s. 843.085(1), F.S., which prohibits a person from wearing any indicia of law enforcement authority, was unconstitutionally overbroad. The Court indicated that without a “specific intent-to-deceive element” the statute might sweep within its prohibitions the innocent wearing and displaying of specified words. Arguably, the words “reasonably calculated to convey the impression” in the bill may be construed as akin to the “specific intent to deceive element” that the Court noted was missing in s. 843.08(5)(1), F.S.

**B. Public Records/Open Meetings Issues:**

Section 1 of the bill authorizes the Florida Department of Law Enforcement (FDLE) to disclose to federal agencies and agencies of other states certain court records pertaining to the mental health of the subject of the records. The data may be disclosed exclusively for use in determining the lawfulness of a firearm sale or transfer. The bill authorizes such disclosure although much of the information may already be public record. By providing that the FDLE may disclose the mental health adjudications to specified entities, the bill may prohibit the disclosure of information to non-specified individuals and entities. As such, the bill may create a public records exemption. Under s. 24, Art. I, State Const., public records exemptions must be created in a bill limited to public records exemptions.

From the language of the bill, it is unclear exactly what kind of court orders would be collected by the FDLE and placed in its database, and it is, therefore, unclear whether the data to be collected is confidential and exempt from public records laws. According to staff of the Attorney General's Office, there may be some difference of opinion among the Florida District Courts of Appeal about what mental health records of the clerks of court are or are not confidential and exempt. According to the FDLE, in order to implement the provisions of Section 1, the department will seek an opinion of the Attorney General to clarify which clerk of court records are confidential and exempt, and which ones are not, and to clarify how those records may be handled by the department once collected.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

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 Florida Department of Law Enforcement (FDLE). This may have an indeterminate fiscal impact on the clerks of court.

The bill requires the FDLE to create a system to collect information submitted by the clerks of court on adjudications of mental defectiveness or commitments to mental institutions. The FDLE estimates that the system will cost \$143,200 with an annual

recurring cost of \$37,000 for maintaining the system. According to the FDLE, this can be accomplished within current appropriations.

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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