

By the Committees on Criminal and Civil Justice Appropriations;
and Judiciary; and Senator Negron

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1 A bill to be entitled
2 An act relating to the Department of Law Enforcement;
3 amending s. 790.065, F.S.; requiring certain reports
4 to be submitted in an automated format; deleting
5 provisions relating to automatic deletion of mental
6 health records under specified conditions from the
7 Department of Law Enforcement's database of such
8 records kept for purposes of sale and delivery of
9 firearms and substituting a procedure for petition to
10 obtain judicial relief from firearm disabilities and,
11 upon obtaining such relief, the removal of the
12 individual mental health records from the department's
13 database; amending s. 943.05, F.S.; revising
14 provisions relating to the Criminal Justice
15 Information Program under the Department of Law
16 Enforcement; authorizing agencies to request the
17 retention of certain fingerprints by the department;
18 providing for rulemaking to require employers to keep
19 the agencies informed of any change in the
20 affiliation, employment, or contractual status of each
21 person whose fingerprints are retained in certain
22 circumstances; providing departmental duties upon
23 notification that a federal fingerprint retention
24 program is in effect; amending s. 943.053, F.S.;
25 removing obsolete references relating to the
26 dissemination of criminal justice information;
27 amending s. 943.12, F.S.; requiring the Criminal
28 Justice Standards and Training Commission to adopt
29 rules relating to the maintenance of officers who

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30 engage in those specialized areas found to present a
31 high risk of harm to the officer or the public at
32 large; requiring the commission to adopt rules
33 requiring the demonstration of proficiency in firearms
34 for all law enforcement officers; amending s. 943.131,
35 F.S.; revising provisions relating to exemptions from
36 completing a commission-approved basic recruit
37 training program; amending s. 943.1395, F.S.; revising
38 provisions relating to qualifications for certified
39 law enforcement officers separated from employment for
40 more than a certain period of time; amending s.
41 943.17, F.S.; deleting a requirement that correctional
42 probation officers pass a specified basic skills
43 examination and assessment instrument before entrance
44 into the basic recruit training program; amending s.
45 943.32, F.S.; deleting state funding eligibility for a
46 locally funded crime laboratory in Monroe County;
47 providing an effective date.

48
49 Be It Enacted by the Legislature of the State of Florida:

50
51 Section 1. Paragraph (a) of subsection (2) of section
52 790.065, Florida Statutes, is amended to read:

53 790.065 Sale and delivery of firearms.—

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

57 (a) Review any records available to determine if the
58 potential buyer or transferee:

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59 1. Has been convicted of a felony and is prohibited from
60 receipt or possession of a firearm pursuant to s. 790.23;

61 2. Has been convicted of a misdemeanor crime of domestic
62 violence, and therefore is prohibited from purchasing a firearm;

63 3. Has had adjudication of guilt withheld or imposition of
64 sentence suspended on any felony or misdemeanor crime of
65 domestic violence unless 3 years have elapsed since probation or
66 any other conditions set by the court have been fulfilled or
67 expunction has occurred; or

68 4. Has been adjudicated mentally defective or has been
69 committed to a mental institution by a court and as a result is
70 prohibited by federal law from purchasing a firearm.

71 a. As used in this subparagraph, "adjudicated mentally
72 defective" means a determination by a court that a person, as a
73 result of marked subnormal intelligence, or mental illness,
74 incompetency, condition, or disease, is a danger to himself or
75 herself or to others or lacks the mental capacity to contract or
76 manage his or her own affairs. The phrase includes a judicial
77 finding of incapacity under s. 744.331(6)(a), an acquittal by
78 reason of insanity of a person charged with a criminal offense,
79 and a judicial finding that a criminal defendant is not
80 competent to stand trial.

81 b. As used in this subparagraph, "committed to a mental
82 institution" means involuntary commitment, commitment for mental
83 defectiveness or mental illness, and commitment for substance
84 abuse. The phrase includes involuntary inpatient placement as
85 defined in s. 394.467, involuntary outpatient placement as
86 defined in s. 394.4655, involuntary assessment and stabilization
87 under s. 397.6818, and involuntary substance abuse treatment

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88 under s. 397.6957, but does not include a person in a mental
89 institution for observation or discharged from a mental
90 institution based upon the initial review by the physician or a
91 voluntary admission to a mental institution.

92 c. In order to check for these conditions, the department
93 shall compile and maintain an automated database of persons who
94 are prohibited from purchasing a firearm based on court records
95 of adjudications of mental defectiveness or commitments to
96 mental institutions. Clerks of court shall submit these records
97 to the department within 1 month after the rendition of the
98 adjudication or commitment. Reports shall ~~may~~ be submitted in an
99 automated format. The reports must, at a minimum, include the
100 name, along with any known alias or former name, the sex, and
101 the date of birth of the subject. ~~The department shall delete~~
102 ~~any mental health record from the database upon request of an~~
103 ~~individual when 5 years have elapsed since the individual's~~
104 ~~restoration to capacity by court order after being adjudicated~~
105 ~~an incapacitated person under s. 744.331, or similar laws of any~~
106 ~~other state; or, in the case of an individual who was previously~~
107 ~~committed to a mental institution under chapter 394, or similar~~
108 ~~laws of any other state, when the individual produces a~~
109 ~~certificate from a licensed psychiatrist that he or she has not~~
110 ~~suffered from disability for at least 5 years prior to the date~~
111 ~~of request for removal of the record. When the department has~~
112 ~~received a subsequent record of an adjudication of mental~~
113 ~~defectiveness or commitment to a mental institution for such~~
114 ~~individual, the 5-year timeframe shall be calculated from the~~
115 ~~most recent adjudication of incapacitation or commitment.~~

116 d. A person who has been adjudicated mentally defective or

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117 committed to a mental institution, as those terms are defined in
118 this paragraph, may petition the circuit court that made the
119 adjudication or commitment for relief from the firearm
120 disabilities imposed by such adjudication or commitment. A copy
121 of the petition shall be served on the state attorney for the
122 county in which the person was adjudicated or committed. The
123 state attorney may object to and present evidence relevant to
124 the relief sought by the petition. The hearing on the petition
125 may be open or closed as the petitioner may choose. The
126 petitioner may present evidence and subpoena witnesses to appear
127 at the hearing on the petition. The petitioner may confront and
128 cross-examine witnesses called by the state attorney. A record
129 of the hearing shall be made by a certified court reporter or by
130 court-approved electronic means. The court shall make written
131 findings of fact and conclusions of law on the issues before it
132 and issue a final order. The court shall grant the relief
133 requested in the petition if the court finds, based on the
134 evidence presented with respect to the petitioner's reputation,
135 the petitioner's mental health record and, if applicable,
136 criminal history record, the circumstances surrounding the
137 firearm disability, and any other evidence in the record, that
138 the petitioner will not be likely to act in a manner that is
139 dangerous to public safety and that granting the relief would
140 not be contrary to the public interest. If the final order
141 denies relief, the petitioner may not petition again for relief
142 from firearm disabilities until 1 year after the date of the
143 final order. The petitioner may seek judicial review of a final
144 order denying relief in the district court of appeal having
145 jurisdiction over the court that issued the order. The review

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146 shall be conducted de novo. Relief from a firearm disability
147 granted under this sub-subparagraph has no effect on the loss of
148 civil rights, including firearm rights, for any reason other
149 than the particular adjudication of mental defectiveness or
150 commitment to a mental institution from which relief is granted.

151 e. Upon receipt of proper notice of relief from firearm
152 disabilities granted under sub-subparagraph d., the department
153 shall delete any mental health record of the person granted
154 relief from the automated database of persons who are prohibited
155 from purchasing a firearm based on court records of
156 adjudications of mental defectiveness or commitments to mental
157 institutions.

158 ~~f.d.~~ The department is authorized to disclose the collected
159 data to agencies of the Federal Government and other states for
160 use exclusively in determining the lawfulness of a firearm sale
161 or transfer. The department is also authorized to disclose any
162 collected data to the Department of Agriculture and Consumer
163 Services for purposes of determining eligibility for issuance of
164 a concealed weapons or concealed firearms license and for
165 determining whether a basis exists for revoking or suspending a
166 previously issued license pursuant to s. 790.06(10). When a
167 potential buyer or transferee appeals a nonapproval based on
168 these records, the clerks of court and mental institutions
169 shall, upon request by the department, provide information to
170 help determine whether the potential buyer or transferee is the
171 same person as the subject of the record. Photographs and any
172 other data that could confirm or negate identity must be made
173 available to the department for such purposes, notwithstanding
174 any other provision of state law to the contrary. Any such

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175 information that is made confidential or exempt from disclosure
176 by law shall retain such confidential or exempt status when
177 transferred to the department.

178 Section 2. Paragraphs (g) and (h) of subsection (2) of
179 section 943.05, Florida Statutes, are amended, and subsection
180 (4) is added to that section, to read:

181 943.05 Criminal Justice Information Program; duties; crime
182 reports.-

183 (2) The program shall:

184 (g) Upon official written request, and subject to the
185 department having sufficient funds and equipment to participate
186 in such a request, from the agency executive director or
187 secretary, or from his or her designee, or from qualified
188 entities participating in the volunteer and employee criminal
189 history screening system under s. 943.0542, or as otherwise
190 required ~~As authorized~~ by law, retain fingerprints submitted by
191 criminal and noncriminal justice agencies to the department for
192 a criminal history background screening in a manner provided by
193 rule and enter the fingerprints in the statewide automated
194 fingerprint identification system authorized by paragraph (b).
195 Such fingerprints shall thereafter be available for all purposes
196 and uses authorized for arrest fingerprint submissions ~~cards~~
197 entered into the statewide automated fingerprint identification
198 system pursuant to s. 943.051.

199 (h) ~~1.~~ For each agency or qualified entity that officially
200 requests retention of fingerprints or for which retention is
201 otherwise required ~~As authorized~~ by law, search all arrest
202 fingerprint submissions ~~cards~~ received under s. 943.051 against
203 the fingerprints retained in the statewide automated fingerprint

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204 identification system under paragraph (g).

205 1. Any arrest record that is identified with the retained
206 fingerprints of a person subject to background screening as
207 provided in paragraph (g) shall be reported to the appropriate
208 agency or qualified entity.

209 2. ~~To Agencies may~~ participate in this search process,
210 agencies or qualified entities must notify each person
211 fingerprinted that his or her fingerprints will be retained, pay
212 ~~by payment of~~ an annual fee to the department, and inform by
213 ~~informing~~ the department of any change in the affiliation,
214 employment, or contractual status ~~or place of affiliation,~~
215 ~~employment, or contracting of~~ each person ~~the persons~~ whose
216 fingerprints are retained under paragraph (g) when such change
217 removes or eliminates the agency or qualified entity's basis or
218 need for receiving reports of any arrest of that person, so that
219 the agency or qualified entity will not be obligated to pay the
220 upcoming annual fee for the retention and searching of that
221 person's fingerprints to the department. The department shall
222 adopt a rule setting the amount of the annual fee to be imposed
223 upon each participating agency or qualified entity for
224 performing these searches and establishing the procedures for
225 the retention of fingerprints and the dissemination of search
226 results. The fee may be borne by the agency, qualified entity,
227 or person subject to fingerprint retention or as otherwise
228 ~~provided by law. Fees may be waived or reduced by the executive~~
229 ~~director for good cause shown.~~ Consistent with the recognition
230 of criminal justice agencies expressed in s. 943.053(3), these
231 services will be provided to criminal justice agencies for
232 criminal justice purposes free of charge.

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233 3. Agencies that participate in the fingerprint retention
234 and search process may adopt rules pursuant to ss. 120.536(1)
235 and 120.54 to require employers to keep the agency informed of
236 any change in the affiliation, employment, or contractual status
237 of each person whose fingerprints are retained under paragraph
238 (g) when such change removes or eliminates the agency's basis or
239 need for receiving reports of any arrest of that person, so that
240 the agency will not be obligated to pay the upcoming annual fee
241 for the retention and search of that person's fingerprints to
242 the department.

243 (4) Upon notification that a federal fingerprint retention
244 program is in effect, and subject to the department being funded
245 and equipped to participate in such a program, the department
246 shall, when state and national criminal history records checks
247 and retention of submitted prints are authorized or required by
248 law, retain the fingerprints as provided in paragraphs (2) (g)
249 and (h) and advise the Federal Bureau of Investigation to retain
250 the fingerprints at the national level for searching against
251 arrest fingerprint submissions received at the national level.

252 Section 3. Subsections (6) and (11) of section 943.053,
253 Florida Statutes, are amended to read:

254 943.053 Dissemination of criminal justice information;
255 fees.—

256 (6) Notwithstanding any other provision of law, the
257 department shall provide to the ~~Florida~~ Department of Revenue
258 ~~Child Support Enforcement~~ access to Florida criminal history
259 records which are not exempt from disclosure under chapter 119,
260 and to such information as may be lawfully available from other
261 states via the National Law Enforcement Telecommunications

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262 System, for the purpose of locating subjects who owe or
263 potentially owe support, as defined in s. 409.2554, or to whom
264 such obligation is owed pursuant to Title IV-D of the Social
265 Security Act. Such information may be provided to child support
266 enforcement authorities in other states for these specific
267 purposes.

268 (11) A criminal justice agency that is authorized under
269 federal rules or law to conduct a criminal history background
270 check on an agency employee who is not certified by the Criminal
271 Justice Standards and Training Commission under s. 943.12 may
272 submit to the department the fingerprints of the noncertified
273 employee to obtain state and national criminal history
274 information. ~~Effective January 15, 2007,~~ The fingerprints
275 submitted shall be retained and entered in the statewide
276 automated fingerprint identification system authorized by s.
277 943.05 and shall be available for all purposes and uses
278 authorized for arrest fingerprint submissions ~~cards~~ entered in
279 the statewide automated fingerprint identification system
280 pursuant to s. 943.051. The department shall search all arrest
281 fingerprint submissions ~~cards~~ received pursuant to s. 943.051
282 against the fingerprints retained in the statewide automated
283 fingerprint identification system pursuant to this section. In
284 addition to all purposes and uses authorized for arrest
285 fingerprint submissions ~~cards~~ for which submitted fingerprints
286 may be used, any arrest record that is identified with the
287 retained employee fingerprints must be reported to the
288 submitting employing agency.

289 Section 4. Subsection (16) of section 943.12, Florida
290 Statutes, is amended to read:

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291 943.12 Powers, duties, and functions of the commission.—The
292 commission shall:

293 (16) ~~Adopt Promulgate~~ rules for the certification,
294 maintenance, and discipline of officers who engage in those
295 specialized areas found to present a high risk of harm to the
296 officer or the public at large and which would in turn increase
297 the potential liability of an employing agency. The commission
298 shall adopt rules requiring the demonstration of proficiency in
299 firearms for all law enforcement officers. The commission shall
300 by rule include the frequency of demonstration of proficiency
301 with firearms and the consequences for officers failing to
302 demonstrate proficiency with firearms.

303 Section 5. Subsection (2) of section 943.131, Florida
304 Statutes, is amended to read:

305 943.131 Temporary employment or appointment; minimum basic
306 recruit training exemption.—

307 (2) If an applicant seeks an exemption from completing a
308 commission-approved basic recruit training program, the
309 employing agency or criminal justice selection center must
310 verify that the applicant has successfully completed a
311 comparable basic recruit training program for the discipline in
312 which the applicant is seeking certification in another state or
313 for the Federal Government or a previous Florida basic recruit
314 training program. Further, the employing agency or criminal
315 justice selection center must verify that the applicant has
316 served as a full-time sworn officer in another state or for the
317 Federal Government for at least 1 year provided there is no more
318 than an 8-year break in employment or was a previously certified
319 Florida officer provided there is no more than an 8-year break

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320 in employment, as measured from the separation date of the most
321 recent qualifying employment to the time a complete application
322 is submitted for an exemption under this section. When the
323 employing agency or criminal justice selection center obtains
324 written documentation regarding the applicant's criminal justice
325 experience, the documentation must be submitted to the
326 commission. The commission shall adopt rules that establish
327 criteria and procedures to determine if the applicant is exempt
328 from completing the commission-approved basic recruit training
329 program and, upon making a determination, shall notify the
330 employing agency or criminal justice selection center. An
331 applicant who is exempt from completing the commission-approved
332 basic recruit training program must demonstrate proficiency in
333 the high-liability areas, as defined by commission rule, and
334 must complete the requirements of s. 943.13(10) within 1 year
335 after receiving an exemption. If the proficiencies and
336 requirements of s. 943.13(10) are not met within the 1 year, the
337 applicant must seek an additional exemption pursuant to the
338 requirements of this subsection ~~complete a commission-approved~~
339 ~~basic recruit training program, as required by the commission by~~
340 ~~rule~~. Except as provided in subsection (1), before the employing
341 agency may employ or appoint the applicant as an officer, the
342 applicant must meet the minimum qualifications described in s.
343 943.13(1)-(8), and must fulfill the requirements of s.
344 943.13(10).

345 Section 6. Subsection (3) of section 943.1395, Florida
346 Statutes, is amended to read:

347 943.1395 Certification for employment or appointment;
348 concurrent certification; reemployment or reappointment;

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349 inactive status; revocation; suspension; investigation.—

350 (3) Any certified officer who has separated from employment
351 or appointment and who is not reemployed or reappointed by an
352 employing agency within 4 years after the date of separation
353 must meet the minimum qualifications described in s. 943.13,
354 except for the requirement found in s. 943.13(9). Further, such
355 officer must complete any training required by the commission by
356 rule in compliance with s. 943.131(2). Any such officer who
357 fails to comply with the requirements provided in s. 943.131(2)
358 ~~is not reemployed or reappointed by an employing agency within 8~~
359 ~~years after the date of separation~~ must meet the minimum
360 qualifications described in s. 943.13, to include the
361 requirement of s. 943.13(9).

362 Section 7. Paragraph (g) of subsection (1) of section
363 943.17, Florida Statutes, is amended to read:

364 943.17 Basic recruit, advanced, and career development
365 training programs; participation; cost; evaluation.—The
366 commission shall, by rule, design, implement, maintain,
367 evaluate, and revise entry requirements and job-related
368 curricula and performance standards for basic recruit, advanced,
369 and career development training programs and courses. The rules
370 shall include, but are not limited to, a methodology to assess
371 relevance of the subject matter to the job, student performance,
372 and instructor competency.

373 (1) The commission shall:

374 (g) Assure that entrance into the basic recruit training
375 program for law enforcement and ~~correctional, and correctional~~
376 ~~probation~~ officers be limited to those who have passed a basic
377 skills examination and assessment instrument, based on a job

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378 task analysis in each discipline and adopted by the commission.

379 Section 8. Section 943.32, Florida Statutes, is amended to
380 read:

381 943.32 Statewide criminal analysis laboratory system.—There
382 is established a statewide criminal analysis laboratory system
383 to be composed of:

384 (1) The state-operated laboratories under the jurisdiction
385 of the Department of Law Enforcement in Ft. Myers, Jacksonville,
386 Pensacola, Orlando, Tallahassee, Tampa, and such other areas of
387 the state as may be necessary;

388 (2) The existing locally funded laboratories in Broward,
389 Indian River, Miami-Dade, ~~Monroe~~, Palm Beach, and Pinellas
390 Counties, specifically designated in s. 943.35 to be eligible
391 for state matching funds; and

392 (3) Such other laboratories as render criminal analysis
393 laboratory services to criminal justice agencies in the state.

394 Section 9. This act shall take effect July 1, 2010.