

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 951 Public Safety  
**SPONSOR(S):** Criminal & Civil Justice Appropriations Committee; Snyder and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1974

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Public Safety &amp; Domestic Security Policy Committee</u>	<u>13 Y, 0 N</u>	<u>Cunningham</u>	<u>Cunningham</u>
2)	<u>Criminal &amp; Civil Justice Appropriations Committee</u>	<u>11 Y, 0 N, As CS</u>	<u>McAuliffe</u>	<u>Davis</u>
3)	<u>Criminal &amp; Civil Justice Policy Council</u>	<u></u>	<u>Cunningham</u>	<u>Havlicak</u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

House Bill 951 is the Florida Department of Law Enforcement’s 2010 Legislative Package and contains the following:

- Revisions to the process for removing mental health records from FDLE’s mental competency database for purposes of firearms purchases. These revisions align the statutes with federal law requirements.
- Provisions requiring FDLE to retain fingerprints submitted as part of the background screening process upon official written request from an agency executive director or secretary or his or her designee, from specified qualified entities, or as otherwise required by law. The bill also requires FDLE to store the additional fingerprints that it retains and to search all incoming Florida arrest fingerprint submissions against the fingerprints retained in the Automated Fingerprint Identification System/Applicant Fingerprint Retention and Notification Program.
- Provisions requiring the Criminal Justice Standards and Training Commission to adopt rules requiring all law enforcement officers to demonstrate proficiency in firearms and to specify in the rules how often officers must demonstrate firearm proficiency and what the consequences will be if an officer fails to demonstrate firearm proficiency.
- Updates to the Basic Recruit Training Program exemption statutes to require employing agencies and criminal justice selection centers to verify that a person has completed the appropriate basic recruit training program and has served as an officer for the required amount of time without breaks in service.
- Provisions removing correctional probation officers from the list of persons who must pass a basic skills exam in order to be admitted to a basic recruit training program.

This bill appears that it could have a positive fiscal impact on FDLE because the provisions in the bill for removing mental health records from FDLE’s mental competency database align the statutes with federal law, making Florida eligible for certain federal grants.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background – Firearm Background Checks**

###### FDLE's Firearm Purchase Program

In accordance with the Brady Handgun Violence Prevention Act<sup>1</sup>, Florida law requires federal firearms licensees<sup>2</sup> (FFLs) to request background checks on individuals attempting to purchase a firearm.<sup>3</sup> In Florida, FFLs contact the Florida Department of Law Enforcement's (FDLE) Firearms Purchase Program (FPP) which conducts firearm background checks by electronically accessing the National Instant Criminal Background Check System (NICS).

Created in 1989, the FPP operates 7 days a week, 363 days a year and is designed to provide FFLs immediate responses to background check inquiries.<sup>4</sup> Pursuant to s. 790.065, F.S., FFLs must contact the FPP using a toll-free number to request a criminal history check on potential purchasers prior to selling or transferring a firearm. Upon receiving such request, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the transfer of a firearm would violate state or federal law, and provides a response to the FFL.

###### Prohibitions on Selling Firearms to the Mentally Ill

Florida law prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.<sup>5</sup> Florida defines "adjudicated mentally defective" as:

[A] determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs.

<sup>1</sup> Pub. L. No. 103-159, 107 Stat. 1536 (1993) (codified at 18 U.S.C. §§ 921-925A).

<sup>2</sup> 18 U.S.C. 923 sets forth the requirements necessary to obtain a federal firearms license. The Federal Firearms Licensing Center, a branch within the Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for licensing firearms manufacturers, importers, collectors, and dealers, and implementing related legislation.

<sup>3</sup> "Firearm" is defined in s. 790.001(6), F.S., as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."

<sup>4</sup> Section 790.065, F.S.

<sup>5</sup> Section 790.065(2)(a), F.S.

The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.<sup>6</sup>

The term “committed to a mental institution” is defined as:

[I]nvoluntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.<sup>7</sup>

#### FDLE’s Mental Competency Database

In 2006, Florida enacted House Bill 151, which required FDLE 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.<sup>8</sup> Codified in s. 790.065(2)(a), F.S., the bill also required clerks of court to submit such records to FDLE, and authorized FDLE to disclose the collected data to federal governmental agencies and other states for use exclusively in determining the lawfulness of a firearm sale or transfer.<sup>9</sup>

In an effort to comply with the above statutory requirements, FDLE created the Mental Competency (MECOM) database. As noted above, clerks of court are required to submit<sup>10</sup> court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month of the adjudication or commitment.<sup>11</sup> These records are then uploaded into the MECOM database,<sup>12</sup> and are accessed by the FPP as part of the screening of potential firearm purchasers.

#### **Removing Mental Health Records from the MECOM Database**

##### Current Process for Removing Mental Health Records from the MECOM Database

Section 790.065(2)(a)c., F.S., establishes when FDLE may delete mental health records from its MECOM database. For persons who have been adjudicated an incapacitated person under s. 774.331, F.S., FDLE must delete such person’s mental health records from the MECOM database if:

- The person requests such deletion;
- The person has been restored to capacity by court order; and
- 5 years have passed since the person’s court ordered restoration to capacity.

For persons who were committed to a mental institution under ch. 394, F.S., FDLE must delete such person’s mental health records from the MECOM database if:

- The person requests such deletion; and
- The person produces a certificate from a licensed psychiatrist that the person has not suffered from disability for at least 5 years prior to the date of the request.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Currently, clerks submit such records either by directly inputting them into the MECOM database, or by faxing or mailing the records to FDLE for input into the database.

<sup>11</sup> As of July, 2007, Florida clerks have entered 4,283 records into the MECOM database.

<sup>12</sup> FDLE also uploads the records into the NICS.

### The NICS Improvement Act

The NICS Improvement Amendments Act of 2007<sup>13</sup> (Act) became law on January 8, 2008. The Act authorizes the establishment of state programs that allow individuals to seek relief from a mental health firearm disability. Section 105 of the Act sets forth requirements of the relief from disabilities program required for states to be eligible for grant funding.

The following minimum criteria must be satisfied for a state to establish a qualifying mental health relief from firearms disabilities program under the NICS Improvement Act:

1. State Law: The relief program has been established by state statute, or administrative regulation or order pursuant to state law.
2. Application: The relief program allows a person who has been formally adjudicated as a mental defective<sup>14</sup> or committed involuntarily to a mental institution<sup>15</sup> to apply or petition for relief from federal firearms prohibitions (disabilities) imposed under 18 U.S.C. §§ 922(d)(4) and (g)(4).
3. Lawful Authority: A state court, board, commission or other lawful authority (per state law) considers the applicant's petition for relief. The lawful authority may only consider applications for relief due to mental health adjudications or commitments that occurred in the applicant state.
4. Due Process: The petition for relief is considered by the lawful authority in accordance with principles of due process, as follows:
  - a. The applicant has the opportunity to submit his or her own evidence to the lawful authority considering the relief application.
  - b. An independent decision maker--someone other than the individual who gathered the evidence for the lawful authority acting on the application--reviews the evidence.
  - c. A record of the matter is created and maintained for review.
5. Proper Record: In determining whether to grant relief, the lawful authority receives evidence concerning and considers the:
  - a. Circumstances regarding the firearms disabilities imposed by 18 U.S.C. §922(g)(4);
  - b. Applicant's record, which must include at a minimum, the applicant's mental health and criminal history records; and
  - c. Applicant's reputation, developed, at a minimum, through character witness statements, testimony, or other character evidence.
6. Proper Findings: In granting relief, the lawful authority issues findings that:
  - a. The applicant will not be likely to act in a manner dangerous to public safety; and
  - b. Granting the relief will not be contrary to the public interest.

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<sup>13</sup> Pub.L. 110-180.

<sup>14</sup> Federal regulations at 27 C.F.R. § 478.11 define the term "adjudicated as a mental defective" as: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or others; or (2) Lacks the mental capacity to contract or manage his own affairs. The term shall include (1) A finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

<sup>15</sup> Federal regulations at 27 C.F.R. § 478.11 define the term "committed to a mental institution" as: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

7. De Novo Judicial Review of a Denial: The State provides for de novo judicial review of relief application denials that includes the following principles:
  - a. If relief is denied, the applicant may petition the State court of appropriate jurisdiction to review the denial, including the record of the denying court, board, commission or other lawful authority.
  - b. Judicial review is de novo in that the reviewing court may, but is not required to, give deference to the decision of the lawful authority that denied the application for relief.
  - c. The reviewing court has discretion to receive additional evidence necessary to conduct an adequate review.
  
8. Required Updates to State and Federal Records: Pursuant to Section 102(c) of the NICS Improvement Act, the State, on being made aware that the basis under which the record was made available does not apply or no longer applies:
  - a. Updates, corrects, modifies, or removes the record from any database that the Federal or State government maintains and makes available to the NICS, consistent with the rules pertaining to the database; and
  - b. Notifies the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.
  
9. Recommended Procedure: It is recommended (not required) that the State have a written procedure (e.g., state law, regulation, or administrative order) to address the update requirements.

Grant funds are available to states only if state processes meet the above-described federal standards. The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), is responsible for certifying that a state mental health relief from firearms disabilities program has met the criteria set forth in the NICS Improvement Act. On October 1, 2009, ATF notified FDLE that Florida's current relief program does not meet the criteria set forth in federal law. Due to the denial of certification, Florida was not eligible to receive \$528,960 in available grant funds for 2009. FDLE reports that this grant funding would have been used to:

- Hire a vendor to develop a plan, methodology and staffing to research and provide missing final disposition data from selected Clerks of Court.
- Hire a consultant to develop a warrant exchange interface between the Escambia County Sheriff's Office and Clerk of Court; develop a warrant exchange interface for Hillsborough County and purchase servers to process warrant information for these two counties.
- Hire a consultant to program the Mental Competency (MECOM) database to accept relief of firearm disability information.<sup>16</sup>

Failure to conform to NICS criteria also jeopardizes future grant funding. Total amounts appropriated in the act for 2010 and 2011 grants are \$250,000,000 for increasing the number of court dispositions in the criminal history repository and another \$125,000,000 is available to the state court system.

#### *Effect of the Bill*

The bill removes the above-described language from s. 790.065(2)(a)c., F.S., and replaces it with language that establishes more specific procedures that must be followed when a person wants to have their mental health records removed from FDLE's MECOM database. Specifically, the bill:

- Provides that a person who has been adjudicated mentally defective or committed to a mental institution may petition the court that made the adjudication or commitment for relief from the firearm disabilities imposed by such adjudication or commitment.

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<sup>16</sup> See FDLE's 2010 analysis of House Bill 951.

- Requires that a copy of the petition be served on the state attorney for the county in which the person was adjudicated or committed.
- Specifies that the state attorney may object to the relief sought by the petition.
- Specifies that the petitioner may choose whether the hearing on the petition is open or closed.
- Authorizes the petitioner to present evidence and subpoena witnesses to appear at the hearing on the petition and to confront and cross-examine witnesses called by the state attorney.
- Requires that a record of the hearing be made by a certified court reporter or by court-approved electronic means.
- Requires the court to make written findings of fact and conclusions of law and issue a final order.
- Requires the court to grant the relief requested in the petition if the court finds that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. The court must make this finding based on the evidence presented with respect to the petitioner's reputation; the petitioner's mental health record, and if applicable, criminal history record; the circumstances surrounding the firearm disability; and any other evidence in the record.
- Specifies that if the final order denies relief, the petitioner may not petition again for relief until 1 year after the date of the final order.
- Authorizes the petitioner to seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order and specifies that such review will be conducted de novo.
- Provides that relief from firearm disability has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.
- Requires FDLE to remove a person's mental health record from the MECOM database upon receipt of a final order of relief from firearm disabilities.

The bill will bring Florida into alignment with the requirements of the NICS Improvement Act and will restore the state's eligibility for federal grant funding.

### **Fingerprint Retention**

Chapter 435, F.S., enacted in 1995, sets forth the procedures that must be used whenever a background screening<sup>17</sup> for employment is required by law. There are currently two levels of background screenings – Level I and Level II. Level I background screenings search the state databases using a person's *name* – these screenings do not require a person to submit fingerprints. Level II background screenings search state and national databases and do require a person to submit fingerprints. FDLE is the entity responsible for conducting background screenings.

Section 943.05(2)(g), F.S., requires FDLE to retain fingerprints submitted as part of the Level II screening process, but only as authorized by law. Currently, Florida law only authorizes FDLE to retain the fingerprints of the following:

- Eligible nonprofit scholarship-funding organizations;<sup>18</sup>

<sup>17</sup> A background screening is a criminal history record check to determine if a person has been arrested and/or convicted of a crime.

<sup>18</sup> Section 220.187, F.S., defines the term "eligible nonprofit scholarship-funding organization" as a charitable organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code; is a Florida entity formed under ch. 607, F.S., ch. 608, F.S., or ch. 617, F.S., and whose principal office is located in the state; and complies with the provisions of s. 220.187(6), F.S.

- The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation for the purpose of screening applicants for a slot machine occupational license;
- Professional guardians, and employees of professional guardians who have a fiduciary responsibility to a ward;<sup>19</sup>
- Part-time, full-time, or auxiliary law enforcement officers, correctional officers, and correctional probation officers;<sup>20</sup>
- The Department of Juvenile Justice for purposes of screening persons employed by the department, or employed by a provider under contract with the department;
- Employees and contracted personnel with direct student contact of a private school participating in a scholarship program;
- Instructional and non-instructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system or university lab school; Instructional and non-instructional personnel who are hired or contracted to fill positions in any charter school and members of the governing board of any charter school; Instructional and non-instructional personnel who are hired or contracted to fill positions that require direct contact with students in an alternative school that operates under contract with a district school system; and student teachers, persons participating in a field experience pursuant to s. 1004.04(6) or s. 1004.85, and persons participating in a short-term experience as a teacher assistant pursuant to s. 1004.04(10) in any district school system, lab school, or charter school;
- Non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds;
- Persons who seek instructional personnel certification pursuant to ch. 1012, F.S.;<sup>21</sup> and
- Seaports.<sup>22</sup>

FDLE enters fingerprints of the above-described individuals in the Automated Fingerprint Identification System (AFIS) and retains them in the Applicant Fingerprint Retention and Notification Program (AFRNP).<sup>23</sup> All incoming Florida arrest fingerprint submissions are searched against the fingerprints entered and retained in AFIS/AFRNP.<sup>24</sup> When the subject of retained fingerprints is identified with fingerprints of an incoming Florida arrest, FDLE notifies the licensing or employing agency of the arrest.<sup>25</sup> Agencies that have their records retained must pay FDLE an annual fee<sup>26</sup> and agree to inform FDLE of any change in an employee's employment status.<sup>27</sup>

Currently, the Federal Bureau of Investigation (FBI), which conducts *national* criminal history background checks, does not retain applicant fingerprints submitted by states. Thus, the AFRNP can only conduct searches against incoming *Florida* arrest fingerprints – not arrests made in other states or by the federal government. However, FDLE reports that the FBI is developing a retained fingerprint and arrest notification system, which should be available in 2013.<sup>28</sup>

#### *Effect of the Bill*

The bill amends s. 943.05(2)(g), F.S., to require FDLE, subject to FDLE having sufficient funds and equipment, to retain the applicant fingerprints of additional entities. Specifically, the bill requires FDLE to retain applicant fingerprints upon official written request from an agency executive director or

<sup>19</sup> Section 744.102, F.S., defines the term “professional guardian” as “any guardian who has at any time rendered services to three or more wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2), F.S., is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.” The term “ward” is defined as “a person for whom a guardian has been appointed.”

<sup>20</sup> These terms are defined in s. 943.10, F.S.

<sup>21</sup> See ss. 220.187(6)(b), 551.107(7)(c), 744.3135(4)(b), 943.13(5), 985.644(5)(b), 1002.421(3)(a), 1012.32(3), 1012.465, and 1012.56, F.S.

<sup>22</sup> See s. 311.12(7)(d), F.S.

<sup>23</sup> See s. 943.05, F.S., Rule 11C-6.010, F.A.C., and FDLE publication “Criminal History Record Checks / Background Checks Fact Sheet,” January 22, 2010. Only digital fingerprints can be entered into AFIS and retained in the AFRNP database.

<sup>24</sup> See s. 943.05(2)(h), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> The annual fee is currently \$6. See Rule 11C-6.010, F.A.C.

<sup>27</sup> Section 943.05(2)(h), F.S.

<sup>28</sup> See FDLE’s 2010 analysis of House Bill 951.

secretary or his or her designee, or from qualified entities<sup>29</sup> participating in the volunteer and employee criminal history screening system under s. 943.0542, F.S., or as otherwise required by law. The bill requires FDLE to store the additional fingerprints that it retains in AFIS/AFRNP and to search all incoming Florida arrest fingerprint submissions against the fingerprints retained in AFIS/AFRNP. The bill provides rulemaking authority to agencies that participate in the fingerprint retention process.

The bill also provides that upon notification that a federal fingerprint retention program is in effect, FDLE shall, when a state and national criminal history record check and retention of fingerprints are authorized by law, retain such fingerprints and advise the FBI to retain such fingerprints for searching against arrest fingerprint submissions received at the national level. The bill specifies that this requirement only applies if FDLE is funded and equipped to participate in a federal fingerprint program.

### **Criminal Justice Standards and Training Commission – Firearm Proficiency Rules**

The Criminal Justice Standards and Training Commission (Commission), housed within FDLE, has a number of responsibilities relating to the training, certification, and discipline of full-time, part-time, and auxiliary law enforcement officers, correctional officers, and correctional probation officers.

Currently, s. 943.12(16), F.S., requires the Commission to promulgate rules for the certification and discipline of officers<sup>30</sup> who engage in those specialized areas found to present a high risk of harm to the officer or the public at large and which would in turn increase the potential liability of an employing agency. In March 2006, the Commission formally adopted biennial firearms qualification requirements for all certified law enforcement officers. During the rule promulgation process for rules effective September 28, 2009, the Joint Administrative Procedures Committee agreed that while the Commission has general statutory authority to promulgate a rule, the Commission should seek specific authority to promulgate a rule relating to the biennial firearms qualification requirement.<sup>31</sup>

#### *Effect of the Bill*

The bill amends s. 943.12(16), F.S., to require the Commission to promulgate rules for the certification, maintenance, and discipline of officers engaged in the above-described specialized areas. The bill also requires the Commission to adopt rules requiring all law enforcement officers to demonstrate proficiency in firearms and to specify in the rules how often officers must demonstrate firearm proficiency and what the consequences will be if an officer fails to demonstrate firearm proficiency.

### **Basic Recruit Training Program - Exemptions**

#### Criminal Justice Selection Centers

Section 943.256, F.S., authorizes the creation of criminal justice selection centers. Selection centers provide standardized evaluation of pre-service candidates and inservice officers for all units of the local criminal justice system in a region, thereby establishing a pool of qualified candidates for criminal justice agencies. The statute requires each selection center to be under the direction and control of a postsecondary public school or a criminal justice agency within the selection center's region.

#### Exemptions from Completing a Basic Recruit Training Program

In Florida, the Commission is responsible for establishing uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers.<sup>32</sup> With few exceptions, every prospective law enforcement officer (LEO), correctional officer (CO), and correctional probation officer (CPO) must successfully complete a Commission-developed Basic Recruit Training Program in order to receive their certification.

Section 943.13(9), F.S., provides that those that do not have to complete a Basic Recruit Training Program are those who:

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<sup>29</sup> Section 943.0542, F.S., defines the term "qualified entity" as "a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services."

<sup>30</sup> Section 943.10, F.S., defines the term "officer" as "any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer."

<sup>31</sup> See FDLE's 2010 analysis of House Bill 951.

<sup>32</sup> <http://www.fdle.state.fl.us/cjst/commission/index.html>



- Have completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government; and
- Have served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an eight-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section.

Additionally, s. 943.1395(3), F.S., provides that a certified officer who has separated from employment and who is not reemployed within four years after the date of separation must meet the requirements of s. 943.13, F.S., but does not have to complete a Basic Recruit Training Program. Officers who are not reemployed within eight years after separation must meet the requirements of s. 943.13, F.S., and complete a Basic Recruit Training Program.

Currently, s. 943.131(2), F.S., specifies that if a person is seeking an exemption from completing a Basic Recruit Training Program, the person's employing agency must verify that the person meets the above-described exemption criteria. The statute also requires the person's employing agency to submit documentation about the person's criminal justice experience to the Commission. Those who the Commission finds to be exempt from having to complete a Basic Recruit Training Program must still demonstrate proficiency in high-liability areas and pass the state officer certification exam within one year after receiving an exemption. If these requirements are not met within one year, the person must complete a Basic Recruit Training Program.<sup>33</sup>

#### *Effect of the Bill*

The bill amends s. 943.131(2), F.S., to require employing agencies *and criminal justice selection centers* to:

- Verify that a person:
  - o Has completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government *or a previous Florida basic recruit training program*; and
  - o Has served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an eight-year break in employment, *or was a previously certified Florida officer provided there is no more than an eight-year break in employment*.<sup>34</sup>
- Submit documentation about a person's criminal justice experience to the Commission.

Additionally, the bill specifies that if a person who is exempt from having to complete a Basic Recruit Training Program does not demonstrate proficiency in high-liability areas or pass the state officer certification exam within one year after receiving an exemption, the person must seek an additional exemption. Such persons will no longer be required to complete a Basic Recruit Training Program.

The bill also amends s. 943.1395(3), F.S., to provide that a certified officer who has separated from employment and who is not reemployed within four years after the date of separation must meet the requirements of s. 943.131(2), F.S., (i.e., demonstrate proficiency in high-liability areas and pass the state officer certification exam within one year after receiving an exemption). Such officers who do not meet the requirements of s. 943.131(2), F.S., must complete a Basic Recruit Training Program.

### **Basic Recruit Training Programs – Correctional Probation Officers**

Section 943.17, F.S., requires the Commission to design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses. Paragraph (1)(g) of the statute specifies that

<sup>33</sup> Section 943.131(2), F.S.

<sup>34</sup> See s. 943.13(9), F.S.

the Commission must assure that entrance into the basic recruit training program for law enforcement, correctional, and correctional probation officers be limited to those who have passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the Commission.

Unlike law enforcement officers and correctional officers, correctional probation officers are required by the Department of Corrections to possess a bachelor's degree from an accredited college or university in order to be certified. Attaining a four-year degree is more demanding than passing the basic skills exam required by s. 943.17(1)(g), F.S. FDLE reports that the skill level required to obtain a bachelor's degree is much higher than the skill level tested by the basic skills exam.<sup>35</sup> Thus, the requirement for a correctional probation officer to pass a basic skills exam is redundant.

#### *Effect of the Bill*

The bill amends s. 943.17(1)(g), F.S., to remove correctional probation officers from the list of persons who must pass a basic skills exam in order to be admitted to a basic recruit training program. The Commission will only be required to ensure that law enforcement and correctional officers have passed a basic skills test prior to entering into a basic recruit training program.

#### **Crime Laboratories**

Section 943.32, F.S., establishes a statewide criminal analysis laboratory system composed of the following:

- The state-operated laboratories under the jurisdiction of FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, Tampa, and such other areas of the state as may be necessary;
- The existing locally funded laboratories in Broward, Indian River, Miami-Dade, Monroe, Palm Beach, and Pinellas Counties, specifically designated in s. 943.35, F.S., to be eligible for state matching funds; and
- Such other laboratories as render criminal analysis laboratory services to criminal justice agencies in the state.

At the request of Monroe County, the Key West crime lab became part of the state crime lab system in 1994. In a June 1998 report, the Office of Program Policy Analysis and Accountability recommended that the now state-run Key West crime lab be eliminated due to costs associated with its operation. The Key West crime lab was closed on July 1, 2001. Consequently, the reference to Monroe County's locally funded laboratory in s. 943.32, F.S., is obsolete.

The bill amends s. 943.32, F.S., to remove the obsolete reference to Monroe County.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 790.065, F.S., relating to sale and delivery of firearms.

**Section 2.** Amends s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.

**Section 3.** Amends s. 943.053, F.S., relating to the dissemination of criminal justice information; fees.

**Section 4.** Amends s. 943.12, F.S., relating to powers, duties, and functions of the commission.

**Section 5.** Amends s. 943.131, F.S., relating to temporary employment or appointment; minimum basic recruit training exemption.

**Section 6.** Amends s. 943.1395, F.S., relating to certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation.

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<sup>35</sup> See FDLE's 2010 analysis of House Bill 951.

**Section 7.** Amends s. 943.17, F.S., relating to basic recruit, advanced, and career development training programs; participation; cost; evaluation.

**Section 8.** Amends s. 943.32, F.S., relating to statewide criminal analysis laboratory system.

**Section 9.** This bill takes effect July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

This bill may have a positive fiscal impact on FDLE because the provisions in the bill for removing mental health records from FDLE's mental competency database align the statutes with federal law, making Florida eligible for certain federal grants. The U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for certifying that a state mental health relief from firearms disabilities program has met the criteria set forth in the NICS Improvement Act. On October 1, 2009, ATF notified FDLE that Florida's current relief program does not meet the criteria set forth in federal law. Due to the denial of certification, Florida was not eligible to receive \$528,960 in available grant funds for 2009.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

#### **2. Other:**

None.

### **B. RULE-MAKING AUTHORITY:**

The bill amends s. 943.12(16), F.S., to require the Commission to promulgate rules for the certification, maintenance, and discipline of officer engaged in the above-described specialized areas. The bill also requires the Commission to adopt rules requiring all law enforcement officers to demonstrate proficiency in firearms and to specify in the rules how often officers must demonstrate firearm proficiency and what the consequences will be if an officer fails to demonstrate firearm proficiency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 26, 2010, the Criminal & Civil Justice Appropriations Committee adopted 2 amendments to the bill.

- Amendment 1 removed language authorizing the Florida Criminal Justice Executive Institute to collect fees for delivering criminal justice executive training.
- Amendment 2 made changes to language relating to the processing of fingerprints by FDLE. The amendment clarifies that the retention of fingerprints is subject to FDLE having sufficient funds and equipment to retain the fingerprints. The amendment also provides rulemaking authority to agencies that participate in the retention process.

**This analysis reflects the bill as amended.**