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1 A bill to be entitled
2 An act relating to public safety; amending s. 790.065,
3 F.S.; requiring certain reports to be submitted in an
4 automated format; deleting provisions relating to
5 automatic deletion of mental health records under
6 specified conditions from the Department of Law
7 Enforcement's database of such records kept for purposes
8 of sale and delivery of firearms and substituting a
9 procedure for petition to obtain judicial relief from
10 firearm disabilities and, upon obtaining such relief, the
11 removal of the individual mental health records from the
12 department's database; amending s. 943.05, F.S.; revising
13 who may request retention of fingerprints submitted to the
14 Department of Law Enforcement; authorizing retention of
15 fingerprints in certain circumstances; amending s. 943.12,
16 F.S.; requiring the Criminal Justice Standards and
17 Training Commission to adopt rules relating to the
18 maintenance of officers who engage in those specialized
19 areas found to present a high risk of harm to the officer
20 or the public at large; requiring the commission to adopt
21 rules requiring the demonstration of proficiency in
22 firearms for all law enforcement officers; amending s.
23 943.131, F.S.; revising provisions relating to exemptions
24 from completing a commission-approved basic recruit
25 training program; amending s. 943.1395, F.S.; revising
26 provisions relating to qualifications for certified law
27 enforcement officers separated from employment for more
28 than a certain period of time; amending s. 943.17, F.S.;

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29 deleting a requirement that correctional probation
30 officers pass a specified basic skills examination and
31 assessment instrument before entrance into the basic
32 recruit training program; amending s. 943.1755, F.S.;
33 authorizing fees for criminal justice executive training
34 from the Florida Criminal Justice Executive Institute;
35 providing for the deposit and use of such fees; amending
36 s. 943.32, F.S.; deleting state funding eligibility for a
37 locally funded crime laboratory in Monroe County;
38 providing an effective date.
39

40 Be It Enacted by the Legislature of the State of Florida:
41

42 Section 1. Paragraph (a) of subsection (2) of section
43 790.065, Florida Statutes, is amended to read:

44 790.065 Sale and delivery of firearms.—

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

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

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

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

54 3. Has had adjudication of guilt withheld or imposition of
55 sentence suspended on any felony or misdemeanor crime of
56 domestic violence unless 3 years have elapsed since probation or

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57 | any other conditions set by the court have been fulfilled or
58 | expunction has occurred; or

59 | 4. Has been adjudicated mentally defective or has been
60 | committed to a mental institution by a court and as a result is
61 | prohibited by federal law from purchasing a firearm.

62 | a. As used in this subparagraph, "adjudicated mentally
63 | defective" means a determination by a court that a person, as a
64 | result of marked subnormal intelligence, or mental illness,
65 | incompetency, condition, or disease, is a danger to himself or
66 | herself or to others or lacks the mental capacity to contract or
67 | manage his or her own affairs. The phrase includes a judicial
68 | finding of incapacity under s. 744.331(6)(a), an acquittal by
69 | reason of insanity of a person charged with a criminal offense,
70 | and a judicial finding that a criminal defendant is not
71 | competent to stand trial.

72 | b. As used in this subparagraph, "committed to a mental
73 | institution" means involuntary commitment, commitment for mental
74 | defectiveness or mental illness, and commitment for substance
75 | abuse. The phrase includes involuntary inpatient placement as
76 | defined in s. 394.467, involuntary outpatient placement as
77 | defined in s. 394.4655, involuntary assessment and stabilization
78 | under s. 397.6818, and involuntary substance abuse treatment
79 | under s. 397.6957, but does not include a person in a mental
80 | institution for observation or discharged from a mental
81 | institution based upon the initial review by the physician or a
82 | voluntary admission to a mental institution.

83 | c. In order to check for these conditions, the department
84 | shall compile and maintain an automated database of persons who

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

107 d. A person who has been adjudicated mentally defective or
108 committed to a mental institution, as those terms are defined in
109 this paragraph, may petition the circuit court that made the
110 adjudication or commitment for relief from the firearm
111 disabilities imposed by such adjudication or commitment. A copy
112 of the petition shall be served on the state attorney for the

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113 county in which the person was adjudicated or committed. The
114 state attorney may object to and present evidence relevant to
115 the relief sought by the petition. The hearing on the petition
116 may be open or closed as the petitioner may choose. The
117 petitioner may present evidence and subpoena witnesses to appear
118 at the hearing on the petition. The petitioner may confront and
119 cross-examine witnesses called by the state attorney. A record
120 of the hearing shall be made by a certified court reporter or by
121 court-approved electronic means. The court shall make written
122 findings of fact and conclusions of law on the issues before it
123 and issue a final order. The court shall grant the relief
124 requested in the petition if the court finds, based on the
125 evidence presented with respect to the petitioner's reputation,
126 the petitioner's mental health record and, if applicable,
127 criminal history record, the circumstances surrounding the
128 firearm disability, and any other evidence in the record, that
129 the petitioner will not be likely to act in a manner that is
130 dangerous to public safety and that granting the relief would
131 not be contrary to the public interest. If the final order
132 denies relief, the petitioner may not petition again for relief
133 from firearm disabilities until 1 year after the date of the
134 final order. The petitioner may seek judicial review of a final
135 order denying relief in the district court of appeal having
136 jurisdiction over the court that issued the order. The review
137 shall be conducted de novo. Relief from a firearm disability
138 granted under this sub-subparagraph has no effect on the loss of
139 civil rights, including firearm rights, for any reason other
140 than the particular adjudication of mental defectiveness or

141 commitment to a mental institution from which relief is granted.

142 e. Upon receipt of proper notice of relief from firearm
 143 disabilities granted under sub-subparagraph d., the department
 144 shall delete any mental health record of the person granted
 145 relief from the automated database of persons who are prohibited
 146 from purchasing a firearm based on court records of
 147 adjudications of mental defectiveness or commitments to mental
 148 institutions.

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

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

172 943.05 Criminal Justice Information Program; duties; crime
 173 reports.—

174 (2) The program shall:

175 (g) Upon official written request from the agency
 176 executive director or secretary or from his or her designee, or
 177 from qualified entities participating in the volunteer and
 178 employee criminal history screening system under s. 943.0542, or
 179 as otherwise required ~~As authorized~~ by law, retain fingerprints
 180 submitted by criminal and noncriminal justice agencies to the
 181 department for a criminal history background screening in a
 182 manner provided by rule and enter the fingerprints in the
 183 statewide automated fingerprint identification system authorized
 184 by paragraph (b). Such fingerprints shall thereafter be
 185 available for all purposes and uses authorized for arrest
 186 fingerprint cards entered into the statewide automated
 187 fingerprint identification system pursuant to s. 943.051.

188 (h)1. For each agency or qualified entity that officially
 189 requests retention of fingerprints or for which retention is
 190 otherwise required ~~As authorized~~ by law, search all arrest
 191 fingerprint submissions ~~cards~~ received under s. 943.051 against
 192 the fingerprints retained in the statewide automated fingerprint
 193 identification system under paragraph (g). Any arrest record
 194 that is identified with the retained fingerprints of a person
 195 subject to background screening as provided in paragraph (g)
 196 shall be reported to the appropriate agency or qualified entity.

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197 2. To Agencies may participate in this search process,
198 agencies or qualified entities must notify each person
199 fingerprinted that his or her fingerprints will be retained, pay
200 by payment of an annual fee to the department, and inform by
201 informing the department of any change in the affiliation,
202 employment, or contractual status or place of affiliation,
203 employment, or contracting of each person the persons whose
204 fingerprints are retained under paragraph (g). The department
205 shall adopt a rule setting the amount of the annual fee to be
206 imposed upon each participating agency or qualified entity for
207 performing these searches and establishing the procedures for
208 the retention of fingerprints and the dissemination of search
209 results. The fee may be borne by the agency, qualified entity,
210 or person subject to fingerprint retention or as otherwise
211 provided by law. Fees may be waived or reduced by the executive
212 director for good cause shown. Consistent with the recognition
213 of criminal justice agencies expressed in s. 943.053(3), these
214 services will be provided to criminal justice agencies for
215 criminal justice purposes free of charge.

216 (4) Upon notification that a federal fingerprint retention
217 program is in effect, and provided that the department is funded
218 and equipped to participate in such a program, the department
219 shall, when a state and national criminal history record check
220 and retention of submitted prints are authorized or required by
221 law, retain the fingerprints as provided in paragraphs (2) (g)
222 and (h) and advise the Federal Bureau of Investigation to retain
223 the fingerprints at the national level for searching against
224 arrest fingerprint submissions received at the national level.

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225 Section 3. Subsection (16) of section 943.12, Florida
 226 Statutes, is amended to read:

227 943.12 Powers, duties, and functions of the commission.—
 228 The commission shall:

229 (16) Adopt ~~Promulgate~~ rules for the certification,
 230 maintenance, and discipline of officers who engage in those
 231 specialized areas found to present a high risk of harm to the
 232 officer or the public at large and which would in turn increase
 233 the potential liability of an employing agency. The commission
 234 shall adopt rules requiring the demonstration of proficiency in
 235 firearms for all law enforcement officers. The commission shall
 236 by rule include the frequency of demonstration of proficiency
 237 with firearms and the consequences for officers failing to
 238 demonstrate proficiency with firearms.

239 Section 4. Subsection (2) of section 943.131, Florida
 240 Statutes, is amended to read:

241 943.131 Temporary employment or appointment; minimum basic
 242 recruit training exemption.—

243 (2) If an applicant seeks an exemption from completing a
 244 commission-approved basic recruit training program, the
 245 employing agency or criminal justice selection center must
 246 verify that the applicant has successfully completed a
 247 comparable basic recruit training program for the discipline in
 248 which the applicant is seeking certification in another state or
 249 for the Federal Government or a previous Florida basic recruit
 250 training program. Further, the employing agency or criminal
 251 justice selection center must verify that the applicant has
 252 served as a full-time sworn officer in another state or for the

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253 Federal Government for at least 1 year provided there is no more
254 than an 8-year break in employment or was a previously certified
255 Florida officer provided there is no more than an 8-year break
256 in employment, as measured from the separation date of the most
257 recent qualifying employment to the time a complete application
258 is submitted for an exemption under this section. When the
259 employing agency or criminal justice selection center obtains
260 written documentation regarding the applicant's criminal justice
261 experience, the documentation must be submitted to the
262 commission. The commission shall adopt rules that establish
263 criteria and procedures to determine if the applicant is exempt
264 from completing the commission-approved basic recruit training
265 program and, upon making a determination, shall notify the
266 employing agency or criminal justice selection center. An
267 applicant who is exempt from completing the commission-approved
268 basic recruit training program must demonstrate proficiency in
269 the high-liability areas, as defined by commission rule, and
270 must complete the requirements of s. 943.13(10) within 1 year
271 after receiving an exemption. If the proficiencies and
272 requirements of s. 943.13(10) are not met within the 1 year, the
273 applicant must seek an additional exemption pursuant to the
274 requirements of this subsection ~~complete a commission-approved~~
275 ~~basic recruit training program, as required by the commission by~~
276 ~~rule~~. Except as provided in subsection (1), before the employing
277 agency may employ or appoint the applicant as an officer, the
278 applicant must meet the minimum qualifications described in s.
279 943.13(1)-(8), and must fulfill the requirements of s.
280 943.13(10).

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281 Section 5. Subsection (3) of section 943.1395, Florida
 282 Statutes, is amended to read:

283 943.1395 Certification for employment or appointment;
 284 concurrent certification; reemployment or reappointment;
 285 inactive status; revocation; suspension; investigation.—

286 (3) Any certified officer who has separated from
 287 employment or appointment and who is not reemployed or
 288 reappointed by an employing agency within 4 years after the date
 289 of separation must meet the minimum qualifications described in
 290 s. 943.13, except for the requirement found in s. 943.13(9).
 291 Further, such officer must complete any training required by the
 292 commission by rule in compliance with s. 943.131(2). Any such
 293 officer who fails to comply with the requirements provided in s.
 294 943.131(2) ~~is not reemployed or reappointed by an employing~~
 295 ~~agency within 8 years after the date of separation~~ must meet the
 296 minimum qualifications described in s. 943.13, to include the
 297 requirement of s. 943.13(9).

298 Section 6. Paragraph (g) of subsection (1) of section
 299 943.17, Florida Statutes, is amended to read:

300 943.17 Basic recruit, advanced, and career development
 301 training programs; participation; cost; evaluation.—The
 302 commission shall, by rule, design, implement, maintain,
 303 evaluate, and revise entry requirements and job-related
 304 curricula and performance standards for basic recruit, advanced,
 305 and career development training programs and courses. The rules
 306 shall include, but are not limited to, a methodology to assess
 307 relevance of the subject matter to the job, student performance,
 308 and instructor competency.

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309 (1) The commission shall:

310 (g) Assure that entrance into the basic recruit training
 311 program for law enforcement and, ~~correctional, and correctional~~
 312 ~~probation~~ officers be limited to those who have passed a basic
 313 skills examination and assessment instrument, based on a job
 314 task analysis in each discipline and adopted by the commission.

315 Section 7. Subsection (4) of section 943.1755, Florida
 316 Statutes, is amended to read:

317 943.1755 Florida Criminal Justice Executive Institute.—

318 (4) The policy board shall establish administrative
 319 procedures and operational guidelines necessary to ensure that
 320 criminal justice executive training needs are identified and met
 321 through the delivery of quality instruction. The policy board
 322 may authorize fees to be collected for delivering criminal
 323 justice executive training. Fees for criminal justice executive
 324 training collected pursuant to this subsection shall be
 325 deposited in the Criminal Justice Standards and Training Trust
 326 Fund and used solely for payment of necessary and proper
 327 expenses incurred by the department for criminal justice
 328 executive training.

329 Section 8. Subsection (2) of section 943.32, Florida
 330 Statutes, is amended to read:

331 943.32 Statewide criminal analysis laboratory system.—

332 There is established a statewide criminal analysis laboratory
 333 system to be composed of:

334 (2) The existing locally funded laboratories in Broward,
 335 Indian River, Miami-Dade, ~~Monroe~~, Palm Beach, and Pinellas
 336 Counties, specifically designated in s. 943.35 to be eligible

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337 | for state matching funds; and

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