

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 provisions relating to the Criminal Justice Information
14 Program under the Department of Law Enforcement;
15 authorizing agencies to request the retention of certain
16 fingerprints by the department; providing for rulemaking
17 to require employers to keep the agencies informed of any
18 change in the affiliation, employment, or contractual
19 status of each person whose fingerprints are retained in
20 certain circumstances; providing departmental duties upon
21 notification that a federal fingerprint retention program
22 is in effect; amending s. 943.053, F.S.; removing obsolete
23 references relating to the dissemination of criminal
24 justice information; amending s. 943.12, F.S.; requiring
25 the Criminal Justice Standards and Training Commission to
26 adopt rules relating to the maintenance of officers who
27 engage in those specialized areas found to present a high
28 risk of harm to the officer or the public at large;

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

44
 45 Be It Enacted by the Legislature of the State of Florida:

46
 47 Section 1. Paragraph (a) of subsection (2) of section
 48 790.065, Florida Statutes, is amended to read:

49 790.065 Sale and delivery of firearms.—

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

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

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

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

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

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

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

77 b. As used in this subparagraph, "committed to a mental
78 institution" means involuntary commitment, commitment for mental
79 defectiveness or mental illness, and commitment for substance
80 abuse. The phrase includes involuntary inpatient placement as
81 defined in s. 394.467, involuntary outpatient placement as
82 defined in s. 394.4655, involuntary assessment and stabilization
83 under s. 397.6818, and involuntary substance abuse treatment
84 under s. 397.6957, but does not include a person in a mental

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85 institution for observation or discharged from a mental
86 institution based upon the initial review by the physician or a
87 voluntary admission to a mental institution.

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

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

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

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141 jurisdiction over the court that issued the order. The review
142 shall be conducted de novo. Relief from a firearm disability
143 granted under this sub-subparagraph has no effect on the loss of
144 civil rights, including firearm rights, for any reason other
145 than the particular adjudication of mental defectiveness or
146 commitment to a mental institution from which relief is granted.

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

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

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169 negate identity must be made available to the department for
 170 such purposes, notwithstanding any other provision of state law
 171 to the contrary. Any such information that is made confidential
 172 or exempt from disclosure by law shall retain such confidential
 173 or exempt status when transferred to the department.

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

177 943.05 Criminal Justice Information Program; duties; crime
 178 reports.—

179 (2) The program shall:

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

195 (h) ~~1.~~ For each agency or qualified entity that officially
 196 requests retention of fingerprints or for which retention is

197 otherwise required ~~As authorized~~ by law, search all arrest
 198 fingerprint submissions ~~cards~~ received under s. 943.051 against
 199 the fingerprints retained in the statewide automated fingerprint
 200 identification system under paragraph (g).

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

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

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225 ~~director for good cause shown.~~ Consistent with the recognition
226 of criminal justice agencies expressed in s. 943.053(3), these
227 services will be provided to criminal justice agencies for
228 criminal justice purposes free of charge.

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

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

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

250 943.053 Dissemination of criminal justice information;
251 fees.—

252 (6) Notwithstanding any other provision of law, the

253 department shall provide to the ~~Florida~~ Department of Revenue
 254 ~~Child Support Enforcement~~ access to Florida criminal history
 255 records which are not exempt from disclosure under chapter 119,
 256 and to such information as may be lawfully available from other
 257 states via the National Law Enforcement Telecommunications
 258 System, for the purpose of locating subjects who owe or
 259 potentially owe support, as defined in s. 409.2554, or to whom
 260 such obligation is owed pursuant to Title IV-D of the Social
 261 Security Act. Such information may be provided to child support
 262 enforcement authorities in other states for these specific
 263 purposes.

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

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281 fingerprint submissions ~~cards~~ for which submitted fingerprints
 282 may be used, any arrest record that is identified with the
 283 retained employee fingerprints must be reported to the
 284 submitting employing agency.

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

287 943.12 Powers, duties, and functions of the commission.—
 288 The commission shall:

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

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

301 943.131 Temporary employment or appointment; minimum basic
 302 recruit training exemption.—

303 (2) If an applicant seeks an exemption from completing a
 304 commission-approved basic recruit training program, the
 305 employing agency or criminal justice selection center must
 306 verify that the applicant has successfully completed a
 307 comparable basic recruit training program for the discipline in
 308 which the applicant is seeking certification in another state or

309 | for the Federal Government or a previous Florida basic recruit
310 | training program. Further, the employing agency or criminal
311 | justice selection center must verify that the applicant has
312 | served as a full-time sworn officer in another state or for the
313 | Federal Government for at least 1 year provided there is no more
314 | than an 8-year break in employment or was a previously certified
315 | Florida officer provided there is no more than an 8-year break
316 | in employment, as measured from the separation date of the most
317 | recent qualifying employment to the time a complete application
318 | is submitted for an exemption under this section. When the
319 | employing agency or criminal justice selection center obtains
320 | written documentation regarding the applicant's criminal justice
321 | experience, the documentation must be submitted to the
322 | commission. The commission shall adopt rules that establish
323 | criteria and procedures to determine if the applicant is exempt
324 | from completing the commission-approved basic recruit training
325 | program and, upon making a determination, shall notify the
326 | employing agency or criminal justice selection center. An
327 | applicant who is exempt from completing the commission-approved
328 | basic recruit training program must demonstrate proficiency in
329 | the high-liability areas, as defined by commission rule, and
330 | must complete the requirements of s. 943.13(10) within 1 year
331 | after receiving an exemption. If the proficiencies and
332 | requirements of s. 943.13(10) are not met within the 1 year, the
333 | applicant must seek an additional exemption pursuant to the
334 | requirements of this subsection ~~complete a commission-approved~~
335 | ~~basic recruit training program, as required by the commission by~~
336 | ~~rule~~. Except as provided in subsection (1), before the employing

337 agency may employ or appoint the applicant as an officer, the
 338 applicant must meet the minimum qualifications described in s.
 339 943.13(1)-(8), and must fulfill the requirements of s.
 340 943.13(10).

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

343 943.1395 Certification for employment or appointment;
 344 concurrent certification; reemployment or reappointment;
 345 inactive status; revocation; suspension; investigation.—

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

358 Section 7. Paragraph (g) of subsection (1) of section
 359 943.17, Florida Statutes, is amended to read:

360 943.17 Basic recruit, advanced, and career development
 361 training programs; participation; cost; evaluation.—The
 362 commission shall, by rule, design, implement, maintain,
 363 evaluate, and revise entry requirements and job-related
 364 curricula and performance standards for basic recruit, advanced,

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365 and career development training programs and courses. The rules
366 shall include, but are not limited to, a methodology to assess
367 relevance of the subject matter to the job, student performance,
368 and instructor competency.

369 (1) The commission shall:

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

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

377 943.32 Statewide criminal analysis laboratory system.—
378 There is established a statewide criminal analysis laboratory
379 system to be composed of:

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

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