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CS/HB 951

2010 Legislature

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;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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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;

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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

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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

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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

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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

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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.