

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1434  
 INTRODUCER: Senator Evers  
 SUBJECT: Department of Law Enforcement  
 DATE: March 11, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	CA	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

SB 1434 amends numerous statutes relating to the operations and duties of, services provided by, and other matters involving the Florida Department of Law Enforcement (FDLE), and also relating to those who use or are impacted by those services.

The majority of the changes to law made by the bill are technical in nature: correcting grammar; replacing antiquated or obsolete terminology or tasks; repealing implementation or adoption dates that have passed; and correcting statutory citations. However, the bill does make some substantive changes to the law, including, but not limited to:

- Authorizing counties and cities to require, by ordinance, employment screening of private contractors and other positions noted in the statutes who are subject to licensing or regulation by the county or city or who have contact with members of the public or access to any public facility or publicly operated facility in such a manner that the county or city finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.
- Revising duties concerning missing person reporting.
- Specifying additional items to be reported by persons required to register as sexual offenders.
- Requiring state agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work at specified locations, to conduct a search of that person's identifying information through the national sexual offender public website.
- Redesignating the statewide automated fingerprint identification system as the statewide automated biometric identification system.

- Revising matters relating to the Florida Violent Crime and Drug Control Council and its committees.
- Requiring the collection of additional information from persons charged with or convicted of specified offenses.
- Requiring the Domestic and Repeat Violence Injunction Statewide Verification System maintained by the FDLE to include injunctions to prevent child abuse issued under chapter 39, F.S.
- Increasing the period in which a minor may seek expunction of nonjudicial arrest record following diversion, and conditions eligibility on the qualifications of the applicant rather than on those of the diversion program in which he or she participates.
- Clarifying that a person may only seal or expunge a record if the person has never before sealed or expunged a record (except in specified instances), and removing references to having received an expunction or sealing “from any jurisdiction outside the state” as a disqualifier for seeking expunction or sealing in Florida.
- Providing for accreditation of correctional facilities, public agency offices of inspectors general, and pretrial diversion programs.
- Revising language relating to testing services provided by a state-operated analysis laboratories to defendants.

This bill substantially amends the following sections of the Florida Statutes: 125.5801; 166.0422; 258.18; 406.145; 414.40; 937.021; 937.024; 937.025; 937.028; 943.03; 943.031; 943.0435; 943.04351; 943.0438; 943.045; 943.05; 943.051; 943.052; 943.053; 943.054; 943.0542; 943.0544; 943.055; 943.056; 943.0582; 943.0585; 943.059; 943.125; 943.13; 943.132; 943.1395; 943.755; 943.1757; 943.25; 943.325; 943.33; and 943.68.

## II. Present Situation:

See the “Effect of Proposed Changes” section of this analysis for a discussion of the statutes amended by the bill, and the relevant background regarding and explanation of changes to the law made by the bill.

## III. Effect of Proposed Changes:

The bill amends numerous statutes relating to the operations and duties of, services provided by, and other matters involving the Florida Department of Law Enforcement (FDLE), and also relating to those who use or are impacted by those services.

The majority of the changes to law made by the bill are technical in nature: correcting grammar; replacing antiquated or obsolete terminology or tasks; repealing implementation or adoption dates that have passed; and correcting statutory citations. However, the bill does make some substantive changes to the law. Provided is a section-by-section analysis of the bill.

### **Sections 1 and 2 (Criminal history record checks for county and municipal employees and appointees and others)**

Sections 1 and 2 of the bill, respectively, substantially reword s. 125.5801, F.S. (applicable to counties), and s. 166.0422, F.S. (applicable to municipalities). Presently, these statutes authorize

counties and municipalities to require, by ordinance, employment screening for any position of county or municipal employment or appointment critical to security or public safety and for any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility that the county or municipality finds is critical to security or public safety.

The FDLE indicates that the statutes, as presently worded, would not, for example, permit a county or city to conduct criminal history checks on tow truck operators selected for emergency towing, even though these operators would predictably have close contact with persons in vulnerable situations, because such contact could not be construed as having access to any public facility or publicly operated facility that the county or city finds is critical to security or public safety.<sup>1</sup>

The bill authorizes counties and cities to require, by ordinance, employment screening of private contractors and other positions noted in the statutes who are subject to licensing or regulation by the county or city or who have contact with members of the public or access to any public facility or publicly operated facility in such a manner that the county or city finds that preventing unsuitable persons from having such contact or access is critical to security or public safety. The FDLE states that the Federal Bureau of Investigation (FBI) will recognize ordinances that are passed under the authority of these statutes (and in compliance with the conditions expressed therein) for purposes of access to national criminal history information.

The FDLE further states that the changes to the statute would cover, for example, taxi drivers who could remain parked at an airport for long periods, but not members of the general public who would have limited access to an airport.

### **Section 3 (Tribal council as governing body; powers and duties)**

Section 3 of the bill amends s. 258.18, F.S., which provides that the law enforcement agencies of the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are “criminal justice agencies.” The term “criminal justice agencies” is defined by reference to a statutory provision which has changed as a result of other changes in the bill. The bill corrects the statutory citation (conforming change).

### **Section 4 (Reporting requirements for unidentified bodies)**

Section 4 of the bill amends s. 406.145, F.S., which requires law enforcement agencies to enter unidentified deceased individuals through the Florida Crime Information Center (FCIC) into the Unidentified Person File of the National Crime Information Center (NCIC), maintained by the FBI, so that the information can be queried and compared to missing person records across jurisdictions.

The FDLE states that requirement for agencies to use the Unidentified Person Report Form as a conduit for making unidentified person’s entries is outdated. While the Unidentified Report

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<sup>1</sup> Analysis of SB 1434 (dated March 13, 2013), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “FDLE Analysis.” All background information in the “Effect of Proposed Changes” section of this analysis is from the FDLE Analysis, unless otherwise indicated.

Form continues to exist, use of the form is unnecessary to complete an unidentified entry into FCIC/NCIC. Today, many agencies prefer electronic or automated methods of exchanging information that are more accurate, timely, and efficient than the use of the Unidentified Person Report form.

The bill deletes the requirement for a law enforcement agency investigating a death to complete an Unidentified Person Report Form when submitting information for entry into the Unidentified Person File.

### **Section 5 (Stop Inmate Fraud Program)**

Section 5 of the bill amends s. 414.40, F.S., which addresses the Stop Inmate Fraud Program in the Department of Financial Services. The terms “record” and “criminal justice agencies” are defined by reference to statutory provisions which have changed as a result of other changes in the bill. The bill corrects the statutory citations (conforming changes).

### **Sections 6-9 (Missing child and missing adult reports; birth records of missing children; false information concerning a missing child; fingerprints of missing children)**

Sections 6-9 of the bill amend, respectively, ss. 937.021, 937.024, 937.025, and 937.028, F.S.

The FDLE’s Missing Endangered Persons Information Clearinghouse (MEPIC) is the central repository of information regarding missing endangered persons in Florida. The MEPIC assists law enforcement agencies and Florida’s citizens in finding missing persons by providing analytical services and engaging the public in the search. As part of these services, the MEPIC has worked with partner agencies to develop the Florida AMBER Plan and the Florida Silver Alert Plan. Under these plans, the MEPIC is responsible for issuing all AMBER Alerts, Missing Child Alerts, and State Silver Alerts in Florida. The MEPIC also provides assistance to law enforcement in cases involving unidentified deceased and crimes against children.

Section 937.021, F.S., provides immunity from civil liability for agencies, media, and their personnel who comply in good faith with a request relating to an Amber Alert, Missing Child Alert, Silver Alert, or missing adult cases.

Section 937.024, F.S., requires the Office of Vital Statistics to collect each month a list of missing children provided by the FDLE. The birth certificate of each identified missing child must be flagged by the Office of Vital Statistics in order to make its employees aware that a birth certificate is that of a child reported as missing. A copy of the birth certificate or information concerning the birth record of a child whose record has been flagged may not be provided by the state registrar or a local registrar in response to an inquiry unless the flag has been removed.

Section 937.025, F.S., provides that it is a first degree misdemeanor for a person to knowingly provide false information concerning a missing child or the efforts to locate and return a missing child to a parent, family member, or guardian of a child who has been reported missing.

Fingerprints can be a valuable tool to help identify missing or unidentified persons.

Section 937.028, F.S., requires that fingerprints taken and retained by any state agency, public or

private organization, or other person, excluding the parent or guardian of the child, for the purpose of identifying a child, must be destroyed when the child reaches 18 years of age. The FDLE states that this provision was designed in response to concern that private fingerprinting companies might keep children's fingerprints on file after they had reached adulthood.

The bill extends immunity for civil liability currently provided for Amber Alerts, Missing Child Alerts, Silver Alerts and missing adult cases, for acting in good faith to include missing child cases. The FDLE states that it only releases information to the public at the request of law enforcement or the legal guardian of a child. The FDLE believes that, as immunity is provided for all other types of cases, this revision will provide consistency within the statute and security for agencies and organizations helping to locate missing children.

The bill provides for the Office of Vital Statistics to unflag the birth certificates and birth records of missing children and provide necessary information at the request of the MEPIC. This provision addresses instances in which a parent of a missing child needs to obtain vital statistics records on that child but current law restricts the release of the records if the child's record is flagged. The FDLE states that under this revision, after the information is released to the MEPIC, the Office of Vital Statistics will then reflag the missing child's record to ensure that law enforcement is notified if other requests for the record are received.

The bill clarifies the false information offense, which the FDLE believes could be read as providing false information to the parents or guardians of a missing child. The FDLE believes legislative intent appears to be providing false information concerning a child reported missing by their parents or guardian.

The bill allows the FDLE to continue to retain the fingerprints of individuals who are missing through adulthood until they are recovered. The FDLE believes that this change will not only aid in the recovery of missing adults but also missing children, particularly where the child is missing for many years.

### **Section 10 (Department of Law Enforcement duties)**

Section 10 of the bill amends s. 943.03, F.S., which, in part, authorizes the FDLE to enter into contracts with other state agencies to make "photostats" and transmit information by "teletype"; maintain a "statewide, integrated violent crime information system"; and serve as custodial manager of the "statewide telecommunications and data network" maintained by the FDLE. This terminology no longer reflects current operations, services, and responsibilities.

The FDLE is the central repository of criminal justice information for the State of Florida and operates under the authority of s. 943.05, F.S., and chapter 11C, F.A.C. The FDLE maintains the central repository of criminal history records, as well as "hot files" that provide data such as wanted and missing persons, stolen vehicles, guns and property, and domestic violence injunctions. These databases are made accessible to all criminal justice agencies statewide through the FCIC, which links agencies to the FBI's NCIC. The FDLE's Automated Fingerprint Identification System provides immediate positive identification of fingerprints of arrested persons and an automatic update of the criminal history files. The Criminal Justice Network

(CJNet) provides a secure network for law enforcement agencies to access key intelligence databases, relevant publications, and other related information-sharing links.

The bill deletes obsolete provisions and makes other clarifying and technical changes, including but not limited to, updating certain terms due to advancements in technology.

### **Section 11 (Florida Violent Crime and Drug Control Council)**

Section 11 of the bill amends s. 943.031, F.S., which addresses the composition and responsibilities of, and other matters pertaining to, the Florida Violent Crime and Drug Control Council and its committees.

The FDLE provides staff to the council which disburses funds (when and if appropriated) to reimburse state and local law enforcement for violent crime investigations, drug cases, and victim/witness protection. The council is required to conduct at least two meetings a year, collect and review agencies' financial updates in receipt of advanced funding, disperse funds, and prepare and submit an annual report. As a result of budget reductions, the violent crime and drug funding has not been appropriated since FY 2007-2008 and the victim/witness protection funding was reduced to \$100,000.<sup>2</sup>

The bill provides that the council shall meet at least annually instead of semi-annually. It clarifies that meetings of the council and committees within the council may be conducted by conference call, teleconferencing, or similar technology. It clarifies that duties of the council and committees within the council will be carried out subject to available funding being provided by the Legislature. It provides that the council may require a recipient of proactive funding to return all or any portion of provided, but yet-unexpended funds to the council.

### **Section 12 (Sexual offender registration)**

Section 12 of the bill amends s. 943.0435, F.S., which, in part, requires qualifying sexual offenders to provide specified identifying information. The FDLE maintains Florida's sexual offender registry which contains this identifying information.

The bill amends the statute to conform to current requirements and practices in all sexual registration chapters by adding fingerprints and photographs to information that must be provided as part of the sexual offender registration process.

### **Section 13 (Search of registration information regarding sexual predators and sexual offenders prior to certain appointment or employment)**

Section 13 of the bill amends s. 943.04351, F.S., which requires a state agency or governmental subdivision to search the sexual offender registration records prior to appointing or hiring someone to work or volunteer at a park, playground, day care center, or other place where

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<sup>2</sup> According to information provided by FDLE staff via e-mail communication, the reduction was in the 2007 2C special appropriations bill. The FDLE received \$500,000 and the bill reduced the funding by \$400,000 to give the FDLE what it currently receives: \$100,000.

children regularly congregate. The search is done using the applicant's name or other identifying information and is conducted via the Internet site maintained by the FDLE.

The bill expands requirements for state agencies employing persons who work or volunteer at parks, playgrounds and day care centers to include a search of the national sexual offender public website maintained by the FBI. The current law requiring a search of Florida's sexual offender registry was enacted in 2004, prior to the availability of the national public search. The FDLE believes that this revision ensures that state agencies and governmental subdivisions have the most complete information available about sexual offenders from other states who may either fail to register or identify themselves as such when applying for employment. The entire Florida sexual offender registry is submitted to the national registry daily. As such, results from a search of the national registry will include any Florida registry matches as well as any publicly available matches from other state registries.

#### **Section 14 (Background screening of athletic coaches)**

Section 14 of the bill amends s. 943.0438, F.S., which requires independent sanctioning authorities to conduct a search of an athletic coach's identifying information against the state and national sexual predators and sexual offenders registries. The bill makes a technical change to delete an obsolete date.

#### **Section 15 (Definitions)**

Section 15 of the bill amends s. 943.045, F.S., which defines words and phrases used in ss. 943.045-943.08, F.S., which govern the administration of the Criminal Justice Information Program within the FDLE.

The bill defines the term "biometric" to mean impressions, reproductions or representations of human physical characteristics, such as DNA fingerprints, palm prints and foot prints, eye retinas and irises, voice patterns and facial images, such as booking and drivers' license photographs, which when measured and analyzed can be used for identification purposes. The FBI is incorporating systems that can identify palm prints and facial features. The FDLE states that this definition accommodates other modalities for identifying people at the state and national level. The FDLE recommends these changes in order to specify methods used for identification purposes for biometric identification for the Criminal Justice Information Services.

The bill also adds "offender registration information" to the definition of the term "criminal justice information" and replaces obsolete language in the definition of the term "criminal history information."

#### **Section 16 (Criminal Justice Information Program)**

Section 16 of the bill amends s. 943.05, F.S., which sets forth duties of the Criminal Justice Information Program. Currently, domestic violence and repeat violence injunction information is electronically transmitted to and between criminal justice agencies via the FCIC. Court orders of protection issued under chapter 39, F.S., are often orders directing an abusing parent to have no contact with a child, not to visit the child's school, etc.

The bill adds injunctions to prevent child abuse issued under chapter 39, F.S., to the Domestic and Repeat Violence Injunction Statewide Verification System. The FDLE states that this change allows for law enforcement officers to be made aware of these injunctions through the same methods currently used for warrants and domestic violence injunctions.

### **Section 17 (Criminal justice information; collection and storage; fingerprinting)**

Section 17 of the bill amends s. 943.051, F.S., which requires fingerprinting of adults and minors charged with or convicted of felonies or misdemeanors, as specified in the statute. The statute also states that a minor shall be fingerprinted and the fingerprints shall be sent to the FDLE for specific misdemeanor crimes. When this occurs, the submission of fingerprints to the FDLE results in the creation of a criminal history record for the juvenile.

The bill requires submission of palm prints and photographs in addition to fingerprints for those currently required to be fingerprinted. The bill also provides an exception to the fingerprinting requirement for a minor issued a civil citation pursuant to s. 985.12, F.S. The FDLE states that this exception will ensure that the civil citation process works to allow diversion from the criminal justice system and avoidance of a criminal history record for a juvenile in one of these programs.

### **Section 18 (Disposition reporting)**

Section 18 of the bill amends s. 943.052, F.S., which requires arresting agencies to include on the arrest fingerprint card the offender-based transaction system number. The FDLE states that over 90 percent of these submissions are electronic using Livescan machines at booking facilities. A required field in these automated submissions (and for entry into the Computerized Criminal History file) is the offender based transaction system number. This number is recorded on the arrest affidavit and provided to the Clerk of Court. The number is used to help link the reported arrest to the subsequent court disposition.

Additionally, all 67 Clerks of Court submit electronic files of prosecutor and court disposition information to the FDLE. These files are in an established format that allows the FDLE to receive and process them automatically. The Department of Corrections submits fingerprints and palm prints electronically for each inmate being processed into prison through one of their Reception Centers and the Department of Juvenile Justice has Livescan fingerprint capability (booking devices) at their Juvenile Assessment Facilities and submits fingerprints and palm prints of juvenile offenders.

The bill changes the reference from fingerprint cards to fingerprint submissions in recognition of the fact that over 90 percent of incoming arrests are electronic. The bill also updates the court disposition provision of the statute to reflect current practice. All 67 Clerks report electronically at least monthly, and they have to use a format that the FDLE can receive and process electronically.

The bill also removes the requirement to submit information to the FDLE upon a person being released from a state correctional institution, since there is currently no fingerprint Type of



Transaction for a release and there is no automated way to enter release information into the computerized criminal history file.

The bill also removes the requirement to submit information to the FDLE upon a person being released from Department of Juvenile Justice (DJJ) custody since currently the FDLE does not get release information from the DJJ.

### **Section 19 (Dissemination of criminal justice information)**

Section 19 of the bill amends s. 943.053, F.S., which provides that criminal justice information derived from federal criminal justice information systems or criminal justice information systems of other states shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency.

The National Crime Prevention and Privacy Compact Act of 1998 established an infrastructure by which states can exchange criminal history records for noncriminal justice purposes according to the laws of the requesting state. The act also provides for reciprocity among the states to share records without charging each other for the information. The Compact establishes a council to promulgate rules and procedures for the effective use of the Interstate Identification Index (III) System for noncriminal justice purposes.

The bill provides that criminal justice information derived from federal criminal justice information systems or systems of other states shall not be disseminated in a manner inconsistent with the rules instituted by the National Crime Prevention and Privacy Compact or with other applicable laws or rules.

### **Section 20 (Exchange of federal criminal history records and information)**

Section 20 of the bill amends s. 943.054, F.S., which, in part, provides that criminal history information derived from any U.S. Department of Justice criminal justice information system is available to certain entities, including criminal justice agencies for criminal justice purposes and, pursuant to applicable federal laws and regulations, for use in connection with licensing or local or state employment.

The bill provides that this information is available pursuant to applicable federal laws and regulations, including those instituted by the National Crime Prevention and Privacy Compact, for use in connection with licensing or local or state employment.

### **Section 21 (Access to criminal history information provided by the FDLE to qualified entities)**

Section 21 of the bill amends s. 943.0542, F.S., which provides for access to criminal history information by certain qualified entities. A qualified entity must submit to the FDLE a request for screening an employee or volunteer “on a completed fingerprint card” or the request may be submitted electronically. Each such request must be accompanied by a fee for a statewide criminal history check as established in s. 943.053, F.S., plus the amount charged by the FBI for the national criminal history check.

The bill updates language to remove the reference to hard fingerprint cards and only reference electronic fingerprint submissions. The FBI stopped accepting fingerprint cards in April 2011. It also provides that payments made for criminal history checks must be made in the manner prescribed by the FDLE by rule. These fees are set in law but the timing of payments is established in administrative rule. The FDLE states that last year the Legislature authorized invoicing of these entities and the bill clarifies that this option may be set in rule in the future.

### **Section 22 (Criminal justice information network and information management)**

Section 22 of the bill amends s. 943.0544, F.S., which provides that the FDLE manages and operates the Criminal Justice Network which allows for information and data sharing by criminal justice agencies across the state.

The bill specifies the name of the statewide telecommunications and data network as the “Criminal Justice Network” and corrects a reference relating to the Criminal Justice Network (changing the term “intraagency” to “intrastate”).

### **Section 23 (Records and audits)**

Section 23 amends s. 943.055, F.S., which addresses audits conducted by the Criminal Justice Information Program. This program audits state and local criminal justice agencies to assure compliance with federal and state laws and regulations pertaining to the operation of criminal justice information systems. The program also audits noncriminal justice agencies, including state agencies that receive state and national criminal history record checks and public and private organizations that submit record check requests under the National Child Protection Act (1993), as amended, and s. 943.0542, F.S. The FBI Criminal Justice Information Services Security Policy, v.5.1 Appendix J, offers guidelines for auditing noncriminal justice agencies.

The bill conforms the statute to current practice by expanding audit requirements for the Criminal Justice Information Program to apply to noncriminal justice agencies.

### **Section 24 (Access to, and review and challenge of, criminal history records)**

Section 24 amends s. 943.056, F.S., which provides a mechanism for an individual to verify the accuracy and completeness of a criminal history record. Upon determining what the record should contain in order to be complete and accurate, the Criminal Justice Information Program must conform state and federal records to reflect corrected criminal history information.

The bill clarifies that the FDLE will request that federal records be corrected by notifying the FBI of the need for correction of records. The FDLE cannot make corrections directly to federal records.

### **Section 25 (Prearrest, postarrest, or teen court diversion program expunction)**

Section 24 of the bill amends s. 943.0582, F.S. The FDLE processes expunction applications for minors who successfully complete a prearrest, postarrest, or teen court diversion program after

being arrested for a nonviolent misdemeanor under s. 943.0582, F.S. Applications for prearrest or postarrest diversion expunction must be submitted no later than 6 months after completion of the diversion program. In compliance with the statute, the FDLE must reject juvenile diversion applications that are received after the 6-month application deadline, even though an applicant has completed the diversion program and met all local criteria.

The FDLE believes that current s. 943.0582(3)(c), F.S., is unworkable in practice, as it conditions eligibility for this form of expunction on the admission criteria of the particular diversion program in which the juvenile defendant participated. The FDLE believes that eligibility should not (and was not intended) to vary according to the way different diversion programs are organized and administered from county to county, and should be based on criteria (first-time, non-violent misdemeanor, as defined) applied to the juvenile applicant as an individual, not to the diversion program in which he or she participates.

The bill extends the time limit for applying for a juvenile diversion expunction after completion of the diversion program from 6 to 12 months, and conditions eligibility on the qualifications of the applicant rather than on those of the diversion program in which he or she participates.

### **Sections 26 and 27 (Court-ordered expunction of criminal history records; court-ordered sealing of criminal history records)**

Sections 26 and 27 of the bill amend ss. 943.0585 and 943.059, F.S., which, respectively, address court-ordered expunction of criminal history records and court-ordered sealing of criminal history records. These statutes set forth the criteria that must be met in order to be eligible to have a criminal history record expunged or sealed. In addition, these statutes also provide that in order to have a criminal history record expunged or sealed within the State of Florida, an individual must first make application to the FDLE for a Certificate of Eligibility.

Currently, the FDLE understands the law to mean that a person can only get one court-ordered expunction (s. 943.0585, F.S.) or one court-ordered seal (s. 943.059, F.S.) in a lifetime. The exception is that a person can apply to have a record expunged after it has been sealed for 10 years. The juvenile diversion expunction (s. 943.0582, F.S.) and the automatic juvenile “purge” expunction (s. 943.0515, F.S.) do not count against this once-in-a-lifetime limitation.

The FDLE believes that a very close reading of the current statutes could potentially open to dispute this once-in-a-lifetime limitation. The FDLE states that, for example, currently, a person must state, when applying for a seal under s. 943.059, F.S., that he or she “has never secured a prior sealing or expunction of a criminal history record under this section.” However, s. 943.059, F.S., relates to sealing only, so a person could argue that he or she does have an expunction under s. 943.059, F.S. (though the person may actually have received an expunction under the appropriate expunction statute, s. 943.0585, F.S.). This same glitch appears in s. 943.0585, F.S.

The statutes make receipt of an expunction or seal from another jurisdiction a disqualification, without elaboration. The FDLE states that the laws of other states vary widely with regard to sealing and expunging criminal history records. In order to make a determination whether an action taken on a record from another state should disqualify a person from applying for a court-ordered expunction or seal in Florida, FDLE attorneys must conduct extensive research to

determine if the action more closely resembles Florida's court-ordered expunction or seal (limited to once in a lifetime) or one of the other kinds of expunction that would not disqualify an application if it occurred in Florida, e.g., juvenile diversion expunction, automatic juvenile "purge" expunction, or administrative expunction.

The bill replaces the phrase "under this section" in both seal and expunge statutes with a clarification that the subject cannot have secured either a court-ordered expunction or a court-ordered seal under s. 943.0585 or s. 943.059, F.S., as applicable.

The bill also removes references to having received an expunction or sealing "from any jurisdiction outside the state" as a disqualifier for seeking expunction or sealing in Florida.

### **Section 28 (Law enforcement agency accreditation)**

Section 28 of the bill amends s. 943.125, F.S., which provides for a law enforcement accreditation program to address certain aspects of law enforcement, including, but not limited to: law enforcement disciplinary procedures and rights; collection and preservation of evidence; use of force; use of criminal investigative funds; seizure and forfeiture of contraband articles; vehicle pursuits; recording and processing citizens' complaints; and handling natural and manmade disasters. The Commission for Florida Law Enforcement Accreditation (CFA) was created in 1995 and is staffed by the FDLE.

In 1996, the Legislature repealed the Department of Corrections' oversight authority of county correctional facilities. As a result, county correctional professionals determined that a state accreditation process should be established. The Florida Corrections Accreditation Commission (FCAC) was formed in 1998 to create a process for correctional facilities to incorporate uniform standards for county jails.

In 2005, the Association of Pretrial Professionals (APPF) approached the FCAC and requested an accreditation program for agencies with pretrial responsibilities. Two years later, Florida's Chief Inspector General asked for the development of an accreditation program for the Inspectors General investigation function. As a result of requests by county correctional, pretrial diversion, and inspectors general professionals for accreditation programs, accreditation duties were expanded beyond law enforcement. FDLE staff currently supports the Commission for Florida Law Enforcement Accreditation and the Florida Corrections Accreditation Commission.

The bill provides for accreditation of state and local law enforcement agencies, correctional facilities, public agency offices of inspectors general, and the pretrial diversion operations within offices of the state attorneys, county government, or sheriffs' offices. The bill further provides that, subject to available funding, the FDLE will employ support staff to the Commission for Florida Law Enforcement Accreditation and the Florida Corrections Accreditation Commission.

The bill clarifies that the state accreditation process is voluntary. The bill also makes technical changes to correct the name of the Corrections Accreditation Commission.

**Section 29 (Officers' minimum qualifications for employment or appointment)**

Section 29 of the bill amends s. 943.13, F.S., which provides the minimum qualifications for employment as a law enforcement officer or correctional officer. Under this statute, in the case of administrative delays in processing fingerprints, a person may be employed for a period not to exceed 1 year while the fingerprint check is pending if he or she meets other hiring criteria. Previously when the FBI received paper-inked fingerprint cards, the delay in processing was often 6 weeks, and at times up to 3 months. Because of these delays, there was a need to hire an applicant before the state and national criminal history results were available to the employing agency.

The bill deletes the provision allowing an individual to be employed up to 1 year while a fingerprint check is pending. Technology has improved response times to the point that response times are measured in hours rather than months. All submissions to the FDLE and the FBI are electronic so mailing time is eliminated. In addition, the FDLE has committed to a 3 business day turn around on these submissions. The FDLE packages the state and national responses into a single response and provides it to the employing agency via secure email or secure file transfer. The FDLE states that since response delays no longer exist, this provision is not needed.

**Section 30 (Implementation of federal Law Enforcement Officers Safety Act of 2004)**

Section 30 of the bill amends s. 943.132, F.S., which requires the Criminal Justice Standards and Training Commission to authorize a uniform firearms proficiency verification card to facilitate implementation of the federal Law Enforcement Officers Safety Act of 2004. The federal act relates to the carrying of concealed firearms by qualified law enforcement officers and qualified retired law enforcement officers.

The bill deletes references to the "Law Enforcement Officers Safety Act of 2004." References to the underlying U.S. Code are retained. By not referring to a particular Congressional Act but rather to the underlying U.S. Code, the statute will not have to be amended each time Congress makes changes to the federal law as each such change is made by a bill with a particular "common name."

**Section 31 (Revocation of employment; investigation)**

Section 31 of the bill amends s. 943.1395, F.S., which, in part, authorizes the Criminal Justice Standards and Training Commission to revoke the certification of an officer who is not in compliance with specified provisions. Section 943.1395(6)(a), F.S., provides that the commission shall cause to be investigated any ground for revocation from the employing agency or from the Governor, and the commission may investigate verifiable complaints against an officer.

The Criminal Justice Standards and Training Commission is a politically appointed body that does not have the authority to investigate verifiable complaints against an officer. The bill clarifies that the commission may cause verifiable complaints to be investigated.

**Section 32 (Florida Criminal Justice Executive Institute)**

Section 32 of the bill amends s. 943.1755, F.S., which provides that the Florida Criminal Justice Executive Institute (FCJEI) is housed within the FDLE. Through the FCJEI, the FDLE delivers educational programs for Florida criminal justice executives. The FCJEI provides external training for high-level criminal justice executives, as well as law enforcement officers and officials. The FCJEI is a Criminal Justice Standards and Training Commission certified training center subject to specific rules and audits.

The bill clarifies that the FDLE maintains responsibility for delivering and facilitating all Florida Criminal Justice Executive Institute training.

The bill allows for the appointment of designees to the FCJEI Policy Board to act on behalf of the Secretary of the Department of Corrections, the Secretary of the Department of Juvenile Justice, and the Executive Director of the FDLE. This change allows these individual agency heads to appoint designees from within their agency that have background and experience in leadership and management training. As designee members of the FCJEI Policy Board they will represent their respective agency interests in the development and delivery of leadership programs offered through and sponsored by the FCJEI. This provision is already allowed for the Commissioner of Education.

The bill corrects the number of members that constitute a quorum of the FCJEI Policy Board. Seven members are needed to obtain a quorum for the 12-person board.

**Section 33 (Criminal justice executives; training)**

Section 33 of the bill amends s. 943.1757, F.S., which requires the Florida Criminal Justice Executive Institute (FCJEI) Policy Board to identify the needs of criminal justice executives regarding issues related to diverse populations to ensure that appropriate training is provided. Beginning January 1, 1995, and every 5 years thereafter, the policy board is required to submit a report to the appropriate substantive committees of the Legislature describing executive training needs. The board must also prepare a biennial report to the appropriate substantive committees describing how the training needs are being met.

In order to eliminate redundant reporting requirements, the bill deletes the requirement to report to substantive committees of the Legislature every 5 years. The FDLE will continue to submit the required biennial report describing how these training needs are being met. Additionally, the FDLE prepares an annual report for the policy board that addresses these training requirements and is available upon request.

**Section 34 (Criminal justice trust funds; regional training councils)**

Section 34 of the bill amends s. 943.25, F.S., relating to criminal justice trust funds. Section 943.25(9), F.S., provides that up to \$250,000 per annum from the Criminal Justice Standards and Training Trust Fund may be used to develop, validate, update, and maintain test or assessment instruments relating to selection, employment, training, or evaluation of officers, instructors, or courses.

The bill adds “computer-based testing” relating to selection, employment, training, or evaluation of officers, instructors, or courses.

### **Section 35 (DNA database)**

Section 35 of the bill amends s. 943.325, F.S., relating to the DNA database, which provides, in part, that the results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies, at the request of the agency. The term “criminal justice agencies” is defined by reference to a statutory provision which has changed as a result of other changes in the bill. The bill corrects the statutory citation (conforming change).

### **Section 36 (State-operated criminal analysis laboratories)**

Section 36 of the bill amends s. 943.325, F.S., which, in part, provides that testing services of state-operated criminal analysis laboratories shall be available to any defendant in a criminal case upon showing of good cause and upon order of the court with jurisdiction in the case. The term “good cause” is defined as a finding by the court that the laboratory service being sought by the defendant is anticipated to produce evidence that is relevant and material to the defense, that the service sought is one which is reasonably within the capacity of the state-operated laboratory and will not be unduly burdensome upon the laboratory, and that the service cannot be obtained from any qualified private or nonstate operated laboratory within the state or otherwise reasonably available to the defense. The court shall assess the costs of such service ordered by the court to the defendant or the local public defender’s office.

The FDLE states that it has recently encountered a spate of orders seeking to allow defense experts access to the FDLE labs for purposes of testing evidence relevant to the defendant’s defense in an ongoing prosecution. The FDLE further states the presence of any non-FDLE personnel in the FDLE labs causes significant concern regarding contamination, misuse of equipment, and other recognized lab protocol concerns. The FDLE has always considered s. 943.33, F.S., to allow court-ordered testing on behalf of a defendant to be conducted by FDLE personnel, not defense experts or others acting on behalf of the defense.

The bill amends the definition of “good cause” to add that the service sought is one that will not impede normal daily laboratory operations, negatively impact the laboratory’s certifications or equipment calibration, and violate the laboratory’s national certification or accreditation standards.

The bill also provides that s. 943.33, F.S., does not authorize the presence of defense experts or others representing the defense inside a state-operated laboratory facility where actual testing or analysis is occurring, and does not authorize the use of state-operated laboratory equipment or facilities by defense experts or other persons not employed by or acting on behalf of the FDLE.

The bill also requires the FDLE to assess the costs of all testing, equipment operation, personnel costs, and any other costs directly attributable to the court-ordered testing to the defendant or the defendant’s counsel, whether public, private, or pro bono, who obtained the testing order.

**Section 37 (Transportation and protective services)**

Section 37 of the bill amends s. 943.68, F.S., which, in part, provides that the FDLE shall submit a report each July 15 to the Governor, the Legislature, and the Cabinet, detailing all transportation and protective services provided under specified subsections of the statute within the preceding fiscal year.

The FDLE is charged with providing protective services to the Governor, the Governor's immediate family, and the Governor's office and mansion. The FDLE also provides protective or transportation services to other individuals in certain circumstances when requested by the Governor, the Lieutenant Governor, a member of the Cabinet, the President of the Senate, the Speaker of the House, or the Chief Justice of the Supreme Court.

The FDLE special agents are assigned to two different pay cycles (160 hours) in which they document their hours of service in the FDLE's Automated Investigative Management System (AIM). Therefore, some agents may be at the beginning or middle of a pay cycle on June 30th (the end of the fiscal year) when the transportation and protective services costs are obtained from the AIM.

The bill changes the due date of the annual Transportation and Protective Services Report from July 15th to August 15th. The FDLE states this change will allow for a more accurate reflection of costs associated with protective services provided during a fiscal year. This change will allow all agents who worked protective operations during the fiscal year but whose pay cycle has not ended by June 30th to submit their hours at the end of their cycle.

**Section 38 (Effective date)**

Section 38 of the bill provides that bill takes effect on July 1, 2013.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.



**B. Private Sector Impact:**

It is unknown at this time if changes relating to court-ordered costs of laboratory services provided by the FDLE will substantially impact defendants and private defense counsel (relative to the current law on court-ordered costs for these services).

**C. Government Sector Impact:**

It is unknown at this time if changes relating to court-ordered costs of laboratory services provided by the FDLE will substantially impact public defenders (relative to the current law on court-ordered costs for these services).

The bill does not have a fiscal impact on the FDLE.<sup>3</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>3</sup> FDLE Analysis.