

**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 Judiciary Committee

BILL: CS/SB 1974

INTRODUCER: Judiciary Committee and Senator Negron

SUBJECT: Department of Law Enforcement

DATE: March 29, 2010                      REVISED: \_\_\_\_\_

|    | ANALYST   | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|-----------|----------------|-----------|------------------|
| 1. | Cellon    | Cannon         | CJ        | <b>Favorable</b> |
| 2. | Treadwell | Maclure        | JU        | <b>Fav/CS</b>    |
| 3. | _____     | _____          | JA        | _____            |
| 4. | _____     | _____          | _____     | _____            |
| 5. | _____     | _____          | _____     | _____            |
| 6. | _____     | _____          | _____     | _____            |

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

The bill contains the Florida Department of Law Enforcement’s (FDLE) legislative requests for 2010.

The bill revises the process for removing mental health records from FDLE’s mental competency database for purposes of firearms purchases. These revisions align the process with federal requirements.

The bill requires FDLE to retain fingerprints submitted as part of the job application process upon official written request. The bill also requires FDLE to store the additional fingerprints that it retains in the Automated Fingerprint Identification System (AFIS)/Applicant Fingerprint Retention and Notification Program (AFRNP) and to search all incoming Florida arrest fingerprint cards against the fingerprints retained in AFIS/AFRNP.

The bill requires the Criminal Justice Standards and Training Commission to adopt rules requiring all law enforcement officers to demonstrate proficiency in firearms and to specify in the rules how often officers must demonstrate firearm proficiency and what the consequences will be if an officer fails to demonstrate firearm proficiency.

The bill updates the Basic Recruit Training Program exemption statutes to require employing agencies and criminal justice selection centers to verify that a person has completed the appropriate basic recruit training program and has served as an officer for the required amount of time without breaks in service.

It provides for removal of correctional probation officers from the list of persons who must pass a basic skills exam in order to be admitted to a basic recruit training program.

The bill also provides authorization for the policy board of the Florida Criminal Justice Executive Institute to authorize fees to be collected for delivering criminal justice executive training. The bill requires these fees to be deposited in the Criminal Justice Standards and Training Trust Fund and used solely for the payment of necessary and proper expenses incurred by FDLE for criminal justice executive training.

The bill deletes the Monroe County crime lab from the listed participating labs in the state crime lab system because this lab has closed.

This bill substantially amends the following sections of the Florida Statutes: 790.065, 943.05, 943.12, 943.131, 943.1395, 943.17, 943.1755, and 943.32.

## **II. Present Situation:**

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

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

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

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

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

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

<sup>4</sup> Section 790.065(5), F.S.

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

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

A determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.<sup>6</sup>

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

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

### **FDLE’s Mental Competency Database**

In 2006, Florida enacted House Bill 151, which required FDLE to compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.<sup>8</sup> Codified in s. 790.065(2)(a), F.S., the bill also required clerks of court to submit these records to FDLE, and authorized FDLE to disclose the collected data to federal governmental agencies and other states for use exclusively in determining the lawfulness of a firearm sale or transfer.<sup>9</sup>

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

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

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

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

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

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

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

<sup>11</sup> Section 790.065(2)(a)4.c., F.S. As of July, 2007, Florida clerks had entered 4,283 records into the MECOM database.

MECOM database,<sup>12</sup> and are accessed by the FPP as part of the screening of potential firearm purchasers.

### **Removal of Mental Health Records from the MECOM Database**

Florida law establishes when FDLE may delete mental health records from its MECOM database.<sup>13</sup> For persons who have been adjudicated an incapacitated person under s. 774.331, F.S., FDLE must delete such person's mental health records from the MECOM database if:

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

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

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

### **NICS Improvement Act**

The NICS Improvement Amendments Act of 2007<sup>14</sup> (Act) became law on January 8, 2008. The Act authorizes the establishment of state programs that allow individuals to seek relief from a mental health firearm disability. Section 105 of the Act sets forth requirements related to the relief from disabilities programs, which states must satisfy to be eligible for grant funding.

FDLE reports that the following minimum criteria must be satisfied for a state to establish a qualifying mental health relief from firearms disabilities program under the Act:

- **State Law:** The relief program must be established by State statute, or administrative regulation or order pursuant to state law.
- **Application:** The relief program must allow a person who has been formally adjudicated as a mental defective<sup>15</sup> or committed involuntarily to a mental institution<sup>16</sup> to apply or

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

<sup>13</sup> Section 790.065(2)(a)4.c., F.S.

<sup>14</sup> Pub. L. 110-180 (2008).

<sup>15</sup> Federal regulations at 27 C.F.R. § 478.11 define the term "adjudicated as a mental defective" as:

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

<sup>16</sup> Federal regulations at 27 C.F.R. § 478.11 define the term "committed to a mental institution" as:

petition for relief from federal firearms prohibitions (disabilities) imposed under 18 U.S.C. §§ 922(d)(4) and (g)(4).

- **Lawful Authority:** A state court, board, commission or other lawful authority (per state law) must consider the applicant's petition for relief. The lawful authority may only consider applications for relief due to mental health adjudications or commitments that occurred in the applicant state.
- **Due Process:** The petition for relief must be considered by the lawful authority in accordance with principles of due process, as follows:
  - The applicant has the opportunity to submit his or her own evidence to the lawful authority considering the relief application.
  - An independent decision maker – someone other than the individual who gathered the evidence for the lawful authority acting on the application – reviews the evidence.
  - A record of the matter is created and maintained for review.
- **Proper Record:** In determining whether to grant relief, the lawful authority must receive evidence concerning and must consider the:
  - Circumstances regarding the firearms disabilities imposed by 18 U.S.C. s. 922(g)(4);
  - Applicant's record, which must include at a minimum, the applicant's mental health and criminal history records; and
  - Applicant's reputation, developed, at a minimum, through character witness statements, testimony, or other character evidence.
- **Proper Findings:** In granting relief, the lawful authority must issue findings establishing that:
  - The applicant will not be likely to act in a manner dangerous to public safety; and
  - Granting the relief will not be contrary to the public interest.
- **De Novo Judicial Review of a Denial:** The State must provide for de novo judicial review of relief application denials that includes the following principles:
  - If relief is denied, the applicant may petition the state court of appropriate jurisdiction to review the denial, including the record of the denying court, board, commission or other lawful authority.

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A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

- Judicial review is de novo in that the reviewing court may, but is not required to, give deference to the decision of the lawful authority that denied the application for relief.
- The reviewing court has discretion to receive additional evidence necessary to conduct an adequate review.
- **Required Updates to State and Federal Records:** Pursuant to Section 102(c) of the NICS Improvement Act, the State, on being made aware that the basis under which the record was made available does not apply or no longer applies:
  - Updates, corrects, modifies, or removes the record from any database that the Federal or State government maintains and makes available to the NICS, consistent with the rules pertaining to the database; and
  - Notifies the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.
- **Recommended Procedure:** It is recommended (not required) that the State have a written procedure (e.g., state law, regulation, or administrative order) to address the update requirements.<sup>17</sup>

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

- Hire a vendor to develop a plan, methodology and staffing to research and provide missing final disposition data from selected Clerks of Court.
- Hire a consultant to develop a warrant exchange interface between the Escambia County Sheriff's Office and Clerk of Court; a warrant exchange interface will also be developed for Hillsborough County and servers will be purchased to process warrant information for these two counties.
- Hire a consultant to program the Mental Competency (MECOM) database to accept relief of firearm disability information.<sup>18</sup>

FDLE reports that further failure to conform to NICS criteria also jeopardizes future grant funding. Total amounts appropriated in the act for 2010 and 2011 grants are \$2.5 million for increasing the number of court dispositions and other firearm disqualifiers in the criminal history repository, and another \$1.25 million is available to the state court system. It is estimated that no more than 10 states will have perfected their relief from disability process, and therefore share the grants.<sup>19</sup>

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<sup>17</sup> Florida Department of Law Enforcement, *2010 Analysis: SB 1974*, 2-3 (Mar. 2010).

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.*

## Fingerprint Retention

Florida law sets forth the procedures that must be used whenever a background screening<sup>20</sup> for employment is required by law. There are currently two levels of background screenings – Level I and Level II. Level I background screenings search the state databases using a person’s *name* – these screenings do not require a person to submit fingerprints.<sup>21</sup> Level II background screenings search state and national databases and do require a person to submit fingerprints.<sup>22</sup> FDLE is the entity responsible for conducting background screenings.

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

- Eligible nonprofit scholarship-funding organizations;<sup>23</sup>
- The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation for the purpose of screening applicants for a slot machine occupational license;
- Professional guardians, and employees of professional guardians who have a fiduciary responsibility to award;<sup>24</sup>
- Part-time, full-time, or auxiliary law enforcement officers, correctional officers, and correctional probation officers;<sup>25</sup>
- The Department of Juvenile Justice for purposes of screening persons employed by the department, or employed by a provider under contract with the department;
- Employees and contracted personnel with direct student contact of a private school participating in a scholarship program;
- Instructional and non-instructional personnel who are hired or contracted to fill positions that require direct contact with students in any district school system or university lab school; instructional and non-instructional personnel who are hired or contracted to fill positions in any charter school and members of the governing board of any charter school; instructional and non-instructional personnel who are hired or contracted to fill positions that require direct contact with students in an alternative school that operates under contract with a district school system; and student teachers, persons participating in a field experience pursuant to s. 1004.04(6) or s. 1004.85, F.S., and persons participating

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<sup>20</sup> A background screening is a criminal history record check to determine if a person has been arrested and/or convicted of a crime.

<sup>21</sup> See s. 435.03, F.S.

<sup>22</sup> See s. 435.04, F.S.

<sup>23</sup> Section 220.187, F.S., defines the term “eligible nonprofit scholarship-funding organization” as a charitable organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code; is a Florida entity formed under ch. 607, F.S., ch. 608, F.S., or ch. 617, F.S., and whose principal office is located in the state; and complies with the provisions of s. 220.187(6), F.S.

<sup>24</sup> Section 744.102(17), F.S., defines the term “professional guardian” as “any guardian who has at any time rendered services to three or more wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2) is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.” The term “ward” is defined as “a person for whom a guardian has been appointed.” Section 744.102(22), F.S.

<sup>25</sup> These terms are defined in s. 943.10, F.S.

- in a short-term experience as a teacher assistant pursuant to s. 1004.04(10), F.S., in any district school system, lab school, or charter school;
- Non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds;
  - Persons who seek instructional personnel certification pursuant to ch. 1012, F.S.;<sup>26</sup> and
  - Seaport workers.<sup>27</sup>

FDLE enters fingerprints of the above-described individuals in the Automated Fingerprint Identification System (AFIS) and retains them in the Applicant Fingerprint Retention and Notification Program (AFRNP).<sup>28</sup> All incoming Florida arrest fingerprint cards are searched against the fingerprints entered and retained in AFIS/AFRNP.<sup>29</sup> When the subject of retained fingerprints is identified with fingerprints of an incoming Florida arrest, FDLE notifies the licensing or employing agency of the arrest.<sup>30</sup> Agencies that have their records retained must pay FDLE an annual fee<sup>31</sup> and agree to inform FDLE of any change in an employee's employment status.<sup>32</sup>

Currently, the Federal Bureau of Investigation (FBI), which conducts *national* criminal history background checks, does not retain applicant fingerprints submitted by states. Thus, the AFRNP can only conduct searches against incoming *Florida* arrest fingerprints – not arrests made in other states or by the federal government. However, FDLE reports that the FBI is developing a retained fingerprint and arrest notification system, which should be available in 2013.<sup>33</sup>

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

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

Currently, s. 943.12(16), F.S., requires the Commission to promulgate rules for the certification and discipline of officers<sup>34</sup> who engage in those specialized areas found to present a high risk of harm to the officer or the public at large and which would in turn increase the potential liability of an employing agency. In March 2006, the Commission formally adopted bi-annual firearms

<sup>26</sup> See ss. 220.187(6)(b), 551.107(7)(c), 744.3135(4)(b), 943.13(5), 985.644(5)(b), 1002.421(3)(a), 1012.465, and 1012.56(2)(d), F.S.

<sup>27</sup> See s. 311.12(7)(d), F.S.

<sup>28</sup> See s. 943.05, F.S.; Rule 11C-6.010, F.A.C.; and Florida Department of Law Enforcement, *Criminal History Record Checks/Background Checks Fact Sheet* (Jan. 22, 2010), available at [http://www.fdle.state.fl.us/Content/getdoc/59ec2830-4e4f-4b24-b0af-ba471237d70c/BackgroundChecks\\_FAQs\\_012210\\_Final.aspx](http://www.fdle.state.fl.us/Content/getdoc/59ec2830-4e4f-4b24-b0af-ba471237d70c/BackgroundChecks_FAQs_012210_Final.aspx) (last visited Mar. 23, 2010). Only digital fingerprints can be entered into AFIS and retained in the AFRNP database.

<sup>29</sup> See s. 943.05(2)(h), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> The annual fee is currently \$6. See Rule 11C-6.010, F.A.C.

<sup>32</sup> Section 943.05(2)(h), F.S.

<sup>33</sup> Florida Department of Law Enforcement, *supra* note 17, at 3.

<sup>34</sup> Section 943.10(14), F.S., defines the term “officer” as “any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer.”

qualification requirements for all certified law enforcement officers. During the rule promulgation process for rules effective September 28, 2009, the Joint Administrative Procedures Committee agreed that while the Commission has general statutory authority to promulgate a rule, the Commission should seek specific authority to promulgate a rule relating to the bi-annual firearms qualification requirement.<sup>35</sup>

### **Basic Recruit Training Program – Exemptions**

In Florida, the Commission is responsible for establishing uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers.<sup>36</sup> With few exceptions, every prospective law enforcement officer (LEO), correctional officer (CO), and correctional probation officer (CPO) must successfully complete a Commission-developed basic recruit training program in order to receive their certification.

Current law provides that those that do not have to complete a basic recruit training program are those who:

- Have completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the federal government; and
- Have served as a full-time sworn officer in another state or for the federal government for at least one year provided there is no more than an eight-year break in employment, as measured from the separation date of the most recent qualifying employment to the time a complete application is submitted for an exemption under this section.<sup>37</sup>

Additionally, existing law provides that a certified officer who has separated from employment and who is not reemployed within four years after the date of separation must meet the requirements of s. 943.13, F.S., but does not have to complete a basic recruit training program.<sup>38</sup> Officers who are not reemployed within eight years after separation must meet the requirements of s. 943.13, F.S., *and* complete a basic recruit training program.

If a person is seeking an exemption from completing a basic recruit training program, the person's employing agency must verify that the person meets the above-described exemption criteria.<sup>39</sup> The statute also requires the person's employing agency to submit documentation about the person's criminal justice experience to the Commission. Those who the Commission finds to be exempt from having to complete a basic recruit training program must still demonstrate proficiency in high-liability areas and pass the state officer certification exam within one year after receiving an exemption. If these requirements are not met within one year, the person must complete a basic recruit training program.<sup>40</sup>

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<sup>35</sup> Florida Department of Law Enforcement, *supra* note 17, at 4.

<sup>36</sup> Florida Department of Law Enforcement, *Criminal History Record Checks /Background Checks*, available at <http://www.fdle.state.fl.us/cjst/commission/index.html> (last visited Mar. 23, 2010).

<sup>37</sup> Section 943.13(9), F.S.

<sup>38</sup> Section 943.1395(3), F.S.

<sup>39</sup> Section 943.131(2), F.S.

<sup>40</sup> *Id.*

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

Current law requires the Commission to design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses.<sup>41</sup> The Commission must assure that entrance into the basic recruit training program for law enforcement, correctional, and correctional probation officers be limited to those who have passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the Commission.<sup>42</sup>

Unlike law enforcement officers and correctional officers, correctional probation officers are required by the Department of Corrections to possess a bachelor's degree from an accredited college or university in order to be certified. Attaining a four-year degree is more demanding than passing the basic skills exam required by s. 943.17(1)(g), F.S. The FDLE reports that the skill level required to obtain a bachelor's degree is much higher than the skill level tested by the basic skills exam.<sup>43</sup>

Existing law authorizes the creation of criminal justice selection centers.<sup>44</sup> Selection centers provide standardized evaluation of pre-service candidates and inservice officers for all units of the local criminal justice system in a region, thereby establishing a pool of qualified candidates for criminal justice agencies. Each selection center is under the direction and control of a postsecondary public school or a criminal justice agency within the selection center's region.

## **Florida Criminal Justice Executive Institute**

Section 943.1755, F.S., creates the Florida Criminal Justice Executive Institute (Institute) whose purpose is to provide quality training for criminal justice executives and to improve relationships between law enforcement agencies and the diverse populations they serve. The Institute is established within FDLE, affiliated with the state university system, and directed by a policy board comprised of the following members:

- The Executive Director of FDLE;
- The Secretary of Corrections;
- The Commissioner of Education or his or her designee;
- The Secretary of Juvenile Justice;
- Three chiefs of municipal police departments nominated by the Florida Police Chiefs Association;
- Three sheriffs nominated by the Florida Sheriffs Association;
- A county jail administrator nominated by the Florida Sheriffs Association and the Florida Association of Counties; and
- A representative nominated by the State Law Enforcement Chiefs Association.

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<sup>41</sup> Section 943.17, F.S.

<sup>42</sup> Section 943.17(1)(g), F.S.

<sup>43</sup> Florida Department of Law Enforcement, *supra* note 17, at 5.

<sup>44</sup> Section 943.256, F.S.

Section 943.1755(4), F.S., requires the Institute's policy board to establish administrative procedures and operational guidelines necessary to ensure that criminal justice executive training needs are identified and met through the delivery of quality instruction.

FDLE reports that prior to July 1, 1995, tuition fees for criminal justice executive training were deposited in (and expenditures made from) the Florida Law Enforcement Academy Trust Fund. This trust fund was terminated in 1994,<sup>45</sup> and fund balances were moved to the Operating Trust Fund. Since 1995, criminal justice executive training tuition fees for certain courses have been deposited in the Operating Trust Fund while tuition fees for other courses have been deposited in the Criminal Justice Standards and Training Trust Fund.<sup>46</sup>

### **Crime Laboratories**

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

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

According to FDLE, at the request of Monroe county, the Key West crime lab became part of the state crime lab system in 1994. In a June 1998 report, the Office of Program Policy Analysis and Accountability recommended that the now state-run Key West crime lab be eliminated due to costs associated with its operation. The Key West crime lab was closed on July 1, 2001. Consequently, the reference to Monroe county's locally funded laboratory in s. 943.32, F.S., is obsolete.<sup>47</sup>

### **III. Effect of Proposed Changes:**

#### **Removal from MECOM Database**

The bill removes the current language in statute governing the Florida Department of Law Enforcement's (FDLE) ability to delete mental health records in the Mental Competency (MECOM) database relating to the sale and transfer of firearms. The bill replaces it with language that establishes more specific procedures that must be followed when a person wants to have his or her mental health records removed from FDLE's MECOM database. Specifically, the bill:

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<sup>45</sup> Chapter 94-265, Laws of Fla.

<sup>46</sup> Florida Department of Law Enforcement, *supra* note 17, at 5.

<sup>47</sup> *Id.*

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

The bill will bring Florida into alignment with the requirements of the National Instant Criminal Background Check System (NICS) Improvement Act and will restore the state's eligibility for federal grant funding.

### **Fingerprint Retention**

The bill amends s. 943.05(2)(g), F.S., to require FDLE to retain the applicant fingerprints of additional entities. Specifically, the bill requires FDLE to retain applicant fingerprints upon official written request from an agency executive director or secretary or his or her designee, or

from qualified entities<sup>48</sup> participating in the volunteer and employee criminal history screening system under s. 943.0542, F.S., or as otherwise required by law. The bill requires FDLE to store the additional fingerprints that it retains in the Automated Fingerprint Identification System (AFIS) and the Applicant Fingerprint Retention and Notification Program (AFRNP) and to search all incoming Florida arrest fingerprint cards against the fingerprints retained in AFIS/AFRNP. The bill requires the agencies or qualified entities to notify each person fingerprinted that the fingerprints will be retained.

The agency or qualified entity must notify FDLE of any change in status of the person when the change removes or eliminates the agency or qualified entity's basis or need for receiving reports of any arrest of that person. This notification will ensure that the agency or qualified entity will not be obligated to pay the annual fee related to the retention and search of the person's fingerprints.

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

### **Firearm Proficiency Rules**

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

### **Basic Recruit Training – Exemptions**

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

- Has completed a comparable basic recruit training program for the applicable criminal justice discipline in another state or for the Federal Government *or a previous Florida basic recruit training program*; and
- Has served as a full-time sworn officer in another state or for the Federal Government for at least one year provided there is no more than an eight-year break in employment, *or was a previously certified Florida officer provided there is no more than an eight-year break in employment.*<sup>49</sup>

<sup>48</sup> Section 943.0542(1)(b), F.S., defines the term "qualified entity" as "a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services."

<sup>49</sup> See s. 943.13(9), F.S.

- Submit documentation about a person's criminal justice experience to the Commission.

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

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

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

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

### **Criminal Justice Executive Institute – Criminal Justice Standards and Training Trust Fund**

The bill amends s. 943.1755(4), F.S., to provide that the Institute's policy board may authorize fees to be collected for delivering criminal justice executive training. The bill requires such fees to be deposited in the Criminal Justice Standards and Training Trust Fund<sup>50</sup> and used solely for the payment of necessary and proper expenses incurred by FDLE for criminal justice executive training. FDLE reports that this bill does not create any new sources of fees.<sup>51</sup>

### **Monroe County Crime Lab**

The bill amends s. 943.32, F.S., to remove the obsolete reference to Monroe county because the lab was closed in 2001.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

<sup>50</sup> The Criminal Justice Standards and Training Trust Fund is created for the purpose of providing for the payment of necessary and proper expenses incurred by the operation of the commission and the Criminal Justice Professionalism Program and providing commission-approved criminal justice advanced and specialized training and criminal justice training school enhancements and of establishing the provisions of s. 943.17, F.S., and developing the specific tests provided under s. 943.12(9), F.S. Section 943.25(2), F.S.

<sup>51</sup> Florida Department of Law Enforcement, *supra* note 17, at 5.

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:

Persons seeking to remove a firearm disability due to a mental defect may incur some costs associated with filing a petition and litigating the issue in court under the new process created by the bill.

Qualified entities participating in the volunteer and employee criminal history screening system who request the retention of fingerprints may incur minimal costs associated with providing volunteers and employees with notice that their fingerprints are being retained.

C. Government Sector Impact:

Regarding the changes to the process governing a petition for relief of the firearm disability under the bill, the Florida Department of Law Enforcement (FDLE) reports that it has received no petitions for relief under the current statute. Accordingly, it does not anticipate that this bill will generate a significant number of petitions. Otherwise, FDLE reports that there is no anticipated fiscal impact from this bill.<sup>52</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

**FDLE is Given Rule-Making Authority**

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

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<sup>52</sup> Florida Department of Law Enforcement, *supra* note 17, at 6 and 8.

**VIII. Additional Information:**

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

**CS by Judiciary on March 26, 2010:**

The committee substitute:

- Changes the title of the bill to an “act relating to Department of Law Enforcement” from an “act relating to Public Safety.”
- Clarifies the role of an agency or qualified entity in notifying the Florida Department of Law Enforcement when a person’s fingerprints may be deleted from the retained fingerprint database and ensures the annual fee for retention will no longer be assessed.

- B. **Amendments:**

None.