

By the Committee on Judiciary; and Senator Negron

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

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30 more than a certain period of time; amending s.
31 943.17, F.S.; deleting a requirement that correctional
32 probation officers pass a specified basic skills
33 examination and assessment instrument before entrance
34 into the basic recruit training program; amending s.
35 943.1755, F.S.; authorizing fees for criminal justice
36 executive training from the Florida Criminal Justice
37 Executive Institute; providing for the deposit and use
38 of such fees; amending s. 943.32, F.S.; deleting state
39 funding eligibility for a locally funded crime
40 laboratory in Monroe County; providing an effective
41 date.

42
43 Be It Enacted by the Legislature of the State of Florida:

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

47 790.065 Sale and delivery of firearms.—

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

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

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

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

57 3. Has had adjudication of guilt withheld or imposition of
58 sentence suspended on any felony or misdemeanor crime of

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59 domestic violence unless 3 years have elapsed since probation or
60 any other conditions set by the court have been fulfilled or
61 expunction has occurred; or

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

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

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

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

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

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

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

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

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

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

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175 943.05 Criminal Justice Information Program; duties; crime
176 reports.-

177 (2) The program shall:

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

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

200 2. To Agencies ~~may~~ participate in this search process,
201 agencies or qualified entities must notify each person
202 fingerprinted that his or her fingerprints will be retained, pay
203 by payment of an annual fee to the department, and inform by

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204 ~~informing~~ the department of any change in the affiliation,
205 employment, or contractual status ~~or place of affiliation,~~
206 ~~employment, or contracting~~ of each person ~~the persons~~ whose
207 fingerprints are retained under paragraph (g) when such change
208 removes or eliminates the agency or qualified entity's basis or
209 need for receiving reports of any arrest of that person, so that
210 the agency or qualified entity will not be obligated to pay the
211 upcoming annual fee for the retention and searching of that
212 person's fingerprints to the department. The department shall
213 adopt a rule setting the amount of the annual fee to be imposed
214 upon each participating agency or qualified entity for
215 performing these searches and establishing the procedures for
216 the retention of fingerprints and the dissemination of search
217 results. The fee may be borne by the agency, qualified entity,
218 or person subject to fingerprint retention or as otherwise
219 provided by law. ~~Fees may be waived or reduced by the executive~~
220 ~~director for good cause shown.~~ Consistent with the recognition
221 of criminal justice agencies expressed in s. 943.053(3), these
222 services will be provided to criminal justice agencies for
223 criminal justice purposes free of charge.

224 (4) Upon notification that a federal fingerprint retention
225 program is in effect, and provided that the department is funded
226 and equipped to participate in such a program, the department
227 shall, when a state and national criminal history record check
228 and retention of submitted prints are authorized or required by
229 law, retain the fingerprints as provided in paragraphs (2) (g)
230 and (h) and advise the Federal Bureau of Investigation to retain
231 the fingerprints at the national level for searching against
232 arrest fingerprint submissions received at the national level.

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

235 943.12 Powers, duties, and functions of the commission.—The
236 commission shall:

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

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

249 943.131 Temporary employment or appointment; minimum basic
250 recruit training exemption.—

251 (2) If an applicant seeks an exemption from completing a
252 commission-approved basic recruit training program, the
253 employing agency or criminal justice selection center must
254 verify that the applicant has successfully completed a
255 comparable basic recruit training program for the discipline in
256 which the applicant is seeking certification in another state or
257 for the Federal Government or a previous Florida basic recruit
258 training program. Further, the employing agency or criminal
259 justice selection center must verify that the applicant has
260 served as a full-time sworn officer in another state or for the
261 Federal Government for at least 1 year provided there is no more

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262 than an 8-year break in employment or was a previously certified
263 Florida officer provided there is no more than an 8-year break
264 in employment, as measured from the separation date of the most
265 recent qualifying employment to the time a complete application
266 is submitted for an exemption under this section. When the
267 employing agency or criminal justice selection center obtains
268 written documentation regarding the applicant's criminal justice
269 experience, the documentation must be submitted to the
270 commission. The commission shall adopt rules that establish
271 criteria and procedures to determine if the applicant is exempt
272 from completing the commission-approved basic recruit training
273 program and, upon making a determination, shall notify the
274 employing agency or criminal justice selection center. An
275 applicant who is exempt from completing the commission-approved
276 basic recruit training program must demonstrate proficiency in
277 the high-liability areas, as defined by commission rule, and
278 must complete the requirements of s. 943.13(10) within 1 year
279 after receiving an exemption. If the proficiencies and
280 requirements of s. 943.13(10) are not met within the 1 year, the
281 applicant must seek an additional exemption pursuant to the
282 requirements of this subsection ~~complete a commission-approved~~
283 ~~basic recruit training program, as required by the commission by~~
284 ~~rule~~. Except as provided in subsection (1), before the employing
285 agency may employ or appoint the applicant as an officer, the
286 applicant must meet the minimum qualifications described in s.
287 943.13(1)-(8), and must fulfill the requirements of s.
288 943.13(10).

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

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291 943.1395 Certification for employment or appointment;
292 concurrent certification; reemployment or reappointment;
293 inactive status; revocation; suspension; investigation.—

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

306 Section 6. Paragraph (g) of subsection (1) of section
307 943.17, Florida Statutes, is amended to read:

308 943.17 Basic recruit, advanced, and career development
309 training programs; participation; cost; evaluation.—The
310 commission shall, by rule, design, implement, maintain,
311 evaluate, and revise entry requirements and job-related
312 curricula and performance standards for basic recruit, advanced,
313 and career development training programs and courses. The rules
314 shall include, but are not limited to, a methodology to assess
315 relevance of the subject matter to the job, student performance,
316 and instructor competency.

317 (1) The commission shall:

318 (g) Assure that entrance into the basic recruit training
319 program for law enforcement and, ~~correctional, and correctional~~

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320 ~~probation~~ officers be limited to those who have passed a basic
321 skills examination and assessment instrument, based on a job
322 task analysis in each discipline and adopted by the commission.

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

325 943.1755 Florida Criminal Justice Executive Institute.—

326 (4) The policy board shall establish administrative
327 procedures and operational guidelines necessary to ensure that
328 criminal justice executive training needs are identified and met
329 through the delivery of quality instruction. The policy board
330 may authorize fees to be collected for delivering criminal
331 justice executive training. Fees for criminal justice executive
332 training collected pursuant to this subsection shall be
333 deposited in the Criminal Justice Standards and Training Trust
334 Fund and used solely for payment of necessary and proper
335 expenses incurred by the department for criminal justice
336 executive training.

337 Section 8. Section 943.32, Florida Statutes, is amended to
338 read:

339 943.32 Statewide criminal analysis laboratory system.—There
340 is established a statewide criminal analysis laboratory system
341 to be composed of:

342 (1) The state-operated laboratories under the jurisdiction
343 of the Department of Law Enforcement in Ft. Myers, Jacksonville,
344 Pensacola, Orlando, Tallahassee, Tampa, and such other areas of
345 the state as may be necessary;

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

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349 for state matching funds; and

350 (3) Such other laboratories as render criminal analysis
351 laboratory services to criminal justice agencies in the state.

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