

CHAPTER 2010-62

Committee Substitute for House Bill No. 951

An act relating to public safety; amending s. 790.065, F.S.; requiring certain reports to be submitted in an automated format; deleting provisions relating to automatic deletion of mental health records under specified conditions from the Department of Law Enforcement's database of such records kept for purposes of sale and delivery of firearms and substituting a procedure for petition to obtain judicial relief from firearm disabilities and, upon obtaining such relief, the removal of the individual mental health records from the department's database; amending s. 943.05, F.S.; revising provisions relating to the Criminal Justice Information Program under the Department of Law Enforcement; authorizing agencies to request the retention of certain fingerprints by the department; providing for rulemaking to require employers to keep the agencies informed of any change in the affiliation, employment, or contractual status of each person whose fingerprints are retained in certain circumstances; providing departmental duties upon notification that a federal fingerprint retention program is in effect; amending s. 943.053, F.S.; removing obsolete references relating to the dissemination of criminal justice information; amending s. 943.12, F.S.; requiring the Criminal Justice Standards and Training Commission to adopt rules relating to the maintenance of officers who engage in those specialized areas found to present a high risk of harm to the officer or the public at large; requiring the commission to adopt rules requiring the demonstration of proficiency in firearms for all law enforcement officers; amending s. 943.131, F.S.; revising provisions relating to exemptions from completing a commission-approved basic recruit training program; amending s. 943.1395, F.S.; revising provisions relating to qualifications for certified law enforcement officers separated from employment for more than a certain period of time; amending s. 943.17, F.S.; deleting a requirement that correctional probation officers pass a specified basic skills examination and assessment instrument before entrance into the basic recruit training program; amending s. 943.32, F.S.; deleting state funding eligibility for a locally funded crime laboratory in Monroe County; providing an effective date.

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

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

790.065 Sale and delivery of firearms.—

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

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

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

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

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

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

a. As used in this subparagraph, “adjudicated mentally defective” means 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.

b. As used in this subparagraph, “committed to a mental institution” means 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.

c. In order to check for these conditions, the department shall 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. Clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall may be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject. ~~The department shall delete any mental health record from the database upon request of an individual when 5 years have elapsed since the individual’s restoration to capacity by court order after being adjudicated an incapacitated person under s. 744.331, or similar laws of any other state; or,~~

~~in the case of an individual who was previously committed to a mental institution under chapter 394, or similar laws of any other state, when the individual produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of request for removal of the record. When the department has received a subsequent record of an adjudication of mental defectiveness or commitment to a mental institution for such individual, the 5-year timeframe shall be calculated from the most recent adjudication of incapacitation or commitment.~~

d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the circuit court that made the adjudication or commitment for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, 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. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph 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.

e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the 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.

f.d. The department is authorized to disclose the collected data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose any collected data to the Department of

Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

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

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

(2) The program shall:

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

(h)1. For each agency or qualified entity that officially requests retention of fingerprints or for which retention is otherwise required As authorized by law, search all arrest fingerprint submissions ~~cards~~ received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (g).

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

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

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

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

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

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

943.053 Dissemination of criminal justice information; fees.—

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

(11) A criminal justice agency that is authorized under federal rules or law to conduct a criminal history background check on an agency employee who is not certified by the Criminal Justice Standards and Training Commission under s. 943.12 may submit to the department the fingerprints of the noncertified employee to obtain state and national criminal history information. ~~Effective January 15, 2007,~~ the fingerprints submitted shall be retained and entered in the statewide automated fingerprint identification system authorized by s. 943.05 and shall be available for all purposes and uses authorized for arrest fingerprint submissions cards entered in the statewide automated fingerprint identification system pursuant to s. 943.051. The department shall search all arrest fingerprint submissions cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section. In addition to all purposes and uses authorized for arrest fingerprint submissions cards for which submitted fingerprints may be used, any arrest record that is identified with the retained employee fingerprints must be reported to the submitting employing agency.

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

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

(16) ~~Adopt~~ Promulgate rules for the certification, maintenance, and discipline of officers 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. The commission shall adopt rules requiring the demonstration of proficiency in firearms for all law enforcement officers. The commission shall by rule include the frequency of demonstration of proficiency with firearms and the consequences for officers failing to demonstrate proficiency with firearms.

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

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

(2) If an applicant seeks an exemption from completing a commission-approved basic recruit training program, the employing agency or criminal justice selection center must verify that the applicant has successfully completed a comparable basic recruit training program for the discipline in which the applicant is seeking certification in another state or for the Federal Government or a previous Florida basic recruit training program. Further, the employing agency or criminal justice selection center must verify that the applicant has served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment or was a previously certified Florida officer provided there is no more than an 8-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. When the employing agency or criminal justice selection center obtains written documentation regarding the applicant's criminal justice experience, the documentation must be submitted to the commission. The commission shall adopt rules that establish criteria and procedures to determine if the applicant is exempt from completing the commission-approved basic recruit training program and, upon making a determination, shall notify the employing agency or criminal justice selection center. An applicant who is exempt from completing the commission-approved basic recruit training program must demonstrate proficiency in the high-liability areas, as defined by commission rule, and must complete the requirements of s. 943.13(10) within 1 year after receiving an exemption. If the proficiencies and requirements of s. 943.13(10) are not met within the 1 year, the applicant must seek an additional exemption pursuant to the requirements of this subsection ~~complete a commission-approved basic recruit training program, as required by the commission by rule.~~ Except as provided in subsection (1), before the employing agency may employ or appoint the applicant as an officer, the applicant must meet the minimum qualifications described in s. 943.13(1)-(8), and must fulfill the requirements of s. 943.13(10).

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

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

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

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

943.17 Basic recruit, advanced, and career development training programs; participation; cost; evaluation.—The commission shall, by rule, 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. The rules shall include, but are not limited to, a methodology to assess relevance of the subject matter to the job, student performance, and instructor competency.

(1) The commission shall:

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

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

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

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

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

Approved by the Governor May 11, 2010.

Filed in Office Secretary of State May 11, 2010.