

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 585	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Criminal Justice Subcommittee; Hood and others	119 Y's	0 N's
<b>COMPANION BILLS:</b>	(CS/SB 1434)	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 585 passed the House on April 4, 2013, and subsequently passed the Senate on April 26, 2013. The bill is the Florida Department of Law Enforcement's (FDLE) 2013 legislative package, and amends a variety of statutes in ch. 943, F.S., relating to FDLE, its duties, and its programs. Specifically, the bill:

- Adds additional individuals to the list of persons that counties and cities may conduct state and national criminal history screenings on;
- Adds an additional item to the list of items that a secondary metal recycler cannot purchase;
- Revises duties relating to missing person reporting;
- Requires the Violence Crime and Drug Control Council to meet annually instead of semiannually, and specifies that additional meetings may take place when determined by FDLE and the chair;
- Requires sexual offenders to provide additional information during registration;
- Requires states 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 name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice;
- Redesignates the statewide automated fingerprint identification system as the statewide automated biometric identification system;
- Increases the period in which a minor can seek expunction after completing a diversion program;
- Clarifies 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);
- Provides for accreditation of correctional facilities, public agency offices of inspectors general, and pretrial diversion programs; and
- Amends provisions relating to state-operated crime labs to specify who can have access to such labs.

The bill also amends a variety of statutes to make conforming changes, correct statutory cross-references, update terminology, and to delete obsolete provisions.

The bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on June 5, 2013, ch. 2013-116, L.O.F., and will become effective on July 1, 2013.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **City and County Criminal History Checks (Sections 1 and 2)**

Sections 125.5801 and 166.0442, F.S., authorizes counties and cities, by ordinance, to require employment screening for:

- Any position of county/city employment or appointment which the governing body of the county/city finds is critical to security or public safety; and
- 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 governing body of the county/city finds is critical to security or public safety.

The statutes do not currently permit a county or city to conduct criminal history checks on persons such as taxi drivers, tow truck operators, and other individuals likely to have close contact with persons in vulnerable situations, because such contact could not be construed as “ha[ving] access to any public facility or publicly operated facility that the governing body of the municipality finds is critical to security or public safety.”<sup>1</sup>

#### Effect of the Bill

The bill amends ss. 125.5801 and 166.0442, F.S., to specify that counties and cities are authorized to require state and national criminal history screening for:

- Any position of county/city employment or appointment, whether paid, unpaid, or contractual, which the governing body of the county/city finds is critical to security or public safety;
- Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who is subject to licensing or regulation by the county; and
- Any private contractor, employee of a private contractor, vendor, repair person, for-hire chauffeur, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the county/city finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

#### **Unidentified Deceased Persons (Section 3)**

Section 406.145, F.S., requires a law enforcement officer investigating the death of an unidentified person to immediately identify the body. If not immediately identified, the investigating law enforcement agency (LEA) must complete an Unidentified Person Report and enter the data, through the Florida Crime Information Center (FCIC), into the Unidentified Person File of the National Crime Information Center (NCIC).<sup>2</sup> An Unidentified Person Report is the form identified by the Florida Department of Law Enforcement (FDLE) that LEAs use to compile information entered into the Unidentified Person File.<sup>3</sup>

According the FDLE, while the Unidentified Person Report continues to exist, the form is unnecessary to complete an unidentified entry into FCIC/NCIC, and many LEAs prefer electronic or automated methods of exchanging information that are more accurate, timely and efficient than the form.<sup>4</sup>

#### Effect of the Bill

The bill amends s. 406.145, F.S., to delete the requirement that a LEA investigating the death of an unidentified person complete an Unidentified Person Report when submitting information for entry into the Unidentified Person File of the NCIC. LEAs are still required to enter data concerning the unidentified body into the Unidentified Person File of the NCIC.

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<sup>1</sup> FDLE Analysis of House Bill 585, March 6, 2013 (on file with the Criminal Justice Subcommittee).

<sup>2</sup> Section 406.145, F.S.

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

<sup>4</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

## Secondary Metal Recyclers (Section 4)

Section 538.26(5), F.S., prohibits a secondary metals recycler<sup>5</sup> from purchasing any restricted regulated metals property listed in s. 538.26(5)(b), F.S. unless the secondary metals recycler obtains reasonable proof that the seller:

- Owns such property. Reasonable proof of ownership may include, but is not limited to, a receipt or bill of sale; or
- Is an employee, agent, or contractor of the property's owner who is authorized to sell the property on behalf of the owner. Reasonable proof of authorization to sell the property includes, but is not limited to, a signed letter on the owner's letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property.

### Effect of the Bill

The bill amends s. 538.26(5)(b), F.S., to add the following to the list of items that a secondary metal recycler cannot purchase:

- More than two lead-acid batteries, or any part or component thereof, in a single purchase or from the same individual in a single day.

## Missing Persons (Sections 5, 6, 7, and 8)

The Missing Endangered Persons Information Clearinghouse (MEPIC) is the central repository of information regarding missing endangered persons in Florida.<sup>6</sup> 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, MEPIC has worked with partner agencies to develop the Florida AMBER Plan<sup>7</sup> and Florida Silver Alert Plan.<sup>8</sup> Under these plans, MEPIC is responsible for issuing all AMBER Alerts, Missing Child Alerts<sup>9</sup> and State Silver Alerts in Florida. MEPIC also provides assistance to law enforcement in cases involving unidentified deceased and crimes against children.<sup>10</sup>

### *Immunity*

Section 937.021(5)(b), F.S., grants specified entities immunity from civil liability when responding to a request from a law enforcement agency to release information or photographs pertaining to a missing adult (similar immunity is given to entities responding to requests to release information pertain to Amber Alerts and Silver Alerts). Currently, there is no such immunity for those responding to requests to release information relating to missing children.

### *Birth Records*

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<sup>5</sup> Section 538.18, F.S., defines the term "secondary metals recycler" as any person who:

- Is engaged, from a fixed location, in the business of purchase transactions or gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

<sup>6</sup> <http://www.fdle.state.fl.us/MCICSearch/> (last visited on March 8, 2013).

<sup>7</sup> The Florida AMBER Plan was established in 2000, making Florida the second state in the nation to develop a statewide AMBER Alert. The purpose of the Plan is to broadcast critical information of an abducted child as quickly as possible to the media and general public. <http://www.fdle.state.fl.us/MCICSearch/Amber.asp> (last visited on March 8, 2013).

<sup>8</sup> The statewide Silver Alert is a plan to aid local law enforcement in the rescue or recovery of a missing person who suffers from irreversible deterioration of intellectual faculties. <http://www.fdle.state.fl.us/MCICSearch/SilverAlerts.asp> (last visited on March 8, 2013).

<sup>9</sup> To aid in the recovery of missing children who are in danger where there is no evidence of an abduction, FDLE established the Missing Child Alert in 2003. <http://www.fdle.state.fl.us/MCICSearch/Amber.asp> (last visited on March 8, 2013).

<sup>10</sup> *Id.*

Section 937.024, F.S., requires the Office of Vital Statistics (Office) to, on a monthly basis, collect a list of missing children provided by FDLE and:

- Flag the birth certificate of each identified missing child in order to make its employees aware that a birth certificate is that of a child reported as missing; and
- Recall each missing child's birth certificate or birth record from the local registrar of vital statistics in the county of the missing child's birth.

The state and local registrar are prohibited from providing a copy of the birth certificate or information concerning the birth record of a child whose record has been flagged unless the flag has been removed.<sup>11</sup>

#### *False Information*

Section 937.025, F.S., requires schools to take certain actions and report information about missing children who are students at the school. Subsection (7) of the statute makes it a first degree misdemeanor<sup>12</sup> 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. As drafted, it is unclear whether crime involves providing false information to a law enforcement officer, or to the parents of the missing child.

#### *Fingerprints*

Section 937.028, F.S., requires 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, be destroyed when the child reaches 18 years of age. According to FDLE, this provision was designed in response to a concern that private fingerprinting companies might keep children's fingerprints on file after they had reached adulthood.<sup>13</sup>

#### Effect of the Bill

The bill amends s. 937.021, F.S., to grant specified entities immunity from civil liability when responding to a request from a law enforcement agency to release information or photographs pertaining to a missing child.

The bill amends s. 937.024, F.S., to remove the requirement that the Office of Vital Statistics recall each missing child's birth certificate or birth record from the local registrar of vital statistics in the county of the missing child's birth. The Office is still required to flag the record and the state and local registrar are still prohibited from releasing the record unless the flag is removed. However, the bill adds language authorizing the state and local registrar to remove a flag from a record upon MEPIC's official request. According to FDLE, this will allow parents of missing children to obtain vital statistics records through a request from MEPIC.

The bill amends s. 937.025(7), F.S., to provide 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 whose parent, family member, or guardian reported the child missing. This language clarifies that the crime requires providing false information to a law enforcement officer, and not the parents of a missing child.

The bill amends s. 937.028, F.S., to allow FDLE to retain the fingerprints of any missing person, including children, until FDLE is notified that the missing person has been recovered.

### **Violent Crime & Drug Control Council (Section 10)**

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<sup>11</sup> Section 937.024(2)(a), F.S. The Office must also collect from FCIC a list of missing children who have been located, identify which of the located children were born in Florida, and remove its flags from the birth certificates or birth records of such children. Section 937.024(1), F.S.

<sup>12</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>13</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

In 1993, the Florida Violent Crime Council was established to financially assist local law enforcement agencies in extraordinary violent crime cases.<sup>14</sup> After Florida's crime trend slightly shifted from violent crime to drug crimes, the 2001 Legislature approved the expansion of the Council to include funding for drug investigations. Renamed the Violent Crime and Drug Control Council (Council), the Council now has the ability to provide supplemental funding to local and state law enforcement agencies working violent crime, major drug and money laundering investigations, and victim/witness protection and relocation efforts.<sup>15</sup> The Council is currently required to conduct at least two meetings a year, but may meet more often when determined by the chair that extraordinary circumstances require it.<sup>16</sup>

The Legislature supports the funding of the Council on a year-to-year basis.<sup>17</sup> However, 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>18</sup>

#### Effect of the Bill

The bill requires the Council to meet annually instead of semiannually, and specifies that additional meetings may take place when determined by FDLE and the chair. The bill authorizes Council meetings to take place via conference call, teleconference, or other similar technology. The bill also specifies that the duties of the Council must be carried out *subject to available funding*, and requires recipients of the Council's funding to return unexpended funds to the Council.

#### **Sexual Offender Registration Information (Section 11)**

Sexual offenders must comply with a number of statutory registration requirements.<sup>19</sup> For example, sexual offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>20</sup> During initial registration, a sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department, who then provides the information to FDLE for inclusion in the statewide database.<sup>21</sup> Failure to comply with these requirements is generally a third degree felony.<sup>22</sup>

#### Effect of the Bill

The bill amends s. 943.0435, F.S., to require sexual offenders to provide their fingerprints and photograph during the initial registration period. This conforms s. 943.0435, F.S., to the other sexual offender registration statutes.

#### **Search of Registration Information (Section 12)**

Section 943.04351, F.S., requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,<sup>23</sup> to conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

#### Effect of the Bill

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<sup>14</sup> <http://www.fdle.state.fl.us/Content/getdoc/5bcffc57-b3f4-4190-833b-0236a4608d1e/Home.aspx> (last visited on March 10, 2013).

<sup>15</sup> *Id.*

<sup>16</sup> Section 943.031(4), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>19</sup> *See generally*, ss. 943.0435, 944.607, and 985.4815, F.S.

<sup>20</sup> Section 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of the Department of Corrections (DOC) or a local jail are required to register with DOC and the jail, respectively.

<sup>21</sup> *See generally*, ss. 943.0435, 944.607, and 985.4815, F.S.

<sup>22</sup> Section 943.0435, F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>23</sup> These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

The bill amends s. 943.04351, F.S., to require state agencies and governmental subdivisions to search the person's name through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice, rather than FDLE's database. According to FDLE, 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 publically available matches from other state registries.<sup>24</sup> If the national site is not available, the bill requires a search of FDLE's database.

### **Biometric Data (Sections 14 and 15)**

Section 943.045, F.S., defines terms used in relation to FDLE's Criminal Justice Information Program.

#### Effect of the Bill

The bill amends s. 943.045, F.S., to define "biometric" as "impressions, reproductions, or representations of human physical characteristics, such as DNA, fingerprints, palm prints, footprints, retina and iris images, voice patterns, and facial images, such as booking and driver license photographs, that, when measured and analyzed, can be used for identification purposes."

The bill also amends s. 943.05, F.S., to require the Criminal Justice Information Program to establish, implement, and maintain a statewide automated biometric identification system (rather than simply a fingerprint system) that is capable of reading, classifying, matching, and storing fingerprints, rolled fingerprints, latent fingerprints, palm prints, and facial images.

The bill amends a variety of statutes in ch. 943, F.S., to refer to various biometric data rather than simply fingerprints.

### **Criminal Justice Information Program (Section 15)**

Section 943.05, F.S., requires the Criminal Justice Information Program to establish, implement, and maintain a Domestic and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies relating to domestic and repeat violence injunctions.

#### Effect of the Bill

The bill amends s. 943.05, F.S., to require that the Domestic and Repeat Violence Injunction Statewide Verification System be capable of electronically transmitting information relating to injunctions to prevent child abuse issued under ch. 39, F.S.

### **Minors - Fingerprints (Section 16)**

Section 943.051, F.S., requires a minor who is charged with or found to have committed specified offenses to be fingerprinted, which must be submitted to FDLE. This results in the creation of a criminal history record for the minor.

#### Effect of the Bill

The bill amends s. 943.051, F.S., to create an exception to the fingerprinting requirement if the minor is issued a civil citation pursuant to s. 985.12, F.S.

### **Dissemination of Information (Sections 18 and 19)**

Section 943.053, F.S., prohibits criminal justice information derived from federal criminal justice information systems or criminal justice information systems of other states from being disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency.

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<sup>24</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

Section 943.054, F.S., specifies that criminal history information derived from any United States Department of Justice criminal justice information system is available pursuant to applicable federal laws and regulations for use in connection with or local or state employment for other uses as authorized by federal or state laws which have been approved by the United State Attorney General.

According to FDLE, 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 and provide 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.<sup>25</sup>

#### Effect of the Bill

The bill amends s. 943.053, F.S., to prohibit criminal justice information derived from federal criminal justice information systems or systems of other states from being disseminated in a manner inconsistent with the rules instituted by the National Crime Prevention and Privacy Compact or with other applicable laws or rules.

The bill amends s. 943.054, F.S., to specify that criminal history information derived from any United States Department of Justice criminal justice information system is available pursuant to applicable federal laws and regulations, including those instituted by the National Crime Prevention and Privacy Compact.

#### **Access to Criminal History Information (Section 20)**

Section 943.0542, F.S., provides for access to criminal history information by certain qualified entities. Currently, a qualified entity must submit to FDLE a request for screening an employee or volunteer “on a completed fingerprint card” or the request may be submitted electronically.<sup>26</sup> 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.<sup>27</sup>

#### Effect of the Bill

The bill updates language to remove the reference to fingerprint cards and instead only reference electronic fingerprint submissions. According to FDLE, the FBI stopped accepting fingerprint cards in April 2011.<sup>28</sup> The bill also provides that payments made for criminal history checks must be made in the manner prescribed by FDLE by rule. According to FDLE, these fees are set in law, but the timing of payments is established in administrative rule. Last year’s Legislature authorized invoicing of these entities, and the bill clarifies that this option may be set in rule in the future.<sup>29</sup>

#### **Agency Audits (Section 22)**

The Criminal Justice Information 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.<sup>30</sup> 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 and s. 943.0542, F.S.<sup>31</sup> The FBI Criminal Justice Information Services Security Policy, v.5.1 Appendix J, offers guidelines for auditing noncriminal justice agencies.<sup>32</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> Section 943.0542(2), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>29</sup> *Id.*

<sup>30</sup> Section 943.055, F.S.

<sup>31</sup> *Id.* Also see, FDLE Analysis of House Bill 585, February 19, 2013 (on file with Criminal Justice Subcommittee).

<sup>32</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

### Effect of the Bill

The bill amends s. 943.055, F.S., to expand the audit requirements for the Criminal Justice Information Program to apply to noncriminal justice agencies. This conforms the statute to FDLE's current practices.<sup>33</sup>

### **Correcting Criminal History Records (Section 23)**

Section 943.056, F.S., 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 statute requires the Criminal Justice Information Program must conform state *and federal* records to reflect corrected criminal history information. However, the Criminal Justice Information Program cannot make corrections directly to federal records.<sup>34</sup>

### Effect of the Bill

The bill amends s. 943.056, F.S., to require the Criminal Justice Information Program to *request that* federal records be corrected by notifying the FBI of the need for correction of records.

### **Juvenile Expunction (Section 24)**

Section 943.0582, F.S., requires FDLE to expunge the nonjudicial arrest record of a minor who successfully completes a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor. Applications for prearrest or postarrest diversion expunction must be submitted no later than six months after completion of the diversion program.<sup>35</sup> Paragraph (3)(c) requires the applicant to submit an official written statement from the state attorney of the county in which the arrest occurred certifying that the applicant has successfully completed the county's diversion program and that participation in the program is limited to minors arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.

According to FDLE, paragraph (3)(c) unworkable in practice, as it conditions eligibility for expunction on the admission criteria of the particular diversion program in which the juvenile defendant participated.<sup>36</sup> Eligibility should not (and was not intended) to vary according to the way different diversion programs are organized and administered from county to county. Eligibility 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.<sup>37</sup>

### Effect of 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.

### **Sealing and Expunging Criminal History Records (Section 25 and 26)**

Sections 943.0585 and 943.059, F.S., 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 state 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.

In order to be eligible to have a record sealed or expunged, both s. 943.0585 and s. 943.059, F.S., require that applicant have never secured a prior sealing or expunction "under this section." FDLE understands this language to mean that a person can only get one court-ordered expunction (s.

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Section 943.0582(3)(b), F.S.

<sup>36</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>37</sup> *Id.*



943.0585, F.S.) or one court-ordered seal (s. 943.059, F.S.) in a lifetime.<sup>38</sup> However, very close reading of the current statutes leaves a potential for this once in a lifetime limitation to be disputed.

For example, currently, a person must state, when applying for a seal, that he or she “has never secured a *prior sealing or expunction* of a criminal history record *under this section*.” However, the section relates to sealing only, so a person could argue that he or she does have an expunction but that it is under *another section* of the statute, therefore he or she has never applied for an expunction *under this section*. The same glitch appears in both the seal section of the statutes (s. 943.059, F.S.) and the expunction section of the statutes (s. 943.0585, F.S.).

Additionally, in order to be eligible to have a record sealed or expunged, both s. 943.0585 and s. 943.059, F.S., require that applicant have never secured a prior sealing or expunction “from any jurisdiction outside the state.” According to FDLE, the laws of other states vary widely with regard to sealing and expunging criminal history records.<sup>39</sup> 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 our state’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.<sup>40</sup>

#### Effect of the Bill

The bill amends ss. 943.0585 and 943.059, F.S., to replace the phrase “under this section” 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.

#### **Accreditation (Section 27)**

An accreditation program has long been recognized as a means of maintaining the highest standards of professionalism. Accreditation is the certification by an independent reviewing authority that an entity has met specific requirements and prescribed standards.<sup>41</sup>

Section 943.125, F.S., provides legislative intent that law enforcement agencies voluntarily adopt standards of operation designed to promote equal and fair law enforcement, to maximize the capability of law enforcement agencies to prevent and control criminal activities, and to increase interagency cooperation. The statute further encourages the Florida Sheriffs Association and the Florida Police Chiefs Association to develop a law enforcement agency accreditation program that addresses specified aspects of law enforcement (e.g., vehicle pursuits, use of force, prisoner transfers, etc.).<sup>42</sup> In response, the Commission for Florida Law Enforcement Accreditation (CFA) was created in 1995 and is staffed by FDLE.<sup>43</sup>

In 1996, when the Legislature repealed the Department of Corrections' oversight authority of county correctional facilities, county correctional professionals determined that a state accreditation process should be established.<sup>44</sup> The Florida Corrections Accreditation Commission (FCAC) was formed in 1998 to create a process for correctional facilities to incorporate uniform standards for county jails.<sup>45</sup>

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<sup>38</sup> *Id.* The exception is that a person can apply to have a record expunged after it has been sealed for 10 years (s. 985.0585(1), F.S.). Also, 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.

<sup>39</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

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

<sup>41</sup> <http://www.flaccreditation.org/> (last visited on March 10, 2013).

<sup>42</sup> Section 943.125(1)-(4), F.S.

<sup>43</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

In 2005, the Association of Pretrial Professionals approached 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.<sup>46</sup> As a result of requests by county correctional, pretrial diversion, and inspectors general professionals for accreditation programs, CFA's and FCAC's accreditation duties were expanded beyond "law enforcement."

#### Effect of the Bill

The bill amends s. 943.125, F.S., to provide additional legislative intent relating to accreditation standards for correctional facilities, public agency offices of inspectors general, and pretrial diversion programs within offices of the state attorneys, county government, or sheriff's offices. The bill encourages the continuation of a state accreditation program for each of these entities. The CFA is responsible for determining the accreditation standards for law enforcement and inspectors general, and the FCAC must do the same for correctional functions and pretrial diversion programs. FDLE is required, subject to available funding, to employ adequate support staff to the CFA and FCAC in support of each accreditation program.

#### **Minimum Qualifications for Employment (Section 28)**

Section 943.13, F.S., provides the minimum qualifications for employment as a law enforcement officer (LEO) or correctional officer (CO). The statute specifies that in the case of administrative delays in processing fingerprints, a person may be employed for a period not to exceed one year while the fingerprint check is pending if he or she meets other hiring criteria.<sup>47</sup> Previously, when the FBI received paper inked fingerprint cards, the delay in processing was often six weeks and at times, up to three 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.<sup>48</sup>

According to FDLE, technology has improved response times to the point that response times are measured in hours rather than months.<sup>49</sup> All submissions to FDLE and the FBI are electronic so mailing time is eliminated. In addition, FDLE has committed to a three business day turn around on these submissions.<sup>50</sup> 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. Since response delays no longer exist, this provision is not needed.<sup>51</sup>

#### Effect of the Bill

The bill amends s. 943.13, F.S., to delete the provision allowing an individual to be employed up to one year while a fingerprint check is pending.

#### **Firearms - Law Enforcement Officers (Section 29)**

Section 943.132, F.S., requires the Criminal Justice Standards and Training Commission (CJSTC) 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.

#### Effect of the Bill

The bill deletes the reference to the "Law Enforcement Officers Safety Act of 2004," but retains the reference to the U.S. Code. By not referring to a particular Congressional Act, 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." The bill also requires the uniform firearms proficiency

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<sup>46</sup> *Id.*

<sup>47</sup> Section 943.13(5), F.S.

<sup>48</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

verification card to be issued by a firearms instructor with current certifications from the CJSTC (rather than instructors certified by CJSTC).

### **CJSTC Investigations (Section 30)**

Section 943.1395, F.S., authorizes CJSTC 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 an employing agency or from the Governor, and provides that the commission may investigate verifiable complaints against an officer. However, according to FDLE, CJSTC is a politically appointed body that does not have the authority to investigate verifiable complaints against an officer.<sup>52</sup>

#### Effect of the Bill

The bill amends s. 943.1395(6)(a), F.S., to clarify that CJSTC may *cause* verifiable complaints to be investigated.

### **Florida Criminal Justice Executive Institute (Sections 31 and 32)**

The Florida Criminal Justice Executive Institute (FCJIEI) delivers educational programs for Florida criminal justice executives and training for high-level criminal justice executives, LEOs, and law enforcement and officials.<sup>53</sup> Section 943.1755, F.S., establishes FCJIEI within FDLE and provides that FCJIEI is affiliated with the State University System. FCJIEI must cooperate with CJSTC, and must be guided and directed by a policy board composed of specified members. Currently, 6 members constitute a quorum of the policy board.

Section 943.1757, F.S., requires the FCJIEI policy board to, beginning January 1, 1995, and every five years thereafter, to provide the appropriate substantive committees of the legislature a report describing executive training needs. The statute also requires the FCJIEI policy board to submit a biennial report to the legislature describing how the executive training needs are being met.

#### Effect of the Bill

The bill amends s. 943.1755, F.S., to clarify that FDLE maintains responsibility for delivering and facilitating all FCJIEI training, and to specify that 7 members of the policy board constitutes a quorum. The bill also amends s. 943.1757, F.S., to remove the requirement that the FCJIEI policy board submit the training needs report every five years. The biennial report is still required.

### **Regional Training Councils (Section 33)**

Regional training councils advise and assist CJSTC in assessing regional criminal justice training needs and act as extensions of CJSTC in planning, programming, and budgeting for expenditures of moneys in the Criminal Justice Standards and Training Trust Fund. Section 943.25, F.S., requires CJSTC to annually forward to each regional training council a list of its specific recommended priority issues or items to be funded. According to FDLE, CJSTC defers to each regional training council to make their own determination of priorities for their jurisdictions, as this is a specific duty for each council.<sup>54</sup>

#### Effect of the Bill

The bill amends s. 943.25, F.S., to authorize, rather than require, CJSTC to annually forward to each regional training council a list of specific recommended priority issues or items for funding.

### **State-Operated Crime Labs (Section 35)**

Section 943.33, F.S., requires state-operated labs to furnish lab services upon request to law enforcement officials in the state. Lab services must also be available to a defendant in a criminal case

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

upon a showing of good cause and upon order of the court with jurisdiction in the case. The statute defines “good cause” 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.

FDLE reports that they have recently encountered a spate of orders seeking to allow defense experts access to FDLE labs for purposes of testing evidence relevant to the defendant’s defense in an ongoing prosecution.<sup>55</sup> The presence of any non-FDLE personnel in FDLE labs causes significant concern regarding contamination, misuse of equipment, and other recognized lab protocol concerns. 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.<sup>56</sup>

#### Effect of the Bill

The bill amends s. 943.33, F.S., to specify that the *testing* services of state-operated labs *by persons employed by or acting on behalf of the department* must be available to criminal defendants upon good cause shown and court order. The bill amends the definition of “good cause” as follows:

- A finding by the court that the laboratory testing 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, will not be unduly burdensome upon the laboratory, will not impede normal daily laboratory operations, will not negatively impact laboratory certifications or equipment calibration, and does not violate the laboratory's national certification or accreditation standards; 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 bill also specifies 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 the behalf of the FDLE.

#### **Protective Services (Section 36)**

Section 943.68, F.S., requires FDLE to provide protective services to the Governor, the Governor’s immediate family, and the Governor’s office and mansion. The statute also requires FDLE to provide 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. FDLE must submit a report each July 15<sup>th</sup> to the Governor, Legislature and Cabinet detailing all transportation and protective services provided within the preceding fiscal year.<sup>57</sup>

According to FDLE, FDLE special agents are assigned to two different pay cycles (160 hours) in which they document their hours of service in FDLE’s Automated Investigative Management System (AIM). Therefore, some agents may be at the beginning or middle of a pay cycle on June 30<sup>th</sup> (the end of the fiscal year) when the transportation and protective services costs are obtained from AIM.<sup>58</sup>

#### Effect of the Bill

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<sup>55</sup> FDLE Analysis of House Bill 585, March 6, 2013 (on file with the Criminal Justice Subcommittee).

<sup>56</sup> *Id.*

<sup>57</sup> Section 943.68(9), F.S.

<sup>58</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

The bill amends s. 943.68(9), F.S., to change the due date of the annual Transportation and Protective Services Report from July 15<sup>th</sup> to August 15<sup>th</sup>. FDLE reports that this will allow for a more accurate reflection of costs associated with protective services provided during a fiscal year. This will allow all agents who worked protective operations during the fiscal year but whose pay cycle has not ended by June 30<sup>th</sup> to submit their hours at the end of their cycle.<sup>59</sup>

### **Obsolete Provisions & Technical Changes**

The bill amends a variety of statutes to make conforming changes, correct statutory cross-references, to update terminology, and to delete obsolete provisions.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on state revenues.

#### **2. Expenditures:**

FDLE reports that the bill does not have an impact on state expenditures.<sup>60</sup>

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have a fiscal impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

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<sup>59</sup> *Id.*

<sup>60</sup> FDLE Analysis of House Bill 585, March 6, 2013 (on file with the Criminal Justice Subcommittee).