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# Justice Council

## Meeting Packet

**Wednesday, February 8, 2006  
9:45 AM – 10:30 AM  
404 House Office Building**

**Allan G. Bense  
Speaker**

**Bruce Kyle  
Chair**



# Florida House of Representatives

## Justice Council

Allan G. Bense  
Speaker

Bruce Kyle  
Chair

### Agenda

Wednesday, February 8, 2006

9:45 – 10:30 AM

404 House Office Building

**I. Comments by the Chair, Bruce Kyle**

**II. Consideration of the following bill(s):**

HB 41, Administrative Expunction of Nonjudicial Arrest Records by Dean

HB 95 CS, Alcoholic Beverages by Henriquez

HB 109 CS, Temporary Custody of a Child by an Extended Family Member or a Putative Father by Anderson

HB 139, Trespass by Mahon

HB 151 CS, Law Enforcement by Adams

**III. Comments by the Chair**

**IV. Adjourn**

If you wish to speak, please complete an Appearance Record and deliver to the Council Administrative Assistant prior to the start of the meeting. Thank you for your assistance.

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

(AMENDED 1/27/2006 10:33:34AM)

Amended(1)

### Justice Council

**Start Date and Time:** Wednesday, February 08, 2006 09:45 am

**End Date and Time:** Wednesday, February 08, 2006 10:30 am

**Location:** 404 HOB

**Duration:** 0.75 hrs

#### Consideration of the following bill(s):

HB 41 Administrative Expunction of Nonjudicial Arrest Records by Dean

HB 95 CS Alcoholic Beverages by Henriquez

HB 109 CS Temporary Custody of a Child by an Extended Family Member or a Putative Father by Anderson

HB 139 Trespass by Mahon

HB 151 CS Law Enforcement by Adams

**NOTICE FINALIZED on 01/27/2006 10:33 by COCHRAN.MARGARET**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 41  
**SPONSOR(S):** Dean  
**TIED BILLS:**

Administrative Expunction of Nonjudicial Arrest Records

**IDEN./SIM. BILLS:**

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

Criminal justice agencies are required to report every arrest to the Florida Department of Law Enforcement (FDLE), which compiles those arrest records in a database that is publicly accessible. Current law provides that a law enforcement agency may apply for administrative destruction (known as "expunction") of the record of an arrest made contrary to law or by mistake.

This bill provides that a law enforcement agency must apply for expunction of an arrest made contrary to law or by mistake and provides that the person who was arrested may apply for such expunction if endorsed by the head of the arresting agency or the state attorney. The bill also provides that a law enforcement agency's filing of an application for expunction cannot be used as evidence in a civil lawsuit.

This bill does not appear to have a fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - This bill appears to increase the responsibilities of local government officials.

#### B. EFFECT OF PROPOSED CHANGES:

Florida has a policy of allowing very broad public access to government records, including records of criminal arrests. The Florida Department of Law Enforcement (FDLE) maintains a central repository of all Florida arrests and convictions. Any person may request from FDLE a Florida criminal history record of any individual for \$23. Employers and licensing authorities commonly make these requests. The stigma of a criminal arrest can cause difficulty when seeking employment or licensure. Some believe this stigma exists even regarding arrests where the individual is cleared prior to trial, or acquitted at trial.

Current law provides for sealing or expunction of criminal history records in limited circumstances. See generally, ss. 943.0585 and .059, F.S. The arrested individual must apply for sealing or expunction, pay a \$75 fee to FDLE, and pay \$37.50 to the clerk should the court order the record sealed or expunged. Sealing or expunction is not automatic, the court may deny the petition. An individual may only have one arrest (and related proceedings) sealed, and then later expunged, in his or her lifetime. A record may not be sealed or expunged if the person was convicted of the crime, or the person was found guilty after pleading guilty or no contest. Records related to certain offenses may not be sealed or expunged.<sup>1</sup>

The arresting agency keeps a sealed record, but the record is confidential and exempt from the public records laws.<sup>2</sup> A sealed record does not appear on a criminal history search requested by a member of the public, but is still available for review by the arrested person and by certain government agencies for specific purposes. When a record is expunged, the arresting agency must physically destroy the record.<sup>3</sup> FDLE does not destroy an expunged record, but keeps a copy of the record as a confidential and exempt record.

An individual who has had an arrest sealed or expunged may lawfully deny the arrest in most circumstances. The FDLE record of an expunged criminal history record is still available to certain government entities for specific purposes.<sup>4</sup>

Alternatively, s. 943.0581, F.S., provides that FDLE may, by rule, provide a process for administrative expunction of an arrest "made contrary to law or by mistake." Unlike sealing or expunction under ss. 943.0585 and .059, F.S., there is no cost to the applicant for administrative expunction, nor are there limits on type of offense or the number of times that an individual may receive an expunction. Rule 11C-7.008, F.A.C., provides that FDLE will administratively expunge a non-judicial criminal arrest record, as authorized by s. 943.0581, F.S., upon the written request of the chief law enforcement officer of the arresting agency.

<sup>1</sup> Offenses in this category include numerous sex crimes, plus communications fraud, offenses by public employees, drug trafficking, or violation of pretrial release conditions.

<sup>2</sup> Section 943.059(4), F.S.

<sup>3</sup> Section 943.0585(4), F.S.

<sup>4</sup> A record that is sealed or expunged is provided to the appropriate state or local government agency should the arrested person apply for: employment with a criminal justice agency, admission to the Florida Bar, employment with the Department of Children and Families or the Department of Juvenile Justice if the individual will be in a sensitive position (whether employed by agency or by a contractor), or employment in a school or day care center.

A law enforcement agency may make the request for administrative expunction on its own, but more typically it is only made when the arrested person requests that the agency apply for administrative expunction. Current law does not require an agency to seek administrative expunction, and thus a person who has been the subject of an arrest made contrary to law or by mistake cannot file a lawsuit to force a law enforcement agency to apply for administrative expunction. A wrongfully arrested person may, however, file a civil action for damages resulting from the wrongful arrest.<sup>5</sup>

### **Effect of Bill**

This bill requires a law enforcement agency to apply to FDLE for the administrative expunction of any nonjudicial record of any arrest made contrary to law or by mistake. The determination of whether the arrest was made contrary to law or by mistake may be made by the agency at its discretion, or may be the result of a final order of a court of competent jurisdiction.

This bill also provides that an adult or, in the case of a minor child, the parent or legal guardian of the minor child, may apply to FDLE for the administrative expunction of any nonjudicial record of an arrest made contrary to law or by mistake. Either the head of the arresting agency, or the state attorney of the judicial circuit in which the arrest occurred, must endorse the application.

Both new provisions require FDLE to draft implementing rules.

An application for administrative expunction must include an affidavit executed by the chief of the law enforcement agency, sheriff, or department head of the state law enforcement agency, which verifies that she or he has reviewed the record of the arrest and that the arrest was contrary to law or a mistake.

Additionally, this bill provides that an application, endorsement or affidavit by a law enforcement agency or state attorney is not admissible as evidence in any judicial or administrative proceeding, nor may such application, endorsement or affidavit be deemed an admission of liability in connection with an arrest.<sup>6</sup>

### **C. SECTION DIRECTORY:**

Section 1 amends s. 943.0581, F.S., to provide for administrative expunction of nonjudicial arrest records.

Section 2 provides an effective date of upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

<sup>5</sup> Florida recognizes a civil cause of action for "Wrongful Arrest". See, e.g., *Tursi v. Metropolitan Dade County*, 579 So.2d 150 (Fla. 3rd DCA 1991).

<sup>6</sup> An application for expunction, or an endorsement of such application, is in effect an admission of liability for wrongful arrest. This provision only bars using such application or endorsement as evidence, it does not otherwise bar or limit a civil action for damages filed against a law enforcement agency and/or against its employees.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill requires rulemaking by the Florida Department of Law Enforcement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is possible that law enforcement agencies are reluctant under current law to apply for administrative expunction for fear of admitting an arrest was wrongful, and thereby incurring potential civil liability. This bill provides that an application or endorsement by a law enforcement agency may not be admitted into evidence in a lawsuit filed against the agency. The apparent intent is to encourage agencies to participate in clearing wrongful arrests without the agency subjecting itself to civil liability by the admission of wrongdoing. The bill as written will accomplish this effect as to state court civil actions; however, this provision will not be applicable in federal courts and thus may not have the effect of avoiding potential civil liability under federal civil rights law.<sup>7</sup>

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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<sup>7</sup> 42 U.S.C. §1983



A bill to be entitled

An act relating to administrative expunction of nonjudicial arrest records; amending s. 943.0581, F.S.; requiring the arresting law enforcement agency to apply to the Department of Law Enforcement for the administrative expunction of certain nonjudicial records of arrest; authorizing certain persons to apply directly to the department for administrative expunction in certain circumstances; requiring such persons to support such application with an endorsement; requiring an affidavit; providing that an application, endorsement, or affidavit may not be admitted into evidence or construed as an admission of liability; providing an effective date.

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

Section 1. Section 943.0581, Florida Statutes, is amended to read:

943.0581 Administrative expunction.--

(1) Notwithstanding any law dealing generally with the preservation and destruction of public records, the department may provide, by rule adopted pursuant to chapter 120, for the administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.

(2) A law enforcement agency shall apply to the department in the manner prescribed by rule for the administrative expunction of any nonjudicial record of any arrest of a minor or an adult who is subsequently determined by the agency, at its

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29 discretion, or by the final order of a court of competent  
 30 jurisdiction, to have been arrested contrary to law or by  
 31 mistake.

32 (3) An adult or, in the case of a minor child, the parent  
 33 or legal guardian of the minor child, may apply to the  
 34 department in the manner prescribed by rule for the  
 35 administrative expunction of any nonjudicial record of an arrest  
 36 alleged to have been made contrary to law or by mistake,  
 37 provided that the application is supported by the endorsement of  
 38 the head of the arresting agency or the state attorney of the  
 39 judicial circuit in which the arrest occurred.

40 (4) An application for administrative expunction shall  
 41 include an affidavit executed by the chief of the law  
 42 enforcement agency, sheriff, or department head of the state law  
 43 enforcement agency in which the affiant verifies that he or she  
 44 has reviewed the record of the arrest and that the arrest was  
 45 contrary to law or was a mistake.

46 (5) No application, endorsement, or affidavit made under  
 47 this section shall be admissible as evidence in any judicial or  
 48 administrative proceeding or otherwise be construed in any way  
 49 as an admission of liability in connection with an arrest.

50 Section 2. This act shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 95 CS  
**SPONSOR(S):** Henriquez  
**TIED BILLS:**

Alcoholic Beverages

**IDEN./SIM. BILLS:** SB 1154

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) Criminal Justice Committee	8 Y, 0 N, w/CS	Kramer	Kramer
2) Business Regulation Committee	17 Y, 1 N	Morris	Liepshutz
3) Justice Council			
4)			
5)			

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**SUMMARY ANALYSIS**

An alcohol vaporizing device, also known as an "alcohol without liquid" machine or AWOL, allows users to inhale alcohol in the form of vapor. HB 95 CS makes it a first degree misdemeanor to sell or offer for sale an alcohol vaporizing device. A second conviction within 5 years will be a third degree felony. A person who purchases or uses an alcohol vaporizing device will be subject to a fine of \$250.

The provisions of this bill will have an insignificant fiscal impact on state revenue expenditures and collections.

The bill will take effect July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government:** The bill prohibits the use of an alcohol vaporizing device.

#### B. EFFECT OF PROPOSED CHANGES:

An alcohol vaporizing device, which is also known as an "alcohol without liquid" machine or AWOL, allows users to inhale alcohol in the form of vapor. The device works by pouring an alcoholic spirit into a diffuser capsule in the alcohol vaporizing device. The alcohol is absorbed by oxygen bubbles, and the user inhales the alcohol vapor. Alcohol vaporizing devices are being marketed on the internet as a low calorie and hangover free way to consume alcohol. There does not appear to be any evidence supporting either of these claims. There are obvious health risks associated with consuming a large amount of alcohol in a short amount of time.

HB 95 CS creates s. 562.61, F.S. which provides that no person shall purchase, sell, offer for sale, or use an alcohol vaporizing device. The bill makes it a first degree misdemeanor to sell or offer for sale an alcohol vaporizing device. A person who violates the provision by selling or offering for sale an alcohol vaporizing device after having been previously convicted of such offense within the past 5 years commits a third degree felony. A person who purchases or uses an alcohol vaporizing device shall be subject to a \$250 fine.

The term "alcohol vaporizing device" is defined as "any device, machine, or process which mixes spirits, liquor or other alcohol products with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation."

It is unknown how many, if any, of these machines are in commercial or private use in Florida at this time. The device is available for sale on eBay<sup>1</sup> and direct from the U.S. supplier at a cost of \$299 for single user machines to \$2895 for a commercial 4-person simultaneous use machine.<sup>2</sup>

There is currently no federal or state regulation of these devices. However, legislation has been introduced in Congress that would prohibit the sale of these alcohol vaporizing machines prior to pre-market approval by the Food and Drug Administration.<sup>3</sup> In addition legislation similar to HB 95 CS was introduced in several states and has been implemented in Arizona, Colorado, Indiana, Kansas, Maine, Nevada, and Tennessee.<sup>4</sup>

The bill provides that these provisions will take effect July 1, 2006.

#### C. SECTION DIRECTORY:

Section 1. Creates s. 562.61, F.S. relating to alcohol vaporizing devices.

Section 2. Provides effective date of July 1, 2006.

<sup>1</sup> Last checked January 3, 2006, listed three devices for sale ranging in price from \$210 to \$299 each.

<sup>2</sup> See <http://www.awolusa.com/page-3.htm> last visited January 3, 2006.

<sup>3</sup> HR 613 by Representative Bob Beauprez of Colorado.

<sup>4</sup> Information provided by the Distilled Spirits Council of the United States, a trade association representing producers and marketers of distilled spirits.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On February 22, 2005, the Criminal Justice Impact Conference determined that HB 241, which was identical to this bill, would have an insignificant prison bed impact on the Department of Corrections.

There will be minimal costs associated with training of Division of Alcoholic Beverages and Tobacco law enforcement agents.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

This legislation will prohibit the sale or use of certain alcohol vaporizing devices in the state of Florida. It is unknown how many, if any, of these devices are currently in use commercially or privately in the state.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

It may be somewhat unclear whether the definition of an alcohol vaporizing device provided in this legislation could encompass devices such as perfume atomizers, aerosol air fresheners, disinfectants, etc. or medical devices such as nebulizers and vaporizers, etc.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The original bill contained provisions relating to malt beverage tastings. The Criminal Justice Committee adopted an amendment that removed this language from the bill.

HB 95

2006  
CS

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to alcoholic beverages; creating s.  
7 562.61, F.S.; providing a definition of the term "alcohol  
8 vaporizing device"; prohibiting the sale, offer for sale,  
9 purchase, or use of machines or devices which vaporize  
10 alcohol; providing penalties; providing a fine; providing  
11 an effective date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Section 562.61, Florida Statutes, is created to  
16 read:

17 562.61 Sale, offer for sale, purchase, or use of alcohol  
18 vaporizing devices prohibited.--

19 (1) For purposes of this section, the term "alcohol  
20 vaporizing device" means any device, machine, or process which  
21 mixes spirits, liquor, or other alcohol products with pure  
22 oxygen or other gas to produce a vaporized product for the  
23 purpose of consumption by inhalation.



HB 95

2006  
CS

24       (2) A person may not sell, offer for sale, purchase, or  
 25 use an alcohol vaporizing device.

26       (3) (a) Any person who violates this section by selling or  
 27 offering for sale an alcohol vaporizing device commits a  
 28 misdemeanor of the first degree, punishable as provided in s.  
 29 775.082 or s. 775.083. Any person who violates this section by  
 30 selling or offering for sale an alcohol vaporizing device after  
 31 having been previously convicted of such an offense within the  
 32 past 5 years commits a felony of the third degree, punishable as  
 33 provided in s. 775.082 or s. 775.083.

34       (b) Any person who violates this section by purchasing or  
 35 using an alcohol vaporizing device shall be subject to a fine of  
 36 \$250.

37       Section 2. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 109 CS

Temporary Custody of a Child

**SPONSOR(S):** Anderson

**TIED BILLS:** None.

**IDEN./SIM. BILLS:** SB 118

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Civil Justice Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Kruse</u>	<u>Bond</u>
2) <u>Future of Florida's Families Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Preston</u>	<u>Collins</u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

Chapter 751, F.S., provides a procedure whereby a court may grant a relative or a putative father of a minor child temporary legal custody of the child under certain specified circumstances.

The bill expands the group of relatives who may petition a court for temporary custody of a child. The bill amends the definition of the term "extended family" to allow a relative within the third degree by blood or marriage to the parent or stepparent of a child to petition for temporary custody, if the relative is caring full time for that child as a substitute parent. The bill also requires petitions for temporary custody to provide the court with additional information on the circumstances surrounding the petition and allows for court modification of a temporary custody order.

The bill provides that an order granting temporary custody may redirect all or part of an existing child support obligation to the extended family member granted custody of the child and provides direction to the clerk of court.

The bill has the potential to have an indeterminate fiscal impact on the state court system as an increased number of petitions for temporary custody may be filed, resulting in additional hearings.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Empower families** — The bill may provide more authority to a family member who is actually caring for a child by authorizing that family member to make certain types of decisions on the child's behalf without having to obtain approval from the child's legal guardian each time one of those decisions must be made. However, this bill may require a parent to participate in an adversarial legal proceeding to gain custody of his or her child.

#### **Comments by the Future of Florida's Families Committee**

**Provide limited government** — The bill may increase the number of petitions filed for temporary custody which would increase the number of court hearings.

**Empower families** — The bill may reduce the number of children who are declared dependent due to the increased number of extended family members that would be eligible to seek temporary custody and it would enable decisions affecting those children to be made by family members actually providing day to day care.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Law**

At times and for various reasons, a parent or parents of a minor child may be unable to provide care to that child. Chapter 751, F.S., provides that a relative or putative father who has the signed, notarized permission of the parents or who has physical custody of the child may be granted temporary legal custody of the child. Temporary custody is needed in order to allow that person to consent to medical and dental care for the child, obtain copies of the child's records, enroll the child in school, grant or withhold consent for a child to be placed in special school programs, or to provide any necessary care to that child.<sup>1</sup> Because these children receive care from their extended family members, they are not considered dependent children, as defined in s. 39.01(14), F.S. If a child is found dependent, the state is required to step in and take action to protect the child.

Section 751.011(1), F.S., defines "extended family" as a family consisting of the child and a relative of the child who is the child's brother, sister, grandparent, aunt, uncle, or cousin.<sup>2</sup> While currently any relative who has the signed, notarized permission of the parents or who has physical custody of the child may petition for temporary custody under ch. 751, F.S., a putative father may only do so if he is unable to perfect personal service of process upon the mother of the child. If a putative father is able to locate the mother of a child, he must petition for the establishment of paternity, custody, and other relief under ch. 742, F.S.<sup>3</sup> A petition for temporary custody must contain:

- The name, date of birth, and current address of the child;
- The names and current addresses of the child's parents;
- The names and current addresses of persons with whom the child has lived for the past 5 years;
- The places where the child has lived for the last 5 years;
- Information regarding any other custody proceedings in any state involving the child;
- The petitioner's contact information;
- The petitioner's relationship to the child, and for a putative father, the reasons for his belief that he is the natural father;

<sup>1</sup> Section 751.01(3), F.S.

<sup>2</sup> Section 751.02, F.S.

<sup>3</sup> Section 751.02, F.S.

- The parents' consent or the factual situation of the child's current living situation with the petitioner; and
- The length of time that the petitioner is requesting temporary custody, with a statement of reasons supporting the request.<sup>4</sup>

Temporary custody of a child may be awarded to a relative or putative father with or without the consent of the child's parent(s). If the parents do not object, the court must award temporary custody of the child to the petitioner if it is in the best interest of the child.<sup>5</sup> If a parent objects, the court may only award temporary custody after finding by clear and convincing evidence that the parent or parents are unfit, i.e., that the parent has abused, abandoned, or neglected the child, as defined in ch. 39, F.S.<sup>6</sup> Chapter 751, F.S., proceedings do not provide a parent the right to counsel under these circumstances as is provided under ch. 39, F.S. (See "Constitutional Issues" below). Once an order has been entered, a parent or both parents may petition the court at any time to terminate the temporary custody order, based upon either the consent of the parties or a finding that the parent is a fit parent.<sup>7</sup>

### **Effect of Bill**

The bill changes the definition of "extended family" in s. 751.011(1), F.S., to "extended family member."

"Extended family member" is defined by the bill as any person who is a relative within the third degree, by blood or marriage, to the parent or stepparent of a child.

Currently, extended family only includes a child's brother, sister, grandparent, aunt, uncle, or cousin. The new definition adds great-aunts, great-uncles, great-grandparents, and stepparents along with step-family members within the third degree of blood or marital relationship to the stepparent. However, by specifying which family members are entitled to petition for temporary custody, the bill also limits which family members may petition as well. A relative of the third-degree only extends to a first-cousin. The definitional change will allow those relatives to file a petition for temporary custody of a child when that relative has the parent's permission or when the child is presently living with that relative who is caring for the child fulltime in the role of a parent.

Additionally, the bill modifies what must be provided in a petition for temporary custody to also include:

- All information regarding the fitness of the parents to raise the child and information concerning whether the parent has abused, abandoned, or neglected the child;
- Any temporary or permanent child support, attorney's fees, costs, and disbursements;
- A statement of whether an order of protection governing the parties, or a party and a minor child of a party or the parties, is in effect, and if so, in what jurisdiction; and
- A statement that it is in the best interest of the child for the petitioner to have custody of the child.

The bill provides that an order granting temporary custody may redirect all or part of an existing child support obligation to the extended family member granted custody of the child and provides direction to the clerk of court. The bill also provides that the parent or parents may petition for modification, in addition to termination, of an order granting temporary custody.

The effective date of the bill is July 1, 2006.

### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 751.011(1), F.S., to expand the definition of extended family members entitled to petition for temporary custody of a minor child.

<sup>4</sup> Section 751.03, F.S.

<sup>5</sup> Section 751.05(2), F.S.

<sup>6</sup> Section 751.05(3), F.S.

<sup>7</sup> Section 751.05(7), F.S.

**Section 2.** Amends s. 751.02, F.S., to provide that an extended family member may petition for temporary custody of a child under certain circumstances.

**Section 3.** Amends s. 751.03, F.S., to require additional information to be included in a petition for temporary custody, and to provide that only a putative father or extended family member may petition for temporary custody.

**Section 4.** Amends s. 751.05(5) and (7), F.S., to provide that either or both of the child's parents may petition to modify, as well as to terminate, an order granting temporary custody. The section also provides that an order granting temporary custody may redirect all or part of an existing child support obligation to the extended family member granted custody of the child and provides direction to the clerk of court.

**Section 5.** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has the potential to have an indeterminate fiscal impact on the state court system as an increased number of petitions for temporary custody may be filed, resulting in additional hearings.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

To the extent the bill would permit more filings under Chapter 751, those individuals filing petitions would incur any related expenses/fees. However, these amounts are unknown.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Chapter 751, F.S., does not require legal counsel to be appointed to represent the parents in a temporary custody proceeding. The proceeding is similar in nature to a ch. 39, F.S., dependency proceeding and requires similar findings regarding parental fitness. Chapter 751, F.S., also specifically references ch. 39, F.S., and requires the court to make findings that would support an adjudication of dependency if the temporary custody petition was contested. However, it does not appear that the lack of appointed counsel in a ch. 751, F.S., proceeding is necessarily a violation of a constitutional right - the right to raise one's own children<sup>8</sup> because the constitutional right to counsel only extends to cases where the parent faces a permanent loss of parental rights or when a parent may be charged with criminal child abuse.<sup>9</sup> However, it is possible that the facts giving rise to a temporary loss of parental rights through an award of temporary custody may later form the basis for a petition to terminate parental rights.<sup>10</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**Comments by the Future of Florida's Families Committee**

**Definitions**

Currently, section 751.011(2), defines "putative father" as a man who reasonably believes himself to be the biological father of the minor child, but who is unable to prove his paternity due to the absence of the mother of the child. This definition would appear to be scientifically obsolete because advances in DNA testing have made it possible to determine paternity without a sample from the mother.

**Persons Who May Petition for Temporary Custody**

Under existing law, a relative who may petition for temporary custody could be interpreted to be limited to a brother, sister, grandparent, aunt, uncle, cousin, or a putative father. Under the bill, a relative within the third degree by blood or marriage to the parent or stepparent of a child may petition for temporary custody, if the relative is acting as a substitute parent. The table below identifies the relatives within the third degree of a parent or stepparent.

**Relatives within the third degree of a parent or stepparent**

<sup>8</sup> *S.B. v. Dep't of Children & Families*, 851 So. 2d 689, 692-693 (Fla. 2003); *In Interest of D.B.*, 385 So. 2d 83, 90 (Fla. 1980).

<sup>9</sup> *S.B.*, 851 So. 2d at 692-693.

<sup>10</sup> See s. 39.806, F.S., grounds for termination of parental rights.

			<b>3</b> Great-Grandparents of a parent or stepparent
		<b>2</b> Grandparents of a parent or stepparent	
	<b>1</b> Parents of a parent or stepparent	<b>3</b> Aunts/Uncles of a parent or stepparent	
<b>0</b> Parent or stepparent of the child	<b>2</b> Brothers/Sisters of a parent or stepparent		
<b>1</b> Children of the parent or stepparent	<b>3</b> Nephews/ Nieces of a parent or stepparent		

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On October 19, 2005, the Civil Justice Committee considered the bill and adopted one amendment. The amendment removed the words "or similar jurisdiction" to prevent any confusion over the meaning of those words. The bill, as amended, was reported favorably as a committee substitute.

On December 7, 2005, the Future of Florida's Families Committee adopted one amendment to the bill. The amendment made the following changes:

- Allows a court to order that an existing child support obligation be paid to a relative who is granted temporary custody of a child;
- Removes the redundancy from the definition of the term "extended family member"; and
- Clarifies exactly which relatives are eligible to petition for temporary custody of a child.

As amended, the bill was reported favorably as a committee substitute.



CHAMBER ACTION

1 The Future of Florida's Families Committee recommends the  
2 following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to temporary custody of a child by an  
8 extended family member or a putative father; amending s.  
9 751.011, F.S.; defining the term "extended family member";  
10 amending s. 751.02, F.S.; authorizing an extended family  
11 member to bring a proceeding in court to determine the  
12 temporary custody of a child; amending s. 751.03, F.S.;  
13 specifying the information that must be included in a  
14 petition for temporary custody by an extended family  
15 member or a putative father; providing that only an  
16 extended family member or a putative father may file a  
17 petition for temporary custody under ch. 751, F.S.;  
18 amending s. 751.05, F.S.; authorizing a court to redirect  
19 child support payments to an extended family member;  
20 providing that either or both of the child's parents may  
21 petition the court to modify the order granting temporary  
22 custody under certain circumstances; providing an  
23 effective date.

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

Section 1. Subsection (1) of section 751.011, Florida Statutes, is amended to read:

751.011 Definitions.--As used in ss. 751.01-751.05, the term:

(1) "Extended family member" is any person who is a relative within the third degree by blood or marriage to the parent or stepparent of a child ~~family composed of the minor child and a relative of the child who is the child's brother, sister, grandparent, aunt, uncle, or cousin.~~

Section 2. Section 751.02, Florida Statutes, is amended to read:

751.02 Determination of temporary custody proceedings; jurisdiction.--

(1) The following individuals may bring proceedings in the circuit court to determine the temporary custody of a minor child:

(a) Any extended family member ~~relative of a minor child~~ who has the signed, notarized consent of the child's legal parents; ~~or~~

(b) Any extended family member or a putative father who is caring full time for the child in the role of a substitute parent and relative of the child, ~~including a putative father,~~ with whom the child is presently living, ~~may bring proceedings in the circuit court to determine the temporary custody of the child.~~

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52           (2) A putative father may bring a proceeding for temporary  
53 custody only when he is unable to perfect personal service of  
54 process upon the mother of the child. When the putative father  
55 is able to perfect personal service of process upon the mother  
56 of the child, he must petition for custody and other relief,  
57 including the establishment of his paternity of the child, under  
58 chapter 742.

59           Section 3. Section 751.03, Florida Statutes, is amended to  
60 read:

61           751.03 Petition for temporary custody; contents.--Each  
62 ~~Every~~ petition for temporary custody of a minor child must be  
63 verified by the petitioner and must contain statements, to the  
64 best of petitioner's knowledge and belief, showing:

- 65           (1) The name, date of birth, and current address of the  
66 child;
- 67           (2) The names and current addresses of the child's  
68 parents;
- 69           (3) The names and current addresses of the persons with  
70 whom the child has lived during the past 5 years;
- 71           (4) The places where the child has lived during the past 5  
72 years;
- 73           (5) Information concerning any custody proceeding in this  
74 or any other state with respect to the child;
- 75           (6) The residence and post office address of the  
76 petitioner;
- 77           (7) The petitioner's relationship to the child, including  
78 the circumstances leading the petitioner to believe he is the

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79 natural father of the child when the petitioner is the putative  
80 father; ~~and~~

81 (8) The consent of the child's parents, or the  
82 circumstances of the child's current living situation with the  
83 petitioner, including information concerning the fitness of the  
84 parents to raise the child and whether either parent has abused,  
85 abandoned, or neglected the child;-

86 (9) Any temporary or permanent child support obligations  
87 for the benefit of the child;

88 (10) Whether an order of protection governing the parties  
89 or a party and a minor child of the parties or party is in  
90 effect and, if so, the court in which the order was entered;

91 (11) That it is in the best interest of the child for the  
92 petitioner to have custody of the child; and

93 (12) ~~(9)~~ A statement of the period of time the petitioner  
94 is requesting temporary custody, including a statement of the  
95 reasons supporting that request.

96  
97 Only an extended family member or a putative father may file a  
98 petition under this chapter.

99 Section 4. Subsections (5) and (7) of section 751.05,  
100 Florida Statutes, are amended to read:

101 751.05 Order granting temporary custody.--

102 (5) (a) The order granting temporary custody of the minor  
103 child to the petitioner may not include an order for the support  
104 of the child unless the parent has received personal or  
105 substituted service of process, the petition requests an order

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106 | for the support of the child, and there is evidence of the  
107 | parent's ability to pay the support ordered.

108 |       (b) The order granting temporary custody may redirect all  
109 | or part of an existing child support obligation to be paid to  
110 | the extended family member who is granted temporary custody of  
111 | the child. If the court redirects an existing child support  
112 | obligation, the clerk of the circuit court in which the  
113 | temporary custody order is entered shall transmit a certified  
114 | copy thereof to the court originally entering the child support  
115 | order. The temporary custody order shall be recorded and filed  
116 | in the original action in which child support was determined and  
117 | become a part thereof.

118 |       (7) At any time, either or both of the child's parents may  
119 | petition the court to modify or terminate the order granting  
120 | temporary custody. The court shall terminate the order upon a  
121 | finding that the parent ~~requesting the termination of the order~~  
122 | is a fit parent, or by consent of the parties. The court may  
123 | modify an order granting temporary custody if the parties  
124 | consent or if modification is in the best interest of the child.

125 |       Section 5. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 0109 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Justice Council  
2 Representative(s) Anderson offered the following:

3  
4 **Amendment (with title amendments)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsections (2) and (3) of section 751.01,  
7 Florida Statutes, are amended to read:

8 751.01 Purpose of act.--The purposes of ss. 751.01-751.05  
9 are to:

10 (2) Provide for the welfare of a minor child ~~children~~ who  
11 ~~is~~ ~~are~~ living with ~~an~~ extended family members, ~~or who are being~~  
12 ~~cared for by putative fathers whose paternity cannot be~~  
13 ~~established given the absence of the mothers~~. At present, such  
14 family members are unable to give complete care to the child in  
15 their custody because they lack a legal document that explains  
16 and defines their relationship to the child, and they are unable  
17 effectively to consent to the care of the child ~~children~~ by  
18 third parties.

19 (3) Provide temporary custody of a minor child to a family  
20 member ~~or putative father~~ having physical custody of the minor  
21 child to enable the custodian to:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 (a) Consent to all necessary and reasonable medical and  
23 dental care for the child, including nonemergency surgery and  
24 psychiatric care;

25 (b) Secure copies of the child's records, held by third  
26 parties, that are necessary to the care of the child, including,  
27 but not limited to:

- 28 1. Medical, dental, and psychiatric records;  
29 2. Birth certificates and other records; and  
30 3. Educational records;

31 (c) Enroll the child in school and grant or withhold  
32 consent for a child to be tested or placed in special school  
33 programs, including exceptional education; and

34 (d) Do all other things necessary for the care of the  
35 child.

36 Section 2. Section 751.011, Florida Statutes, is amended  
37 to read:

38 751.011 Definitions.--As used in ss. 751.01-751.05, the  
39 term-

40 ~~(1)~~ "Extended family member" is any person who is:

41 (1) A relative within the third degree by blood or  
42 marriage to the parent; or

43 (2) The stepparent of a child if the stepparent is  
44 currently married to the parent of the child and is not a party  
45 in a pending dissolution, separate maintenance, domestic  
46 violence, or other civil or criminal proceeding in any court of  
47 competent jurisdiction involving one or both of the child's  
48 parents as an adverse party ~~family composed of the minor child~~  
49 and a relative of the child who is the child's brother, sister,  
50 grandparent, aunt, uncle, or cousin.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

51       ~~(2) "Putative father" is a man who reasonably believes~~  
52 ~~himself to be the biological father of the minor child, but who~~  
53 ~~is unable to prove his paternity due to the absence of the~~  
54 ~~mother of the child.~~

55       Section 3. Section 751.02, Florida Statutes, is amended to  
56 read:

57       751.02 Determination of temporary custody proceedings;  
58 jurisdiction.--The following individuals may bring proceedings  
59 in the circuit court to determine the temporary custody of a  
60 minor child:

61       (1) Any extended family member ~~relative of a minor child~~  
62 who has the signed, notarized consent of the child's legal  
63 parents; or

64       (2) Any extended family member who is caring full time for  
65 the child in the role of a substitute parent and ~~relative of the~~  
66 ~~child, including a putative father, with whom the child is~~  
67 ~~presently living, may bring proceedings in the circuit court to~~  
68 ~~determine the temporary custody of the child. A putative father~~  
69 ~~may bring a proceeding for temporary custody only when he is~~  
70 ~~unable to perfect personal service of process upon the mother of~~  
71 ~~the child. When the putative father is able to perfect personal~~  
72 ~~service of process upon the mother of the child, he must~~  
73 ~~petition for custody and other relief, including the~~  
74 ~~establishment of his paternity of the child, under chapter 742.~~

75       Section 4. Section 751.03, Florida Statutes, is amended to  
76 read:

77       751.03 Petition for temporary custody; contents.--Each  
78 ~~Every~~ petition for temporary custody of a minor child must be  
79 verified by the petitioner and must contain statements, to the  
80 best of petitioner's knowledge and belief, showing:



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

81 (1) The name, date of birth, and current address of the  
82 child;

83 (2) The names and current addresses of the child's  
84 parents;

85 (3) The names and current addresses of the persons with  
86 whom the child has lived during the past 5 years;

87 (4) The places where the child has lived during the past 5  
88 years;

89 (5) Information concerning any custody proceeding in this  
90 or any other state with respect to the child;

91 (6) The residence and post office address of the  
92 petitioner;

93 (7) The petitioner's relationship to the child, ~~including~~  
94 ~~the circumstances leading the petitioner to believe he is the~~  
95 ~~natural father of the child when the petitioner is the putative~~  
96 ~~father; and~~

97 (8) The consent of the child's parents, or the specific  
98 acts or omissions of the parents which demonstrate that the  
99 parents have abused, abandoned, or neglected the child as  
100 defined in chapter 39;

101 (9) Any temporary or permanent orders for child support,  
102 the court entering the order, and the case number;

103 (10) Any temporary or permanent order for protection  
104 entered on behalf of or against either parent, the petitioner,  
105 or the child; the court entering the order; and the case number;

106 (11) That it is in the best interest of the child for the  
107 petitioner to have custody of the child; and ~~the circumstances~~  
108 ~~of the child's current living situation with the petitioner.~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

109       ~~(12)(9)~~ A statement of the period of time the petitioner  
110 is requesting temporary custody, including a statement of the  
111 reasons supporting that request.

112  
113       Only an extended family member may file a petition under this  
114 chapter.

115       Section 5. Subsections (5), (6), and (7) of section  
116 751.05, Florida Statutes, are amended to read:

117       751.05 Order granting temporary custody.--

118       (5)(a) The order granting temporary custody of the minor  
119 child to the petitioner may not include an order for the support  
120 of the child unless the parent has received personal or  
121 substituted service of process, the petition requests an order  
122 for the support of the child, and there is evidence of the  
123 parent's ability to pay the support ordered.

124       (b) The order granting temporary custody may redirect all  
125 or part of an existing child support obligation to be paid to  
126 the extended family member who is granted temporary custody of  
127 the child. If the court redirects an existing child support  
128 obligation, the order granting temporary custody must include  
129 the determination of arrearages owed to the obligee and the  
130 person awarded temporary custody and must order payment of the  
131 arrearages. The clerk of the circuit court in which the  
132 temporary custody order is entered shall transmit a certified  
133 copy thereof to the court originally entering the child support  
134 order. The temporary custody order shall be recorded and filed  
135 in the original action in which child support was determined and  
136 become a part thereof. A copy of the temporary custody order  
137 shall be filed with the depository that serves as the official  
138 recordkeeper for support payments due under the support order.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

139 The depository shall maintain separate accounts and separate  
140 account numbers for individual obligees.

141 ~~(6) The order granting temporary custody of a minor child~~  
142 ~~to a putative father must not include a determination of the~~  
143 ~~paternity of the child.~~

144 (6)(7) At any time, either or both of the child's parents  
145 may petition the court to modify or terminate the order granting  
146 temporary custody. The court shall terminate the order upon a  
147 finding that the parent ~~requesting the termination of the order~~  
148 is a fit parent, or by consent of the parties. The court may  
149 modify an order granting temporary custody if the parties  
150 consent or if modification is in the best interest of the child.

151 Section 6. This act shall take effect July 1, 2006.

152  
153 ===== T I T L E A M E N D M E N T =====

154 Remove the entire title and insert:

155 A bill to be entitled

156 An act relating to temporary custody of a child by an extended  
157 family member; amending s. 751.01, F.S.; removing provisions  
158 related to putative fathers; amending s. 751.011, F.S.; defining  
159 the term "extended family member"; removing the definition of  
160 the term "putative father"; amending s. 751.02, F.S.;

161 authorizing an extended family member to bring a proceeding in  
162 court to determine the temporary custody of a child; amending s.  
163 751.03, F.S.; specifying the information that must be included  
164 in a petition for temporary custody by an extended family  
165 member; providing that only an extended family member may file a  
166 petition for temporary custody under ch. 751, F.S.; amending s.  
167 751.05, F.S.; authorizing a court to redirect child support  
168 payments to an extended family member; requiring that the court

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

169 order payment of arrearages; removing reference to an order  
170 granting temporary custody of a minor child to a putative  
171 father; providing that either or both of the child's parents may  
172 petition the court to modify the order granting temporary  
173 custody under certain circumstances; providing an effective  
174 date.  
175



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 139                                      Trespass on Railroad Property  
**SPONSOR(S):** Mahon  
**TIED BILLS:** None                                      **IDEN./SIM. BILLS:** None

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<b>DIRECTOR</b>	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF</b>
	1) Criminal Justice Committee	7 Y, 0 N	Cunningham	Kramer
	2) Judiciary Committee	12 Y, 0 N	Hogge	Hogge
	3) Justice Council			
	4)			
	5)			

---

**SUMMARY ANALYSIS**

Trespass is the unauthorized entry onto the property of another. In prosecuting trespass, the state must prove that the offender knew, or should have known, that entry onto the property is unauthorized. In regards to open lands (as opposed to buildings), a person knows not to enter the lands if told not to enter, or if "no trespassing" signs are posted. A person should know not to enter if the property is cultivated or fenced.

This bill provides that a person may be prosecuted for trespass onto railroad property even if the property is not fenced and does not have "no trespassing" signs posted. In effect, this bill provides that persons should know not to enter railroad property.

In general, trespass onto lands is a first degree misdemeanor.

This bill appears to have an insignificant fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill lessens the requirement that a railway company post signs in order to have the protection of the trespass law.

#### B. EFFECT OF PROPOSED CHANGES:

Florida's rail system stretches for 2,788 miles.<sup>1</sup> All but 81 of those miles are privately owned.<sup>2</sup> The Federal Railroad Administration (FRA) reports that trespasser deaths have decreased by 36.4% between 2002 and 2004.<sup>3</sup> Florida is third in the nation for trespasser fatalities that occur on rail lines.<sup>4</sup>

Section 810.09, F.S., provides that it is a first degree misdemeanor to commit trespass on lands.<sup>5</sup> The offense level is increased to a third degree felony in certain circumstances.<sup>6</sup> Trespass on lands is when a person:

- willfully enters upon or remains in any property other than a structure or conveyance without being authorized<sup>7</sup>, licensed, or invited; and
- notice against entering is given by actual communication or by posting, fencing, or cultivation.<sup>8</sup>

"Posted land" is land upon which signs are placed no more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently the words "no trespassing."<sup>9</sup> The unauthorized entry by any person into or upon any enclosed and posted land is prima facie evidence of the intention of such person to commit an act of trespass.<sup>10</sup>

The effect of these laws is that a person is not prosecuted for criminal trespass by simply wandering onto the open property of another. An offender must be given actual notice (e.g. direct communication) or constructive notice (e.g. posting) that entry is not authorized.<sup>11</sup> The

<sup>1</sup> 2004 Florida Rail System Plan, published by the Florida Department of Transportation (FDOT).

<sup>2</sup> The State of Florida, through the FDOT, owns the 81-mile stretch between West Palm Beach and Miami, with a branch to the Miami International Airport.

<sup>3</sup> The Federal Railroad Administration Office of Safety Analysis reports that Florida had 33 trespasser deaths in 2002, and 21 trespasser deaths in 2004. Between January and July of 2005, there have been 25 trespasser deaths. See <http://safetydata.fra.dot.gov/officeofsafety/>.

<sup>4</sup> <http://safetydata.fra.dot.gov/officeofsafety/>.

<sup>5</sup> Trespass in a dwelling, structure or conveyance is considered a more serious offense.

<sup>6</sup> It is a third degree felony if the offender is armed during the trespass; if the property trespassed is a posted construction site; if the property is posted as commercial property designated for horticultural products; if the property trespassed is posted as a designated agricultural site for testing or research purposes; or if a person knowingly propels any potentially lethal projectile over or across private land without authorization while taking, killing, or endangering specified animals. See ss. 810.09(2)(a)-(g), F.S.

<sup>7</sup> "Authorized" means any owner, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or agent to communicate an order to leave the property in the case of a threat to public safety or welfare. Section 810.09(3), F.S.

<sup>8</sup> See s. 810.09(1)(a), F.S. Trespass can also occur if the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

<sup>9</sup> See s. 810.011(5)(a), F.S.

<sup>10</sup> See s. 810.12, F.S.

<sup>11</sup> See *K.S. v. State*, 840 So.2d 1116 (Fla. 1<sup>st</sup> DCA 2003).

law presumes that individuals know or should know that they are not authorized to enter fenced or cultivated lands.

Generally, the only duty owed by a railroad company to a trespasser on its property is not to harm the trespasser willfully or wantonly or to expose the trespasser to danger recklessly or wantonly.<sup>12</sup> Once the presence of a trespasser is known, the railroad company must exercise ordinary care to avoid injury to him.<sup>13</sup>

A landowner owes less of a duty of care to an unknown licensee or to a trespasser, than they do to an invitee. "The unwavering rule as to a trespasser is that the property owner is under the duty only to avoid willful and wanton harm to him and upon discovery of his presence to warn him of known dangers not open to ordinary observation."<sup>14</sup> The duty owed by a landowner to an uninvited "licensee or discovered trespasser is essentially the same: to avoid willful and wanton harm to him, and to warn him of defect or condition known by the landowner to be dangerous when such danger is not open to ordinary observation by licensee or trespasser."<sup>15</sup>

### **Effect of Bill**

This bill provides that, for purposes of prosecution for trespass, posting is not required for lands that contain stationary rails or roadbeds<sup>16</sup> that are owned or leased by a railroad or railway company if the property is:

- readily recognizable to a reasonable person as being the property of a railroad or railway company, or
- identified by conspicuous fencing or signs indicating that the property is owned or leased by a railroad or railway company.

Thus, this bill provides that in order for the state to prove that an individual trespassed upon railroad property, the state does not have to offer proof that notice was given.

### **C. SECTION DIRECTORY:**

Section 1 amends s. 810.011, F.S., to provide an alternative to posting requirements.

Section 2 re-enacts s. 810.09, F.S., to incorporate the reference to s. 810.011, F.S.

Section 3 provides an effective date of October 1, 2006.

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

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

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<sup>12</sup> See *Louisville & N.R. Co. v. Holland*, 79 So.2d 691 (Fla. 1955).

<sup>13</sup> See *Atlantic Coast Line R. Co. v. Webb*, 112 Fla. 449, 150 So. 741 (Fla. 1933).

<sup>14</sup> See *Wood v. Camp*, 284 So.2d 691, 693-694 (Fla. 1973).

<sup>15</sup> See *Morris v. Florentes, Inc.*, 421 So.2d 582, 583 (Fla. 5th DCA 1982).

<sup>16</sup> The roadbed of a railroad is the foundation upon which the ties, rails, and ballast of a railroad are laid. See *The American Heritage Dictionary of the English Language*, Fourth Edition.



1. Revenues:

None.

2. Expenditures:

The 2004 Criminal Justice Estimating Conference determined that this bill had an insignificant prison bed impact.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

If the railroad companies elected to post "No Trespassing" signs, it would require more than 58,000 signs.<sup>17</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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<sup>17</sup> There are 2,788 miles of railway. Signs are required to be no more than 500 feet apart, which would require approximately 10.5 signs per mile. Multiplying 29,274 times two (both sides of the tracks) yields 58,548.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a

1                                   A bill to be entitled  
 2           An act relating to trespass; amending s. 810.011, F.S.;  
 3           providing that property that is owned or leased by a  
 4           railroad or railway company does not have to satisfy the  
 5           definition of "posted land" in order to obtain the  
 6           benefits of ss. 810.09 and 810.12, F.S., in certain  
 7           circumstances; reenacting s. 810.09(1)(a), F.S., relating  
 8           to trespass on property other than structure or  
 9           conveyance, for the purpose of incorporating the amendment  
 10          to s. 810.011, F.S., in a reference thereto; providing an  
 11          effective date.

12  
 13   Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Subsection (5) of section 810.011, Florida  
 16   Statutes, is amended to read:

17           810.011 Definitions.--As used in this chapter:

18           (5)(a) "Posted land" is that land upon which signs are  
 19   placed not more than 500 feet apart along, and at each corner  
 20   of, the boundaries of the land, upon which signs there appears  
 21   prominently, in letters of not less than 2 inches in height, the  
 22   words "no trespassing" and in addition thereto the name of the  
 23   owner, lessee, or occupant of said land. Said signs shall be  
 24   placed along the boundary line of posted land in a manner and in  
 25   such position as to be clearly noticeable from outside the  
 26   boundary line.

27           (b) It shall not be necessary to give notice by posting on  
 28   any enclosed land or place not exceeding 5 acres in area on

29 which there is a dwelling house in order to obtain the benefits  
 30 of ss. 810.09 and 810.12 pertaining to trespass on enclosed  
 31 lands.

32 (c) It shall not be necessary to give notice by posting as  
 33 required in paragraph (a) on any stationary rails or roadbeds  
 34 that are owned or leased by a railroad or railway company and  
 35 are:

36 1. Readily recognizable to a reasonable person as being  
 37 the property of a railroad or railway company; or

38 2. Identified by conspicuous fencing or signs indicating  
 39 that the property is owned or leased by a railroad or railway  
 40 company

41  
 42 in order to obtain the benefits of ss. 810.09 and 810.12  
 43 pertaining to trespass on enclosed and posted land.

44 Section 2. For the purpose of incorporating the amendment  
 45 to section 810.011, Florida Statutes, in a reference thereto,  
 46 paragraph (a) of subsection (1) of section 810.09, Florida  
 47 Statutes, is reenacted to read:

48 810.09 Trespass on property other than structure or  
 49 conveyance.--

50 (1)(a) A person who, without being authorized, licensed,  
 51 or invited, willfully enters upon or remains in any property  
 52 other than a structure or conveyance:

53 1. As to which notice against entering or remaining is  
 54 given, either by actual communication to the offender or by  
 55 posting, fencing, or cultivation as described in s. 810.011; or

56 2. If the property is the unenclosed curtilage of a

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57 dwelling and the offender enters or remains with the intent to  
58 commit an offense thereon, other than the offense of trespass,  
59  
60  
61 commits the offense of trespass on property other than a  
62 structure or conveyance.

63 Section 3. This act shall take effect October 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 151 CS Law Enforcement  
**SPONSOR(S):** Adams  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Burns</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

HB 151 amends several sections of statute relating to the Florida Department of Law Enforcement (FDLE). Most significantly, the bill:

- Requires FDLE to review its records to determine whether a person who is attempting to purchase a firearm has been adjudicated mentally defective or has been committed to a mental institution and as a result is prohibited by federal law from purchasing a firearm. Currently, FDLE does not have access to this background information. The bill requires the clerks of court to submit these records to FDLE.
- Increases the amount of time that protective services can be provided to a witness or victim who is at risk of harm upon certification by a state attorney or the statewide prosecutor.
- Provides immunity from civil liability for damages when an agency responds in good faith to a request to publicly release information relating to a missing child, commonly known as an Amber Alert.
- Requires each clerk of the court to submit to FDLE a disposition report for each disposition relating to a minor offender.
- Expands the list of records of criminal offenses that may not be expunged or sealed to include offenses of voyeurism and false imprisonment.
- Provides that a sealed criminal history record can be used by a criminal justice agency in conducting a criminal history background check for approval of firearms purchases as required by state or federal law.
- Authorizes FDLE to retain fingerprints of law enforcement officers (and other criminal justice agency employees if submitted by the employing agency) for the purpose of checking arrest fingerprint cards against fingerprints of officers or other criminal justice agency employees. Requires FDLE to inform an agency if an arrest record is identified as belonging to an officer or other criminal justice agency employee.
- Creates the first degree misdemeanor offense of using a name or emblem of FDLE to convey the impression that a product is approved, endorsed or authorized by FDLE.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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**DATE:** 1/13/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

##### Provide limited government

The bill prohibits the expunction or sealing of certain criminal history records. The bill will allow FDLE access to records indicating that someone has been committed to a mental institution for the purpose of determining whether the person is prohibited by federal law from purchasing a firearm. The bill increases the amount of time that protective services can be provided to a witness or victim who is at risk of harm upon certification by the state attorney or statewide prosecutor. The bill requires the clerk of court to submit disposition information to FDLE relating to minor offenders. The bill authorizes FDLE to keep fingerprints of law enforcement officers and other criminal justice agency employees on file for the purpose of checking incoming arrest information against these fingerprint records. The bill provides immunity from civil liability for damages when an agency responds in good faith to a request to publicly release information relating to a missing child, commonly known as an Amber Alert.

##### Promote personal responsibility

The bill will allow FDLE to determine whether a person is prohibited by federal law from purchasing a firearm based on commitment to a mental institution. The bill prohibits using the name or emblem of FDLE for improper purposes.

#### B. EFFECT OF PROPOSED CHANGES:

Sale and delivery of firearms (Section 1): Federal law provides that it is unlawful for any person to sell a firearm to any person knowing or having reasonable cause to believe that such person has been adjudicated as a mental defective or has been committed to any mental institution.<sup>1</sup> Before a licensed firearm dealer can sell or deliver a firearm to another person, the dealer is required to contact the Florida Department of Law Enforcement (FDLE) who then conducts a records check on the potential buyer.<sup>2</sup> The department is required to review criminal history records to determine if the potential buyer has been convicted of a felony or other enumerated offense. The department notifies the dealer if the check of the potential buyer discloses any disqualifying information. The department does not have access to information relating to whether a potential buyer has been adjudicated mentally defective or committed to a mental institution. As such, this information is not part of the department's record check.

HB 151 amends s. 790.065, F.S. to require the department to compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.<sup>3</sup> The bill requires the clerks of court to submit these records to the department within one month of the adjudication or commitment. The bill provides a procedure by which an individual can request that the department delete a mental health record in certain circumstances. The bill authorizes the department to disclose the mental health data to agencies of the federal government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose the information to the Department of Agriculture and Consumer Services for determining eligibility for issuance of a concealed weapons or firearms license. If a potential buyer appeals a non-approval based on the mental health records, the clerks of court and mental institutions must, upon request, provide information to help determine whether the potential buyer is the same person as the subject of

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<sup>1</sup> 18 U.S.C. 922(d)(4)

<sup>2</sup> See s. 790.065, F.S.

<sup>3</sup> The bill defines the terms "adjudicated mentally defective" and "committed to a mental institution".



the record. Any identifying information that is provided to FDLE which is confidential or exempt from disclosure, must retain such confidential or exempt status when transferred to FDLE.

Protective services for certain victims and witnesses (Section 2): Section 914.25, F.S. provides that upon certification from a state attorney or the statewide prosecutor that a victim or witness who is critical to a criminal investigation or prosecution is at risk of harm, law enforcement may provide protective services. If the victim or witness needs to be temporarily relocated, the state attorney or statewide prosecutor must notify FDLE who coordinates the temporary relocation. Protective services, including temporary relocation may be provided for up to one year or until the risk giving rise to the certification has diminished, whichever occurs sooner. The state attorney or statewide prosecutor can recertify a victim or witness at risk of harm for an additional year. The lead law enforcement agency who provides protective services may seek reimbursement for expenses from the Victim and Witness Protection Review Committee which is part of the Florida Violent Crime and Drug Control Council that serves in an advisory capacity to FDLE.<sup>4</sup>

HB 151 amends this section to provide that at the end of the first certification year, the prosecutor may recertify the victim at risk for an additional year or until the risk giving rise to the certification has diminished, whichever occurs first. Certification may be renewed annually to allow a maximum of 4 years of eligibility for protective services. The bill provides that the section does not prevent any agency from providing protective services at the agency's expense beyond the four year maximum period but that the agency cannot seek reimbursement for any additional expenditures from the Victim and Witness Protection Review Committee.

Missing child reports (Section 3): FDLE maintains the Missing Children Information Clearinghouse (MCIC) which is a central repository of information regarding missing children. In cooperation with several other state agencies, FDLE administers the Amber Alert program to aid in the recovery of missing children. The purpose of the program is to broadcast information to the public relating to a missing or abducted child believed to be in danger through the use of radio and television broadcasts, road signs and lottery machines. A Missing Child Alert can be issued in cases where the criteria for the issuance of an Amber Alert have not been met. Currently, there is no statutory language which governs the program.

HB 151 amends s. 937.021, F.S. which relates to missing child reports to provide that upon receiving a request to release Amber Alert or Missing Child Alert information, any agency, employee, individual or entity is immune from civil liability for damages for complying in good faith with the request. The bill also provides that a person is presumed to have acted in good faith in releasing information pertaining to the missing child. The presumption of good faith is not overcome if a technical or clerical error is made or if the alert information is incomplete because the information received from the local law enforcement agency was incomplete or incorrect. The bill further provides that there is no duty to release the alert information and the decision to release the information is discretionary with the agency receiving the information.

Trust funds (Sections 4 & 5) Section 938.07, F.S. provides that a court cost of \$135 shall be added to any fine for driving under the influence or boating under the influence. This money is statutorily divided as follows: \$25 dollars is to be deposited in the Emergency Medical Services Trust Fund; \$60 is to be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund and; \$50 is to be deposited in the Criminal Justice Standards and Training Trust Fund of FDLE to be used for operational expenses in conducting the statewide criminal analysis laboratory system established in statute.<sup>5</sup> In audit report number 03-042, released in October 2002, the Auditor General reported that, contrary to section

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<sup>4</sup> See s. 943.031(6) which establishes the Victim and Witness Protection Review Committee within the Florida Violent Crime and Drug Control Council. The committee maintains criteria for disbursing funds to reimburse law enforcement agencies for witness protection costs and reviews and approves or denies reimbursement requests. The lead agency must provide a plan for how the funds would be distributed among any agencies that cooperated in providing protective services.

<sup>5</sup> Section 943.32, F.S. establishes a statewide criminal analysis laboratory system to be composed of state operated laboratories under the jurisdiction of FDLE and locally funded laboratories in Broward, Dade, Indian River, Monroe, Palm Beach and Pinellas Counties as well as such other laboratories as render criminal analysis laboratory services to criminal justice agencies in the state.

938.07, F.S., FDLE was placing the \$50 portion of DUI court costs in its Operating Trust Fund rather than in the Criminal Justice Standards and Training Trust Fund. In an October 2004 audit, the Auditor General noted "continued noncompliance with this law."<sup>6</sup> HB 151 provides that the \$50 to FDLE shall be deposited in FDLE's Operating Trust Fund rather than the Criminal Justice Standards and Training Trust Fund.

Section 938.27, F.S. provides that in all criminal cases, convicted persons are liable for payment of investigative costs incurred by law enforcement agencies. Investigative costs which are recovered must be returned to the agency which incurred the expense and deposited into that agency's operating trust fund. HB 151 amends this section to provide that investigative costs recovered on behalf of FDLE shall be deposited in the department's Forfeiture and Investigative Support Trust Fund established in s. 943.362, F.S.

Disposition reporting (Section 6): FDLE maintains the Criminal Justice Information Program which acts as the state's central criminal justice information repository. Law enforcement agencies are required to submit arrest information to FDLE. Section 943.052, F.S. requires each clerk of court to submit disposition information to FDLE.<sup>7</sup> This information would indicate, for example, whether a person had been acquitted or convicted of the offense for which they were arrested. The section provides that disposition reports must be submitted at least once a month and provides that the report is mandatory for dispositions relating to adult offenders only. HB 151 provides that, beginning July 1, 2008, a disposition report for each disposition relating to a minor offender will be mandatory.

Name change petitions (Section 7): Section 68.07, F.S. currently provides that a petition for change of name must include a copy of the petitioner's fingerprints taken by a law enforcement agency, except where a former name is being restored. After the filing of a final judgment granting a name change, the clerk is required to send a report to the FDLE. Along with additional information, the report must contain a copy of the petitioner's fingerprints. The bill changes the references from a *copy* of the petitioner's fingerprints to a *set* of the petitioner's fingerprints.

Fingerprint submission for criminal history background checks (Sections 8, 9, 10 and 12): Section 943.13, F.S. provides minimum qualifications for a person employed as a law enforcement or correctional officer. A person who has been convicted of any felony or a misdemeanor involving perjury or false statement is not eligible to be an officer. An employing agency is required to conduct a fingerprint based criminal history background check as a condition of employment of an officer. The employing agency keeps the processed fingerprints on file. FDLE does not retain the fingerprints. As a result, unless the agency later resubmits the fingerprints, they are not subsequently checked to ensure that the officer has not been arrested for or convicted of a disqualifying criminal offense.

HB 151 amends s. 943.13, F.S. to require that beginning January 15, 2007, FDLE must retain and enter into the statewide automated fingerprint identification system all fingerprints of officers submitted as required by this section. FDLE will then search all arrest fingerprint cards against the fingerprints of the officers submitted as required by this section and report to the employing agency if an fingerprint from an arrest card is identified as matching an officer's fingerprints. By January 1, 2008 an officer whose fingerprints are not retained by the FDLE must be re-fingerprinted and the fingerprints must be forwarded to FDLE.

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<sup>6</sup> See, Report No. 2005-042, Department of Law Enforcement, Criminal Justice Standards and Training Trust Fund and Accountability for Evidence and Seized Property, Operational Audit.

<sup>7</sup> See also, Rule 11C-4.006, F.A.C.; Section 943.045(9), F.S. defines the term "disposition" to mean "details relating to the termination of an individual criminal defendant's relationship with a criminal justice agency, including information disclosing that the law enforcement agency has elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, that a court has dealt with the individual, or that the individual has been incarcerated, paroled, pardoned, released, or granted clemency. Dispositions include, but are not limited to, acquittals, dismissals, pleas, convictions, adjudications, youthful offender determinations, determinations of mental capacity, placements in intervention programs, pardons, probations, paroles, and releases from correctional institutions."

HB 151 amends s. 943.053, F.S. to provide that if a criminal justice agency is authorized to conduct a criminal background check on an agency employee (other than an officer), the agency may submit the employee's fingerprint identification information to FDLE who (effective January 15, 2007) will retain this information and will search all arrest fingerprint cards against the fingerprints of the agency employees as described above.

The bill also amends section 943.05, F.S., relating to the Criminal Justice Information Program to authorize the program to retain fingerprints submitted by agencies as described above. The bill also authorizes the program to search all arrest fingerprints against the fingerprints retained. Agencies wishing to participate in having the submitted fingerprints searched against arrest fingerprints will be required to pay an annual fee to the FDLE. Fees may be waived or reduced by the executive director for good cause shown. These services will be provided to criminal justice agencies for criminal justice purposes free of charge.

*Criminal history check (Section 9):* HB 151 amends s. 943.053, F.S. to provide that when a criminal history check or a duty to disclose the absence of criminal history check is mandated by state law, or when a privilege or benefit is conferred by state law in return for exercising an option of conducting a criminal history check, the check must include a Florida criminal history provided by the FDLE. Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request. When a national criminal history check is required or authorized by state law, the national criminal history check must be submitted by and through the FDLE unless otherwise required by federal law. Criminal history information provided by another governmental entity of the state or a private entity cannot be substituted for criminal history information provided by the department if the check is required by statute or is made a condition of a privilege or benefit by law.

*Expunction and sealing of records (Sections 10 & 11):* Current law provides for sealing or expunction of criminal history records in limited circumstances. See generally, ss. 943.0585 and 943.059, F.S. The arrested individual must apply with FDLE for a certificate of eligibility for sealing or expunction and pay a \$75 fee. A record may not be sealed or expunged if the person was adjudicated guilty of the offense. Criminal history records relating to certain offenses such as sexual battery or drug trafficking may not be expunged or sealed if the defendant was found guilty or pled guilty, even if adjudication was withheld.<sup>8</sup> Even if FDLE grants an individual a certificate of eligibility, sealing or expunction is not automatic - the court may deny the petition. An individual may only have one arrest (and related proceedings) sealed, and then later expunged, in his or her lifetime.

The arresting agency keeps possession of a sealed record, but the record is confidential and exempt from the public records laws.<sup>9</sup> A sealed record does not appear on a criminal history search requested by a member of the public, but is still available for review by the arrested person and by certain government agencies for specific purposes. The arresting agency must physically destroy an expunged record.<sup>10</sup> FDLE does not destroy an expunged record, but keeps a copy of the record as a confidential and exempt record.

An individual who has had an arrest sealed or expunged may lawfully deny the arrest in most circumstances. The FDLE record of an expunged criminal history record is still available to certain government entities for specific purposes.<sup>11</sup>

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<sup>8</sup> Offenses in this category include numerous sex crimes, plus communications fraud, offenses by public employees, drug trafficking, or violation of pretrial release conditions.

<sup>9</sup> Section 943.059(4), F.S.

<sup>10</sup> Section 943.0585(4), F.S.

<sup>11</sup> A record that is sealed or expunged is provided to the appropriate state or local government agency should the arrested person apply for: employment with a criminal justice agency, admission to the Florida Bar, employment with the Department of Children and Families or the Department of Juvenile Justice if the individual will be in a sensitive position (whether employed by agency or by a contractor), or employment in a school or day care center.

HB 151 makes several changes to the statutes relating to sealing and expunging of criminal history records. The bill expands the list of offenses that cannot be sealed or expunged to include voyeurism<sup>12</sup> and also includes offenses specified as predicate offenses for registration as a sexual predator or a sexual offender.<sup>13</sup> This will result in the offenses of false imprisonment and luring or enticing a child and certain offenses related to pornography being ineligible for sealing or expunction.

HB 151 also provides that a certificate of eligibility for sealing or expunction is valid for 12 months after the date it is issued by FDLE. After that time, the petitioner must reapply to the department for a new certificate of eligibility. The bill also clarifies that eligibility for a renewed certification will be based on the law in effect and the status of the applicant at the time of the most recent application.

HB 151 adds to the list of exceptions to the general rule that a person may lawfully deny or fail to acknowledge arrests covered by a sealed record to include a person who is attempting to purchase a firearm and a person who is seeking authorization from a Florida seaport for employment within or access to one or more seaports. Current law provides that a sealed record can be provided to a criminal justice agency for their respective criminal justice purposes. The bill clarifies that a "criminal justice purpose" includes conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law and includes authorizing access to a seaport.

Current law provides that a person is not required to wait a minimum of 10 years prior to being eligible for an expunction when the charges were dismissed prior to trial, adjudication or withholding of adjudication. Otherwise, the criminal history record must be sealed for at least ten years before such record is eligible for expunction. HB 151 amends this criteria to provide that the department may issue a certificate of eligibility for expunction if the person has previously obtained a court order sealing the record for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest were not dismissed prior to trial, regardless of whether the outcome of the trial was other than an adjudication of guilt. The requirement for the record to have previously been sealed for a minimum of 10 years before expunction is permitted does not apply when a plea was not entered or all charges related to the arrest or to which the petition to expunge pertains were dismissed prior to trial. In short, under the provisions of the bill, unless the charges were dismissed prior to trial, the record cannot be expunged unless 10 years has elapsed since the record was sealed. If the person went to trial and was acquitted or if the person was convicted but adjudication was withheld or if the person pled guilty or nolo contendere and adjudication was withheld, the record must be sealed for 10 years before it can be expunged. [As under current law, a record cannot be sealed or expunged if it resulted in an adjudication of guilt either by way of a plea or after a trial.]

*Providing judges with online access to criminal justice information (Section 9):* The bill amends section 943.053, F.S. to provide that the department shall make online access to Florida criminal justice information available to each judge in the state courts system for the purpose of assisting judges in their case-related decision making responsibilities.

*Officer training (Section 13 & 14):* As a condition of employment, a law enforcement officer must complete a basic skills training program. Every 4 years, an officer is required to have 40 hours of continued training.<sup>14</sup> Sections 943.171 through 943.17295, F.S. require training in a number of specific areas such as victims assistance, juvenile sexual offender investigations, and domestic violence cases. Section 943.1715, F.S. provides that each basic skills course must include a minimum of 8 hours training in "interpersonal skills with diverse populations." Section 943.1716, F.S. mandates that a continued education course must contain 8 hours of instruction in the subject of interpersonal skills relating to diverse populations, with an emphasis on the awareness of cultural differences. HB 151 retains the requirement that basic skills training and continued education training contain instruction in

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<sup>12</sup> s. 810.14, F.S.

<sup>13</sup> See ss. 775.21 and 943.0435.

<sup>14</sup> s. 943.135, F.S.

the subject of interpersonal skills relating to diverse populations but removes the requirement that a minimum of 8 hours training be given in that subject.

*Criminal justice selection centers (Sections 15 & 16)* Florida has selection centers throughout the state that evaluate criminal justice applicants for employment with agencies in the region. The centers are each under the direction and control of a postsecondary public school or a criminal justice agency.<sup>15</sup> Section 943.2569, F.S. requires that each center provide for an annual financial audit and a management letter. However, a postsecondary public school or criminal justice agency that administers a center is required to conduct these annual financial audits pursuant to section 11.45(2)(c), F.S. or s. 218.39(1), F.S. A recent Auditor General report suggested that the need for a separate audit requirement in s. 943.2569, F.S. is not apparent.<sup>16</sup> HB 151 repeals s. 943.2569, thereby deleting the separate audit requirement. The bill also amends s. 943.257, F.S. to clarify the oversight role of FDLE's Criminal Justice Standards and Training Commission and the center's advisory board over the centers.

*Public assistance fraud (Section 17)*: Section 943.401, F.S. provides that FDLE must investigate fraud in public assistance made under the provisions of chapter 409 or 414. The references to these sections are outdated because functions that were previously handled by the Department of Health and Rehabilitative Services are now located in other state agencies that do not come under the provisions of chapter 409 or 414. The bill clarifies this reference. Currently, all public assistance recipients must first give the agency administering the assistance consent to make inquiry of past and present employers and financial records. The bill includes the Agency for Workforce Innovation in the list of agencies because this agency now administers subsidized child day care under the School Readiness program.

*Purchasing promotional materials (Section 18)*: The bill provides that, in addition to expenditures otherwise authorized by law, the department is authorized to expend not more than \$5,000 annually to "purchase and distribute promotional materials or items that serve to advance with dignity and integrity the goodwill of this state and the department and to provide basic refreshments" at meetings of the department with representatives from other governmental entities.

*Unauthorized use of FDLE emblems or names (Section 19)*: Section 843.085, F.S. makes it a first degree misdemeanor for an unauthorized person to wear law enforcement insignia in a manner that could deceive a reasonable person into believing that it is authorized by a law enforcement agency. The bill creates an unnumbered section of statute which provides that whoever, without the written permission of the executive director, knowingly uses the words "Florida Department of Law Enforcement", "F.D.L.E.", "FDLE", or Florida Capitol police or who uses a department logo or emblem in connection with any publication or production in a manner reasonably calculated to convey the impression that such publication or production is approved, endorsed or authorized by the department, commits a first degree misdemeanor. The bill provides that a violation of the section may be enjoined upon suit by the department or the Department of Legal Affairs upon complaint filed in any court of competent jurisdiction.

### C. SECTION DIRECTORY:

Section 1: Amends s. 790.065, F.S. relating to sale and delivery of firearms to provide that FDLE will review records to determine if person has been adjudicated mentally defective or has been committed to a mental institution; requires clerks of court to submit information to FDLE.

Section 2. Amends s. 914.25, F.S. to allow for recertification that victim or witness requires protective services or relocation; provides that up to 4 years of protective services may be eligible for reimbursement.

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<sup>15</sup> s. 943.256, F.S.

<sup>16</sup> Report No. 2005-042, pages 7-8.

Section 3. Amends s. 937.021, F.S. to provide immunity from civil liability for transmission of Amber Alert/Missing Child Alert when acting in faith; provides for presumption of good faith and that presumption is not overcome in certain circumstances; provides that section does not create a duty to release alert.

Section 4. Amends s. 938.07 to redesignate \$50 DUI court cost from Criminal Justice Standard and Training Trust Fund to Operational Trust Fund.

Section 5. Amends s. 938.27, F.S. to redesignate investigative court costs recovered on behalf of FDLE from agency operational trust fund to Forfeiture and Investigative Support Trust Fund.

Section 6. Amends s. 943.052, F.S. to require clerks of court to submit disposition reports relating to minor offenders to Criminal Justice Information Program.

Section 7: Amends s. 68.07, F.S. to clarify that change of name petitions must include an original set of the petitioner's fingerprints.

Section 8. Amends s. 943.05, F.S. to authorize Criminal Justice Information Program to retain employee fingerprints and search against arrest records.

Section 9. Amends s. 943.053, F.S. to authorize FDLE to retain fingerprints of criminal justice agency employees submitted by agency for purpose of checking against arrest fingerprint cards; requires FDLE to inform agency if arrest record is identified as belonging to agency employee.

Section 10. Amends s. 943.0585, F.S. relating to court-ordered expunction of criminal history records; prohibits expunction of certain records; provides that certificate of eligibility for expunction is valid for 12 months after issued by FDLE; allows for reapplication to the department for a new certificate of eligibility.

Section 11. Amends s. 943.059, F.S. relating to court-ordered sealing of criminal history records; prohibiting expunction of certain records; provides that certificate of eligibility is valid for 12 months after issued by FDLE; allows for reapplication to the department for a new certificate of eligibility; provides that sealed records can be used in conducting criminal history background check for approval of firearms purchases; provides that person may not deny or fail to acknowledge sealed record when attempting to purchase a firearm.

Section 12. Amends s. 943.13, F.S. to authorize FDLE to retain fingerprints of officers for purpose of checking against arrest fingerprint cards; requires FDLE to inform agency if arrest record is identified as belonging to officer.

Section 13. Amends s. 943.1715, F.S. to remove requirement for specific number of hours of basic skills training relating to interpersonal skills in diverse populations.

Section 14. Amends s. 943.1716, F.S. to remove requirement for specific number of hours of continued employment training relating to interpersonal skills in diverse populations.

Section 15. Repeals s. 943.2569, F.S. relating to audit of criminal justice selection centers.

Section 16. Amends s. 943.257, F.S. relating to oversight of criminal justice selection centers.

Section 17. Amends s. 943.401, F.S. to clarify FDLE's jurisdiction to investigate public assistance fraud.

Section 18. Authorizes FDLE to purchase up to \$5,000 worth of goodwill and promotional materials.

Section 19. Prohibits unauthorized use of FDLE emblem or name.

Section 20. Provides effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill requires the clerks of the court to provide information relating to juvenile disposition and to adjudications of mental defectiveness or commitments to mental institutions to the FDLE. This may have an indeterminate fiscal impact on the clerks of court.

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

None.

### D. FISCAL COMMENTS:

The bill will require FDLE to update the Firearm Purchase Program (FPP) system to collect information submitted by the clerks of court on adjudications of mental defectiveness or commitments to mental institutions. FDLE estimates that the system will cost \$143,200 to create with an annual recurring cost of \$37,400 to maintain. According to FDLE staff, this can be accomplished within current appropriations.

FDLE also intends to charge a \$6 retention fee when an agency elects to have FDLE retain the fingerprints of non-sworn agency personnel as provided for in section 8 of the bill. FDLE does not intend to charge this fee for the retention of fingerprints of law enforcement or correctional officers.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

HB 151 requires the clerks of court to provide certain information to FDLE. Although this will increase the responsibilities of clerk staff, these duties of the clerk of the court are funded by state revenues. Accordingly, this bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds and is not a mandate.

2. Other:

Section 843.085(1), F.S. makes it a first degree misdemeanor for an unauthorized person to wear law enforcement insignia which could deceive a reasonable person into believing that it is authorized by a law enforcement agency. In Sult v. State, 906 So.2d 1013 (Fla. 2005), the Florida Supreme Court held that the statute was unconstitutionally overbroad. The court stated:

With no specific intent-to-deceive element, the section extends its prohibitions to innocent wearing and displaying of specified words. The reach of the statute is not tailored toward the legitimate public purpose of prohibiting conduct intended to deceive the public into believing law enforcement impersonators. The "could deceive a reasonable person" element of section 843.085(1), in conjunction with the prohibition of a display in any manner or combination of the words listed in the statute, results in a virtually boundless and uncertain restriction on expression. Thus....section 843.085(1) is overbroad because it reaches a substantial amount of constitutionally protected conduct.

HB 151 creates an unnumbered section of statute which provides that whoever, without the written permission of the executive director, knowingly uses the words "Florida Department of Law Enforcement", "F.D.L.E.", "FDLE", or Florida Capitol police or who uses a department logo or emblem in connection with any publication or production *in a manner reasonably calculated to convey the impression* that such publication or production is approved, endorsed or authorized by the department, commits a first degree misdemeanor. This language may be distinguishable from the language struck down by the Sult court because it provides that the use of the words or emblem must be in a manner *reasonably calculated* to convey the impression that such publication is approved by the department.

**B. RULE-MAKING AUTHORITY:**

The bill amends s. 943.05, F.S. to require the department to adopt a rule setting the amount of the annual fee to be imposed upon an agency who wishes to have the FDLE search submitted fingerprints against arrest fingerprints.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Section 1 of the bill authorizes FDLE to disclose to federal agencies and agencies of other states certain court records data pertaining to the mental health of the subject of the data. The data may be disclosed exclusively for use in determining the lawfulness of a firearm sale or transfer. The bill authorizes such disclosure although much of the information may already be public record. From the language of the bill, it is unclear exactly what kind of court orders would be collected by FDLE and placed in its database, and it is therefore unclear whether the data to be collected is confidential and exempt from public records laws. According to the staff of the Attorney General's Office, there may be some difference of opinion among the Florida District Courts of Appeal about what mental health records of the clerks of court are or are not confidential and exempt. According to FDLE, in order to implement the provisions of Section 1, the department will seek an opinion of the Attorney General to clarify which clerk of court records are confidential and exempt, and which ones are not, and to also clarify how those records may be handled by the department once collected. The language of this bill does not appear to create a new public records exemption.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Criminal Justice Committee adopted one amendment authorizing FDLE to retain fingerprints submitted by criminal and noncriminal justice agencies for criminal history background screening in a manner provided by law rather than in a manner provided by rule.

The Criminal Justice Appropriations Committee met January 12, 2006, and adopted three amendments:

Amendment #1: Changed the word "law" to "rule". This reversed amendment adopted by Criminal Justice Committee (see above)



Amendment #2: Added statute references relating to the Agency for Workforce Innovation.

Amendment #3: Added communication service dealers to those entities granted civil liability immunity in regards to Amber Alert or missing child information.

CHAMBER ACTION

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1 The Criminal Justice Appropriations Committee recommends the  
2 following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to law enforcement; amending s. 790.065,  
8 F.S.; requiring the Department of Law Enforcement to  
9 review other records in addition to criminal history  
10 records to evaluate a potential buyer or transferee of a  
11 firearm, including an adjudication of mental defectiveness  
12 or a commitment to a mental institution as criteria that  
13 prohibit a person from purchasing a firearm; providing  
14 definitions; requiring the department to maintain an  
15 automated database of persons who are prohibited from  
16 purchasing a firearm; requiring each clerk of court to  
17 submit certain court records to the department within a  
18 certain period; requiring the department to delete certain  
19 records from the automated database upon the request of an  
20 individual meeting specified conditions; authorizing the  
21 department to disclose collected data to other federal or  
22 state agencies with regard to the sale or transfer of a  
23 firearm; authorizing the department to disclose certain

24 information to the Department of Agriculture and Consumer  
 25 Services for determining the eligibility of an applicant  
 26 for a concealed weapons or concealed firearms license;  
 27 requiring the clerk of court or mental hospital to provide  
 28 additional information upon request following an appeal of  
 29 an unapproved sale or transfer of a firearm; amending s.  
 30 914.25, F.S.; providing for recertification for protective  
 31 services for an additional period, with reimbursement for  
 32 expenses from the Victim and Witness Protection Review  
 33 Committee; providing for unlimited protective services for  
 34 a victim or witness without reimbursement; amending s.  
 35 937.021, F.S.; providing immunity to the Department of Law  
 36 Enforcement, other law enforcement agencies, media  
 37 representatives, and dealers of communications services  
 38 from civil liability for complying in good faith with a  
 39 request to record or report information of an Amber Alert  
 40 or Missing Child Alert; providing that a technical or  
 41 clerical error or incorrect or incomplete information does  
 42 not overcome the presumption of good faith in reporting  
 43 information about an Amber Alert or Missing Child Alert;  
 44 providing that it is a discretionary decision to report,  
 45 record, or display Amber Alert or Missing Child Alert  
 46 information received from the local law enforcement agency  
 47 having jurisdiction; amending s. 938.07, F.S.; requiring  
 48 that a portion of certain court costs imposed for a  
 49 conviction of driving or boating under the influence be  
 50 deposited into the Operating Trust Fund of the Department  
 51 of Law Enforcement instead of the Criminal Justice

52 Standards and Training Trust Fund; amending s. 938.27,  
 53 F.S.; requiring that investigative costs recovered on  
 54 behalf of the Department of Law Enforcement be deposited  
 55 into the department's Forfeiture and Investigative Trust  
 56 Fund; amending s. 943.052, F.S.; requiring that  
 57 disposition reports for dispositions relating to minor  
 58 offenders are mandatory after a specified date; amending  
 59 s. 68.07, F.S.; requiring a set of fingerprints as part of  
 60 a name change petition; amending s. 943.05, F.S.;  
 61 authorizing the Department of Law Enforcement to retain  
 62 fingerprints in certain circumstances and use retained  
 63 fingerprints for certain purposes; providing for an annual  
 64 fee; providing for waiver of the fee for good cause shown;  
 65 providing for free services for certain purposes; amending  
 66 s. 943.053, F.S.; requiring the department to make certain  
 67 information available to judges; limiting use of  
 68 information; authorizing a criminal justice agency to  
 69 obtain a criminal history background check of a  
 70 noncertified agency employee by submitting fingerprints to  
 71 the department; requiring that the criminal history check  
 72 be provided by the department in certain circumstances;  
 73 amending s. 943.0585, F.S.; prohibiting a court from  
 74 expunging a criminal history record containing certain  
 75 sexual offenses or certain offenses that require  
 76 registration as a sexual offender; requiring a valid  
 77 certificate of eligibility for expunction in a petition to  
 78 expunge a criminal history record; specifying the time  
 79 during which a certificate of eligibility for expunction

80 is valid; requiring that a trial may not have occurred in  
 81 order for a person to obtain a statement from the state  
 82 attorney authorizing the expunction of a criminal record;  
 83 authorizing a person who has secured a prior sealing of a  
 84 criminal history record to seek a certificate of  
 85 eligibility for expunction if the criminal history record  
 86 was previously sealed for a certain number of years and is  
 87 otherwise eligible for expunction; providing that a person  
 88 who is seeking authorization for employment within or  
 89 access to a seaport may not deny or fail to acknowledge  
 90 arrests covered by expunged records; providing that the  
 91 department may acknowledge expunged criminal history  
 92 records under certain circumstances; prohibiting seaport  
 93 employees from disclosing expunged criminal history record  
 94 information except to certain persons; providing  
 95 penalties; amending s. 943.059, F.S.; enumerating certain  
 96 sexual offenses and offenses that require registration as  
 97 a sexual offender which may not be sealed; requiring a  
 98 valid certificate of eligibility for sealing in a petition  
 99 to seal a criminal history record; specifying the period  
 100 during which a certificate of eligibility for sealing is  
 101 valid; providing that the information contained in a  
 102 sealed criminal record is available to a criminal justice  
 103 agency for the purpose of conducting a criminal history  
 104 background check for approval of a firearms purchase or  
 105 transfer; prohibiting a person from denying arrests  
 106 covered by his or her sealed criminal record when  
 107 attempting to purchase a firearm; providing that a person

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108 who is seeking authorization for employment within or  
109 access to a seaport may not deny or fail to acknowledge  
110 arrests covered by sealed records; providing that the  
111 department may acknowledge sealed criminal history records  
112 under certain circumstances; prohibiting seaport employees  
113 from disclosing sealed criminal history record information  
114 except to certain persons; providing penalties; amending  
115 s. 943.13, F.S.; requiring the department to enter law  
116 enforcement, correctional, and correctional probation  
117 officers' fingerprints into a statewide automated  
118 fingerprint identification system; requiring the  
119 department to search each arrest fingerprint card received  
120 against fingerprints retained in the statewide automated  
121 fingerprint identification system; providing for  
122 refingerprinting by a certain date; amending ss. 943.1715  
123 and 943.1716, F.S.; deleting the minimum number of hours  
124 required for basic skills training and continued  
125 employment training relating to diverse populations for  
126 law enforcement, correctional, and correctional probation  
127 officers; repealing s. 943.2569, F.S., relating to an  
128 annual financial audit of criminal justice selection  
129 centers; amending s. 943.257, F.S.; authorizing the  
130 Criminal Justice Standards and Training Commission and the  
131 advisory board of a criminal justice selection center to  
132 inspect and copy any documents from a center in order to  
133 carry out oversight responsibilities, including documents  
134 pertaining to any internal or independent audits; amending  
135 s. 943.401, F.S.; requiring the department to investigate

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136 all public assistance that is provided by the state;  
 137 requiring public assistance recipients to consent in  
 138 writing to an investigation into their employment and  
 139 financial histories by the Agency for Workforce  
 140 Innovation; requiring the department to report the results  
 141 of the investigations to the Agency for Workforce  
 142 Innovation; authorizing the department to purchase  
 143 goodwill and promotional materials; limiting the annual  
 144 amount of such expenditures; prohibiting the unauthorized  
 145 use of the department's emblems and names; providing a  
 146 penalty; providing effective dates.

147

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

149

150 Section 1. Effective February 1, 2007, paragraph (a) of  
 151 subsection (2) of section 790.065, Florida Statutes, is amended  
 152 to read:

153 790.065 Sale and delivery of firearms.--

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

157 (a) Review criminal history records and other records that  
 158 have been provided to the department to determine if the  
 159 potential buyer or transferee:

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

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

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

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

173           a. As used in this subparagraph, "adjudicated mentally  
174 defective" means a determination by a court that a person, as a  
175 result of marked subnormal intelligence, or mental illness,  
176 incompetency, condition, or disease, is a danger to himself or  
177 herself or to others or lacks the mental capacity to contract or  
178 manage his or her own affairs. The phrase shall include a  
179 judicial finding of incapacity under s. 744.331(6)(a), an  
180 acquittal by reason of insanity of a person charged with a  
181 criminal offense, and a judicial finding that a criminal  
182 defendant is not competent to stand trial.

183           b. As used in this subparagraph, "committed to a mental  
184 institution" means involuntary commitment, commitment for mental  
185 defectiveness or mental illness, and commitment for substance  
186 abuse. The phrase shall include involuntary inpatient placement  
187 as defined in s. 394.467, involuntary assessment and  
188 stabilization under s. 397.6818, and involuntary substance abuse  
189 treatment under s. 397.6957, but shall not include a person in a



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190 mental institution for observation or discharged from a mental  
 191 institution based upon the initial review by the physician or a  
 192 voluntary admission to a mental institution.

193 c. In order to check for these conditions, the department  
 194 shall compile and maintain an automated database of persons who  
 195 are prohibited from purchasing a firearm based on court records  
 196 of adjudications of mental defectiveness or commitments to  
 197 mental institutions. Clerks of court are required to submit  
 198 these records to the department within 1 month after the  
 199 rendition of the adjudication or commitment. Reports may be  
 200 submitted in an automated format. The reports must, at a  
 201 minimum, include the name, along with any known alias or former  
 202 name, the sex, and the date of birth of the subject. The  
 203 department shall delete any mental health record from the  
 204 database upon request of an individual when 5 years have elapsed  
 205 since the individual's restoration to capacity by court order  
 206 after being adjudicated an incapacitated person under s.  
 207 744.331, or similar laws of any other state; or, in the case of  
 208 an individual who was previously committed to a mental  
 209 institution under chapter 394, or similar laws of any other  
 210 state, when the individual produces a certificate from a  
 211 licensed psychiatrist that he or she has not suffered from  
 212 disability for at least 5 years prior to the date of request for  
 213 removal of the record. Where the department has received a  
 214 subsequent record of an adjudication of mental defectiveness or  
 215 commitment to a mental institution for such individual, the 5-  
 216 year timeframe shall be calculated from the most recent  
 217 adjudication of incapacitation or commitment.

218 d. The department is authorized to disclose the collected  
 219 data to agencies of the Federal Government and other states for  
 220 use exclusively in determining the lawfulness of a firearm sale  
 221 or transfer. The department is also authorized to disclose any  
 222 applicable collected data to the Department of Agriculture and  
 223 Consumer Services for determination of eligibility for issuance  
 224 of a concealed weapons or concealed firearms license upon  
 225 receipt of an applicant fingerprint submission forwarded  
 226 pursuant to s. 790.06(6)(a). When a potential buyer or  
 227 transferee appeals a nonapproval based on these records, the  
 228 clerks of court and mental institutions shall, upon request by  
 229 the department, provide information to help determine whether  
 230 the potential buyer or transferee is the same person as the  
 231 subject of the record. Photographs and any other data that could  
 232 confirm or negate identity must be made available to the  
 233 department for such purposes, notwithstanding any other  
 234 provision of state law to the contrary. Any such information  
 235 that is made confidential or exempt from disclosure by law shall  
 236 retain such confidential or exempt status when transferred to  
 237 the department.

238 Section 2. Subsections (4) and (5) of section 914.25,  
 239 Florida Statutes, are amended to read:

240 914.25 Protective services for certain victims and  
 241 witnesses.--

242 (4) (a) When a victim or witness is certified as provided  
 243 in subsection (3), a law enforcement agency, in consultation  
 244 with the certifying state attorney or the statewide prosecutor,  
 245 may provide appropriate protective services. If a victim or

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246 witness needs to be temporarily relocated, the statewide  
 247 prosecutor or the state attorney must notify the Department of  
 248 Law Enforcement. The Department of Law Enforcement, in  
 249 consultation with the statewide prosecutor or the state  
 250 attorney, and any other law enforcement agency involved in the  
 251 criminal investigation or prosecution, shall coordinate the  
 252 temporary relocation of the victim or witness.

253 (b) Protective services, including temporary relocation  
 254 services, may initially be provided for up to 1 year or until  
 255 the risk giving rise to the certification has diminished,  
 256 whichever occurs sooner. ~~If deemed necessary,~~ The statewide  
 257 prosecutor or the state attorney may, at the end of the  
 258 certification year, recertify a victim or witness at risk of  
 259 harm for an additional period of up to 1 year or until the risk  
 260 giving rise to the certification has diminished, whichever  
 261 occurs first. A victim or witness at risk of harm may be  
 262 certified and recertified annually as provided in this section  
 263 to provide a maximum of 4 years of eligibility for protective  
 264 services.

265 (5) The lead law enforcement agency that provides  
 266 protective services, as authorized in this section, may seek  
 267 reimbursement for its reasonable expenses from the Victim and  
 268 Witness Protection Review Committee, pursuant to ~~the provisions~~  
 269 ~~of s. 943.031.~~ This section does not prevent any law enforcement  
 270 agency from providing protective services at the agency's  
 271 expense beyond the 4-year maximum period established in this  
 272 section. Any such additional expenditures for protective

273 services are not eligible for the reimbursement provided in this  
 274 section.

275 Section 3. Subsection (3) is added to section 937.021,  
 276 Florida Statutes, to read:

277 937.021 Missing child reports.--

278 (3)(a) Upon receiving a request to record, report,  
 279 transmit, display, or release Amber Alert or Missing Child Alert  
 280 information from the law enforcement agency having jurisdiction  
 281 over the missing or endangered child, the Department of Law  
 282 Enforcement as the state Amber Alert coordinator; any state or  
 283 local law enforcement agency and the personnel of these  
 284 agencies; any radio or television network, broadcaster, or other  
 285 media representative; any dealer of communications services as  
 286 defined in s. 202.11; or any agency, employee, individual, or  
 287 entity is immune from civil liability for damages for complying  
 288 in good faith with the request and is presumed to have acted in  
 289 good faith in recording, reporting, transmitting, displaying, or  
 290 releasing Amber Alert or Missing Child Alert information  
 291 pertaining to such child.

292 (b) The presumption of good faith is not overcome if a  
 293 technical or clerical error is made by any such agency,  
 294 employee, individual, or entity acting at the request of the  
 295 local law enforcement agency having jurisdiction or if the Amber  
 296 Alert or Missing Child Alert information is incomplete or  
 297 incorrect because the information received from the local law  
 298 enforcement agency was incomplete or incorrect.

299 (c) Neither this subsection nor any other provision of law  
 300 creates a duty of the agency, employee, individual, or entity to

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301 record, report, transmit, display, or release the Amber Alert or  
 302 Missing Child Alert information received from the local law  
 303 enforcement agency having jurisdiction. The decision to record,  
 304 report, transmit, display, or release information is  
 305 discretionary with the agency, employee, individual, or entity  
 306 receiving that information from the local law enforcement agency  
 307 having jurisdiction.

308 Section 4. Section 938.07, Florida Statutes, is amended to  
 309 read:

310 938.07 Driving or boating under the  
 311 influence.--Notwithstanding any other provision of s. 316.193 or  
 312 s. 327.35, a court cost of \$135 shall be added to any fine  
 313 imposed pursuant to s. 316.193 or s. 327.35. The clerks shall  
 314 remit the funds to the Department of Revenue, \$25 of which shall  
 315 be deposited in the Emergency Medical Services Trust Fund, \$50  
 316 shall be deposited in the Operating Criminal Justice Standards  
 317 and Training Trust Fund of the Department of Law Enforcement to  
 318 be used for operational expenses in conducting the statewide  
 319 criminal analysis laboratory system established in s. 943.32,  
 320 and \$60 shall be deposited in the Brain and Spinal Cord Injury  
 321 Rehabilitation Trust Fund created in s. 381.79.

322 Section 5. Subsection (7) of section 938.27, Florida  
 323 Statutes, is amended to read:

324 938.27 Judgment for costs on conviction.--

325 (7) Investigative costs that ~~which~~ are recovered shall be  
 326 returned to the appropriate investigative agency that ~~which~~  
 327 incurred the expense. Such costs ~~shall~~ include actual expenses  
 328 incurred in conducting the investigation and prosecution of the

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329 criminal case; however, costs may also include the salaries of  
 330 permanent employees. Any investigative costs recovered on behalf  
 331 of a state agency must be remitted to the Department of Revenue  
 332 for deposit in the agency operating trust fund, and a report of  
 333 the payment must be sent to the agency, except that any  
 334 investigative costs recovered on behalf of the Department of Law  
 335 Enforcement shall be deposited in the department's Forfeiture  
 336 and Investigative Support Trust Fund under s. 943.362.

337 Section 6. Subsection (2) of section 943.052, Florida  
 338 Statutes, is amended to read:

339 943.052 Disposition reporting.--The Criminal Justice  
 340 Information Program shall, by rule, establish procedures and a  
 341 format for each criminal justice agency to monitor its records  
 342 and submit reports, as provided by this section, to the program.  
 343 The disposition report shall be developed by the program and  
 344 shall include the offender-based transaction system number.

345 (2) Each clerk of the court shall submit the uniform  
 346 dispositions to the program or in a manner acceptable to the  
 347 program. The report shall be submitted at least once a month  
 348 and, when acceptable by the program, may be submitted in an  
 349 automated format. The disposition report is mandatory for  
 350 dispositions relating to adult offenders only. Beginning July 1,  
 351 2008, a disposition report for each disposition relating to a  
 352 minor offender is mandatory.

353 Section 7. Subsections (2) and (5) of section 68.07,  
 354 Florida Statutes, are amended to read:

355 68.07 Change of name.--

356 (2) The petition shall include a set ~~copy~~ of the  
 357 petitioner's fingerprints taken by a law enforcement agency  
 358 except where a former name is being restored and be verified and  
 359 show:

360 (a) That petitioner is a bona fide resident of and  
 361 domiciled in the county where the change of name is sought.

362 (b) If known, the date and place of birth of petitioner,  
 363 petitioner's father's name, mother's maiden name, and where  
 364 petitioner has resided since birth.

365 (c) If petitioner is married, the name of petitioner's  
 366 spouse and if petitioner has children, the names and ages of  
 367 each and where they reside.

368 (d) If petitioner's name has previously been changed and  
 369 when and where and by what court.

370 (e) Petitioner's occupation and where petitioner is  
 371 employed and has been employed for 5 years next preceding filing  
 372 of the petition. If petitioner owns and operates a business, the  
 373 name and place of it shall be stated and petitioner's connection  
 374 therewith and how long petitioner has been identified with said  
 375 business. If petitioner is in a profession, the profession shall  
 376 be stated, where the petitioner has practiced the profession and  
 377 if a graduate of a school or schools, the name or names thereof,  
 378 time of graduation, and degrees received.

379 (f) Whether the petitioner has been generally known or  
 380 called by any other names and if so, by what names and where.

381 (g) Whether petitioner has ever been adjudicated a  
 382 bankrupt and if so, where and when.

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383 (h) Whether petitioner has ever been arrested for or  
384 charged with, pled guilty or nolo contendere to, or been found  
385 to have committed a criminal offense, regardless of  
386 adjudication, and if so, when and where.

387 (i) Whether any money judgment has ever been entered  
388 against petitioner and if so, the name of the judgment creditor,  
389 the amount and date thereof, the court by which entered, and  
390 whether the judgment has been satisfied.

391 (j) That the petition is filed for no ulterior or illegal  
392 purpose and granting it will not in any manner invade the  
393 property rights of others, whether partnership, patent, good  
394 will, privacy, trademark, or otherwise.

395 (k) That the petitioner's civil rights have never been  
396 suspended, or if the petitioner's civil rights have been  
397 suspended, that full restoration of civil rights has occurred.

398 (5) The clerk must, upon the filing of the final judgment,  
399 send a report of the judgment to the Department of Law  
400 Enforcement on a form to be furnished by that department. The  
401 Department of Law Enforcement must send a copy of the report to  
402 the Department of Highway Safety and Motor Vehicles, which may  
403 be delivered by electronic transmission. The report must contain  
404 sufficient information to identify the petitioner, including a  
405 set copy of the petitioner's fingerprints taken by a law  
406 enforcement agency, the new name of the petitioner, and the file  
407 number of the judgment. Any information retained by the  
408 Department of Law Enforcement and the Department of Highway  
409 Safety and Motor Vehicles may be revised or supplemented by said  
410 departments to reflect changes made by the final judgment. With



411 respect to a person convicted of a felony in another state or of  
 412 a federal offense, the Department of Law Enforcement must send  
 413 the report to the respective state's office of law enforcement  
 414 records or to the office of the Federal Bureau of Investigation.  
 415 The Department of Law Enforcement may forward the report to any  
 416 other law enforcement agency it believes may retain information  
 417 related to the petitioner. Any costs associated with  
 418 fingerprinting must be paid by the petitioner.

419 Section 8. Paragraphs (g) and (h) are added to subsection  
 420 (2) of section 943.05, Florida Statutes, to read:

421 943.05 Criminal Justice Information Program; duties; crime  
 422 reports.--

423 (2) The program shall:

424 (g) As authorized by law, retain fingerprints submitted by  
 425 criminal and noncriminal justice agencies to the department for  
 426 a criminal history background screening in a manner provided by  
 427 rule and enter the fingerprints in the statewide automated  
 428 fingerprint identification system authorized by paragraph (b).  
 429 Such fingerprints shall thereafter be available for all purposes  
 430 and uses authorized for arrest fingerprint cards entered into  
 431 the statewide automated fingerprint identification system  
 432 pursuant to s. 943.051.

433 (h)1. As authorized by law, search all arrest fingerprint  
 434 cards received under s. 943.051 against the fingerprints  
 435 retained in the statewide automated fingerprint identification  
 436 system under paragraph (g). Any arrest record that is identified  
 437 with the retained fingerprints of a person subject to background

438 screening as provided in paragraph (g) shall be reported to the  
439 appropriate agency.

440 2. Agencies may participate in this search process by  
441 payment of an annual fee to the department and by informing the  
442 department of any change in the affiliation, employment, or  
443 contractual status or place of affiliation, employment, or  
444 contracting of the persons whose fingerprints are retained under  
445 paragraph (g). The department shall adopt a rule setting the  
446 amount of the annual fee to be imposed upon each participating  
447 agency for performing these searches and establishing the  
448 procedures for the retention of fingerprints and the  
449 dissemination of search results. The fee may be borne as  
450 provided by law. Fees may be waived or reduced by the executive  
451 director for good cause shown. Consistent with the recognition  
452 of criminal justice agencies expressed in s. 943.053(3), these  
453 services will be provided to criminal justice agencies for  
454 criminal justice purposes free of charge.

455 Section 9. Subsections (5) through (9) of section 943.053,  
456 Florida Statutes, are renumbered as subsections (6) through  
457 (10), respectively, and new subsections (5), (11), and (12) are  
458 added to that section, to read:

459 943.053 Dissemination of criminal justice information;  
460 fees.--

461 (5) Notwithstanding the provisions of s. 943.0525, and any  
462 user agreements adopted pursuant thereto, and notwithstanding  
463 the confidentiality of sealed records as provided for in s.  
464 943.059, the department shall make online access to Florida  
465 criminal justice information available to each judge in the

466 state courts system for the purpose of assisting judges in their  
 467 case-related decisionmaking responsibilities. Such online access  
 468 shall be provided without charge to the state courts system.  
 469 Sealed records received by the courts under this section remain  
 470 confidential and exempt from the provisions of s. 119.07(1). The  
 471 information provided pursuant to this section shall not take the  
 472 place of any information required to be provided to the courts  
 473 by any other agency or entity. Information provided under this  
 474 section shall be used only for the official court business for  
 475 which it was requested and may not be further disseminated.

476 (11) A criminal justice agency that is authorized under  
 477 federal rules or law to conduct a criminal history background  
 478 check on an agency employee who is not certified by the Criminal  
 479 Justice Standards and Training Commission under s. 943.12 may  
 480 submit to the department the fingerprints of the noncertified  
 481 employee to obtain state and national criminal history  
 482 information. Effective January 15, 2007, the fingerprints  
 483 submitted shall be retained and entered in the statewide  
 484 automated fingerprint identification system authorized by s.  
 485 943.05 and shall be available for all purposes and uses  
 486 authorized for arrest fingerprint cards entered in the statewide  
 487 automated fingerprint identification system pursuant to s.  
 488 943.051. The department shall search all arrest fingerprint  
 489 cards received pursuant to s. 943.051 against the fingerprints  
 490 retained in the statewide automated fingerprint identification  
 491 system pursuant to this section. In addition to all purposes and  
 492 uses authorized for arrest fingerprint cards for which submitted  
 493 fingerprints may be used, any arrest record that is identified

494 with the retained employee fingerprints must be reported to the  
 495 submitting employing agency.

496 (12) Notwithstanding any other provision of law, when a  
 497 criminal history check or a duty to disclose the absence of a  
 498 criminal history check is mandated by state law, or when a  
 499 privilege or benefit is conferred by state law in return for  
 500 exercising an option of conducting a criminal history check, the  
 501 referenced criminal history check, whether it is an initial or  
 502 renewal check, shall include a Florida criminal history provided  
 503 by the department as set forth in this section. Such Florida  
 504 criminal history information may be provided by a private vendor  
 505 only if that information is directly obtained from the  
 506 department for each request. When a national criminal history  
 507 check is required or authorized by state law, the national  
 508 criminal history check shall be submitted by and through the  
 509 department in the manner established by the department for such  
 510 checks, unless otherwise required by federal law. The fee for  
 511 criminal history information as established by state law or, in  
 512 the case of national checks, by the Federal Government, shall be  
 513 borne by the person or entity submitting the request, or as  
 514 provided by law. Criminal history information provided by any  
 515 other governmental entity of this state or any private entity  
 516 shall not be substituted for criminal history information  
 517 provided by the department when the criminal history check or a  
 518 duty to disclose the absence of a criminal history check is  
 519 required by statute or is made a condition of a privilege or  
 520 benefit by law.

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521 Section 10. Section 943.0585, Florida Statutes, is amended  
522 to read:

523 943.0585 Court-ordered expunction of criminal history  
524 records.--The courts of this state have jurisdiction over their  
525 own procedures, including the maintenance, expunction, and  
526 correction of judicial records containing criminal history  
527 information to the extent such procedures are not inconsistent  
528 with the conditions, responsibilities, and duties established by  
529 this section. Any court of competent jurisdiction may order a  
530 criminal justice agency to expunge the criminal history record  
531 of a minor or an adult who complies with the requirements of  
532 this section. The court shall not order a criminal justice  
533 agency to expunge a criminal history record until the person  
534 seeking to expunge a criminal history record has applied for and  
535 received a certificate of eligibility for expunction pursuant to  
536 subsection (2). A criminal history record that relates to a  
537 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
538 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
539 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
540 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041,  
541 or any violation specified as a predicate offense for  
542 registration as a sexual predator pursuant to s. 775.21, without  
543 regard to whether that offense alone is sufficient to require  
544 such registration, or for registration as a sexual offender  
545 pursuant to s. 943.0435, may not be expunged, without regard to  
546 whether adjudication was withheld, if the defendant was found  
547 guilty of or pled guilty or nolo contendere to the offense, or  
548 if the defendant, as a minor, was found to have committed, or

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549 | pled guilty or nolo contendere to committing, the offense as a  
 550 | delinquent act. The court may only order expunction of a  
 551 | criminal history record pertaining to one arrest or one incident  
 552 | of alleged criminal activity, except as provided in this  
 553 | section. The court may, at its sole discretion, order the  
 554 | expunction of a criminal history record pertaining to more than  
 555 | one arrest if the additional arrests directly relate to the  
 556 | original arrest. If the court intends to order the expunction of  
 557 | records pertaining to such additional arrests, such intent must  
 558 | be specified in the order. A criminal justice agency may not  
 559 | expunge any record pertaining to such additional arrests if the  
 560 | order to expunge does not articulate the intention of the court  
 561 | to expunge a record pertaining to more than one arrest. This  
 562 | section does not prevent the court from ordering the expunction  
 563 | of only a portion of a criminal history record pertaining to one  
 564 | arrest or one incident of alleged criminal activity.

565 | Notwithstanding any law to the contrary, a criminal justice  
 566 | agency may comply with laws, court orders, and official requests  
 567 | of other jurisdictions relating to expunction, correction, or  
 568 | confidential handling of criminal history records or information  
 569 | derived therefrom. This section does not confer any right to the  
 570 | expunction of any criminal history record, and any request for  
 571 | expunction of a criminal history record may be denied at the  
 572 | sole discretion of the court.

573 |       (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.--Each  
 574 | petition to a court to expunge a criminal history record is  
 575 | complete only when accompanied by:

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576 (a) A valid certificate of eligibility for expunction  
 577 issued by the department pursuant to subsection (2).  
 578 (b) The petitioner's sworn statement attesting that the  
 579 petitioner:  
 580 1. Has never, prior to the date on which the petition is  
 581 filed, been adjudicated guilty of a criminal offense or  
 582 comparable ordinance violation, or been adjudicated delinquent  
 583 for committing any a felony or a misdemeanor specified in s.  
 584 943.051(3)(b).  
 585 2. Has not been adjudicated guilty of, or adjudicated  
 586 delinquent for committing, any of the acts stemming from the  
 587 arrest or alleged criminal activity to which the petition  
 588 pertains.  
 589 3. Has never secured a prior sealing or expunction of a  
 590 criminal history record under this section, former s. 893.14,  
 591 former s. 901.33, or former s. 943.058, or from any jurisdiction  
 592 outside the state, unless expunction is sought of a criminal  
 593 history record previously sealed for 10 years pursuant to  
 594 paragraph (2)(h) and the record is otherwise eligible for  
 595 expunction.  
 596 4. Is eligible for such an expunction to the best of his  
 597 or her knowledge or belief and does not have any other petition  
 598 to expunge or any petition to seal pending before any court.  
 599  
 600 Any person who knowingly provides false information on such  
 601 sworn statement to the court commits a felony of the third  
 602 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 603 775.084.

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604 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to  
 605 petitioning the court to expunge a criminal history record, a  
 606 person seeking to expunge a criminal history record shall apply  
 607 to the department for a certificate of eligibility for  
 608 expunction. The department shall, by rule adopted pursuant to  
 609 chapter 120, establish procedures pertaining to the application  
 610 for and issuance of certificates of eligibility for expunction.  
 611 A certificate of eligibility for expunction is valid for 12  
 612 months after the date stamped on the certificate when issued by  
 613 the department. After that time, the petitioner must reapply to  
 614 the department for a new certificate of eligibility. Eligibility  
 615 for a renewed certification of eligibility must be based on the  
 616 status of the applicant and the law in effect at the time of the  
 617 most recent application. The department shall issue a  
 618 certificate of eligibility for expunction to a person who is the  
 619 subject of a criminal history record if that person:  
 620 (a) Has obtained, and submitted to the department, a  
 621 written, certified statement from the appropriate state attorney  
 622 or statewide prosecutor which indicates:  
 623 1. That an indictment, information, or other charging  
 624 document was not filed or issued in the case.  
 625 2. That an indictment, information, or other charging  
 626 document, if filed or issued in the case, was dismissed or nolle  
 627 prosequi by the state attorney or statewide prosecutor, or was  
 628 dismissed by a court of competent jurisdiction, and that none of  
 629 the charges related to the arrest or alleged criminal activity  
 630 to which the petition to expunge pertains resulted in a trial,



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631 without regard to whether the outcome of the trial was other  
632 than an adjudication of guilt.

633 3. That the criminal history record does not relate to a  
634 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
635 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
636 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
637 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041,  
638 or any violation specified as a predicate offense for  
639 registration as a sexual predator pursuant to s. 775.21, without  
640 regard to whether that offense alone is sufficient to require  
641 such registration, or for registration as a sexual offender  
642 pursuant to s. 943.0435, where the defendant was found guilty  
643 of, or pled guilty or nolo contendere to any such offense, or  
644 that the defendant, as a minor, was found to have committed, or  
645 pled guilty or nolo contendere to committing, such an offense as  
646 a delinquent act, without regard to whether adjudication was  
647 withheld.

648 (b) Remits a \$75 processing fee to the department for  
649 placement in the Department of Law Enforcement Operating Trust  
650 Fund, unless such fee is waived by the executive director.

651 (c) Has submitted to the department a certified copy of  
652 the disposition of the charge to which the petition to expunge  
653 pertains.

654 (d) Has never, prior to the date on which the application  
655 for a certificate of eligibility is filed, been adjudicated  
656 guilty of a criminal offense or comparable ordinance violation,  
657 or been adjudicated delinquent for committing any a felony or a  
658 misdemeanor specified in s. 943.051(3)(b).

659 (e) Has not been adjudicated guilty of, or adjudicated  
660 delinquent for committing, any of the acts stemming from the  
661 arrest or alleged criminal activity to which the petition to  
662 expunge pertains.

663 (f) Has never secured a prior sealing or expunction of a  
664 criminal history record under this section, former s. 893.14,  
665 former s. 901.33, or former s. 943.058, unless expunction is  
666 sought of a criminal history record previously sealed for 10  
667 years pursuant to paragraph (h) and the record is otherwise  
668 eligible for expunction.

669 (g) Is no longer under court supervision applicable to the  
670 disposition of the arrest or alleged criminal activity to which  
671 the petition to expunge pertains.

672 (h) Has previously obtained a court order sealing the  
673 record under this section, former s. 893.14, former s. 901.33,  
674 or former s. 943.058 for a minimum of 10 years because  
675 adjudication was withheld or because all charges related to the  
676 arrest or alleged criminal activity to which the petition to  
677 expunge pertains were not dismissed prior to trial, without  
678 regard to whether the outcome of the trial was other than an  
679 adjudication of guilt. The requirement for the record to have  
680 previously been sealed for a minimum of 10 years does not apply  
681 when a plea was not entered or all charges related to the arrest  
682 or alleged criminal activity to which the petition to expunge  
683 pertains were dismissed prior to trial. ~~Is not required to wait~~  
684 ~~a minimum of 10 years prior to being eligible for an expunction~~  
685 ~~of such records because all charges related to the arrest or~~  
686 ~~criminal activity to which the petition to expunge pertains were~~

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687 ~~dismissed prior to trial, adjudication, or the withholding of~~  
 688 ~~adjudication. Otherwise, such criminal history record must be~~  
 689 ~~sealed under this section, former s. 893.14, former s. 901.33,~~  
 690 ~~or former s. 943.058 for at least 10 years before such record is~~  
 691 ~~eligible for expunction.~~

692 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.--

693 (a) In judicial proceedings under this section, a copy of  
 694 the completed petition to expunge shall be served upon the  
 695 appropriate state attorney or the statewide prosecutor and upon  
 696 the arresting agency; however, it is not necessary to make any  
 697 agency other than the state a party. The appropriate state  
 698 attorney or the statewide prosecutor and the arresting agency  
 699 may respond to the court regarding the completed petition to  
 700 expunge.

701 (b) If relief is granted by the court, the clerk of the  
 702 court shall certify copies of the order to the appropriate state  
 703 attorney or the statewide prosecutor and the arresting agency.  
 704 The arresting agency is responsible for forwarding the order to  
 705 any other agency to which the arresting agency disseminated the  
 706 criminal history record information to which the order pertains.  
 707 The department shall forward the order to expunge to the Federal  
 708 Bureau of Investigation. The clerk of the court shall certify a  
 709 copy of the order to any other agency which the records of the  
 710 court reflect has received the criminal history record from the  
 711 court.

712 (c) For an order to expunge entered by a court prior to  
 713 July 1, 1992, the department shall notify the appropriate state  
 714 attorney or statewide prosecutor of an order to expunge which is

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715 contrary to law because the person who is the subject of the  
 716 record has previously been convicted of a crime or comparable  
 717 ordinance violation or has had a prior criminal history record  
 718 sealed or expunged. Upon receipt of such notice, the appropriate  
 719 state attorney or statewide prosecutor shall take action, within  
 720 60 days, to correct the record and petition the court to void  
 721 the order to expunge. The department shall seal the record until  
 722 such time as the order is voided by the court.

723 (d) On or after July 1, 1992, the department or any other  
 724 criminal justice agency is not required to act on an order to  
 725 expunge entered by a court when such order does not comply with  
 726 the requirements of this section. Upon receipt of such an order,  
 727 the department must notify the issuing court, the appropriate  
 728 state attorney or statewide prosecutor, the petitioner or the  
 729 petitioner's attorney, and the arresting agency of the reason  
 730 for noncompliance. The appropriate state attorney or statewide  
 731 prosecutor shall take action within 60 days to correct the  
 732 record and petition the court to void the order. No cause of  
 733 action, including contempt of court, shall arise against any  
 734 criminal justice agency for failure to comply with an order to  
 735 expunge when the petitioner for such order failed to obtain the  
 736 certificate of eligibility as required by this section or such  
 737 order does not otherwise comply with the requirements of this  
 738 section.

739 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any  
 740 criminal history record of a minor or an adult which is ordered  
 741 expunged by a court of competent jurisdiction pursuant to this  
 742 section must be physically destroyed or obliterated by any

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743 criminal justice agency having custody of such record; except  
 744 that any criminal history record in the custody of the  
 745 department must be retained in all cases. A criminal history  
 746 record ordered expunged that is retained by the department is  
 747 confidential and exempt from the provisions of s. 119.07(1) and  
 748 s. 24(a), Art. I of the State Constitution and not available to  
 749 any person or entity except upon order of a court of competent  
 750 jurisdiction. A criminal justice agency may retain a notation  
 751 indicating compliance with an order to expunge.

752 (a) The person who is the subject of a criminal history  
 753 record that is expunged under this section or under other  
 754 provisions of law, including former s. 893.14, former s. 901.33,  
 755 and former s. 943.058, may lawfully deny or fail to acknowledge  
 756 the arrests covered by the expunged record, except when the  
 757 subject of the record:

- 758 1. Is a candidate for employment with a criminal justice  
 759 agency;
- 760 2. Is a defendant in a criminal prosecution;
- 761 3. Concurrently or subsequently petitions for relief under  
 762 this section or s. 943.059;
- 763 4. Is a candidate for admission to The Florida Bar;
- 764 5. Is seeking to be employed or licensed by or to contract  
 765 with the Department of Children and Family Services or the  
 766 Department of Juvenile Justice or to be employed or used by such  
 767 contractor or licensee in a sensitive position having direct  
 768 contact with children, the developmentally disabled, the aged,  
 769 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
 770 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.

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771 409.175(2)(i), s. 415.102(4), s. 916.106(10) and (13), s.  
772 985.407, or chapter 400; ~~or~~

773 6. Is seeking to be employed or licensed by the Department  
774 of Education, any district school board, any university  
775 laboratory school, any charter school, any private or parochial  
776 school, or any local governmental entity that licenses child  
777 care facilities; or

778 7. Is seeking authorization from a Florida seaport  
779 identified in s. 311.09 for employment within or access to one  
780 or more of such seaports pursuant to s. 311.12 or s. 311.125.

781 (b) Subject to the exceptions in paragraph (a), a person  
782 who has been granted an expunction under this section, former s.  
783 893.14, former s. 901.33, or former s. 943.058 may not be held  
784 under any provision of law of this state to commit perjury or to  
785 be otherwise liable for giving a false statement by reason of  
786 such person's failure to recite or acknowledge an expunged  
787 criminal history record.

788 (c) Information relating to the existence of an expunged  
789 criminal history record which is provided in accordance with  
790 paragraph (a) is confidential and exempt from the provisions of  
791 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
792 except that the department shall disclose the existence of a  
793 criminal history record ordered expunged to the entities set  
794 forth in subparagraphs (a)1., 4., 5., and 6., and 7. for their  
795 respective licensing, access authorization, and employment  
796 purposes, and to criminal justice agencies for their respective  
797 criminal justice purposes. It is unlawful for any employee of an  
798 entity set forth in subparagraph (a)1., subparagraph (a)4.,

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799 | subparagraph (a)5., ~~or~~ subparagraph (a)6., or subparagraph(a)7.  
 800 | to disclose information relating to the existence of an expunged  
 801 | criminal history record of a person seeking employment, access  
 802 | authorization, or licensure with such entity or contractor,  
 803 | except to the person to whom the criminal history record relates  
 804 | or to persons having direct responsibility for employment,  
 805 | access authorization, or licensure decisions. Any person who  
 806 | violates this paragraph commits a misdemeanor of the first  
 807 | degree, punishable as provided in s. 775.082 or s. 775.083.

808 | (5) STATUTORY REFERENCES.--Any reference to any other  
 809 | chapter, section, or subdivision of the Florida Statutes in this  
 810 | section constitutes a general reference under the doctrine of  
 811 | incorporation by reference.

812 | Section 11. Section 943.059, Florida Statutes, is amended  
 813 | to read:

814 | 943.059 Court-ordered sealing of criminal history  
 815 | records.--The courts of this state shall continue to have  
 816 | jurisdiction over their own procedures, including the  
 817 | maintenance, sealing, and correction of judicial records  
 818 | containing criminal history information to the extent such  
 819 | procedures are not inconsistent with the conditions,  
 820 | responsibilities, and duties established by this section. Any  
 821 | court of competent jurisdiction may order a criminal justice  
 822 | agency to seal the criminal history record of a minor or an  
 823 | adult who complies with the requirements of this section. The  
 824 | court shall not order a criminal justice agency to seal a  
 825 | criminal history record until the person seeking to seal a  
 826 | criminal history record has applied for and received a

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827 certificate of eligibility for sealing pursuant to subsection  
 828 (2). A criminal history record that relates to a violation of s.  
 829 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
 830 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
 831 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
 832 916.1075, ~~or~~ a violation enumerated in s. 907.041, or any  
 833 violation specified as a predicate offense for registration as a  
 834 sexual predator pursuant to s. 775.21, without regard to whether  
 835 that offense alone is sufficient to require such registration,  
 836 or for registration as a sexual offender pursuant to s.  
 837 943.0435, may not be sealed, without regard to whether  
 838 adjudication was withheld, if the defendant was found guilty of  
 839 or pled guilty or nolo contendere to the offense, or if the  
 840 defendant, as a minor, was found to have committed or pled  
 841 guilty or nolo contendere to committing the offense as a  
 842 delinquent act. The court may only order sealing of a criminal  
 843 history record pertaining to one arrest or one incident of  
 844 alleged criminal activity, except as provided in this section.  
 845 The court may, at its sole discretion, order the sealing of a  
 846 criminal history record pertaining to more than one arrest if  
 847 the additional arrests directly relate to the original arrest.  
 848 If the court intends to order the sealing of records pertaining  
 849 to such additional arrests, such intent must be specified in the  
 850 order. A criminal justice agency may not seal any record  
 851 pertaining to such additional arrests if the order to seal does  
 852 not articulate the intention of the court to seal records  
 853 pertaining to more than one arrest. This section does not  
 854 prevent the court from ordering the sealing of only a portion of



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855 a criminal history record pertaining to one arrest or one  
 856 incident of alleged criminal activity. Notwithstanding any law  
 857 to the contrary, a criminal justice agency may comply with laws,  
 858 court orders, and official requests of other jurisdictions  
 859 relating to sealing, correction, or confidential handling of  
 860 criminal history records or information derived therefrom. This  
 861 section does not confer any right to the sealing of any criminal  
 862 history record, and any request for sealing a criminal history  
 863 record may be denied at the sole discretion of the court.

864 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.--Each  
 865 petition to a court to seal a criminal history record is  
 866 complete only when accompanied by:

867 (a) A valid certificate of eligibility for sealing issued  
 868 by the department pursuant to subsection (2).

869 (b) The petitioner's sworn statement attesting that the  
 870 petitioner:

871 1. Has never, prior to the date on which the petition is  
 872 filed, been adjudicated guilty of a criminal offense or  
 873 comparable ordinance violation, or been adjudicated delinquent  
 874 for committing any a felony or a misdemeanor specified in s.  
 875 943.051(3)(b).

876 2. Has not been adjudicated guilty of or adjudicated  
 877 delinquent for committing any of the acts stemming from the  
 878 arrest or alleged criminal activity to which the petition to  
 879 seal pertains.

880 3. Has never secured a prior sealing or expunction of a  
 881 criminal history record under this section, former s. 893.14,

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882 former s. 901.33, former s. 943.058, or from any jurisdiction  
883 outside the state.

884 4. Is eligible for such a sealing to the best of his or  
885 her knowledge or belief and does not have any other petition to  
886 seal or any petition to expunge pending before any court.

887

888 Any person who knowingly provides false information on such  
889 sworn statement to the court commits a felony of the third  
890 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
891 775.084.

892 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to  
893 petitioning the court to seal a criminal history record, a  
894 person seeking to seal a criminal history record shall apply to  
895 the department for a certificate of eligibility for sealing. The  
896 department shall, by rule adopted pursuant to chapter 120,  
897 establish procedures pertaining to the application for and  
898 issuance of certificates of eligibility for sealing. A  
899 certificate of eligibility for sealing is valid for 12 months  
900 after the date stamped on the certificate when issued by the  
901 department. After that time, the petitioner must reapply to the  
902 department for a new certificate of eligibility. Eligibility for  
903 a renewed certification of eligibility must be based on the  
904 status of the applicant and the law in effect at the time of the  
905 most recent application. The department shall issue a  
906 certificate of eligibility for sealing to a person who is the  
907 subject of a criminal history record provided that such person:

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908 (a) Has submitted to the department a certified copy of  
909 the disposition of the charge to which the petition to seal  
910 pertains.

911 (b) Remits a \$75 processing fee to the department for  
912 placement in the Department of Law Enforcement Operating Trust  
913 Fund, unless such fee is waived by the executive director.

914 (c) Has never, prior to the date on which the application  
915 for a certificate of eligibility is filed, been adjudicated  
916 guilty of a criminal offense or comparable ordinance violation,  
917 or been adjudicated delinquent for committing any a felony or a  
918 misdemeanor specified in s. 943.051(3)(b).

919 (d) Has not been adjudicated guilty of or adjudicated  
920 delinquent for committing any of the acts stemming from the  
921 arrest or alleged criminal activity to which the petition to  
922 seal pertains.

923 (e) Has never secured a prior sealing or expunction of a  
924 criminal history record under this section, former s. 893.14,  
925 former s. 901.33, or former s. 943.058.

926 (f) Is no longer under court supervision applicable to the  
927 disposition of the arrest or alleged criminal activity to which  
928 the petition to seal pertains.

929 (3) PROCESSING OF A PETITION OR ORDER TO SEAL.--

930 (a) In judicial proceedings under this section, a copy of  
931 the completed petition to seal shall be served upon the  
932 appropriate state attorney or the statewide prosecutor and upon  
933 the arresting agency; however, it is not necessary to make any  
934 agency other than the state a party. The appropriate state  
935 attorney or the statewide prosecutor and the arresting agency

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936 may respond to the court regarding the completed petition to  
937 seal.

938 (b) If relief is granted by the court, the clerk of the  
939 court shall certify copies of the order to the appropriate state  
940 attorney or the statewide prosecutor and to the arresting  
941 agency. The arresting agency is responsible for forwarding the  
942 order to any other agency to which the arresting agency  
943 disseminated the criminal history record information to which  
944 the order pertains. The department shall forward the order to  
945 seal to the Federal Bureau of Investigation. The clerk of the  
946 court shall certify a copy of the order to any other agency  
947 which the records of the court reflect has received the criminal  
948 history record from the court.

949 (c) For an order to seal entered by a court prior to July  
950 1, 1992, the department shall notify the appropriate state  
951 attorney or statewide prosecutor of any order to seal which is  
952 contrary to law because the person who is the subject of the  
953 record has previously been convicted of a crime or comparable  
954 ordinance violation or has had a prior criminal history record  
955 sealed or expunged. Upon receipt of such notice, the appropriate  
956 state attorney or statewide prosecutor shall take action, within  
957 60 days, to correct the record and petition the court to void  
958 the order to seal. The department shall seal the record until  
959 such time as the order is voided by the court.

960 (d) On or after July 1, 1992, the department or any other  
961 criminal justice agency is not required to act on an order to  
962 seal entered by a court when such order does not comply with the  
963 requirements of this section. Upon receipt of such an order, the

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964 department must notify the issuing court, the appropriate state  
 965 attorney or statewide prosecutor, the petitioner or the  
 966 petitioner's attorney, and the arresting agency of the reason  
 967 for noncompliance. The appropriate state attorney or statewide  
 968 prosecutor shall take action within 60 days to correct the  
 969 record and petition the court to void the order. No cause of  
 970 action, including contempt of court, shall arise against any  
 971 criminal justice agency for failure to comply with an order to  
 972 seal when the petitioner for such order failed to obtain the  
 973 certificate of eligibility as required by this section or when  
 974 such order does not comply with the requirements of this  
 975 section.

976 (e) An order sealing a criminal history record pursuant to  
 977 this section does not require that such record be surrendered to  
 978 the court, and such record shall continue to be maintained by  
 979 the department and other criminal justice agencies.

980 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal  
 981 history record of a minor or an adult which is ordered sealed by  
 982 a court of competent jurisdiction pursuant to this section is  
 983 confidential and exempt from the provisions of s. 119.07(1) and  
 984 s. 24(a), Art. I of the State Constitution and is available only  
 985 to the person who is the subject of the record, to the subject's  
 986 attorney, to criminal justice agencies for their respective  
 987 criminal justice purposes, which include conducting a criminal  
 988 history background check for approval of firearms purchases or  
 989 transfers as authorized by state or federal law, or to those  
 990 entities set forth in subparagraphs (a)1., 4., 5., and 6., and

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991 8. for their respective licensing, access authorization, and  
992 employment purposes.

993 (a) The subject of a criminal history record sealed under  
994 this section or under other provisions of law, including former  
995 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
996 deny or fail to acknowledge the arrests covered by the sealed  
997 record, except when the subject of the record:

998 1. Is a candidate for employment with a criminal justice  
999 agency;

1000 2. Is a defendant in a criminal prosecution;

1001 3. Concurrently or subsequently petitions for relief under  
1002 this section or s. 943.0585;

1003 4. Is a candidate for admission to The Florida Bar;

1004 5. Is seeking to be employed or licensed by or to contract  
1005 with the Department of Children and Family Services or the  
1006 Department of Juvenile Justice or to be employed or used by such  
1007 contractor or licensee in a sensitive position having direct  
1008 contact with children, the developmentally disabled, the aged,  
1009 or the elderly as provided in s. 110.1127(3), s. 393.063, s.  
1010 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s.  
1011 409.175(2)(i), s. 415.102(4), s. 415.103, s. 916.106(10) and  
1012 (13), s. 985.407, or chapter 400; ~~or~~

1013 6. Is seeking to be employed or licensed by the Department  
1014 of Education, any district school board, any university  
1015 laboratory school, any charter school, any private or parochial  
1016 school, or any local governmental entity that licenses child  
1017 care facilities;i-

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1018           7. Is attempting to purchase a firearm from a licensed  
 1019 importer, licensed manufacturer, or licensed dealer and is  
 1020 subject to a criminal history background check under state or  
 1021 federal law; or

1022           8. Is seeking authorization from a Florida seaport  
 1023 identified in s. 311.09 for employment within or access to one  
 1024 or more of such seaports pursuant to s. 311.12 or s. 311.125.

1025           (b) Subject to the exceptions in paragraph (a), a person  
 1026 who has been granted a sealing under this section, former s.  
 1027 893.14, former s. 901.33, or former s. 943.058 may not be held  
 1028 under any provision of law of this state to commit perjury or to  
 1029 be otherwise liable for giving a false statement by reason of  
 1030 such person's failure to recite or acknowledge a sealed criminal  
 1031 history record.

1032           (c) Information relating to the existence of a sealed  
 1033 criminal record provided in accordance with the provisions of  
 1034 paragraph (a) is confidential and exempt from the provisions of  
 1035 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,  
 1036 except that the department shall disclose the sealed criminal  
 1037 history record to the entities set forth in subparagraphs (a)1.,  
 1038 4., 5., ~~and 6.~~, and 8. for their respective licensing, access  
 1039 authorization, and employment purposes. It is unlawful for any  
 1040 employee of an entity set forth in subparagraph (a)1.,  
 1041 subparagraph (a)4., subparagraph (a)5., ~~or~~ subparagraph (a)6.,  
 1042 or subparagraph (a)8. to disclose information relating to the  
 1043 existence of a sealed criminal history record of a person  
 1044 seeking employment, access authorization, or licensure with such  
 1045 entity or contractor, except to the person to whom the criminal

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1046 history record relates or to persons having direct  
 1047 responsibility for employment, access authorization, or  
 1048 licensure decisions. Any person who violates the provisions of  
 1049 this paragraph commits a misdemeanor of the first degree,  
 1050 punishable as provided in s. 775.082 or s. 775.083.

1051 (5) STATUTORY REFERENCES.--Any reference to any other  
 1052 chapter, section, or subdivision of the Florida Statutes in this  
 1053 section constitutes a general reference under the doctrine of  
 1054 incorporation by reference.

1055 Section 12. Subsection (5) of section 943.13, Florida  
 1056 Statutes, is amended to read:

1057 943.13 Officers' minimum qualifications for employment or  
 1058 appointment.--On or after October 1, 1984, any person employed  
 1059 or appointed as a full-time, part-time, or auxiliary law  
 1060 enforcement officer or correctional officer; on or after October  
 1061 1, 1986, any person employed as a full-time, part-time, or  
 1062 auxiliary correctional probation officer; and on or after  
 1063 October 1, 1986, any person employed as a full-time, part-time,  
 1064 or auxiliary correctional officer by a private entity under  
 1065 contract to the Department of Corrections, to a county  
 1066 commission, or to the Department of Management Services shall:

1067 (5) Have documentation of his or her processed  
 1068 fingerprints on file with the employing agency or, if a private  
 1069 correctional officer, have documentation of his or her processed  
 1070 fingerprints on file with the Department of Corrections or the  
 1071 Criminal Justice Standards and Training Commission. If  
 1072 administrative delays are caused by the department or the  
 1073 Federal Bureau of Investigation and the person has complied with



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1074 subsections (1)-(4) and (6)-(9), he or she may be employed or  
 1075 appointed for a period not to exceed 1 calendar year from the  
 1076 date he or she was employed or appointed or until return of the  
 1077 processed fingerprints documenting noncompliance with  
 1078 subsections (1)-(4) or subsection (7), whichever occurs first.  
 1079 Beginning January 15, 2007, the department shall retain and  
 1080 enter into the statewide automated fingerprint identification  
 1081 system authorized by s. 943.05 all fingerprints submitted to the  
 1082 department as required by this section. Thereafter, the  
 1083 fingerprints shall be available for all purposes and uses  
 1084 authorized for arrest fingerprint cards entered in the statewide  
 1085 automated fingerprint identification system pursuant to s.  
 1086 943.051. The department shall search all arrest fingerprint  
 1087 cards received pursuant to s. 943.051 against the fingerprints  
 1088 retained in the statewide automated fingerprint identification  
 1089 system pursuant to this section and report to the employing  
 1090 agency any arrest records that are identified with the retained  
 1091 employee's fingerprints. By January 1, 2008, a person who must  
 1092 meet minimum qualifications as provided in this section and  
 1093 whose fingerprints are not retained by the department pursuant  
 1094 to this section must be refingerprinted. These fingerprints must  
 1095 be forwarded to the department for processing and retention.

1096 Section 13. Section 943.1715, Florida Statutes, is amended  
 1097 to read:

1098 943.1715 Basic skills training relating to diverse  
 1099 populations.--The commission shall establish and maintain  
 1100 standards for instruction of officers in the subject of  
 1101 interpersonal skills relating to diverse populations, with an

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1102 emphasis on the awareness of cultural differences. Every basic  
1103 skills course required in order for officers to obtain initial  
1104 certification must include ~~a minimum of 8 hours~~ training in  
1105 interpersonal skills with diverse populations.

1106 Section 14. Section 943.1716, Florida Statutes, is amended  
1107 to read:

1108 943.1716 Continued employment training relating to diverse  
1109 populations.--The commission shall by rule require that each  
1110 officer receive, as part of the 40 hours of required instruction  
1111 for continued employment or appointment as an officer, ~~8 hours~~  
1112 ~~of~~ instruction in the subject of interpersonal skills relating  
1113 to diverse populations, with an emphasis on the awareness of  
1114 cultural differences.

1115 Section 15. Section 943.2569, Florida Statutes, is  
1116 repealed.

1117 Section 16. Section 943.257, Florida Statutes, is amended  
1118 to read:

1119 943.257 Independent audit documentation subject to  
1120 inspection.--The Criminal Justice Standards and Training  
1121 Commission or a center's advisory board may inspect and copy any  
1122 documents from the center as required to carry out the  
1123 commission's or the respective board's oversight  
1124 responsibilities, including information and documents related to  
1125 applicant evaluations and center expenditures. In addition, the  
1126 commission or board may inspect and copy the documentation of  
1127 any internal or independent audits conducted by or on behalf of  
1128 the centers to ensure that candidate and inservice officer  
1129 assessments have been made and that expenditures are in

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1130 conformance with the requirements of this act and with other  
1131 applicable procedures.

1132 Section 17. Subsections (1) and (3) of section 943.401,  
1133 Florida Statutes, are amended to read:

1134 943.401 Public assistance fraud.--

1135 (1)(a) The Department of Law Enforcement shall investigate  
1136 all public assistance provided to residents of the state or  
1137 provided to others by the state made under the provisions of  
1138 chapter 409 or chapter 414. In the course of such investigation  
1139 the Department of Law Enforcement shall examine all records,  
1140 including electronic benefits transfer records and make inquiry  
1141 of all persons who may have knowledge as to any irregularity  
1142 incidental to the disbursement of public moneys, food stamps, or  
1143 other items or benefits authorizations to recipients.

1144 (b) All public assistance recipients, as a condition  
1145 precedent to qualification for public assistance received and as  
1146 defined under the provisions of chapter 409, chapter 411, or  
1147 chapter 414, shall first give in writing, to the Agency for  
1148 Health Care Administration, the Department of Health, the Agency  
1149 for Workforce Innovation, and the Department of Children and  
1150 Family Services, as appropriate, and to the Department of Law  
1151 Enforcement, consent to make inquiry of past or present  
1152 employers and records, financial or otherwise.

1153 (3) The results of such investigation shall be reported by  
1154 the Department of Law Enforcement to the appropriate legislative  
1155 committees, the Agency for Health Care Administration, the  
1156 Department of Health, the Agency for Workforce Innovation, and

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1157 the Department of Children and Family Services, and to such  
1158 others as the Department of Law Enforcement may determine.

1159 Section 18. Authority to purchase goodwill and promotional  
1160 materials.--

1161 (1) The Legislature recognizes that the Department of Law  
1162 Enforcement functions as one of the state's primary law  
1163 enforcement representatives in national and international  
1164 meetings, conferences, and cooperative efforts. The department  
1165 often hosts delegates from other federal, state, local, and  
1166 international agencies and is in a position to function as a  
1167 representative of the state fostering goodwill and effective  
1168 interagency working relationships. It is the intent of the  
1169 Legislature that the department be allowed, consistent with the  
1170 dignity and integrity of the state, to purchase and distribute  
1171 material and items of collection to those with whom the  
1172 department has contact in meetings, conferences, and cooperative  
1173 efforts.

1174 (2) In addition to expenditures separately authorized by  
1175 law, the department may expend not more than \$5,000 annually to  
1176 purchase and distribute promotional materials or items that  
1177 serve to advance with dignity and integrity the goodwill of this  
1178 state and the department and to provide basic refreshments at  
1179 official functions, seminars, or meetings of the department in  
1180 which dignitaries or representatives from the Federal  
1181 Government, other states or nationalities, or other agencies are  
1182 in attendance.

1183 Section 19. Unauthorized use of Department of Law  
1184 Enforcement emblems or names prohibited.--

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1185           (1) Whoever, except with the written permission of the  
 1186 executive director of the Department of Law Enforcement or as  
 1187 otherwise expressly authorized by the department, knowingly uses  
 1188 the words "Florida Department of Law Enforcement," the initials  
 1189 "F.D.L.E." or "FDLE," or the words "Florida Capitol Police," or  
 1190 any colorable imitation of such words or initials, or who uses a  
 1191 logo or emblem used by the department in connection with any  
 1192 advertisement, circular, book, pamphlet, or other publication,  
 1193 play, motion picture, broadcast, telecast, or other production,  
 1194 in any Internet web page or upon any product in a manner  
 1195 reasonably calculated to convey the impression that such  
 1196 advertisement, circular, book, pamphlet, or other publication,  
 1197 play, motion picture, broadcast, telecast, or other production,  
 1198 Internet web page, or product is approved, endorsed, or  
 1199 authorized by the Department of Law Enforcement commits a  
 1200 misdemeanor of the first degree, punishable as provided in s.  
 1201 775.082 or s. 775.083, Florida Statutes.

1202           (2) A violation of this section may be enjoined upon suit  
 1203 by the department or the Department of Legal Affairs upon  
 1204 complaint filed in any court of competent jurisdiction.

1205           Section 20. Except as otherwise expressly provided in this  
 1206 act, this act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. 151 CS

COUNCIL/COMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                              \_\_\_ (Y/N)  
OTHER                                    \_\_\_\_\_

1

1 Council/Committee hearing bill: Justice Council

2 Representative(s) Adams offered the following:

3

4           **Amendment (with directory and title amendments)**

5           Remove line(s) 617 and 905 and insert:

6 renewal application. The department shall issue a

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. 151 CS

COUNCIL/COMMITTEE ACTION

2

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Justice Council  
 2 Representative(s) Adams offered the following:

**Amendment (with directory and title amendments)**

5 Between lines 1204 and 1205 insert:

6 Section 20. Subsection (9) of section 932.7055, Florida  
7 Statutes, is amended to read:

8 932.7055 Disposition of liens and forfeited property.--

9 (9) (a) ~~Every law enforcement agency shall submit~~  
 10 ~~semiannual reports to the Department of Law Enforcement~~  
 11 ~~indicating whether the agency has seized or forfeited property~~  
 12 ~~under the Florida Contraband Forfeiture Act. Any law enforcement~~  
 13 ~~agency receiving or expending forfeited property or proceeds~~  
 14 ~~from the sale of forfeited property in accordance with the~~  
 15 ~~Florida Contraband Forfeiture Act shall submit completed~~  
 16 ~~semiannual reports, by April 10, and October 10, documenting the~~  
 17 ~~receipts and expenditures, on forms promulgated by the~~  
 18 ~~Department of Law Enforcement, to the entity which has budgetary~~  
 19 ~~authority over such agency and to the Department of Law~~  
 20 ~~Enforcement. The semiannual report shall specify the type,~~  
 21 ~~approximate value, any court case number, type of offense,~~

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

22 ~~disposition of the property received, and the amount of any~~  
23 ~~proceeds received or expended.~~

24 ~~— (b) The Department of Law Enforcement shall submit an~~  
25 ~~annual report to the criminal justice committees of the House of~~  
26 ~~Representatives and of the Senate compiling the information and~~  
27 ~~data related in the semiannual reports submitted by the law~~  
28 ~~enforcement agencies. The annual report shall also contain a~~  
29 ~~list of law enforcement agencies which have failed to meet the~~  
30 ~~reporting requirements and a summary of any action which has~~  
31 ~~been taken against the noncomplying agency by the Office of the~~  
32 ~~Chief Financial Officer.~~

33 ~~(e) Neither the law enforcement agency nor the entity~~  
34 ~~having budgetary control over the law enforcement agency shall~~  
35 ~~anticipate future forfeitures or proceeds therefrom in the~~  
36 ~~adoption and approval of the budget for the law enforcement~~  
37 ~~agency.~~

38 Section 21. Section 932.707, Florida Statutes is repealed.

39  
40 ===== T I T L E A M E N D M E N T =====

41 Remove line(s) 146 and insert:  
42 penalty; amending s. 932.7055, F.S.; deleting certain reporting  
43 requirements; repealing s. 932.707, F.S. relating to penalty for  
44 noncompliance with reporting requirements; providing effective  
45 dates.