CRIMINAL JUSTICE COMMITTEE

MEETING PACKET

Wednesday, October 19, 2005
9:00 a.m. – 12:00 p.m.
(404 HOB)

Allan G. Bense
Speaker

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Committee

Start Date and Time:	Wednesday, October 19, 2005 09:00 am
End Date and Time:	Wednesday, October 19, 2005 12:00 pm
Location:	404 HOB
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 23 Bicycle Safety by Jordan
HB 35 Abatement of Drug Paraphernalia by Peterman
HB 41 Administrative Expunction of Nonjudicial Arrest Records by Dean
HB 55 Restoration of Civil Rights by Smith
HB 81 Student Loans by Porth
HB 151 Law Enforcement by Adams

Status Report on Florida Law Enforcement Regional Data Integration Projects
by Mark Zadra, Chief of Investigations
Office of Statewide Intelligence
Florida Department of Law Enforcement

NOTICE FINALIZED on 10/07/2005 12:17 by THOMPSON.SONJA

FLORIDA HOUSE OF REPRESENTATIVES

Allan G. Bense, Speaker

Justice Council
Criminal Justice Committee

Dick Kravitz
Chair

Wilbert "Tee" Holloway
Vice Chair

Meeting Agenda
Wednesday, October 19, 2005
404 House Office Building
9:00 a.m. – 12:00 p.m.

I. Opening remarks by Chair Kravitz

II. Roll call

III. Status Report on Florida Law Enforcement Regional Data Integration Projects by Mark Zadra, Chief of Investigation, Office of Statewide Intelligence, Florida Department of Law Enforcement.

IV. Consideration of the following bills:

HB 23—Bicycle Safety by Jordan

HB 35—Abatement of Drug Paraphernalia by Peterman

HB 41—Administrative Expunction of Nonjudicial Arrest Records by Dean

HB 55—Restoration of Civil Rights by Smith

HB 81—Student Loans by Porth

HB 151—Law Enforcement by Adams

V. Closing comments / Meeting adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 23 Bicycle Safety
SPONSOR(S): Jordan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Transportation Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Under current law bicycle riders or passengers less than sixteen years of age are required to wear a bicycle helmet that meets certain standards. HB 23 will require that bicycle helmets comply with federal safety standards. The use of helmets purchased before October 1, 2005 that comply with current standards will be permitted until January 1, 2010.

Currently every bicycle that is in use between sunset and sunrise must be equipped with a white light visible from at least 500 feet from the front and a lamp and reflector exhibiting a red light visible from 600 feet from the rear. Current law does not specifically allow a law enforcement officer the option of issuing a bicycle safety brochure and a verbal warning to a bicycle rider who violates these lighting provisions. Mirroring the current law relating to bicycle helmets, this bill specifically authorizes verbal warnings and the issuance of safety brochures for violations of bicycle lighting equipment requirements and requires the court to dismiss the charge against a bicycle rider for a first violation relating to bicycle lighting equipment if proof is provided that proper lighting equipment has been installed.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill will require that bicycle helmets worn by riders and passengers under the age of 16 comply with federal standards.

Promote Personal Responsibility—The bill allows law enforcement officers to issue a bicycle safety brochure and a verbal warning to a bicycle rider who violates s. 316.2065(8) F.S. The court must dismiss the charge against a bicycle rider for a first violation upon proof of purchase and installation of proper lighting equipment.

B. EFFECT OF PROPOSED CHANGES:

Bicycle Helmet Standards

Under current law, a bicycle rider or passenger who is less than 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap.[1] The helmet must meet the standards of the American National Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the standards of the Snell Memorial Foundation (1984 Standard for Protective Headgear for Use in Bicycling), or any other nationally recognized standards for bicycle helmets adopted by the Department of Highway Safety and Motor Vehicles. The term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.

A law enforcement officer or school crossing guard is specifically authorized to issue a bicycle safety brochure and a verbal warning to a rider or passenger who violates the helmet law.[2] A law enforcement officer is authorized to issue a citation and assess a $15 fine[3], plus applicable court costs and fees.[4] The total amount paid varies from county to county but ranges from $40.50 to $46.50. An officer may issue a traffic citation for a violation of this provision only if the violation occurs on a bicycle path or road.[5] A court is required to dismiss the charge against a bicycle rider or passenger for a first violation of the provision upon proof of purchase of a bicycle helmet that complies with the law.[6] Further, a court is authorized to waive, reduce or suspend payment of any fine imposed for a violation of the helmet law.[7]

This bill amends bicycle helmet regulations effective October 1, 2006, to require compliance with the federal safety standard for bicycle helmets, contained in 16 C.F.R., part 1203. Helmets purchased prior to October 1, 2005[8], that meet the current statutory standards may continue to be worn by riders or passengers until January 1, 2010.

Bicycle Lighting

Currently every bicycle in use between sunset and sunrise must be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector

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[1] s. 316.2065(3)(d) F.S.
[2] s. 316.2065(3)(e), F.S.
[3] s. 318.18(1)(b) F.S.
[4] s. 316.2065(3)(e) F.S.
[5] s. 316.2065(20), F.S. A citation may not be issued to a person on private property except any part that is open to the use of the public for purposes of vehicular traffic.
[6] *Id.*
[7] s. 316.2065(17), F.S.
[8] See Drafting Issues or Other Comments section below.

on the rear each exhibiting a red light visible from a distance of 600 feet to the rear.[9] A bicycle or its rider may be equipped with lights or reflectors in addition to those required by law. Violation of bicycle lighting requirements is a non-criminal traffic infraction punishable as a pedestrian violation[10] by a $15 fine, plus applicable court costs and fees.[11] The total amount paid varies from county to county but ranges from $40.50 to $46.50.

In conformity with the helmet law discussed above, this bill would allow law enforcement officers and traffic infraction enforcement officers to issue bicycle safety brochures and verbal warnings to bicycle riders who violate bicycle lighting equipment standards. Alternatively, at the discretion of the law enforcement officer or traffic infraction enforcement officer, a bicycle rider who violates the bicycle lighting equipment standards may be issued a citation and assessed a fine as described above. Also, the bill requires the court to dismiss the charge against a bicycle rider for a first violation of this offense upon proof of purchase and installation of the proper lighting equipment.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.2065, F.S.; revising safety standard requirements for bicycle helmets that must be worn by certain riders and passengers; providing for enforcement of certain bicycle lighting equipment requirements; providing penalties for violations; providing for dismissal of a first offense.

Section 2. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See fiscal comments.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

According to information obtained from the Florida Department of Highway Safety and Motor Vehicles, in 2004 there were 10,947 citations issued for violations of s. 316.2065 F.S., which contains the current bicycle regulations. Passage of this bill may increase the number of warnings issued for bicycle

[9] s. 316.2065(8) F.S.
[10] s. 316.2065(20), F.S.
[11] s. 318.18(1)(b) F.S.

violations concerning reflectors and headlamps, thereby reducing the number of traffic citations issued. To the extent that this occurs, there could be a reduction in revenue collected by the state and local government.

The bill will require that by January 1, 2010, all bicycle helmets worn by riders and passengers meet the federal safety standard in addition to the current safety standards. There could be an economic impact on the private sector to the extent that some bicycle riders or passengers may have to replace helmets to comply with the proposed regulation.

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:

The bill provides that helmets purchased before October 1, *2005* and meeting current standards, may continue to be worn for a certain length of time. This provision is presumably intended to correspond to the effective date of the bill and should therefore be changed to October 1, *2006.*

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to bicycle safety; amending s. 316.2065, F.S.; revising safety standard requirements for bicycle helmets that must be worn by certain riders and passengers; providing for enforcement of certain bicycle equipment requirements; providing penalties for violations; providing for dismissal of a first offense; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) and subsection (8) of section 316.2065, Florida Statutes, are amended to read:

316.2065 Bicycle regulations.--

(3)

(d) A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap, and that meets the federal safety standard for bicycle helmets, final rule, 16 C.F.R. part 1203. Helmets purchased prior to October 1, 2005, and meeting standards of the American National Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the standards of the Snell Memorial Foundation (1984 Standard for Protective Headgear for Use in Bicycling), or any other nationally recognized standards for bicycle helmets adopted by the department may continue to be worn by riders or passengers until January 1, 2010. As used in this subsection, the term

"passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.

(8) Every bicycle in use between sunset and sunrise shall be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear. A bicycle or its rider may be equipped with lights or reflectors in addition to those required by this section. Law enforcement officers and traffic infraction enforcement officers may issue a bicycle safety brochure and a verbal warning to a bicycle rider who violates this subsection. A bicycle rider who violates this subsection may be issued a citation by a law enforcement officer or a traffic infraction enforcement officer and assessed a fine for a pedestrian violation, as provided in s. 318.18. The court shall dismiss the charge against a bicycle rider for a first violation of this subsection upon proof of purchase and installation of the proper lighting equipment.

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 35 Abatement of Drug Paraphernalia
SPONSOR(S): Peterman
TIED BILLS: **IDEN./SIM. BILLS:** SB 100

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Health Care General Committee			
3) Transportation & Economic Development Appropriations Committee			
4) Justice Council			
5)			

SUMMARY ANALYSIS

HB 35 creates an eight member task force within the Executive Office of the Governor to recommend strategies for reducing the availability and use of drug paraphernalia. The bill specifies the members and their appointment, the chair's selection, the minimum number and location of meetings, public access to meetings and records, reimbursement for per diem and travel expenses, topics for task force review, and deadlines for submitting reports of findings and recommendations. The task force must hold its first meeting by July 15, 2006. The Office of Drug Control is to provide staff support within existing resources. The bill abolishes the task force on July 1, 2007.

This bill appears to have a minimal fiscal impact on the state. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--this bill creates an eight member task force that sunsets on July 1, 2006.

B. EFFECT OF PROPOSED CHANGES:

Current situation

Florida law provides a three-part definition of the term "drug paraphernalia." First, s. 893.145, F.S., defines the term's general meeting. Second, this section provides a non-exclusive list of items that meet the term's definition. Third, s. 893.146, F.S., provides a non-exclusive list of factors for determining whether an item or object is drug paraphernalia.

Section 893.145, F.S., defines "drug paraphernalia" as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S. (the "Florida Comprehensive Drug Abuse Prevention and Control Act") or s. 877.111, F.S. (proscribing the inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances).

Further, s. 893.145, F.S., provides the following non-exclusive list of items that fall within the statutory definition of "drug paraphernalia":

- Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
- Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.

- Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

- Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.

- Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

- Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:

    - Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
    - Water pipes.
    - Carburetion tubes and devices.
    - Smoking and carburetion masks.
    - Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.
    - Miniature cocaine spoons, and cocaine vials.
    - Chamber pipes.
    - Carburetor pipes.
    - Electric pipes.
    - Air-driven pipes.
    - Chillums.
    - Bongs.
    - Ice pipes or chillers.
    - A cartridge or canister, which means a small metal device used to contain nitrous oxide.
    - A charger, sometimes referred to as a "cracker," which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.
    - A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.
    - A whip-it, which means a device that may be used to expel nitrous oxide.
    - A tank.
    - A balloon.
    - A hose or tube.
    - A 2-liter-type soda bottle.
    - Duct tape[1]

Section 893.146, F.S., provides that, in determining whether an object is drug paraphernalia, a court or other authority or jury must consider, in addition to all other logically relevant factors, the following factors:

- Statements by an owner or by anyone in control of the object concerning its use.

- The proximity of the object, in time and space, to a direct violation of this act.

- The proximity of the object to controlled substances.

- The existence of any residue of controlled substances on the object.

[1] This section further provides that drug paraphernalia is contraband and is subject to civil forfeiture.

- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

- Instructions, oral or written, provided with the object concerning its use.

- Descriptive materials accompanying the object which explain or depict its use.

- Any advertising concerning its use.

- The manner in which the object is displayed for sale.

- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.

- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

- The existence and scope of legitimate uses for the object in the community.

- Expert testimony concerning its use.

Section 893.147, F.S., proscribes the possession, use, manufacture, delivery, transportation, and advertisement of drug paraphernalia. It is a first degree misdemeanor to use or possesses with intent to use drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or

- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.[2]

It is a third degree felony to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or

- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S. [3]

If the person committing the delivery and manufacturing offense delivered the drug paraphernalia to a minor, the person commits a second degree felony. It is a first degree misdemeanor to sell or otherwise

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[2] "To prove possession of drug paraphernalia, the state must show that the appellant had in his possession drug paraphernalia and that he had knowledge of its presence." *Lawson v. State*, 666 So.2d 193, 194 (Fla. 2d DCA 1995).

[3] "The statute does not require that a person unequivocally know that the paraphernalia will be used for an illicit purpose; rather the state must only show that the defendant knew or reasonably should have known that the drug paraphernalia would be used for such purposes. It is important to note that the intent at issue in the statute is that of the seller/defendant, not that of the buyer." *Baldwin v. State*, 498 So.2d 1385, 1386 (Fla. 5th DCA 1986).

deliver hypodermic syringes, needles, or other such objects to a minor, with some lawful dispensing exceptions.

It is a third degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport a controlled substance in violation of ch. 893, F.S., or contraband, as defined in s. 932.701(2)(a)1., F.S.

It is a first degree misdemeanor to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

Proving requisite intent is often difficult because some items sold have multiple and legal uses[4] or contain features that may suggest a use other than an illegal use or support a claim that the item is not being sold for an illegal use.[5]

A "head shop" is a term defining a type of establishment allegedly specializing in selling drug paraphernalia. There has been a longstanding tension between "head shop" owners and law enforcement, prosecutors, and some communities over the sale of such items. Head shop owners argue that they only engage in legitimate business activities and that they only sell such items for legitimate uses, such as for use in smoking tobacco. They contend that possession, sale, and purchase of such items are not per se illegal. They further contend that many of the same items they sell in their shops are also sold in convenience stores and general retail stores and over the Internet.

Law enforcement, prosecutors, and opponents of head shops argue that, despite the claims of head shop owners that they sell such items only for legitimate uses, the owners are really engaged in selling drug paraphernalia to illicit substance users and producers. They contend that some of the items sold by head shop owners have little or no real use to the general public outside of the illicit drug trade. Further, they contend that the prevalence or number of such items within one establishment and as part of the establishment's total inventory indicate that the true motive of head shop owners is to profit from the illicit drug trade under the pretext of engaging in a legitimate business.

Some communities have raised concerns that head shops adversely affect quality of life, increase accessibility to drug paraphernalia, and attract or engage in criminal activity. Communities throughout the nation have taken different approaches to address concerns about head shops, including outright prohibition; moratoriums on new licenses; special business classifications; nuisance abatement; fees and compliance checks on head shops that sell tobacco paraphernalia; limitations on hours of operation, window displays, and signage; lighting or security requirements; zoning; annexation of commercial properties; development standards; separation buffers; public education campaigns; media

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[4] In *Subuh v. State*, 732 So.2d 40, 44 (Fla. 2d DCA 1999), the court noted that a glass pipe sold by the defendant and which police claimed was a crack pipe was "very similar to the 'glass tube' or 'pipette' commonly found in any chemistry laboratory or glass 'straw' formerly used in hospitals for patients to drink liquids, except this one was shorter." In reversing the conviction, the court stated that "[a]lthough we are hard pressed to think of a probable lawful use for this tube when purchased from this location, there are many lawful uses for glass tubing."

[5] For example, store owners arrested in a drug paraphernalia sting claim that they are selling glass tubes with miniature roses as "ornamental novelty items"; the police claim the tubes are "nothing but ready-made crack pipes." Stores accused of selling glass tubes for crack pipes. *St. Petersburg Times* (December 31, 1998). Reporting on a 2004 U.S. Customs seizure of items in a Miami-Dade County warehouse, the South Florida Sun-Sentinel noted that the items included bongs "shaped as guns," "disguised as lipstick tubes," and "decorated with cartoon characters such as Cat in the Hat." One bong, which was "disguised as a thermos, was placed inside a Simpsons lunchbox." Customs agents raid drug warehouse. *South Florida Sun-Sentinel* (May 4, 2004). Similarly, reporting on a 2005 drug paraphernalia sting of head shops in Palm Beach County, the Palm Beach Post quoted one federal official as stating that bong and other drug paraphernalia seized were "disguised as cartoon characters." Alleged drug items seized at 3 shops. *Palm Beach Post* (February 17, 2005).

advisories of enforcement actions; and enforcement actions relating to violations of local ordinances or state laws.

Proposed changes

This bill creates an eight member Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor. The task force is to recommend strategies and actions for abating access to and the use and proliferation of drug paraphernalia, as that term is defined in s. 893.145, F.S.

The task force consists of six members appointed by the Governor:

- A representative of a corporation that is licensed to do business in this state and that sells any of the items described in s. 893.145, F.S.;
- A local law enforcement official or officer;
- A member of a faith-based community;
- A superintendent of a school district or a principal of a secondary school;
- A member of a community organization concerned about issues relating to illicit activities involving controlled substances; and
- A former or recovering drug addict.

These members must be representative of the geographic regions and ethnic and gender diversity of this state.

Other members include the Secretary of Business and Professional Regulation or his or her designee and the director of the Office of Drug Control within the Executive Office of the Governor.

The first meeting of the task force must be held by July 15, 2006, at which time the members must select by majority vote a chairperson from among the task force members. All recommendations of the task force are by majority vote. The task force meets at the call of the chairperson and must conduct at least three public meetings in localities throughout this state which have a significant urban business district or have experienced problems with illicit controlled-substance activity resulting, in part, from access to and the use and proliferation of drug paraphernalia.

Meetings of the task force are open to the public and are subject to the requirements of ch. 286, F.S. Records of the task force are public records and subject to the requirements of ch. 119, F.S., except to the extent that public access to any of those records may be restricted pursuant to that chapter.

Members of the task force serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The task force is staffed by the Office of Drug Control within existing appropriations.

The task force is required to study and take testimony regarding:

- The problem of access to and the use and proliferation of drug paraphernalia in this state;
- Businesses that sell items that may be used as drug paraphernalia;
- Current laws and rules and current efforts by regulatory agencies and law enforcement agencies to abate access to, use and proliferation of drug paraphernalia, including, whether new or amended laws and rules are needed; and
- Approaches to abate access to and the use and proliferation of drug paraphernalia.

The task force must submit a preliminary draft report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 45 days before the first day of the 2007 Regular Session of the Legislature and must submit its final report 15 days later. In addition to findings and recommendations, the report must include any proposed legislation or rules necessary to implement recommendations.

The task force is abolished July 1, 2007.

C. SECTION DIRECTORY:

Section 1 creates the Drug Paraphernalia Abatement Task Force and provides for its membership and responsibilities.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Minimal. Task force members are entitled to per diem.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Members of the task force serve without compensation but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The task force is staffed by the Office of Drug Control within existing appropriations.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the abatement of drug paraphernalia; creating the Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor; prescribing task force membership; providing for meetings and duties of the task force; providing that meetings and records of the task force are subject to statutory public meetings and records requirements; providing for members of the task force to be reimbursed for per diem and travel expenses; requiring the Office of Drug Control within the Executive Office of the Governor to provide staff support; requiring reports; requiring cooperation by state agencies; abolishing the task force on a specified date; providing an effective date.

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

Section 1. Drug Paraphernalia Abatement Task Force.--

(1)(a) There is created within the Executive Office of the Governor the Drug Paraphernalia Abatement Task Force for the purpose of recommending strategies and actions for abating access to and the use and proliferation of drug paraphernalia, as that term is defined in s. 893.145, Florida Statutes.

(b) The task force shall consist of the following eight members:

1. The Secretary of Business and Professional Regulation or his or her designee.

2. The director of the Office of Drug Control within the

Executive Office of the Governor.

3. A representative from a corporation that is licensed to do business in this state and that sells any of the items described in s. 893.145, Florida Statutes, that may be used as drug paraphernalia.

4. A local law enforcement official or officer.

5. A member of a faith-based community.

6. A superintendent of a school district or a principal of a secondary school.

7. A member of a community organization concerned about issues relating to illicit activities involving controlled substances, including access to and the use and proliferation of drug paraphernalia.

8. A former or recovering drug addict.

(c) Members of the task force shall be appointed by the Governor by July 1, 2006, and shall be representative of the geographic regions and ethnic and gender diversity of this state. The first meeting of the task force shall be held by July 15, 2006, at which time the members shall select by majority vote a chairperson from among the task force members. All recommendations of the task force shall be by majority vote.

(d) The task force shall meet at the call of the chairperson and shall conduct at least three public meetings, which shall be held in localities throughout this state that have a significant urban business district or have experienced problems with illicit controlled-substance activity resulting, in part, from access to and the use and proliferation of drug paraphernalia.

(e) Meetings of the task force shall be open to the public and are subject to the requirements of chapter 286, Florida Statutes. Records of the task force are public records and subject to the requirements of chapter 119, Florida Statutes, except to the extent that public access to any of those records may be restricted pursuant to that chapter.

(f) Members of the task force shall serve without compensation but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, Florida Statutes.

(g) The Office of Drug Control within the Executive Office of the Governor shall provide staff support for the task force within existing appropriations.

(2)(a) The task force shall study and take testimony regarding:

1. The nature and extent of the problem of access to and the use and proliferation of drug paraphernalia in this state, including the extent to which the marketing, selling, or purchasing of items that may be used as drug paraphernalia may contribute to that problem.

2. Businesses that sell items that may be used as drug paraphernalia, including, but not limited to, consideration of:

a. The types, ownership, organization, and operation of those businesses.

b. The regulation of those businesses and the state and federal laws applicable to them.

c. The marketing or selling of those items by those businesses.

d. The inventory and sale of those items relative to the

total inventory and total sales of those businesses.

e. Measures taken by those businesses to restrict purchases of those items by minors or otherwise restrict purchases of those items.

f. The clientele of those businesses.

g. The prevalence of civil or criminal enforcement actions taken against those businesses for violations of state or federal rules or laws that are relevant to prohibited activities involving drug paraphernalia.

h. The location of those businesses relative to the location of schools; churches or places of worship; neighborhoods; and buildings, facilities, and areas where children may regularly congregate.

i. The opinions and concerns of local residents, community and neighborhood activists and leaders, faith-based community members and leaders, school personnel and students, businesses, service providers, local law enforcement officials and officers, and local government officials regarding those businesses.

j. Local or community efforts to restrict or regulate those businesses.

3. Current rules and laws and current efforts by regulatory agencies and law enforcement agencies to abate access to and the use and proliferation of drug paraphernalia in this state, including, but not limited to, consideration of whether it is necessary to amend those rules or laws or propose new rules or new legislation.

4. Approaches to abate access to and the use and proliferation of drug paraphernalia, including, but not limited

to:

a. Conforming the rules or laws of this state to federal rules or laws that are relevant to abating access to and the use and proliferation of drug paraphernalia.

b. Restricting the marketing, selling, or purchasing of any item that may be used as drug paraphernalia and legal concerns relevant to that restriction.

c. Adopting provisions of rules or laws of other states that are relevant to abating access to and the use and proliferation of drug paraphernalia.

5. Any other subject that is relevant to abating access to and the use and proliferation of drug paraphernalia.

(b) The task force shall submit a preliminary draft report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 45 days before the first day of the 2007 Regular Session of the Legislature. The final report shall be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 30 days before the first day of the 2007 Regular Session. In addition to the findings and recommendations included in the final report, the report must include a draft of proposed rules and proposed legislation for any recommendations requiring proposed rules and proposed legislation.

(c) Each state agency shall fully cooperate with the task force in the performance of its duties.

(3)(a) All meetings of the task force and all business of the task force for which reimbursement may be requested shall be

concluded before the final report is filed.

(b) The task force is abolished July 1, 2007.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 41 Administrative Expunction of Nonjudicial Arrest Records
SPONSOR(S): Dean
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Justice Council			
3)			
4)			
5)			

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.[1]

The arresting agency keeps a sealed record, but the record is confidential and exempt from the public records laws.[2] 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.[3] 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.[4]

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.

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

[2] Section 943.059(4), F.S.

[3] Section 943.0585(4), F.S.

[4] 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.[5]

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.[6]

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.

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[5] 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).

[6] 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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.[7]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[7] 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

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

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

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 55 Restoration of Civil Rights
SPONSOR(S): Smith
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

There is no statutory requirement for county jails to provide county jail prisoners with information regarding civil rights restoration. Any information that is currently provided is initiated locally. This bill would require the administrator of a county detention facility to provide an application form obtained from the Parole Commission relating to restoration of civil rights to a prisoner who has been convicted of a felony at least two weeks before discharge, if possible. It would then be the prisoner's responsibility to fill out the form.

The bill provides that the administrator of the county detention facility may allow volunteers to help the prisoners complete their application.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill requires county jail administrators to provide forms relating to restoration of civil rights to inmates prior to release.

B. EFFECT OF PROPOSED CHANGES:

The civil rights of a convicted felon such are the right to vote, the right to serve on a jury and the right to hold public office are suspended until restored by pardon or restoration of civil rights.[1] Restoration of civil rights is a form of executive clemency – a power granted by the Florida Constitution to the Governor with the consent of at least two members of the Cabinet. Art. IV, s. 8(a), Fla. Const. In this situation, the Governor and Cabinet are known as the Clemency Board. Convicted felons are eligible for restoration of civil rights (except the right to own, possess, or use firearms) without a hearing upon completion of sentence or supervision if they meet certain criteria set forth in the Rules of the Clemency Board. If not eligible for restoration of civil rights without a hearing, the felon may apply for a hearing to determine whether his or her civil rights will be restored. In certain cases, convicted felons must request a waiver of clemency rules to be eligible for consideration.

The Florida Parole Commission acts as the agent of the Clemency Board in determining whether offenders and inmates are eligible for restoration of rights without a hearing, investigating applications and conducting hearings when required, and making recommendations to the Board. The Department of Corrections' participation in the process is required by the following two statutes:

- s. 940.061, F.S., requires the department to inform and educate inmates and offenders on community supervision about the restoration of civil rights and to assist eligible inmates and offenders on community supervision with completion of the application for restoration of civil rights.

- s. 944.293, F.S., requires the department to assist offenders under supervision in completing the application and necessary forms and to ensure that the application and other necessary information is forwarded to the Governor before the offender is released from supervision.

A person seeking restoration of civil rights can initiate the process by applying online, by telephone, in person, or in writing.

In recent years, the department and the Parole Commission have reportedly coordinated efforts in order to make restoration of civil rights less difficult for incarcerated felons who will be eligible for restoration without a hearing upon release. The department provides the commission with a computerized list of all eligible inmates who are being released from prison or supervision. If the commission determines that the individual is eligible for restoration of civil rights without a hearing, the individual's name is submitted to the Clemency Board and if no objection is received from two or more board members, the individual's rights are restored. If the commission determines that the individual is ineligible for restoration of civil rights without a hearing or two or more board members object, the commission send the individual an application for restoration of civil rights with a hearing.

There is no statutory requirement for county jails to provide county jail prisoners with education or assistance regarding civil rights restoration. Any education or assistance that is currently provided is initiated locally.

[1] Art. VI, section 4 of the Florida Constitution. See also, s. 40.013, F.S.

This bill would require the administrator of a county detention facility to provide an application form obtained from the Parole Commission relating to restoration of civil rights to a prisoner who has been convicted of a felony at least two weeks before discharge, if possible. It would then be the prisoner's responsibility to fill out the form.

The bill provides that the administrator of the county detention facility may allow volunteers to help the prisoners complete their application.

The proposed legislation does not apply to prisoners who are released to the custody of the Department of Corrections. Those prisoners are exempted from this legislation because their restoration of civil rights process would be covered by the Department of Corrections as discussed above. Also, by implication this bill would only apply to those inmates who have in fact lost their civil rights by reason of commission of a felony.

C. SECTION DIRECTORY:

Section 1. Requires administrator of county detention facility to provide application form for restoration of civil rights to a prisoner in certain circumstances.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   There will be some costs to the counties in implementing the provisions of the bill but the specific amount is not determinable. However, the impact will be dependent upon the number of eligible prisoners in a particular county. According to data supplied by the Department of Corrections, it is estimated that approximately 43,000 felons were sentenced to county detention facilities between July 1, 2003, and June 30, 2004.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill requires the administrator of a county detention facility to provide certain prisoners with an application form for civil rights restoration. It is anticipated that any fiscal impact on local counties will be insignificant and it therefore appears that the provision of the bill is exempt from Article VII, Section 18 of the Florida Constitution which prohibits unfunded mandates.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   This bill would require the administrator of a county jail to provide a restoration of civil rights application to all inmates who have been convicted of a felony prior to their release. The bill excludes inmates subsequently sent to the Department of Corrections. However, the bill would apparently require that the application form be provided to prisoners who are being released from jail but have a term of probation to follow despite the fact that these inmates would be ineligible to have their civil rights restored before the probationary term is completed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the restoration of civil rights; requiring that the administrator of a county detention facility provide an application form for the restoration of civil rights to a prisoner who has been convicted of a felony and is serving a sentence in that facility; authorizing the use of volunteers to assist the prisoner in completing the application; providing that this act shall not apply to prisoners who are transferred to the Department of Corrections; providing an effective date.

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

Section 1. Procedure for requesting restoration of civil rights of county prisoners convicted of felonies.--

(1) With respect to a person who has been convicted of a felony and is serving a sentence in a county detention facility, the administrator of the county detention facility:

(a) Shall provide to the prisoner, at least 2 weeks before discharge, if possible, an application form obtained from the Parole Commission which the prisoner must complete in order to begin the process of having his or her civil rights restored.

(b) May allow volunteers to be used to assist the prisoner in completing the application.

(2) This section shall not apply to prisoners who are discharged from a county detention facility to the custody or control of the Department of Corrections.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 81 Student Loans
SPONSOR(S): Porth and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

This bill would create a program to fund the repayment of law school student loans for eligible assistant attorney generals, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders. Those individuals with at least three years of continuous service as an assistant attorney general, assistant statewide prosecutor, assistant state attorney, or assistant public defender would be eligible for loan repayment assistance. The Justice Administrative Commission (JAC) would administer the program.

Total loan repayment assistance under the proposed program would be capped at $44,000, or after twelve years of continuous service, whichever comes first, payable in the amount of $3,000 per year for years four through six, and $5,000 per year of service between years seven and twelve.

The bill contains no specific appropriation to fund the program. Funding, if any, would be provided by the Legislature through an annual appropriation of an unspecified amount.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill would have the government repay, in whole or in part, law school loans incurred by eligible assistant attorney generals, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders.

B. EFFECT OF PROPOSED CHANGES:

General Background

In Florida state courts, criminal prosecutions are conducted by the state attorney.[1] Florida is divided into twenty judicial circuits and each circuit has an elected state attorney. Indigent criminal defendants are represented by a public defender, except in conflict cases.[2] Each judicial circuit has an elected public defender. State attorneys and pubic defenders are permitted to hire assistants.[3]

Assistant state attorneys and assistant public defenders were guaranteed a minimum salary of $37,566, under the FY 2004-05 General Appropriations Act.[4] State attorneys reported an average statewide turnover rate of 16.9 percent for FY 2003-04. State public defenders reported a statewide turnover rate of 21.2 percent during the same time period.[5] [Statistics in this bill analysis were obtained from the Justice Administrative Commission (JAC) during the 2005 session. Updated statistics have been requested from JAC staff and this analysis will be updated when those statistics are received.]

Proposed Changes

This bill would create a program to fund the repayment of law school student loans for eligible assistant attorney generals, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders. Those individuals with at least three years of continuous service as an assistant attorney general, assistant statewide prosecutor, assistant state attorney, or assistant public defender would be eligible for loan repayment assistance. Once the attorney general, statewide prosecutor, state attorney, or public defender approves the affidavit of certification from the individual requesting loan repayment assistance, then the attorney general, statewide prosecutor, state attorney, or public defender, as appropriate, shall submit the affidavit to the JAC.

The JAC reports that on March 2, 2005, there were 422 assistant state attorneys, 280 assistant public defenders, and 145 assistant attorney generals and statewide prosecutors with at least three years of continuous service and, therefore, eligible for loan repayment assistance. The Legislature created the JAC to provide administrative services and assistance to the offices of the state attorneys, the public defenders, the Capital Collateral Regional Counsels, and the Judicial Qualifications Commission.[6] The JAC is composed of two state attorneys selected by the Florida Prosecuting Attorneys Association and two public defenders selected by the Florida Public Defenders Association. The JAC employs an executive director and staff to run the day-to-day operations.

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[1] *See* Art. V, s. 17, Fla. Const.
[2] *See* Art. V, s. 18, Fla. Const.
[3] *See* Art. V, ss. 16, 17, Fla. Const.
[4] Attorneys at executive branch agencies start at $35,931.
[5] Information provided on March 3, 2005, by the Justice Administrative Commission. This information was captured by circuits. The turnover rate ranged from 9.04 percent to 44.91 percent for assistant state attorneys and 2.42 percent to 38.66 percent for assistant public defenders.
[6] See s. 43.16, F.S.

Total loan repayment assistance under the proposed program would be capped at $44,000, or after twelve years of continuous service, whichever comes first, payable in the amount of $3,000 per year for years four through six, and $5,000 per year of service between years seven and twelve.[7]

This bill would have the program funded annually out of the General Revenue Fund. This bill does not provide a specific appropriation.

This bill takes effect on July 1, 2006.

C. SECTION DIRECTORY:

Section 1 creates s. 43.201, F.S., creating a law school student loan repayment program for assistant attorney generals, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders.

Section 2 establishes an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Funding is subject to specific appropriation under the bill; however, the estimated cost to fully fund this program is uncertain. The number of attorneys with outstanding government loans is unknown, but presumably could be determined. Assuming all 702 eligible assistant state attorneys and public defenders had outstanding loans and received repayment assistance, an appropriation of approximately $2.6 million would be required to fully fund the program in FY 2005-06. As for assistant attorney generals assistant statewide prosecutors, the attorney general's office estimates that 145 attorneys might be eligible at a first year cost of $406,000 if fully funded. Combined, to fully fund, the bill would require an appropriation for FY 2005-06 of an estimated $2.64 million,

2. Expenditures:

Additionally, according to the JAC, one additional full-time equivalent employee would be required at a cost of $58,299 for FY 2005-06, and an incrementally greater cost thereafter. The JAC projects an additional $4,561 in non-recurring administrative costs in FY 2005-06

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[7] According to the Florida State University College of Law, tuition for the 2004-05 academic year tuition is $250.15 per credit hour for an in-state student and $917.27 per credit hour for an out-of-state student. Students must earn eighty-eight credit hours to graduate. Therefore, based on current tuition, total tuition is approximately $22,000 for an in-state student and $80,700 for an out-of-state student. Tuition at the University of Miami is approximately $27,500 per year, totaling an estimated $82,500 over three years. According to the Florida State University Financial Aid Office, students are allowed to borrow up to $18,500 per academic year under the federal Stafford Loan Program.

Subject to specific appropriations, this bill provides for the repayment of student loans for certain state employees.

D. FISCAL COMMENTS:

Assumptions for determination of fiscal for assistant attorney generals and statewide prosecutors:

They report 109 attorneys with 3 to 6 years of experience. They estimate that 80 percent have student loans. Multiplied by the $3,000 per year, they would qualify for $261,000 for FY 2005-06. For those with more than 6 years, they estimate 58 attorneys with only 50 percent still having outstanding loans. Multiplied by $5,000, that would generate an additional fiscal of $145,000. Taken together, the total would be $406,000.

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:

The JAC is not provided with specific rule making authority to implement a program that appears to require the exercise of discretion in dispensing benefits to government employees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Under the bill, loan payments may be made even if the eligible student loan is in default. The Legislature may wish to consider amending the definition of eligible student loan so that it excludes loans in default.

The bill requires an eligible attorney to submit an affidavit of certification once when three years of continuous service have been completed. Upon receipt of the certification, the commission may begin yearly payments. In order to ensure that yearly payments are made only to attorneys still employed, the Legislature may wish to require the certification to be submitted to the JAC annually.

The bill does not specify a deadline for an attorney to assert his or her eligibility for loan repayment assistance. The Legislature may wish to set a deadline for the submission of an affidavit of certification within a certain period of time following the eligible attorney's triggering employment anniversary date.

The degree of discretion the JAC has in authorizing loan repayment assistance once approved by the attorney general, statewide prosecutor, state attorney, or public defender, is unclear. The bill suggests authorization is not automatic, but does not include any criteria or priority for guiding the JAC in making this determination. The Legislature may wish to consider providing criteria for the JAC's decision-making or making the JAC's duties mandatory.

The bill assumes that an eligible attorney has a single loan; however, it is possible that an eligible attorney may have multiple loans with multiple interest rates. The Legislature may wish to require the repayment assistance to be directed to the loan with the highest interest rate.

The bill provides that the loan repayment assistance program shall be funded by appropriation; however, the bill does not state how the funds should be distributed in the event eligibility exceeds the appropriation amount. The Legislature may wish to amend the bill so that it requires even distribution of the annual appropriation amount among all attorneys eligible to receive loan repayment assistance in the relevant year.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to student loans; creating s. 43.201, F.S.; providing for a financial assistance program administered by the Justice Administrative Commission to provide assistance to career assistant attorneys general, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders for the repayment of eligible student loans; defining the term "eligible student loan"; providing the elements of the program; providing loan assistance payment amounts; providing for funding; providing an effective date.

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

Section 1. Section 43.201, Florida Statutes, is created to read:

43.201 Justice Administrative Commission; student loan program administration.--

(1) The Justice Administrative Commission shall administer a student loan program for career assistant attorneys general, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders. The purpose of the program shall be to provide financial assistance to assistant attorneys general, assistant statewide prosecutors, assistant state attorneys, and assistant public defenders for the repayment of eligible student loans.

(2) As used in this section, the term "eligible student loan" means a loan that was issued pursuant to the Higher

Education Act of 1965, as amended, to an assistant attorney general, assistant statewide prosecutor, assistant state attorney, or assistant public defender to fund his or her law school education.

(3) The program shall be administered in the following manner:

(a) An assistant attorney general, assistant statewide prosecutor, assistant state attorney, or assistant public defender is not eligible for assistance under the program until the assistant attorney general, assistant statewide prosecutor, assistant state attorney, or assistant public defender has been employed as an assistant attorney general, assistant statewide prosecutor, assistant state attorney, or assistant public defender for 3 years of continuous service on his or her employment anniversary date.

(b) After an individual has completed 3 years of continuous service, an affidavit of certification on a form approved by the commission shall be submitted to the Office of the Attorney General, the Office of Statewide Prosecution, the state attorney's office, or the public defender's office, as appropriate. The affidavit of certification shall, upon approval of the Attorney General, statewide prosecutor, state attorney, or public defender, as appropriate, be submitted to the commission.

(c) Upon receipt of the certificate, the commission may begin yearly payments in the amount of $3,000 to the lender that services the eligible student loan. These payments shall be made for the benefit of the assistant attorney general, assistant

statewide prosecutor, assistant state attorney, or assistant public defender named in the certificate and for the purpose of satisfying the eligible student loan obligation.

(d) Upon an individual's completion of 6 years of continuous service, the annual loan assistance payment amount shall increase to $5,000. After 12 years of continuous service or upon completion of the payment of the eligible student loan, whichever occurs first, loan assistance shall cease. The total amount of loan assistance permitted under the program for any one assistant attorney general, assistant statewide prosecutor, assistant state attorney, or assistant public defender may not exceed $44,000.

(4) The program shall be funded annually by an appropriation from the General Revenue Fund to the Justice Administrative Commission.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Justice Appropriations Committee			
3) Justice Council			
4)			
5)			

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.

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.[1] 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.[2] 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.[3] 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

[1] 18 U.S.C. 922(d)(4)
[2] See s. 790.065, F.S.
[3] 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.[4]

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.[5] In audit report

[4] 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.

[5] 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.

number 03-042, released in October 2002, the Auditor General reported that, contrary to section 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."[6] 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.[7] 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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[6] 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.

[7] 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 employees 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.[8] 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.[9] 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.[10] 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.[11]

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

[9] Section 943.059(4), F.S.

[10] Section 943.0585(4), F.S.

[11] 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[12]and also includes offenses specified as predicate offenses for registration as a sexual predator or a sexual offender.[13] 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.[14] 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

[12] s. 810.14, F.S.
[13] See ss. 775.21 and 943.0435.
[14] s. 943.135, F.S.

retains the requirement that basic skills training and continued education training contain instruction in 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.[15] 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.[16] 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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[15] s. 943.256, F.S.

[16] 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 create a 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 $126,600 to create.

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, it appears likely that the aggregate impact on counties would be insignificant

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

A bill to be entitled

An act relating to law enforcement; amending s. 790.065, F.S.; requiring the Department of Law Enforcement to review other records in addition to criminal history records to evaluate a potential buyer or transferee of a firearm, including an adjudication of mental defectiveness or a commitment to a mental institution as criteria that prohibit a person from purchasing a firearm; providing definitions; requiring the department to maintain an automated database of persons who are prohibited from purchasing a firearm; requiring each clerk of court to submit certain court records to the department within a certain period; requiring the department to delete certain records from the automated database upon the request of an individual meeting specified conditions; authorizing the department to disclose collected data to other federal or state agencies with regard to the sale or transfer of a firearm; authorizing the department to disclose certain information to the Department of Agriculture and Consumer Services for determining the eligibility of an applicant for a concealed weapons or concealed firearms license; requiring the clerk of court or mental hospital to provide additional information upon request following an appeal of an unapproved sale or transfer of a firearm; amending s. 914.25, F.S.; providing for recertification for protective services for an additional period, with reimbursement for expenses from the Victim and Witness Protection Review Committee; providing for unlimited protective services for

a victim or witness without reimbursement; amending s. 937.021, F.S.; providing immunity to the Department of Law Enforcement, other law enforcement agencies, and media representatives from civil liability for complying in good faith with a request to record or report information of an Amber Alert or Missing Child Alert; providing that a technical or clerical error or incorrect or incomplete information does not overcome the presumption of good faith in reporting information about an Amber Alert or Missing Child Alert; providing that it is a discretionary decision to report, record, or display Amber Alert or Missing Child Alert information received from the local law enforcement agency having jurisdiction; amending s. 938.07, F.S.; requiring that a portion of certain court costs imposed for a conviction of driving or boating under the influence be deposited into the Operating Trust Fund of the Department of Law Enforcement instead of the Criminal Justice Standards and Training Trust Fund; amending s. 938.27, F.S.; requiring that investigative costs recovered on behalf of the Department of Law Enforcement be deposited into the department's Forfeiture and Investigative Trust Fund; amending s. 943.052, F.S.; requiring that disposition reports for dispositions relating to minor offenders are mandatory after a specified date; amending s. 68.07, F.S.; requiring a set of fingerprints as part of a name change petition; amending s. 943.05, F.S.; authorizing the Department of Law Enforcement to retain fingerprints in certain

circumstances and use retained fingerprints for certain purposes; providing for an annual fee; providing for waiver of the fee for good cause shown; providing for free services for certain purposes; amending s. 943.053, F.S.; requiring the department to make certain information available to judges; limiting use of information; authorizing a criminal justice agency to obtain a criminal history background check of a noncertified agency employee by submitting fingerprints to the department; requiring that the criminal history check be provided by the department in certain circumstances; amending s. 943.0585, F.S.; prohibiting a court from expunging a criminal history record containing certain sexual offenses or certain offenses that require registration as a sexual offender; requiring a valid certificate of eligibility for expunction in a petition to expunge a criminal history record; specifying the time during which a certificate of eligibility for expunction is valid; requiring that a trial may not have occurred in order for a person to obtain a statement from the state attorney authorizing the expunction of a criminal record; authorizing a person who has secured a prior sealing of a criminal history record to seek a certificate of eligibility for expunction if the criminal history record was previously sealed for a certain number of years and is otherwise eligible for expunction; providing that a person who is seeking authorization for employment within or access to a seaport may not deny or fail to acknowledge arrests covered by

expunged records; providing that the department may acknowledge expunged criminal history records under certain circumstances; prohibiting seaport employees from disclosing expunged criminal history record information except to certain persons; providing penalties; amending s. 943.059, F.S.; enumerating certain sexual offenses and offenses that require registration as a sexual offender which may not be sealed; requiring a valid certificate of eligibility for sealing in a petition to seal a criminal history record; specifying the period during which a certificate of eligibility for sealing is valid; providing that the information contained in a sealed criminal record is available to a criminal justice agency for the purpose of conducting a criminal history background check for approval of a firearms purchase or transfer; prohibiting a person from denying arrests covered by his or her sealed criminal record when attempting to purchase a firearm; providing that a person who is seeking authorization for employment within or access to a seaport may not deny or fail to acknowledge arrests covered by sealed records; providing that the department may acknowledge sealed criminal history records under certain circumstances; prohibiting seaport employees from disclosing sealed criminal history record information except to certain persons; providing penalties; amending s. 943.13, F.S.; requiring the department to enter law enforcement, correctional, and correctional probation officers' fingerprints into a statewide automated fingerprint

identification system; requiring the department to search each arrest fingerprint card received against fingerprints retained in the statewide automated fingerprint identification system; providing for refingerprinting by a certain date; amending ss. 943.1715 and 943.1716, F.S.; deleting the minimum number of hours required for basic skills training and continued employment training relating to diverse populations for law enforcement, correctional, and correctional probation officers; repealing s. 943.2569, F.S., relating to an annual financial audit of criminal justice selection centers; amending s. 943.257, F.S.; authorizing the Criminal Justice Standards and Training Commission and the advisory board of a criminal justice selection center to inspect and copy any documents from a center in order to carry out oversight responsibilities, including documents pertaining to any internal or independent audits; amending s. 943.401, F.S.; requiring the department to investigate all public assistance that is provided by the state; requiring public assistance recipients to consent in writing to an investigation into their employment and financial histories by the Agency for Workforce Innovation; requiring the department to report the results of the investigations to the Agency for Workforce Innovation; authorizing the department to purchase goodwill and promotional materials; limiting the annual amount of such expenditures; prohibiting the unauthorized use of the department's emblems and names; providing a penalty;

providing effective dates.

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

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

790.065 Sale and delivery of firearms.--

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

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

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

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

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

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

a. As used in this subparagraph, "adjudicated mentally

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

b. As used in this subparagraph, "committed to a mental institution" means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase shall include involuntary inpatient placement as defined in s. 394.467, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but shall not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. Clerks of court are required to submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports may be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former

name, the sex, and the date of birth of the subject. The department shall delete any mental health record from the database upon request of an individual when 5 years have elapsed since the individual's restoration to capacity by court order after being adjudicated an incapacitated person under s. 744.331, or similar laws of any other state; or, in the case of an individual who was previously committed to a mental institution under chapter 394, or similar laws of any other state, when the individual produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years prior to the date of request for removal of the record. Where the department has received a subsequent record of an adjudication of mental defectiveness or commitment to a mental institution for such individual, the 5-year timeframe shall be calculated from the most recent adjudication of incapacitation or commitment.

d. The department is authorized to disclose the collected data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is also authorized to disclose any applicable collected data to the Department of Agriculture and Consumer Services for determination of eligibility for issuance of a concealed weapons or concealed firearms license upon receipt of an applicant fingerprint submission forwarded pursuant to s. 790.06(6)(a). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether

the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

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

914.25 Protective services for certain victims and witnesses.--

(4)(a) When a victim or witness is certified as provided in subsection (3), a law enforcement agency, in consultation with the certifying state attorney or the statewide prosecutor, may provide appropriate protective services. If a victim or witness needs to be temporarily relocated, the statewide prosecutor or the state attorney must notify the Department of Law Enforcement. The Department of Law Enforcement, in consultation with the statewide prosecutor or the state attorney, and any other law enforcement agency involved in the criminal investigation or prosecution, shall coordinate the temporary relocation of the victim or witness.

(b) Protective services, including temporary relocation services, may initially be provided for up to 1 year or until the risk giving rise to the certification has diminished, whichever occurs sooner. ~~If deemed necessary,~~ The statewide prosecutor or the state attorney may, at the end of the

certification year, recertify a victim or witness at risk of harm for an additional period of up to 1 year or until the risk giving rise to the certification has diminished, whichever occurs first. A victim or witness at risk of harm may be certified and recertified annually as provided in this section to provide a maximum of 4 years of eligibility for protective services.

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

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

937.021 Missing child reports.--

(3)(a) Upon receiving a request to record, report, transmit, display, or release Amber Alert or Missing Child Alert information from the law enforcement agency having jurisdiction over the missing or endangered child, the Department of Law Enforcement as the state Amber Alert coordinator; any state or local law enforcement agency and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; or any agency, employee, individual, or

entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Amber Alert or Missing Child Alert information pertaining to such child.

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

(c) Neither this subsection nor any other provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert or Missing Child Alert information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving that information from the local law enforcement agency having jurisdiction.

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

938.07 Driving or boating under the influence.--Notwithstanding any other provision of s. 316.193 or s. 327.35, a court cost of $135 shall be added to any fine imposed pursuant to s. 316.193 or s. 327.35. The clerks shall remit the funds to the Department of Revenue, $25 of which shall

be deposited in the Emergency Medical Services Trust Fund, $50 shall be deposited in the Operating ~~Criminal Justice Standards and Training~~ Trust Fund of the Department of Law Enforcement to be used for operational expenses in conducting the statewide criminal analysis laboratory system established in s. 943.32, and $60 shall be deposited in the Brain and Spinal Cord Injury Rehabilitation Trust Fund created in s. 381.79.

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

938.27 Judgment for costs on conviction.--

(7) Investigative costs that ~~which~~ are recovered shall be returned to the appropriate investigative agency that ~~which~~ incurred the expense. Such costs ~~shall~~ include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of Revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under s. 943.362.

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

943.052 Disposition reporting.--The Criminal Justice Information Program shall, by rule, establish procedures and a format for each criminal justice agency to monitor its records and submit reports, as provided by this section, to the program.

The disposition report shall be developed by the program and shall include the offender-based transaction system number.

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

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

68.07 Change of name.--

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

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

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

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

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

(e) Petitioner's occupation and where petitioner is

employed and has been employed for 5 years next preceding filing of the petition. If petitioner owns and operates a business, the name and place of it shall be stated and petitioner's connection therewith and how long petitioner has been identified with said business. If petitioner is in a profession, the profession shall be stated, where the petitioner has practiced the profession and if a graduate of a school or schools, the name or names thereof, time of graduation, and degrees received.

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

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

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

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

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

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

(5) The clerk must, upon the filing of the final judgment,

send a report of the judgment to the Department of Law Enforcement on a form to be furnished by that department. The Department of Law Enforcement must send a copy of the report to the Department of Highway Safety and Motor Vehicles, which may be delivered by electronic transmission. The report must contain sufficient information to identify the petitioner, including a set ~~copy~~ of the petitioner's fingerprints taken by a law enforcement agency, the new name of the petitioner, and the file number of the judgment. Any information retained by the Department of Law Enforcement and the Department of Highway Safety and Motor Vehicles may be revised or supplemented by said departments to reflect changes made by the final judgment. With respect to a person convicted of a felony in another state or of a federal offense, the Department of Law Enforcement must send the report to the respective state's office of law enforcement records or to the office of the Federal Bureau of Investigation. The Department of Law Enforcement may forward the report to any other law enforcement agency it believes may retain information related to the petitioner. Any costs associated with fingerprinting must be paid by the petitioner.

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

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

(2) The program shall:

(g) As authorized by law, retain fingerprints submitted by criminal and noncriminal justice agencies to the department for a criminal history background screening in a manner provided by

rule and enter the fingerprints in the statewide automated fingerprint identification system authorized by paragraph (b). Such fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system pursuant to s. 943.051.

(h)1. As authorized by law, search all arrest fingerprint cards received under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (g). Any arrest record that is identified with the retained fingerprints of a person subject to background screening as provided in paragraph (g) shall be reported to the appropriate agency.

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

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

943.053 Dissemination of criminal justice information; fees.--

(5) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, 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 decisionmaking responsibilities. Such online access shall be provided without charge to the state courts system. Sealed records received by the courts under this section remain confidential and exempt from the provisions of s. 119.07(1). The information provided pursuant to this section shall not take the place of any information required to be provided to the courts by any other agency or entity. Information provided under this section shall be used only for the official court business for which it was requested and may not be further disseminated.

(11) A criminal justice agency that is authorized under federal rules or law to conduct a criminal history background check on an agency employee who is not certified by the Criminal Justice Standards and Training Commission under s. 943.12 may submit to the department the fingerprints of the noncertified employee to obtain state and national criminal history information. Effective January 15, 2007, the fingerprints

submitted shall be retained and entered in the statewide automated fingerprint identification system authorized by s. 943.05 and shall be available for all purposes and uses authorized for arrest fingerprint cards entered in the statewide automated fingerprint identification system pursuant to s. 943.051. The department shall search all arrest fingerprint cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section. In addition to all purposes and uses authorized for arrest fingerprint cards for which submitted fingerprints may be used, any arrest record that is identified with the retained employee fingerprints must be reported to the submitting employing agency.

(12) Notwithstanding any other provision of law, when a criminal history check or a duty to disclose the absence of a 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 referenced criminal history check, whether it is an initial or renewal check, shall include a Florida criminal history provided by the department as set forth in this section. Such Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the department for each request. When a national criminal history check is required or authorized by state law, the national criminal history check shall be submitted by and through the department in the manner established by the department for such checks, unless otherwise required by federal law. The fee for

criminal history information as established by state law or, in the case of national checks, by the Federal Government, shall be borne by the person or entity submitting the request, or as provided by law. Criminal history information provided by any other governmental entity of this state or any private entity shall not be substituted for criminal history information provided by the department when the criminal history check or a duty to disclose the absence of a criminal history check is required by statute or is made a condition of a privilege or benefit by law.

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

943.0585 Court-ordered expunction of criminal history records.--The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.

827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests

of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

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

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

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

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

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

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, or former s. 943.058, or from any jurisdiction outside the state, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for

expunction.

4. Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

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

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.--Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the most recent application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction, and that none of the charges related to the arrest or alleged criminal activity to which the petition to expunge pertains resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.

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

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

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

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

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

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

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

(h) Has previously obtained a court order sealing the record under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for a minimum of 10 years because adjudication was withheld or because all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were not dismissed prior to trial, without regard to 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 does not apply when a plea was not entered or all charges related to the arrest or alleged criminal activity to which the petition to expunge pertains were dismissed prior to trial. ~~Is not required to wait a minimum of 10 years prior to being eligible for an expunction of such records because all charges related to the arrest or criminal activity to which the petition to expunge pertains were dismissed prior to trial, adjudication, or the withholding of adjudication. Otherwise, such criminal history record must be sealed under this section, former s. 893.14, former s. 901.33, or former s. 943.058 for at least 10 years before such record is eligible for expunction.~~

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

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

(b) If relief is granted by the court, the clerk of the court shall certify copies of the order to the appropriate state attorney or the statewide prosecutor and the arresting agency. The arresting agency is responsible for forwarding the order to any other agency to which the arresting agency disseminated the criminal history record information to which the order pertains.

The department shall forward the order to expunge to the Federal Bureau of Investigation. The clerk of the court shall certify a copy of the order to any other agency which the records of the court reflect has received the criminal history record from the court.

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

(d) On or after July 1, 1992, the department or any other criminal justice agency is not required to act on an order to expunge entered by a court when such order does not comply with the requirements of this section. Upon receipt of such an order, the department must notify the issuing court, the appropriate state attorney or statewide prosecutor, the petitioner or the petitioner's attorney, and the arresting agency of the reason for noncompliance. The appropriate state attorney or statewide prosecutor shall take action within 60 days to correct the record and petition the court to void the order. No cause of action, including contempt of court, shall arise against any criminal justice agency for failure to comply with an order to

expunge when the petitioner for such order failed to obtain the certificate of eligibility as required by this section or such order does not otherwise comply with the requirements of this section.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.--Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

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

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

2. Is a defendant in a criminal prosecution;

3. Concurrently or subsequently petitions for relief under this section or s. 943.059;

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

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

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

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

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

(c) Information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) is confidential and exempt from the provisions of

s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the existence of a criminal history record ordered expunged to the entities set forth in subparagraphs (a)1., 4., 5., ~~and~~ 6., and 7. for their respective licensing, access authorization, and employment purposes, and to criminal justice agencies for their respective criminal justice purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., ~~or~~ subparagraph (a)6., or subparagraph (a)7. to disclose information relating to the existence of an expunged criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

943.059 Court-ordered sealing of criminal history records.--The courts of this state shall continue to have jurisdiction over their own procedures, including the maintenance, sealing, and correction of judicial records containing criminal history information to the extent such

procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to seal the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to seal a criminal history record until the person seeking to seal a criminal history record has applied for and received a certificate of eligibility for sealing pursuant to subsection (2). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, ~~or~~ a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed or pled guilty or nolo contendere to committing the offense as a delinquent act. The court may only order sealing of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the sealing of a criminal history record pertaining to more than one arrest if

the additional arrests directly relate to the original arrest. If the court intends to order the sealing of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not seal any record pertaining to such additional arrests if the order to seal does not articulate the intention of the court to seal records pertaining to more than one arrest. This section does not prevent the court from ordering the sealing of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

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

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

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

1. Has never, prior to the date on which the petition is filed, been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any ~~a~~ felony or a misdemeanor specified in s.

943.051(3)(b).

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

3. Has never secured a prior sealing or expunction of a criminal history record under this section, former s. 893.14, former s. 901.33, former s. 943.058, or from any jurisdiction outside the state.

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

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

(2) CERTIFICATE OF ELIGIBILITY FOR SEALING.--Prior to petitioning the court to seal a criminal history record, a person seeking to seal a criminal history record shall apply to the department for a certificate of eligibility for sealing. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for sealing. A certificate of eligibility for sealing is valid for 12 months after the date stamped on the certificate when issued by the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for

a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the most recent application. The department shall issue a certificate of eligibility for sealing to a person who is the subject of a criminal history record provided that such person:

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

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

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

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

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

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

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

(a) In judicial proceedings under this section, a copy of

the completed petition to seal shall be served upon the appropriate state attorney or the statewide prosecutor and upon the arresting agency; however, it is not necessary to make any agency other than the state a party. The appropriate state attorney or the statewide prosecutor and the arresting agency may respond to the court regarding the completed petition to seal.

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

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

such time as the order is voided by the court.

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

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

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.--A criminal history record of a minor or an adult which is ordered sealed by a court of competent jurisdiction pursuant to this section is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject's attorney, to criminal justice agencies for their respective

criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, or to those entities set forth in subparagraphs (a)1., 4., 5., ~~and~~ 6., and 8. for their respective licensing, access authorization, and employment purposes.

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

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

2. Is a defendant in a criminal prosecution;

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

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

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

6. Is seeking to be employed or licensed by the Department of Education, any district school board, any university

laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities;~~.~~

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

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

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

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., ~~and~~ 6., and 8. for their respective licensing, access authorization, and employment purposes. It is unlawful for any employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., ~~or~~ subparagraph (a)6., or subparagraph (a)8. to disclose information relating to the

existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. Any person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

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

(5) Have documentation of his or her processed fingerprints on file with the employing agency or, if a private correctional officer, have documentation of his or her processed fingerprints on file with the Department of Corrections or the

Criminal Justice Standards and Training Commission. If administrative delays are caused by the department or the Federal Bureau of Investigation and the person has complied with subsections (1)-(4) and (6)-(9), he or she may be employed or appointed for a period not to exceed 1 calendar year from the date he or she was employed or appointed or until return of the processed fingerprints documenting noncompliance with subsections (1)-(4) or subsection (7), whichever occurs first. Beginning January 15, 2007, the department shall retain and enter into the statewide automated fingerprint identification system authorized by s. 943.05 all fingerprints submitted to the department as required by this section. Thereafter, the fingerprints shall be available for all purposes and uses authorized for arrest fingerprint cards entered in the statewide automated fingerprint identification system pursuant to s. 943.051. The department shall search all arrest fingerprint cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section and report to the employing agency any arrest records that are identified with the retained employee's fingerprints. By January 1, 2008, a person who must meet minimum qualifications as provided in this section and whose fingerprints are not retained by the department pursuant to this section must be refingerprinted. These fingerprints must be forwarded to the department for processing and retention.

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

943.1715 Basic skills training relating to diverse

populations.--The commission shall establish and maintain standards for instruction of officers in the subject of interpersonal skills relating to diverse populations, with an emphasis on the awareness of cultural differences. Every basic skills course required in order for officers to obtain initial certification must include ~~a minimum of 8 hours~~ training in interpersonal skills with diverse populations.

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

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

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

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

943.257 Independent audit documentation subject to inspection.--The Criminal Justice Standards and Training Commission or a center's advisory board may inspect and copy any documents from the center as required to carry out the commission's or the respective board's oversight responsibilities, including information and documents related to applicant evaluations and center expenditures. In addition, the commission or board may inspect and copy the documentation of

any internal or independent audits conducted by or on behalf of the centers to ensure that candidate and inservice officer assessments have been made and that expenditures are in conformance with the requirements of this act and with other applicable procedures.

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

943.401 Public assistance fraud.--

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

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

(3) The results of such investigation shall be reported by the Department of Law Enforcement to the appropriate legislative

committees, the Agency for Health Care Administration, the Department of Health, the Agency for Workforce Innovation, and the Department of Children and Family Services, and to such others as the Department of Law Enforcement may determine.

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

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

(2) In addition to expenditures separately authorized by law, the department may 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 official functions, seminars, or meetings of the department in which dignitaries or representatives from the Federal Government, other states or nationalities, or other agencies are in attendance.

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

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

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

Section 20. Except as otherwise expressly provided in this 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**

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	_____

Council/Committee hearing bill: Criminal Justice

Representative(s) Adams offered the following:

Amendment (with directory and title amendments)

Remove line(s) 421 and insert:

law and enter the fingerprints in the statewide automated

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