



FLORIDA DEPARTMENT OF LAW ENFORCEMENT

2010 Legislative Proposal

Restoration of Ability to Purchase a Firearm Subsequent to Disqualification for Mental Competency Reasons

The proposed legislation revises Section 790.065, FS, to provide “relief of (firearm) disability” for persons who have been committed or adjudicated mentally defective meeting criteria for obtaining such relief and allow them to purchase a firearm unless there is other disqualifying information available. A court order must grant the relief of disability. The National Instant Criminal Background Check System (NICS) Improvement Act authorizes the establishment of state programs that allow individuals to seek relief from the federal mental health firearms disability. It is necessary to bring Florida into alignment with the federal requirements for grant eligibility.

The NICS Improvement Amendments Act, which became law on January 8, 2008, amends the Brady Handgun Violence Prevention Act of 1993. The Brady Act, which established NICS, requires federal firearms licensees to contact NICS before transferring a firearm to an unlicensed person to determine whether the individual is prohibited from receiving or possessing a firearm under state or federal law.

Chapter 2006-176, Laws of Florida, authorized FDLE to create a database with information provided by the clerks of court regarding persons adjudicated mentally defective or committed to a mental institution. The database was established in 2007 and is used in determining a person’s eligibility for purchasing a firearm. To date, FDLE has not received any petitions for relief under the current statute. The Department does not anticipate a large number of petitions.

FDLE was recently notified by the Division of Alcohol, Tobacco, Firearms and Explosives that Florida’s current relief program does not meet the criteria set forth in Section 105 of the NICS Improvement Act. As a result, Florida was not eligible for federal grants in 2009 and future grants are jeopardized by Florida’s failure to conform to NICS criteria. Over \$250 million in grants are appropriated for 2010 and 2011 for projects such as increasing the number of court dispositions in the criminal history repository and another \$125 million is available to the state court system.

Applicant Fingerprint Retention and Notification Program

The proposed legislation revises Section 943.05, FS, to increase the number of state agencies participating in FDLE’s Applicant Fingerprint Retention and Notification Program (AFRNP). Currently, applicant fingerprints submitted for state and national criminal history checks are entered and retained by FDLE in the Automated Fingerprint Identification System (AFIS). Agencies statutorily authorized to participate in AFRNP submit fingerprints for current and prospective employees, contractors, volunteers, and persons seeking to be licensed or certified. Interested agencies would submit a written request to FDLE seeking enrollment in the program. The proposed legislation also requires agencies in AFRNP to notify personnel their fingerprints are being retained.

Initial entry of an applicant’s fingerprints into the AFRNP database must be accompanied by a state and national criminal history records check. There is no retention fee for the first year of participation in the program, but for each succeeding year, a \$6 per record annual fee for fingerprint retention is charged. The retention of prints eliminates the necessity to have a state criminal history record recheck at a cost of \$24, since all incoming Florida arrest information is continuously compared to the retained applicant database. If a recheck is required, it is only for a national criminal history check.

Only digital applicant fingerprints can be entered into AFIS and retained in the AFRNP database. Applicant prints are retained in a manner that makes them distinct from the criminal history record database. When a person's fingerprints submitted for retention is identified with fingerprints from an incoming Florida arrest, FDLE immediately provides written notification of the arrest to the licensing or employing agency which originally submitted the fingerprints.

In 2004, fingerprints of employees of public school districts were retained in the AFRNP. In 2005-06, seaport workers, Department of Juvenile Justice (employees and caretakers) and Department of Business and Professional Regulation (slot machine licensees) were added. In subsequent years, the Department of Elder Affairs (Statewide Public Guardianship Office) and the Clerk of Courts (professional guardianship), criminal justice agencies (sworn and non-sworn personnel) and Volunteer and Employee Criminal History System private schools (state school choice scholarship program participants) also started having applicant fingerprints retained. Mortgage brokers and loan originators will be retained beginning in October 2010.

The FBI is also developing a fingerprint retention and arrest notification system, which should be available in 2013. Once this system is available, governmental agencies and qualified entities conducting a state and national record check may request FDLE to have the fingerprints retained at the national level. This may provide a cost savings to the customers who currently require a national record check rescreen. The proposed legislation authorizes utilization of the FBI option when it becomes available.

Criminal Justice Standards and Training Commission

The proposed legislation revises Section 943.12(16), FS to specifically authorize rules regarding the bi-annual firearms qualification requirement. During recent rule promulgation, the Joint Administrative Procedures Committee suggested the Criminal Justice Standards and Training Commission (CJSTC) should seek specific statutory authority for this requirement, rather than relying upon general powers stated in the current statute.

The CJSTC establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers. The Commission is responsible for establishing and maintaining officer training programs, curricula requirements, and certification of training schools and training school instructors. It also promulgates rules for the certification and discipline of officers who engage in areas that present a high risk of harm to the officer or public, which in turn increases liability to local criminal justice agencies. In March 2006, the CJSTC formally adopted bi-annual firearms qualification requirements for all certified law enforcement.

The proposed legislation also revises Sections 943.131(2) and 943.1395(3), FS, regarding persons who receive an exemption from basic recruit training but do not complete the proficiency demonstration and pass the certification exam within one year. The revision provides them the option to apply for an additional exemption, provided they are within the eight year break in service.

Currently, if an out-of-state, federal, or military criminal justice officer seeks to relocate to Florida, the officer must provide proof of comparable basic recruit training and possession of one year of full-time, sworn criminal justice experience. Upon documentation of the required training and experience, the officer is eligible for an exemption from Florida basic recruit training. Once an officer is notified of the exemption, he or she has one year to demonstrate proficiency in the high liability areas and pass the certification exam. If they fail to complete both within the one year time limitation, the officer must attend a full basic recruit training program. The same process applies to former Florida officers with a four to eight year break in service.

The proposed legislation revises Section 943.17(1)(g), FS, to remove the basic abilities test requirement for correctional probation officers. The test is redundant for those individuals who possess a four year degree from an accredited college or university. An individual attending a basic recruit training program must pass a CJSTC approved basic abilities test prior to entry into the training program. This requirement applies to all criminal justice disciplines. Currently, the Department of Corrections (DOC) is the only employer of certified correctional probation officers in Florida. To become a correctional probation officer, DOC requires an individual to possess a four year degree.

Florida Criminal Justice Executive Institute – Administration of Tuition

The proposed legislation revises Section 943.1755, FS, to allow Criminal Justice Professionalism Program staff to continue its current criminal justice executive training activities, to administer them from a single trust fund and to provide clear authority for FDLE to continue charging tuition fees as approved by the Florida Criminal Justice Executive Institute (FCJIE) Policy Board.

FCJIE provides training for criminal justice executives in the state. The Institute is affiliated with the State University System and is directed by a policy board established in Section 943.1755, FS. Prior to July 1, 1995, tuition fees for criminal justice executive training were deposited in and expenditures made from the Florida Law Enforcement Academy Trust Fund. Chapter 94-265, LOF, terminated the Florida Law Enforcement Academy Trust Fund and moved fund balances to the Operating Trust Fund where the criminal justice executive training tuition fees have continued to be deposited. This legislation would allow for the continued collection of such tuition fees for deposit in the Criminal Justice Training Trust Fund rather than the Operating Trust Fund.

Training fees for courses for the Executive Leadership Seminar, Continuing Executive Development, and the Center for Advanced Law Enforcement Studies have been deposited in the Operating Trust Fund since 1995. Chapter 943, FS, does not specifically provide for the collection of these tuition fees. This legislation would clearly allow FDLE to collect the tuition fees for deposit in the Criminal Justice Standards and Training Trust Fund. Other courses for the Chief Executive Seminar, Senior Leadership Program and Florida Leadership Academy have been and will continue to be paid from the Criminal Justice Standards and Training Trust Fund.

The proposed legislation does not create any new sources of fees.

Miscellaneous Change

The proposed legislation deletes an obsolete reference in Section 943.32, FS to the Monroe County crime laboratory. The lab was closed by FDLE on July 1, 2001 as a cost-savings measure. It became part of FDLE's state crime lab system in 1994 when the Monroe County Sheriff's Office could no longer afford to operate it. Until that time, the lab received state funding for its operations with FDLE acting as the "pass-through" agency. Transfer of the Monroe County lab to FDLE was done as part of the legislative appropriations process.