

STORAGE NAME: h1771.sgc.doc

DATE: April 20, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 1771

RELATING TO: Juvenile Records/Confidentiality

SPONSOR(S): Representative Melvin

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUVENILE JUSTICE YEAS 5 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Under current law, all information obtained pursuant to the official discharge of a duty under ch. 985, F.S., is confidential and may only be disclosed to persons authorized in statute. Generally, crime reports and arrest records – along with the name, address, and photograph – of juvenile offenders are not available to the public.

The bill removes the protection of confidentiality presently provided for the name, photograph, address, and arrest report of certain juvenile offenders.

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

The bill provides an effective date of July 1, 2001.

NOTE: The bill is traveling with a “strike-everything” amendment adopted by the Committee on Juvenile Justice and a substitute “strike-everything” amendment adopted by the Council on Smarter Government. The traveling amendments make significant changes to this bill. Please refer to the “Amendment or Committee Substitute Changes” section for explanations of the traveling amendments.

SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. PRESENT SITUATION:

Under current law, all information obtained pursuant to the official discharge of a duty under ch. 985, F.S., is confidential and may only be disclosed to persons authorized in statute.¹ Generally, crime reports and arrest records – along with the name, address, and photograph – of juvenile offenders are not available to the public.² However, such information pertaining to juvenile offenders who have been:

(a) Taken into custody by a law enforcement officer for a violation which, if committed by an adult, would be a felony; or

(b) Found by the court to have committed three or more violations of law, which if committed by an adult, would be misdemeanors

is **not** considered confidential and exempt from the provisions of s. 119.07(1), F.S., solely because of the offender’s age.³

C. EFFECT OF PROPOSED CHANGES:

The bill removes the protection of confidentiality presently provided for the name, photograph, address, and arrest report of certain juvenile offenders.

NOTE: The bill is traveling with a “strike-everything” amendment adopted by the Committee on Juvenile Justice and a substitute “strike-everything” amendment adopted by the Council on Smarter Government. The traveling amendments make significant changes to this bill. Please refer to the “Amendment or Committee Substitute Changes” section for explanations of the traveling amendments.

D. SECTION-BY-SECTION ANALYSIS:

Please refer to the “Present Situation” and “Effect of Proposed Changes” sections, *supra*.

¹ See s. 985.04(3), F.S.

² See s. 985.04(5), F.S.

³ *Id.*

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of municipalities or counties to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill would not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 19, 2001, the Committee on Juvenile Justice adopted a "strike-everything" amendment to the bill. The following changes were included in this amendment:

Expands the list of enumerated offenses under s. 435.04, F.S., which disqualify a candidate from employment with the Department of Juvenile Justice (DJJ) to include assault and battery on a law enforcement officer, felony burglary, and escape. Potential employees are also required to be of good moral character. No exemptions are granted for applicants seeking employment in the juvenile justice system for any of these enumerated offenses if it occurred during the most recent 7-year period.

Allows the Florida Department of Law Enforcement (FDLE) to expunge a nonjudicial arrest record of a juvenile for a non-violent misdemeanor who successfully completed a prearrest, postarrest, or teen court diversion program that was verified and approved in writing by the state attorney. This change allows such juveniles to apply subsequently for another expunction if otherwise qualified under s. 943.0585, F.S.

Allows the Secretary of DJJ to designate as certified law enforcement officers certain employees who work within the Office of the Inspector General and who already hold law enforcement certifications under ch. 943, F.S. This authority allows DJJ to enforce criminal laws and conduct criminal investigations that relates to state-operated programs or facilities over which the DJJ has jurisdiction.

Expands current law that requires certain offenders to submit a blood sample for purposes of DNA testing to include juveniles who are transferred to Florida under the Interstate Compact on Juveniles. Failure to comply would result in the State refusing to accept the juvenile under the Interstate Compact on Juveniles.

Permits the secure detention of a juvenile offender for a period, not to exceed 24 hours, for the purpose of being transported by DJJ to or from a commitment facility in order to ensure the safe delivery of the child to the commitment program, to court, or to the community.

Requires an offender's parent or guardian to provide personal identification and financial information when the offender is taken into custody, released or delivered from custody, placed in any form of detention care or in a residential commitment facility in order to determine ability to pay certain fees associated with the child's cost of care. The required information includes name, address, social security number, date of birth, driver's license number, and sufficient financial information for the department to determine the parent's or guardian's ability to pay. Upon refusal to provide this information or the required financial information, the parent or guardian could be held in contempt of court. DJJ is required to determine the cost of care and report it to the court at the detention hearing and/or disposition hearing. The department is given authorization, even in the absence of a court order, to collect at least \$5 per day that the child is placed in a commitment program, \$2 per day that the child is in secure detention, and \$1 per day that the child is otherwise under the supervision of the department.

Provides DJJ with discretion in collecting and settling unpaid fees or judgments, including settling for less than the full amount owed or selling the right to collect to third parties.

Clarifies that youth involved in the Early Delinquency Intervention Program are not on conditional release status.

Amends s. 230.23161, F.S., to clarify that youth in DJJ programs shall have equal opportunity and access to quality and effective education.

Removes references to the Juvenile Justice Advisory Board, which is scheduled to expire on June 30, 2001.

Deletes a provision from s. 985.417, F.S., which requires the consent of the Parole Commission for administrative transfers of youth between the Department of Corrections and DJJ.

Defines the term "respite" to clarify that respite care is an alternative to secure detention for juveniles charged with domestic violence or in cases where a CINS/FINS shelter bed is not available.

Revises the term "temporary release" to eliminate references to commitment levels. Last year's juvenile justice legislation stated that youth in high or maximum risk programs cannot have community access and that moderate risk programs afforded only supervised community access. Removes an obsolete line clarifying that post-commitment probation is not a form of temporary release, and also removes post-commitment probation as a form of conditional release. These changes would clarify that administrative transfers are not possible for youth on postcommitment probation and that the court must handle violations of postcommitment probation.

Provides legislative intent that the department, when contracting for services providers, consider faith-based organizations equally with other non-governmental providers.

Moves from s. 985.404 to s. 985.412, F.S., language concerning collection and reporting of cost-effectiveness program information, and adds requirements relating to the collection and reporting of cost data and program ranking. Further, the amendment requires DJJ to submit to the Legislature proposals for funding incentives and disincentives based upon quality assurance performance and cost-effectiveness performance.

The amendment also makes the following technical and conforming changes in ch. 985, F.S.:

- Changes references of "community control" to "probation."
- Changes references of "aftercare" to "conditional release."
- Corrects references to "non-residential day treatment programs" to clarify that they are no longer commitment programs.
- Removes references to "minimum-risk" commitment programs.

On April 23, 2001, the Council for Smarter Government adopted a substitute amendment to the "strike-everything" amendment by the Committee on Juvenile Justice. The substitute amendment is substantially similar to the "strike-everything" amendment, with the following changes:

Clarifies that all juvenile justice youth are compelled to participate in education programs by removing language added by the "strike-everything" amendment to s. 230.23161, F.S.

Revises definitions in s. 985.03, F.S. "Legal custody" is redefined to include the concept of guardianship in the definition. The definition of "juvenile sex offender" is revised for purposes of public safety.

Amends s. 985.04, F.S., to remove the protection of confidentiality presently provided for the name, photograph, address, and arrest report of certain juvenile offenders. Limits DJJ's responsibility for the retention of certain juvenile records to a period of 25 years.

Revises language in ss. 985.215(6), 985.231(1)(b), and 985.233(4)(d), F.S., relating to the collection of fees by DJJ, which relate to ordinary and usual obligations of parents to their children. These fees are intended to offset the cost of care, support, and maintenance of the child while under the care or supervision of the department.⁴ In the event that payment of the specified fees is determined by the court to constitute a significant hardship to the parent, provisions are provided for the reduction or waiver of such fees.

Allows DJJ to withhold a portion of a provider's payment, pursuant to contract, for the purposes of establishing a fund for significant maintenance, repairs, or upgrades to state-owned or leased facilities.

VI. SIGNATURES:

COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Lori Ager

Staff Director:

Lori Ager

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Lori Ager

Staff Director:

Don Rubottom

⁴ Generally, the fee is set at \$5 per day that the child is under the care or supervision of DJJ. Upon a finding of indigency, the fees may be reduced to a nominal obligation of \$2 per day that the child is in the out-of-home care of DJJ or \$1 per day that the child is otherwise supervised. These fees may be waived if the court determines that such payments would constitute a significant hardship.