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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON JUVENILE JUSTICE
ANALYSIS**

BILL #: HB 1983 (PCB JJ 02-02)
RELATING TO: Juvenile Delinquency Programs and Records
SPONSOR(S): Committee on Juvenile Justice and Representative Barreiro
TIED BILL(S):

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

- (1) COMMITTEE ON JUVENILE JUSTICE YEAS 5 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends s. 938.19, F.S., to provide counties with the authority to create juvenile drug courts, and allows the counties, at local discretion, to use the \$3 assessment provided for in s. 938.19(1), F.S., to fund teen courts, juvenile drug courts, or both. The bill clarifies that teen courts and juvenile drug courts are court diversion programs for purposes of ss. 943.0582 and 985.21, F.S.

The bill amends s. 943.0582, F.S., to require the Florida Department of Law Enforcement to prepare a report detailing its actual costs relating to expunging nonjudicial arrest records subject to the offender having completed a court diversion program. The report is due no later than January 1, 2003, and is to outline the feasibility and potential fiscal impact of expunging nonjudicial arrest records without necessity of a \$75 processing fee and subject to the submission of a certificate of completion on behalf of the offender by the diversion program.

The bill amends s. 984.06(3), F.S., to clarify that the obligation of the clerk to keep CINS / FINS records confidential is identical to the clerk's obligation to keep dependency records confidential.

The bill amends s. 985.04(5), F.S., to broaden the circumstances in which certain information concerning juvenile offenders may be made available to the public.

The bill requires the Department of Juvenile Justice to promulgate a rule establishing a procedure to provide notice of anticipated changes in agency policy that impact contracted delinquency services and programs. For purposes of amending s. 985.407, F.S., a "policy" is defined to mean an operational requirement applying only to specified contracted delinquency services or programs. The procedure must include opportunity for public comment on the proposed policy change, an assessment of the potential fiscal impact of the proposed policy change, and the department's response to any comments received.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

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

B. PRESENT SITUATION:

Please refer to the “Section By Section Analysis,” below.

C. EFFECT OF PROPOSED CHANGES:

Please refer to the “Section By Section Analysis,” below.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 of the bill amends s. 938.19, F.S., which relates to teen court programs. Teen court programs are a type of juvenile delinquency diversion program. Under current law, each county in which a teen court has been created may adopt a mandatory cost of \$3 to be assessed in addition to any fine, civil penalty, or other court cost order by the court pursuant to the disposition of any criminal case, traffic fine, or ordinance violation. Funds collected through the assessment are remitted to the teen court to support its operations.

Although modeled after adult drug courts, there are not currently specific provisions in statute for the creation of juvenile drug courts. In Florida, all but the 12th and the 15th judicial circuits currently have or are in the planning stages of a juvenile drug court.¹ Section 1 of the bill amends s. 938.19, F.S., to specifically empower counties to create teen courts, juvenile drug courts, or both, at the discretion of local governments. The bill directs the chief judge of the circuit court to specify the portion of the funds generated by the \$3 assessment to be remitted to each program in the event that the county opts to operate both a teen court and a juvenile drug court. The bill specifies that teen courts and juvenile drug courts are court diversion programs for purposes of ss. 943.0582 and 985.21, F.S.²

Section 2 of the bill amends s. 943.0582, F.S., which provides for the expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion

¹ See “Map of Florida’s Drug Courts” link at www.flcourts.org.

² Section 943.0582, F.S., provides for the expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program. Section 985.21, F.S., allows the juvenile probation officer to screen juvenile offenders in order to determine whether referral to a diversion program would be appropriate.

program for minors, as authorized by s. 985.3065, F.S.³ However, expunction is not automatic. A juvenile offender who has successfully completed a diversion program must still go through the formal process of requesting the Florida Department of Law Enforcement (FDLE) to expunge the record. FDLE is authorized to charge a \$75 processing fee for each request received for prearrest or postarrest diversion program expunction.

Section 2 of the bill directs FDLE to prepare a report concerning the feasibility and fiscal impact of expunging such records subsequent to a certification of successful completion being submitted by the diversionary program on behalf of the offender. The report must detail the actual costs to FDLE associated with the current expunction process, the anticipated costs of expunction pursuant to certification of completion by the diversion program, and the fiscal impact to the department if the \$75 processing fee were eliminated. The report is due by January 1, 2003.

Section 3 of the bill amends s. 984.06(3), F.S., which relates to the responsibility of the clerk of courts to ensure that records pertaining to children and families in need of services (CINS / FINS) are not open to public inspection. The amendment conforms the provisions of s. 984.06(3), F.S., to the exact language found in s. 39.0132(3), F.S., which relates to the responsibility of the clerk of courts to ensure that records pertaining to dependency proceedings are not open to public inspection. The amendment does not change the effect of s. 984.06(3), F.S., but does clarify that the obligation of the clerk to keep CINS / FINS records confidential is identical to the clerk's obligation to keep dependency records confidential.

Section 4 of the bill amends s. 985.04(5), F.S., which relates to juvenile delinquency records. Unlike its counterparts in Ch. 39 and Ch. 984, F.S., subsection (5) of 984.04, F.S., allows the release of certain information concerning juvenile offenders. Specifically, current law allows that the name, address, photograph, and criminal arrest report of a juvenile offender who is:

- (a) Taken into custody if the child has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- (b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- (c) Transferred to the adult system pursuant to s. 985.227, indicted pursuant to s. 985.225, or waived pursuant to s. 95.226;
- (d) Taken into custody by a law enforcement officer for a violation of law subject to the provisions of s. 985.227(2)(b) or (d); or
- (e) Transferred to the adult system but sentenced to the juvenile system pursuant to s. 985.233

is not considered confidential and exempt solely because of the offender's age. The bill broadens the circumstances in which information concerning a juvenile offender may be made available to the public. The bill allows for the release of the identifying information of a juvenile offender who either is identified in a law enforcement incident or arrest report or for whom an arrest warrant has been issued. The bill clarifies that any information that is not considered confidential and exempt pursuant to the provisions of s. 985.04(5), F.S., may be obtained from the law enforcement agency that originated the report.

³ Section 985.3065, F.S., authorizes law enforcement agencies or school districts, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program.

There is no current statutory authority for the Department of Juvenile Justice (DJJ) to adopt a rule establishing procedures to provide notice of policy changes impacting contracted services.

Section 5 of the bill amends s. 985.407, F.S., which provides DJJ with contracting powers. DJJ contracts with private providers for approximately 85% of its services. Some providers have expressed frustration about their contract negotiation experiences with DJJ, particularly with regard to contract modifications imposed by DJJ, that the providers perceive as changes in agency policy.⁴ These providers have urged the Legislature to require the agency to promulgate rules in accordance with the provisions of Ch. 120, F.S.⁵ However, DJJ has consistently maintained that the provisions of Ch. 120, F.S., are not applicable in these circumstances because the agency is not regulating any activity when it contracts for the delivery of services.⁶

Chapter 120, F.S., Florida's Administrative Procedure Act, defines a "rule" to mean

[E]ach agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

The term also includes the amendment or repeal of a rule...

In an effort to provide an agreeable resolution of this issue for the providers and the agency, the bill requires DJJ to adopt a rule in accordance with Ch. 120, F.S. The rule must specify a procedure for providing notice of anticipated changes in agency policy that impact contracted delinquency services and programs. For purposes of amending s. 985.407, F.S., a "policy" is defined to mean an operational requirement applying only to specified contracted delinquency services or programs. The procedure must include opportunity for public comment on the proposed policy change, an assessment of the potential fiscal impact of the proposed policy change, and the department's response to any comments received.

Section 6 of the bill provides an effective date of October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁴ See, e.g., Testimony of Barney Bishop before the Senate Criminal Justice Committee on March 20, 2001.

⁵ *Id.*

⁶ See, e.g., Response letter dated April 4, 2001, from DJJ Secretary W.G. "Bill" Bankhead to the House Committee on Juvenile Justice, pursuant to a letter of inquiry as to the agency's need for administrative rule-making authority.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. 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 that municipalities or counties have to raise revenue in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON JUVENILE JUSTICE:

Prepared by:

Staff Director:

Lori Ager

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