

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/SB 1914

SPONSOR: Criminal Justice Committee and Senator Argenziano

SUBJECT: Juvenile Justice/Personnel Screening Procedures

DATE: April 7, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger/Cannon	Cannon	CJ	Fav/CS
2.			JA	
3.				
4.				
5.				
6.				

I. Summary:

The bill eliminates a statutory conflict by amending s. 985.407(4), F.S., to require Level 2 screenings for persons prior to employment with the Department of Juvenile Justice (DJJ), or by a provider under contract with the DJJ, in delinquency facilities, services, or programs. (According to the department, the more stringent Level 2 screenings are currently being conducted pursuant to s. 985.01, F.S.)

The bill also establishes a new, continuous state criminal history screening process for DJJ and provider personnel, which requires the Florida Department of Law Enforcement (FDLE) to: (a) enter fingerprint information for all DJJ and provider employees, current and prospective, into the statewide automated fingerprint identification system; (b) retain that fingerprint information in the system; and (c) conduct searches as arrest records are received to determine whether any such records are associated with the retained fingerprint information.

The bill permits the FDLE to charge the DJJ an annual fee for its fingerprint retention services.

This bill amends section 985.407, Florida Statutes.

II. Present Situation:

General statutory screening requirements: In 1995, the Legislature codified standards relating to background screenings required by law for employment with its creation of ch. 435, F.S.¹ This chapter provides for two levels of background screening that when required by law serve as a condition of employment or continued employment:

¹ Chapter 95-228, L.O.F.

- A Level 1 screening requires, but is not limited to, a statewide criminal history check by the Florida Department of Law Enforcement (FDLE) and an employment history check. At this level, the person must not have been convicted of or pled guilty to enumerated offenses that include sexual, manslaughter, battery, and abuse offenses against certain persons, felony drug offenses, murder, kidnapping, prostitution, vehicular homicide, arson, and felony theft.²
- A Level 2 screening requires, but is not limited to, fingerprint-based state and federal juvenile and criminal records checks by the FDLE and federal criminal records checks by the Federal Bureau of Investigations. At this level, the person must not have been convicted of or pled guilty to enumerated offenses that include those proscribed for level one screenings, as well as resisting arrest with violence, aiding in certain escapes, introducing contraband into certain facilities, depriving officers of protection or communication, and recruiting gang members.³

If an employer believes that grounds exist for the denial or termination of employment as a result of a background screening, the employer must notify the applicant or employee in writing, stating the specific record that indicates noncompliance. The applicant or employee may contest the disqualification on mistaken identity grounds or may request an exemption from disqualification.⁴ In order to obtain an exemption, the crime at issue must be: a felony committed more than three years ago; a misdemeanor; or an act of delinquency or domestic violence. Further, the person seeking the exemption must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment based on evidence of rehabilitation. The decision of an employer regarding whether to grant an exemption may be contested under ch. 120, F.S., the Administrative Procedure Act.⁵

Department of Juvenile Justice screening requirements: Section 985.01(2), F.S., requires the Department of Juvenile Justice (DJJ) to conduct Level 2 screenings for personnel in programs for children or youth and specifies that the personnel of contractual providers to the DJJ must be of good moral character.⁶ Conversely, s. 985.407(4), F.S., states that the DJJ shall require Level 1 screenings for personnel in delinquency facilities, services, and programs. Thus, the statutes appear to conflict on the level of screening required. Representatives from the DJJ have indicated that the department in practice applies the more stringent Level 2 screening requirements of s. 985.01(2), F.S., for all employed and contracted personnel.

² Section 435.03, F.S.

³ Section 435.04, F.S.

⁴ Section 435.06, F.S.

⁵ In *Heburn v. Department of Children and Families*, the court indicated that departments have broad discretion in determining whether to grant an exemption and that such discretion will be upheld by an appellate court if it is exercised reasonably. *Heburn v. Department of Children and Families*, 772 So.2d 561, 563-564 (Fla. 1st DCA 2000); *See also Phillips v. Department of Juvenile Justice*, 736 So.2d 118, 119 (Fla. 4th DCA 1999)(stating that the court could not substitute its judgment for the department's discretionary decision to deny an exemption).

⁶ The Florida Supreme Court has defined good moral character as, "... acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation." *Florida Board of Bar Examiners, Re: G.W.L.*, 364 So.2d 454, 458 (Fla.1978).

With regard to the DJJ's ability to grant exemptions from employment disqualification based upon Level 2 employment screenings, the statute provides that the DJJ may not grant an exemption for any offense enumerated in the Level 2 screening section, which was disposed of within the last seven years.⁷

Criminal Justice Information Program: Section 943.05, F.S., establishes the Criminal Justice Information Program within the FDLE, which is to include the implementation of a statewide automated fingerprint identification system that is available to all criminal justice agencies. Section 943.051, F.S., requires the following persons to be fingerprinted: (a) adults charged with or convicted of felonies, misdemeanors, or specified ordinances; and (b) minors charged with or found to have committed specified misdemeanors and offenses that would be felonies if committed by an adult. Such fingerprints are used as the basis for criminal history records that are entered into the statewide automated fingerprint identification system.⁸

The FDLE is statutorily authorized to charge state agencies from \$8 to \$23 per state criminal history request. The fee applicable to the DJJ is \$8 per request made.⁹

III. Effect of Proposed Changes:

The bill amends s. 985.407(4), F.S., to require a Level 2, rather than Level 1 screening prior to employing persons by the DJJ, or by a provider under contract with the DJJ, in delinquency facilities, services, or programs. The bill's Level 2 screening requirement brings s. 985.407(4), F.S., into conformity with the: (a) Level 2 screening requirements of s. 985.01(2), F.S.; and (b) DJJ's current screening practices.

The bill also establishes a new, continuous state criminal history screening process for DJJ and provider personnel. This process requires the DJJ to electronically submit to the FDLE: (a) fingerprints obtained during Level 2 employment screenings; and (b) by December 15, 2005, fingerprint information for all persons employed by the DJJ, or its providers, in delinquency facilities, services, or programs if that person's information has not previously been submitted to the FDLE by the DJJ.¹⁰ The FDLE must retain and enter fingerprint information submitted by the DJJ into the statewide automated fingerprint identification system and must search to determine whether any arrest records are associated with the fingerprints.¹¹ Arrest records identified by the FDLE must be reported to the DJJ in a manner and time frame established by the FDLE in rule.

The bill requires the DJJ to pay an annual fee to the FDLE for its costs resulting from the retention of fingerprint information. Additionally, the FDLE is required to adopt rules that establish the amount of the annual fee and procedures for the submission and retention of fingerprints submitted by, and the dissemination of search results to, the DJJ. The bill specifies

⁷ Section 435.04(3), F.S.

⁸ Section 943.051(4), F.S.

⁹ Section 943.053, F.S.

¹⁰ The bill specifies that the requirement for the DJJ to submit fingerprint information for all current personnel does not apply to law enforcement, correctional, and correctional probation officers, as s. 943.13, F.S., sets forth the employment screening requirements for those persons.

¹¹ The bill provides that fingerprint information entered into the statewide automated fingerprint identification system shall be available for all purposes and uses authorized for arrest fingerprint information received pursuant to s. 943.051, F.S., which addresses the type of arrests, charges, and convictions for which fingerprint information must be submitted to the FDLE.

that the rule may apply to the DJJ individually, or that, if otherwise authorized by law, it may apply to the DJJ and other employing agencies.

Finally, the bill directs the department to notify FDLE when a person whose fingerprint information is retained under this provision is no longer employed by the department, or by a provider under contract with the department, in a delinquency facility, service, or program. The bill specifies that this notice must be submitted to FDLE no later than 6 months after the date of the change in a person's employment status. Fingerprint information for persons identified by the department in the notice shall be removed from the statewide automated fingerprint system.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Pursuant to Art. VII, s. 18 of the Florida Constitution, the provision concerning local mandates, the Legislature may not pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided. This bill, however, does not appear to implicate this provision as it does not directly require counties to pay for employment screening costs for detention workers. Instead, s. 985.2155, F.S., as amended by ch. 2004-263, L.O.F., imposes the obligation of paying all detention costs on the counties beginning July 1, 2005. Further, even if this bill were construed as implicating the local mandates provision, the bill is anticipated to have an insignificant fiscal impact on the counties, i.e., less than \$1.6 million, based on the estimate that Fiscal Year '05—'06 non-recurring costs to counties will be \$70,400. Accordingly, the bill appears to be exempt from the constitutional mandate funding requirements.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DJJ indicates that its private providers currently pay the \$32 Level 2 employment screening cost and that the private providers will be responsible for costs resulting from this bill's requirements. As discussed below, the current number of private provider employees is 10,000. Thus, the DJJ may bill the private providers for \$320,000 (\$32 fee multiplied by 10,000 employees) in Fiscal Year '05—'06 and \$45,000 (\$6 fee multiplied by 7,500 employees) in future fiscal years.

C. Government Sector Impact:**Summary:**

The bill permits the FDLE to charge an annual fee for its fingerprint retention services. The gross fiscal impact of this bill on the DJJ is anticipated to be a total of \$480,000 in Fiscal Year '05—'06 and of \$67,500 in future years.

However, as these costs may be shared with the DJJ's private providers and the counties under existing contracts and statute, the following net fiscal impacts are anticipated: (a) for the DJJ, \$89,600 in Fiscal Year '05—'06 and \$12,600 in future years; (b) for the private providers, \$320,000 in Fiscal Year '05—'06 and \$45,000 in future years; and (c) for the counties, \$70,400 in Fiscal Year '05—'06 and \$9,900 in future years.

State Government Impact:**Revenues:**

The bill states that the DJJ shall pay an annual fee to the FDLE as established by the FDLE in rule. Representatives from the FDLE have indicated that the DJJ will be charged \$32 for each initial submission of fingerprint information under the bill and \$6 for each fiscal year thereafter for FDLE's retention of that fingerprint information. Of the initial \$32 fee, the FDLE receives \$8 for its statewide criminal history check, while the federal government receives \$24 for its nationwide criminal history check.

Fiscal Year '05—'06: It is estimated that the DJJ and its private providers currently have a total of 15,000 employees whose fingerprint information will be required to be submitted to the FDLE under this bill. Although Level 2 screenings have previously been conducted on these employees, the FDLE indicates that it will be necessary to conduct those screenings again in order to enter the fingerprint records into the statewide automated fingerprint system. Thus, the non-recurring cost to the DJJ and its private providers for Fiscal Year '05—'06 is projected to be \$480,000 (\$32 multiplied by 15,000). Of this amount, the FDLE will receive \$120,000 and the federal government will receive \$360,000.

Future Fiscal Years: Representatives from the DJJ estimate that the department will maintain its current total of 15,000 employees in future fiscal years; however, they state that the department has a 25 percent turnover rate. As such, it is estimated for future years that the \$6 per year retention fee will be charged for 11,250 employees (75 percent of the 15,000 total employees); thereby, resulting in an annual recurring revenue to the FDLE of \$67,500 (\$6 multiplied by 11,250 employees). A Level 2 screening fee of \$32 will be charged for the estimated 3,750 new employees. This latter cost is not a result of the bill, however, as the DJJ and its private providers currently conduct and pay for Level 2 screenings.

Expenditures:

Fiscal Year '05—'06: As discussed above, the DJJ and its private providers currently have a total of 15,000 employees whose fingerprint information will be required to be submitted to the FDLE under this bill at a non-recurring cost of \$480,000 (\$32 multiplied by 15,000) for Fiscal Year '05—'06. The DJJ indicates that approximately 10,000 of

these employees are with its private providers and that it will bill the private providers for \$320,000 (\$32 fee multiplied by 10,000 employees). Further, as discussed below, the DJJ under current law, may shift its cost for detention workers to the counties. It is estimated that 2,200 of the 15,000 employees are detention workers employed by the DJJ and, thus, the DJJ may bill the counties for \$70,400 (\$32 fee multiplied by 2,200). Accordingly, the net non-recurring cost of this bill to the DJJ in Fiscal Year '05-'06 is estimated to be \$89,600.

Future Fiscal Years: Representatives from the DJJ estimate that the department will maintain its current total of 15,000 employees in future fiscal years; however, they state that the department has a 25 percent annual turnover rate. As such, it is estimated for future years that the \$6 per year retention fee will be charged for a total of 11,250 employees (75 percent of the 15,000 total employees); thereby, resulting in an annual recurring cost of \$67,500 (\$6 multiplied by 11,250 employees).

Of the 11,250 employees, approximately 7,500 are employed by private providers and approximately 1,650 are detention workers. Accordingly, the DJJ may bill the private providers for \$45,000 (\$6 fee multiplied by 7,500 employees) and the counties for \$9,900 (\$6 fee multiplied by 1,650 employees). Thus, the net recurring cost of this bill to the DJJ is \$12,600.

A Level 2 screening fee of \$32 will be charged for the estimated 3,750 new employees that the DJJ and its private providers are estimated to hire annually. This cost, however, is not a result of the bill as the DJJ and its private providers currently conduct and pay for Level 2 screenings.

Local Government Impact:

Currently s. 985.2155, F.S., as amended by ch. 2004-263, L.O.F., will require Florida counties effective July 1, 2005, to pay the costs of detention care provided by the DJJ for juveniles during the preadjudication phase. Accordingly, it appears that the costs incurred by the DJJ for fingerprint retention under this bill may be passed on to the counties. As discussed above, the number of current DJJ detention employees is 2,200. Thus, the DJJ may bill the counties for \$70,400 (\$32 fee multiplied by 2,200) in Fiscal Year '05—'06 and for \$9,900 (\$6 fee multiplied by 1,650 employees) in future fiscal years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
