

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: PCS/SB 700 (365564)

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on General Government); and Senator Soto

SUBJECT: Public Records/Juvenile Criminal History Information

DATE: February 16, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 700 addresses inconsistencies between s. 985.04(1), F.S. (confidential information of juveniles), and s. 943.053, F.S. (dissemination of criminal history information), by:

- Making the records of juveniles who have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.053, F.S.;
- Permitting a custodian of public records to choose not to post a juvenile's arrest or booking photograph that is not confidential and exempt under s. 985.04(2), F.S., on the custodian's website, while maintaining the public's right of access to the photograph;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how the FDLE must release juvenile criminal history records.

The bill expands existing public record exemptions and repeals them on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it expands public records exemptions.

The FDLE indicates that the bill will have no fiscal impact on the department if its requirements are implemented as part of the ongoing Computerized Criminal History (CCH) system update/replacement project, which began in Fiscal Year 2015-2016 and is expected to be completed in Fiscal Year 2017-2018. Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Act, includes \$2.5 million for continued implementation of the CCH project. There would be a fiscal impact of approximately \$100,000 if the requirements are implemented before the CCH system is updated.

The bill is effective upon becoming law.

II. Present Situation:

The Florida Constitution provides that every individual has a right of access to public records which are made or received in connection with official public business unless the records are exempt. This right applies to records of the legislative, executive, and judicial branches.¹

The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record² at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.³

Only the Legislature may create an exemption to public records requirements.⁴ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁵ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁶

The Open Government Sunset Review Act requires a newly created or expanded public records exemption be repealed on October 2 of the fifth year after enactment, unless reviewed and

¹ Article I, s. 24(a), FLA. CONST.

² Section 119.011(12), F.S., defines "public record" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

³ Section 119.07(1)(a), F.S.

⁴ Article I, s. 24(c), FLA. CONST. There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Bd. of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, then such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption. See Op. Att'y Gen, Fla. 85-62, August 1, 1985.

⁵ The bill may, however, contain multiple exemptions that relate to one subject.

⁶ Article I, s. 24(c), FLA. CONST.

reenacted by the Legislature.⁷ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.⁸

Section 985.04, F.S., Confidential Information of Juveniles

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system are confidential. However, there are several exceptions to this confidentiality.

Section 985.04(2), F.S., provides that the name, photograph, address, and crime or arrest report of a juveniles are not *confidential and exempt* from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system by indictment, judicial waiver, or direct file;
- Taken into custody by a law enforcement officer for a violation of law subject to mandatory direct file under s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

Criminal Justice Information Program

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information repository.⁹ Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in the CJIP.¹⁰ This information can then be transmitted between criminal justice agencies.¹¹

Section 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to the FDLE the fingerprints, palm prints, and facial images of:

- An adult charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile charged with or found to have committed an offense, which would be a felony if committed by an adult; or

⁷ Section 119.15(3), F.S.

⁸ Section 119.15(6)(b), F.S.

⁹ Section 943.045(12), F.S., defines "criminal justice information" as information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

¹⁰ Section 943.052, F.S.

¹¹ Section 985.051, F.S.

- A juvenile charged with or found to have committed an enumerated offense, unless the person is issued a civil citation pursuant to s. 985.12, F.S.

Section 943.053, F.S., Dissemination of Criminal History Information

Criminal history information¹² compiled by the CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.¹³ With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 dollars per name submitted.¹⁴

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.¹⁵ The statute is silent as to the release of a juvenile's information which has been made confidential pursuant to s. 985.04, F.S.

G.G. v. FDLE

In *G.G. v. FDLE*, 97 So.3d 268 (Fla. 1st DCA 2012), a juvenile with no prior criminal history record was arrested for a first degree misdemeanor of petit theft. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from the FDLE, and discovered that it included information relating to the petit theft arrest. G.G. filed suit, claiming that the petit theft information should be confidential and exempt under s. 985.04(1), F.S. The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.¹⁶

On appeal, the First District Court of Appeal reversed the trial court's decision and held that the FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.¹⁷

Release of Juvenile Information since *G.G. v. FDLE*

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential except for the exceptions provided in s. 985.04(2), F.S. (**Section 985.04, F.S., Confidential Information of Juveniles**).

¹² Section 943.045(5), F.S., defines "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

¹³ Section 943.053(3)(a), F.S.

¹⁴ Section 943.053(3)(b), F.S. The guardian ad litem program, vendors of the Department of Children and Families, the DJJ, the Department of Elderly Affairs, the Department of Agriculture and Consumer Services, and other qualified entities are charged lesser amounts.

¹⁵ Section 943.053(3)(a), F.S.

¹⁶ *G.G.*, 97 So.3d 268 at 269.

¹⁷ *G.G.*, 97 So.3d 268 at 273.

In an effort to comply with the ruling in *G.G. v. FDLE*, the FDLE is ensuring that only the above-described records are released. However, because of programming limitations¹⁸ and incomplete reporting of juvenile disposition information,¹⁹ the FDLE reports that it is unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors. As such, the FDLE is currently only releasing the following juvenile records to private entities and non-criminal justice agencies:

- Records of juveniles taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Records of juveniles who are treated as adults.²⁰

III. Effect of Proposed Changes:

The bill addresses the inconsistencies that exist between s. 985.04(1), F.S. (making the majority of juvenile records confidential), and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult), by:

- Ensuring that the specified juvenile records deemed to be not confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed to be not confidential and exempt under s. 985.04, F.S.; and
- Requiring the FDLE to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status.

Section 985.04, F.S., Confidential Information of Juveniles

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential). The changes to apply to records obtained before, on, and after the effective date of the bill.

Section 985.04(2), F.S., is amended to specify that the following juvenile records are not confidential and exempt:

- Records of a juvenile taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records of a juvenile who is charged with a violation of law which, if committed by an adult, would be a felony;
- Records of a juvenile who has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records of a juvenile who has been transferred to adult court pursuant to part X of ch. 985, F.S.

¹⁸ The FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, *2016 Bill Analysis for SB 700* (November 3, 2015) (on file with the Senate Criminal Justice Committee).

¹⁹ "Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5%, while the adult rate is 72.2%)." *Id.*

²⁰ *Id.*

The bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records are now confidential and exempt.

The bill authorizes a custodian of public records to choose not to post a juvenile's arrest or booking photograph on the custodian's website even though the photograph is not confidential and exempt under s. 985.04(2), F.S. This authorization does not restrict public access to the record.

Section 943.053, F.S., Dissemination of Criminal History Information

The bill amends s. 943.053, F.S., to make the list of juvenile records deemed to be not confidential and exempt identical to the list of juvenile records deemed to be not confidential and exempt under s. 985.04(2), F.S. Because the language regarding three or more misdemeanors is not included on the list, the FDLE is no longer tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies. Records relating to misdemeanors are now confidential and exempt.

The bill amends s. 943.053(3), F.S., to establish a separate process to disseminate juvenile criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.,²¹ for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

Juvenile records deemed confidential and exempt under s. 943.053, F.S., which are released by the sheriff, the DOC, or the DJJ to private entities under contract with each entity retain their confidential and exempt status upon release to these private entities.

The bill repeals all new public records exemptions created in the bill on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.²²

²¹ These sections require persons who are seeking employment with specified agencies (e.g., in part, the Department of Children and Families, the Department of Health, and the DJJ) to acknowledge their criminal history records, even if such records has been sealed or expunged.

²² Article I, s. 24(c), FLA. CONST.

The bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption and includes the required public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption limited to certain criminal history information of juveniles.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in a positive economic benefit to juveniles with misdemeanor records who are seeking employment as these records will no longer be released to the public.

C. Government Sector Impact:

According to the FDLE, there should be no fiscal impact upon the department if the requirements of the bill are implemented as part of the ongoing Computerized Criminal History (CCH) system update/replacement project, which began in Fiscal Year 2015-2016 and is expected to be completed in Fiscal Year 2017-2018.²³

Senate Bill 2500, the Senate proposed 2016-2017 General Appropriations Act, includes \$2.5 million for continued implementation of the CCH project. If the bill is implemented in the current CCH system before the system is updated, it will cost the department \$100,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDLE recommends that the bill's effective date be changed to July 1, 2018 because that is when the CCH system replacement project will be completed and the bill's requirements can be fully implemented without the department incurring additional costs.²⁴

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.04 and 943.053.

This bill makes conforming and technical changes to the following sections of the Florida Statutes: 496.4101 and 943.056.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**Recommended PCS Barcode 365564 by the Appropriations Subcommittee on General Government on February 11, 2016:**

- Amends s. 985.04(2)(a), F.S., to permit a custodian of public records to choose not to post a juvenile's arrest or booking photograph that is not confidential and exempt under s. 985.04(2), F.S., on the custodian's website, while maintaining the public's right of access to the photograph.

²³ Florida Department of Law Enforcement, *2016 Bill Analysis for SB 700* (November 3, 2015), and Email from Bobbie Baggett, Legislative Analyst, Office of External Affairs, Florida Department of Law Enforcement, (January 27, 2016) (on file with the Senate Criminal Justice Committee).

²⁴ Email from Bobbie Baggett, Legislative Analyst, Office of External Affairs, Florida Department of Law Enforcement, (January 27, 2016) (on file with the Senate Criminal Justice Committee).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
