

STORAGE NAME: h1151s1.leps
DATE: March 18, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1151

RELATING TO: Florida Department of Law Enforcement

SPONSOR(S): Committee on Law Enforcement and Public Safety and Representative Futch

COMPANION BILL(S): SB 1378 (s)

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

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 7 NAYS 0
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I. SUMMARY:

The Criminal and Juvenile Justice Information Systems Council (CJJISC, or the "Council") is a 14-member council established in the Florida Department of Law Enforcement (FDLE). The Council is charged with facilitating the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies.

During the 1996 legislative session, the Council's guiding principles were codified as the guiding principles for the state's management of public safety system information technology resources. Additionally, the duties of the Council were expanded, [see *Chapter 96-388, Laws of Florida*].

Committee Substitute for House Bill 1151 amends various sections of the Florida Statutes that address criminal and juvenile justice information system issues at the request of the Criminal and Juvenile Justice Information Systems Council. Substantive provisions of the bill include:

- ▶ *Requiring* FDLE to develop and maintain an information system that supports the administration of the state's criminal and juvenile justice system; *and*
- ▶ *Revising* the duties of the Criminal and Juvenile Justice Information Systems Council by providing that the council must review the proposed plans and policies relating to the information systems of the Departments of Corrections, Juvenile Justice, and Law Enforcement. [The bill removes the requirement that the Council review rules and procedures, which enables the Council to focus on "big-picture," strategic planning and policy issues. The bill also expands the scope of the Council's review to specifically include the Department of Corrections.]

Committee Substitute for House Bill 1151 also amends several provisions pertaining to the department's function to provide laboratory services and DNA analyses. These provisions include:

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- ▶ Requiring that criminal defendants make a “good cause” showing in court, prior to any court order that FDLE perform analyses, and that such laboratory costs must be assessed against the defendant.
- ▶ Providing that crime scene analysts, forensic technologists, and crime laboratory analysts who have suffered significant exposure may require that a person be screened for a sexually transmissible disease.
- ▶ Requiring that blood specimens for DNA analysis be obtained from persons convicted of specified offenses even though the person was placed on probation, or remanded to county jail, where specimens are not regularly obtained.

Committee Substitute for House Bill 1151 would also affect the department’s Criminal Justice Standards and Training function, by allowing the department to secure copyrights on its work product, such as training materials and handbooks. This bill would also authorize a law enforcement officer, correctional officer, or correctional probation officer, who has resigned due to the officer’s appointment or election to office, to continue to participate in any training and educational programs approved by the Criminal Justice Standards and Training Commission of the Florida Department of Law Enforcement. In this way, the person elected or appointed to office could retain active certification as an officer without violating the constitutional prohibition against dual office-holding.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Criminal and Juvenile Justice Information Systems Council (CJJISC, or the “Council”) is a 14-member council established in the Florida Department of Law Enforcement (FDLE). The membership of the council consists of: the Attorney General, the Executive Director of FDLE, the secretary of the Department of Corrections (DOC), the chair of the Parole Commission, the secretary of the Department of Juvenile Justice (DJJ), the executive director of the Department of Highway Safety and Motor Vehicles (DHSMV), the State Courts Administrator (or their designees); a public defender (appointed by the Florida Public Defender Association, Inc.); a state attorney (appointed by the Florida Prosecuting Attorneys’ Association, Inc.); and five members appointed by the Governor, as follows -- two sheriffs, two police chiefs, and a clerk of the circuit court. CJJISC members serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

CJJISC is charged with facilitating the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies. The council is responsible for making recommendations to FDLE’s executive director and to the secretary of DJJ regarding issues related to criminal justice information systems, criminal intelligence information systems, and criminal investigative information systems.

During the 1996 legislative session, the Council’s guiding principles were codified as the guiding principles for the state’s management of public safety system information technology resources. These guiding principles include:

- ▶ Cooperative planning by public safety system entities is a prerequisite for the effective development of systems to enable sharing of data. The planning process, as well as the coordination of development efforts, should include all principals from the outset.
- ▶ Public safety system entities should: *be committed* to maximizing information sharing, moving away from proprietary positions taken relative to data they capture and maintain; *maximize* public access to data, while complying with legitimate security, privacy, and confidentiality requirements; and *strive* for the electronic sharing of information via networks. As much as possible, the redundant capture of data must be eliminated.
- ▶ The practice of public safety system entities charging one another for data should be eliminated. Further, when the capture of data for mutual benefit can be accomplished, the costs for the development, capture, and network for access to that data should be shared. Methods of sharing data among different protocols must be developed without requiring major redesign or replacement of individual systems.

With regard to the department's investigative/ forensic sciences function, s. 943.33 F.S., allows any defendant in a criminal proceeding to seek a court order for the department to perform forensic laboratory services. There is currently no definition of good cause to delineate when such services are appropriate, and no requirement that the criminal defendant bear the costs of these laboratory services.

Currently, under s. 384.287, F.S., an officer firefighter, ambulance driver, paramedic, or emergency medical technician who comes into contact with a person or is subjected to significant exposure, may request that the person be screened for a sexually transmissible disease. However, crime scene analysts, forensic technologists, and crime laboratory analysts employed by FDLE are not covered under this provision.

Under s. 943.325 F.S., any person convicted of a sexual offense under chapter 794, chapter 800, s. 784.04, s. 782.045, S.812.133, or s. 812.135 F.S., is required to submit two specimens of blood to FDLE, for DNA analysis and entry into the automated database. Currently, the blood samples are obtained when the offenders are remanded to the custody of the Department of Corrections. However, when offenders are not sent to prison, such as when placed on probation, or sent to county jail as a condition of probation, the collection of blood samples for DNA does not regularly occur. Thus, a substantial number of persons required to submit blood samples for DNA analysis have not done so.

With regard to the department's Criminal Justice Professionalism function, FDLE develops training materials and handbooks for law enforcement officers. However, FDLE is not able to directly copyright the materials or otherwise control or license the commercial distribution of materials it has developed.

B. EFFECT OF PROPOSED CHANGES:

Under current law, FDLE or local agency crime scene technicians and crime lab forensic employees who "stick" themselves with lab needles containing blood or other bodily fluids of suspects, who cut themselves on a broken test tube while handling such fluids, or otherwise become subject to a "significant" exposure while doing their duties have no ability to require a subject to be tested for sexually transmissible disease such as HIV testing. CS/HB 1151 addresses the concerns of crime scene analysts and forensic technologists by including them in the scope of persons who may request the screening of a person for a sexually transmissible disease that can be transmitted through a "significant exposure" to body fluids.

Committee Substitute for House Bill 1151 amends various sections of the Florida Statutes that address criminal and juvenile justice information system issues at the request of the Criminal and Juvenile Justice Information Systems Council. Substantive provisions of the bill include:

- ▶ *Requiring* FDLE to develop and maintain an information system that supports the administration of the state's criminal and juvenile justice system; *and*
- ▶ *Revising* the duties of the Criminal and Juvenile Justice Information Systems Council by providing that the council must review the proposed *plans and policies* relating to the information systems of the Departments of *Corrections*, Juvenile Justice, and *Law Enforcement*. [The bill removes the requirement that the Council review rules and procedures, which enables the Council to focus on "big-picture," strategic planning and policy issues. The bill also expands the scope of the Council's review to include the Department of Corrections.]

Committee Substitute for House Bill 1151 would also amend section 943.135, F.S., to authorize any law enforcement officer, correctional officer, or correctional probation officer, who has resigned due to the constitutional dual office-holding prohibition, to retain active certification by participating in continuing training and education approved by the commission. Thus, the officer's law enforcement certification would remain valid during the tenure of the elected or appointed office.

Through its Criminal Justice Standards and Training function, the Department's Criminal Justice Executive Institute, and other training or information management areas of FDLE, training materials and handbooks are developed that become very popular. Currently, however, FDLE has no direct authority to control the use of these materials or handbooks once they are developed. As a result, predictable problems in controlling the use or dissemination of materials develop. For example, curricula developed by FDLE gets incorporated into privately marketed materials. FDLE's Juvenile Handbook developed a few years ago became very popular, but FDLE had no control on it being excerpted and utilized by commercial interest.

At other times, commercial interests have approached FDLE with a proposal to better distribute and utilize FDLE materials, but have withdrawn their interest when they determine that FDLE cannot control by license the use of the materials. While a limited option for copyrighting rests in the Department of State, other state agencies have individual authority to seek copyrights and secure licensing agreements, such as the Department of Transportation, the Department of Lottery, Department of Citrus, our state

universities, and agricultural cooperative marketing associations. Not being able to directly copyright the materials deprives the Department of the ability to control how materials are utilized.

Committee Substitute for House Bill 1151 grants FDLE authority to appropriately copyright, license, or otherwise protect materials, and will allow FDLE to enter into marketing agreements for some materials that would help recoup some of the expenses to taxpayers in the development of the materials. The bill does NOT seek to remove public records from public review. It will allow FDLE to control and, as may be necessary, to license or market the commercial distribution of materials developed in conjunction with its efforts, primarily in the area of leadership development and training. Specifically, it gives FDLE copyright, license, and similar powers for things developed, written, or manufactured, and provides authority to take actions necessary to enforce its rights and to protect against infringement of its rights. FDLE is to notify the Department of State in writing when copyrights are secured or used by the department. Proceeds to FDLE from its powers provided by this bill will be deposited in the FDLE Grants and Donations Trust Fund to "finance activities of the department."

Under s. 943.325 F.S., any person convicted of a sexual offense under chapter 794, chapter 800, s. 784.04, s. 782.045, S.812.133, or s. 812.135 F.S., is required to submit two specimens of blood to FDLE, for DNA analysis and entry into the automated database. Currently, the blood samples are obtained when the offenders are remanded to the custody of the Department of Corrections. However, when offenders are not sent to prison, such as when placed on probation, or sent to county jail as a condition of probation, the collection of blood samples for DNA does not regularly occur. Thus, a substantial number of persons required to submit blood samples for DNA analysis have not done so. CS/HB 1151 would amend s. 943.325 F.S., to require a DNA blood specimen for any of the specified offenses "resulting in the committment of the offender to a county jail, correctional facility, or juvenile facility" or, if the disposition results in any option other than commitment to incarceration, the blood specimen is required prior to release from the custody of the court.

Under 943.33, FDLE's labs can be required to perform laboratory analyses on behalf of criminal defendants. Often when such work is ordered by the court, the defense advises the FDLE forensic person(s) involved to not disclose the work to the state. This places FDLE personnel in an ethical dilemma because the same personnel or co-workers probably have already performed work on the case and disclosed the information to the investigating agency or state attorney. While FDLE forensic personnel are obligated to call the analysis as they see it (providing no advantage to the state or to the defense), to have to deal with a "do not disclose to the other side" "gag order" is very awkward, and is inconsistent with the mutual discovery obligations of Florida's Rules of Criminal Procedure. In addition, the use of FDLE labs to do defense work ought to be the result if no other laboratory is available. This bill will (a) tighten the grounds for which a defendant could obtain an order requiring FDLE to perform analysis work, (b) require assessment of costs (under current law costs are at court's option), and (c) require disclosure to all involved of the results of any analysis done.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

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(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 20.315, 20.316, 186.022, 216.0445, 282.1095, 282.111, 318.18, 384.287, 760.40, 943.03, 943.031, 943.08, 943.135, 943.146, 943.256, 943.325, 943.33, and 948.03, F.S.

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate

2. Recurring Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Total Revenues and Expenditures:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate

2. Recurring Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

The bill authorizes the installation and operation of statewide telecommunications networks to support data sharing, including electronic mail and file transport capabilities, among federal, state, and local criminal and juvenile justice agencies and other authorized entities. To the extent that the private sector is involved in developing this system, there may be a positive economic impact to the private sector.

3. Effects on Competition, Private Enterprise and Employment Markets:

indeterminate.

D. FISCAL COMMENTS:

FDLE's development, implementation, and maintenance of an information system (such as a communications network) that is capable of supporting the administration of the state's criminal and juvenile justice system will have fiscal implications for FDLE and other participating agencies. Such impact is indeterminate at this time. Any improvements made relating to the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data should ultimately have a positive fiscal impact upon state and local governments.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

During the 1997 Session, HB 1151 was passed out of the Law Enforcement and Public Safety Committee and on April 17, 1997 passed the House. The bill died in the Senate upon adjournment, and carried over to the 1998 Session pursuant to House Rule 96. It was then referred back to the Law Enforcement and Public Safety Committee from the Justice Council.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1998, the Committee on Law Enforcement and Public Safety approved a strike-everything amendment, which incorporated the original bill language with numerous substantive changes described herein.

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VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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