

STORAGE NAME: h3121.cor

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CORRECTIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3121

RELATING TO: Public Records/Access by Inmates

SPONSOR(S): Representative Mackey

COMPANION BILL(S): s. 945.10, F.S.

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

- (1) CORRECTIONS
 - (2) CRIME & PUNISHMENT
 - (3) GOVERNMENTAL OPERATIONS
 - (4)
 - (5)
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I. SUMMARY:

House Bill 3121 prohibits an inmate or offender in the correctional system or under correctional supervision from disclosing or using certain personal information relating to the Department of Corrections' licensed or certified health care clinicians, certified educational personnel and other state officers and employees whose duties are performed in state correctional institutions, including certain personal information regarding the families of these officers and employees.

The bill defines "personal information about another" as the home addresses, telephone numbers, social security numbers and photographs.

The bill creates a third degree felony offense, and an inmate or offender who is convicted of the offense is prohibited from working in a correctional work program or other correctional programs, and is subject to having gain-time forfeited.

This bill would have an insignificant fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Law

The Florida Constitution grants state citizens the right to access records made or received by a public body or public official in connection with official business. Art. I, sec. 24, Fla. Const. The constitution also provides that the Legislature may exempt records from the requirement that they be open to public inspection. Exemptions must be provided by general law, state a public necessity justifying the exemption, and be no broader than necessary to accomplish the stated purpose of the law. A bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records exemptions that are created or substantially amended in 1996 and after that year. The law states that an exemption may be created or expanded only if the exemption:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety (emphasis supplied); or
- protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Public Records Exemption--Law Enforcement Personnel

The Legislature has already allowed certain personal identifying information associated with various classes of public employees to be exempt from public disclosure. Section 119.07(3)(i) F.S., provides for the exemption of information that would reveal the home address, telephone number, or photograph of active or former law enforcement personnel, including correctional and correctional probation officers, and certain personnel of the Department of Children and Family Services and the Department of Revenue. Certain identifying information about the spouses and children of law enforcement personnel is also exempt.

Confidential Information

Section 945.10 (1), F.S., provides that, except as otherwise provided by law or in this section, the following records and information of the Department of Corrections (DOC)

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are confidential and exempt from provisions of s. 119.07(1), F.S., and s. 24 (a), Art. I, State Constitution: mental health, medical, or substance abuse records of an inmate or offender; preplea, pretrial intervention, presentence or postsentence investigative records; information regarding a person in the federal witness protection program; confidential Parole Commission records; information which, if released, would jeopardize a person's safety; information concerning a victim's statement and identity; the identity of an executioner; and records otherwise confidential or exempt from public disclosure.

Section 945.10(2), F.S, provides that certain information, otherwise confidential or exempt from public disclosure under s. 945.10(l), F.S., may be released to the Office of the Governor, the Legislature, the Parole Commission, the Department of Children and Family Services and the Department of Health, a contracted, private correctional facility, or program, the Department of Legal Affairs, a state attorney, the court, or a law enforcement agency, unless prohibited by federal law. Information that does not need to be requested in writing includes: preplea, pretrial intervention, presentence or postsentence investigative records; confidential Parole Commission records; and information concerning a victim's statement and identity. Information which requires a written request demonstrating a need for the records or information includes: information regarding a person in the federal witness protection program; information that, if released, would jeopardize a person's safety; and records that are otherwise confidential or exempt from public disclosure by law.

Unless precluded by federal law, DOC may also release preplea, pretrial intervention, presentence or postsentence investigative records to an attorney representing a person under sentence of death; a public defender representing a defendant, a state or local governmental agency, or a person conducting legitimate research, if a written request is made that demonstrates a need for the records or information. However, an attorney representing a death-sentenced inmate and a public defender representing a defendant, cannot obtain those portions of the records containing a victim's statement or address. The public defender cannot obtain a statement or address of a relative of the victim, and a person requesting such records for legitimate research purposes must sign a confidentiality agreement and the person's request must be approved in writing by DOC.

Records released pursuant to s. 945.10(2), F.S., remain confidential and exempt from public disclosure.

As stated in s. 945.10(3), F.S., the DOC may permit an inmate to have limited access to its records, except for the records of another inmate or offender; if the inmate makes a written request that demonstrates an exceptional need for such information otherwise unavailable. Exceptional circumstances include, but are not limited to the following: a conflict exists between the inmate's court documentation and the commitment papers or court orders received by the department regarding the inmate or offender; a prospective employer of an inmate or offender whose release is forthcoming makes a written request for documentation of the inmate's work performance; the information is needed regarding the amount of victim restitution the inmate or offender paid during his incarceration; information required to process an application or claim by the inmate or offender with the Internal Revenue Service, the Social Security Administration, the Department of Labor and Employment Security, or any other similar application or claim with a state agency or federal agency; or the records contain the current address of a relative whose address is in the department's records and the relative has not indicated a desire not to be contacted by the inmate or offender or other similar circumstances

that do not present a threat to the security, order, or rehabilitative objectives of the correctional system or to any person's safety.

Section 945.10(4), F.S., requires the Department of Corrections to adopt rules to prevent disclosure of confidential records or information to unauthorized persons.

Section 945.10(5), F.S., requires the Department of Corrections and the Parole Commission shall mutually cooperate with respect to maintaining the confidentiality of records that are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Department of Corrections' Health Care Clinicians

The Department of Corrections employs licensed clinicians to provide health and mental health services to the inmates housed by the department. The licensed clinicians include physicians, nurses, psychologists, dentists, and physician assistants. The Agency for Health Care Administration currently licenses the clinicians employed by the department. Most of the certification and licensure records of licensed medical and mental health practitioners are open for public inspection.

Department of Corrections' Educational Personnel

Section 944.801, F.S., relates to education for state prisoners. The Correctional Education Program is created within the Department of Corrections to operate the education program within the prison system. The department currently employs certified teachers throughout the state.

Section 231.17, F.S., outlines the certification process for public school teachers. The Department of Education (DOE) has administrative responsibility to certify school teachers in the state, including teachers employed by the Department of Corrections to teach inmates. Under current law, most of the information and records associated with teacher certification are open for public inspection.

B. EFFECT OF PROPOSED CHANGES:

HB 3121 substantially amends s. 945.10, F.S., to prohibit an inmate or offender in the correctional system or under correctional supervision from disclosing the following information:

- home addresses, telephone numbers, social security numbers, and photographs of:
 - Department of Corrections' health care clinicians licensed or certified under chapters 458 (physicians), 459 (osteopaths), 464 (nurses), 465 (pharmacists), 466 (dentists and dental assistants), and 490 (psychologists);
 - the Department of Corrections' educational personnel certified by the Department of Education pursuant to s. 231.17, F.S; and

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- other state officers and employees whose duties are performed in whole or in part in state correctional institutions;
- home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of the licensed or certified clinicians and certified educational personnel; and
- the names and locations of schools and day care facilities attended by the children of these persons;

HB 3121 creates a felony for the unauthorized disclosure of this information by an inmate or offender. The bill further provides that an inmate or offender convicted of this new third degree felony offense is prohibited from subsequently participating in any correctional work or other correctional program that provides inmates or offenders with access to personal information about persons who are not in the correctional system or under correctional supervision. Additionally, if during a term of imprisonment, an inmate or offender is convicted of the new third degree felony offense, the inmate or offender shall be subject to having all or any part of his or her gain-time forfeited pursuant to rules adopted by the Department of Corrections. The department is authorized to adopt such rules to implement the subsection.

The bill would take effect October 1 of the year in which it is enacted.

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?

No.

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

No.

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

No.

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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

No.

4. Individual Freedom:

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

The prohibition against the disclosure of certain personal information may protect identified persons from potential harassment by inmates, who may desire the personal information for that purpose.

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

No.

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

(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?

No.

- 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:

s. 945.10, F.S.

E. SECTION-BY-SECTION RESEARCH:

None.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

As determined by the Criminal Justice Estimating Conference, this bill would have an insignificant fiscal impact.

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.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority of counties or municipalities to raise revenue

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.

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V. COMMENTS:

The new third degree felony offense created by HB 3121 would only apply if the inmate or offender has "access" to the person he or she intends to obtain benefit from, harm, or defraud, by the use of the personal information. It is uncertain if this requirement means that the inmate or offender must have physical access to the person.

The felony offense created by the bill may be subject to a challenge that is unconstitutionally vague if the law does not give a person of ordinary intelligence fair notice of what conduct is forbidden (*See Warren v. State*, 572 So 2d 1376, 1377 (Fla 1991)).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

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