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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 335
RELATING TO: Criminal History Background Checks
SPONSOR(S): Representative Rojaz
STATUTE(S) AFFECTED: Creates s. 943.083
COMPANION BILL(S):

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

- (1) GOVERNMENTAL OPERATIONS
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

HB 335 requires certain institutions and organizations to have a criminal history record check done on volunteers or paid employees (currently working or applicants) if such persons are over age 18 and have or would have "unsupervised access" to children, the elderly, or disabled. The institutions and organizations affected are religious, charitable, scientific, educational, athletic, or service institutions or organizations which provide care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or disabled.

Affected institutions and organizations must acquire from the employee or volunteer a complete set of fingerprints and any other information necessary for the processing of a criminal history records check by the Florida Department of Law Enforcement ("FDLE") and the Federal Bureau of Investigation ("FBI"). HB 335 also authorizes the sharing of multistate and federal criminal history records to the maximum extent allowed by federal law. Finally, HB 335 provides that when a criminal records check is requested, fees shall be at the rates established by the FDLE and the FBI in accordance with the National Child Protection Act. Such fees must be reduced for "recognized charitable or not-for-profit organizations."

The FDLE has expressed concerns regarding the bill; for example: How often would an employee/volunteer be checked? Who will fingerprint? See the "Comments" section of this bill analysis. This bill also does not address what an employer is to do if the check does reveal a criminal background. Is the employer not to hire the employee? Must the employer fire a current employee? Does it matter how long ago the criminal infraction occurred or what the criminal infraction was?

There could be significant fiscal impact on private sector as well as governmental entities that provide services to children, the elderly, and disabled. Mandates issues also arise. Furthermore, there is an indeterminate but significant fiscal impact on FDLE. See the "Fiscal Comments" section of this analysis.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The National Child Protection Act

The National Child Protection Act, Public Law 103-209, (hereinafter "Act") became law on December 20, 1993. This Act, also known as the "Oprah Winfrey Bill," requires the U.S. Attorney General to, "in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records." National Child Protection Act Task Group, Preliminary Report and Recommendations, July 20-21, 1994, Arlington, Virginia, at 1.

The purpose of the National Child Protection Act of 1993 is to require the States to report information on arrests and convictions for child abuse crimes to the national criminal history record system maintained by the Federal Bureau of Investigation, to encourage the States to adopt legislation requiring background checks for child care providers through the FBI criminal history record system, to establish procedures for such checks, and to authorize funding for improvements in criminal history records. Act, Report 103-393, Summary and Purpose, at 4.

This Act does not require that states pass legislation to implement its background check provisions. It simply provides that a state "may" have in effect "procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose to determine whether a provider has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well being of children." Act, at sec. 3., Background Checks. This Act further provides that such background checks be run through the national criminal history background check system and that "reasonable efforts [be made] to respond to the inquiry within 15 business days." Act, at sec. 3(a)(2).

The FBI has maintained for many years criminal history records submitted by state, local, and federal agencies consisting of fingerprints, personal identification data such as name, date of birth and physical descriptions, and reports of arrests and dispositions. The records are used for criminal justice purposes associated with investigations and bail and sentencing determinations, and for background screening under certain conditions. Act, Report 103-393, Background, at 5.

Under current federal law, this criminal history record system can be accessed through the FBI for pre-employment and pre-licensing purposes if there is a state law requiring such a check. Many states already have such laws covering some types of positions that involve contact with children.

According to testimony by the FBI, thirty-one States and the District of Columbia have enacted statutes that require criminal history screening through the FBI for some category of child care providers. These laws, however, vary widely in coverage. H.R. 1237 is intended to encourage States with such laws to expand their coverage, to encourage the remaining States to adopt similar law requiring

background checks through the national system, and to improve the quality of the criminal history records used for the checks. *Id.*

State Criminal History Records

The Florida Department of Law Enforcement ("FDLE") has established and maintains intrastate systems for the collection, compilation, and dissemination of state criminal history records and information in accordance with s. 943.05, F.S. Section 943.05(1), F.S., creates the Division of Criminal Justice Information Systems (the "Division") within FDLE. The Division must:

- a) Establish and maintain a communication system capable of transmitting criminal justice information to and between criminal justice agencies.
- b) establish, implement, and maintain a statewide automated fingerprint identification system capable of, but not limited to, reading, classifying, matching, and storing fingerprints, rolled fingerprints, and latent fingerprints. The system shall be available to every criminal justice agency that is responsible for the administration of criminal justice.
- c) initiate a crime information system s. 943.05(2), F.S.

Additionally, FDLE participates in the federal criminal history records system pursuant to s. 943.051, F.S.

FDLE and its user agencies are subject to and must comply with pertinent state and federal regulations relating to the obtaining, use, and dissemination of records and record information derived from the systems of FDLE and the United States Department of Justice. See Ch. 943, F.S.; Ch. 11C-6, Florida Administrative Code; Title 28 U.S.C. ch. 1; Part 20, Criminal Justice Information Systems, Code of Federal Regulations.

FDLE has promulgated rules regarding their criminal history records dissemination policy which are found in Rule Chapter 11C, s. 6.0002 et al., Florida Administrative Code. More particularly, Rule 11C-6.004 provides, with certain exceptions, that FDLE will charge a \$15 fee for each criminal history records check conducted.

Numerous Florida Statutes require criminal history background checks for employment screening. See ss. 231.02, .17, .1725, F.S., (new instructional and noninstructional school personnel must submit fingerprints to Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing), ss. 415.5077 (1) & 61.402, F.S., (security background investigation to certify guardian ad litem); s. 110.1127 (HRS background check); s. 393.0674, F.S. (use of criminal records for employment screening); s. 400.512, F.S., (employment screening of home health agency personnel, nurse registry personnel, sitters, companions, and homemakers); s. 409.175, F.S., (screening for employment with child care facilities and summer camps); s. 409.176, F.S., (screening for employment in a residential child care facility or family foster home); see *generally*, Ch. 435, F.S., Employment Screening.

Not only are criminal history records checks used to screen employees, but such information is also used in various licensing, permitting, registration, and certification processes.

B. EFFECT OF PROPOSED CHANGES:

HB 335 requires certain institutions and organizations to have a criminal history records check done on volunteers or paid employees (currently working or applicants) if such persons are over age 18 and have or would have "unsupervised access" to children, the elderly, or disabled. The institutions and organizations affected are religious, charitable, scientific, educational, athletic, or service institutions or organizations which provide care, treatment, education, training, instruction, supervision, or recreation to children, elderly persons, or individuals with disabilities.

HB 335 defines "unsupervised access" to mean when there is no other person over age 18 present in the same room with a child, elderly person, or individual with disabilities or, if outdoors, present within a 30-yard radius of the child, elderly person, or individual with disabilities, "and/or a relationship of trust is attempted to be established with the child, elderly person, or individual with disabilities."

Affected institutions and organizations must acquire from the employee or volunteer a complete set of fingerprints and any other information necessary for the processing of a criminal history records check by the FDLE and the FBI. HB 335 also authorizes the sharing of multistate and federal criminal history records to the maximum extent allowed by federal law.

Finally, HB 335 provides that when a criminal history records check is requested, fees shall be at the rates established by the FDLE and the FBI in accordance with the National Child Protection Act. Such fees must be reduced for "recognized charitable or not-for-profit organizations."

According to an analysis done by the FDLE on a similar bill (HB 177) that was before the Legislature in 1995, the fee to be charged by the FBI will be \$18.00. FDLE, Internal Substantive Review, HB 177, Feb. 1, 1995 (hereinafter "Review"), at 1. Furthermore, the FDLE has proposed a reduced fee of \$8 (instead of \$15 as required by rule) for its criminal history records check. *Id.* Who the "recognized charitable or not-for-profit organizations" are that are to receive this reduced rate is unclear.

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?

Yes. Any institution or organization, private or governmental, which provides services to children, the elderly, or disabled who have employees/volunteers that have unsupervised access to children, the elderly, or disabled must have a criminal history records check done on such employees/volunteers.

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

No.

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

An agency or program is not eliminated or reduced by this bill.

- (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?

This bill requires certain institutions and organizations to have a criminal history records check conducted on certain employees/volunteers. There are fees associated with this process. It is unclear whether the institution or organization will pay these fees or whether they will, if possible, pass the costs on to their employees/volunteers or service recipients. The terms and conditions of existing employee contracts may control whether current employees absorb the costs of having criminal history checks conducted.

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?

If the beneficiaries of this legislation are considered the children, the elderly, or disabled, none of the costs of the criminal history records checks are directly passed on to them. However, an affected institution or organization may directly pass on the costs of conducting such checks to their employees/volunteers or may indirectly pass on such costs to those they serve by increasing the costs of services provided.

4. Individual Freedom:

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

No.

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:

This bill does not purport 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:

N/A

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1 - Provides a statement of intent to implement the National Child Protection Act.

Section 2 - Creates s. 943.083; provides for criminal history records checks on volunteers and employees subject to the National Child Protection Act; defines "unsupervised access"; provides for criminal history records check fees.

Section 2 - Provides an effective date of October 1, 1997.

III. FISCAL ANALYSIS & 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:

None.

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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See "Fiscal Comments".

2. Direct Private Sector Benefits:

See "Fiscal Comments".

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

See "Fiscal Comments".

D. FISCAL COMMENTS:

This bill requires that a criminal history records check be conducted on certain employees/volunteers. According to the FDLE:

The number of volunteers and employees in non-profit organizations dealing with children, the elderly and disabled is unknown. Best current estimates are 20% of the population, or 2,721,725. Through a series of contacts with non-profit organizations ... we were informed ... that 1 in 2 of the population volunteers and 1 in 5 volunteers with an entity that deals with children, the elderly or disabled. If all these individuals were required to have a record check, the FDLE licensing/employment/Public Record check workload would be almost 9 times what it is today. There are currently 55 FTEs performing this work. The increase would require approximately 440 new positions (and a new building). Efforts continue to refine the estimated workload and fiscal impact. Review, at 2.

Not only are non-profit organizations affected by this bill, but for-profit organizations and governmental entities are impacted as well. Accordingly, the number of volunteers and employees required to be checked would be even greater than that quoted above. See House Committee on Criminal Justice, Final Bill Analysis & Economic Impact Statement, HB 177, May 15, 1995, at 4 ([T]he total number of additional record checks required by the bill is estimated to be 3,121,725 or more.).

Whether the fees charged by the FDLE to conduct these additional criminal history records checks will cover the costs of the needed FTEs, facility expansion, and overhead is uncertain but unlikely. Remember, non-profit organizations and recognized charitable organizations must be charged a reduced fee for providing criminal history records checks.

Other costs associated with this bill include the costs of providing the FDLE with a "complete set of fingerprints and such other information as is necessary for the processing of a criminal history record check."

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Sec. 18, of the Florida Constitution excuses local governments from complying with state mandates which impose negative fiscal consequences. Subsection (a) provides, "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds" unless certain requirements are met. However, several exemptions and exceptions exist.

HB 355 will require cities and counties that provide services to children, the elderly, or disabled to have criminal background checks conducted on their employees/volunteers who have unsupervised access to children, the elderly, or disabled. This would require cities and counties to spend money and thus HB 355 would, initially at least, fall within the purview of Art. VII, Sec. 18(a).

Subsection (d) of Art. VII, Sec. 18, exempts those laws which have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact must be determined on an aggregate, statewide basis. Any bill which requires an expenditure of greater than \$1.4 million is considered to produce a significant impact. How many city/county employees/volunteers would be affected by this bill is unknown. Some cities and counties may already require a criminal history records check on the affected employees/volunteers. Accordingly, it is uncertain whether the fiscal impact of this bill is significant.

However, subsection (a) contains an exception for laws which apply "to all persons similarly situated, " and which advance an important state interest. HB 335 does apply to all persons similarly situated, but does not appear to provide a statement of important state interest.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill will not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A similar bill was before the Legislature in 1995, HB 177. However, neither it nor its Senate companion passed.

Some concerns expressed by the FDLE regarding this bill are:

How often would volunteers be checked?

When the same person volunteers with multiple organizations, how will checks be "shared"?

Will "casual" or one-time volunteers need to be checked?

How will volunteers for agencies that occasionally do projects with children, elderly or disabled, but not as [a] main focus of the agency, be checked without impacting time frames of projects?

Who will fingerprint? This is probably too large a workload for sheriffs' offices, and any fees charged for fingerprinting increase the overall costs of volunteering.

What problems will be caused by the time lags in FBI responses? Review, at 2.

Other concerns include the fact that this bill does not instruct the affected institutions or organizations as to what to do if they find that an employee or volunteer does have a criminal background. Should the person be fired/not employed? Does it matter how many or what kind of criminal infractions the person may have? Does it matter how long ago the criminal infraction occurred?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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