

**STORAGE NAME:** h0335s1.go

**DATE:** March 19, 1997

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

**BILL #:** CS/HB 335

**RELATING TO:** Criminal History Background Checks

**SPONSOR(S):** Committee on Governmental Operations and Representative Rojas

**STATUTE(S) AFFECTED:** Creates s. 943.083

**COMPANION BILL(S):** SB 2186 (s)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS
- (3)
- (4)
- (5)

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**I. SUMMARY:**

CS/HB 335 provides that religious, charitable, scientific, educational, athletic, service institutions or organizations, or local governments (hereinafter "affected entity") which provide care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or disabled *may* require any person, "who applies to work with or have unsupervised access to such children, elderly persons, or individuals with disabilities, as a volunteer or as a paid employee, to do one or more of the following:" (1) agree to the release of all investigative records, including a statewide criminal records correspondence check through the Florida Department of Law Enforcement ("FDLE"), to the affected entity for the purpose of verifying the accuracy of information contained on an application to work; (2) provide a complete set of fingerprints and such other information as is necessary for the processing of a criminal history records check by the FDLE and the Federal Bureau of Investigation ("FBI"), and allow FDLE to notify the affected entity if the individual has been convicted of a felony or misdemeanor offense under certain specified laws or comparable laws of other states; or (3) attend a comprehensive training program for the protection of children, the elderly, or the disabled.

CS/HB 335 also requires a parent or legal guardian to submit a written request to the affected entity asking that a state and national criminal history records check be run on an employee or volunteer who works with or has unsupervised access to that parent's or legal guardian's child. The affected entity decides whether to conduct the records check. If the records check is conducted, the requesting parent or legal guardian must pay the expenses thereof. If such a records check request is made on an employee or volunteer on whom a records check has been conducted within the preceding 36 months, that records check "shall be deemed sufficient for purposes of this act." When a records check is requested by a charitable or not-for-profit organization, fees must be at the rates established by the FDLE and the FBI in accordance with the National Child Protection Act. FDLE is granted authority to establish positions in excess of the total authorized positions upon submission of a proper request to the Administration Commission.

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Concerns regarding CS/HB 335 are addressed in the "Comments" section of this analysis. There is an indeterminate fiscal impact on FDLE and affected entities. 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 of determining 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 obtaining, using, and disseminating 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 dissemination of criminal history records 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 records 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:

CS/HB 335 provides that religious, charitable, scientific, educational, athletic, or service institutions or organizations or local governments (hereinafter "affected entity") which provide care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or disabled *may* require any person, "who applies to work with or have unsupervised access to such children, elderly persons, or individuals with disabilities, as a volunteer or as a paid employee,"<sup>1</sup> to do one or more of the following:

(1) agree to the release of all investigative records, including a statewide criminal records correspondence check through the Florida Department of Law Enforcement ("FDLE"), to the affected entity for the purpose of verifying the accuracy of information contained on an application to work;

*[What these "investigative records" are is unclear and in whose custody they reside is equally unclear. If this is an authorization by the employee or volunteer for FDLE to release its investigative records regarding that employee or volunteer, that could compromise an active investigation and run contrary to the exemption from public disclosure found in Ch. 119, F.S., regarding active criminal investigative records. Furthermore, it is unclear what a "statewide criminal records correspondence check" is.]*

(2) provide a complete set of fingerprints and such other information as is necessary for the processing of a criminal history records check by the FDLE and the Federal Bureau of Investigation ("FBI"), and allow the FDLE to notify the affected entity if the individual has been convicted of a felony or misdemeanor offense under any of the following laws or comparable laws of other states:

- stalking as defined in s. 784.048, F.S.;
- prostitution as defined in s. 796.07, F.S.;
- unnatural or lascivious act as defined in s. 800.02, F.S.;
- exposure of sexual organs as defined in s. 800.03, F.S.;
- child abuse as defined in s. 827.04, F.S.;

*[Child abuse is not defined in s. 827.04, F.S. As noted below, that section deals with contributing to the delinquency of a minor. Section 827.04, F.S., was amended in 1996, s.10, Ch. 96-322, L.O.F. The definition of child abuse was removed from that section. Accordingly, the reference in CS/HB 335 regarding the definition of child abuse should be to "former s. 827.04, F.S."]*

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<sup>1</sup> It appears that only employees or volunteers who apply for such positions are affected by this provision. Had the drafters intended to include current employees or volunteers they could have easily done so. The provisions of the original HB 335 were expressly made applicable to an employee or volunteer "who currently works with or applies to work with" children, the elderly, or disabled.

- child abuse or neglect as defined in s. 827.03, F.S., or former s. 827.05, F.S.;
- contributing to the delinquency of a minor as defined in s. 827.04, F.S.;
- sale or possession of obscene material as defined in s. 847.011, F.S.;
- violation of a domestic violence injunction as provided for in s. 741.30, F.S.;  
or
- violation of a repeat violence injunction as provided for in s. 784.047, F.S.;  
or

(3) attend a comprehensive training program for the protection of children, the elderly, or the disabled.

*[All of the crimes listed above either deal with general offenses or specific offenses regarding children. Since the criminal history records check is also a tool to potentially screen employees or volunteers who would work with the elderly and disabled, it is unclear why crimes against the elderly and disabled are not listed; for example, abuse and neglect of an elderly person or disabled adult, s. 825.102, F.S., and exploitation of an elderly person or disabled adult, s. 825.103, F.S. Furthermore, it is unclear why "[I]ewd, lascivious, or indecent assault or act upon or in presence of child", s. 800.04, F.S., is not listed.]*

CS/HB 335 provides that "a parent or legal guardian shall submit in writing" a request to the affected entity asking that a state and national criminal history records check be run on an employee or volunteer who works with or has unsupervised access to that parent's or legal guardian's child. The literal language of CS/HB 335 requires that a parent or legal guardian submit a written request for a criminal history records check. However, it is unlikely such is an intended result. *[An amendment to CS/HB 335 could clarify the matter and simply allow parents or legal guardians, at their option, to make a request for a criminal history records check, but require that the request be in writing. Furthermore, this provision ignores the possible need for the parent or legal guardian of an elderly or disabled person to request a criminal history records check on an employee or volunteer.]*

Once a parent or legal guardian has made a criminal history records check request, the affected entity decides whether to conduct such a check. If the records check is conducted, the requesting parent or legal guardian must pay the expenses thereof. If such a records check request is made on an employee or volunteer on whom a records check has already been conducted within the preceding 36 months, that records check "shall be deemed sufficient for purposes of this act."

When a records check is requested by a charitable or not-for-profit organization, fees must be at the rates established by the FDLE and the FBI in accordance with the National Child Protection Act. 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.*; see also, FDLE's

March 10, 1997, fiscal analysis of HB 335, at III.A. [*The fees prescribed by the National Child Protection Act do not address fees for records checks conducted on behalf of the elderly or disabled.*]

The FDLE is granted authority to establish positions in excess of the total authorized positions provided for in the appropriations act upon submission of a proper request to the Administration Commission. These positions must be established with funding from the FDLE's Law Enforcement Operating Trust Fund and must be used to process the increased workload of conducting the criminal history records checks resulting from this legislation. These positions must be earmarked by the FDLE, and when they are no longer needed, such positions may be placed in a reserve status for future use.

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 affected entity which provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or disabled may, at its option, have a criminal history records check conducted on applicant employees or volunteers who would be working with or have unsupervised access to children, the elderly, or disabled; or the affected entity may require such applicant employees/volunteers to agree to the release of certain investigative records; or the affected entity may require applicant employees/volunteers to attend a comprehensive training program for the protection of children, the elderly, or the disabled. FDLE will have the increased responsibility of processing any additional criminal history records checks requested as a result of this legislation.

(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?

CS/HB 335 requires that when a parent or legal guardian requests a criminal history records check on an employee or volunteer who works with or has unsupervised access to that parent's or legal guardian's child, and that check is conducted, the parent or legal guardian must pay the state and national fees for having the check 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?

CS/HB 335 requires that when a parent or legal guardian requests a criminal history records check on an employee or volunteer who works with or has unsupervised access to that parent's or legal guardian's child, and that check is conducted, the parent or legal guardian must pay the state and national fee for having the check conducted.

4. Individual Freedom:

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

Yes. CS/HB 335 allows an affected entity to have a criminal history records check conducted on an applicant employee or volunteer; or require the applicant employee or volunteer to attend a comprehensive training program for the protection of children, the elderly, or the disabled; or require the applicant employee or volunteer to authorize the release of investigative records, including a statewide criminal records correspondence check, to the affected entity. CS/HB 335 also allows a parent or legal guardian to request a criminal history records check on an employee or volunteer who works with or has unsupervised access to that parent's or legal guardian's child.

- 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:

CS/HB 335 does not create or change a program providing services to families or children.

(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 optional criminal history records checks, regarding certain specified crimes, on applicant employees or volunteers subject to the National Child Protection Act as well as on applicant employees or volunteers who work with the elderly or disabled; provides for optional training of such volunteer or employee; provides for the release of certain information regarding such volunteer or employee; provides that under certain circumstances a parent or legal guardian may request a criminal history records check on an employee or volunteer, and if conducted, will pay the costs thereof; provides for certain criminal history records check fees; and, provides for the establishment of additional FDLE positions and for the source of funding.

Section 3 - 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:

Because CS/HB 335 makes criminal history records checks optional with regard to applicant employees/volunteers, how many more requests for records checks FDLE will receive as a result of this legislation is uncertain. Also, when the FDLE staff receives criminal background information from the FBI from other states, the FDLE staff must determine which crimes committed in other states equate to the crimes listed in CS/HB 335. Other states' criminal laws vary from that of Florida. Accordingly, how many additional positions, if any, the FDLE will need to process criminal records checks is uncertain. Currently there are 55 FTEs performing criminal history records checks. *Id.* See House Committee on Criminal Justice, Final Bill Analysis & Economic Impact Statement, HB 177, May 15, 1995, at 4 (HB 177 required that criminal history records checks be conducted on affected employees/volunteers. The total number of additional record checks anticipated as a result of that bill was estimated at 3,121,725 or more.).

Additionally, the costs of having a criminal records check conducted on an applicant employee/volunteer must be paid by the affected entity requesting the check. (Affected entities include private and public sector institutions or organizations as well as local governments.) Whether the affected entity will absorb the costs or pass them on to the applicant employee/volunteer may vary among the affected entities.

Other costs associated with CS/HB 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[;]" and, the costs of providing the optional "comprehensive training program for the protection of children, elderly persons, or individuals with disabilities."

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

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.

Concerns regarding CS/HB 332, discussed in the "Effect of Proposed Changes", are summarized as follows:

- (1) What "investigative records" the applicant employee or volunteer may be required to authorize the release of is unclear.
- (2) It is not clear as to what a "statewide criminal records correspondence check" is.
- (3) The current s. 827.04, F.S., does not define child abuse.
- (4) A question arises as to why crimes against the elderly and disabled are not included in the criminal history records check, as well as why s. 800.04, F.S., is not included.
- (5) Parents or legal guardians of children are required to make a written request for a criminal history records check. The request probably should be made optional with the requirement that the request be made in writing.
- (6) There is no provision, similar to that for a parent or legal guardian of a child, authorizing a parent or legal guardian of an elderly or disabled person to make a written request for a records check, or that the parent or legal guardian would pay for same.

Other concerns include the fact that CS/HB 335 does not instruct the affected institutions or organizations as to what to do if they find that an applicant employee or volunteer does have a criminal history. Should the person not be employed or allowed to be a volunteer? Does it matter how many or what kind of criminal infraction(s) the person may have? Does it matter how long ago the criminal infraction(s) occurred? Apparently, all of these decisions are at the discretion of the affected entity. If an affected entity chooses to hire an employee or volunteer who has committed one of the listed criminal infractions, what liability concerns, if any, arise as a result of this legislation?

When a parent or legal guardian of a child makes a request for a criminal history records check, there is no list of criminal infractions that the check is limited to. Thus it appears that all infractions will be reported by FDLE to the affected entity, that is with regard to crimes recorded in Florida. Out-of-state criminal infractions reported through the FBI check can not be reported with specificity to the affected entity, unless the affected entity is a governmental agency with statutory authority to receive such information. Nongovernmental affected entities can only be apprised that an infraction has been reported by a certain state. Information regarding the type of infraction or when it was committed will not be given (telephone conversations with Donna Uzell and Jean Itzin, FDLE, March, 1997). What affected entities will do with this information, or partial information, appears totally within the discretion of the affected entity. Without guidelines to support decisionmaking, affected entities may vary widely in their response. However, governmental entities are otherwise

governed by the provisions in s. 112.011, F.S. (Felons, removal of disqualification for employment; exceptions).

Finally, it is unclear whether the parent or legal guardian requesting and paying for the records check will be provided any information regarding the results of the check.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

On March 12, 1997, the House Committee on Governmental Operations passed HB 335 as amended, and made the bill, as amended, a committee substitute.

The amendment struck everything after the enacting clause.

The committee substitute makes the criminal history records check optional as to only persons who apply to work with or have unsupervised access to children, the elderly, or the disabled, whether as an employee or volunteer, and specifies the crimes for which the check is to be conducted. HB 335 requires such a check on current as well as applicant employees/volunteers over the age of 18, and does not specify any crimes. HB 335 defines "unsupervised access", CS/HB 335 does not.

CS/HB 335 also includes the option of requiring an applicant employee or volunteer to authorize the release of certain investigative records, or requiring the applicant employee or volunteer to attend a comprehensive training program for the protection of children, elderly persons, or individuals with disabilities. HB 335 does not provide these options.

HB 335 provides for the sharing of criminal history records among the affected entities, to the extent possible by federal law, in order to verify the accuracy of information contained on an employee or volunteer application; CS/HB does not.

CS/HB 335 provides for a parent or legal guardian of a child to request that a criminal history records check on an employee or volunteer be conducted, and if that check is conducted, that parent or legal guardian must pay for the records check. (A records check conducted within the previous 36 months will suffice.) HB 335 does not have any such provisions.

CS/HB 335 grants FDLE the authority to establish positions in excess of the total authorized upon submission of a proper request to the Administration Commission, and has other provisions regarding funding. HB 335 does not have these provisions.

**VII. SIGNATURES:**

**COMMITTEE ON GOVERNMENTAL OPERATIONS:**

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