

STORAGE NAME: h3571a.grr

DATE: April 7, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3571 (PCB LEPS 98-01A)

RELATING TO: The Department of Law Enforcement

SPONSOR(S): Committees on Governmental Operations, Law Enforcement and Public Safety
and Representative Futch

COMPANION BILL(S): CS/SB 486(s) (Rule Authorization Bill)

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

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 5 NAYS 0
- (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
- (3) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

I. SUMMARY:

This bill reorganizes the Department of Law Enforcement (FDLE) from five divisions: the Divisions of Criminal Investigations, Local Law Enforcement Assistance, Criminal Justice Information Systems, Criminal Justice Standards and Training, and Staff Services, into three programs: the Criminal Justice Investigations and Forensic Science Program, Criminal Justice Information Program, and Criminal Justice Professionalism Program. These program based units are structured to be consistent with the budget entities established pursuant to the performance-based program budgeting (PB²) system. The executive director of FDLE is authorized to establish a command, operational, and administrative structure to support the FDLE's programs and services.

The bill provides that the FDLE, in consultation with the Criminal Justice Information Systems Council, develop, maintain, and be the custodial manager of an information system, including statewide telecommunications, that would support the administration of the criminal and juvenile justice system. The FDLE may coordinate with, and assist, other government agencies and private entities to facilitate the department's responsibility for managing criminal and juvenile information.

The bill authorizes the department to adopt and recommend policies for state and local law enforcement agency cooperation relating to investigation and forensic science services and to adopt, by rule, policies, procedures, and standards for operating state-operated crime laboratories. The bill provides the department with the statutory language necessary to authorize four rules identified by FDLE as presently lacking specific rulemaking authority.

The bill further removes the department as a "pass through" agency for state funding for the Monroe County Sheriff's Crime Laboratory. The bill also provides that the \$50 in fines deposited in the Criminal Justice Standards and Training Trust Fund for operational expenses in conducting the statewide criminal analysis laboratory system established in §943.32, F.S., be continued, but the reference to the Division of Local Law Enforcement Assistance is deleted. The department would still be required to use that money as specified. The bill has no apparent fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

FDLE Organization and Performance-Based Budgeting

In 1994 the Legislature passed a law which required state agencies to submit performance-based program budget requests according to a schedule prescribed in §216.0172, F.S. Pursuant to this schedule, the FDLE was required to submit its first performance-based program budget (PB²) request by September 1, 1995 for the 1996-97 fiscal year pursuant to §216.0172 (2) (d), F.S.

In consultation with legislative appropriations and appropriate substantive committees, the FDLE developed a list of agency programs which was subsequently approved by the Executive Office of the Governor. Once the list of programs was approved, performance measures were developed for each program. FDLE identified the outputs produced by each approved program, the outcomes resulting from each approved program, and the baseline data associated with each performance measure. For subsequent PB² requests, the performance measures were revised, or new measures were developed in consultation with legislative appropriations and appropriate substantive committees, and the Office of Program Policy Analysis and Government Accountability (OPPAGA). As part of the Legislative Budget Request, the Governor's Office approved the final list of proposed performance measures. The Legislature has final approval of FDLE's programs, performance measures, and standards through the General Appropriations Act and its implementing bill.

Pursuant to §20.201 (2), F.S., the department is currently organized into five divisions: Criminal Investigation, Local Law Enforcement Assistance, Criminal Justice Information Systems, Criminal Justice Standards and Training, and Staff Services. As part of PB², the department was reconfigured into three programs or budget entities: Criminal Justice Investigations and Forensic Science, Criminal Justice Information, and Criminal Justice Professionalism. Despite this change in performance-based program budgeting, the department is still statutorily organized in a configuration that differs from that which would be optimal according to its budgeting structure under PB².

According to OPPAGA, FDLE's PB² measures were "improved" in its second year of PB², FY 1997-98. Expectations are that the measures will continue to improve through future revisions. OPPAGA reports that the PB² process has already improved the organization of the department, which has a current budget of approximately \$136 million, and over 1,530 positions.

In 1995 the Legislature directed the Criminal Justice and Juvenile Justice Information Systems Council, an advisory body of the Criminal Justice Information System Division, to develop standards and policies to promote sharing criminal justice information throughout the state and provide oversight on the development of the juvenile justice data system. The Council is currently working on linking law enforcement and other criminal justice agencies' database systems through the Criminal Justice Network.

Currently, each sheriff or unit of government is required to submit information to the Criminal Justice Information Program (or Division) relating to the receipt or discharge of any person who is sentenced to a jail facility. According to FDLE, most information that

is required, was either not received, or the FDLE did not find the information useful. Information on the disposition of all adult offenders is already being received from the clerks of the courts. The department has found this information to be adequate for its database, and believes it does not need the information on the receipt or discharge of persons sentenced to a jail.

In 1995, Representative Horan sponsored HB 1193, which sought to amend substantive law under §943.35, F.S., and to transfer the Monroe County Crime Laboratory to the FDLE. However, the House bill, as well as the Senate companion bill, SB 2532, died in committee. Until that time, the Monroe County Sheriff's Crime Laboratory received state funding for its operations with the FDLE acting as the "pass-through" agency for the state funding. Despite the substantive bills not passing the Legislature, the transfer of the laboratory to FDLE operation was made in the appropriations process. However, the change in substantive law to conform it with the actual funding practice was never made.

Rulemaking Authority

The Legislature amended the Administrative Procedures Act (APA) during the 1996 Session. The revised APA imposes a stricter rulemaking standard by requiring more specific agency rulemaking authority in statutes to accomplish the stated purpose of enabling statutes.

Pursuant to subsection 120.536(2), Florida Statutes, by October 1, 1997, all agencies were required to notify the Joint Administrative Procedures Committee of all existing rules, or portions thereof, adopted before October 1, 1996, which exceeded the agency's statutory rulemaking authority under the stricter APA rulemaking standards. If the agency does not secure specific legislative authority during the 1998 regular session, the agency must initiate rulemaking by January 1, 1999, to repeal the identified rules. Effective July 1, 1999, the JAPC or any substantially affected person has standing to petition the agency to repeal identified rules that have not yet been repealed by the agency.

FDLE identified the following rules as lacking the necessary rulemaking authority pursuant to the new rulemaking standards:

- ▶ 11C-4.003, F.A.C., relating to Arrest Fingerprint Card Submission. FDLE does not have specific authority to specify the manner in which fingerprints are to be submitted.
- ▶ 11C-6.003 and 11C-6.004, F.A.C., relating to the dissemination of criminal history records. FDLE needs rulemaking authority to prescribe the manner in which criminal histories are sought and obtained.
- ▶ 11C-8.001, F.A.C., relating to review procedures for criminal history records. FDLE does not have specific authority to develop procedures governing the manner in which criminal histories are reviewed.

B. EFFECT OF PROPOSED CHANGES:

This bill changes the organizational structure of the FDLE from five divisions to three program entities. This conforms the agency structure to the following budget entities that exist for the department for performance-based program budgeting (PB²): Criminal Justice Investigations and Forensic Science, Criminal Justice Professionalism, and Criminal Justice Information.

The department is no longer required to designate persons currently identified as "division directors" as such, but has the flexibility to name one or more persons to the same or similar position in each program as determined by the executive director. Such personnel shall supervise, direct, coordinate, and administer activities of the three programs.

The bill provides the statutory language necessary to authorize the department's rules identified in the s.120.536 report to JAPC as lacking the required rulemaking authority under the new APA.

The bill also provides additional authority to the executive director of the department to establish a "command, operational, and administrative services structure" which shall assist and support the department in operating programs and delivering services. This authority gives wide discretion to the executive director to organize the administrative and support services structure without explicit legislative directive. Such services would involve a chain-of-command for management and accountability for the activities and mission of the department. Positions included in this structure are the general counsel and assistant general counsels, and the inspector general, among others.

According to FDLE, the administrative structure of the department, which essentially includes all of the personnel in the Division of Staff Services (approximately 100 persons), is not specified in the PB² system. Since the new PB² structure does not include an administrative program function, there are no performance measures for these activities. Therefore, the FDLE anticipates that an administrative program, including performance measures, will be included in the PB² system. However, this proposal would have to be approved in the legislative appropriations process.

The FDLE, in consultation with the Criminal and Juvenile Justice Information Systems Council, will develop and maintain an information system which supports the administration of the state's criminal and juvenile justice system. The department shall serve as the custodial manager of the statewide telecommunications and data network developed and maintained as part of the department's information system. The department is encouraged to develop innovative and progressive methods of serving the information management needs of the criminal justice agencies and the public. The department is authorized to contract with other agencies or private entities to help facilitate the department's responsibilities for receiving, maintaining, managing, processing, allowing access to, and disseminating criminal justice information and criminal history records to criminal justice agencies, and to the public, as appropriate.

The department has the authority to adopt rules to carry out the services of the Criminal Justice Investigations and Forensic Science Program relating to cooperative policies for coordinating law enforcement work of all state, county, and municipal law enforcement

agencies; assisting local law enforcement agencies with research, planning, training; providing technical assistance to aid officers in preventing, controlling, and solving criminal activity; providing forensic services to all levels of law enforcement agencies; and adopting procedures and standards for operating certain crime laboratories.

The bill eliminates the requirement that each sheriff or unit of government submit information to the Criminal Justice Information Program (or Division) relating to the receipt or discharge of any person who is sentenced to a jail facility.

The bill provides for the payment from the Criminal Justice Standards and Training Trust Fund, of proper and necessary expenses of personnel of the Criminal Justice Professionalism Program employed as staff to assist the Criminal Justice Standards and Training Commission. Other personnel, and related expenses of personnel employed by the program, will be paid with other funds.

The bill removes language naming the department as a "pass through" agency for state funding for the Monroe County Sheriff's Crime Laboratory. The bill clarifies that the \$50 in fines currently deposited in the Criminal Justice Standards and Training Trust Fund be used for operational expenses in conducting the statewide criminal analysis laboratory system established in §943.32, F.S.

The bill also repeals ss. 943.26 and 943.381, F.S., which created the Division of Local Law Enforcement Assistance and the Division of Staff Services.

The bill provides an effective date of July 1, in the year in which 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?

The bill authorizes the FDLE to adopt rules relating to cooperative policies coordinating state and local law enforcement agencies as they relate to preventing and solving crimes, controlling criminal activities, and providing forensic services including adopting policies, procedures, and standards for operating state-operated crime laboratories.

The bill provides the statutory language necessary to authorize the department's rules identified in the s.120.536 report to JAPC as lacking the required rulemaking authority under the new APA.

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

None apparent.

- (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?

None, except to the extent that the bill provides for a reorganization of the FDLE to conform to its PB² budget entities.

- (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?

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

- (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:

Amends ss. 20.201, 943.01, 943.93, 943.04, 943.05, 943.051, 943.0515, 943.052, 943.0525, 943.053, 943.055, 943.056, 943.08, 943.09, 943.10, 943.133, 943.17, 943.173, 943.25, 943.32, 943.35, 943.355, 938.07, 316.640, F.S., and repeals ss.943.26, and 943.381, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 - Amends s. 20.201, F.S., providing a change in the organizational structure of the FDLE, eliminating five divisions, and establishing three program entities. This conforms the agency structure to the following budget entities that exist for the department for performance-based program budgeting (PB²): Criminal Justice Investigations and Forensic Science, Criminal Justice Professionalism, and Criminal Justice Information.

The bill provides authority to the executive director of the department to establish a "command, operational, and administrative services structure" which would assist and support the department in operating programs and delivering services. This authority

provides wide discretion to the executive director to organize the administrative and support services structure without explicit legislative directive.

Section 2 - Amends s. 943.01, F.S., providing that this act may be cited as the "Department of Law Enforcement Act".

Section 3 - Amends s. 943.03, F.S., providing the department is no longer required to designate persons currently identified as "division directors" as such, but has the flexibility to name one or more persons in each program as determined by the executive director.

The FDLE, in consultation with the Criminal and Juvenile Justice Information Systems Council, shall develop and maintain an information system which supports the administration of the state's criminal and juvenile justice system. The department shall serve as the custodial manager of the statewide telecommunications and data network developed and maintained as part of the department's information system.

Section 4 - Amends s. 943.04, F.S., establishes the Criminal Justice Investigations and Forensic Science Program within the FDLE. The department has the authority to adopt rules to carry out the services of the Criminal Justice Investigations and Forensic Science Program and relating to cooperative policies for: coordinating law enforcement work of all state, county, and municipal law enforcement agencies; assisting local law enforcement agencies with research, planning, training; providing technical assistance to aid officers in preventing, controlling, and solving criminal activity; providing forensic services to all levels of law enforcement agencies; and adopting procedures and standards for operating certain crime laboratories.

Section 5 - Amends s. 943.05, F.S., establishing the Criminal Justice Information Program within the FDLE, replacing the former Division of Criminal Justice Information Systems.

Section 6 - Amends s. 943.051, F.S., providing that FDLE shall, by rule, conduct its program operations and is encouraged to develop innovative and progressive methods of serving the information management needs of the criminal justice agencies and the public. The department is authorized to contract with other agencies or private entities to help facilitate the department's responsibilities for receiving, maintaining, managing, processing, allowing access to, and disseminating criminal justice information and criminal history records to criminal justice agencies and the public, as appropriate. Contracts with such agencies or entities do not permit waiving any confidentiality or exemption from disclosure under s. 119.07, F.S., or other applicable law.

Such services shall involve a chain-of-command for management and accountability for the activities and mission of the department. Positions included in this structure are the general counsel and assistant general counsels, and the inspector general, among others.

Provides the statutory language necessary to authorize Rule 11C-4.003, F.A.C.

Section 7 - Amends s. 943.0515, F.S., conforming criminal history record retention relative to minors with appropriate chapters and terminology.

STORAGE NAME: h3571a.grr

DATE: April 7, 1998

PAGE 10

Section 8 - Amends s. 943.052, F.S., conforms terms relative to disposition reporting, and deletes the requirement that each sheriff or unit of government, or agent thereof shall submit information relating to receipt and discharge of persons from jail facilities.

Section 9 - Amends s. 943.0525, F.S., conforming terms.

Section 10 - Amends s. 943.053, F.S., conforming terms, and providing that information made available to private entities be made on an approximate cost basis.

Provides the statutory language necessary to authorize Rules 11C-6.003 and 6.004, F.A.C.

Section 11 - Amends s. 943.055, F.S., conforming terms relative to records and audit.

Provides the statutory language necessary to authorize Rule 11C-8.001, F.A.C.

Section 12 - Amends s. 943.056, F.S., conforming terms relative to access to, and review and challenge of, criminal history records.

Section 13 - Amends s. 943.08, F.S., conforming terms relative to duties of the Criminal and Juvenile Justice Information Systems Council.

Section 14 - Amends s. 943.09, F.S., establishing the Criminal Justice Professionalism Program in place of the Division of Criminal Justice Standards and Training; conforming terms relative to such program; and providing for conforming staffing changes.

Section 15 - Amends s. 943.10, F.S., conforming terms consistent with Section 14.

Section 16 - Amends s. 943.133, F.S., conforming terms relative to employment documentation and procedures.

Section 17 - Amends s. 943.17, F.S., conforming terms relative to career development training programs.

Section 18 - Amends s. 943.173, F.S., conforming terms relative to officer certification examinations.

Section 19 - Amends s. 943.25, F.S., conforming terms relative to criminal justice trust funds.

Section 20 - Amends s. 943.32, F.S., removing the statewide criminal analysis laboratory located in Monroe County from the list of those specifically designated in s. 943.35, F.S., as one eligible for state matching funds.

Section 21 - Amends s. 943.35, F.S., removing the reference to the funding of the laboratory located in Monroe County.

Section 22 - Amends s. 943.355, F.S., conforming subparagraph numbering found in s. 943.35, F.S.

Section 23 - Amends s. 938.07, F.S., removing reference to the Division of Local Law Enforcement Assistance, and its operational expenses.

Section 24 - Amends s. 316.640, F.S., conforming terms relative to traffic control officer training.

Section 25 - Repeals ss. 943.26 and 943.381, F.S., conforming language relative to the elimination of the Division of Local Law Enforcement Assistance, and the Division of Staff Services.

Section 26 - Provides an effective date of July 1 of the year in which enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None apparent.

2. Recurring Effects:

As noted by OPPAGA, there can be expectations of cost-efficiency and effectiveness of the department's programs as the PB² process continues for FDLE. Because the intent of this committee substitute is to align the agency's organizational structure with adjustments that have already been made for FDLE in the appropriations process, it is not anticipated that funding will decrease as a result of this legislation. Although increases in funding to the department may occur as a result of other factors, it is not anticipated that any funding increases to FDLE would occur as a direct result of this bill.

3. Long Run Effects Other Than Normal Growth:

Unknown

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown, but unlikely.

2. Recurring Effects:

Unknown.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

None.

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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

STORAGE NAME: h3571a.grr

DATE: April 7, 1998

PAGE 13

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

James S. Trunzo

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Legislative Research Director:

Russell J. Cyphers, Jr.

Jimmy O. Helms

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Legislative Research Director:

Angela Price

David M. Greenbaum