

STORAGE NAME: h1727a.ca

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 1727 (PCB LECP 99-06b)

RELATING TO: The Department of Law Enforcement

SPONSOR(S): Committee on Law Enforcement and Crime Prevention and Representative Futch

COMPANION BILL(S): CS/SB 1936 (s)

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION (CRC) 9 YEAS 0 NAYS
 - (2) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 0
 - (3) JUDICIARY (CJC)
 - (4) GOVERNMENTAL RULES & REGULATIONS (PRC)
 - (5) CRIMINAL JUSTICE APPROPRIATIONS (FRC)
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I. SUMMARY:

Proposed Committee Bill for the Committee on Law Enforcement & Crime Prevention (PCB LECP 99-06) is a bill pertaining to the Florida Department of Law Enforcement (FDLE), which makes several technical changes to the statutes, addresses new federal laws, and defines FDLE's role with regard to the Criminal Justice Network (or CJ NET). Specifically, the bill deals with the following:

- The bill clarifies that criminal history records pertaining to any of the "dangerous crimes" set forth in section 907.041, F.S., may not be sealed or expunged.
- The bill more precisely defines the meaning of "previously" being adjudicated guilty of a criminal offense which would preclude the sealing or expunging of criminal history records.
- The bill gives FDLE a role in implementing the "Foley Amendment," which is a federal law to facilitate background checks for volunteers and employees of entities dealing with children, the elderly, or those with disabilities.
- The bill ratifies the National Crime Prevention and Privacy Compact and designates FDLE as the criminal history record repository for purposes of the contract.
- The bill specifically defines FDLE's role with regard to the Criminal Justice Network, providing authority to manage the network and enter into relationships with non-criminal justice entities, so as to make products, programs, and services available over the network to criminal justice agencies.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, there are two issues that continue to generate significant controversy and litigation whenever FDLE denies an application for a certificate of eligibility for the sealing or expunging of criminal history records. The first issue pertains to a list of certain offenses, including "dangerous offenses" which make a person ineligible for sealing or expunging criminal history records, when adjudication is withheld or the person is found guilty of these crimes.

Several of these "dangerous" offenses were added to s. 907.041 F.S., by amendment subsequent to their incorporation by reference in ss. 943.0585 and 943.059, F.S. Over the years, this list of dangerous crimes expanded to include new crimes. Under accepted rules of statutory construction, the subsequently added offenses, such as domestic violence, are *not* deemed incorporated by reference in the sealing and expunction statutes *unless those statutes were reenacted expressly for that purpose*. To date, such statutes have not been enacted.

The second issue concerns the meaning of "previously" in the context of the requirement that a person must never have previously been adjudicated guilty of (or found delinquent for committing) a criminal offense in order to be eligible to seal or expunge a criminal history record. Under an older case, construing an *earlier* version of the law, State v. Zawistowski, 339 So.2d 315 (Fla. 1st DCA 1976), "previously" meant *prior to the arrest* to be sealed or expunged. Under a more recent case, Hunt v. State, 670 So.2d 1180 (Fla. 3d DCA 1996), *review denied*, 684 So.2d 1351 (Fla. 1996), the *only* case on point interpreting *current* law, "previously" means *prior to the filing* of the petition to seal or expunge. These divergent interpretations of the law require clarification.

Recently, at the federal level, there have been modifications made to the National Child Protection Act, which have broadened the scope of child protective measures. The National Child Protection Act initially established mechanisms to check the background of volunteers and employees who work with children. A 1994 amendment expanded this act to include elderly and disabled persons. This federal law, however, required state enabling legislation.

The "Foley Amendment" was enacted at the federal level, promoting the disclosure of federal criminal history information to facilitate background checks on volunteers and employees of entities dealing with children, the elderly or those with disabilities. The more recent "Foley Amendment" allows the states to obtain federal criminal history information on volunteers and employees without specific enabling legislation. However, because the results from the Federal Bureau of Investigation (FBI) can only be returned to government agencies, the Florida Legislature needs to designate which agency will receive the results of these inquiries, for distribution to the organization or entity dealing with children, the elderly, or the disabled. Also, Congress has enacted the **National Crime Prevention and Privacy Compact** (Compact).

Currently, s. 943.051, F.S., provides generally for the Criminal Justice Information Program and the collection, storage, and dissemination of criminal justice information. Subsection (5) provides that the "department is encouraged to develop innovative and progressive methods of serving the information management needs of the criminal justice community." It further provides that "the department may contract with other agencies, or private entities for the purpose of facilitating the department's responsibilities for receiving, maintaining, managing, processing, allowing access to, and disseminating criminal justice information, intelligence, and data . . ."

B. EFFECT OF PROPOSED CHANGES:

The bill reenacts provisions which provide procedures and requirements for court-ordered "expunction of criminal history records" (s.943.0585 F.S.), and the "sealing of criminal history records" statute (s. 943.059, F.S.), to incorporate prior amendments to statutes referenced in ss 943.0585 and 943.059, F.S. These amendments resolve the *two issues* that arise whenever FDLE denies an application for a certificate of eligibility. Section 907.041, F.S., sets forth a list of "dangerous crimes," which pursuant to s. 943.0585, F.S., and s. 943.059, F.S., are crimes which cannot be expunged or sealed if a person is found guilty or when adjudication of guilt is withheld by a court. The bill incorporates into sealing and expunction law *all* subsequent amendments to s. 907.041 enacted since its initial incorporation by reference in the two statutes on July 1, 1992. It

also provides that any subsequent amendments to s. 907.041, F.S., will be deemed incorporated into the two statutes.

Regarding the meaning of "previously," the bill adopts the reading espoused in Hunt v. State, 670 So.2d 1180 (Fla. 3d DCA 1996), reviewed denied, 684 So.2d 1351 (Fla. 1996), with the qualification that a person *applying to the FDLE* for a certificate of eligibility can, at that time, only affirm that he or she has never been adjudicated guilty of an offense *at the time of filing the application with the FDLE*. The filing of the certificate with the court is, at that time, still in the future. The holding in Hunt stated that "previously" means prior to the filing of the petition to seal or expunge.

The bill sets up a system where qualified entities can submit fingerprint cards to the FDLE and the FDLE will serve as the conduit through which state and federal criminal history information will return to those entities. The FDLE will not evaluate the volunteers or employees-- this remains the duty of the entity considering the volunteer or employee. The FDLE will also maintain a directory of qualified entities to facilitate one entity making contact with another entity to discuss an employee or volunteer who was previously involved with another entity. The bill requires volunteers and employees to disclose any previous submissions to qualified entities. The bill provides that a qualified entity is not liable for damages for failing to seek the criminal history backgrounds. Immunity from liability is also provided to state agencies and employees performing duties required by this section.

The bill formally ratifies the Compact. The bill further appoints the FDLE as the criminal history record repository for purposes of the Compact and designates the FDLE's Commissioner as Florida's Compact Officer. It also authorizes the FDLE to promulgate rules necessary to implement the compact, which is intended to facilitate the exchange of criminal history information between states and the federal government.

The bill specifically defines FDLE's role with regard to the Criminal Justice Network (CJNET). The bill allows rulemaking as may be required to manage the CJNET as it is now and as it expands in the future.

As the FDLE implements the CJNET, the FDLE seeks authority to enter into relationships with non-criminal justice entities to allow "special limited presence" on the CJNET, for purposes of assisting the criminal justice entities utilizing the CJNET. The special limited presence must be justified by a finding that the service, product, program, etc. offered is of "substantial" value. The bill grants the FDLE authority to implement and manage a method of allowing limited special presence on the CJNET.

In addition, as the "information revolution" provides new and promising methods of information management to the FDLE, the FDLE needs the authority to enter into agreements with third parties to facilitate its duties and obligations for information handling and management as established in chapter 943, F.S. The FDLE also seeks authority to accept exchanges of services of value to itself in lieu of charges that could be assessed against private entities in the context of information services. The FDLE also would have the authority to contract with commercial or other entities to provide all or a portion of the services required of it.

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 provides specific authority to the FDLE to make rules to implement procedures for the cooperative state-federal exchange of criminal history records for non-criminal justice uses, pursuant to the National Crime Prevention and Privacy Compact. The bill also provides rule authority to implement statutes allowing for the screening of individuals working for qualified entities dealing with children, the

elderly, and the disabled. Finally, the bill provides rule authority in matters pertaining to the criminal justice information network and information management.

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

N/A

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

Qualified entities will be able to obtain access to criminal history records pertaining to volunteers or employees working with children, the elderly, and the disabled.

- 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?

The bill requires that qualified entities pay a fee in order to access criminal history records.

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

N/A

- 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?

Qualified entities will pay a fee in order to obtain criminal history records.

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:

Sections 943.0585, 943.059, and 943.051, Florida Statutes; Creating ss. 943.0531, 943.0545, and 943.0565.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Repeals s. 943.051(5), F.S., relates to serving the information needs of the criminal justice community.

Section 2. Creates 943.0531, permits the Florida Department of Law Enforcement (FDLE) to develop and manage effective methods of serving the information management needs of the criminal justice community; authorizes the FDLE to develop, manage, and operate an intra-agency information and data sharing communication network; names such network as the Criminal Justice Network; provides that the Florida Department of Law Enforcement must determine what Florida criminal justice agencies will have access to the Criminal Justice Network, after consulting with the Criminal and Juvenile Justice Information Systems Council; provides that the FDLE may authorize certain entities to serve the information needs of criminal justice information agencies participating in the Criminal Justice Network, after consulting with the Criminal and Juvenile Justice Information Systems Council; provides that the FDLE may contract with and charge entities approved for special presence on the Criminal Justice Network in consideration for such presence; allows exchange of services of value to the FDLE in lieu of a charge that might be otherwise assessed by the FDLE upon an entity granted special limited presence on the network; authorizes the FDLE to enter into agreements with any entity to facilitate its mission to provide criminal justice information, intelligence, data, or criminal history records as provided in the bill and arranges for certain payment options for such entities; and provides for confidentiality or exemption under s. 119.07, F.S., for certain disclosures to entities under contract with the FDLE.

Section 3. Creates s. 943.0545, implements the federal National Crime Prevention and Privacy Compact (Compact) by approving and ratifying the Compact; provides that Florida's ratification of the compact must remain effective until the Legislature enacts, specifically, a law renouncing the Compact; designates the FDLE as the criminal history record repository for purposes of the Compact; requires the FDLE executive director or designee to serve as the state's Compact officer to administer the compact in Florida; and protects the obligations or responsibilities of the FDLE from provisions of this bill.

Section 4. Creates s. 943.0565, provides a statewide system, in concert with the federal National Child Protection Act, to prevent abuses to portions of society who typically need protection; requires the FDLE to provide a mechanism whereby employees or volunteers working with qualified entities may be screened using state and national criminal history information; establishes safety of the children, disabled, and elderly as the state's priority; defines "qualified entity" and "care" for purposes of the bill; establishes parameters for qualified entities requesting screening pursuant to the bill's provisions that includes: (1) registering with the FDLE prior to submitting such request, (2) conforming to the requirements established by the National Child Protection Act of 1993, as amended; and (3) agreeing to comply with the provisions of federal and state law, in writing; provides that FDLE may arrange periodic audits of qualified entities necessary to ensure compliance with federal laws and regulations and the provisions of this bill; requires that all qualified entities submit requests for employee or volunteer screening to the FDLE be on a completed fingerprint card, with a signed waiver allowing the release of state and national criminal history record information; requires that each request accompany the prescribed payment; establishes that the payment fee for qualified entities using the FDLE screening service will be the same as that charged governmental agencies not qualified as criminal justice agencies for state criminal history records pursuant to s. 943.053, F.S., plus the amount required by the Federal Bureau of Investigation for the national criminal history check in compliance with the National Child Protection Act; requires certain employees or volunteers to disclose other qualified entities that have requested screening on them; requires the FDLE to provide directly to the qualified entity certain state criminal history records; limits the qualified entities' use of the national criminal

history data to only screening employees and volunteers or such applicants with a qualified entity; places the sole responsibility on qualified entities, and not the FDLE, for determining whether or not the criminal history record results bear upon the employee's or volunteer's fitness to have responsibility for the safety and well-being of children, elderly, or disabled persons; requires qualified entities to notify persons of their right to obtain a copy of any background check report and other related rights; allows the FDLE to establish a database of registered qualified entities and make data available free of charge to all registered qualified entities; provides for the minimum information to be included in such database; provides that a qualified entity will not be liable in an action for damages solely for failure to obtain the information authorized under the bill on an employee or volunteer, nor will the state or any political subdivision thereof or any agency, officer, or employee thereof be liable in an action for damages for providing the information requested pursuant to the bill; and authorizes the FDLE to adopt rules to implement the provisions of this bill.

Section 5. Authorizes the FDLE to establish necessary positions to implement the access to criminal history information to qualified entities program; and requires that the positions be established in accordance with the demands for criminal history information at the rate of one position for each 5,000 requests received by the FDLE, with an initial authorization of 14 positions.

Section 6. Reenacts provisions which provide procedures and requirements for court-ordered expunction of criminal history records, to incorporate prior amendments to statutes referenced therein; specifies that statutory references in said provisions are general references; and clarifies the meaning of "previous" in provisions which require statements regarding previous offenses.

Section 7. Reenacts provisions which provide procedures and requirements for court-ordered sealing of criminal history records, to incorporate prior amendments to statutes referenced therein; specifies that statutory references in said provisions are general references; and clarifies the meaning of "previous" in provisions which require statements regarding previous offenses.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

First year support and implementation expenses -- \$42,600

2. Recurring Effects:

Costs for 14 positions -- \$630,814.96

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Amount Yr. 1	Amount Yr. 2	Amount Yr. 3
\$673,414.96	\$630,814.96	\$630,814.96

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

Amount Yr. 1	Amount Yr. 2	Amount Yr. 3
\$673,414.96	\$630,814.96	\$630,814.96

These are the anticipated costs to the private sector for "Foley" checks performed on volunteers and employees who work with children, the elderly, or the disabled.

2. Direct Private Sector Benefits:

Indeterminate.

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

N/A

D. **FISCAL COMMENTS:**

The main fiscal impact from this bill comes from implementation of the Foley amendment. The bill provides for an initial authorization of 14 positions, with increases of one position for each 5,000 requests for criminal history records. All positions and equipment will be paid from revenue in the FDLE Operating Trust Fund. The trust fund will be reimbursed from the fees charged to qualified entities to obtain criminal history records on their employees and volunteers.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require cities or counties to spend money or take action that requires expenditure of money.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce revenue raising authority.

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

This bill does not reduce the state tax shared with cities and counties.

V. COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, the Committee on Law Enforcement and Crime Prevention approved an amendment to the bill. The amendment clarified that persons applying as employees or volunteers for a qualified entity are subject to background screening under this bill.

On April 8, 1999, the House Community Affairs Community adopted one technical amendment to HB 1727 to correct a citation in the bill. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Kurt E. Ahrendt

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON JUDICIARY:

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