

STORAGE NAME: h0391a.jud

DATE: March 4, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 391

RELATING TO: Criminal Justice Information

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

COMPANION BILL(S): SB 730(s)

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

- (1) JUDICIARY YEAS 9 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

HB 391 amends s. 943.053, F.S., to require the Department of Law Enforcement to provide to each office of the Public Defender online access to criminal records of this state that are not otherwise exempt from disclosure under chapter 119 or confidential under law. The bill provides that the access to the online information shall be used solely to support the statutory duties of the public defender or any attorney assigned to represent a person who is determined to be indigent under s. 27.52, F.S.

The bill requires the agency to which access has been provided to bear the costs of establishing and maintaining online access. The costs of the provision of online access are not estimated.

The bill shall become effective on October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Dissemination of Criminal Justice Information

Florida law presently requires the Department of Law Enforcement to disseminate criminal justice information according to all applicable federal and state laws and regulations. s. 943.053, F.S. The law provides that criminal justice information shall be made available by the Department, free of charge, on a priority basis to criminal justice agencies for criminal justice purposes. s. 943.053(3). The same information may be made available to government agencies not qualified as criminal justice agencies on an average cost basis. *Id.* The law requires the information to be used by the requesting agency only for the reasons stated in the request. *Id.*

Section 943.053 also requires the Department to provide criminal records not exempt from disclosure under Chapter 119 to the Florida Department of Revenue Child Support Enforcement organization, private operators of county detention facilities, and the Department of Corrections is required to provide such information to the private operators of state correctional facilities.

Currently, the Department provides information to public defenders through a facsimile request and response system. This system handles thousands of requests annually.

Chapter 119 Records Law

Chapter 119, F.S., provides a comprehensive regime for the collection, maintenance, and dissemination of public records. While the presumption in the law is that records made by units of government should be made public, there are a number of exceptions applicable to criminal justice records. For example, active criminal intelligence and investigative information is exempt from the public records law, as is information relating to the identity of confidential informants, information revealing surveillance techniques, information revealing the undercover personnel of any criminal justice agency, information revealing the identity of the victim of sexual battery, information revealing the personal assets of a victim of a crime, the home addresses and other personal information of active or former law enforcement personnel, and any information relating to the confession of a person arrested before the criminal case involving that person is finally determined. See generally s. 119.07(3), F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill will add a requirement to s. 943.053 that the Department of Law Enforcement provide all public defenders with online access to state criminal justice information. The bill provides that such information must be used consistently with the mission of the public defender and of any attorney assigned to represent an indigent criminal defendant. The bill further provides that the costs of establishing and maintaining online access to criminal justice information are to be borne by the office to which access has been provided.

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?

The bill requires the Department of Law Enforcement to provide online access to criminal justice information for state public defenders and assigned counsel.

(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?

The bill does not eliminate or reduce any agency or program.

(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 provides that the state offices of the public defender shall bear the costs of establishing and maintaining online access to criminal justice information.

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?

Yes. State offices of the public defender must bear the costs of establishing and maintaining access to criminal justice information.

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:

- (1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

The bill does not create or change a program providing services to families or children.

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 943.053, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 943.053, F.S., to require the Department of Law Enforcement to provide to each office of the Public Defender online access to criminal records of this state that are not otherwise exempt from disclosure under chapter 119 or confidential under law. Provides that the access to the online information shall be used solely to support the statutory duties of the public defender or any attorney assigned to represent a person who is determined to be indigent under s. 27.52, F.S. Requires the agency to which access has been provided to bear the costs of establishing and maintaining online access.

Section 2. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Not estimated.

2. Recurring Effects:

The Department of Law Enforcement estimates that there will be a ½ FTE workload requirement associated with the bill, amounting to approximately \$25,000 in year one, and \$23,000 per year thereafter (approx.).

3. Long Run Effects Other Than Normal Growth:

Not estimated.

4. Total Revenues and Expenditures:

\$25,000 in year one, and \$23,000 per year thereafter (approx.).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The Florida Department of Law Enforcement estimates that each public defender site will expend \$1,500 to establish communication lines with FDLE.

2. Recurring Effects:

The Florida Department of Law Enforcement estimates that ongoing maintenance costs will be \$6,000 per site per year.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

The fiscal impact of this bill has not been estimated.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require local governments to expend funds or to take any action requiring the expenditure of funds nor will it affect the authority of cities or counties to raise aggregate revenues or reduce the share of a local government's share of any state tax. Therefore the provisions of Article VII, Section 18 of the Florida Constitution do not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Staff Director:

Michael W. Carlson, Esq.

Don Rubottom, Esq.