

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Justice Appropriations Committee

BILL: CS/CS/SB 1914

SPONSOR: Justice Appropriations Committee, Criminal Justice Committee and Senator Argenziano

SUBJECT: Juvenile Justice/Personnel Screening Procedures

DATE: April 21, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger/Cannon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Butler</u>	<u>Sadberry</u>	<u>JA</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute eliminates a statutory conflict by amending s. 985.407(4), F.S., to require Level 2 screenings for persons prior to employment with the Department of Juvenile Justice (DJJ), or by a provider under contract with the DJJ, in delinquency facilities, services, or programs. (According to the department, the more stringent Level 2 screenings are currently being conducted pursuant to s. 985.01, F.S.)

The committee substitute also establishes a new, continuous state criminal history screening process for DJJ and provider personnel, which requires the Florida Department of Law Enforcement (FDLE) to: (a) enter fingerprint information for all DJJ and provider employees, current and prospective, into the statewide automated fingerprint identification system; (b) retain that fingerprint information in the system; and (c) conduct searches as arrest records are received to determine whether any such records are associated with the retained fingerprint information.

The committee substitute permits the FDLE to charge the DJJ an annual fee for its fingerprint retention services.

The committee substitute provides appropriations of \$36,834 from recurring general revenue, \$86,407 from nonrecurring general revenue, and \$133,335 from recurring trust funds to pay the FDLE fees for fingerprint retention services, and to pay for associated implementation expenses DJJ incurs.

This committee substitute amends section 985.407, Florida Statutes.

II. Present Situation:

General statutory screening requirements: In 1995, the Legislature codified standards relating to background screenings required by law for employment with its creation of ch. 435, F.S.¹ This chapter provides for two levels of background screening that when required by law serve as a condition of employment or continued employment:

- A Level 1 screening requires, but is not limited to, a statewide criminal history check by the Florida Department of Law Enforcement (FDLE) and an employment history check. At this level, the person must not have been convicted of or pled guilty to enumerated offenses that include sexual, manslaughter, battery, and abuse offenses against certain persons, felony drug offenses, murder, kidnapping, prostitution, vehicular homicide, arson, and felony theft.²
- A Level 2 screening requires, but is not limited to, fingerprint-based state and federal juvenile and criminal records checks by the FDLE and federal criminal records checks by the Federal Bureau of Investigations. At this level, the person must not have been convicted of or pled guilty to enumerated offenses that include those proscribed for level one screenings, as well as resisting arrest with violence, aiding in certain escapes, introducing contraband into certain facilities, depriving officers of protection or communication, and recruiting gang members.³

If an employer believes that grounds exist for the denial or termination of employment as a result of a background screening, the employer must notify the applicant or employee in writing, stating the specific record that indicates noncompliance. The applicant or employee may contest the disqualification on mistaken identity grounds or may request an exemption from disqualification.⁴ In order to obtain an exemption, the crime at issue must be: a felony committed more than three years ago; a misdemeanor; or an act of delinquency or domestic violence. Further, the person seeking the exemption must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment based on evidence of rehabilitation. The decision of an employer regarding whether to grant an exemption may be contested under ch. 120, F.S., the Administrative Procedure Act.⁵

Department of Juvenile Justice screening requirements: Section 985.01(2), F.S., requires the Department of Juvenile Justice (DJJ) to conduct Level 2 screenings for personnel in programs for children or youth and specifies that the personnel of contractual providers to the DJJ must be of

¹ Chapter 95-228, L.O.F.

² Section 435.03, F.S.

³ Section 435.04, F.S.

⁴ Section 435.06, F.S.

⁵ In *Heburn v. Department of Children and Families*, the court indicated that departments have broad discretion in determining whether to grant an exemption and that such discretion will be upheld by an appellate court if it is exercised reasonably. *Heburn v. Department of Children and Families*, 772 So.2d 561, 563-564 (Fla. 1st DCA 2000); *See also Phillips v. Department of Juvenile Justice*, 736 So.2d 118, 119 (Fla. 4th DCA 1999)(stating that the court could not substitute its judgment for the department's discretionary decision to deny an exemption).

good moral character.⁶ Conversely, s. 985.407(4), F.S., states that the DJJ shall require Level 1 screenings for personnel in delinquency facilities, services, and programs. Thus, the statutes appear to conflict on the level of screening required. Representatives from the DJJ have indicated that the department in practice applies the more stringent Level 2 screening requirements of s. 985.01(2), F.S., for all employed and contracted personnel.

With regard to the DJJ's ability to grant exemptions from employment disqualification based upon Level 2 employment screenings, the statute provides that the DJJ may not grant an exemption for any offense enumerated in the Level 2 screening section, which was disposed of within the last seven years.⁷

Criminal Justice Information Program: Section 943.05, F.S., establishes the Criminal Justice Information Program within the FDLE, which is to include the implementation of a statewide automated fingerprint identification system that is available to all criminal justice agencies. Section 943.051, F.S., requires the following persons to be fingerprinted: (a) adults charged with or convicted of felonies, misdemeanors, or specified ordinances; and (b) minors charged with or found to have committed specified misdemeanors and offenses that would be felonies if committed by an adult. Such fingerprints are used as the basis for criminal history records that are entered into the statewide automated fingerprint identification system.⁸

The FDLE is statutorily authorized to charge state agencies from \$8 to \$23 per state criminal history request. The fee applicable to the DJJ is \$8 per request made.⁹

III. Effect of Proposed Changes:

The committee substitute amends s. 985.407(4), F.S., to require a Level 2, rather than Level 1 screening prior to employing persons by the DJJ, or by a provider under contract with the DJJ, in delinquency facilities, services, or programs. The committee substitute's Level 2 screening requirement brings s. 985.407(4), F.S., into conformity with the: (a) Level 2 screening requirements of s. 985.01(2), F.S.; and (b) DJJ's current screening practices.

The committee substitute also establishes a new, continuous state criminal history screening process for DJJ and provider personnel. This process requires the DJJ to electronically submit to the FDLE: (a) fingerprints obtained during Level 2 employment screenings; and (b) by December 15, 2005, fingerprint information for all persons employed by the DJJ, or its providers, in delinquency facilities, services, or programs if that person's information has not previously been submitted to the FDLE by the DJJ.¹⁰ The FDLE must retain and enter fingerprint information submitted by the DJJ into the statewide automated fingerprint identification system

⁶ The Florida Supreme Court has defined good moral character as, "... acts and conduct which would cause a reasonable man to have substantial doubts about an individual's honesty, fairness, and respect for the rights of others and for the laws of the state and nation." *Florida Board of Bar Examiners, Re: G.W.L.*, 364 So.2d 454, 458 (Fla.1978).

⁷ Section 435.04(3), F.S.

⁸ Section 943.051(4), F.S.

⁹ Section 943.053, F.S.

¹⁰ The bill specifies that the requirement for the DJJ to submit fingerprint information for all current personnel does not apply to law enforcement, correctional, and correctional probation officers, as s. 943.13, F.S., sets forth the employment screening requirements for those persons.

and must search to determine whether any arrest records are associated with the fingerprints.¹¹ Arrest records identified by the FDLE must be reported to the DJJ in a manner and time frame established by the FDLE in rule.

The committee substitute requires the DJJ to pay an annual fee to the FDLE for its costs resulting from the retention of fingerprint information. Additionally, the FDLE is required to adopt rules that establish the amount of the annual fee and procedures for the submission and retention of fingerprints submitted by, and the dissemination of search results to, the DJJ. The committee substitute specifies that the rule may apply to the DJJ individually, or that, if otherwise authorized by law, it may apply to the DJJ and other employing agencies.

The committee substitute directs the department to notify FDLE when a person whose fingerprint information is retained under this provision is no longer employed by the department, or by a provider under contract with the department, in a delinquency facility, service, or program. The committee substitute specifies that this notice must be submitted to FDLE no later than 6 months after the date of the change in a person's employment status. Fingerprint information for persons identified by the department in the notice shall be removed from the statewide automated fingerprint system.

Finally, the committee substitute provides appropriations of \$36,834 from recurring general revenue, \$86,407 from nonrecurring general revenue, and \$133,335 from recurring trust funds to pay the FDLE fees for fingerprint retention services, and to pay associated implementation expenses DJJ incurs.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Pursuant to Art. VII, s. 18 of the Florida Constitution, the provision concerning local mandates, the Legislature may not pass a law requiring a county or municipality to spend funds unless an appropriation of sufficient funding is provided. This committee substitute, however, does not appear to implicate this provision as it does not directly require counties to pay for employment screening costs for detention workers. Instead, s. 985.2155, F.S., as amended by ch. 2004-263, L.O.F., imposes the obligation of paying all detention costs on the counties beginning July 1, 2005. Further, even if this committee substitute were construed as implicating the local mandates provision, the committee substitute is anticipated to have an insignificant fiscal impact on the counties, i.e., less than \$1.6 million, based on estimated recurring costs to counties of \$14,838 beginning in 2005-06. Accordingly, the committee substitute appears to be exempt from the constitutional mandate funding requirements.

¹¹ The bill provides that fingerprint information entered into the statewide automated fingerprint identification system shall be available for all purposes and uses authorized for arrest fingerprint information received pursuant to s. 943.051, F.S., which addresses the type of arrests, charges, and convictions for which fingerprint information must be submitted to the FDLE.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DJJ indicates that its private providers currently pay the \$32 Level 2 employment screening cost and that the private providers will be responsible for costs resulting from this committee substitute’s requirements. As discussed below, the current number of private provider employees is 11,029. Thus, the DJJ may bill the private providers for \$352,928 (\$32 fee multiplied by 11,029 employees) in Fiscal Year 2005-06. Although Level 2 screenings have previously been conducted on these employees, the FDLE indicates that it will be necessary to conduct those screenings again in order to enter the fingerprint records into the statewide automated fingerprint system. Additionally in FY 2005-06, DJJ may bill private providers for \$66,174 (\$6 fee multiplied 11,029) for fingerprints retained by FDLE. In years 2 through 5, an additional 25% is built into the estimate to account for turnover; therefore, the retention fee estimated is \$82,178 for out years. In year five, the committee substitute requires a new background check for those employees who have not been checked within the past five years. The \$132,348 referenced in the chart below is based on 50 percent retention. The department estimated annual fees beyond 2010 at \$20,032.

Costs Associated	Fee	# of Bkgd / Prints	New Fees as a Result of this Bill				
			2005-06 Year 1	2006-07 Year 2	2007-08 Year 3	2008-09 Year 4	2009-10 Year 5
To be Billed to Private Providers							
State/Natl. Crim. History	\$32	11,029	352,928				
Fingerprint Retention Fee	\$6		66,174	82,718	82,718	82,718	82,718
5th Year Natl. Re-Check <i>(Assume 50% Retention in yr 5)</i>	\$24		0	0	0	0	132,348
Total		11,029	419,102	82,718	82,718	82,718	215,066

C. Government Sector Impact:

Summary:

The committee substitute permits the FDLE to charge an annual fee for its fingerprint retention services. The gross fiscal impact of this committee substitute is anticipated to be

a total of \$455,936 for background checks and fingerprint retention in Fiscal Year 2005-06. The fiscal impact in future fiscal years is \$119,552 until year five. The committee substitute requires a federal criminal records check by the Federal Bureau of Investigation every 5 years following the date of the person’s employment. The cost for these checks is \$24, and affects private providers. It is unknown how many contract employees will be retained for the full five years. The \$132,348 referenced in the chart below for year 5 is based on a 50 percent retention rate.

Costs Associated	Fee	# of Bkgd / Prints	New Fees as a Result of this Bill				
			2005-06 Year 1	2006-07 Year 2	2007-08 Year 3	2008-09 Year 4	2009-10 Year 5
Department of Juvenile Justice (Total Employees)							
Fingerprint Retention Fee	\$6	6,139	36,834	36,834	36,834	36,834	36,834
DJJ State Share							
Fingerprint Retention Fee	\$6	3,666	21,996	21,996	21,996	21,996	21,996
DJJ County Share							
Fingerprint Retention Fee	\$6	2,473	14,838	14,838	14,838	14,838	14,838
Private Providers							
State/Natl. Crim. History	\$32	11,029	352,928				
Fingerprint Retention Fee	\$6		66,174	82,718	82,718	82,718	82,718
5th Year Natl. Re-Check (Assume 50% Retention in yr 5)	\$24		0	0	0	0	132,348
TOTAL		17,168	455,936	119,552	119,552	119,552	251,900

As these costs may be shared with the DJJ’s private providers and the counties under existing contracts and statute, the following net fiscal impacts are anticipated: (a) for the DJJ, \$21,996 in Fiscal Year 2005-06 and in future years; (b) for the private providers, \$419,102 in Fiscal Year 2005-06 and \$82,718 in future years; and (c) for the counties, \$14,838 in Fiscal Year 2005-06 and in future years.

State Government Impact:

The Department of Juvenile Justice will not be assessed the initial fees for state and national background checks. There will, however be a \$6 fee assessed for each fingerprint retained in the statewide automated fingerprint identification system. The total number of DJJ employees this committee substitute affects is 5,388; however, with anticipated turnover, the number of records likely to be retained would be 6,139 in any one given year. For Fiscal Year 2005-06, this amount is \$36,834, of which \$14,838 may be billed to the counties. In addition, \$86,407 in non-recurring costs have been identified by the Department of Juvenile Justice for Fiscal Year 2005-06 for programming and labor costs associated with processing current records into the new statewide database.

Costs Associated	Fee	# of Bkgd / Prints	New Fees as a Result of this Bill				
			2005-06 Year 1	2006-07 Year 2	2007-08 Year 3	2008-09 Year 4	2009-10 Year 5
Dept. Juvenile Justice							
Fingerprint Retention Fee	\$6	6,139	36,834	36,834	36,834	36,834	36,834

Local Government Impact:

Currently s. 985.2155, F.S., as amended by ch. 2004-263, L.O.F., will require Florida counties effective July 1, 2005, to pay the costs of detention care provided by the DJJ for juveniles during the preadjudication phase. Accordingly, it appears that the costs incurred by the DJJ for fingerprint retention under this committee substitute may be passed on to the counties. The number of current DJJ detention employees is 2,200. With anticipated turnover, it is estimated the number of records likely to be retained 2,473 in any one given year. Thus, the DJJ may bill the counties for \$14,838 (\$6 retention fee multiplied by 2,473) in Fiscal Year 2005-06 and in future fiscal years.

Costs Associated	Fee	# of Bkgd / Prints	New Fees as a Result of this Bill				
			2005-06 Year 1	2006-07 Year 2	2007-08 Year 3	2008-09 Year 4	2009-10 Year 5
Could Be Billed to County							
Fingerprint Retention Fee	\$6	2,473	14,838	14,838	14,838	14,838	14,838

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
