

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7089 PCB SSC 08-10 Department of Juvenile Justice Public Records Exemption

**SPONSOR(S):** Safety & Security Council; Needelman

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
<u>Orig. Comm.: Safety &amp; Security Council</u>	<u>13 Y, 0 N</u>	<u>Hogge/Davis</u>	<u>Havlicak</u>
<u>1) Policy &amp; Budget Council</u>	<u>25 Y, 3 N</u>	<u>Leznoff</u>	<u>Hansen</u>
<u>2)</u>	<u></u>	<u></u>	<u></u>
<u>3)</u>	<u></u>	<u></u>	<u></u>
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<u>5)</u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

In July 2007, Governor Crist authorized the creation of the Blueprint Commission to develop recommendations to reform the juvenile justice system. The Commission met throughout the second half of 2007, issuing its report entitled "Getting Smart About Juvenile Justice in Florida" in February 2008. The Commission included two recommendations, recommendations 19 and 20, dealing with juvenile records. Motivated by a concern that youth have meaningful employment and other opportunities, the Commission, in recommendation 19, suggested that juvenile arrest records be made confidential when no charges have been filed. In recommendation 20, the Commission called for making the arrest records of first-time nonviolent offenders confidential as long as the juvenile remains crime free.

This bill would make the criminal history record of a minor confidential and exempt from the public records laws, unless the minor has been arrested for, or found to have committed, regardless of adjudication,

- a felony offense; or
- a misdemeanor offense, after having been arrested for, or found to have committed, regardless of adjudication, misdemeanors on at least three prior occasions.

The bill would provide that the record may be disclosed to certain specified persons and entities authorized to receive sealed criminal history information, to each judge in the state courts system to assist in case-related decision making responsibilities, to those contractors authorized to receive sealed criminal history information, and to others currently authorized to receive certain specified juvenile information.

This exemption would stand repealed on October 2, 2014, unless reenacted by the Legislature.

The bill would have a negative nonrecurring fiscal impact on state government in FY 2008-09, in the amount of \$25,000 for one-time start-up programming expenses by the Florida Department of Law Enforcement (FDLE).

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

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**DATE:** 4/21/2008

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.<sup>1</sup> The Florida Supreme Court has noted that chapter 119, F.S., the Public Records Act, was enacted "...to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people."<sup>2</sup>

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>3</sup> Article I, s. 24 of the State Constitution, provides that:

(a) Every person<sup>4</sup> has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution...

Unless specifically exempted, all agency<sup>5</sup> records are available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>6</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate or formalize knowledge.<sup>7</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>8</sup>

The Public Records Act specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time,

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<sup>1</sup> ss. 1390, 1391, F.S. (Rev. 1892).

<sup>2</sup> *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).

<sup>3</sup> Article I, s. 24 of the State Constitution.

<sup>4</sup> s. 1.01(3), F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>5</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean "...any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>6</sup> s. 119.011(11), F.S. (2007)

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.* 379 So.2d 633, 640 (Fla. 1980).

<sup>8</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

under reasonable conditions, and under supervision by the custodian of the public record.

If a record has been made exempt, the agency must redact the exempt portions of the record prior to releasing the remainder of the record.<sup>9</sup> The records custodian must state the basis for the exemption, in writing if requested.<sup>10</sup> Section 119.011(5), F.S., defines “custodian of public records” to mean “... the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining public records, or his or her designee.”

### Blueprint Commission Recommendations

In July 2007, Governor Crist authorized the creation of the Blueprint Commission to develop recommendations to reform the juvenile justice system. The Commission met throughout the second half of 2007, issuing its report entitled “Getting Smart About Juvenile Justice in Florida” in February 2008. The Commission included two recommendations, recommendations 19 and 20, dealing with juvenile records. Motivated by a concern that youth have meaningful employment and other opportunities, the Commission, in recommendation 19, suggested that juvenile arrest records be made confidential when no charges have been filed. In recommendation 20, the Commission called for making the arrest records of first-time nonviolent offenders confidential so long as the juvenile remains crime free.

### **Proposed Public Records Exemption**

This bill would make the criminal history record of a minor confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, unless the minor has been arrested for, or found to have committed, regardless of adjudication, a:

- felony offense; or
- misdemeanor offense, after having been arrested for, or found to have committed, regardless of adjudication, misdemeanors on at least three prior occasions.

However, the bill would permit the record to be disclosed to certain specified persons and entities authorized to receive sealed criminal history information, such as the following:

- a law enforcement agency, when the person is a candidate for employment with a law enforcement agency, or the Florida Bar, when the person is a candidate for admission to the Florida Bar.
- the Department of Children and Family Services (DCF) or the Department of Juvenile Justice (DJJ), when the person is seeking to be employed or licensed by the DCF or the DJJ or in a sensitive position having direct contact with children or certain others such as the aged, developmentally disabled, and elderly.
- the Department of Education (DOE) or a school or school district, when the person is seeking employment with or licensure by the DOE or the school or school district, or any local governmental entity, when the person is seeking employment with or licensure by such local governmental entity licensing child care facilities.
- the relevant authorities, when seeking authorization for employment with or access to a Florida seaport.

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<sup>9</sup> s. 119.07(1)(b), F.S. (2007)

<sup>10</sup> s. 119.07(1)(c) and (d), F.S. (2007)

In addition, the bill would permit the disclosure of these records to judges to assist in their case-related decision making responsibilities, to private contractors authorized to receive sealed criminal history information,<sup>11</sup> and to those persons authorized to receive information obtained by any judge, court employee, DJJ, Parole Commission, the Department of Corrections, among others, in the discharge of official duties under the state juvenile justice code.<sup>12</sup>

Pursuant to the bill, this exemption would be subject to the Open Government Sunset Review Act in accordance with s. 119.15 and stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

### Public Necessity Statement

According to the bill, the exemption is necessary because “youth are often denied employment and other life and career opportunities as a result of mistakes made during adolescence. These offenses can have short and long term consequences, becoming serious impediments to employment, education, and other socially productive and meaningful pursuits, whether at the time they enter adulthood or at some other critical life juncture years after the arrest or conviction.”

#### C. SECTION DIRECTORY:

Section 1. Amending s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

Section 2. Providing a statement of public necessity.

Section 3. Providing an effective date of January 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None

##### 2. Expenditures:

<u>Source</u>	<u>Year</u>	<u>Amount</u>	<u>Type</u>
General Revenue Fund	FY 2008-09	\$25,000	Nonrecurring

This would fund one-time startup programming related to implementation of the proposed exemption by the Florida Department of Law Enforcement (FDLE).

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None

<sup>11</sup> s. 943.053(8), (9) and (10), F.S. (2007). These would include private entities operating a detention facility, a state correctional facility, or a juvenile assessment center or contracted juvenile treatment program.

<sup>12</sup> s. 985.04(1), F.S. (2007)

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**