

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 1764

INTRODUCER: Senator Baxley

SUBJECT: Fees/Foreign Language Court Reporter/Fingerprint Processing

DATE: April 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1764 requires applicants for certification as a foreign language court interpreter or certification as a mediator to pay the fees associated with fingerprint processing for the security background investigation required as part of the certification process in SB 656, a linked bill.

The Florida Constitution requires that legislation imposing or authorizing new state taxes or fees¹ and legislation that raises existing state taxes or fees² be passed by a two-thirds vote of the membership of each house of the Legislature, and the tax or fee provisions must be passed in a separate bill.³ This bill requires applicants seeking certification as a foreign language court interpreter or certification as a mediator to pay the fingerprint processing fees for state and national security background investigations.

The bill takes effect on the same date that SB 656, or other similar legislation, takes effect if the legislation is passed during the 2019 Legislative Session or an extension of the session.

II. Present Situation:

Mediators and Foreign Language Court Interpreters

In 1988, the Florida Supreme Court was tasked with the responsibility of establishing minimum standards for qualifications, professional conduct, and training for court mediators^{4,5} and

¹ FLA. CONST. art. VII, s. 19(a).

² FLA. CONST. art. VII, s. 19(b).

³ FLA. CONST. art. VII, s. 19(e).

⁴ A mediator is a neutral and impartial person who tries to help opposing parties reach a solution to their conflict. BLACK'S LAW DICTIONARY (10th ed. 2014).

⁵ Generally, in order to become a certified mediator someone must be at least 21 years old, of good moral character, and earn a designated number of points for training, education, and mentorship. Training and education requirements vary depending

arbitrators. Before a mediator could be appointed to serve in a circuit, he or she was required to be certified by the chief judge in accordance with the Supreme Court standards.⁶

Similarly, in 2006, the Florida Supreme Court was given the responsibility of establishing minimum standards and procedures to qualify, certify, discipline, and train foreign language interpreters who are appointed by a court.^{7,8}

The Authority of the Court Interpreter Certification and Regulation Program/Board and the Florida Dispute Resolution Center

The Supreme Court, with the assistance of the Office of the State Courts Administrator (OSCA), established two boards to oversee the responsibilities required of them by statute. The Florida Dispute Resolution Center (DRC) was established to assess the qualifications of mediators and the Court Interpreter Certification and Regulation Program/Board was established to determine the qualifications of foreign language interpreters. As part of its responsibilities, the OSCA conducted background checks to determine the suitability of applicants. According to the OSCA, as early as 2007, both groups conducted nationwide criminal history background checks, which required the submission of fingerprints through the Florida Department of Law Enforcement (FDLE) to the Federal Bureau of Investigation (FBI).⁹

In 2017, the FDLE conducted records compliance and technical audits to determine whether state entities possessed the appropriate authority to access national criminal justice information.¹⁰ Pursuant to s. 943.053(2), F.S., the FDLE is prohibited from disseminating criminal justice information that is not in compliance with federal and state laws, regulations, and rules. The FDLE determined that the OSCA did not have sufficient statutory authority to request national criminal history checks for a regulatory purpose.¹¹ The FDLE determined that the OSCA had the authority to perform background checks as a criminal justice agency on its employees, but it did not have the authority to perform criminal history background checks on people who were not employees, such as mediators and court interpreters. Because the OSCA lacked the authority to have the FDLE access the national criminal history background information in the FBI databases, it was determined that the OSCA was limited to accessing the results of Florida background information.

on whether someone seeks to become a county court, family, circuit court, dependency, or appellate mediator.

Fla. R. Cert. & Ct.-Apptd. Mediators 10.100(a).

⁶ Ch. 87-133, s. 6, Laws of Florida.

⁷ Ch. 2006-253, s. 1, Laws of Florida.

⁸ To become certified, a court interpreter must be of good moral character, pass a background check, complete courtroom observation requirements, and pass a written and oral exam demonstrating language proficiency. Florida Courts, *Court Interpreter Certification and Regulation Program, Application for Court Interpreter Registration Renewal* (Effective July, 18, 2018), <https://www.flcourts.org/content/download/402733/3454022/application-for-court-interpreter-registration-renewal.pdf>; Florida Courts, *Court Interpreter Certification and Regulation Program, Steps to Court Interpreter Certification* <https://www.flcourts.org/content/download/217092/1968498/FINAL-Certification-Process-Flow-Chart.pdf>.

⁹ Office of the State Courts Administrator, *Judicial Branch 2019 Legislative Agenda*, 19-20, (April 8, 2019) (on file with the Senate Committee on Judiciary).

¹⁰ *Id.*

¹¹ *Id.* OSCA's position, as stated in the *Judicial Branch 2019 Legislative Agenda*, is that the Department of Justice changed its policy on what constituted the proper authority to conduct national background checks, and this change has necessitated this bill.

FBI Requirements for Conducting a Criminal Record Check for a Noncriminal Justice Licensing or Employment Purpose

The FBI derives its authority to conduct a *criminal* record check for a *noncriminal* justice licensing or employment purpose from Public Law 92-544. Under that law, the FBI is authorized to exchange identification records with state and local government officials for licensing and employment purposes when authorized by a state statute. The statute must be approved by the U.S. Attorney General.¹² The standards that the FBI relies upon in approving state authorizations have been developed through a number of memoranda issued by the Office of Legal Counsel in the Department of Justice.¹³

An authorization consistent with the standards must:

- Be the result of a legislative enactment or its functional equivalent;
- Require fingerprinting of applicants for a license or employment;
- Expressly or by implication authorize the use of the FBI records for screening applicants;
- Not be against public policy; and
- Identify the specific category of applicants or licenses to prevent the authorization from being overly broad in scope.¹⁴

Additionally, the state must designate a government agency that is authorized and responsible for receiving the results of the record check and screening those results to determine whether the applicant is suitable for employing or licensing.¹⁵

If the OSCA receives the requisite statutory authority to conduct criminal history checks for a regulatory purpose, it will be in compliance with federal law.

Level 1 and Level 2 Screening Standards

Chapter 435, F.S., establishes two levels of background screenings that employees must undergo as a condition of employment. Level 1 is the more basic screening and involves an in-state name-based background check, employment history check, statewide criminal correspondence check through the FDLE, a sex offender registry check, local criminal records check, and a domestic violence check.¹⁶ Level 2 screenings are more thorough because they apply to persons in positions of responsibility or trust, often involving more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through the FDLE and a national criminal history records check through the Federal Bureau of Investigation. It may also include local criminal records checks. A level 2 screening disqualifies a person from

¹² The Department of Justice has determined that Attorney General's authority to approve the state "statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j)." U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Identification Services, *Appendix B: Criminal Justice Information (CJIS) Information Letter 95-3, 5* (July 17, 1995), <https://www.ojjdp.gov/pubs/guidelines/appen-b2.html> (Last visited April 8, 2019.)

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 435.03, F.S.

employment if the person has a conviction or unresolved arrest for any one of more than 50 criminal offenses.¹⁷

III. Effect of Proposed Changes:

This bill requires applicants for certification as a foreign language court interpreter or certification as a mediator to pay the existing fees associated with fingerprint processing for the security background investigations required as part of the certification process in SB 656, a linked bill.

The bill takes effect on the same date that SB 656, or other similar legislation, takes effect if the legislation is passed during the 2019 Legislative Session or an extension of the session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Article VII, s. 19, of the State Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, s. 19(d)(1) of the State Constitution defines “fee” to mean “any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.”

Section 25.386, F.S. requires the Supreme Court to set fees to be charged to applicants for certification and renewal of certification as a court interpreter, and s. 44.106 authorizes the Supreme Court to set fees to be charged to mediator applicants for certification and renewal of certification.

Individuals who apply to become a certified interpreter or a certified mediator are required to go to a live scan provider to be fingerprinted at their own expense. The results of the live scan are transmitted to FDLE and to the OSCA. Until 2017, the background screen for interpreters included both the state and national background checks. In 2017, the FDLE advised that the OSCA could no longer require the national checks, until such

¹⁷ Section 435.04, F.S.

time as the legislature granted them statutory authority to do so. For mediators, the cessation of national background screens by FDLE was in 2015.

The bill requires the national background checks be done for new applicants to be court-appointed mediators and foreign language interpreters. The fee for a state and national criminal history background check is not being increased and no new fee is authorized.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The total cost of the Level 1 “state” background check is approximately \$50-\$75 per person, which includes the FDLE fee of \$24.00 and the cost charged by the Livescan provider to perform the fingerprinting.¹⁸ According to the fiscal analysis by the FDLE, the additional cost for a national criminal history record check is \$13.25.¹⁹ Those seeking certification as a foreign language court interpreter or as a mediator will bear the costs associated with security background investigations.

C. Government Sector Impact:

The Office of the State Courts Administrator does not anticipate a meaningful increase in judicial workload because court staff are already performing some background screening of applicants for certification as court interpreters and mediators.²⁰

Currently, applicants are paying the \$24 state portion of the fee for the state (Level 1) background screening. These fees are deposited into the FDLE’s Operating Trust Fund.²¹ The additional \$13.25 for the national (Level 2) background screening is paid to the federal government and therefore there would not be a state fiscal impact from the bill.

The cost to retain the information for the first year is included in the criminal history record check. Although not required, an agency can pay FDLE to retain a set of fingerprints for \$6 annually, which also is deposited in the FDLE’s Operating Trust Fund.

¹⁸ Court Interpreter Certification and Regulation Program (CICRP) Background Check Screening Process for Court Interpreters, <https://www.flcourts.org/content/download/402727/3453986/CICRP-background-check-announcement.pdf> (Last visited April 9, 2019.)

¹⁹ Florida Department of Law Enforcement, *Judicial Impact Statement for SB 656* (March 8, 2019).

²⁰ Office of the State Courts Administrator, *Judicial Impact Statement for SB 656* (Feb. 28, 2019).

²¹ *Supra* note 20

The FDLE states that when it begins to participate in the federal retention program, the FBI will not require a fee for federal fingerprint retention.²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.386 and 44.106.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²² *Supra* note 20