

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7009 PCB GOS 21-04 OGSR/Juvenile Criminal History Records

**SPONSOR(S):** Government Operations Subcommittee, Barnaby

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 7012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Toliver	Smith
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Mathews	Hall
2) State Affairs Committee			

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Criminal Justice Information Program (CJIP) is a program established under the Florida Department of Law Enforcement (FDLE). CJIP was created to act as the state's central criminal justice information repository. Criminal history information compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request. Criminal justice agencies are provided criminal history information free of charge on a priority basis.

Section 943.053, F.S., provides that criminal history information related to juveniles compiled by CJIP is confidential and exempt from public record requirements, except when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court. The exempt juvenile criminal history information must be made available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- Certain agencies and to any person within those agencies or entities who has direct responsibility for employment, access authorization, or licensure decisions.

Section 985.04, F.S., provides that the name, photograph, address, and crime or arrest report of a juvenile is not confidential and exempt when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court. The exemption also provides that a public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs of the above-mentioned juveniles' records that are not confidential and exempt or otherwise restricted from publication by law. However, those records would still be available to the public through a public records request.

The bill saves from repeal the public record exemptions, which will repeal on October 2, 2021, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

##### Criminal Justice Information Program

The Criminal Justice Information Program (CJIP) is a program established under the Florida Department of Law Enforcement (FDLE).<sup>5</sup> CJIP was created to act as the state's central criminal justice information repository. CJIP must:

- Establish and maintain a communication system capable of transmitting criminal justice information to and between criminal justice agencies.
- Establish, implement, and maintain a statewide automated biometric identification system.
- Initiate a crime information system that is responsible for preparing and disseminating reports, providing data, and developing and maintaining an offender based transaction system.
- Adopt rules to implement, administer, manage, maintain, and use the automated biometric system and uniform offense reports and arrest reports.
- Establish, implement, and maintain a Domestic and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies.
- Establish, implement, and maintain a system for transmitting to and between criminal justice agencies information about writs of bodily attachment issues.
- In certain circumstances, retain fingerprints submitted by criminal and noncriminal justice agencies to the department for a criminal history background screening as provided by rule and enter the fingerprints in the statewide automated biometric identification system.

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</sup> Sections 20.201(2)(b) and 943.05, F.S.

Criminal history information<sup>6</sup> compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request.<sup>7</sup> Criminal justice agencies are provided criminal history information free of charge on a priority basis.<sup>8</sup> With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 per name submitted.<sup>9</sup>

### CS/CS/HB 293 (2016)

Prior to 2016, Florida law allowed a juvenile's criminal history information to be disseminated and made public in the same manner as that of an adult in certain circumstances.<sup>10</sup> However, another provision of law specified that all records obtained as a result of a juvenile being involved with the juvenile justice system were, with some exceptions,<sup>11</sup> confidential.<sup>12</sup>

In 2012, the First District Court of Appeal, in *G.G. v. FDLE*, 97 So. 3d 268 (Fla. 1st DCA 2012), highlighted the inconsistency that existed between these two provisions: one specifically made most juvenile records confidential, while the other allowed a juvenile's record to be disseminated in the same manner as that of an adult. The court held that FDLE's general authority to disseminate juvenile records was limited by the provision that required most juvenile criminal history records to be confidential.<sup>13</sup>

The Legislature sought to address the inconsistency with the passage of CS/CS/HB 293 (2016).<sup>14</sup> The bill clarified that juvenile records are confidential and exempt (rather than only confidential),<sup>15</sup> and provided that the public records exemption applied retroactively. The bill also specified which juvenile records were not confidential and exempt and amended the conflicting provisions so that the list of juvenile records deemed not to be confidential and exempt were identical.

### Public Record Exemptions under Review

Section 943.053, F.S., provides that criminal history information related to juveniles compiled by CJIP is confidential and exempt from public record requirements, except when the juvenile has been taken into

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<sup>6</sup> Section 943.045(5), F.S., defines "criminal history information" to mean information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

<sup>7</sup> Section 943.053(3)(a), F.S.

<sup>8</sup> Section 943.053(3)(a), F.S.

<sup>9</sup> Section 943.053(3)(e), F.S. The guardian ad litem program; vendors of the Department of Children and Families, Department of Juvenile Justice, and Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

<sup>10</sup> Section 943.053(3), F.S. (2015).

<sup>11</sup> Section 985.04(2), F.S. (2015).

<sup>12</sup> Section 985.04(1), F.S. (2015).

<sup>13</sup> *G.G. v. FDLE*, 97 So. 3d 268 (Fla. 1st DCA 2012).

<sup>14</sup> Chapter 2016-78, L.O.F.

<sup>15</sup> There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (Aug. 1, 1985).

custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court. The exempt juvenile criminal history information must be made available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- Certain agencies<sup>16</sup> and to any person within those agencies or entities who has direct responsibility for employment, access authorization, or licensure decisions.<sup>17</sup>

The exemption specifies that juvenile criminal history information that is not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.<sup>18</sup>

Section 985.04, F.S., provides that the name, photograph, address, and crime or arrest report of a juvenile is not confidential and exempt when the juvenile has been taken into custody for, charged with, or found guilty of, a felony offense, or the juvenile has been transferred to adult court. The exemption also provides that a public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs of the above-mentioned juveniles' records that are not confidential and exempt or otherwise restricted from publication by law.<sup>19</sup> However, those records would still be available to the public through a public records request.<sup>20</sup>

The 2016 public necessity statement<sup>21</sup> for the exemptions states the following:

Many individuals who have either completed their sanctions and received treatment or who were never charged in the juvenile justice system have found it difficult to obtain employment. The presence of an arrest or a misdemeanor record in these individuals' juvenile past and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program creates an unnecessary barrier to becoming productive members of society, thus frustrating the rehabilitative purpose of the juvenile system. The Legislature found that it is in the best interest of the public that individuals with juvenile misdemeanor records are given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.<sup>22</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2021, unless reenacted by the Legislature.<sup>23</sup>

During the 2020 interim, subcommittee staff contacted staff from FDLE and the Florida Department of Juvenile Justice (DJJ) concerning the exemptions.<sup>24</sup> Staff for both agencies were unaware of any

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<sup>16</sup> See ss. 943.0585(6) and 943.059(6), F.S. These sections require persons who are seeking employment with specified agencies (e.g., Department of Children and Families, Department of Health, or Department of Juvenile Justice) to acknowledge their criminal history record, even if such record has been sealed or expunged.

<sup>17</sup> Section 943.053(3)(c), F.S.

<sup>18</sup> Section 943.053(3)(a), F.S.

<sup>19</sup> Section 985.04(2)(a)2., F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

<sup>22</sup> Chapter 2016-78, L.O.F.

<sup>23</sup> Section 624.4212(6), F.S.

<sup>24</sup> Open Government Sunset Review Questionnaire, Information related to certain Criminal Justice Information regarding Juveniles, responses on file with the Government Operations Subcommittee.

litigation concerning the exemptions since they were amended in 2016.<sup>25</sup> Both agencies stated that they had no issues interpreting or implementing the exemptions.<sup>26</sup> FDLE and DJJ recommended reenactment of the exemptions in the current form.<sup>27</sup> In addition to those two state agencies, subcommittee staff sent questionnaires to county sheriff's departments and local police departments.<sup>28</sup> All of the responding agencies that reported collecting the criminal history information of juveniles recommended to reenact the public records exemption.<sup>29</sup> An overwhelming majority of those responding recommended reenactment of the exemptions as is.<sup>30</sup> Only two responding agencies recommended reenactment with changes.<sup>31</sup>

### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record exemptions, thereby maintaining the exemptions for certain criminal history information related to juveniles compiled by CJIP and certain criminal records of juveniles.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 943.053, F.S., relating to the dissemination of criminal justice information.

**Section 2:** Amends s. 985.04, F.S., relating to oaths, records, and confidential information.

**Section 3:** Provides an effective date of October 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

#### **D. FISCAL COMMENTS:**

None.

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.