

**STORAGE NAME:** h2043.go

**DATE:** April 16, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
ANALYSIS**

**BILL #:** HB 2043

**RELATING TO:** Presentence Investigation Reports

**SPONSOR(S):** Representative Bense

**COMPANION BILL(S):** CS/SB 1870 (similar)

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

- (1) GOVERNMENTAL OPERATIONS
  - (2) CRIME & PUNISHMENT
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

The bill provides that victims in Florida will be statutorily entitled to receive a copy of the presentence investigation (PSI). In order to accomplish this purpose, the bill amends s. 960.001, F.S., (1998 Supp.), which generally specifies a victim's legal rights, to provide that the state attorney, upon request, must permit a victim, a victim's parent or guardian if the victim is a minor, or the victim's next of kin in a homicide case to receive a copy of the PSI, which excludes any confidential information pertaining to the offender's medical history, mental health, or substance abuse, or to another victim.

Furthermore, the bill amends s. 945.10, F.S. (1998 Supp.), which specifies that a PSI report is a confidential document, to cross-reference s. 960.001, F.S., so that it is clear that victims are exempted from the PSI's regular confidentiality protections.

The bill has an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

When a defendant has been found guilty or has pled no contest in a criminal case, the Department of Corrections may be ordered by the trial court to complete a presentence investigation (PSI) report. If the offender is found guilty of a first felony offense or a felony while under the age of 18 years old, the court may not impose a sentence, other than probation, without a PSI report. Fla.R.Crim.P. 3.710.

**Contents of the PSI report**

The report must include:

- ▶ a complete description of the situation surrounding the charged criminal activity, and the offender's description of the act, if he or she chooses to provide this information;
- ▶ the offender's sentencing status, e.g., whether the offender is on probation or is a first-time, habitual, or youthful offender, and the offender's prior record of arrests and convictions, along with any explanation given by the offender for the prior record;
- ▶ the offender's residence history, educational and employment background, monthly income, estimated debts, and social history, including family relationships, marital status, and interests;
- ▶ the offender's medical history, and if appropriate, his or her psychological evaluation;
- ▶ information about nonincarcerative environments to which the offender may be returned should the court not impose a jail or prison sentence;
- ▶ information about resources available to assist the offender;
- ▶ the PSI report drafter's views of the offender's motivations and an assessment of the offender's explanations for his or her criminal activity;
- ▶ a statement regarding the extent of the victim's loss or injury; and
- ▶ a disposition recommendation based on the appropriateness of treatment or supervision, the ability of the department to adequately supervise the offender in the community, and the existence of treatment which might assist the offender, but is not available in the community.

See s. 921.231, F.S.

**Confidentiality and disclosure of the PSI report**

Pursuant to both court rule and statute, an offender's PSI report is a non-public record which may not be inspected under ch. 119, Florida's Public Records Act. Fla.R.Crim.P. 3.712; s. 945.10, F.S. Furthermore, the courts have explained that statutorily a PSI contains both confidential and non-confidential information. *McClendon v. State*, 589 So.2d 353-354 (Fla. 1st DCA 1991). Section 945.10, F.S., provides that information concerning the offender's mental health, medical, and substance abuse records, and concerning a victim's statement and identity is confidential; whereas, s. 921.31, F.S., specifies that the portion of the PSI which addresses the basic classification and evaluation by the DOC is non-confidential.

Statute provides that a PSI may be released to the court, state attorney, defense counsel, and persons conducting legitimate research who sign a confidentiality agreement. s. 945.10(2), F.S. The subsection further provides that the PSI released to defense counsel may not include the victim's statement or address, or the statement or the address of a relative of the victim; however, the PSI provided to the state attorney and court may contain this information. Moreover, case law adds that any confidential information contained in the PSI, which is relied on by the trial court, must be released to a defendant in a *death penalty case*. *Gardener v. Florida*, 430 U.S. 349 (1977).

On the other hand, the court rules provide that the PSI may only be released to the sentencing and reviewing court, the parties, i.e., counsel for the state and the defense, as provided for in Fla.R.Crim.P. 3.713, and persons having a legitimate professional interest in the information. Fla.R.Crim.P. 3.713 provides that the trial court *may* disclose any part of the PSI to the parties, but that any information disclosed to one party must be disclosed to the other party. Moreover, the rule provides that the trial court *must* disclose any factual material, including but not limited to, the offender's education and employment history, prior record, and any mental or physical examinations. The purpose of this mandatory disclosure requirement is to enable the defendant to challenge any of the facts upon which the PSI is based. Again, it should be noted that case law requires that any confidential information contained in the PSI, which is relied on by the trial court, must be released to a defendant in a *death penalty case*.

The only Florida case construing the aforementioned statutes and the court rules is *Singletary v. Smith*, 23 Fla. L. Weekly D715 (Fla. 2d DCA March 11, 1998). In this case, the DOC gave the defense a PSI, from which the victims' statements were redacted, and gave the state an unredacted copy. On appeal, the Court ruled that the DOC should not release the confidential portions of the PSI to any party. Instead, the DOC should provide the trial court with an unredacted copy, and provide the defense and state identical copies in which all confidential information has been redacted. The court explained that then, pursuant to court rule, the trial court decides on a case-by-case basis whether any confidential information should be released, and noted that the court rule requires that any information disclosed to one party must be disclosed to the other. The court did not discuss the fact that statutorily the state is entitled to the victim's statements, while the defense is not.

Thus, under current law, the only conclusion which can be drawn is that: (1) in death penalty cases, the defense and the state may receive the PSI and any confidential information relied on by the court; and (2) in non-death penalty cases, the defense and the state may receive identical copies of the PSIs. The courts have not addressed whether the statute which allows the state access to confidential victim information, but which disallows the defendant to have this information can stand in the face of the court rule which requires that any PSI information released to one party must also be released to the other party.

#### **Disclosure of PSI reports to victims**

Given the strict legal limitations on PSI disclosure, Florida victims are not entitled to receive or review the PSI; however, at least five other states have legislation which permits victims to review or receive the PSI.

In Alabama, a law passed in 1995 which provides that the victim has the right to review a copy of the PSI, with the confidential information redacted, when the PSI is provided to the defendant or his counsel. Ala. Code s. 15-23-73 (1998). Idaho, likewise, allows the victim to review the PSI prior to sentencing, but adds that the victim must maintain the confidentiality of the PSI, and cannot disclose its contents to anyone, except the prosecutor and court. Idaho Code s. 19-5306 (1998). Alaska also allows a victim to review the PSI, upon request, but limits the review to: (1) the DOC's summary of the offense; (2) the defendant's version of the offense; (3) all statements and summaries of the victim; and (4) the DOC's sentence recommendation. Alaska Stat. s. 12.55.023 (1998); *See also* Mont. Code Ann. s. 46-18-113 (1997) (allowing the prosecutor to disclose the contents of the PSI to the victim); Ariz. Rev. State. Ann. s. 13-4425 (allowing victim to receive a PSI report). There is no reported case law construing the validity, constitutionally or otherwise, of these statutes.

#### **B. EFFECT OF PROPOSED CHANGES:**

The bill provides that victims in Florida will be statutorily entitled to receive a copy of the PSI. In order to accomplish this purpose, the bill amends s. 960.001, F.S. (1998 Supp.), which generally specifies a victim's legal rights, to provide that the state attorney, upon request, must permit a victim, a victim's parent or guardian if the victim is a minor, or the victim's next of kin in a homicide case to receive a copy of the PSI, which excludes any confidential information pertaining to the offender's medical history, mental health, or substance abuse, or to another victim.

Furthermore, the bill amends s. 945.10, F.S. (1998 Supp.), which specifies that a PSI is a confidential document, to cross-reference s. 960.001, F.S., so that it is clear that victims are exempted from the PSI's regular confidentiality protections.

The bill has an effective date of July 1, 1999.

**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?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. State Attorneys will be required to furnish to victims copies of PSIs.

(3) any entitlement to a government service or benefit?

Yes. Victims will be entitled to receive copies of PSIs from State Attorneys.

b. If an agency or program is eliminated or reduced:

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

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(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?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

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

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

N/A

- (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?

N/A

- 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:

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

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. STATUTE(S) AFFECTED:**

Amends sections 945.10 and 960.001, F.S. (1998 Supp.).

**E. SECTION-BY-SECTION ANALYSIS:**

None.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the ability of municipalities or counties to raise revenues.

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

The bill does not reduce the state taxes shared with municipalities or counties.

V. COMMENTS:

Article V, Section 2(a), Florida Constitution, provides that "[t]he supreme court shall adopt rules for the practice and procedure in all courts...." While this same constitutional provision states that a rule may be repealed "by a two-thirds vote of the membership of each house of the legislature," the Legislature does not have "constitutional authority to enact any law relating to practice and procedure." *In re Clarification of Florida Rules of Practice and Procedure*, 281 So. 2d 204 (Fla. 1973). In determining whether a legislative enactment encroaches on the Supreme Court's rule-making authority, the courts have drawn a "distinction between practice and procedure, which is regulated by the Supreme Court and substantive law which is regulated by the Legislature." *Id.*

"Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion." *In re Florida Rules of Criminal Procedure*, 272 So. 2d 65, 66 (Fla. 1972)(Adkins, J., concurring). Further, "[t]he term 'rules of practice and procedure' includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution." *Id.* On the other hand, "substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property." *Id.*

For example, in *Huntley v. State*, 339 So.2d 194 (Fla. 1976), the Supreme Court dealt with the issue of whether the Legislature could enact a statute which provided that the trial court was required to obtain a PSI for all felony defendants, when Fla.R.Crim.P. 3.710 only required a PSI in cases involving first felonies or a felony offender under 18 years of age. The Court ruled that the Legislature could not because the exercise of judicial discretion in sentencing proceedings is a procedural matter properly determined by the court rules. See also *Rhynes v. State*, 312 So.2d 520 (Fla. 4th DCA 1975) (holding that the regulation of PSIs is a matter within the constitutional rule making power of the court).

Concerning the release of PSI reports, the Supreme Court adopted Fla.R.Crim.P. 3.712 in 1972. The rule provides that the only persons/entities to which a PSI shall be available are the sentencing and reviewing court, the parties, and persons or agencies with a legitimate professional interest in the PSI. The bill expands this availability to victims, and thus, the question of whether the Legislature is permitted to enact such a statute, when a court rule currently addresses this matter, is presented.

It can be argued that the Legislature is permitted to expand the availability of PSIs because such is substantive in nature. In other words, the Legislature is merely declaring that a victim has a right to this information, and is not telling the court how to proceed. Indeed, the Legislature, throughout the statutes, routinely determines what types of records and information are public and non-public or confidential and non-confidential. See ch. 119 (the chapter defining public records and providing that the Legislature may exempt certain records and information from public disclosure).

On the other hand, however, based on the *Singleton* case discussed in the Present Situation section, it appears that the courts often adhere to the court rules concerning PSIs. For example in *Singleton*, the court, without discussing the fact that the state is statutorily entitled to a victim's statement contained in the PSI, held that the DOC is only permitted to provide the state and the defense with redacted PSI reports, and that only the trial court, pursuant to the court rules, should determine whether to distribute confidential victim statements to the parties. If the *Singleton* rationale were followed, the bill's expansion of PSI availability could be invalidated as procedural.

Nonetheless, any provisions of this bill deemed "procedural" could serve to alert the court to the legislative intent and the public desire. See *Leapai v. Milton*, 595 So. 2d 12 (Fla. 1992). Further, in the past the court has chosen, in certain cases, to simply adopt the procedural portions of a legislative enactment as a rule of court. See *Timmons v. Combs*, 608 So. 2d 1, 2 (Fla. 1992); *Kalway v. Singleton*, 708 So. 2d 267, (Fla. 1998)(adopting statutory time limitations).

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

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