

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1151 CS Department of Juvenile Justice
SPONSOR(S): Llorente and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice Committee	6 Y, 0 N, w/CS	White	White
2) Governmental Operations Committee	7 Y, 0 N	Brazzell	Everhart
3) Justice Appropriations Committee			
4) Justice Council			
5) _____			

SUMMARY ANALYSIS

Chapter 435, F.S., sets forth two levels of employment background screenings that must be conducted by employers when required by law. Level 1 screenings require state criminal history checks to determine whether an employee has been convicted of or pled guilty to enumerated disqualifying offenses. Level 2 screenings require state and federal criminal history checks and provide for a greater number of disqualifying offenses.

Currently, s. 985.01 F.S., requires the Department of Juvenile Justice (DJJ) to conduct Level 2 screenings for personnel in programs for children or youth, while s. 985.407, F.S., requires the DJJ to conduct Level 1 screenings for personnel in delinquency facilities, services, and programs. Although the statutes conflict, the DJJ has in practice consistently applied the more stringent Level 2 screening requirements.

The committee substitute (hereinafter "the bill") eliminates the statutory conflict by amending s. 985.407(4), F.S., to require Level 2 screenings for persons employed by the DJJ, or by a provider under contract with the DJJ, in delinquency facilities, services, or programs. Such personnel are also required, under the bill, to have federal criminal record checks repeated every five years following the date of their employment.

The bill also establishes a new, continuous state criminal history screening process for DJJ and provider personnel, which requires the 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 gross fiscal impact of this bill is estimated to be a total of \$499,092 in Fiscal Year '05—'06 and of \$119,550 in future years. These costs are to be shared among the DJJ, its private providers, and the counties and the following net fiscal impacts are anticipated: (a) for the DJJ, \$61,846 in Fiscal Year '05—'06 and \$21,732 in future years; (b) for the private providers, \$394,268 in Fiscal Year '05—'06 and \$82,716 in future years; and (c) for the counties, \$42,978 in Fiscal Year '05—'06 and \$15,102 in future years. Further, the bill's requirement for repeated federal criminal history checks every five years will result in additional annual costs of \$15,024 for the DJJ's providers in Fiscal Year 2010—2011 and fiscal years thereafter..

The bill takes effect July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases agency authority in the Florida Department of Law Enforcement (FDLE) by authorizing that department to adopt rules applicable to the Department of Juvenile Justice (DJJ) that prescribe employment screening procedures and annual fees.

Ensure Lower Taxes – The bill authorizes the FDLE to charge annual fees for its employment screening services.

Promote personal responsibility – The bill clarifies that Level 2, rather than Level 1, employment screenings must be conducted by the DJJ for all DJJ and provider personnel prior to employment and it requires federal criminal history checks to be conducted every five years following the date of such personnel's employment. These more rigorous screening requirements may require greater personal accountability for unlawful behavior.

B. EFFECT OF PROPOSED CHANGES:

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 1 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

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*

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 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, 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

Effect of bill: The bill amends s. 985.407(4), F.S., to require the DJJ require, for persons employed by the DJJ, or by a provider under contract with the DJJ, in delinquency facilities, services, or programs:

- A Level 2, rather than Level 1, screening prior to employment;
- A federal criminal records check by the Federal Bureau of Investigation every five years following the date of the person's employment.

The bill's Level 2 screening requirement brings s. 985.407(4), F.S., into conformity with the Level 2 screening requirements of s. 985.01(2), F.S.; and DJJ's current screening practices.

The bill 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 enter fingerprint information submitted by the DJJ into the statewide automated fingerprint identification system and must conduct searches to determine whether any arrest records are associated with the

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).

⁶ The Florida Supreme Court indicated that in assessing if an individual is of good moral character, it should be considered whether that person has performed "... 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.

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 DJJ is required to notify the FDLE when any person, whose fingerprint information must be retained by the FDLE under the bill, is no longer employed by the DJJ or a provider. This notice must be given within six months following the date of the change in the person's employment status, and such person's fingerprint information must be removed by the FDLE from the automated statewide fingerprint system at that time. The purpose of the six-month time frame is to avoid the premature removal of a person's fingerprint information by the FDLE should that person again seek employment with the DJJ or a provider during those six months.

The bill 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 bill 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.

C. SECTION DIRECTORY:

Section 1 amends s. 985.407(4), F.S.; clarifies that the DJJ must conduct Level 2, rather than Level 1, employment screenings; requires federal criminal records checks to be conducted every five years; requires fingerprint information for all DJJ and provider personnel to be submitted to the FDLE by December 15, 2005; requires the FDLE to retain submitted fingerprint information and to input such information in the statewide automated fingerprint identification system; requires the FDLE to search arrest fingerprint information against submitted fingerprint information; requires the FDLE to report arrest information identified with the submitted fingerprints to the DJJ; requires the DJJ to pay an annual fee for FDLE's costs to retain submitted fingerprints; requires the DJJ to inform the FDLE within six months of changes in the employment of DJJ and provider personnel whose fingerprints are retained by the FDLE; and requires the FDLE to remove fingerprint information for persons no longer employed.

Section 2 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Non-recurring initial fingerprint submission revenue: The bill requires the fingerprints of all DJJ and provider employees to be submitted to the FDLE for retention by December 15, 2005. Representatives of the DJJ have indicated that FDLE will not charge the DJJ for its initial submission of fingerprints for its estimated 5,338 employees, as the DJJ is a criminal justice agency. The FDLE, however, will charge providers a fee of \$8 for the initial submission of an estimated 11,029 provider employee fingerprints. Thus, the total revenue projected to be received by the FDLE for the initial provider fingerprint submission that will occur during Fiscal Year '05—'06 is \$88,232. This is non-recurring revenue.

Recurring fingerprint retention revenue: The bill states that the DJJ shall pay an annual fee to the FDLE, as established by the FDLE in rule, for the retention of fingerprints, and representatives

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.

of the DJJ have indicated that the FDLE has proposed a \$6 per employee retention fee. The DJJ states that:

- It will pay the FDLE \$36,834 (6,139 DJJ employees, which includes a 15 percent employee turnover rate x \$6 per year) for calendar year 2006 or \$18,417 for FY '05—'06; and
- DJJ providers will pay the FDLE \$82,716 (13,786 provider employees, which includes a 25 percent turnover rate x \$6 per year) or \$41,358 for FY '05—'06.

Accordingly, the total revenues projected to be received by the FDLE for DJJ and provider employee fingerprint retention during calendar year 2006 is \$119,550, and for the second half of FY '05-'06, i.e., January 2006 through June 2006, is \$59,775. This revenue will be annually recurring.

2. Expenditures:

Fiscal Year '05—'06: As discussed above, the DJJ projects expenditures of \$18,417 for the retention of employee fingerprints during FY '05—'06. Additionally, the DJJ projects the following additional non-recurring expenditures, under the bill, for FY '05—'06:

- \$60,000 for costs associated with the development of a database that will track the current employment status of DJJ and provider employees.
- \$26,407 for 2055 hours of DJJ staff time at \$12.85 per hour to enter DJJ and provider employee fingerprint cards into the equipment that will electronically submit the fingerprints from the DJJ to the FDLE.

Thus, the DJJ's total FY '05—'06 expenditures under the bill are projected to be \$104,824; however, as discussed below in the section entitled, "Fiscal Impact on Local Governments," the DJJ, under current law, may shift its costs for detention workers to the counties. It is estimated that 2,200 of the DJJ's 5,338 employees, i.e., 41 percent of the DJJ employees, are detention workers. Thus, it appears that the DJJ may bill the counties for approximately \$42,978 (41 percent x \$104,824) for FY '05—'06.

Future Fiscal Years: The DJJ estimates that it will have total annual recurring costs of \$36,834 (6,139 DJJ employees, which includes a 15 percent turnover rate x \$6 per year) for FDLE fingerprint retention fees; however, it appears that the DJJ may shift \$15,102 (41 percent x \$36,834) to counties for detention worker costs.

The bill also requires the DJJ to conduct a federal fingerprint rescreening for its employees every five years; however, DJJ representatives indicate that it will not be charged the \$24 federal screening fee as the it is a criminal justice agency.

Thus, net annual recurring costs to the DJJ are projected to be \$21,732 (\$36,834 minus \$15,102 to be paid by the counties).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None apparent.

2. Expenditures:

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 under this bill will be passed on to the counties.

As discussed above, it appears that the DJJ may shift the following expenditures to the counties: (a) \$42,978 of its expenditures in FY '05—'06; and (b) \$15,102 annually for future years.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 bill. The DJJ estimates that there are 11,029 provider employees subject to the bill's requirements.

Fiscal Year '05—'06: DJJ providers will be responsible for costs associated with the initial employee fingerprint submission required in December 2005. These costs are \$8 to be paid to the FDLE for a statewide criminal history check and \$24 to be paid to the Federal Bureau of Investigation for a nationwide criminal history check.¹² Thus, the total provider cost for the initial employee fingerprint submission is projected to be \$352,928 (\$32 x 11,029 employees).

Additionally, providers will be responsible for FDLE's annual fingerprint retention fees of \$6 per employee. For FY '05—'06, these fees will be \$41,358 (\$3, which is half of FDLE 's annual retention fee, for January through June 2006 x 13,786 provider employees, which includes a 25 percent employee turnover rate).

Thus, total provider costs under the bill for FY '05—'06 are projected to be \$394,286.

Future Fiscal Years: DJJ providers will be responsible for FDLE's fingerprint retention fees. It is estimated that these fees will annually cost providers \$82,716 (13,786 provider employees, which includes a 25 percent employee turnover rate x \$6 per employee). Additionally, the providers will be responsible for conducting nationwide background screenings every five years for their employees beginning in July 2010, which is five years after the bill's effective date. The DJJ estimates that annually 626 provider employee re-screenings will be annually required at a cost of \$24 per employee for yearly total of \$15,024.

Thus, total provider costs for FYs '06 – '10 are projected to be \$82,716 annually for fingerprint retention fees. For FY '10—'11 and FYs thereafter, total provider costs are projected to be \$97,740 annually for fingerprint retention fees and nationwide re-screenings.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 bill, 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. Accordingly, the bill appears to be exempt from the constitutional mandate funding requirements. Further, even if this bill were construed as implicating the local mandates provision, the bill is anticipated to have an insignificant fiscal impact on the counties, i.e., less than \$1.6 million, based on the estimate that Fiscal Year '05—

¹² Although Level 2 screenings may have previously been conducted on the majority of these employees, FDLE representatives indicate that it will be necessary to conduct those screenings again in order to enter the fingerprint records into its statewide automated fingerprint system.

'06 non-recurring costs to counties will be \$42,978 and that future costs will be \$15,102 annually. Accordingly, the bill appears to be exempt from the constitutional mandate funding requirements.

2. Other:

None apparent.

B. RULE-MAKING AUTHORITY:

The bill requires the FDLE 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 bill 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 bill's reference to authority that may be otherwise provided by law is referring to the rule-making authority currently being considered by the Legislature in Committee Substitute for HB 645, which permits the FDLE to adopt rules regarding the annual fee and fingerprint procedures for employing agencies generally.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 67-76 provide for the Department of Law Enforcement to set fees by rule for the services it provides. On line 75, the bill provides that the rule may apply to "the department and other employing agencies." Since the term "agency" is not defined, it is unclear whether it applies to the contracted providers, other departments of the state, or other entities.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2005, the Juvenile Justice Committee adopted a committee substitute that amended the bill so that it: (a) requires nationwide fingerprint screenings every five years for all persons employed by the DJJ and its providers in juvenile justice facilities, services, and programs (hereinafter referred to as "employees"); (b) requires the DJJ to submit fingerprints to the FDLE for both current and prospective employees; (c) requires the FDLE to continuously screen the fingerprints of employees as arrest fingerprints are received; (d) provides specific statutory authority for the rules required to be adopted by the FDLE; (e) clarifies that the annual fee assessed by the FDLE shall be based upon its costs resulting from the fingerprint retention services; (f) provides that employee fingerprints shall be removed by the FDLE within six months following the end of employment; and (g) uses terms consistently.