

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 Judiciary Committee

BILL: CS/SB 838

INTRODUCER: Criminal Justice Committee and Senator Dockery

SUBJECT: Department of Law Enforcement

DATE: April 20, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Treadwell</u>	<u>Maclure</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>JA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill does the following:

- Clarifies the authority for the Florida Department of Law Enforcement (FDLE) to retain in the Automated Fingerprint Identification System (AFIS) any applicant prints that were submitted for the purpose of criminal background checks, or records where AFIS images are of poor quality.
- Facilitates dissemination of criminal history information.
- Authorizes FDLE to use electronic fingerprint submissions for qualified entity submissions under the National Child Protection Act.
- Permits either the arresting agency or the agency where the warrant was issued to request an administrative expunction.
- Adds the Secretary of the Department of Children and Family Services (or designated assistant) to the membership of the Criminal and Juvenile Justice Information Systems (CJJIS) Council.
- Amends CJJIS Council statutes to reflect technological advances and address privacy issues as they relate to increased availability of shared data.

- Creates the Citizen Support Organization for Florida Missing Children's Day.

This bill amends the following section of the Florida Statutes: 943.05, 943.053, 943.0542, 943.0581, 943.06, and 943.081. The bill substantially rewords s. 943.08, F.S., and creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Criminal Justice Information Program/AFIS

Current law establishes the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) and outlines the duties and responsibilities of the CJIP.¹ Relevant to the bill, some of those duties and responsibilities include:

- Establishing, implementing, and maintaining a statewide automated fingerprint identification system (AFIS) capable of, but not limited to, reading, classifying, matching, and storing fingerprints, rolled fingerprints, and latent fingerprints, which is available to every criminal justice agency that is responsible for the administration of criminal justice.
- As authorized by law, retaining fingerprints submitted by criminal and noncriminal justice agencies to the FDLE for a criminal history background screening in a manner provided by rule and entering the fingerprints in the AFIS. These fingerprints are thereafter available for all purposes and uses authorized for arrest fingerprint cards entered into the AFIS pursuant to s. 943.051, F.S.
- As authorized by law, searching all arrest fingerprint cards received under s. 943.051, F.S., against the fingerprints retained in the AFIS. Any arrest record that is identified with the retained fingerprints of a person subject to background screening must be reported to the appropriate agency.

Agencies may participate in this search process by paying an annual fee to FDLE and by informing FDLE of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of the persons whose fingerprints are retained. The FDLE is required to adopt a rule setting the amount of the annual fee to be imposed upon each participating agency for performing these searches and establishing the procedures for the retention of fingerprints and the dissemination of search results. The fee may be borne as provided by law. Fees may be waived or reduced by the executive director of FDLE for good cause shown. Consistent with the recognition of criminal justice agencies expressed in s. 943.053, F.S., these services are provided at no costs to criminal justice agencies for criminal justice purposes.

The FDLE states that there is a need to amend this statute to clarify “the authority for FDLE to retain in the Automated Fingerprint Identification System (AFIS) any applicant prints that are

¹ Section 943.05, F.S.

identified to microfilm criminal history records, or records where AFIS images are of poor quality. Having electronic fingerprints is critical to FDLE's automation efforts."²

Dissemination of Criminal Justice Information/Fees Assessed for Specified Entities

Currently, FDLE is required to disseminate criminal justice information only in accordance with federal and state laws, regulations, and rules. The statute provides, in part, that after providing the CJIP with all known identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon payment of fees as established in s. 943.053(3), F.S., and in the manner prescribed by rule of the FDLE. These fees are to offset the cost of producing the record information, including the total cost of creating, storing, maintaining, updating, retrieving, improving, and providing criminal history information in a centralized, automated database, including personnel, technology, and infrastructure expenses. Any access to criminal history information by the private sector or noncriminal justice agencies as provided in this subsection is assessed without regard to the quantity or category of criminal history record information requested. Fees may be waived or reduced by the executive director of FDLE for good cause shown.

The fee per record for criminal history information is \$23 per name submitted, except that an \$8 fee is assessed for each name submitted by vendors of the Department of Children and Family Services, the Department of Juvenile Justice, and the Department of Elderly Affairs.³ A \$15 fee is assessed for each name submitted by the Department of Agriculture and Consumer Services for a state criminal history provided for the application processing it is required to perform, and \$18 is assessed for each volunteer name submitted for requests under the National Child Protection Act.⁴ The state offices of the Public Defender are not assessed a fee for Florida criminal history information or wanted person information.

A "qualified entity" is defined as a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care⁵ or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.⁶ Current law provides that a qualified entity must register with the FDLE before submitting a request for screening under this statute.⁷ Each request must be voluntary and conform to the requirements established in the National Child Protection Act of 1993, as amended. As a part of the registration, the qualified entity must agree to comply with state and federal law and must sign an agreement approved by FDLE. Further, a qualified entity must submit to FDLE a request for screening an employee or volunteer or person applying to be an employee or volunteer on a completed fingerprint card, with a signed waiver allowing the release of state and national criminal history record information to the qualified entity.⁸ Each request

² Analysis of PCS/SB 838. (Undated), Florida Department of Law Enforcement (provided to staff on March 20, 2008). All comments by the FDLE quoted or mentioned in this analysis are from this source, unless otherwise indicated.

³ Section 943.053(3), F.S.

⁴ 42 U.S.C. section 5119a, et seq.

⁵ "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

⁶ Section 943.0542(1), F.S.

⁷ Section 943.0542(2)(a)-(c), F.S.

⁸ According to the FDLE's analysis of the bill, "[q]ualified entities currently participating in the National Child Protection Act are required to submit criminal history record check requests via hard card fingerprints or electronically."

must be accompanied by a fee, which must approximate the actual cost of producing the record information, as provided in s. 943.053, F.S., plus the amount required by the Federal Bureau of Investigation for the national criminal history check in compliance with the National Child Protection Act of 1993, as amended.

As previously noted, current law provides that the request by the qualified entity “must be accompanied by a fee, which shall approximate the actual costs of producing the record information.”⁹ This language might suggest that the fee is based on the FDLE’s assessment of the actual cost of producing the record information; however, the fee assessed by FDLE is actually the fee prescribed by the Legislature, as provided in s. 943.053, F.S. The FDLE has indicated that both statutes need to be amended to clarify how fees are assessed under current law.

Relevant to qualified entities, FDLE states:

Currently, applicants must sign a waiver granting permission for the release of the state and national criminal history record information to the qualified entity. The qualified entity must submit the signed waiver with the fingerprint request. If the fingerprints are submitted electronically, the entity must fax or email, by close of business, the release waiver. Because the Federal Bureau of Investigation indicated they will no longer hold the state repository accountable for the waivers, FDLE does not need to receive them. FDLE had already informed the entities it is their responsibility to maintain the waivers; FDLE was simply receiving a duplicate.

Administrative Expunction

The FDLE is authorized to provide by rule for the administrative expunction of any nonjudicial record of an arrest of a minor or an adult made contrary to law or by mistake.¹⁰ A law enforcement agency must apply to FDLE in the manner prescribed by rule for the administrative expunction of any nonjudicial record of any arrest of a minor or an adult who is subsequently determined by the agency, at its discretion, or by the final order of a court of competent jurisdiction, to have been arrested contrary to law or by mistake.

An adult or, in the case of a minor child, the parent or legal guardian of the minor child, may apply to FDLE in the manner prescribed by rule for the administrative expunction of any nonjudicial record of an arrest alleged to have been made contrary to law or by mistake, provided that the application is supported by the endorsement of the head of the arresting agency or the state attorney of the judicial circuit in which the arrest occurred. An application for administrative expunction must include an affidavit executed by the chief of the law enforcement agency, sheriff, or department head of the state law enforcement agency in which the affiant verifies that he or she has reviewed the record of the arrest and that the arrest was contrary to law or was a mistake. The affidavit must include the date and time of the arrest, the name of the arresting officer, the name of the person arrested, and the crime or crimes charged. No application, endorsement, or affidavit made under s. 943.0581, F.S., is admissible as evidence in

⁹ Section 943.0542, F.S.

¹⁰ Section 943.0581, F.S.

any judicial or administrative proceeding, nor is to be construed as an admission of liability in connection with an arrest.

Relevant to the administrative expunction of criminal records, FDLE identifies that “[c]urrent statutory language permits only the arresting agency to request an administrative expunge.” The FDLE believes the statute should be amended to permit either the arresting agency or the state attorney of the judicial circuit where the warrant was issued to request an administrative expunction, a change that it states “would plug a loophole that has caused some individuals problems – the arresting agency does not want to request the administrative expunge because they arrested in good faith on an outstanding warrant. The agency that had the warrant issued agrees that the subject was arrested in error or contrary to law, e.g., the warrant was issued in the wrong name or in the name of a victim of identity theft.”

Criminal and Juvenile Justice Information Systems Council

The Criminal and Juvenile Justice Information Systems (CJJIS) Council is created within FDLE.¹¹ The 14-member council is comprised of the following members:

- The Attorney General or a designated assistant.
- The Executive Director of FDLE or a designated assistant.
- The Secretary of the Department of Corrections or a designated assistant.
- The Chair of the Parole Commission or a designated assistant.
- The Secretary of Juvenile Justice or a designated assistant.
- The Executive Director of the Department of Highway Safety and Motor Vehicles or a designated assistant.
- The State Courts Administrator or a designated assistant.
- One public defender appointed by the Florida Public Defender Association, Inc.
- One state attorney appointed by the Florida Prosecuting Attorneys Association, Inc.
- Five members, to be appointed by the Governor, consisting of two sheriffs, two police chiefs, and one clerk of the circuit court.

The FDLE states:

During the August 20, 2007 Criminal and Juvenile Justice Systems (CJJSI) Council meeting, the Council proposed the addition of the Department of Children and Family Services (DCF) to a seat on the Council.

Over the last several years, the Department of Children and Families has been increasingly involved with law enforcement as it carries out its social service functions. The sharing of information between the law enforcement and human services components of Florida’s government has become of critical importance. Membership on the Council will facilitate the prompt, on-going, and electronic exchange of information between all these organizations and ultimately enhance the protection of Florida’s most vulnerable citizens.

¹¹ Section 943.06, F.S.

The Florida Legislature designated DCF's protective investigations area as a criminal justice agency. Under the Adam Walsh Act, persons working in child protection investigations have access to national criminal history information in order to effectively perform their job. Agencies represented on the Council have a need to access various data housed by DCF.

The council must facilitate the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies.

The council must review proposed plans and policies relating to the information system of the Department of Corrections, the Department of Highway Safety and Motor Vehicles, the Department of Juvenile Justice, and the FDLE for the purpose of determining whether the departments' strategic information technology resource development efforts will facilitate the effective identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies. The council must make recommendations as it deems appropriate to the executive director of the FDLE and the secretaries of these departments. Those recommendations relate to the following areas:

- The management control of criminal and juvenile justice information systems and applications supported by the departments.
- The installation and operation of criminal and juvenile justice information systems by the departments and the exchange of such information with other criminal and juvenile justice agencies of this state and other states, including federal agencies.
- The operation and maintenance of computer hardware and software within criminal and juvenile justice information systems maintained by the departments.
- The physical security of the systems, to prevent unauthorized disclosure of information contained in the systems and to ensure that the criminal and juvenile justice information in the systems is accurately updated in a timely manner.
- The security of the systems, to ensure that criminal and juvenile justice information is collected, processed, stored, and disseminated in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid by unauthorized individuals or agencies.
- The purging, expunging, or sealing of criminal and juvenile justice information upon order of a court of competent jurisdiction or when authorized by law.
- The dissemination of criminal and juvenile justice information to persons or agencies not associated with criminal justice when such dissemination is authorized by law.
- The access to criminal and juvenile justice information maintained by any criminal or juvenile justice agency by any person about whom such information is maintained for the purpose of challenge, correction, or addition of explanatory material.
- The training, which should be provided to employees of the departments and other state and local criminal and juvenile justice agencies in the proper use and control of criminal and juvenile justice information.

- The characteristics, structures, and communications technologies needed to allow the transmittal of, sharing of, access to, and utilization of information among the various state, local, private, and federal agencies, organizations, and institutions in the criminal and juvenile justice systems.
- The installation and operation of a statewide telecommunications and data network, to be called the Florida Criminal Justice Intranet Service Network, for which the FDLE serves as custodial manager and which will be capable of electronically transmitting text and image data, including electronic mail and file transport, among criminal justice agencies within the state.
- The installation and operation, when feasible, of equipment in each of the judicial circuits capable of electronically transmitting over the Florida Criminal Justice Intranet Service Network digitized photographs and live-scan fingerprint images of each criminal defendant convicted or found guilty, at the time and place of such disposition.
- Such other areas as relate to the collection, processing, storage, and dissemination of criminal and juvenile justice and other public safety system information, including the development of criteria, policies, and procedures for the standardization of criminal and juvenile justice data and information-transfer protocols for transmitting such data.

The council must also develop and approve a long-range program plan pursuant to the requirements set forth in s. 186.021, F.S. Copies of the approved plan are transmitted, electronically or in writing, to the Executive Office of the Governor, the Speaker of the House of Representatives, the President of the Senate, and the council members.

The statute states that it is the policy of this state and the intent of the Legislature that all further installation, enhancement, and planned utilization of equipment capable of transmitting telecommunications and data which are performed by any state court, the clerks of the court, state or local law enforcement agencies, or the departments referred to in this section be implemented in a manner to assure that such equipment is compatible with the Florida Criminal Justice Intranet Service Network standards.

Certain principles were adopted by the council as guiding principles for the management of public safety system information technology resources:

- Cooperative planning by public safety system entities is a prerequisite for the effective development of systems to enable sharing of data.
- The planning process, as well as coordination of development efforts, should include all principals from the outset.
- Public safety system entities should be committed to maximizing information sharing and moving away from proprietary positions taken relative to data they capture and maintain.
- Public safety system entities should maximize public access to data, while complying with legitimate security, privacy, and confidentiality requirements.
- Public safety system entities should strive for electronic sharing of information via networks versus a reliance on magnetic and other media.
- The practice by public safety system entities of charging each other for data should, insofar as possible, be eliminated. Further, when the capture of data for mutual benefit

- can be accomplished, the costs for the development, capture, and network for access to that data should be shared.
- The redundant capture of data should, insofar as possible, be eliminated.
 - With respect to statewide databases:
 - Only data that can best be compiled, preserved, and shared through a central database should be captured at the state level.
 - Remote access to distributed databases should be considered and provided for, instead of central repositories.
 - Statistical data that may be required infrequently or on a one-time basis should be captured via sampling or other methods.
 - Only data that are auditable, or that otherwise can be determined to be accurate, valid, and reliable should be maintained.
 - Methods of sharing data among different protocols must be developed without requiring major redesign or replacement of individual systems.¹²

Considering these guiding principles, FDLE reports:

At the August 20, 2007 CJJIS Council, the Council discussed the goals and mission of the Council and motioned to amend statutes that govern the Council.

Current statutes have not been revised [since the] mid-1990's and statutes were adopted as guiding principles for the management of public safety information technology resources.

The Council proposed changes to reflect technological advances and address privacy issues as they relate to increased availability of data shared.

The changes also allow for the adoption of national standards for the exchange of data.

Florida Missing Children's Day

The second Monday in September of each year is designated as Florida Missing Children's Day in remembrance of Florida's past and present missing children and in recognition of our state's continued efforts to protect the safety of children through prevention, education, and community involvement.¹³ "Hundreds of children from surrounding counties participated in events, including fingerprinting, photographing, and learning about abduction prevention."¹⁴ "Various law enforcement agencies, victim assistance groups and children's non-profit organizations" also attend this event.¹⁵

¹² Section 943.081, F.S.

¹³ Section 683.23, F.S.

¹⁴ *News Release: Governor Crist Recognizes Ninth Annual Florida Missing Children's Day* (September 10, 2007), Florida Department of Law Enforcement *available at* http://www.fdle.state.fl.us/press_releases/20070910_Crist_Recognizes.html (last visited April 19, 2008).

¹⁵ *Id.*

The FDLE states:

Currently FDLE members work with the Missing Children Information Clearinghouse Advisory Board to host and organize the statutorily mandated Florida Missing Children's Day (FMCD) event held in September. Every year the Advisory Board utilizes funds that are donated from the sheriffs' and police departments' forfeiture funds. These funds are used for FMCD and other activities related to the prevention of child abduction and the rescue of missing children. FDLE has always paid a portion of FMCD and other activities related to missing children out of its budget. There has been a steady increase in expenses. With the budget cuts to governmental agencies there will possibly be a decline in donations received from law enforcement agencies. There is no statutory provision for funding for the MCIC Advisory Board projects including FMCD. This combined with declining revenues and increasing costs for the FMCD event and other activities have created a need for the Citizens Support Organization (CSO).

Citizens, visitors, non profit organizations and other interested parties routinely offer to donate money to FDLE to be used for FMCD and other activities related to the prevention of child abduction and the rescue of missing children. The creation of the CSO would allow a legal method for FDLE to accept these donations and spend funds for these specific purposes. Funds will be collected and expended on specified procurements determined to be consistent with the goals and mission of the department.

Currently there is no method for FDLE to fix and collect charges for rental of facilities and properties managed by the department. The CSO would permit this and will provide a method for the monies collected to be managed in accordance with the letter of agreement.

III. Effect of Proposed Changes:

The bill makes several changes to the policies and procedures of the Florida Department of Law Enforcement (FDLE) relating to the statewide fingerprint system, administrative expunction, the Criminal and Juvenile Information Systems Council, and Florida Missing Children's Day. Provided is a section-by-section analysis of the bill:

Section 1 of the bill amends s. 943.05, F.S., which relates to the Automated Fingerprint Information System (AFIS), to provide that, if fingerprints submitted to the FDLE for background screening, whether retained or not, are identified with the fingerprints of a person having a criminal history record, such fingerprints may subsequently be available for all purposes and uses authorized for arrest fingerprint cards. This includes entry into the statewide automated fingerprint identification system to augment or replace the fingerprints that identify the criminal history record.

Section 2 of the bill amends s. 943.053, F.S., which sets fees for records of criminal history information, to reference s. 943.0542, F.S., relating to access to such records by qualified entities, to clarify that s. 943.052, F.S., is the statute pertinent to fees for records requested by qualified entities. This is a technical amendment.

Section 3 of the bill provides that a qualified entity can electronically submit to FDLE a request for screening an employee or volunteer or person applying to be an employee or volunteer.

The bill also removes language that might suggest (inaccurately) that the fee assessed to qualified entities for a statewide criminal history check is based on FDLE's assessment of the actual cost of producing the record information. The fee assessed by FDLE is actually the fee prescribed by the Legislature, as provided in s. 943.053, F.S.

Section 4 of the bill amends s. 943.0581, F.S., to provide that the endorsement for an application for an administration expunction of a nonjudicial record of an arrest can be made by the designee of the head of the arresting agency or a designee of the state attorney of the judicial circuit in which the arrest occurred.

The bill also removes the requirement for an affidavit to be included with the application. The bill also eliminates the requirement to report in the application the name of the arresting officer, but requires that the application include the offender-based tracking system number, be on the submitting agency's letterhead, and be signed by the head of the submitting agency or a designee.

The bill also provides that if the person was arrested on a warrant, *capias*, or pick-up order, a request for an administrative expunction may be made by the sheriff (or his or her designee) of the county where the warrant, *capias*, or pick-up order was issued, or by the state attorney (or his or her designee) of the judicial circuit where the warrant, *capias*, or pick-up order was issued or his or her designee.

Section 5 of the bill amends s. 943.06, F.S., relating to the Criminal and Juvenile Justice Information Systems Council, to add the Secretary of the Department of Children and Family Services or the Secretary's designated assistant as a member of the council.

Section 6 of the bill substantially rewords s. 943.08, F.S., relating to the duties of the Criminal and Juvenile Justice Information Systems Council to provide the following duties of the council:

- Facilitating the identification, standardization, sharing, and coordination of criminal and juvenile justice data and other public safety system data among federal, state, and local agencies.
- Adopting uniform information-exchange standards, methodologies, and best practices, applying national standards and models where appropriate, in order to guide local and state criminal justice agencies when procuring, implementing, or modifying information systems.
- Providing statewide oversight and support the development of plans and policies relating to public safety information systems in order to facilitate the effective identification, standardization, access, sharing, integrating, and coordinating of criminal and juvenile justice data among federal, state, and local agencies.
- Making recommendations addressing each of the following:
 - Privacy of data.
 - Security of systems.
 - Functional and information-sharing standards.

- Accuracy, timeliness, and completeness of data.
- Access to data and systems.
- Transmission of data and information.
- Dissemination of information.
- Training.
- Other areas that effect the sharing of criminal and juvenile justice information and other public safety system information.
- Providing oversight to the operation of the Florida Criminal Justice Network (CJNet), for which the FDLE shall serve as custodial manager pursuant to s. 943.0544, F.S.
- Requiring that criminal justice agencies participating in the Florida Criminal Justice Network shall adhere to CJNet standards and policies.

Section 7 of the bill amends s. 943.081, F.S., relating to guiding principles for the management of public safety system information technology resources. The bill provides that the planning process, as well as coordination of development efforts, should *identify* and include all principles for the outset.

Regarding the current principle that public safety system entities should maximize public access to data, while complying with legitimate security, privacy, and confidentiality requirements, the bill modifies this principle to read: public safety system entities should maximize public access to data, and in so doing, should specifically implement guidelines and practices that address security, privacy, and confidentiality.

Regarding the principle that public safety system entities should strive for electronic sharing of information via networks versus a reliance on magnetic and other media, the bill deletes the words: “via networks versus a reliance on magnetic and other media.”

The bill also deletes the current principles relating to statewide databases and the development of methods of sharing data.

Section 8 of the bill authorizes the FDLE to establish a citizen support organization (CSO) to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children’s Day under s. 683.23, F.S.

The bill defines a “citizen support organization” as an organization that is:

- A Florida corporation not for profit incorporated under ch. 617, F.S., and approved by the Department of State.
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures to or for the direct or indirect benefit of the department in furtherance of Florida Missing Children’s Day.

The bill provides that the CSO is not a registered lobbyist within the meaning of s. 11.045, F.S.

The CSO is specifically authorized to collect and expend funds to be used for awards, public awareness and awards ceremonies, workshops, and other meetings, including distribution materials for public education and awareness; travel; Internet and web-hosting services; administrative costs, including personnel costs; costs of audits; and costs of facilities rental. The activities of the CSO must be determined by FDLE to be consistent with FDLE's goals and mission, and in the best interests of the state and approved in writing by the FDLE (through a letter of agreement from FDLE) to operate for the direct or indirect benefit of FDLE.

The FDLE is authorized to fix and collect charges for the rental of facilities and properties managed by FDLE and may permit, without charge, appropriate use of administrative services, property, and facilities of FDLE by the CSO, subject to this section. The use must be directly in keeping with the approved purposes of the CSO and may not be made at times or places that would unreasonably interfere with opportunities for the public to use such facilities for established purposes. The FDLE is authorized to adopt rules with which the CSO must comply in order to use FDLE's administrative services, property, or facilities. Any money received from rentals of facilities and properties managed by FDLE may be held in FDLE's operating trust fund or in a separate depository account in the name of the CSO and subject to the provisions of the letter of agreement with FDLE. The letter of agreement must provide that any funds held in this separate depository account must revert to FDLE if the CSO is no longer approved by FDLE to operate in the best interests of the state.

The FDLE may not permit the use of any administrative services, property, or facilities of the state by a CSO that does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

Finally, the CSO is required to provide for an annual financial audit in accordance with s. 215.981, F.S. Copies of the audit will be provided to FDLE, the Office of Policy and Budget with the Executive Office of the Governor, and the Florida Cabinet.

Section 9 of the bill provides that the effective date of the bill is July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill does not change current statutory fees for records, including fees for qualified entities. Regarding qualified entities, FDLE states:

Pertaining to the *statutory fee requirement* for criminal history background checks on volunteer care providers as authorized at F.S. 943.0542, this state law implements the National Child Protection Act of 1993, as amended by the Volunteers for Children Act of 1998, which authorizes national criminal history checks to be performed on volunteers and current or prospective employees of “qualified entities.”

While federal law *permits* state and national criminal history checks on care “providers,” F.S. 943.0542(3) *requires* that a state-level criminal history check be conducted on all subjects submitted by a qualified entity for background screening under that law. The fee for the state check is \$18 for volunteers and \$23 for employees. The fee for the FBI check is \$15.25 for volunteers and \$19.25 for employees whose prints are received digitally, \$30.25 for employees who are processed on paper cards.¹⁶

C. Government Sector Impact:

The bill will not have a fiscal impact on the FDLE.

The Secretary of Department of Children and Families (or designated assistant), as a member of the Criminal and Juvenile Justice Information Systems Council, is entitled to be reimbursed for per diem and travel expenses as provided in s. 112.061, F.S.¹⁷

VI. Technical Deficiencies:

In section 7 (line 313) of the bill, current law references “principals.” It appears that “principles” may be the intended term.

VII. Related Issues:

None.

¹⁶ E-mail from Donna Uzzell, FDLE, to staff (March 25, 2008). A private entity that is not a qualified entity (for examples a home repair business) would pay \$23 for the state criminal history check, but is not authorized to request a national criminal history check.

¹⁷ Section 943.06(5), F.S.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 8, 2008:

The committee substitute:

- Provides that if fingerprints submitted to the Florida Department of Law Enforcement (FDLE) for background screening, whether retained or not, are identified with the fingerprints of a person having a criminal history record, such fingerprints may thereafter be available for all purposes and uses authorized for arrest fingerprint cards, including, but not limited to, entry into the statewide automated fingerprint identification system to augment or replace the fingerprints that identify the criminal history record.
- Provides that a qualified entity can submit electronically to the FDLE a request for screening an employee or volunteer or person applying to be an employee or volunteer.
- Removes language in current law that might suggest (inaccurately) that the fee assessed to qualified entities for a statewide criminal history check is based on the FDLE's assessment of the actual cost of producing the record information, rather than on fees set by the Legislature pursuant to current law.
- Provides that the endorsement for an application for an administration expunction of a nonjudicial record of an arrest can be made by the designee of the head of the arresting agency or the designee of the state attorney of the judicial circuit in which the arrest occurred.
- Removes the requirement for an affidavit to be included with the application and removes the requirement to report in the application the name of the arresting officer, but requires that the application include the offender-based tracking system number and that the application be on the submitting agency's letterhead and be signed by the head of the submitting agency or the head's designee.
- Provides that if the person was arrested on a warrant, capias, or pick-up order, a request for an administrative expunction may be made by the sheriff of the county where the warrant, capias, or pick-up order was issued or his or her designee, or by the state attorney of the judicial circuit where the warrant, capias, or pick-up order was issued or his or her designee.
- Adds the Secretary of the Department of Children and Family Services or the Secretary's designated assistant as a member of the Criminal and Juvenile Justice Information Systems (CJJIS) Council.
- Revises duties and guideline principles of the CJJIS Council statutes to reflect technological advances and address privacy issues as they relate to increased availability of data shared.
- Authorizes the FDLE to establish a citizen support organization (CSO) to provide assistance, funding, and promotional support for activities authorized for Florida Missing Children's Day.
- Defines the CSO; specifies how it is organized and its function; specifies authorized activities of and limitations on the CSO; authorizes the FDLE to adopt rules with

which the CSO must comply; specifies that money received from rentals of facilities and properties managed by the FDLE is to be held in the FDLE's operating trust fund or in a separate depository account in the name of the CSO and subject to the provisions of a letter of agreement with the FDLE; specifies that funds held in a separate depository account must revert to the FDLE if the CSO is no longer approved by the FDLE to operate in the best interests of the state; and requires the CSO to provide an annual financial audit as specified in the bill.

B. Amendments:

None.