

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 293	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Pritchett and others	114 Y's	2 N's
COMPANION BILLS:	CS/SB 700	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/CS/HB 293 passed the House on February 24, 2016, and subsequently passed the Senate on March 3, 2016.

Section 985.04(1), F.S., specifies that all records obtained under ch. 985, F.S., as a result of a juvenile being involved in the juvenile justice system, are confidential. However, s. 985.04(2), F.S., creates exceptions to such confidentiality if the juvenile is taken into custody for a violation of law which, if committed by an adult, would be a felony; is found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or is transferred to the adult system.

Section 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult without regard to the confidentiality of the juvenile record.

A recent ruling by Florida's First District Court of Appeal highlighted the inconsistency that exists between s. 985.04(1), F.S., (making most juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's record to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- making the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt (currently they are not);
- ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S.;
- requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- specifying how FDLE must release juvenile criminal history records.

The bill provides that a public records custodian may choose not to electronically publish on the custodian's website the arrest or booking photographs contained in a juvenile's record that is not confidential and exempt or otherwise restricted from publication by law. The bill also specifies that this provision does not restrict public access to records as provided by s. 119.07, F.S.

The bill provides that the exemptions repeal on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

FDLE reports that the bill may have a minimal fiscal impact on the department, which can be absorbed by existing resources. See "Fiscal Analysis Economic Impact Statement," *infra*.

Subject to the Governor's veto powers, the bill is effective upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a) of the State Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public records or public meetings 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:³

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- protects 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.
- protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the 5th year after its creation or substantial amendment, unless reenacted by the Legislature.⁴ The Act also requires specified questions to be considered during the review process.

Confidential Information of Juveniles

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system, are confidential. However, several exceptions to the confidentiality of these records are provided. For example, s. 985.04(2), F.S., provides in part that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- transferred to the adult system under ss. 985.557, 985.56, or 985.556, F.S.;
- taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d), F.S.; or
- transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

Dissemination of Juvenile Arrest Photos

¹ FLA. CONST. art. I, s. 24(c).

² See s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ s. 119.15(3), F.S.

A person's photograph is customarily taken when he or she is arrested. In Florida, as in most states, this photograph (often referred to as a "booking photo") is a public record.⁵ Most county and municipal law enforcement agencies post the photographs on their respective websites. In recent years, a trend has developed where companies scour the public records of a state and post the arrest booking photographs on their private websites.⁶ The publication of these photographs on the Internet can lead to problems and embarrassment for many individuals. For example, if a potential employer conducts an Internet search of a potential employee, one of the top results might be an arrest booking photograph.⁷

The practice of county and municipal law enforcement agencies posting such photos applies to juveniles' arrest photos that are not considered confidential and exempt under s. 985.04, F.S.

Criminal Justice Information Program

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information⁸ repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in CJIP.⁹ This information can then be transmitted between criminal justice agencies.¹⁰

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to FDLE the fingerprints, palm prints, and facial images of:

- each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- a juvenile who is charged with or found to have committed an offense which, if committed by an adult, would be a felony; or
- a minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

Dissemination of Criminal History Information under Chapter 943, F.S.

Criminal history information¹¹ compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.¹² With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 per name submitted.¹³

⁵ "Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf..." FLA. CONST. art. I, s. 24.

⁶ David Segal, *Mugged by a Mug Shot Online*, THE NEW YORK TIMES (Oct. 5, 2013), http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&_r=2&.

⁷ *Id.*

⁸ Section 943.045(12), F.S., provides that the term "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

⁹ s. 943.052, F.S.

¹⁰ s. 985.051, F.S.

¹¹ Section 943.045(5), F.S., defines the term "criminal history information" as 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.

¹² s. 943.053(3)(a), F.S.

¹³ s. 943.053(3)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, DJJ, and Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.¹⁴ The statute is silent as to the release of a juvenile's information, which has been made confidential pursuant to s. 985.04, F.S.

G.G. v. FDLE

In *G.G. v. FDLE*,¹⁵ a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from FDLE, and discovered that it included information relating to the petit theft arrest.¹⁶

G.G. filed suit, claiming that the petit theft information should be confidential and exempt pursuant to s. 985.04(1), F.S.¹⁷ The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to the confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.¹⁸

On appeal, the First District Court of Appeal reversed the trial court's decision and held that FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.¹⁹

FDLE – Release of Juvenile Information since G.G.

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions to the confidentiality requirements for records if the juvenile is:

- taken into custody for a violation of law which, if committed by an adult, would be a felony;
- found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, FDLE is ensuring that only the above-described records are released. However, because of programming limitations²⁰ and incomplete reporting of juvenile disposition information,²¹ FDLE reports that it is unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.²² As such, FDLE currently only releases juvenile records to private entities and non-criminal justice agencies if the juvenile is:

- taken into custody or charged with a crime that would be a felony if committed by an adult; or
- treated as an adult.²³

Effect of the Bill

The ruling in *G.G. v. FDLE* highlighted the inconsistency that exists between s. 985.04(1), F.S., (making the majority of juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

¹⁴ s. 943.053(3)(a), F.S.

¹⁵ 97 So. 3d 268 (Fla. 1st DCA 2012).

¹⁶ *Id.* at 269.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 273.

²⁰ FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, Agency Bill Analysis for HB 7103 (2015), which is identical to this bill (on file with the Criminal Justice Subcommittee)(hereinafter cited as "FDLE Analysis").

²¹ Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. The juvenile reporting rate for all arrests is currently 48.5 percent, while the adult rate is 72.2 percent. FDLE Analysis.

²² FDLE Analysis, p. 3.

²³ *Id.*

- ensuring that the specified juvenile records deemed not to be confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed not to be confidential and exempt under s. 985.04, F.S.; and
- requiring FDLE to release juvenile criminal history records in a manner that takes into account the confidential and exempt status of the record.

Section 985.04, F.S.

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than only confidential),²⁴ and provides that the public records exemption applies retroactively.

The bill also amends s. 985.04(2), F.S., to specify that the following juvenile records are not confidential and exempt:

- records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;
- records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony; or
- records where a juvenile has been transferred to adult court pursuant to part X of ch. 985, F.S.

Notably, the bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records will now be confidential and exempt.

The bill 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, the bill further provides that this provision does not restrict public access to records as provided by s. 119.07, F.S.

Section 943.053, F.S.

The bill amends s. 943.053, F.S., so that the list of juvenile records deemed not to be confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S. Because the language regarding three or more misdemeanors is not included on the list, FDLE will no longer be tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies.

The bill further amends s. 943.053, F.S., to establish a separate process for the dissemination of *juvenile* criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is 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

²⁴ There is a difference between records the Legislature designates as exempt from public records 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. The School Board 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 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 85-62 Fla. Op. Att'y Gen. (August 1, 1985).

- an agency or entity specified in s. 943.0585(4) or s. 943.059(4), F.S.,²⁵ for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

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.

The bill provides that juvenile records deemed confidential and exempt under the provisions of s. 943.053, F.S., which are released by the sheriff, DOC, or DJJ to private entities under contract with each entity, retain their confidential status upon such release.

The bill repeals all new public records exemptions provided for in the bill on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.²⁶

Lastly, the bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act and reenacts ss. 110.1127, 373.6055, 408.809, 943.046, 943.05, 943.0542, 943.0543, 985.045, and 985.11, F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

FDLE reports that the Computerized Criminal History System requires an update to comply with the ruling or to implement the bill, which will require 891 hours of programming at \$85 dollars per hour for a total of \$75,877.²⁷ Additionally, the bill may require staff training related to the expansion of the public records exemption, which will likely result in an insignificant fiscal impact to FDLE. FDLE indicates that these costs, however, will be absorbed, as they are part of the day-to-day responsibilities of the agency.²⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

²⁵ These sections require persons who are seeking employment with specified agencies (e.g., Department of Children and Families, Department of Health, or DJJ) to acknowledge their criminal history record, even if such record has been sealed or expunged.

²⁶ FLA. CONST. art. I, s. 24(c).

²⁷ FDLE Analysis, p. 6.

²⁸ Email from Ronald Draa, Legislative Affairs Director, FDLE, HB 293 (November 10, 2015).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.