

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB SSC 08-05 Department of Law Enforcement  
**SPONSOR(S):** Safety & Security Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Safety & Security Council		Padgett	Havlicak
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill makes several changes to the policies and procedures of the Florida Department of Law Enforcement (FDLE) as follows:

- allows FDLE to maintain electronic copies of all fingerprints submitted for the purpose of criminal background checks; allows FDLE to use the electronic copies in the statewide fingerprint system
- specifically provides that FDLE may accept fingerprint submissions electronically for criminal background checks; eliminates the requirement that FDLE receive a duplicate copy of a waiver granting permission to release a person’s criminal history record
- allows a request for an administrative expunction to be made by the arresting law enforcement agency, as well as an agency that issues a warrant that is the basis for an arrest
- adds the Secretary of the Department of Children and Family Services to the membership of the Criminal and Juvenile Information Systems Council
- amends the duties of the Criminal and Juvenile Information Systems Council to reflect advances in technology
- creates a “citizen support organization” to raise funds and organize events for Florida Missing Children’s Day

The bill has an effective date of July 1, 2008.

The bill does not appear to have a fiscal impact on state government.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates a citizen support organization to raise funds to host and organize events on Florida Missing Children's Day. These events are currently funded by FDLE and money from local sheriff's offices.

### B. EFFECT OF PROPOSED CHANGES:

#### **Criminal Justice Information System – Fingerprints**

##### Present Situation

Currently, FDLE is responsible for maintaining a statewide automated fingerprint identification system (AFIS) that is capable of reading, classifying, matching, and electronically storing fingerprints.<sup>1</sup> FDLE is required to adopt rules to manage and maintain AFIS.<sup>2</sup> FDLE also has the authority to retain fingerprints submitted for criminal history background checks and enter those prints into AFIS.<sup>3</sup>

##### Proposed Changes

The bill clarifies FDLE's authority to retain electronic images of fingerprints submitted for criminal background checks to replace images already in FDLE's files. According to FDLE, the bill would allow all electronic fingerprint images to be retained and entered into AFIS. For example, under the provisions of the bill, FDLE would be able to automatically replace outdated microfilm images of fingerprints with electronic images of fingerprints. In addition, FDLE could retain the newly submitted prints to replace poor quality prints already in the AFIS system.

#### **Dissemination of Criminal Justice Information – Fees**

##### Present Situation

FDLE charges agencies a range of fees for performing criminal background checks. Current s. 943.053(3)(b), F.S. requires FDLE to charge a fee of \$18 for a criminal background check for requests made under the National Child Protection Act<sup>4</sup>, implemented by s. 943.0542, F.S.

##### Proposed Changes

The bill makes a technical change to s. 943.053(3)(b) which specifically cites s. 943.0542, F.S. as the Florida statute which implements the National Child Protection Act.

#### **Electronic Submissions of Fingerprints**

##### Present Situation

Section 943.0542(2)(b), F.S. requires an agency to submit fingerprints used in a criminal background check on a fingerprint card. Applicants who submit their fingerprints are also required to sign a waiver

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<sup>1</sup> Section 943.05(2)(b), F.S.

<sup>2</sup> Section 943.05(2)(d), F.S.

<sup>3</sup> Section 943.05(2)(g), F.S.

<sup>4</sup> The National Child Protection Act (NCPA) requires, among other provisions, that states have procedures for providing criminal background checks for people who work with youth, the disabled, or the elderly. The NCPA requires the criminal background check to be based on fingerprints. The NCPA also establishes a maximum amount states can charge for the criminal history checks. 42 U.S.C. 5119a.

authorizing the release of criminal history information. The waiver is retained by the agency submitting the fingerprints, and FDLE is sent a duplicate copy (required by the Federal Bureau of Investigation [FBI]). According to FDLE, the FBI has changed its policy and no longer requires state law enforcement agencies to retain duplicate copies of the waivers. Applicants are also required to pay a fee that approximates the cost of the criminal background check.<sup>5</sup>

#### Proposed Changes

The bill specifically provides FDLE the authority to accept fingerprints through either a fingerprint card, or electronically. Due to the recent change in policy by the FBI, the bill provides that FDLE no longer must receive or maintain a duplicate copy of the waiver. The agency submitting the fingerprint request, however, is still required to maintain a copy of the waiver, which is consistent to current law. The bill provides that the fingerprint submission must be accompanied by the exact amount of the fee specified in s. 943.053, F.S.<sup>6</sup>, plus the fee charged by the FBI for the national criminal background check.

### **Administrative Expunction**

#### Present Situation

Section 943.0581, F.S. provides law enforcement agencies the authority to request an administrative expunction of an arrest record of a person who was arrested by a mistake of law or a mistake of fact<sup>7</sup>. Currently, the arresting agency must request the administrative expunction. According to FDLE, this creates a problem when a person is arrested in one jurisdiction for warrant that was mistakenly issued in another jurisdiction. The arresting agency is reluctant to make a request for administrative expunction since they arrested the person in good faith for an outstanding warrant.

#### Proposed Changes

The bill permits either the arresting agency or the sheriff or state attorney in the jurisdiction where the warrant was issued with the authority to request an administrative expunction for a person arrested by a mistake of law or a mistake of fact.

### **Criminal and Juvenile Justice Information Systems Council – Membership**

#### Present Situation

Section 943.06, F.S. creates the Criminal and Juvenile Justice Information Systems Council (Council) within FDLE. The Council currently consists of 14 members<sup>8</sup>.

#### Proposed Changes

The bill adds the secretary of Children and Family Services to the Council; increasing the Council to 15 members.

### **Criminal and Juvenile Justice Information Systems Council – Duties**

#### Present Situation

The Council is currently charged with facilitating the standardization and coordination of criminal and juvenile data between federal, state, and local law enforcement agencies.<sup>9</sup> The Council makes

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<sup>5</sup> Section 943.0542(2)(c), F.S.

<sup>6</sup> The fee for the criminal background check varies depending on which agency is requesting the information. The fees range from \$8 to \$23.

<sup>7</sup> e.g. if a person is the victim of identity theft, a warrant issued in the wrong name, mistaken identity, etc.

<sup>8</sup> Members include: the Attorney General, the executive director of FDLE, the secretary of the Department of Corrections, the chair of the Parole Commission, the secretary of Juvenile Justice, the executive director of the Department of Highway Safety and Motor Vehicles, the State Courts Administrator, one public defender, one state attorney, five members appointed by the governor consisting of two sheriffs, two police chiefs, and one clerk of the circuit court.

recommendations to various state and local agencies regarding the installation of information systems, the exchange of information between agencies, the security of the systems, and other issues related to information systems and data sharing. The Council is also responsible for installing and maintaining the Florida Criminal Justice Intranet Service Network (CJNet).<sup>10</sup> CJNet is responsible for the transmission of data and information between criminal justice agencies throughout the state.<sup>11</sup>

#### Proposed Changes

The Council proposed changes in their statutory duties to reflect technological advances. The bill provides the Council shall adopt uniform information exchange standards and best practices, consistent with national models and standards, to guide state and local agencies while implementing information systems. The bill requires the Council to provide guidance in the following areas:

- 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
- training
- other areas that affect the sharing of criminal and juvenile justice information and other public safety system information

The bill also requires the Council to maintain oversight of the operation of the Florida Criminal Justice Network (CJNet). The bill requires that criminal justice agencies participating in CJNet must adhere to all CJNet standards and policies.

### **Public Safety System Information Technology Resources**

#### Present Situation

Currently, s. 943.081, F.S. adopts principles recommended by the Council for the management of public safety system information technology resources.

#### Proposed Changes

The bill amends s. 943.081, F.S. to reflect technological advances. The bill also provides that public safety systems should conform to standards approved by the Council, and that the Council should adopt national standards for data exchange when possible.

### **Citizen Support Organization for Florida Missing Children's Day**

#### Present Situation

Section 683.23, F.S. provides the second Monday in September of each year is designated "Florida Missing Children's Day" (FMCD). Currently, FDLE staff assist in hosting and organizing the event. FDLE uses a portion of its budget, in conjunction with funds donated by local sheriffs, to host FMCD.

#### Proposed Changes

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<sup>9</sup> Section 943.08(1), F.S.

<sup>10</sup> Section 943.08(2)(k), F.S.

<sup>11</sup> Id.

According to FDLE, anticipated budget cuts make it less likely FMCD can be fully funded. In response, FDLE recommends the creation of a citizen support organization (CSO) dedicated to organizing and hosting FMCD. A CSO is defined by the bill to mean an organization that is:

- A Florida corporation not for profit incorporated under chapter 617, Florida Statutes, 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 FDLE in furtherance of FMCD.

The bill also provides FDLE the ability to collect charges for the rental of facilities owned and managed by FDLE. The CSO would facilitate this process and could receive proceeds from the facility rentals.

The bill provides the CSO be subject to an independent annual financial audit. Copies of the audit are to be provided to the Office of Policy and Budget within the Executive Office of the Governor, and to the Florida Cabinet.

### **Effective Date**

The bill has an effective date of July 1, 2008.

### **C. SECTION DIRECTORY:**

Section 1 Amends s. 943.05, F.S., relating to the Criminal Justice Information Program.

Section 2 Amends s. 943.053, F.S., relating to the dissemination of criminal justice information.

Section 3 Amends s. 943.0542, F.S., relating to access to criminal history information provided by the department to qualified entities.

Section 4 Amends s. 943.0581, F.S., relating to administrative expunction.

Section 5 Amends s. 943.06, F.S., relating to the Criminal and Juvenile Justice Information Systems Council.

Section 6 Amends s. 943.08, F.S., relating to the duties of the Criminal and Juvenile Justice Information Systems Council.

Section 7 Amends s. 943.081, F.S., relating to Public safety system information technology resources.

Section 8 Creates the citizen support organization for Florida Missing Children's Day.

Section 9 Provides an effective date of July 1, 2008.

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

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

#### **1. Revenues:**

See fiscal comments.

#### **2. Expenditures:**

See fiscal comments.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

The creation of the citizen support organization would reduce the amount of FDLE funds used towards Florida Missing Children's Day because the CSO allows a legal method for FDLE to collect donations and to spend the funds to host and organize FMCD.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes FDLE to adopt rules to govern the citizen support organization's use of department administrative services, property or facilities.

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

None.

**D. STATEMENT OF THE SPONSOR**

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**