

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB SSC 08-10 Department of Juvenile Justice Public Records Exemption

**SPONSOR(S):** Safety & Security Council

**TIED BILLS:** **IDEN./SIM. BILLS:**

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

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**SUMMARY ANALYSIS**

In July 2007, Governor Charlie Crist authorized the creation of the Blueprint Commission for the purpose of developing recommendations to reform Florida's juvenile justice system. The Commission met throughout the second half of 2007 and issued its report entitled "Getting Smart About Juvenile Justice in Florida" in February 2008. Recommendations 19 and 20 of the Report pertain to juvenile records. Motivated by a concern that youth have meaningful employment and other opportunities, the Commission, in Recommendation 19, suggested that juvenile arrest records be made confidential when no charges have been filed. In Recommendation 20, the Commission called for making the arrest records of first-time nonviolent offenders confidential so long as the juvenile remains crime free.

This bill would make the criminal history record of a minor confidential and exempt from the public records laws, unless the minor has been arrested for, or found to have committed, regardless of adjudication,

- a felony offense; or,
- a misdemeanor offense, after having been arrested for, or found to have committed, regardless of adjudication, misdemeanors on at least three prior occasions.

The bill would require the record to be released to the person who is the subject of the record or the subject's attorney or a criminal justice agency in the furtherance of its duties and responsibilities. It could also be released to certain specified entities for their respective licensing, access authorization, and employment purposes.

The bill would have a negative nonrecurring fiscal impact on state government in FY 2008-09, in the amount of \$25,000 for one-time start-up programming expenses by the Florida Department of Law Enforcement (FDLE).

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** pcb10.SSC.doc  
**DATE:** 3/28/2008

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.<sup>1</sup> The Florida Supreme Court has noted that chapter 119, F.S., the Public Records Act, was enacted "...to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people."<sup>2</sup>

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>3</sup> Article I, s. 24 of the State Constitution, provides that:

(a) Every person<sup>4</sup> 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution...

Unless specifically exempted, all agency<sup>5</sup> records are available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>6</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate or formalize knowledge.<sup>7</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>8</sup>

The Public Records Act specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1) (a), F.S., states:

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<sup>1</sup> ss. 1390, 1391, F.S. (Rev. 1892).

<sup>2</sup> *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).

<sup>3</sup> Article I, s. 24 of the State Constitution.

<sup>4</sup> S. 1.01(3), F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>5</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean "...any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>6</sup> S. 119.011(11), F.S.

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.* 379 So.2d 633, 640 (Fla. 1980).

<sup>8</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

If a record has been made exempt, the agency must redact the exempt portions of the record prior to releasing the remainder of the record.<sup>9</sup> The records custodian must state the basis for the exemption, in writing if requested.<sup>10</sup> Section 119.011(5), F.S., defines “custodian of public records” to mean “... the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining public records, or his or her designee.”

### Blueprint Commission Recommendations

In July 2007, Governor Charlie Crist authorized the creation of the Blueprint Commission for the purpose of developing recommendations to reform Florida’s juvenile justice system. The Commission met throughout the second half of 2007 and issued its report entitled “Getting Smart About Juvenile Justice in Florida” in February 2008. Recommendations 19 and 20 of the Report pertain to juvenile records. Motivated by a concern that youth have meaningful employment and other opportunities, the Commission, in Recommendation 19, suggested that juvenile arrest records be made confidential when no charges have been filed. In Recommendation 20, the Commission called for making the arrest records of first-time nonviolent offenders confidential so long as the juvenile remains crime free.

### **Proposed Public Records Exemption**

This bill would make the criminal history record of a minor confidential and exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution (i.e., the public records laws), unless the minor has been arrested for, or found to have committed, regardless of adjudication, a:

- felony offense; or,
- misdemeanor offense, after having been arrested for, or found to have committed, regardless of adjudication, misdemeanors on at least three prior occasions.

However, such information would be required to be released to the person who is the subject of the record or the subject’s attorney or a criminal justice agency in the furtherance of its duties and responsibilities. It could also be released to certain specified entities for their respective licensing, access authorization, and employment purposes. These include when the person:

- is a candidate for employment with a law enforcement agency or admission to the Florida Bar.
- is seeking to be employed or licensed by the Department of Children and Families or the Department of Juvenile Justice or to be employed in a sensitive position having direct contact with children and certain others such as the aged and elderly.
- is seeking to be employed or licensed by the Department of Education or the schools or any local entity that licenses child care facilities.
- is seeking authorization from a seaport for employment within or access to a seaport.

### Public Necessity Statement

According to the bill, the exemption is necessary because “youth are often denied employment and other life and career opportunities as a result of mistakes made during adolescence. These offenses can have short and long term consequences, becoming serious impediments to employment,

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<sup>9</sup> s. 119.07(1)(b), F.S.

<sup>10</sup> s. 119.07(1)(c) & (d), F.S.

education, and other socially productive and meaningful pursuits, whether at the time they enter adulthood or at some other critical life juncture years after the arrest or conviction.”

C. SECTION DIRECTORY:

Section 1. Amending s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 2. Providing a statement of public necessity.

Section 3. Providing an effective date of January 1, 2009.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

<u>Source</u>	<u>Year</u>	<u>Amount</u>	<u>Type</u>
General Revenue Fund	FY 2008-09	\$25,000	Nonrecurring

This would fund one-time startup programming related to implementation of the proposed exemption by the Florida Department of Law Enforcement (FDLE).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**