

CHAPTER 2016-78

Committee Substitute for Committee Substitute for House Bill No. 293

An act relating to public records; amending s. 985.04, F.S.; specifying that certain confidential information obtained under chapter 985, F.S., relating to juvenile justice, is exempt from public records requirements; providing applicability; revising applicability of public records requirements with respect to the arrest records of certain juvenile offenders; authorizing public records custodians to choose not to electronically publish specified arrest or booking photographs of juveniles; providing for future review and repeal of such applicability provisions; amending s. 943.053, F.S.; providing an exemption from public records requirements for juvenile information compiled by the Criminal Justice Information Program from intrastate sources; providing exceptions; providing for future review and repeal of the exemption; providing for release by the Department of Law Enforcement of the criminal history information of a juvenile which has been deemed confidential and exempt under certain circumstances; amending ss. 496.4101 and 943.056, F.S.; conforming provisions to changes made by the act; reenacting s. 110.1127(4), F.S., relating to employee background screening and investigations, to incorporate the amendment made by the act to s. 943.053, F.S., in a reference thereto; reenacting s. 373.6055(3)(a), F.S., relating to criminal history checks for certain water management district employees and others, to incorporate the amendment made by the act to s. 943.053, F.S., in a reference thereto; reenacting s. 408.809(6), F.S., relating to background screening, to incorporate the amendment made by the act to s. 943.053, F.S., in a reference thereto; reenacting s. 943.046(1), F.S., relating to notification of criminal offender information, to incorporate the amendment made by the act to s. 943.053, F.S., in a reference thereto; reenacting s. 943.05(2)(h), F.S., relating to the Criminal Justice Information Program, to incorporate the amendment made by the act to s. 943.053, F.S., in a reference thereto; reenacting s. 943.0542(2)(c), F.S., relating to access to criminal history information provided by the Department of Law Enforcement to qualified entities, to incorporate the amendment made by the act to s. 943.053, F.S., in a reference thereto; reenacting s. 943.0543(5), F.S., relating to the National Crime Prevention and Privacy Compact, to incorporate the amendment made by the act to s. 943.053, F.S., in a reference thereto; reenacting s. 985.045(2), F.S., relating to court records, to incorporate the amendments made by the act to ss. 943.053 and 985.04, F.S., in references thereto; reenacting s. 985.11(1)(b), F.S., relating to fingerprinting and photographing juveniles, to incorporate the amendments made by the act to ss. 943.053 and 985.04, F.S., in references thereto; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2) of section 985.04, Florida Statutes, are amended to read:

985.04 Oaths; records; confidential information.—

(1)(a) Except as provided in subsections (2), (3), (6), and (7) and s. 943.053, all information obtained under this chapter in the discharge of official duty by any judge, any employee of the court, any authorized agent of the department, the Florida Commission on Offender Review, the Department of Corrections, the juvenile justice circuit boards, any law enforcement agent, or any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to information obtained before, on, or after the effective date of this exemption.

(b) Such confidential and exempt information ~~and~~ may be disclosed only to the authorized personnel of the court, the department and its designees, the Department of Corrections, the Florida Commission on Offender Review, law enforcement agents, school superintendents and their designees, any licensed professional or licensed community agency representative participating in the assessment or treatment of a juvenile, and others entitled under this chapter to receive that information, or upon order of the court.

(c) Within each county, the sheriff, the chiefs of police, the district school superintendent, and the department shall enter into an interagency agreement for the purpose of sharing information about juvenile offenders among all parties. The agreement must specify the conditions under which summary criminal history information is to be made available to appropriate school personnel, and the conditions under which school records are to be made available to appropriate department personnel. Such agreement shall require notification to any classroom teacher of assignment to the teacher's classroom of a juvenile who has been placed in a probation or commitment program for a felony offense. The agencies entering into such agreement must comply with s. 943.0525, and must maintain the confidentiality of information that is otherwise exempt from s. 119.07(1), as provided by law.

(2)(a)1. Notwithstanding any other provisions of this chapter, the name, photograph, address, and crime or arrest report of a child:

a.~~(a)~~ Taken into custody ~~if the child 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;

b. Charged with a violation of law which, if committed by an adult, would be a felony;

c. Found to have committed an offense which, if committed by an adult, would be a felony; or

d. Transferred to adult court pursuant to part X of this chapter,

~~(b) Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;~~

~~(c) Transferred to the adult system under s. 985.557, indicted under s. 985.56, or waived under s. 985.556;~~

~~(d) Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d); or~~

~~(e) Transferred to the adult system but sentenced to the juvenile system under s. 985.565~~

are shall not be considered confidential and exempt from s. 119.07(1) solely because of the child’s age.

2. A public records custodian may choose not to electronically publish on the custodian’s website the arrest or booking photographs of a child which are not confidential and exempt under this section or otherwise restricted from publication by law; however, this subparagraph does not restrict public access to records as provided by s. 119.07.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Subsections (3), (8), (9), and (10) of section 943.053, Florida Statutes, are amended to read:

943.053 Dissemination of criminal justice information; fees.—

~~(3)(a) Criminal history information, including information relating to an adult minors, compiled by the Criminal Justice Information Program from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge. After providing the program with all known personal identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement. Any access to criminal history information by the private sector or noncriminal justice agencies as provided in this subsection shall be assessed without regard to the quantity or category of criminal history record information requested.~~

(b)1. Criminal history information relating to a juvenile compiled by the Criminal Justice Information Program from intrastate sources shall be released as provided in this section. Such information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless such juvenile has been:

a. Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

b. Charged with a violation of law which, if committed by an adult, would be a felony;

c. Found to have committed an offense which, if committed by an adult, would be a felony; or

d. Transferred to adult court pursuant to part X of chapter 985,

and provided the criminal history record has not been expunged or sealed under any law applicable to such record.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

(c)1. Criminal history information relating to juveniles, including criminal history information consisting in whole or in part of information that is confidential and exempt under paragraph (b), shall be available to:

a. A criminal justice agency for criminal justice purposes on a priority basis and free of charge;

b. The person to whom the record relates, or his or her attorney;

c. 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

d. An agency or entity specified in s. 943.0585(4) or s. 943.059(4), 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.

2. After providing the program with all known personal identifying information, the criminal history information relating to a juvenile which is not confidential and exempt under this subsection may be released to the private sector and noncriminal justice agencies not specified in s. 943.0585(4) or s. 943.059(4) in the same manner as provided in paragraph (a). Criminal history information relating to a juvenile which is not confidential and exempt under this subsection is the entire criminal history information relating to a juvenile who satisfies any of the criteria listed in sub-subparagraphs (b)1.a. through (b)1.d., except for any portion of such juvenile's criminal history record which has been expunged or sealed under any law applicable to such record.

3. All criminal history information relating to juveniles, other than that provided to criminal justice agencies for criminal justice purposes, shall be

provided upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement.

(d) The fee for access to criminal history information by the private sector or a noncriminal justice agency shall be assessed without regard to the size or category of criminal history record information requested.

~~(e)~~^(b) The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is \$24 per name submitted, except that the fee for the guardian ad litem program and vendors of the Department of Children and Families, the Department of Juvenile Justice, and the Department of Elderly Affairs shall be \$8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services shall be \$15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, shall be \$18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

~~(8) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 and juvenile records as provided for in paragraph (3)(b), the sheriff of any county that has contracted with a private entity to operate a county detention facility pursuant to the provisions of s. 951.062 shall provide that private entity, in a timely manner, copies of the Florida criminal history records for its inmates. The sheriff may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1).~~

~~(9) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 and juvenile records as provided for in paragraph (3)(b), the Department of Corrections shall provide, in a timely manner, copies of the Florida criminal history records for inmates housed in a private state correctional facility to the private entity under contract to operate the facility pursuant to the provisions of s. 944.105. The department may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1).~~

~~(10) Notwithstanding the provisions of s. 943.0525 and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059 or of juvenile records as provided for in paragraph (3)(b), the Department of Juvenile Justice or any other state or local criminal justice agency may provide copies of the Florida criminal history records for juvenile offenders currently or formerly detained~~

or housed in a contracted juvenile assessment center or detention facility or serviced in a contracted treatment program and for employees or other individuals who will have access to these facilities, only to the entity under direct contract with the Department of Juvenile Justice to operate these facilities or programs pursuant to ~~the provisions of s. 985.688~~. The criminal justice agency providing such data may assess a charge for the Florida criminal history records pursuant to ~~the provisions of chapter 119~~. Sealed records and confidential juvenile records received by the private entity under this section remain confidential and exempt from ~~the provisions of s. 119.07(1)~~. Information provided under this section shall be used only for the criminal justice purpose for which it was requested and may not be further disseminated.

Section 3. Paragraph (b) of subsection (3) of section 496.4101, Florida Statutes, is amended to read:

496.4101 Licensure of professional solicitors and certain employees thereof.—

(3)

(b) Fees for state and federal fingerprint processing and fingerprint retention fees shall be borne by the applicant. The state cost for fingerprint processing is that authorized in s. ~~943.053(3)(e)~~ ~~943.053(3)(b)~~ for records provided to persons or entities other than those specified as exceptions therein.

Section 4. Subsection (1) of section 943.056, Florida Statutes, is amended to read:

943.056 Criminal history records; access, review, and challenge.—

(1) For purposes of verification of the accuracy and completeness of a criminal history record, the Department of Law Enforcement shall provide, in the manner prescribed by rule, such record for review upon verification, by fingerprints, of the identity of the requesting person. If a minor, or the parent or legal guardian of a minor, requests a copy of the minor's criminal history record, the Department of Law Enforcement shall provide such copy, including any portions of the record which may be confidential under s. 943.053(3)(b), for review upon verification, by fingerprints, of the identity of the minor. The providing of such record shall not require the payment of any fees, except those provided for by federal regulations.

Section 5. For the purpose of incorporating the amendment made by this act to section 943.053, Florida Statutes, in a reference thereto, subsection (4) of section 110.1127, Florida Statutes, is reenacted to read:

110.1127 Employee background screening and investigations.—

(4) Background screening and investigations shall be conducted at the expense of the employing agency. If fingerprinting is required, the

fingerprints shall be taken by the employing agency, a law enforcement agency, or a vendor as authorized pursuant to s. 435.04, submitted to the Department of Law Enforcement for state processing, and forwarded by the Department of Law Enforcement to the Federal Bureau of Investigation for national processing. The agency or vendor shall remit the processing fees required by s. 943.053 to the Department of Law Enforcement.

Section 6. For the purpose of incorporating the amendment made by this act to section 943.053, Florida Statutes, in a reference thereto, paragraph (a) of subsection (3) of section 373.6055, Florida Statutes, is reenacted to read:

373.6055 Criminal history checks for certain water management district employees and others.—

(3)(a) The fingerprint-based criminal history check shall be performed on any person described in subsection (1) pursuant to the applicable water management district's security plan for buildings, facilities, and structures. With respect to employees or others with regular access, such checks shall be performed at least once every 5 years or at other more frequent intervals as provided by the water management district's security plan for buildings, facilities, and structures. Each individual subject to the criminal history check shall file a complete set of fingerprints which are taken in a manner required by the Department of Law Enforcement and the water management district security plan. Fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The results of each fingerprint-based check shall be reported to the requesting water management district. The costs of the checks, consistent with s. 943.053(3), shall be paid by the water management district or other employing entity or by the individual checked.

Section 7. For the purpose of incorporating the amendment made by this act to section 943.053, Florida Statutes, in a reference thereto, subsection (6) of section 408.809, Florida Statutes, is reenacted to read:

408.809 Background screening; prohibited offenses.—

(6) The costs associated with obtaining the required screening must be borne by the licensee or the person subject to screening. Licensees may reimburse persons for these costs. The Department of Law Enforcement shall charge the agency for screening pursuant to s. 943.053(3). The agency shall establish a schedule of fees to cover the costs of screening.

Section 8. For the purpose of incorporating the amendment made by this act to section 943.053, Florida Statutes, in a reference thereto, subsection (1) of section 943.046, Florida Statutes, is reenacted to read:

943.046 Notification of criminal offender information.—

(1) Any state or local law enforcement agency may release to the public any criminal history information and other information regarding a criminal offender, including, but not limited to, public notification by the agency of

the information, unless the information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, this section does not contravene any provision of s. 943.053 which relates to the method by which an agency or individual may obtain a copy of an offender's criminal history record.

Section 9. For the purpose of incorporating the amendment made by this act to section 943.053, Florida Statutes, in a reference thereto, paragraph (h) of subsection (2) of section 943.05, Florida Statutes, is reenacted to read:

943.05 Criminal Justice Information Program; duties; crime reports.—

(2) The program shall:

(h) For each agency or qualified entity that officially requests retention of fingerprints or for which retention is otherwise required by law, search all arrest fingerprint submissions received under s. 943.051 against the fingerprints retained in the statewide automated biometric identification system under paragraph (g).

1. Any arrest record that is identified with the retained fingerprints of a person subject to background screening as provided in paragraph (g) shall be reported to the appropriate agency or qualified entity.

2. To participate in this search process, agencies or qualified entities must notify each person fingerprinted that his or her fingerprints will be retained, pay an annual fee to the department unless otherwise provided by law, and inform the department of any change in the affiliation, employment, or contractual status of each person whose fingerprints are retained under paragraph (g) if such change removes or eliminates the agency or qualified entity's basis or need for receiving reports of any arrest of that person, so that the agency or qualified entity is not obligated to pay the upcoming annual fee for the retention and searching of that person's fingerprints to the department. The department shall adopt a rule setting the amount of the annual fee to be imposed upon each participating agency or qualified entity for performing these searches and establishing the procedures for the retention of fingerprints and the dissemination of search results. The fee may be borne by the agency, qualified entity, or person subject to fingerprint retention or as otherwise provided by law. Consistent with the recognition of criminal justice agencies expressed in s. 943.053(3), these services shall be provided to criminal justice agencies for criminal justice purposes free of charge. Qualified entities that elect to participate in the fingerprint retention and search process are required to timely remit the fee to the department by a payment mechanism approved by the department. If requested by the qualified entity, and with the approval of the department, such fees may be timely remitted to the department by a qualified entity upon receipt of an invoice for such fees from the department. Failure of a qualified entity to pay the amount due on a timely basis or as invoiced by the department may result in the refusal by the department to

permit the qualified entity to continue to participate in the fingerprint retention and search process until all fees due and owing are paid.

3. Agencies that participate in the fingerprint retention and search process may adopt rules pursuant to ss. 120.536(1) and 120.54 to require employers to keep the agency informed of any change in the affiliation, employment, or contractual status of each person whose fingerprints are retained under paragraph (g) if such change removes or eliminates the agency's basis or need for receiving reports of any arrest of that person, so that the agency is not obligated to pay the upcoming annual fee for the retention and searching of that person's fingerprints to the department.

Section 10. For the purpose of incorporating the amendment made by this act to section 943.053, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 943.0542, Florida Statutes, is reenacted to read:

943.0542 Access to criminal history information provided by the department to qualified entities.—

(2)

(c) Each such request must be accompanied by payment of a fee for a statewide criminal history check by the department established by s. 943.053, plus the amount currently prescribed by the Federal Bureau of Investigation for the national criminal history check in compliance with the National Child Protection Act of 1993, as amended. Payments must be made in the manner prescribed by the department by rule.

Section 11. For the purpose of incorporating the amendment made by this act to section 943.053, Florida Statutes, in a reference thereto, subsection (5) of section 943.0543, Florida Statutes, is reenacted to read:

943.0543 National Crime Prevention and Privacy Compact; ratification and implementation.—

(5) This compact and this section do not affect or abridge the obligations and responsibilities of the department under other provisions of this chapter, including s. 943.053, and do not alter or amend the manner, direct or otherwise, in which the public is afforded access to criminal history records under state law.

Section 12. For the purpose of incorporating the amendments made by this act to sections 943.053 and 985.04, Florida Statutes, in references thereto, subsection (2) of section 985.045, Florida Statutes, is reenacted to read:

985.045 Court records.—

(2) The clerk shall keep all official records required by this section separate from other records of the circuit court, except those records

pertaining to motor vehicle violations, which shall be forwarded to the Department of Highway Safety and Motor Vehicles. Except as provided in ss. 943.053 and 985.04(6)(b) and (7), official records required by this chapter are not open to inspection by the public, but may be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents, guardians, or legal custodians of the child and their attorneys, law enforcement agencies, the Department of Juvenile Justice and its designees, the Florida Commission on Offender Review, the Department of Corrections, and the Justice Administrative Commission shall always have the right to inspect and copy any official record pertaining to the child. Public defender offices shall have access to official records of juveniles on whose behalf they are expected to appear in detention or other hearings before an appointment of representation. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect, and make abstracts from, official records under whatever conditions upon the use and disposition of such records the court may deem proper and may punish by contempt proceedings any violation of those conditions.

Section 13. For the purpose of incorporating the amendments made by this act to sections 943.053 and 985.04, Florida Statutes, in references thereto, paragraph (b) of subsection (1) of section 985.11, Florida Statutes, is reenacted to read:

985.11 Fingerprinting and photographing.—

(1)

(b) Unless the child is issued a civil citation or is participating in a similar diversion program pursuant to s. 985.12, a child who is charged with or found to have committed one of the following offenses shall be fingerprinted, and the fingerprints shall be submitted to the Department of Law Enforcement as provided in s. 943.051(3)(b):

1. Assault, as defined in s. 784.011.
2. Battery, as defined in s. 784.03.
3. Carrying a concealed weapon, as defined in s. 790.01(1).
4. Unlawful use of destructive devices or bombs, as defined in s. 790.1615(1).
5. Neglect of a child, as defined in s. 827.03(1)(e).
6. Assault on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a).
7. Open carrying of a weapon, as defined in s. 790.053.
8. Exposure of sexual organs, as defined in s. 800.03.

9. Unlawful possession of a firearm, as defined in s. 790.22(5).
10. Petit theft, as defined in s. 812.014.
11. Cruelty to animals, as defined in s. 828.12(1).
12. Arson, resulting in bodily harm to a firefighter, as defined in s. 806.031(1).
13. Unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115.

A law enforcement agency may fingerprint and photograph a child taken into custody upon probable cause that such child has committed any other violation of law, as the agency deems appropriate. Such fingerprint records and photographs shall be retained by the law enforcement agency in a separate file, and these records and all copies thereof must be marked "Juvenile Confidential." These records are not available for public disclosure and inspection under s. 119.07(1) except as provided in ss. 943.053 and 985.04(2), but shall be available to other law enforcement agencies, criminal justice agencies, state attorneys, the courts, the child, the parents or legal custodians of the child, their attorneys, and any other person authorized by the court to have access to such records. In addition, such records may be submitted to the Department of Law Enforcement for inclusion in the state criminal history records and used by criminal justice agencies for criminal justice purposes. These records may, in the discretion of the court, be open to inspection by anyone upon a showing of cause. The fingerprint and photograph records shall be produced in the court whenever directed by the court. Any photograph taken pursuant to this section may be shown by a law enforcement officer to any victim or witness of a crime for the purpose of identifying the person who committed such crime.

Section 14. The Legislature finds that it is a public necessity that the criminal history information of juveniles, who have not been adjudicated delinquent of a felony or who have been found only to have committed misdemeanor offenses and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution under ss. 985.04 and 943.053, Florida Statutes. Many individuals who have either completed their sanctions and received treatment or who were never charged in the juvenile justice system have found it difficult to obtain employment. The presence of an arrest or a misdemeanor record in these individuals' juvenile past and certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program creates an unnecessary barrier to becoming productive members of society, thus frustrating the rehabilitative purpose of the juvenile system. The Legislature therefore finds that it is in the best interest of the public that individuals with juvenile misdemeanor records are given the opportunity to become contributing members of society. Therefore, prohibiting the unfettered release of juvenile misdemeanor records and

certain criminal history information relating to a juvenile compiled by the Criminal Justice Information Program is of greater importance than any public benefit that may be derived from the full disclosure and release of such arrest records and information.

Section 15. This act shall take effect upon becoming a law.

Approved by the Governor March 24, 2016.

Filed in Office Secretary of State March 24, 2016.