



MEMORANDUM

TO: Carlos J. Martinez, Chief Assistant Public Defender

FROM: John Eddy Morrison

DATE: August 21, 2006

SUBJECT: FDLE's Release of Confidential Juvenile Records

As I understand from the memo dated December 2002, the FDLE has taken a position that the Florida Statutes authorize it to sell all criminal history information in its possession, even information on arrests and delinquency proceedings against juveniles that are confidential. That memo states: "In brief, juvenile arrest records which are required to be reported to FDLE are public record[s], available on the same terms as are adult criminal history records." Your question, as I understand it, is whether FDLE's position is correct.

Answer: FDLE's Position is without legal merit

The legislature has provided for the confidentiality of juvenile records: "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 [of Juvenile Justice], . . . any law enforcement agent

. . . is confidential and may be disclosed only to the authorized personnel of [listed agencies] and others entitled under this chapter to receive that information, or upon order of the court.” § 985.04(1), Fla. Stat. (2006).¹

The most important exceptions to the rule of confidentiality are in subsection (2):

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

- (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) 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 to 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

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

§ 985.04(2), Fla. Stat. (2006).

Many of our juvenile clients would not fall under any exception. Many of these clients are charged with only on or two misdemeanors. Usually, such clients are not transferred and do not waive into the adult criminal justice system. Indictments for misdemeanors is virtually unheard of. Especially for misdemeanors, many of these client will not be direct filed as an adult under section 985.557(2)(b) or (d), Florida Statute (2006).²

¹ In 2006, the legislature overhauled and reorganized chapter 985 in an attempt to make it more orderly. See Ch. 2006-120, Laws of Florida. The overhaul did not attempt substantive changes. Rather than use the soon-to-be antiquated citations to Florida Statutes 2005, this memorandum will provide the citations as they will appear in Florida Statutes 2006, based on Chapter 2006-120, Laws of Florida.

² The attached FDLE memorandum takes comfort from two Attorney General opinions stating that juvenile records of case that would be felonies if committed by

The other exceptions to confidentiality are less expansive, and also do not apply to support the FDLE's position. Subsection (3) allows the victim of the crime to receive otherwise confidential information, but "information gained by the victim under this chapter . . . must not be revealed to any outside party. . . ." § 985.04(3), Fla. Stat. (2006). Subsection (6) applies to criminal history information and may be used only for "screening requirements for personnel" working in the child care field. "The court may punish by contempt any person who releases or uses the records for any unauthorized purpose." § 985.04(6), Fla. Stat. (2006). Subsection (7) is more a reaffirmation than an exception to confidentiality:

Records in the custody of the department [of Juvenile Justice] regarding children are not open to inspection by the public. Such records may be inspected only upon order of the Secretary of Juvenile Justice or his or her authorized agent by persons who have sufficient reason and upon such conditions for their use and disposition as the secretary or his or her authorized agent deems proper. The information in such records may be disclosed only to other employees of the department who have a need therefor in order to perform their official duties; to other persons as authorized by rule of the department; and, upon request, to the Department of Corrections.

§ 985.04(7)(a), Fla. Stat. (2006). That subsection does allow DJJ to authorize inspections of its records for the purpose of statistical abstractions "provided adequate assurances are given that children's names and other identifying information will not be disclosed." *Id.* FDLE's criminal history information, which is specific to each individual, would not fall under this exception.

The FDLE apparently hangs their decision to sell all juvenile delinquency records

adults are not confidential. See Op. Att'y Gen. Fla. 94-91 (Nov. 14, 1994); Op. Att'y Gen. Fla. 95-19 (Mar. 7, 1995). The careful wording of those opinions restricting them to felonies shows instead that the Attorney General understood the crucial difference between confidentiality of records for felonies and misdemeanors.

on subsection (3) of section 943.053, Florida Statutes. That subsection provides: “Criminal history information, including information relating to 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 identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon tender of fees” § 943.053(3), Fla. Stat. (2005). ”

The FDLE apparently interprets this subsection to give it *carte blanc* to release all criminal history information, even information made confidential by section 985.04. While focusing on subsection (3), the FDLE ignores subsection (1): “The Department of Law Enforcement shall disseminate criminal justice information only in accordance with federal and state laws, regulations and rules.” § 943.053(1), Fla. Stat. (2005) (emphasis supplied). FDLE’s isolated reading of subsection (3), ignoring subsection (1), violates the “cardinal rule of statutory construction that a statute must be construed in its entirety and as a whole.” *See St. Mary’s Hosp. Inc. v. Phillipe*, 769 So. 2d 961, 967 (Fla. 2000).

FDLE’s position, in effect, assumes that subsection 943.053(3) repealed *sub silento* the confidentiality provisions in section 985.04. Again, this position is contrary to basic statutory interpretation: “The courts presume that statutes are passed with knowledge of prior existing statutes and that the legislature does not intend to keep contradictory enactments on the books or to effect so important a measure as the repeal of a law without expressing an intention to do so.” *Woodgate Development Corp. v. Hamilton Inv. Trust*, 351 So. 2d 14, 16 (Fla. 1977). In Florida, “implied repeals are not favored and will not be upheld in doubtful cases.” *Flo-Sun, Inc. v. Kirk*, 783 So. 2d 1029, 1035 (Fla. 2001).

“[B]efore making a determination that a subsequent statute has impliedly repealed one previously enacted, there should appear either a positive repugnancy between the two statutes or a clear legislative intent that the later act prescribes the only governing rule.” *Id.* at 1035-36; see also *Meteor Motors, Inc. v. Thompson Halbach & Assoc.*, 914 So. 2d 479, 483 (Fla 4th DCA 2005) (“In order for one statute to preempt another, express and unambiguous preemption language must be present”) (internal quotation omitted).

Here, the legislature has indicated that section 985.04 is not repealed by continuing to amend or otherwise modify section 985.04 almost every year for the past decade. See § 985.04, Fla. Stat. Ann. (West) (listing amendments). The change to the language of section 943.053(3), inserting “including information relating to minors,” occurred in 1996. See Ch. 96-388, § 21. In 1999, a proposed bill in both the house and senate would have added a subsection (9) to section 985.04 which would have read: “Notwithstanding any other provision to the contrary, orders of disposition and criminal history records showing juvenile offenses charged, and how such offenses were resolved, are public records and are not confidential.” See Fla. SB 1324, § 5, at 12, lines 17-20 (1999); Fla. HB 205, § 5, at 12, lines 7-10 (1999). Those bills died in committee, but they show that the legislature did not intend to make all juvenile delinquency records public records by the 1996 amendments to subsection 943.053(3).

Finally, under the FDLE’s position, the confidentiality provisions of section 985.04 would be meaningless. Why would the legislature bother to specify which juvenile records are public records (for instance felonies, direct files, etc.) and which are not (less than three misdemeanors) if the FDLE can indiscriminately release them all? Why would subsection 985.04(7), Florida Statutes (2006), protect the confidentiality of juvenile records when in

the possession of DJJ, but release to the public that same information through the FDLE? “Because the Legislature does not intend to enact purposeless or useless laws, the primary rule of statutory interpretation is to harmonize related statutes so that each is given effect.” See *Butler v. State*, 838 So. 2d 554, 555-56 (Fla. 2003).

In the attached memorandum, the FDLE cites to retention schedules and expunction provisions as a “balance” to the alleged *sub silento* repeal of the confidentiality provisions. The FDLE assumes that the legislature is limited to either protecting juvenile records through confidentiality, or expunction and shortened retention, but not both. Nothing so limits the legislative power.

This argument, however, illustrates the impossibility of the FDLE’s position. Implicit in the FDLE’s citation to the retention and expunction statutes is an acknowledgement that subsection 943.053(3) is limited by those statutes. The FDLE admits that it cannot sell such information, even though the blanket language in subsection 943.053(3) does not mention those provisions. The FDLE cannot explain why it chooses to honor the expunction and retention statutes, but not the juvenile confidentiality statutes. FDLE has no authority to choose which statutes it will enforce and which it will render meaningless.

The FDLE’s argument rests on creating a false conflict between subsection 943.053(3) and the confidentiality provisions in section 985.04. Harmonizing these statutes is effortless. Subsection 943.053(3) is a general provision authorizing FDLE to release criminal history information. Subsection 943.053(1) specifies that FDLE shall do so “only in accordance with federal and state laws.” Therefore, section 943.053 acknowledges that releases under that section are subject to other statutes making information confidential. Section 985.04 is a statute specifically stating which juvenile delinquency records are (and

are not) confidential. “[A] specific statute covering a particular subject area always controls over a statute covering the same and other subjects in more general terms. The more specific statute is considered to be an exception to the general terms of the more comprehensive statute.” *McKendry v. State*, 641 So. 2d 45, 46 (Fla. 1994). Therefore, section 943.053 gives FDLE the general right to release non-confidential information and section 985.04 specifies which juvenile delinquency records are confidential and which are not.