

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 320

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Storms

SUBJECT: Background Screening

DATE: February 1, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Farmer	CF	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of individuals and businesses that deal primarily with vulnerable populations. In 2011, the Legislature passed CS/SB 1992, which further implemented the 2010 legislation, however, this bill was vetoed by the Governor. The bill contains many of the provisions contained in the vetoed bill, while addressing the concerns of the Governor. It also incorporates the recommendations of the background screening workgroup.

The bill creates the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single “program” of screening individuals and will allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies. Once a person’s screening record is in the Clearinghouse, that person will avoid the need for many future state screens and related fees.

The bill exempts from screening or rescreening: mental health personnel working in hospitals with less than 15 hours of direct contact with adult patients per week in a hospital; Certified Nursing Assistant (CNA) applicants who have successfully passed background screening within

90 days of applying for certification; law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409, F.S., such as foster group homes and residential child-caring agencies; and certain volunteers, relatives of clients, and attorneys who provide services through a direct service provider that has a contractual relationship with the Department of Elderly Affairs (DOEA). The bill requires that these individuals not be listed on the Florida Department of Law Enforcement's (FDLE) Career Offender Search or the Dru Sjodin National Sex Offender Public Website.

The bill also:

- Requires electronic fingerprinting vendors to use technology systems that are compliant with the systems used by the FDLE;
- Allows employers to hire an employee for training and orientation before the screening is complete, provided the employee does not have any contact with clients until successful completion of the screening; and
- Creates background screening requirements related to the Division of Vocational Rehabilitation within the Department of Education

The bill substantially amends ss. 394.4572, 408.809, 409.1757, 409.221, 413.20, 413.208, 430.0402, 435.02, 435.04, 435.06, 435.12, , 464.203, 943.05, 943.053, 943.0585, and 943.059, and creates s. 456.0135 of the Florida Statutes.

## II. Present Situation:

The Florida Legislature in 1995 created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons, including children, the elderly, and the disabled. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

To address these issues, the legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of persons and businesses that deal primarily with vulnerable populations.<sup>1</sup> The bill provided that a "vulnerable person" includes minors and vulnerable adults as defined in s. 415.102(26), F.S. That section defines "vulnerable adult" as an adult "whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging."<sup>2</sup>

Primary changes made by the bill included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified;
- Increasing all Level 1 screening to Level 2 screening. This did not require existing employees to be rescreened until they otherwise due to be rescreened pursuant to existing law;

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<sup>1</sup> Chapter 2010-114, L.O.F.

<sup>2</sup> *Id.*

- Requiring all fingerprint submissions to be done electronically by August 1, 2012, or earlier, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints were required as of August 1, 2010;
- Requiring certain personnel who dealt substantially with vulnerable persons and who were not presently being screened, including persons who volunteered for more than 10 hours a month, to begin Level 2 screening. This included homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under DOEA;
- Adding additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening;
- Authorizing agencies to request the retention of fingerprints by FDLE. The bill also provided for rulemaking and related implementation provisions for retention of fingerprints;
- Providing that an exemption for a disqualifying felony may not be granted until after at least three years from the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head; and
- Rewriting all screening provisions for clarity and consistency.<sup>3</sup>

To implement these new requirements, DOEA adopted an emergency rule which required that all persons who came into direct contact with individuals receiving services provided through the department, whether as employee or volunteer, must undergo a level 2 background screening prior to employment or volunteerism.<sup>4</sup> Level 2 background screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).<sup>5</sup> The department did not make additional funds available to its service providers for this purpose, and most providers have passed this cost on to their prospective employees and volunteers.

It has been reported that the expansion of Level 2 background screening on volunteers and Area Agency and service provider staff resulting from the 2010 legislation has dramatically impacted these types of service providers. These individuals would include Aging Resource Center staff and Meals on Wheels program volunteers who do not enter a senior's home.

The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a level 2 background screening. If this trend continues, and the program continues to lose volunteers or is unable to recruit new volunteers, frail, homebound seniors will not receive needed meals and their nutrition may suffer.

Many service provider agencies have relationships with churches whose volunteers deliver several hundred meals during the holiday season. Under the new background screening requirements, these churches and civic organizations were unable to continue providing volunteers for holiday meal delivery.

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<sup>3</sup> *Id.*

<sup>4</sup> See Rule 58ER10-1, *F.A.C.*, effective August 1, 2010.

<sup>5</sup> *Florida Department of Law Enforcement, Criminal History Record Checks/Background Checks Fact Sheet* July 7, 2011. Retrieved January 28, 2012, from <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx>.

Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteer labor. It is feared that programs and activities will be curtailed or lost entirely if the volunteer force is further diminished.

The provisions of the 2010 legislation are also impacting the Home Care for the Elderly (HCE) caregivers. Many HCE caregivers are family members who receive a small monthly stipend of \$106 to help care for a frail, aging family member at home. Many of these caregivers have been providing this care for years. The stipend is used to pay for a number of things, including, but not limited to, incontinence products, nutritional supplements, respite care, etc. The new Level 2 background screening requirement is applicable to these family members/caregivers as well.<sup>6</sup>

### **III. Effect of Proposed Changes:**

#### **Mental Health Personnel**

“Mental health personnel” are required to be Level 2 screened. “Mental health personnel” includes program directors, clinicians, staff, and volunteers working in public or private mental health programs and facilities who have direct contact with individuals.<sup>7</sup> Volunteers that have less than ten hours per month of contact with patients are not required to be screened so long as they remain in the line of sight of someone who has been Level 2 screened while having direct contact with patients.<sup>8</sup>

The bill amends s. 394.4572(1), F.S., to restore an exemption from fingerprinting and screening requirements that was removed in 2010 for mental health personnel who work on an intermittent basis for less than 15 hours per week with direct, face-to-face contact with patients in a hospital licensed pursuant to ch. 395, F.S., provided that the person is not listed on the FDLE Career Offender database<sup>9</sup> or the Dru Sjodin National Sex Offender Public Website.<sup>10</sup> The exemption is not available to persons working in a mental health facility where the primary purpose of the facility is the treatment of minors.

#### **Agency for Health Care Administration Rescreening Schedule**

Persons screened under the Agency for Health Care Administration (AHCA) must be rescreened every five years. In 2010, authority was given to AHCA to establish by rule a staggered schedule for the rescreening of all persons who have a controlling interest in, are employed by, or contract with a licensee on July 31, 2010. All such persons must be rescreened by July 31, 2015.

The bill amends s. 408.809, F.S., to add the rescreening staggered schedule to statute, thereby eliminating the need for a rule. The bill also amends this statute to limit an exemption from the screening process to persons whose background screening results have not yet been retained in the Care provider Background Screening Clearinghouse created by this bill.

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<sup>6</sup> Meeting with representatives from the Area Agencies on Aging and the Community Care for the Elderly program. November 18, 2010.

<sup>7</sup> Section 394.4572(1)(a), F.S.

<sup>8</sup> Section 394.4572(1)(c), F.S.

<sup>9</sup> This search is free and can be made at <http://www.fdle.state.fl.us/coflyer/home.asp>.

<sup>10</sup> This search is free and can be made at <http://www.nsopw.gov>.

## Summer Camps

Summer camps are not licensed by the state but summer camp owners, operators, employees, and volunteers are required to be Level 2 screened.<sup>11</sup> Volunteers that have less than ten hours per month of contact with children are not required to be screened provided while having direct contact with children they remain in the line of sight of someone who has been Level 2 screened.<sup>12</sup>

The bill amends s. 409.1757, F.S., to add law enforcement officers with active certification to those licensed persons who do not have to be screened for purposes of ch. 409, F.S. The exemption applies to active sworn law enforcement officers who work or volunteer in summer camps and other facilities regulated under ch. 409, F.S., such as foster group homes and residential child-caring agencies.

## Consumer-Directed Care

The Consumer-Directed Care (CDC) Program<sup>13</sup> established under AHCA provides an alternative to institutional care. These alternatives include in-home and community-based care. The program allows recipients of in-home and community-based services the opportunity to select the services they need and the providers they want, including family and friends. The stated intent of the CDC Program is “to give such individuals more choices in and greater control over the purchased long-term care services they receive.”<sup>14</sup>

Persons who provide care under the CDC Program must undergo level 2 background screening pursuant to ch. 435, F.S.<sup>15</sup> Other regulatory and care programs under AHCA screen individuals pursuant to ch. 435, F.S. and s. 408.809, F.S.<sup>16</sup> It is believed to be an oversight that the provisions of s. 408.809, F.S., are not applicable for those providing services under the CDC Program.

The bill amends s. 409.221(4)(i), F.S., to provide that persons providing services under the CDC Program will be background screened pursuant to ch. 435, F.S., and s. 408.809, F.S.

## The Department of Elderly Affairs

The Department of Elderly Affairs (DOEA) is the designated state unit on aging as defined in the Older Americans Act (OAA) of 1965.<sup>17</sup> As such, DOEA’s role is to administer the state’s OAA allotment and grants, and to advocate, coordinate, and plan all elder services.<sup>18</sup> The OAA requires states to provide elder services through a coordinated service delivery system through designated Area Agencies on Aging . Chapter 430, F.S., requires DOEA to fund service delivery

<sup>11</sup> Section 409.175(2)(i) and (k), F.S.

<sup>12</sup> Section 409.175(2)(i), F.S.

<sup>13</sup> Section 409.212, F.S.

<sup>14</sup> Section 409.212(3), F.S.

<sup>15</sup> Section 409.212(4)(i), F.S.

<sup>16</sup> See for example s. 400.215(1), F.S., (nursing homes); s. 400.512, F.S., (home health agencies); and s. 400.6065, F.S., (hospices).

<sup>17</sup> Section 305(a)(1)(c), Older Americans Act.

<sup>18</sup> Section 430.04(1), F.S.

“lead agencies” that coordinate and provide a variety of oversight and elder support services at the consumer level in the counties within each planning and service area. DOEA is 94 percent privatized through contracts with local entities and utilizes over 45,000 volunteers to deliver information and services to elders.<sup>19</sup> Many of the volunteers are elders themselves.<sup>20</sup>

The 2010 revision of the background screening laws created s. 430.0402, F.S., requiring Level 2 background screenings for “direct services providers” who provide services through a contractual relationship with DOEA.<sup>21</sup> A “direct service provider” is defined as a person who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client or has access to the client’s living areas or to the client’s funds or personal property.<sup>22</sup> Volunteers are specifically included as “direct service providers.”<sup>23</sup>

The statute contains no exception from background screening for a volunteer who has occasional or limited contact with elders. In other statutes, there are exceptions for volunteers who are in brief or occasional contact with vulnerable populations. For example, s. 393.0655(1), F.S., exempts from screening a volunteer who assists with persons with developmental disabilities if the volunteer assists less than 10 hours per month and a person who has been screened is always present and has the volunteer within his or her line of sight.<sup>24</sup>

Area Agencies on Aging and Elder Care Services are entities who contract with DOEA to provide services to elders. Representatives of several of these entities report that the requirement of Level 2 background screening of volunteers has dramatically reduced the number of volunteers, potentially impacting the availability of services to elders. The Meals on Wheels program is dependent on volunteers, and the program is currently losing volunteers who cannot afford to pay for the cost of a Level 2 background screening. Senior centers, congregate meal sites, and health and wellness programs are also dependent on volunteers.

The provisions of the 2010 legislation also impacts Home Care for the Elderly (HCE)<sup>25</sup> caregivers. Many HCE caregivers are family members. These family members receive a monthly stipend of \$106 to help care for a family member at home. The stipend is used to pay for incontinence products, nutritional supplements, respite care, and other needed products and services. The new Level 2 background screening requirement is applicable to these family members who act as caregivers.

The bill amends s. 430.0402, F.S., to revise the definition of direct service provider to include only individuals who have direct, face-to-face contact with a client and have access to the client’s living areas, funds, personal property, or personal identification information as defined in

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<sup>19</sup> Department of Elder Affairs, *Summary of Programs and Services (2011)*, Retrieved January 29, 2012, from <http://elderaffairs.state.fl.us/doa/pubs/sops.html>.

<sup>20</sup> *Id.*

<sup>21</sup> Section 34, ch. 2010-114, L.O.F.

<sup>22</sup> Section 430.04(1)(b), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> See e.g. s. 394.4572(1)(a), F.S. (contact with persons held for mental health treatment), and s. 409.175(2), F.S. (contact with children).

<sup>25</sup> Department of Elder Affairs, *Summary of Programs and Services (2011)*, Retrieved January 28, 2012, from <http://elderaffairs.state.fl.us/doa/pubs/sops.html>.

s. 817.568, F.S. Current law defines a direct service provider as having client contact **or** living area/property access.

The bill creates an exemption from background screening for the following:

- Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the FDLE Career Offender database<sup>26</sup> or the Dru Sjodin National Sex Offender Public Website.<sup>27</sup>
- Relatives.<sup>28</sup>
- Attorneys in good standing with the Florida Bar.

The bill provides an exemption from additional background screening for an individual who becomes a direct care provider and provides services within the scope of his or her license. The exemption applies to a person who was previously screened by the Agency for Health Care Administration as a condition of licensure or employment. Such individuals would include owners, administrators, and employees of such entities as nursing homes, assisted living facilities, home health agencies, and adult day care establishments.<sup>29</sup>

The bill provides time frames for screenings by DOEA:

- Individuals serving as direct service providers on July 31, 2011, must be screened by July 1, 2013.
- DOEA may adopt rules to establish a schedule to stagger the implementation of the required screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013.
- Individuals shall be rescreened every 5 years following the date of his or her last background screening unless the individual's fingerprints are continuously retained and monitored by FDLE in the federal fingerprint retention program.

The bill removes “any authorizing statutes, if the offense was a felony” from the list of disqualifying offenses for direct services providers. The term “authorizing statute” is not defined by ch. 430, F.S. The term is defined in s. 408.803, F.S., and relates to entities regulated by the Agency for Health Care Administration.

### **Care Provider Background Screening Clearinghouse**

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities and serving vulnerable persons are subject to background screening. However, due to restrictions placed on the sharing of criminal history

<sup>26</sup> This search is free and can be made at <http://www.fdle.state.fl.us/coflyer/home.asp>.

<sup>27</sup> This search is free and can be made at <http://www.nsopw.gov>.

<sup>28</sup> The bill provides a definition of the term “relative” as it relates to this exemption to mean an individual who is the father, mother, stepfather, stepmother, son, daughter, brother, sister, grandmother, grandfather, great-grandmother, great-grandfather, grandson, granddaughter, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister of the client.

<sup>29</sup> For a complete list of entities, see s. 408.802, F.S.

information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting. This proves frustrating to those involved and leads to the payment of additional fees.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given "program." Since each regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate "program" areas and sharing of results has not been allowed. In addition, screenings are only as good as the date they are run. Arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports.

The bill creates the Care Provider Background Screening Clearinghouse (Clearinghouse) in s. 435.12, F.S. The purpose of the Clearinghouse is to create a single "program" of screening individuals who have direct contact with vulnerable persons. The Clearinghouse is created under AHCA and is to be implemented in consultation with FDLE. The Clearinghouse is a secure internet web-based system and is to be implemented by September 30, 2013, and allows for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.<sup>30</sup>

Fingerprints of the care providers will be retained by FDLE, meaning the electronically scanned image of the print will be stored digitally. FDLE will search the retained prints against incoming Florida arrests and must report the results to AHCA for inclusion in the Clearinghouse, thus avoiding the need for future state screens and related fees. A digital photograph of the person screened will be taken at the time the fingerprints are taken and retained by FDLE in electronic format, as well. This enables accurate identification of the person when they change jobs or are otherwise presented with a situation requiring screening and enables the new employer to access the Clearinghouse to verify that the person has been screened, is in the Clearinghouse, and is who they say they are. Retained fingerprints must be resubmitted for a FBI national criminal history check every five years until such time as the FBI implements its own retention program. Once the FBI implements its retention program, the need for any future screening by the specified agencies of persons in the Clearinghouse will be eliminated.

The bill does not require the rescreening of persons just to be entered into the Clearinghouse, but their fingerprints will be placed into the Clearinghouse once they are required to be rescreened by the operation of other screening laws. Once a person's fingerprints are in the Clearinghouse, they will not have to be reprinted in order to send their fingerprints to the FBI (avoiding further fees).

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<sup>30</sup> "Specified agency" means the Department of Health, the Department of Children and Families, the Agency for Health Care Administration, the Department of Elder Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities, when these agencies are conducting state and national criminal history background screening on persons who work with children, elderly or disabled persons.

### **Electronic Screening Vendors**

By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.<sup>31</sup> An agency may by rule require fingerprints to be submitted electronically prior to that date.<sup>32</sup> An agency may contract with one or more vendors to perform all or part of the electronic fingerprinting and must ensure that each vendor is qualified and will ensure the integrity and security of all personal information.<sup>33</sup>

The bill amends s. 435.04, F.S., to require vendors that do electronic fingerprinting to:

- Meet certain technical standards that are compatible with technology used by FDLE; and
- Have the ability to communicate electronically with the relevant state agency and to provide a photograph of the applicant taken at the time the fingerprints are submitted.

### **Employment Prior to Screening**

Currently an employer may not “hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening” until the person has successfully completed the background screening.<sup>34</sup> The language creates uncertainty whether a person can be hired for the purpose of training and orientation prior to successfully completing the background screening.

The bill amends s. 435.06(2), F.S., to provide that an employer may hire an employee to a position that requires background screening before the employee completes the screening process for training and orientation purposes. However, the employee may not have direct contact with vulnerable persons until the screening process is successfully completed.

### **Screening of Health Care Professionals**

Presently many health care professionals licensed by the Department of Health (DOH) are required to submit fingerprints upon initial licensure or renewal. These professions are regulated under chapters 458 (medical practice), 459 (osteopathic medicine), 460 (chiropractic medicine), 461 (podiatric medicine), 464 (nursing), or s.465.022 (pharmacies), F.S.

The bill creates s. 456.0135, F.S., to provide that after January 1, 2013, such fingerprints must be submitted electronically under FDLE procedures and through an approved vendor. For subsequent renewals, FDLE will submit the retained fingerprints to the FBI for a national criminal history check, avoiding the need for the professional to have her or his fingerprints taken again.

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<sup>31</sup> Section 435.04(1)(b), F.S.

<sup>32</sup> Section 435.04(1)(d), F.S.

<sup>33</sup> Section 435.04(1)(c), F.S.

<sup>34</sup> Section 435.06(2)(a), F.S.

## Certified Nursing Assistants

Certified Nursing Assistants (CNAs) provide care and assistance to persons with their activities of daily living.<sup>35</sup> To become a CNA, an individual must:

- Demonstrate a minimum competency to read and write.
- Successfully pass the Level 2 background screening described in s. 400.215, F.S.<sup>36</sup>
- Meet one of the following requirements:
  - Successfully complete an approved training program and examination.
  - Achieve a minimum score, on the nursing assistant competency examination, be 18 years old, and have a high school degree or the equivalent.

Only CNAs may be employed in nursing homes to provide nursing assistance.<sup>37</sup> However, there are limited exceptions for a person to begin working as a CNA for up to four months prior to certification when the person is enrolled in a CNA program, is a CNA in another state, or has preliminarily passed the CNA exam.<sup>38</sup> Such individuals must be background screened pursuant to s. 400.215, F.S., before beginning work as a CNA in a nursing home.

The bill amends s. 464.203(1), F.S., to provide that if an applicant for CNA certification has successfully passed the background screening required by s. 400.215, F.S., or s. 408.809, F.S., within 90 days of applying for the certification, and the person's background screening results are not retained in the Clearinghouse, the Board of Nursing shall waive the requirement that the applicant pass another background screening.

## Qualified Entities

A “qualified entity” is a business or organization that provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.<sup>39</sup> Qualified entities that register with FDLE may screen personnel and employees through the submission of fingerprints. Each request must be voluntary and conform to the requirements of the National Child Protection Act of 1993, as amended.<sup>40</sup>

The bill amends s. 943.05(2)(h)2., F.S., to provide that qualified entities electing to participate in the fingerprint retention and search process must timely remit fees by a payment mechanism approved by the FDLE. Failure to pay the fees on a timely basis may result in the refusal by FDLE to permit the qualified entity to continue to participate in the fingerprint retention and search process until all fees owed are paid.

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<sup>35</sup> Section 464.201(5), F.S.

<sup>36</sup> The background screening required by s. 400.215, F.S., refers to the screening described in s. 408.809, F.S., and is identical to the background screening required by s. 430.0402, F.S., except that the following are also disqualifying offenses: s. 741.28, F.S., relating to domestic violence, s. 831.30, F.S., relating to fraud in obtaining medicinal drugs, and s. 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.

<sup>37</sup> Section 400.211, F.S.

<sup>38</sup> *Id.*

<sup>39</sup> Section 943.0542(1), F.S.

<sup>40</sup> Section 943.05, F.S.

## **Fingerprints and FDLE**

The Criminal Justice Information Program is established within FDLE.<sup>41</sup> The program maintains a system able to transmit criminal justice information to and between criminal justice agencies and a statewide automated fingerprint identification system.<sup>42</sup> Fingerprints submitted to FDLE for a background screening must be done in a manner established by FDLE.<sup>43</sup> Any related fees must be borne by the person or entity submitting the request, or as provided by law.<sup>44</sup>

The bill amends s. 943.053, F.S., to require fingerprints submitted for background checks be taken by a law enforcement agency employee, a government agency employee, a qualified electronic fingerprint service provider, or a private employer. Such prints may not be taken by the subject of the criminal history check.

The bill provides that a vendor, entity, or agency (except for criminal justice agencies) submitting fingerprints must enter into an agreement with FDLE. Such agreements must require:

- Compliance with FDLE specified standards;
- That persons with responsibility for submitting fingerprints are qualified to do so; and
- Collection and timely submission of fees.

## **Expunction and Sealing of Criminal History Records**

Florida courts generally have jurisdiction over the maintenance and correction of judicial records containing criminal history information. However, the Legislature has provided some conditions, responsibilities, and duties regarding the expunction<sup>45</sup> and sealing<sup>46</sup> of such records. An expunged criminal history record must be destroyed by any criminal justice agency having custody of such record, except for records in the custody of FDLE.<sup>47</sup> Such a record retained by FDLE is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.<sup>48</sup> The person who is the subject of the expunged record may lawfully deny or fail to acknowledge the arrests covered by the expunged record, with limited exceptions.<sup>49</sup> One such exception is when the person is “seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly.”<sup>50</sup>

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<sup>41</sup> Section 943.05, F.S.

<sup>42</sup> Section 943.05(2), F.S.

<sup>43</sup> Section 943.053(12), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> Section 943.0585, F.S.

<sup>46</sup> Section 943.059, F.S.

<sup>47</sup> Section 943.0585(4), F.S.

<sup>48</sup> *Id.*

<sup>49</sup> Section 943.0585(4)(a), F.S.

<sup>50</sup> Section 943.0585(4)(a)5., F.S.

Similar conditions exist for the sealing of a criminal history record. A criminal history record sealed by a court is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, and “is available only to the person who is the subject of the record, to the subject’s attorney, to criminal justice agencies for their respective criminal justice purposes,” and to certain entities “for their respective licensing, access authorization, and employment purposes.”<sup>51</sup> The person who is the subject of the sealed record may lawfully deny or fail to acknowledge the arrests covered by the sealed record, with limited exceptions.<sup>52</sup> One such exception is when the person is “seeking to be employed or licensed by or to contract with the Department of Children and Family Services, the Agency for Health Care Administration, the Agency for Persons with Disabilities, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly.”<sup>53</sup>

The bills amends ss. 943.0585(4)(a)5. and 943.059(4)(a)5., F.S., to add DOH and DOEA to the list of agencies where persons must disclose the existence of expunged or sealed criminal history records for licensing, access authorization, and employment purposes.

### **Vocational Rehabilitation**

The background screening legislation that was enacted during the 2010 session which substantially rewrote the requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations did not include the Division of Vocational Rehabilitation (DVR) in the screening process.

DVR currently has no statutory authority to perform any type of background check on its direct service providers. However, the division has required Level 1 background checks or proof of screening clearance from other agencies of most of them for several years. DVR serves people with mental and physical disabilities whose disabilities present a barrier to finding or maintaining employment. 97 percent of individuals DVR placed in jobs last year have 'significant' or 'most significant' disabilities. Services to students generally begin when they reach age 16, but students may be served beginning at age 14. Anyone under the age of 18 is considered to be vulnerable. DVR provides services to all of these individuals, if they have met eligibility criteria.<sup>54</sup>

The bill defines the term “service provider” as it relates to DVR and provides background screening requirements that would allow DVR to appropriately screen its service providers who are providing one-on-one services to vulnerable clients. It also includes DVR in the definition of “specified agency” for purposes of participating in the Care Provider Background Screening Clearinghouse.

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<sup>51</sup> Section 943.059(4), F.S.

<sup>52</sup> Section 943.059(4)(a), F.S.

<sup>53</sup> Section 943.059(4)(a)5., F.S.

<sup>54</sup> Memo from the Division of Vocational Rehabilitation. January 30, 2012. On file with the Committee on Children, Families, and Elder Affairs.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

The bill will reduce the number of persons who will need to undergo background screening prior to working with vulnerable persons. The Level 2 screenings cost \$43.25 (the \$24 state fee, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints).<sup>55</sup> By decreasing the number of persons subject to screening, there will be less of a financial impact on employers and employees.

## C. Government Sector Impact:

The bill does not appear to have a significant impact on state revenues. The bill is designed to reduce the number of duplicative screenings over the coming years, so there will be a corresponding reduction in the collected fees. However, it is not anticipated that this will represent a large percentage of those collections.

The bill does not appear to have any impact on state expenditures. The bill is designed to reduce the number of duplicative screenings over the coming years, so there will be a corresponding reduction in the related workload. However, the creation of the Clearinghouse and the retention of fingerprints will increase related workload. It is anticipated that such workload will be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

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<sup>55</sup>Florida Department of Law Enforcement, *Criminal History Record Checks / Background Checks Fact Sheet July 7, 2011*. Retrieved January 28, 2012, from <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx>.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by the Children, Families, and Elder Affairs Committee on January 31, 2012:**

The committee substitute:

- Creates an exemption from level 2 background screening for direct service provider volunteers that serve on an intermittent basis for less than 20 hours per week provided the volunteers are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.
- Provides a detailed definition of “Relatives” as it pertains to direct service providers who are exempt from level 2 background screening.
- Changes the dates in the rescreening schedule to conform to current law.
- Creates the Care Provider Background Screening Clearinghouse to be managed by AHCA and amends related statutes to conform.
- Removes from the bill a provision authorizing private schools to seek an exemption from disqualification for its personnel and removes the proposed background screening workgroup.
- Revises the provision in the bill providing an exemption from background screening for mental health personnel working in a licensed hospital who work on an intermittent basis for less than 15 hours per week with direct contact with patients. The amendment leaves the exemption in place, provided that the person is not listed on the FDLE Career Offender database or the Dru Sjodin National Sex Offender Public Website.
- Creates background screening requirements related to the Division of Vocational Rehabilitation within the Department of Education.

- B. **Amendments:**

None.