

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 943 Background Screening

**SPONSOR(S):** Health & Human Services Committee; Criminal Justice Subcommittee; Health & Human Services Subcommittee; Holder and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Guzzo	Schoolfield
2) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Thomas	Cunningham
3) Health & Human Services Committee	18 Y, 0 N, As CS	Guzzo	Gormley

### SUMMARY ANALYSIS

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.

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 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.

The bill also:

- Requires electronic fingerprinting vendors to use technology systems that are compliant with the systems used by the Florida Department of Law Enforcement.
- 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 (DVR).

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

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background Screening

Florida has one of the largest vulnerable populations in the country with over 25% of the state's population over the age of 65, and many more children and disabled adults. These vulnerable populations require special care because they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for the screening of prospective employees, owners, operators, contractors, and volunteers where the Legislature had determined it necessary to conduct criminal history background screenings to protect vulnerable persons. Chapter 435, F.S., outlines the screening requirements. The Florida Department of Law Enforcement (FDLE) processes criminal history checks for the screening entity. In 2010, the Legislature substantially rewrote the requirements and procedures for background screening of these persons and businesses.<sup>1</sup> Major changes made by the 2010 legislation include:

- No person who is required to be screened may begin work until the screening has been completed.
- All Level 1<sup>2</sup> screenings were increased to Level 2<sup>3</sup> screenings.
- By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.
- Certain personnel that were not being screened were required to begin Level 2 screening.
- The addition of serious crimes that disqualify an individual from employment working with vulnerable populations.
- Authorization for agencies to request the retention of fingerprints by FDLE.
- That an exemption for a disqualifying felony may not be granted until at least three years after the completion of all sentencing sanctions for that felony.
- That all exemptions from disqualification may be granted only by the agency head.

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>4</sup>

##### 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>5</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>6</sup>

##### *Effect of Proposed Changes*

The bill amends s. 394.4572(1), F.S., to restore an exemption from screening removed in 2010 for mental health personnel with 15 hours or less direct contact with patients per week in a hospital licensed pursuant to ch. 395, F.S., provided that the person is not listed on the FDLE Career Offender

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

<sup>2</sup> Section 435.03, F.S. Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. A person undergoing a Level 1 screening must not have been found guilty of any of the listed offenses.

<sup>3</sup> Section 435.04, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the listed offenses.

<sup>4</sup> *Criminal History Record Checks/Background Checks Fact Sheet* October 7, 2011. Available at

<http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx> (last visited February 8, 2012).

<sup>5</sup> Section 394.4572(1)(a), F.S.

<sup>6</sup> Section 394.4572(1)(c), F.S.

database<sup>7</sup> or the Dru Sjodin National Sex Offender Public Website.<sup>8</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.

#### *Effect of Proposed Changes*

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 been retained in the Care provider Background Screening Clearinghouse created by this bill.

#### 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>9</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>10</sup>

#### *Effect of Proposed Changes*

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>11</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>12</sup>

Persons who provide care under the CDC Program must undergo level 2 background screening pursuant to ch. 435, F.S.<sup>13</sup> Other regulatory and care programs under AHCA screen individuals pursuant to ch. 435, F.S., but **also** s. 408.809, F.S.<sup>14</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.

#### *Effect of Proposed Changes*

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>15</sup> As such, DOEA's role is to administer the state's OAA allotment and

<sup>7</sup> This search is free and can be made at <http://www.fdle.state.fl.us/coflyer/home.asp> (last visited February 8, 2012).

<sup>8</sup> This search is free and can be made at <http://www.nsopw.gov> (last visited February 8, 2012).

<sup>9</sup> Section 409.175(2)(i) and (k), F.S.

<sup>10</sup> Section 409.175(2)(i), F.S.

<sup>11</sup> Section 409.221, F.S.

<sup>12</sup> Section 409.221(3), F.S.

<sup>13</sup> Section 409.221(4)(i), F.S.

<sup>14</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>15</sup> Section 305(a)(1)(c), Older Americans Act.

grants, and to advocate, coordinate, and plan all elder services.<sup>16</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 “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>17</sup> Many of the volunteers are elders themselves.<sup>18</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>19</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>20</sup> Volunteers are specifically included as “direct service providers.”<sup>21</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>22</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.<sup>23</sup> 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>24</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.

#### *Effect of Proposed Changes*

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 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:

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<sup>16</sup> Section 430.04(1), F.S.

<sup>17</sup> Department of Elder Affairs, Summary of Programs and Services (2011), available at <http://elderaffairs.state.fl.us/doea/pubs/sops.html> (last visited February 8, 2012).

<sup>18</sup> *Id.*

<sup>19</sup> Section 34, ch. 2010-114, L.O.F.

<sup>20</sup> Section 430.04(1)(b), F.S.

<sup>21</sup> *Id.*

<sup>22</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>23</sup> Meetings with Health and Human Services Committee staff in November and December of 2010, and correspondence on file with the Committee.

<sup>24</sup> Department of Elder Affairs, Summary of Programs and Services (2011), available at <http://elderaffairs.state.fl.us/doea/pubs/sops.html> (last visited February 8, 2012).

- 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>25</sup> or the Dru Sjodin National Sex Offender Public Website.<sup>26</sup>
- Relatives.<sup>27</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>28</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 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.

#### *Effect of Proposed Changes*

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

<sup>25</sup> This search is free and can be made at <http://www.fdle.state.fl.us/coflyer/home.asp> (last visited February 8, 2012).

<sup>26</sup> This search is free and can be made at <http://www.nsopw.gov> (last visited February 8, 2012).

<sup>27</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>28</sup> For a complete list of entities, see s. 408.802, F.S.

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>29</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).

#### Electronic Screening Vendors

By July 1, 2012, all fingerprints submitted to FDLE must be submitted electronically.<sup>30</sup> An agency may by rule require fingerprints to be submitted electronically prior to that date.<sup>31</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>32</sup>

#### *Effect of Proposed Changes*

The bill amends s. 435.04, F.S., to require vendors that perform 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>33</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.

#### *Effect of Proposed Changes*

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

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<sup>29</sup> "Specified agency" means the Department of Health, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, 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.

<sup>30</sup> Section 435.04(1)(b), F.S.

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

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

<sup>33</sup> Section 435.06(2)(a), F.S.

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.

#### *Effect of Proposed Changes*

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.

#### Certified Nursing Assistants

Certified Nursing Assistants (CNAs) provide care and assistance to persons with their activities of daily living.<sup>34</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>35</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>36</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>37</sup> Such individuals must be background screened pursuant to s. 400.215, F.S., before beginning work as a CNA in a nursing home.

#### *Effect of Proposed Changes*

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>38</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>39</sup>

#### *Effect of Proposed Changes*

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

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<sup>34</sup> Section 464.201(5), F.S.

<sup>35</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>36</sup> Section 400.211, F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Section 943.0542(1), F.S.

<sup>39</sup> Section 943.0542(2), F.S.

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

### Fingerprints and FDLE

The Criminal Justice Information Program is established within FDLE.<sup>40</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>41</sup> Fingerprints submitted to FDLE for a background screening must be done in a manner established by FDLE.<sup>42</sup> Any related fees must be borne by the person or entity submitting the request, or as provided by law.<sup>43</sup>

### *Effect of Proposed Changes*

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;
- Persons with responsibility for submitting fingerprints to be 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>44</sup> and sealing<sup>45</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>46</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>47</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>48</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>49</sup>

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>50</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>51</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

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

<sup>41</sup> Section 943.05(2), F.S.

<sup>42</sup> Section 943.053(12), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> Section 943.0585, F.S.

<sup>45</sup> Section 943.059, F.S.

<sup>46</sup> Section 943.0585(4), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> Section 943.0585(4)(a), F.S.

<sup>49</sup> Section 943.0585(4)(a)5., F.S.

<sup>50</sup> Section 943.059(4), F.S.

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



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>52</sup>

#### *Effect of Proposed Changes*

The bills amends ss. 943.0585(4)(a)5. and 943.059(4)(a)5., F.S., to add the Division of Vocational Rehabilitation, 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 I 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. Last year, 97% of individuals placed in jobs had 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>53</sup>

#### *Effect of Proposed Changes*

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.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 394.4572, F.S., relating to screening of mental health personnel.
- Section 2:** Amends s. 408.809, F.S., relating to background screening; prohibited offenses.
- Section 3:** Amends s. 409.1757, F.S., relating to persons not required to be refingerprinted or rescreened.
- Section 4:** Amends s. 409.221, F.S., relating to the consumer-directed care program.
- Section 5:** Amends s. 413.20, F.S., relating to service providers.
- Section 6:** Amends s. 413.208, F.S., relating to service providers; quality assurance; fitness for responsibilities; and background screening.
- Section 7:** Provides that the background screening requirements of section 6 do not apply to existing registrants with DVR in effect before October 1, 2012.
- Section 8:** Amends s. 430.0402, F.S., relating to screening of direct service providers.
- Section 9:** Amends s. 435.02, F.S., relating to definitions.
- Section 10:** Amends s. 435.04, F.S., relating to Level 2 screening standards.
- Section 11:** Amends s. 435.06, F.S., relating to exclusion from employment.
- Section 12:** Creates s. 435.12, F.S., relating to the Care Provider Background Screening Clearinghouse.
- Section 13:** Creates s. 456.0135, F.S., relating to general background screening provisions.
- Section 14:** Amends s. 464.203, F.S., relating to certified nursing assistants; certification requirements.
- Section 15:** Amends s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.
- Section 16:** Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

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<sup>52</sup> Section 943.059(4)(a)5., F.S.

<sup>53</sup> Memo from the Division of Vocational Rehabilitation. January 30, 2012. On file with committee staff.

- Section 17:** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
- Section 18:** Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.
- Section 19:** Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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.

#### 2. Expenditures:

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.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

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>54</sup>

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

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<sup>54</sup> *Criminal History Record Checks/Background Checks Fact Sheet* October 7, 2011. Available at <http://www.fdle.state.fl.us/Content/getdoc/39b8f116-6d8b-4024-9a70-5d8cd2e34aa5/FAQ.aspx> (last visited January 23, 2012).

**B. RULE-MAKING AUTHORITY:**

The Department of Elderly Affairs is given rule-making authority to establish a schedule to stagger the implementation of the required background screenings over a 1-year period, beginning July 1, 2012, through July 1, 2013. This authority appears to be adequate under ch. 120, F.S.

The Agency for Health Care Administration and the Department of Law Enforcement are given rule-making authority to adopt any forms or procedures needed to implement the Care Provider Background Screening Clearinghouse created by the bill. This authority appears to be adequate under ch. 120, F.S.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 17, 2012, the Health and Human Services Access Subcommittee adopted two amendments to HB 943. The amendments:

- Create 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.
- Provide a detailed definition of "Relatives" as it pertains to direct service providers who are exempt from level 2 background screening.
- Change the dates in the rescreening schedule to conform to current law.

The bill was reported favorably as a Committee Substitute.

On January 25, 2012, the Criminal Justice Subcommittee adopted seven amendments to the bill and reported the bill favorably as a committee substitute. The amendments:

- Create the Care Provider Background Screening Clearinghouse to be managed by AHCA and amend related statutes to conform.
- Remove from the bill a provision authorizing private schools to seek an exemption from disqualification for its personnel and remove the proposed background screening workgroup.
- Revise 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.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On February 16, 2012, the Health and Human Services Committee adopted five amendments to the bill and reported the bill favorably as a Committee Substitute. The amendments:

- Define the term "service provider" as it relates to the Division of Vocational Rehabilitation (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;
- Includes DVR in the definition of "specified agency" for purposes of participating in the Care Provider Background Screening Clearinghouse;

- Eliminates a requirement for fingerprints to be collected at licensure renewal for certain medical professionals;
- Adds DVR to the list of agencies in which individuals must disclose the existence of expunged criminal history records for licensing, access authorization, and employment purposes;
- Adds DVR to the list of agencies in which individuals must disclose the existence of sealed criminal history records for licensing, access authorization, and employment purposes;

This analysis is drafted to the Committee Substitutes as passed by the Health and Human Services Committee.