



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill may reduce the number of individuals who are required to undergo a state and national criminal history check.

Safeguard individual liberty/Promote personal responsibility: The bill will require sexual predators and sexual offenders to have a marking on their driver's license or identification card indicating the section of statute under which they are registered.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

*Legislative History on School Criminal History Background Checks:* In three of the last four legislative sessions, the Legislature has increasingly required individuals who come in contact with students to submit to Level 2 background checks conducted by FDLE and the FBI.

Section 1012.32, F.S., created in 2002, requires all instructional and non-instructional personnel hired to fill positions having direct contact with students to submit fingerprints for criminal background checks conducted by the FDLE and the FBI. The new law included a provision that persons "found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students." The Department of Education interpreted the term "personnel" to include contractors. Accordingly, contractors having direct contact with students would have to meet state and federal Level 2 background checks and could not be employed if they had been convicted of a crime involving moral turpitude. In 2004, the Legislature created s. 1012.465, F.S., which codified the Department of Education's interpretation of "personnel" by specifically requiring school district contractors with direct student contact to undergo state and federal Level 2 criminal history records checks.

During the 2005 session, HB 1877, known as the Jessica Lunsford Act, passed the legislature and was signed by the Governor on May 2, 2005. [Ch. 2005-28, Laws of Fla.] The bill had an effective date of September 1, 2005. The bill amended several statutes relating to sexual predators and sexual offenders, required electronic monitoring of certain probationers who had committed a sexual offense and mandated lifetime imprisonment or lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12. Section 21 amended s. 1012.465, F.S., to require Level 2 background checks not only for contractors with direct student contact (as required by the 2004 law), but also for those who are on school grounds when students are present. The bill defined the term "contractual personnel" to include "any vendor, individual or entity under contract with the school board."

The Jessica Lunsford Act does not impose requirements on volunteers or parents who visit school to pick up their children – school districts adopt their own policies for screening visitors. Section 943.04351, F.S., passed in 2004, does require government entities that use volunteers at places where children regularly congregate to conduct a search against the sex offender registry maintained by FDLE.

A screening required under the Jessica Lunsford Act is accomplished by the contractor submitting his or her fingerprints to school district personnel who submits the fingerprints to FDLE. FDLE then submits the fingerprints to the FBI for the national check. FDLE sends the results of the state and national check back to the school district. The school district then determines whether the results indicate that the contractor has been convicted of a crime involving moral turpitude.

After the passage of the Jessica Lunsford Act, the district school boards, DOE, and FDLE experienced implementation problems associated with the unexpected volume of contractors who needed Level 2 background checks. Numerous complaints arose from school officials, vendors, charter bus drivers, athletic officials, photographers, visiting performers, class ring sales personnel, engineers, architects, utility workers, food and health service personnel, and other impacted contractors. The complaints included the following:

- School districts expressed concerns about the volume of fingerprinting/background screenings that were required under the new law.<sup>1</sup>
- School districts expressed liability concerns about sharing criminal history information and about failing to identify every possible person who is required to be fingerprinted.
- Contractors who work in multiple school districts opposed the costs for redundant Level 2 background checks. Although school districts are authorized to share screening results with other school districts, initially there was no central database to facilitate sharing of the results.
- Contractors and school officials questioned whether Level 2 background checks were necessary for those contractors (for example, the express mail delivery person or person who refilled the soda machine) who go on school grounds for short or incidental visits or who are directly supervised for the duration of their visit.
- Contractors opposed the additional processing fees imposed by the school districts as well as the wide variability in the Level 2 background check fees charged by the different school districts.<sup>2</sup>
- Contractors who are already required to undergo a Level 2 background screening for the purpose of their employment, certification, or licensure expressed frustration and thought that to undergo another Level 2 background check was redundant and burdensome.

Contractors expressed frustration over the different screening standards and moral turpitude standard.<sup>3</sup> Because there is no statutory definition of moral turpitude, each school district determines whether or not a contractor with a criminal history should be allowed on school grounds. Contractors claim that this school district discretion results in inconsistency in banning a contractor from school grounds – a situation that could be particularly burdensome for contractors who work in multiple districts. Complaints also arose about contractors being banned from school grounds for minor crimes or for crimes committed decades ago.

In August 2005, DOE issued a technical assistance paper to help the school districts in implementing the provisions of the Jessica Lunsford Act.<sup>4</sup> The paper encouraged districts to share Level 2 background check results with other public school districts to reduce the time and fiscal impact on contractors who provide services in multiple districts. Also, FDLE was asked by the Speaker of the House of Representatives and the President of the Senate to implement a system to allow for criminal history information provided to a school district to be shared with other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005. After a school district requests a criminal history check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number or submitting agency.

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<sup>1</sup> FDLE experienced a 196 percent increase for the month of September, and a 178 percent increase for the month of October for fingerprint submissions from school districts compared to 2004.

<sup>2</sup> According to a survey of school districts conducted by the Joint Committee on Intergovernmental Relations (JCIR) in December of 2005, 16 school districts charged contractors \$67 or higher for the background screenings – representing a fee in excess of 30 percent of actual costs. Four districts charged over \$90. School districts reported that these fees were used to cover district administrative costs and contractor identification badges.

<sup>3</sup> According to a JCIR survey, 31 districts reported the use of Level 2 screening standards (19 using only Level 2 screening standards and 12 using a combination of Level 2 standards, a moral turpitude standard, and possibly another standard), 7 districts reported using only a moral turpitude standard, and 5 districts reported use of another standard.

<sup>4</sup> See <http://info.fldoe.org/docushare/dsweb/Get/Document-3151/k12%2005-107a>

*Instructional Personnel:* Section 1012.32, F.S., subjects instructional employees and contractors to Level 2 background checks upon employment or engagement to provide services and every five years thereafter. Instructional personnel are defined by s. 1012.01(2), F.S., to include kindergarten through grade 12 staff members whose functions include the provision of direct instructional services to students or who provide direct support in the learning process of students (e.g., classroom teachers, student personnel services personnel, other instructional staff, and education paraprofessionals).

*Direct Services Providers and Child Care Personnel:* Section 393.0655, F.S., relating to persons with developmental disabilities, requires direct service providers to undergo Level 2 background screening, employment history checks, and local criminal history records checks. Direct service providers are individuals who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under s. 393.067, F.S., and any other person, including volunteers, who provide care or services. The term also includes individuals who have access to a client's living areas or who have access to a client's funds or personal property.

Section 435.05, F.S., provides that every individual employed in a position for which employment screening is required must submit complete information necessary to conduct a screening to the employer within five working days after beginning employment. The law is silent on the frequency of screenings for direct service providers under s. 393.0655, F.S.

Section 402.305, F.S., provides licensure standards that are applicable to child care facilities, regardless of the origin or source of fees used to operate the facility or the type of children served. Child care personnel are subject to Level 2 background screening. The term is defined in Section 402.302(3), F.S., to include owners, operators, employees, and volunteers working in a child care facility, along with persons who work in child care programs that provide care for children 15 hours or more each week in public or nonpublic schools, summer day camps, family day care homes, or programs otherwise exempted under s. 402.316, F.S. It does not include public or nonpublic school personnel who are providing care during regular school hours or during after hours programs for grades kindergarten through 12.

Screening is valid for five years, at which time a statewide re-screening must be conducted, including an FDLE criminal history records check and a local criminal records check. In addition, child care personnel must be re-screened following a break in employment in the child care industry that exceeds 90 days.<sup>5</sup>

### **Effect of Bill:**

*Driver's licenses and identification cards:* The bill amends s. 322.141, F.S., effective August 1, 2007, to provide that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have the following markings on the front of the card:

- For a person designated as a sexual predator under s. 775.21, F.S., the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, F.S. or s. 944.607, F.S., the marking "943.0435, F.S."

The bill amends s. 322.212, F.S., effective February 1, 2008, to provide that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141, F.S., are not displayed or have been altered. Currently, sexual predators and sexual offenders are required to report in person each year during the month of the sexual predator's birthday and during the sixth month following the sexual predator or sexual offenders birth month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. The bill requires a sexual predator or sexual offender to report to

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<sup>5</sup> Rule 65C-22.006(5)(d), F.A.C., relating to child care standards.

the DHSMV to obtain a marked driver's license or identification card during the month of their re-registration unless he or she previously secured such a marked driver's license or identification card.

Currently, a sexual predator or sexual offender must register at a driver's license office of the DHSMV and present proof of registration, provide specified information, and secure a driver's license, if qualified, or an identification card. Each time a sexual predator's driver's license or identification card is subject to renewal, and within 48 hours after any change in the predator's residence or name, he or she must report in person to a driver's license facility of the DHSMV and is subject to specified registration requirements. This bill amends the sexual predator and sexual offender statutes to specify that the driver's license or identification card a predator or offender is required to secure must comply with s. 322.141(3), F.S.

*Background screenings:* The bill retains the language in s. 1012.465, F.S. that was added as part of the Jessica Lunsford Act. The bill also clarifies that the category of contractual personnel includes those who contract directly with a *school*. Current law specifies that contractual personnel include a vendor, individual, or entity under contract with a *school district*. This amendment clarifies that contractors who contract directly with schools, such as athletic officials, are required to undergo background screening unless otherwise exempted.

The bill creates a new section of statute governing access by non-instructional contractors to school grounds when students are present. The term "non-instructional contractor" is defined as a vendor, individual, or entity under contract with a school or school board who is compensated for services performed for the school or district, but who is not considered to be an employee. Employees and subcontractors of the vendor, individual or entity under contract are also included within the definition. The bill defines the terms "convicted" and "school grounds"<sup>6</sup>.

The bill requires that a fingerprint-based background screening be performed of non-instructional contractors who: (1) are permitted access to school grounds when students are present; (2) are not anticipated to have direct contact with students in performing their contract; and (3) would have only unanticipated contact with students that is infrequent and incidental. The bill requires state and federal criminal history checks to be performed at least every five years. The fingerprints may be taken by either an authorized law enforcement agency or an employee of a school district, school, or private company who is trained to take fingerprints. The school districts are required to submit the fingerprints to FDLE for state processing, and FDLE must submit the prints to the FBI for national processing. Results are returned to the school board and entered into the FDLE secure Internet shared system that is codified in the bill. The school board must check the results of the criminal history check against the disqualifying offenses specified below. The cost of the criminal history check may be borne by the district school boards, the school, or the contractor. The fee charged to a contractor cannot exceed 30 percent of the total amount charged by FDLE and the FBI.

The bill requires FDLE to enter fingerprints submitted by school districts into the statewide automated fingerprint identification system. The information is then available for all authorized law enforcement purposes, and is required to be compared with all arrest fingerprint cards. Fingerprints taken pursuant to the bill's requirements must be purged from the system after five years. School district use of the

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<sup>6</sup> The term "school grounds" is defined by the bill as follows:

"School grounds" means the buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school, or any combination of grades prekindergarten through grade 12, together with the school district land on which the buildings are located. The term does not include:

1. Any other facility or location where school classes or activities may be located or take place;
2. The buildings and grounds of any public prekindergarten, kindergarten, elementary school, middle school, junior high school, high school, or secondary school or any combination of grades prekindergarten through grade 12, or contiguous school district land, during any time period in which students are not permitted access; or
3. Any building described in this paragraph during any period in which it is used solely as a career or technical center under part IV of chapter 1004 for postsecondary or adult education.

screening process will be based upon an annual fee set by FDLE, whose director has discretion to reduce or waive the fee for good cause.

The bill requires a non-instructional contractor subject to this section to inform a school district that he or she has had a criminal history check in another school district within the last five years. The school district must verify the results of the previous criminal history check using the shared system, and may not charge the contractor for doing so.

*Disqualifying offenses:* The bill requires that a contractor who has been convicted of one of the following disqualifying offenses be immediately suspended from having access to school grounds and remain suspended unless the conviction has been set aside:

- Any offense that would require registration as a sexual offender.
- Sexual misconduct with certain developmentally disabled clients and reporting thereof.
- Sexual misconduct with certain mental health patients and reporting thereof.
- Terrorism.
- Murder.
- Kidnapping.
- Lewdness and indecent exposure.
- Incest.
- Child abuse, aggravated child abuse, or neglect of a child.

A contractor who has been convicted of a disqualifying offense is prohibited from being on school grounds when students are present unless he or she has received a full pardon or had civil rights restored. Violation of this prohibition is a 3rd degree felony.

The bill requires the school district to notify the contractor in writing when access to school grounds is denied, stating the specific record upon which the denial is based. The only two bases for contesting the denial are mistaken identity or misinterpretation of an offense from another jurisdiction as being similar to a disqualifying Florida offense.

The bill requires the contractor to inform his or her employer (or the party to whom he or she is under contract) and the school district within 48 hours of being arrested for any disqualifying offense. Willful failure to make this report constitutes a 3rd degree felony. It is also a 3rd degree felony for an employer (or the party to whom he or she is under contract) to authorize a contractor to be on school grounds when students are present if the employer has knowledge that the contractor has been arrested for a disqualifying offense. It should be noted that the bill does not prohibit the contractor who has been arrested for a disqualifying offense from being on school grounds when children are present. The prohibition only applies upon conviction for the offense.

The bill provides FDLE with rulemaking authority and provides immunity from civil and criminal liability for a public school employee (defined as an employee of a school district, a charter school, a lab school, a charter lab school, or the Florida School for the Deaf and the Blind) who shares criminal history information in good faith.

*Exemptions:* The bill creates a new section of statute that exempts the following non-institutional contractors from the fingerprint-based background screening requirements:

- Contractors who are under the direct supervision of a school district employee or contractor who meets the screening requirements. The term direct supervision means that a school district employee or contractor is physically present with a non-instructional contractor when the contractor has access to a student and the access remains in the school district employee's or the contractor's line of sight;
- Contractors who are required to undergo a Level 2 background screening process for licensure, employment, certification, or other purposes, who submit evidence that they meet the standard, were screened within the previous 5 years, and who are in good standing in their field;

- Law enforcement officers who are assigned to or dispatched to school grounds by their employer;
- Employees and medical directors of ambulance providers who are on school grounds in the scope of their duties;
- Contractors who remain at a site where students are not permitted and that is separated from the rest of the school grounds by a six-foot high chain link fence; and
- Contractors who provide pick-up and delivery services involving brief visits to school grounds when students are present.

Non-instructional contractors who are exempt from fingerprint-based criminal history background checks are subject to a search of the state and national registry of sexual predators and sexual offenders without charge to the contractor. Contractors identified as a registered sexual predator or sexual offender may not be on school grounds when students are present. The school district must notify the vendor, individual, or entity under contract of an adverse determination within 3 business days.

A contractor may not be subjected to additional criminal history checks by the school district after the evidence supporting an exemption is presented to and verified by the school district.

The section also provides that s. 1012.465 and the newly created ss.1012.467 and 1012.468, F.S., are not intended to create a private cause of action or to create a new duty of care or basis of liability.

*Instructional personnel:* The bill exempts instructional personnel who work with children with disabilities and who have already undergone and meet Level 2 background screening requirements from the screening requirements of s. 1012.32, F.S. In order to be exempt, these persons must have completed the criminal history check within five years of having direct contact with students, be re-screened every 5 years, meet the Level 2 standards and have their fingerprints retained by FDLE.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 322.141, F.S. relating to color or markings of certain licenses or identification cards.

Section 2. Amends s. 322.212, relating to unauthorized possession of, and other unlawful acts in relation to driver's licenses or identification cards.

Section 3. Amends s. 775.21, F.S. relating to the Florida Sexual Predators Act.

Section 4. Amends s. 943.0435, F.S. relating to sexual offender registration.

Section 5. Amends s. 944.607, F.S. relating to sexual offender registration

Section 6. Amends s. 1012.465, F.S.; relating to background screening requirements for certain non-instructional school district employees and contractors.

Section 7. Creates s. 1012.467, F.S.; relating to background screening requirements for non-instructional contractors who are permitted access to school grounds when students are present.

Section 8. Creates s. 1012.468, F.S.; relating to exceptions to certain fingerprinting and criminal history checks.

Section 9. Creates s. 1012.321, F.S.; relating to exceptions for certain instructional personnel from background screening requirements.

Section 10. Provides that except as otherwise provided, the act shall take effect July 1, 2007.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill's exemptions and improved efficiency of the screening process may reduce revenue received by the Department of Law Enforcement (FDLE) for processing the criminal history background checks.

According to the Department of Highway Safety and Motor Vehicles (DHSMV), implementation of this bill may generate additional revenue associated with the issuance of a license, but, additional revenue is expected to be minimal.

#### 2. Expenditures:

The DHSMV estimates that implementing the bill would cost \$74,727 during the first year. This is based upon a cost of \$1.56 for a card for each of the 28,671 registered sexual offenders and sexual predators, and programming costs of \$30,000.

FDLE estimates that the bill will require an expenditure of \$79,996 during 2007-2008 for notification and documentation to sexual offender/predator registrants of the changes made by the bill and for updating and distribution of forms to local law enforcement.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

In general, this bill reduces costs for school districts by clarifying requirements and increasing the efficiency of the background screening process for non-instructional contractors who work on school grounds.

The provision in the bill that exempts contractors who are directly supervised from undergoing the background screening should reduce the volume of cases for school districts that are required to process criminal history background checks. School districts may also experience a workload reduction from the exemption for instructional personnel who meet the background screening requirements of ss. 393.0655 or 402.305, F.S.

The bill limits the amount of fees that a school district is permitted to charge for a federal and state criminal history check of a contractor required under the newly created s. 1012.467, F.S., to 30 percent of the total fees charged by FDLE and the FBI. The current charges are \$23 by FDLE and \$24 for the FBI, for a total of \$47.

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

Non-instructional contractors who work on school grounds can expect to experience a reduction in costs because of provisions in the bill that exempt contractors who are directly supervised from background screenings, establish a fee cap and prohibit redundant screenings by requiring school districts to share results.

### D. FISCAL COMMENTS:

The current House version of the FY 2007-08 General Appropriations Act does not contain increased appropriations to cover the expenditure requirements estimated by the FDLE and the DHSMV



### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill authorizes FDLE to adopt rules regarding the system which allows the results of a criminal history check provided to a school district to be shared with other school districts through a secure Internet website or other electronic means.

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

None.

#### D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES