

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Education Pre-K – 12 Committee

BILL: CS/SB 988

INTRODUCER: Criminal Justice Committee and Senator Argenziano

SUBJECT: High-risk Offenders

DATE: March 19, 2007

REVISED: 3/21/07

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Clodfelter	Cannon	CJ	<b>Fav/CS</b>
2. deMarsh-Mathues	Matthews	ED	<b>Fav/2 amendments</b>
3.		GO	
4.		JA	
5.			
6.			

**Please see last section for Summary of Amendments**

- ☒ Technical amendments were recommended  
☐ Amendments were recommended  
☐ Significant amendments were recommended

**I. Summary:**

This bill makes the following changes to the Jessica Lunsford Act provision requiring fingerprint-based background checks for contractors who are permitted on school grounds when students are present:

- Continues to subject certain school contractors to Level 2 background screenings and clarifies that contractors who contract directly with schools must also be screened.
- Provides a list of offenses that disqualify a noninstructional contractor from having access to school grounds when students are present.
- Requires fingerprint-based background checks to be performed at least every five years.
- Exempts the following noninstructional contractors from fingerprint-based background checks: (1) those under direct line-of-sight supervision of a person who meets the screening requirements; (2) those who are already required by law to undergo a level 2 background screening and who submit evidence that they meet the standard, were screened within the previous 5 years, and are licensed or certified in good standing, if required by their specialty; (3) law enforcement officers assigned or dispatched to school grounds; (4) employees and medical directors of ambulance providers; (5) those who work and remain in an area separated from students by a 6-foot chain link fence; and (6) those who provide pick-up or delivery services that involve brief visits to school

- grounds. Exempt contractors are subject to a search of the state and national registry of sexual predators and sexual offenders with no charge to the contractor.
- Exempts instructional personnel who work with children with developmental disabilities or who are child care personnel from fingerprint-based background checks if they are required to undergo a level 2 background screening, have done so in the previous five years and meet level 2 standards, and have fingerprints retained by the Florida Department of Law Enforcement (FDLE).
  - Provides immunity from civil and criminal liability for employees of school districts and schools who share background check information in good faith.
  - Allows fingerprints to be taken by law enforcement, or by an employee of a school district, public school, or private company who is trained to take fingerprints.
  - Requires a contractor to report an arrest for a disqualifying offense to his or her employer or party to whom he or she is under contract and the school district within 48 hours. Provides that it is a 3rd degree felony for a contractor to willfully fail to report an arrest for a disqualifying offense, or for an employer or party to whom the contractor is under contract to knowingly authorize a contractor with one of the disqualifying offenses to be present on school grounds when students are present.
  - Provides that costs of fingerprint-based background checks may be borne by the district school board, the school, or the contractor, but limits fees charged to a contractor to no more than 30 percent of the total cost charged by FDLE and the Federal Bureau of Investigation (FBI).
  - Requires the FDLE to implement a system for school districts to share the results of the background checks and provides FDLE with rulemaking authority.
  - Requires the school district to notify a contractor of a basis for denial of access to school grounds, and provides that mistaken identity and misinterpretation of an offense from another jurisdiction are the only bases for contesting the denial.
  - Requires a contractor to report that he or she submitted to a fingerprint-based background check in another district and requires school districts to use the shared system to verify the information at no charge to the contractor.
  - Provides that the new and amended sections of the School Code are not intended to create a new duty of care or basis of liability, or to create a private cause of action.

In addition, the bill requires any driver's license or identification card issued to a sexual predator or sexual offender to have a designated marking on the front of the card. It provides that it is unlawful for a sexual predator or sexual offender to possess a card without the required markings or on which the markings are not displayed or have been altered, and requires the predator or offender to obtain a properly marked card.

This bill amends sections 322.141, 322.212, 775.21, 943.0435, 944.607, and 1012.465, and creates sections 1012.467, 1012.468, and 1012.321 of the Florida Statutes.

## **II. Present Situation:**

### **Legislative History on School Criminal History Background Checks**

In three of the last four years 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.<sup>1</sup>

Section 1012.32, F.S., created in 2002, requires all instructional and noninstructional 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 (DOE) 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.

### **The Jessica Lunsford Act – Contractors on School Grounds When Students are Present**

In 2005, the Legislature enacted the Jessica Lunsford Act (Chapter 2005-028, Laws of Florida). The legislation was passed following the assault and murder of 9-year-old Jessica Lunsford in Homosassa Springs, Florida. The crime was committed by John Couey, a sexual offender who had worked as a subcontracted brick mason at Jessica Lunsford’s elementary school. While the act focuses primarily on measures to track, detain, and monitor sexual offenders and predators, section 21 specifically relates to individuals with access to school grounds when students are present. 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 practical impact of the legislation was to require school districts to conduct a fingerprint-based Level 2 background screening of contractors – such as a construction worker or soda machine vendor – who are on school grounds when students are present and to determine whether the individual has been convicted of a crime involving moral turpitude. The costs associated with the background screenings have been borne by the school district, the employer, or the individual. The 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.<sup>2</sup>

### **Section 21 of the Jessica Lunsford Act -- Implementation Issues**

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

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<sup>1</sup> Level 2 background screening standards (disqualifying offenses) are enumerated in s. 435.04, F.S.

<sup>2</sup> Chapter 2004-81, L.O.F., codified in s. 943.04351, F.S.

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>3</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.
- 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>4</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>5</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 Lunsford Act.<sup>6</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 in August 2005, the President of the Senate and Speaker of the House of Representatives formally requested that FDLE implement an Internet-based system to allow for sharing of Level 2 background check results

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<sup>3</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>4</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. See also JCIR 2006 school district survey.

<sup>5</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. See also *Review of the Criminal Background Screening Requirements for Instructional and Noninstructional Personnel in School Districts*, Senate Education Committee, Report #2007-113, October 2006.

<sup>6</sup> See <http://info.fldoe.org/docushare/dsweb/Get/Document-3151/k12%2005-107a>

between school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005.<sup>7</sup> After a school district requests a Level 2 background 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. This new system was designed to lessen the redundancy of background screenings for contractors who do business with multiple school districts.

### **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.<sup>8</sup> 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 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. The law is silent on the frequency of screenings for direct service providers under s. 393.0655, F.S.

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.

Section 402.305(2)(a), 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.

The 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

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<sup>7</sup> See [http://www.fdle.state.fl.us/alerts/jla\\_schools.html](http://www.fdle.state.fl.us/alerts/jla_schools.html)

<sup>8</sup> See also s. 1012.56, F.S.

addition, child care personnel must be re-screened following a break in employment in the child care industry that exceeds 90 days.<sup>9</sup>

### **Sexual Predator Registration**

As of February 13, 2007, there were 6,238 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a “sexual predator.” Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
  - a. Kidnapping or false imprisonment where the victim is a minor and the defendant is not the victim’s parent;
  - b. Sexual battery;
  - c. Lewd or lascivious offenses;
  - d. Selling or buying a minor for child pornography; or
  - e. A violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, one of the following offenses or an attempt thereof:
  - a. Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim’s parent;
  - b. Sexual battery (except false accusation of another and refusal to be chemical castrated);
  - c. Procuring a minor for prostitution;
  - d. Selling or buying of minors into sex trafficking or prostitution;
  - e. Lewd or lascivious offenses;
  - f. Lewd or lascivious battery on an elderly or disabled person;
  - g. Promoting sexual performance by a child;
  - h. Selling or buying a minor for child pornography;
  - i. Sexual misconduct by an employee of the Department of Juvenile Justice; or
  - j. A violation of a similar law of another jurisdiction.

If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections (DOC) or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at a FDLE office, or at the sheriff’s office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver’s license office of the Department of Highway Safety and Motor Vehicles (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

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<sup>9</sup> Rule 65C-22.006(5)(d), F.A.C., relating to child care standards.

specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or equivalent designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister. Procedures are established to notify communities of information relating to predators, much of which is compiled during the registration process.

A sexual predator's failure to comply with registration requirements is a third degree felony. A sexual predator who has been convicted of one of a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.

### **Sexual Offender Registration**

As of February 13, 2007, there were 33,989 sexual offenders in the state registry. The distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997:

- a. Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent;
- b. Sexual battery (except false accusation of another and refusal to be chemical castrated);
- c. Procuring a person under the age of 18 for prostitution;
- d. Lewd or lascivious offenses;
- e. Lewd or lascivious offenses on an elderly or disabled person;
- f. Promoting sexual performance by a child;
- g. Distribution of obscene materials to a minor;
- h. Computer pornography;
- i. Transmission of child pornography by electronic device;
- j. Transmission of material harmful to minors to a minor by electronic device;
- k. Selling or buying of minors for child pornography; or
- l. Violating a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

### III. Effect of Proposed Changes:

**Section 1** of 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., the marking "943.0435, F.S."

**Section 2** of 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. It also requires sexual predators and sexual offenders to obtain a properly marked license or identification card during the month of their reregistration requirement.

**Sections 3 and 4** of the bill amend 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.

**Section 5** of the bill amends s. 944.607(9), F.S., to state the requirement for sexual offenders and sexual predators to obtain a distinctive driver's license or identification card.

**Section 6** of the bill amends s. 1012.465, F.S., to clarify that the category of contractual personnel also 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.

**Section 7** of the bill creates a new section of law in the Florida School Code governing access by noninstructional contractors to school grounds when students are present. Subsection (1) of the newly created statute defines "noninstructional contractor" 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. Subsection (1) also defines the terms "convicted" and "school grounds."

Subsection (2)(a) provides the process for fingerprint-based background screenings of noninstructional 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. It enumerates the responsibilities of the school district and the contractor being screened, and prohibits individuals convicted of certain crimes from having access to school grounds. State and federal criminal history checks must 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. 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.

Subsections (2)(b)-(e) require 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 must 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 screening process will be based upon an annual fee set by FDLE. The FDLE director has the discretion to reduce or waive the fee for good cause.

Subsection (2)(f) requires a noninstructional 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.

Subsection (2)(g) lists the following disqualifying offenses, and subsection (3) and (4) set forth the consequences for the noninstructional contractor. The disqualifying offenses are:

- 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; and
- Child abuse, aggravated child abuse, or neglect of a child.

Subsection (3) requires that a contractor who has been convicted of a disqualifying offense be immediately suspended from having access to school grounds and remain suspended unless the conviction has been set aside. Subsection (4) requires that 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. A convicted contractor who violates the suspension against accessing school grounds when students are present or not may be subject to prosecution for trespass upon grounds or facilities of a school, which is a misdemeanor offense.<sup>10</sup>

Subsection (5) 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

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<sup>10</sup> s. 810.097, F.S.

another jurisdiction as being similar to a disqualifying Florida offense. This provision insulates the school district from having to assess explanations offered by the contractor in an attempt to mitigate the seriousness of the offense or to demonstrate subsequent rehabilitation. While there is no authorization to contest the denial on any other basis, there is nothing that would prevent the district from correcting a factual mistake that is brought to its attention.

Subsection (6) 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.

Subsection (7) requires FDLE to implement a secure system for school districts to share the results of criminal history checks. The bill provides FDLE with rulemaking authority and provides immunity from civil and criminal liability for an 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.

**Section 8** of the bill creates a new section in the Florida School Code that exempts the following noninstructional contractors from the fingerprint-based background screening requirements:

- Contractors who are under the direct supervision (physical presence and within line of sight) of a school district employee or contractor who meets the screening requirements;
- 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.

These are contractors who receive remuneration for services performed for the district or school, but who are not employees of the district. The term includes employees of contractors, subcontractors, and their employees.

Noninstructional 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.

Under current law, a sexual predator who has been convicted of or found to have committed, or has pled no contest or guilty to, regardless of adjudication, any violation, or attempted violation of specific crimes and who works, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate, commits a third degree felony.<sup>11</sup> A contractor who is identified as a sexual predator or offender and who is on school grounds when students are present or not may be subject to prosecution for trespass upon grounds or facilities of a school, which is a misdemeanor offense.<sup>12</sup> The bill does not specify an elevated criminal penalty for these contractors who are on school grounds when students are present.

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 includes a provision that ss. 1012.465, 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. This provision does not take away from any existing cause of action that might be available with respect to a contractor's selection of or monitoring of its workforce.

**Section 9** 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, and meet the Level 2 standards.

**Section 10** of the bill provides an effective date of July 1, 2007, except for the amendments to s. 322.141, F.S., (August 1, 2007), and s. 322.212, F.S., (February 1, 2008).

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

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<sup>11</sup> The law, s. 775.21(10)(b), F.S., specifies the crimes: ss. 787.01, 787.02, or 787.025(2)(c), F.S., where the victim is a minor and the defendant is not the victim's parent; s. 794.011(2), (3), (4), (5), or (8), F.S.; s. 794.05, F.S.; s. 796.03, F.S.; s. 796.035, F.S.; s. 800.04, F.S.; s. 827.071, F.S.; s. 847.0133, F.S.; s. 847.0145, F.S.; or s. 985.701(1), F.S.; or a violation of a similar law of another jurisdiction when the victim of the offense was a minor.

<sup>12</sup> s. 810.097, F.S.

C. Trust Funds Restrictions:

None.

V. **Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Noninstructional 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, prohibit redundant screenings by requiring school districts to share results, and potentially enable contractors to choose the entity to which they submit fingerprints.

C. Government Sector Impact:

**Fingerprint Requirements:**

In general, this bill reduces costs for school districts by clarifying requirements and increasing the efficiency of the background screening process for noninstructional 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's exemptions and improved efficiency of the screening process may reduce revenue received by FDLE for processing the criminal history background checks.

**Cap on Fees**

The bill limits the amount of fees that a school district may 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.

**Driver's License Designation for Sexual Predators/Offenders:**

The Department of Highway Safety and Motor Vehicles 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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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## **VIII. Summary of Amendments:**

**Barcode 500842 by Committee on Education Pre-K --12:**

Corrects the title to reflect the third degree felony provided for in the bill.

**Barcode 115480 by Committee on Education Pre-K --12:**

Corrects the title to remove a provision relating to rulemaking by the State Board of Education.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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