

5The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health and Human Services Appropriations Committee

BILL: CS/CS/CS/SB 1520

INTRODUCER: Health and Human Services Appropriations Committee, Criminal Justice Committee; Children, Families, and Elder Affairs Committee; and Senator Storms

SUBJECT: Background Screening

DATE: April 13, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Walsh	CF	Fav/CS
2.	Clodfelter	Cannon	CJ	Fav/CS
3.	Hardy	Hansen	HA	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill substantially rewrites requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations. Key changes made by the bill include:

- Requiring that no person required to be screened may begin work until the screening has been completed.
- Increasing all Level 1 screening to Level 2 screening for persons working with vulnerable populations.
- Requiring all fingerprints to be submitted electronically by August 1, 2012.
- Requiring certain personnel that are not presently being screened to begin Level 2 screening.
- Adding additional serious crimes to the list of disqualifying offenses.
- Authorizing agencies to request the retention of fingerprints by the Florida Department of Law Enforcement.
- Providing 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.

- Requiring that all exemptions from disqualification be granted only by the agency head.
- Requiring the department to randomly drug test licensed foster parents if there is reasonable suspicion that he or she is using illegal drugs, and providing that the cost of testing shall be paid by the foster parent and reimbursed by the department if the test is negative.
- Clarifying that parents of children in child care centers are not subject to screening.
- Clarifying that contractors of nurse services are included in the background screening requirements.
- Clarifying that level 2 background checks are required of all providers pursuant to s. 409.912, F.S.

The new screening requirements are prospective; existing persons working with vulnerable populations are not required to be rescreened until such time they are otherwise required to be rescreened by existing law.

No need for additional state funds is anticipated as a result of this legislation. The department will incur some costs to reimburse foster parents for the cost of drug testing if the test is negative, but this cost will be absorbed within existing resources. The bill provides that any additional cost of processing and retaining fingerprint records by the Florida Department of Law Enforcement shall be assessed to the agencies requesting the records.

This bill substantially amends the following sections of the Florida Statutes:

39.001, 39.821, 215.5586, 381.60225, 393.0655, 394.4572, 400.215, 400.506, 400.512, 400.6065, 400.801, 400.805, 400.934, 400.953, 400.964, 400.980, 400.991, 402.302, 408.806, 408.808, 408.809, 409.175, 409.221, 409.907, 409.912, 429.14, 429.174, 429.67, 429.69, 429.911, 429.919, 435.01-435.08, 464.018, 464.203, 468.3101, 489.115, 744.309, 744.474, 943.05, 943.053, 985.04, and 985.644.

The bill creates sections 400.9065 and 430.0402, Florida Statutes.

The bill repeals sections 400.955, 409.1758, and 456.039(4)(d), Florida Statutes.

II. Present Situation:

Currently, Florida has one of the largest vulnerable populations in the country with over 17 percent of the state's citizens over the age of 65, and many children and disabled adults. These vulnerable populations require special care as they are at an increased risk of abuse.

In 1995, the Florida Legislature created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons. Chapter 435, F.S., outlines the screening standards for "Level 1" employment screening and "Level 2" employment screening. The Florida Department of Law Enforcement (FDLE) provides criminal history checks to the employer.

In September 2009, the Fort Lauderdale Sun Sentinel published a series of articles detailing their six month investigation into Florida's background screening system for caregivers of children,

the elderly and disabled.¹The newspaper obtained screening databases from the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), and Broward County. Among their findings:

- Since 1985, DCF has granted exemptions to more than 6,500 people with criminal records to work in child care, substance abuse and mental health counseling, and with the disabled.
- Lack of proof that a nationwide criminal check on employees had been conducted is the most frequent violation found by state inspectors in day care centers. Screening problems are among the four most common violations in assisted living facilities, adult day cares, and nursing agencies. Home health agencies and nursing homes are also cited, but less frequently.
- Florida seniors and disabled adults have been beaten, neglected, and robbed by caregivers with criminal records.
- More than 3,500 people with criminal records - including rape, robbery and murder - have been allowed to work with the elderly, disabled, and infirm through exemptions granted by the state over the past two decades.
- Hundreds of employees are working with vulnerable persons because employers failed to check their backgrounds or kept them on the job despite their criminal pasts.
- Facility owners and administrators are required to have a nationwide FBI check, but employees directly caring for patients are not. With some exceptions, direct care staff are checked only for crimes that were committed in Florida.
- For most businesses, employees can begin work before screening results are available.
- At nursing homes, some employees had worked as long as seven years without a background check being completed.

The newspaper performed analyses to determine how many exemptions were granted, who obtained them and for what crimes. A crosscheck of the newspaper's list of 8,750 people who had been granted exemptions against FDLE's criminal database revealed that:

- 1,818 of the people had been re-arrested, with 1,067 of them on felony charges.
- The crimes included 3,123 felonies and 3,321 misdemeanors.
- The majority of the felonies were drug- and theft-related, but arrests also included sex offenses against a child, other sex offenses, murder, arson, extortion, kidnapping, and cruelty toward a child. The five most common felony offenses were possession of cocaine, possession of drugs, larceny, violation of probation, and aggravated battery.²

Level 1 and Level 2 Background Screenings

The provisions of ch. 435, F.S., apply whenever a Level 1 or Level 2 screening for employment is required by law. Screenings can be done following Level 1 or Level 2 standards, depending on what direction is provided in a specific statute.³

¹ Sun Sentinel. Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes. The entire series of articles may be found at http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html_0,3829069.htmlstory. (Last visited March 23, 2010).

² A full report of the FDLE results can be found at <http://www.sun-sentinel.com/media/acrobat/2009-09/49418865.pdf>. (Last visited March 3, 2010). The results do not reflect whether the person was convicted of the offense for which arrested.

³ A Level 1 screening is referred to as a "background screening" in s. 435.03, F.S., while a Level 2 screening is referred to as a "security background investigation" in s. 435.04, F.S.

Level 1 screenings⁴ 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. Anyone undergoing a Level 1 screening must not have been found guilty of any of the offenses listed below:

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to abuse, neglect, or exploitation of a vulnerable adult.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn quick child by injury to the mother.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.021, F.S., relating to aggravated assault.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 784.045, F.S., relating to aggravated battery.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense was a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.

⁴ Level 1 screenings are outlined in s. 435.03, F.S.

- Section 827.071, F.S., relating to sexual performance by a child.
- Chapter 847, F.S., relating to obscene literature.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Has not committed an act that constitutes domestic violence as defined in s. 741.28, F.S.

A Level 2 screening⁵ consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigations (FBI) 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 offenses for Level 1 or the offenses listed below:

- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a dependency hearing.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Section 874.05(1), F.S., relating to encouraging or recruiting another to join a criminal gang.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

Additionally, the security background investigations conducted for employees and contractors of the Department of Juvenile Justice (DJJ) must ensure that no persons have been found guilty of any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- Section 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.
- Section 810.02, F.S., relating to burglary, if the offense is a felony.

⁵ Level 2 screenings are outlined in s. 435.04, F.S.

- Section 944.40, F.S., relating to escape.

The Department of Juvenile Justice may not remove a disqualification from employment to any person who is disqualified for any offense disposed of during the most recent 7-year period.

There are two additional requirements that are unique to the Level 2 screening process. Employees undergoing a Level 2 screening are required to inform an employer immediately if they are convicted of any of the disqualifying offenses listed in the statute during the time they are employed. In addition, each employer that is licensed by a state agency must attest upon each renewal that it is in compliance with the screening provisions.⁶

In addition to Level 1 and Level 2 disqualifying offenses,⁷ in 2009,⁸ additional disqualifying offenses were added to s. 408.809(5), F.S., for screening done under the purview of AHCA. These offenses are disqualifying under both the Level 1 and Level 2 standards:

- Any specific authorizing statutes, if the offense was a felony.
- Chapter 408, F.S., if the offense was a felony.
- Section 409.920, F.S., relating to Medicaid provider fraud, if the offense was a felony.
- Section 409.9201, F.S., relating to Medicaid fraud, if the offense was a felony.
- Section 741.28, F.S., relating to domestic violence.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 810.02, F.S., relating to burglary.
- Section 817.034, F.S., relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, F.S., relating to false and fraudulent insurance claims.
- Section 817.505, F.S., relating to patient brokering.
- Section 817.568, F.S., relating to criminal use of personal identification information.
- Section 817.60, F.S., relating to obtaining a credit card through fraudulent means.
- Section 817.61, F.S., relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, F.S., relating to forgery.
- Section 831.02, F.S., relating to uttering forged instruments.
- Section 831.07, F.S., relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, F.S., relating to uttering forged bank bills, checks, drafts, or promissory notes.
- Section 831.30, F.S., relating to fraud in obtaining medicinal drugs.
- Section 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.

Level 2 Fingerprint Submission

⁶ *Id.* at s. 435.04(5), F.S.

⁷ Section 435.03, and s. 435.04, F.S., respectively.

⁸ Ch. 2009- 223, L.O.F.

Criminal histories for Level 2 background screenings are obtained through the submission of the applicant's fingerprints to FDLE. Currently, there are two ways to submit fingerprints: through the submission of a hard copy of the applicant's fingerprint card or through the electronic submission of the applicant's fingerprints. Each type of submission has a different process and varies in the time it takes to have results returned.

The process for submitting a hard copy of fingerprints is as follows:

- (1) An applicant submits a completed hard copy fingerprint card to a regulatory agency;
- (2) The agency forwards the card to FDLE within five days;
- (3) FDLE screens the Florida records and reports back to the regulatory agency regarding the state criminal history check.
- (4) The FBI's response to the agency is mailed to the employer separately from FDLE's response and at a later date. Results from the FBI can take four to six weeks.

The process for submitting an electronic copy of fingerprints is as follows:

- (1) An applicant has fingerprints taken through the use of a "livescan" device⁹ that digitally takes their fingerprints. The prints are then securely emailed to FDLE;
- (2) FDLE processes the prints for a state check and e-mails the electronic submission to the FBI for a national check;
- (3) A bundle of both the FDLE and the FBI results are sent to the agency within two to three days.¹⁰

Currently, due to the length of time required to respond to hard copy fingerprint submissions, a person may begin to work while awaiting the results of a Level 2 background screening.

The fee for a Level 1 screening request is \$24.00. The fee for a Level 2 screening request is \$43.25¹¹ if submitted electronically, while a hard copy submission costs \$54.25. Currently, over 75 percent of fingerprints are submitted electronically.¹²

Electronic submissions have many benefits, including reduced processing time, improved quality of prints for searching, reduction in potential missed identifications, national and state results bundled together and retention of fingerprints for future records. Electronic submissions that are retained by FDLE allow for easy notification to employers if the applicant is arrested. In addition, fingerprint submissions for a Level 2 screening have been found to be more accurate than a Level 1 screening (which is name-based check only). Level 1 screenings conducted in the

⁹ Livescan devices may be owned by agencies or may be owned by third party vendors. Livescan is a computer device that captures electronic finger prints more accurately than hard copy, and allows for faster submission and retention of the prints. Many state agencies already have livescans in place, and FDLE has established a process to set up any new device.

¹⁰ Results regarding criminal histories for both hard copy and electronic fingerprint submissions are always sent to the agency and never directly to the applicant.

¹¹ The Agency for Health Care Administration: Background Screening. Available at: http://www.fdhc.state.fl.us/mchq/long_term_care/Background_Screening/index.shtml. (Last visited March 23, 2010).

¹² Volunteer and Employee Background Checks. Available at: <http://www.fdle.state.fl.us/Content/getdoc/9023f5ac-2c0c-465c-995c-f949db57d0dd/VECHS.aspx> (Last visited March 23, 2010).

state of Florida were found to have an error rate of 11.7 percent.¹³ A name-based check does not identify convictions outside of Florida and may result in false positives and false negatives when trying to correctly identify the applicant.

Exemptions from Disqualification

If a person is disqualified from employment in a facility through a Level 1 or Level 2 background screening, ch. 435, F.S., provides a mechanism for those individuals to pursue an exemption from disqualification. An agency may grant an exemption from disqualification to any applicant or employee otherwise disqualified for:

- Felonies committed more than three years prior to the date of disqualification;
- Misdemeanors;
- Offenses that were felonies when committed but are now misdemeanors;
- Findings of delinquency; or
- Acts of domestic violence as defined in s. 741.30, F.S.¹⁴

Once an application for exemption is received, the agency determines if a hearing is warranted. A notice is sent to the applicant to request a personal interview. The informal interview is typically conducted by telephone. The review officer poses questions regarding the applicant's criminal/abuse history, work history, and his or her motivations for seeking employment in a position requiring background screening. A review committee will make a decision to grant or deny the application based on this interview and the applicant is notified by mail in 14 days.¹⁵

Pursuant to s. 435.07, F.S., an applicant seeking an exemption must demonstrate by clear and convincing evidence that he or she should not have been disqualified. The applicant must give sufficient evidence of rehabilitation, which could include:

- An explanation of the circumstances surrounding the criminal incident for which an exemption is sought,
- The time period that has elapsed since the incident,
- The nature of the harm caused to the victim,
- The history of the applicant since the incident, or
- Any other evidence indicating that the applicant will not present a danger in continued employment.¹⁶

If one agency grants an exemption, it is not binding on other agencies.¹⁷

Since 2006, nearly 44 percent of the total applications for exemption processed by AHCA have been granted. The Fort Lauderdale Sun Sentinel reported that one in five people granted exemptions were re-arrested after having been granted the exemption.¹⁸

¹³ Interstate Identification Index Name Check Efficacy. Report of the National Task Force to the U.S. Attorney General. July 1999. NCJ-179385. Pg 7. Available at: http://www.search.org/files/pdf/III_Name_Check.pdf. (Last visited March 23, 2010).

¹⁴ Section 435.07(1), F.S.

¹⁵ A decision is contestable under the traditional administrative appeal process found in chapter 120, F.S.

¹⁶ Section 435.07(3), F.S.

¹⁷ Section 435.07(5), F.S.

Screening Statistics for Certain Agencies

The chart below outlines statistics for current screening performed by agencies affected by this bill. These totals are for the most recent one year period available.

	FDLE ¹⁹	AHCA	DCF	DOEA	GAL ²⁰	DJJ	APD ²¹
Level 1 Screens ²²	914,863	35,438	0	0	2,400	0	0
Level 2 Screens	1,236,191	28,323	109,945	628	0	12,199	21,159
Disqualified Level 1	N/A	2,368	N/A	N/A	Unknown	0	0
Disqualified Level 2		1,028	1,032	37	0	361	Unknown
Exemptions Requested ²³	N/A	605	539	36	Unknown	61	136
Exemptions Granted	N/A	182	398	22	Unknown	49	104
Exemptions Denied	N/A	53	130	13	Unknown	Unknown	33
Retains Fingerprints	N/A ²⁴	No	No	No	No	Yes	No
Rescreening	N/A	Administrators	Yes, Level 1 only	No	No	Yes	Yes

III. Effect of Proposed Changes:

The bill substantially rewrites requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations. The bill provides that a “vulnerable person” includes minors and vulnerable adults as defined in s. 415.102(26), F.S. That section defines “vulnerable adult” as an adult “whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging. Key changes made by the bill:

¹⁸ Sun Sentinel. Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes. <http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html.0,3829069.htmlstory> (Last visited March 23, 2010).

¹⁹ FDLE processes all Level 1 and Level 2 screens, but does not make determinations for disqualifications or exemptions. The totals in this chart reflect all screens handled by FDLE, and are not limited to just those screens affected by the agencies listed.

²⁰ Guardian ad Litem.

²¹ Totals for APD in this chart are the annual average over the past five years.

²² Most Level 1 screens go directly to FDLE and do not show up on this chart as handled under the agency, and are therefore under-reported. The number handled directly at FDLE for each agency is unknown.

²³ Not all exemption requests are acted upon. Many are not processed because the applicant does not respond to requests for information, the agency does not have jurisdiction, or the applicant withdraws the request.

²⁴ FDLE is the agency where fingerprints are retained for those agencies that retain fingerprints.

- Require that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified.
- Increase all Level 1 screening to Level 2 screening. This will not require existing employees to be rescreened until they otherwise come up for rescreening pursuant to existing law.
- Require all fingerprint submissions to be done electronically by August 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints will be required as of August 1, 2010.
- Require certain personnel who deal substantially with vulnerable persons and who are not presently being screened, including persons who volunteer for more than 10 hours a month, to begin Level 2 screening. This includes homes for special services, transitional living facilities, prescribed pediatric extended care centers, and certain direct service providers under the Department of Elder Affairs.
- Add additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening.
- Authorize agencies to request the retention of fingerprints by FDLE. The bill also provides for rulemaking and related implementation provisions for retention of fingerprints.
- Provide that an exemption for a disqualifying felony may not be granted until after at least three years from the completion of all sentencing sanctions for that felony.
- Require that all exemptions from disqualification be granted only by the agency head.
- Rewrite present screening provisions for clarity and consistency.
- Require all prospective and current foster parents to undergo drug testing pursuant to s. 112.0455, F.S.

Section 1 amends s. 39.001, F.S., to provide that persons who volunteer to assist with a contractor who provides children's programs for DCF must undergo Level 2 screening unless they volunteer on an intermittent basis for less than 10 hours a month. In order to be exempt, they must also be in the presence of and in the line of sight of a person who has met the screening requirements. Current law exempts volunteers who assist less than 40 hours a month if they are under direct and constant supervision by a screened person.

Section 2 (guardian ad litem), **sections 7 and 8** (home health agency personnel; nurse registry personnel; and companions and homemakers), **section 9** (hospices), **sections 13 and 14**, (home medical equipment providers), **section 17** (health care services pools), **section 23** (employees and volunteers in summer day camps and summer 24-hour camps), **section 24** (consumer directed care personnel), **sections 27 and 28** (assisted living facilities), **sections 29 and 30** (adult family-care homes), and **sections 31 and 32** (adult day care centers) of the bill increase the screening requirement from Level 1 to Level 2 for relevant personnel. These provisions are also being revised for clarity and consistency and to conform to the screening provisions being placed in s. 408.809, F.S. By placing the procedures for screening in a single statute, s. 408.809, F.S., AHCA can achieve efficiencies and consistency in the application of screening requirements. Many of the existing provisions being deleted are duplicative of provisions in ch. 435, F.S., and are unnecessary or may conflict with changes made by this bill.

Section 3 amends s. 215.5586, F.S., to remove a reference to ch. 435, F.S., for background screening of hurricane mitigation inspectors participating in the My Safe Florida Home Program established within the Department of Financial Services. These persons will still undergo

fingerprinting and criminal background screening at the state and national level, but not pursuant to ch. 435, F.S., since they do not deal primarily with vulnerable children or adults.

Section 4 amends s. 393.0655, F.S., to include additional disqualifying offenses for the screening of direct service providers for persons with developmental disabilities. The additional offenses are:

- Any specific authorizing statutes, if the offense was a felony.
- Chapter 393, F.S., if the offense was a felony.
- Section 409.920, F.S., relating to Medicaid provider fraud, if the offense was a felony.
- Section 409.9201, F.S., relating to Medicaid fraud, if the offense was a felony.
- Section 817.034, F.S., relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, F.S., relating to false and fraudulent insurance claims.
- Section 817.505, F.S., relating to patient brokering.
- Section 817.568, F.S., relating to criminal use of personal identification information.
- Section 817.60, F.S., relating to obtaining a credit card through fraudulent means.
- Section 817.61, F.S., relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, F.S., relating to forgery.
- Section 831.02, F.S., relating to uttering forged instruments.
- Section 831.07, F.S., relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, F.S., relating to uttering forged bank bills, checks, drafts, or promissory notes.

The section also exempts volunteers who assist on an intermittent basis from the screening requirement if they work less than 10 hours a month and are always in the line of sight of a person who has met the screening requirements. Current law exempts volunteers who assist for less than 40 hours a month if they are under direct and constant supervision by a screened person.

Section 5 (mental health personnel), **section 6** (nursing homes), **section 16** (intermediate care facilities for developmentally disabled persons), and **section 18** (health care clinics) of the bill revise provisions related to the screening of personnel. These screening provisions already require Level 2 screening, but are being revised for clarity and consistency. They are also being revised to conform to the screening provisions being placed in s. 408.809, F.S. By placing the procedures for screening in a single statute, s. 408.809, F.S., AHCA can achieve efficiencies and consistency in the application of screening requirements. Many of the existing provisions being deleted are duplicative of provisions in ch. 435, F.S., and are unnecessary or may conflict with changes made by this bill.

Section 5 also exempts volunteers who assist with mental health programs on an intermittent basis from the screening requirement if they work less than 10 hours a month and are always in the line of sight of a person who has met the screening requirements. Current law exempts volunteers who assist for less than 40 hours a month if they are under direct and constant supervision by a screened person.

Section 10 (homes for special services), **section 11** (transitional living facilities), and **section 12** (creating s. 400.9065, F.S., and relating to prescribed pediatric extended care centers), require Level 2 background screening for personnel in these facilities. **Section 33** creates s. 430.0402, F.S., to require Level 2 background screening for certain direct service providers who provide services to the elderly under programs of the Department of Elder Affairs. Presently, these groups do not have such screening requirements.

Section 15 repeals s. 400.955, F.S., relating to procedures for screening of home medical equipment provider personnel.

Sections 19, 20, and 21 of the bill revise AHCA's general provisions relating to screening. The changes are intended to provide for consistency and clarity. The change to s. 408.806, F.S., provides for the submission of an affidavit by licensure applicants, subject to the penalty of perjury, stating that all persons subject to background screening have been screened and are qualified. The change to s. 408.808, F.S., deletes a cross-reference to language being struck by the bill regarding a provisional status for persons pending screening results. Changes to s. 408.809, F.S., provide that:

- Any person whose responsibilities may require them to provide personal care or services directly to clients, including contractors, must be screened. A person who is employed or who contracts with a licensee on June 30, 2010, and who has already been screened and qualified according to Level 1 or Level 2 standards, must be rescreened by June 30, 2015. The rescreening date will be determined based upon staggered implementation of the requirement over the five year period.
- A person who is found upon rescreening to have a disqualifying offense that was not a disqualifying offense at the time of the previous screening, who is eligible to apply for an exemption and does so within 30 days of discovery of the disqualification, may continue to work while awaiting the results of the exemption request if the employer approves.
- Proof of compliance with Level 2 screening standards submitted within the previous 5 years to meet requirements of AHCA, the Department of Health, the Agency for Persons with Disabilities, or the Department of Children and Family Services satisfies screening requirements if the person has not been unemployed for more than 90 days. After 5 years, the person must be rescreened.
- Fingerprints must be provided in electronic format.
- Screening results will be reviewed by the agency and maintained in a database. The qualifying or disqualifying status of the person named in the request will be posted on a secure website accessible to all licensees (this is current law for nursing homes and is being moved from s. 400.215(1)(b), F.S.).
- An employer is not liable for unemployment compensation or other monetary reimbursement, upon notice of a disqualifying offense listed, for terminating the person against whom the report was issued, whether or not the person has filed for an exemption.

Section 22 amends the definition of "child care personnel" in s. 402.302(3), F.S., to exclude persons who provide care for children for more than 15 hours a week at a summer day camp and parents of children in child care centers. It also includes volunteers who assist on an intermittent basis in the definition unless they work less than 10 hours a month and are always in the line of sight of a person who has met the screening requirements. Current law excludes parents of

children in Head Start and volunteers who work less than 40 hours a month from the definition if they are under direct and constant supervision by a screened person. The “line of sight” requirement is also applied to students who observe and participate in a child care facility as part of their required coursework.

Section 23 amends s. 409.175, F.S., to increase the screening requirement for employees and volunteers in summer day camps and summer 24-hour camps from Level 1 to Level 2. However, it also exempts camp volunteers who assist on an intermittent basis for less than 10 hours a month if they are always in the line of sight of a person who has met the screening requirements. Current law excludes volunteers who work assist less than 40 hours a month from the definition if they are under direct and constant supervision by a screened person.

Section 23 also requires DCF to randomly drug test licensed foster parents if there is reasonable suspicion that he or she is using illegal drugs. The cost of testing will be paid by the foster parent and reimbursed by the department if the test is negative.

Section 25 amends s. 409.907, F.S., relating to certain Medicaid service providers, to clarify that the background screening must be conducted in accordance with chapter 435, F.S., and s. 408.809, F.S., and that a provider cannot be permitted to participate in the Medicaid program while results of the background check are pending.²⁵

Section 26 clarifies that level 2 background checks are required of all providers pursuant to s.409.912, F.S. including Medicaid providers of Durable Medical Equipment.

Section 27 amends s. 411.01, F.S., to require each school district to make its substitute teacher list available to child care facilities for the purpose of the school readiness program, the Voluntary Prekindergarten Program, and other child care programs.

Section 34 creates s. 430.0402, F.S., to require Level 2 background screening for certain direct service providers who provide services to the elderly under programs of the Department of Elder Affairs. Presently, these groups do not have such screening requirements.

Section 35 amends s. 435.01, F.S., to provide that ch. 435, F.S., only applies to background screenings that are required by law to be conducted under the chapter. This section also provides that, in accordance with the doctrine of incorporation by reference, a reference in the Florida Statutes to any provision in ch. 435, F.S., includes all subsequent amendments to ch. 435, F.S. This section also grants rulemaking authority to the agencies in order to implement the background screening provisions.

Section 36 amends s. 435.02, F.S., to provide:

- A definition of “employment” to clarify that its use in the chapter is limited to those activities that require the employee to be subject to screening.

²⁵ Paragraph 409.907(8)(a), F.S., provides that the subsection does not apply to hospitals, nursing homes, hospices, assisted living facilities, local governments, or any business that derives more than 50 percent of its revenue from the sale of goods to the final consumer. These are specifically addressed in other statutes.

- A definition of “vulnerable person” to include all minors and those adults whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, long-term physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.
- A revision to the definition of “licensing agency” – to “agency” – to clarify that its use includes all agencies that facilitate background screening, not just those agencies that issue licenses.

Section 37 amends s. 435.03, F.S., to revise the provisions related to Level 1 screening to delete the current list of disqualifying offenses and instead, incorporate the expanded list of disqualifying offenses provided by the bill for Level 2 screening in s. 435.04, F.S. It also adds a requirement to check the Dru Sjodin National Sex Offender Public Website as part of the Level 1 screening.

Section 38 amends s. 435.04, F.S., to revise the provisions related to Level 2 screening as follows:

- Require all fingerprints to be submitted electronically by August 1, 2012, or sooner, should an agency decide to do so by rule. However, for those applying under AHCA, electronic prints will be required August 1, 2010.
- Authorize an agency to contract with one or more vendors to perform all or part of the electronic fingerprinting pursuant to this section.
- Delete specific provisions for nursing homes, assisted living facilities, and the Department of Juvenile Justice (these are being transferred to the specific statutes on these topics).
- Delete requirements for attestation and affidavits by employees and employers (these are being moved to s. 435.05, F.S.).

Section 38 also provides the following additional disqualifying offenses to Level 2 screening (which means they will also apply to Level 1 screening):

- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony (therefore, the bill strikes existing specific references to crimes in this chapter).
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Section 810.02, F.S., relating to burglary (presently, felony burglary is a disqualifying offense for those being screening under DJJ).
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.
- Section 944.40, F.S., relating to escape (presently, escape is a disqualifying offense for those being screening under DJJ).
- Any crime that constitutes domestic violence.

Section 39 amends s. 435.05, F.S., to delete existing authority that allows employees to work pending the outcome of their background screening. This section also inserts requirements for attestation and affidavits by employees and employers that are being stricken in s. 435.04, F.S.

Section 40 amends s. 435.06, F.S., to provide that an employer may not hire an employee until the screening process is completed and that if an employer becomes aware that an employee has been arrested for a disqualifying offense, the employer must remove the employee from contact with any vulnerable person.

Section 41 amends s. 435.07, F.S. to provide that:

- An exemption from disqualification may not be granted for a disqualifying felony until at least three years after the applicant has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony.
- Only the head of an agency may grant an exemption from disqualification.
- The agency may consider as part of its deliberations of the employee's rehabilitation subsequent arrests and convictions, even if that subsequent crime is not a disqualifying offense.
- The standard of review by the administrative law judge of the agency's decision as to rehabilitation is whether the agency's intended action is an abuse of discretion.
- An exemption may not be granted from disqualification from employment for any person who has been designated as a sexual predator pursuant to s. 775.21, F.S., is a career offender pursuant to s. 775.261, F.S., or is a sexual offender pursuant to s. 943.0435, F.S. However, an exemption may be granted to a sexual offender who has the requirement to register as a sexual offender removed pursuant to s. 943.04354, F.S.²⁶

Section 42 amends s. 935.08, F.S., to provide that each agency is responsible for collecting and paying any fee related to fingerprints retained on its behalf to FDLE. The amount of the annual fee and procedures for the submission and retention of fingerprint information and for the dissemination of search results is to be established by rule of FDLE.

Sections 43, 49, 50, 51, 52, 53, 54, and 55 correct cross-references to conform to changes made by the bill.

Section 44 amends s. 489.115, F.S., to remove a reference to ch. 435, F.S., for background screening of construction contractors under the Department of Business and Professional Regulation. These persons will still undergo fingerprinting and criminal background screening at the state and national level, but not pursuant to ch. 435, F.S., since they do not deal primarily with vulnerable children or adults.

Section 45 amends s. 943.05, F.S., to authorize agencies to request the retention of fingerprints by FDLE and to adopt rules that require employers to keep the agency informed of any change in the affiliation, employment, or contractual status or place of affiliation, employment, or contracting of each person whose fingerprints are retained. This section also allows FDLE to participate in a federal fingerprint retention program once one is implemented, provided that FDLE is funded and equipped to participate.

²⁶ Section 943.04354, F.S., provides a process for the sexual offender to petition the court for removal of the requirement to register. The threshold for the court to consider removing the requirement is that the victim must have been a minor who was at least 14 years old at the time of the offense, and the offender must have been no more than 4 years older than the victim.

Section 46 makes technical changes by removing obsolete references in s. 943.053, F.S.

Section 47 amends the screening requirement in s. 984.01(2), F.S., for families in need of services to provide an exemption for volunteers who assist on an intermittent basis if they volunteer for less than 10 hours a month and are always in the line of sight of a person who has met the screening requirements. Current law exempts volunteers who assist less than 40 hours a month if they are under direct and constant supervision by a screened person.

Section 48 amends the background screening provisions of the Department of Juvenile Justice in s. 985.644, F.S., for consistency with other changes made by this bill; to remove redundant provisions; to add an additional disqualifying offense for the criminal use of personal identification information; to add the disqualifying offense of assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers (which is being struck from s. 435.04, F.S.); and to authorize the adoption of rules that describe the procedure and requirements necessary to implement the employment screening and fingerprint retention services.

It also exempts volunteers who assist on an intermittent basis from the screening requirement if they work less than 10 hours a month and are always in the line of sight of a person who has met the screening requirements. Current law exempts volunteers who assist less than 40 hours a month if they are under direct and constant supervision by a screened person.

Section 56 repeals s. 409.1758, F.S., relating to summer camp personnel.

Section 57 repeals s. 456.039(4)(d), F.S., to remove an obscure reference to health care practitioner credentialing.

Section 58 provides that the changes made by the bill are intended to be prospective in nature and that persons are not required to be rescreened who are employed or licensed on the effective date of the bill until such time they are otherwise required to be rescreened pursuant to law, at which time they must meet the requirements for screening as set forth in the bill.

Section 59 provides that the bill takes effect August 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will increase the number of persons who will need to undergo background screening prior to working with vulnerable persons. It also will require the screening to be done using Level 2 standards instead of Level 1, at a greater cost. Level 1 costs \$24, and Level 2 costs \$43.25 (that same \$24, plus an additional \$19.25 for electronic fingerprints) or \$30.25 (\$24 plus \$6.25 for hard copy fingerprints). By increasing the cost and the number of those persons subject to screening, there will be an impact on employers and employees. It is anticipated that in most cases, the fees will be passed on to the employee, and the employer may or may not reimburse that employee.

Foster parents will be required to pay to be screened for drugs every two years. Each screening currently costs \$26.

C. Government Sector Impact:

The bill does not create a direct negative fiscal impact on state government. However, while it does not mandate retention of fingerprints, it does authorize an agency to request such retention by the Florida Department of Law Enforcement. If such a request is made, then that agency would realize associated costs that would be passed on to employers. The agency could also realize additional workload in maintaining a list of employers for whom prints should be retained, as well as, making any notifications to employers should the agency be notified that a person whose fingerprints have been retained has been arrested. (Information in the chart below is from the agency shown.)

Agency/ Entity	Fiscal Impact	Additional Comments
AHCA	No fiscal impact	The Agency expects to process approximately 86,000 additional screenings each year. The resources necessary to do this work will be offset by the efficiencies gained through use of Livescan, and movement of OPS staff funding of \$142,098 within the Agency. No new resources will be required.
APD	No fiscal impact	
DCF	No significant fiscal impact	Assuming no retention of prints, no screening for summer camp personnel, and no immediate rescreening of existing personnel. The department will incur some costs to

		reimburse foster parents for the cost of drug testing if the test is negative, but this cost will be absorbed within existing resources.
DJJ	No fiscal impact	
DOEA	No fiscal impact	
DOH	No fiscal impact	
FDLE		The bill will result in an increase in the number of persons required to be screened, resulting in an increase in the related fees collected by FDLE. They will expend additional resources in performing the higher number of Level 2 background screens, but can handle the increase within existing resources.
GAL		The bill will impact workload. The office pays for the screening of volunteers and employees. By increasing the screening to Level 2, they predict an additional cost of \$30 per volunteer. They anticipate approximately 2,400 screens to be done next year, resulting in an increased cost of \$72,000. However, the agency is not required by law to pay for these screenings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Health and Human Services Appropriations Committee on April 13, 2010:

- Expands the scope of the bill title to include all screening, not just background screening.
- Requires the department to randomly drug test licensed foster parents if there is reasonable suspicion that he or she is using illegal drugs, and providing that the cost of testing shall be paid by the foster parent and reimbursed by the department if the test is negative.
- Clarifies that parents of children in child care centers are not subject to screening.
- Clarifies that contractors of nurse services are included in the background screening requirements.
- Clarifies that level 2 background checks are required of all providers pursuant to s. 409.912, F.S.

CS by Criminal Justice on March 26, 2010:

- Exempts volunteers who assist on an intermittent basis from the screening requirement if they work less than 10 hours a month and are always in the line of sight of a person who has met the screening requirements.
- Allows health care facility personnel to continue to work while awaiting the results of an exemption request if a rescreening reveals a disqualifying offense that was not a disqualifying offense at the time of the previous screening.
- Amends the definition of “child care personnel” in s. 402.302(3), F.S., to exclude summer day camp workers.
- Provides that students who observe and participate in a child care facility as part of their required coursework are exempt from background screening if they are always in the line of sight of a screened person.
- Requires DCF to randomly drug test all licensed foster parents every two years. The cost of the test will be paid by the foster parent.
- Requires each school district to make its substitute teacher list available to child care facilities for the purpose of the school readiness program, the Voluntary Prekindergarten Program, and other child care programs.
- Clarifies that an exemption from disqualification from employment may be granted to a person who has had the requirement to register as a sexual offender removed pursuant to s. 943.04354, F.S.
- Requires Level 2 background screening for certain direct service providers who provide services to the elderly under programs of the Department of Elder Affairs.
- Changes the effective date from July 1, 2010 to August 1, 2010, and conforms dates throughout the bill to the change.

CS by Children, Families, and Elder Affairs on March 9, 2010:

- The committee substitute clarifies that background screening for an individual to work with vulnerable populations would disqualify any person who has been adjudicated delinquent and the record has not been sealed or expunged for any offense prohibited under specified statutes.
- Requires that volunteers working with vulnerable populations undergo a Level 2 background screening.
- Adds a check of the Dru Sjodin National Sex Offender Public Website to the Level 1 screening requirements.
- Clarifies that fingerprints are to be submitted to FDLE for a Level 2 screening.
- Provides that there is no unemployment compensation or other monetary liability on the part of, and no cause of action for damages arising against, an employer that, upon notice of a conviction or arrest for a disqualifying offense listed under this chapter, terminates the person against whom the report was issued or who was arrested, regardless of whether or not that person has filed for an exemption pursuant to ch. 435.
- Provides that no exemptions shall be granted to anyone with a delinquency offense that would be a felony if committed by an adult until three years after completion of all sanctions.
- Adds career offenders, sexual offenders, and sexual predators to those individuals who may never apply for an exemption from disqualification.

- Ensures that FDLE does not have to retain fingerprints upon an agency request if it does not have sufficient funding and equipment to do so.
- Repeals s. 409.1758, F.S., relating to summer camp personnel.
- Repeals s. 456.039(4)(d), F.S., to remove an obscure reference to the health care practitioner credentialing.
- Requires all prospective and current foster parents to undergo drug testing pursuant to s. 112.0455, F.S.

B. Amendments:

None.