

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1505 Background Screenings
SPONSOR(S): Education & Employment Committee, Trabulsy
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education & Employment Committee	21 Y, 0 N, As CS	Wolff	Hassell
2) Health & Human Services Committee			
3) Appropriations Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Individuals who work with children and other vulnerable persons are required to undergo criminal background screening. Depending on the role of the individual or the agency responsible, the individual may be screened by the Florida Department of Law Enforcement through the Volunteer Employee Criminal History System (VECHS), the Florida Shared School Results (FSSR) system, or the Care Provider Background Screening Clearinghouse (Clearinghouse). However, screening results are only shared among employers through the FSSR or the Clearinghouse.

The bill requires school districts, lab schools, The Florida School for the Deaf and the Blind, the Florida Virtual School, virtual instruction providers, charter schools, hope operators, early learning coalitions, and qualified entities currently using VECHS, to conduct background screenings through the Clearinghouse. The bill provides the process for background screenings to be used by the entities newly incorporated into the Clearinghouse.

The bill revises screening requirements for youth athletic coaches by changing the screening standard from Level 1 to Level 2 and for instructional personnel and noninstructional personnel by including arrests for certain offenses as disqualifying offenses.

FDLE must develop a method for establishing the identity of individuals who undergo background screening. The method must include automated biometrics and may include latent fingerprints, palm prints, facial recognition, or retina scans.

The bill will have an indeterminant fiscal impact for the entities required to participate in the Clearinghouse. See Fiscal Comments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Employee Background Screenings

Florida provides standard procedures for screening a prospective employee where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.¹ These standards include two different levels of screening: “Level 1” employment screening and “Level 2” employment screening.

A Level 1 screening is a name-based demographic screening that includes a statewide criminal record check through the Florida Department of Law Enforcement (FDLE).² A Level 1 background screening only includes a name-based search of Florida records, including an employment history, state and local criminal history checks, and a check of the Dru Sjodin National Sex Offender Public Website.³ A Level 1 screening may be paid for and conducted through FDLE’s website, which provides immediate results.⁴

A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation (FBI) databases for state and national criminal arrest records.⁵ An applicant must be disqualified from employment if he or she has been arrested for, found guilty of, entered a plea of nolo contendere or guilty for, or been adjudicated delinquent and the record has not been sealed or expunged for, the following criminal offenses:

- Sexual misconduct with certain vulnerable individuals;
- Abuse, neglect, or exploitation of certain vulnerable individuals;
- Murder;
- Manslaughter;
- Aggravated manslaughter of certain vulnerable individuals;
- Vehicular homicide;
- Felony assault, battery, and culpable negligence;
- Assault or battery upon a vulnerable individual;
- Kidnapping;
- False imprisonment;
- Sexual battery;
- Arson;
- Burglary;
- Unlawful sexual activity with a minor;
- Child abuse;
- Negligent treatment of a child or vulnerable individual; or
- Any other offense listed under s. 435.04(2), F.S.⁶

A Level 1 screening and Level 2 screening have the same disqualifying offenses.⁷

Florida licensure laws require providers licensed by the Agency for Health Care Administration (AHCA) to conduct Level 2 criminal background screening for:⁸

¹ Chapter 435, F.S.

² Section 435.03, F.S.

³ Section 435.03(1), F.S.

⁴ Florida Department of Law Enforcement, *State of Florida Criminal History Records Check* <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited Jan. 24, 2022).

⁵ Section 435.04, F.S.

⁶ Section 435.04(2), F.S.

⁷ Sections 435.03(2) and 435.04(2), F.S.

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DATE: 1/27/2022

- The licensee;
- Administrators and financial officers;
- Staff of health care providers who offer residential and home care services that provide personal care services or have access to client property, funds or living areas; and
- Any person who is a controlling interest if there is reason to suspect they have committed a disqualifying criminal offense.

Volunteer Employee Criminal History System

The Volunteer Employee Criminal History System (VECHS) was enacted in 1999 to implement the National Child Protection Act (NCPA). The VECHS program provides state and national criminal history record information on applicants, employees, and volunteers to qualified entities. A “qualified entity” is a business or organization that provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.⁹ Qualified entities that register with FDLE may screen personnel and employees through the submission of fingerprints. Each request must be voluntary and conform to the requirements of the National Child Protection Act of 1993, as amended.¹⁰ Organizations that are statutorily required to obtain criminal history record checks on their employees or volunteers may not use VECHS.¹¹

Care Provider Background Screening Clearinghouse

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities and serving vulnerable persons are subject to background screening. However, due to restrictions placed on the sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given “program.” Since each regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate “program” areas and sharing of results has not been allowed.¹² In addition, screenings are only as good as the date they are run. Arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports.

In 2012, the Legislature passed CS/CS/CS/HB 943, which created the Care Provider Background Screening Clearinghouse (Clearinghouse) to create a single “program” of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.¹³ Designated agencies include the AHCA, the Department of Health (DOH), the Department of Children and Families, the Department of Elder Affairs, the Agency for Persons with Disabilities, and Vocational Rehabilitation within the Department of Education.¹⁴ Once a person’s screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees.¹⁵ Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013. The Clearinghouse was initially implemented by the AHCA on January 1, 2013.

Background Screening of Individuals at Schools

⁸ Section 408.809, F.S.

⁹ Section 943.0542(1), F.S.

¹⁰ Section 943.0542(2), F.S.

¹¹ Florida Department of Law Enforcement, *About VECHS*, <https://www.fdle.state.fl.us/Background-Checks/About-Us> (last visited Jan 24, 2022).

¹² See Pub. L. No. 92-544 (Oct. 25, 1972); 28 C.F.R. Part 20; 28 C.F.R. s. 50.12.

¹³ Chapter 2012-73, L.O.F.

¹⁴ Section 435.02(5), F.S. (definition of “Specified agency”)

¹⁵ Agency for Health Care Administration, *Clearinghouse Renewals*, https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/Renewals.shtml (last visited Jan. 24, 2022).

Individuals who work in or provide services to school districts, charter schools, alternative schools, and private schools participating in state school choice scholarship programs¹⁶ must undergo a fingerprint-based background screening before being permitted access to school grounds.¹⁷ The individuals who must undergo background screening fall under three personnel classifications -- instructional and noninstructional personnel,¹⁸ noninstructional school district employees and contracted personnel,¹⁹ and noninstructional contractors.²⁰ Candidates for educator certification must also undergo background screening.²¹

The background screening requirements for each personnel classification vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students.²² Because they are more likely to have direct contact with students, candidates for educator certification, instructional and noninstructional personnel, and noninstructional school district employees and contracted personnel must be screened against a distinct list of 51 disqualifying offenses applicable to employment with public schools and school districts.²³ Athletic coaches employed by public schools must be certified by the Department of Education and are subject to the same background screening standards as other individuals seeking certification.²⁴ In contrast, noninstructional contractors, individuals who are not school district employees and have no direct contact with students, are screened against a statutory list of 12 disqualifying offenses.²⁵

Fingerprints taken for a background screening are submitted to the FDLE for statewide criminal and juvenile records checks and to the FBI for national criminal records checks. The cost of the background screening may be borne by the district school board, the charter school, or the individual who is subject to the screening requirements.²⁶

FDLE enters and retains the fingerprints in the Automated Fingerprint Identification System (AFIS), and retains them in the Applicant Fingerprint Retention and Notification Program (AFRNP) database.²⁷ Any arrest fingerprints FDLE receives through the Criminal Justice Information Program²⁸ must then be searched against the fingerprints retained in the AFRNP. Any arrest record that is identified with the retained fingerprints of a person subject to the background screening must be reported to the employing or contracting school district.²⁹

Screening results for contractors, both those who have direct contact with students and those who simply have access to school property when students are present, are entered into the Florida Shared School Results (FSSR) system,³⁰ which allows the results to be shared with other school districts through a secure internet website or other secure electronic means. However, the screening results for

¹⁶ The background screenings conducted by such private schools are conducted through the VECHS. *See supra* text accompanying notes 9-11.

¹⁷ Sections 1002.421, 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

¹⁸ Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

¹⁹ Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

²⁰ Noninstructional contractors are vendors or contractors who are not school district employees, are permitted access to school grounds when students are present, and have little or no direct contact with students. Section 1012.467(1)(a), F.S.

²¹ Sections 1012.315, 1012.32(2)(a), and 1012.56(10)(a), F.S.

²² *See ss.* 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

²³ Sections 1012.315, 1012.32, and 1012.465, F.S.

²⁴ Section 1012.55(2), F.S. *See also* 1012.56, F.S.; Rule 6A-4.004(4), F.S.

²⁵ *See s.* 1012.467(2)(g), F.S. The law references eight specific offenses plus crimes involving lewd and lascivious behavior in ch. 800, F.S., which include four such offenses. *Id.*

²⁶ Section 1012.32(2), F.S. (flush-left provision at end of subsection).

²⁷ Section 1012.32(3)(a), F.S.; s. 943.05(2), F.S.; rule 11C-6.010(1), F.A.C.

²⁸ Section 943.051, F.S.

²⁹ Section 1012.32(3)(b), F.S.

³⁰ Florida Department of Law Enforcement, *Jessica Lunsford Act Information*, <http://www.fdle.state.fl.us/JLA/Jessica-Lunsford-Act-Information.aspx> (last visited Jan 24, 2022).

instructional personnel hired or contracted by an approved virtual instruction provider are not included in FSSR. As a result, these individuals must often undergo background screening by multiple school districts using the provider's services.³¹

In addition to fingerprint-based background screening, before employing instructional personnel or school administrators in any position that requires direct contact with students, school districts, charter schools, and private schools participating in a state school choice scholarship program must:

- Conduct an employment history check of the individual's previous employer. If unable to contact a previous employer, efforts to contact the employer must be documented;
- Screen the individual through use of the Department of Education (DOE) Professional Practices' Database of Disciplinary Actions Against Educators, Teacher Certification Database, and the disqualification list(DQ);³² and
- Document the findings.³³

The DQ list is maintained by the DOE and includes:

- The identity of any person who has been permanently denied an educator certificate or whose certificate was permanently revoked and has been placed on the list as directed by the EPC.³⁴
- The identity of any person who has been permanently disqualified by the Commissioner as an owner or operator of a private school participating in a state scholarship program.
- The identity of any person who has been terminated, or has resigned in lieu of termination, from employment as a result of sexual misconduct with a student.
- The identity of any person who is ineligible for educator certification or employment under s. 1012.315, F.S.

An individual on the DQ list is prohibited from serving or applying to serve as an employee or contracted personnel at any public school, charter school, or private school participating in a state scholarship program. Any individual who knowingly violates this prohibition commits a third degree felony.³⁵

Additionally, the DOE is required to investigate complaints or allegations made against certified educators and initiate proceedings to suspend or revoke the educator's certificate if grounds exist to do so. The law specifically references certified educators employed by traditional public schools, charter schools, and private schools participating in a state school choice scholarship programs, while omitting approved virtual instruction providers.³⁶

The law also requires law enforcement agencies to notify the appropriate district school superintendent, charter school governing board, private school owner or administrator, president of the Florida School for the Deaf and the Blind, or university lab schools director or principal, as applicable, within 48 hours if its employee is charged with any felony or misdemeanor involving the abuse of children or sale or possession of controlled substances.³⁷

Upon notification by law enforcement, the principal must, within 24 hours, notify parents of enrolled students who had direct contact with the perpetrator of the arrest and include, at a minimum, the employee's name and the specific charges against him or her.³⁸

Employee Misconduct Reporting Policies

³¹ Section 1012.467(7)(a), F.S.

³² See s. 1001.10(5), F.S.; see also Florida Department of Education, *Employment Screening Tools*, <https://www.fldoe.org/teaching/professional-practices/employment-screening-tools.html> (last visited Jan. 24, 2022) (includes links to the Professional Practices' Database of Disciplinary Actions Against Educators and the Teacher Certification Database).

³³ Sections 1002.33(12)(g)4. (charter schools), 1002.421(4)(c) (private schools), and 1012.27(6), F.S. (school districts).

³⁴ See s. 1012.795, F.S., regarding the EPC's authority to discipline.

³⁵ See ss. 775.082 and 775.083, F.S.

³⁶ Section 1012.796(1), F.S.

³⁷ Section 1012.797, F.S.

³⁸ *Id.*

Each school district, charter school, and private school participating in a state scholarship program must post, at each school and on their website, if they maintain a website, their policies and procedures related to reporting alleged misconduct by instructional personnel, educational support personnel, or school administrators which affects the health, safety, or welfare of a student.³⁹ Additionally, the published policies and procedures must include the contact person to whom the report is made and the penalties that will be imposed for failure to report misconduct.⁴⁰

Youth Athletic Team Coaches

Under s. 943.0438(1)(b), F.S., an “independent sanctioning authority” means a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in Florida, if the team includes one or more minors and is not affiliated with a private school.⁴¹ An independent sanctioning authority must conduct a Level 1 background screening of each current and prospective athletic coach. The required background screening must also include a search of the applicant or coach’s name or other identifying information against state and federal registries of sexual predators and sexual offenders.⁴² An individual may not serve as a youth athletic coach⁴³ unless a Level 1 screening has been conducted and the screening does not result in his or her disqualification.

In 2014, the Legislature expanded background screening requirements for athletic coaches, assistant coaches, and referees of independent sanctioning authorities and allowed a background screening conducted by a commercial consumer reporting agency in compliance with federal standards to satisfy the state level requirement so long as such screening includes a Level 1 background screening and a search against the state and federal registries of sexual predators and sexual offenders to meet the requirements under s. 943.0438, F.S.⁴⁴

An independent sanctioning authority must disqualify an applicant from acting as an athletic coach in Florida if he or she is disqualified by the Level 1 background screening or if his or her name appears in either registry.⁴⁵ Within seven days of the screening, the independent sanctioning authority must provide written notification to a disqualified person advising him or her of the results.⁴⁶ In specified circumstances, an independent sanctioning authority may grant an exception to an applicant in accordance with s. 435.07(1)(a), F.S.⁴⁷ Examples of possible exceptions include, but are not limited to, an applicant whose criminal record includes a:

- Felony that occurred three or more years ago and he or she has lawfully completed or been released from confinement or supervision for the disqualifying felony;
- Misdemeanor and he or she has completed or been lawfully released from confinement or supervision for the disqualifying misdemeanor offense; or
- Felony when committed, but is now classified as a misdemeanor, and he or she has completed or been lawfully released from confinement or supervision for all requirements imposed.⁴⁸

The sanctioning authority must maintain documentation of the results of each person screened and the written notice provided to any disqualified person for a minimum of five years.⁴⁹

Effect of Proposed Changes

³⁹ Section 1006.061(2), F.S.

⁴⁰ *Id.*

⁴¹ Section 1002.01, F.S. (defining “private school”)

⁴² Section 943.0438(2)(a)1, F.S.

⁴³ “Athletic coach” means a person who is authorized by an independent sanctioning authority to work as a coach, assistant coach, or referee for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic based team in this state; and has direct contact with one or more minors on the youth athletic team. Section 943.0438(1)(a), F.S.

⁴⁴ Chapter 2014-9, L.O.F.

⁴⁵ Section 943.0438(2)(b), F.S.

⁴⁶ Section 943.0438(2)(c), F.S.

⁴⁷ Section 943.0438(2)(b), F.S.

⁴⁸ Section 435.07(1), F.S.

⁴⁹ Section 943.0438(3)(d), F.S.

The bill requires school districts, lab schools, The Florida School for the Deaf and the Blind, the Florida Virtual School, virtual instruction providers, charter schools, hope operators, early learning coalitions, and qualified entities currently using VECHS to conduct background screening using the Care Provider Background Screening Clearinghouse (Clearinghouse). The bill provides the process for background screenings to be used by the entities newly incorporated into the Clearinghouse.

Youth athletic coaches are required to undergo Level 2 screening, instead of Level 1, under the bill. In addition to the disqualifying offenses identified in 1012.315, instructional and noninstructional personnel are ineligible for employment if arrested for certain offenses.

FDLE must retain fingerprints received for the purposes of background screenings in its system for the purpose of providing arrest notifications subsequent to the initial screening. Qualified entities who use VECHS must include within its waiver, the authority to include the fingerprints of employees or volunteers for automated biometrics.

FDLE must develop a method for establishing the identity of individuals who undergo background screening. The method must include automated biometrics and may include latent fingerprints, palm prints, facial recognition, or retina scans.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 435.02, F.S., providing a definition for "educational entities."
- Section 2.** Amends s. 435.04, F.S., removing an obsolete date.
- Section 3.** Amends s. 435.12, F.S., authorizing criminal history results to be provided to and shared between certain parties; providing that existing retention provisions apply to persons included in the Care Provider Background Screening Clearinghouse; removing obsolete language.
- Section 4.** Amends s. 943.0438, F.S., requiring certain athletic coaches to receive level 2 background screenings; requiring specified entities to participate in a certain criminal history system.
- Section 5.** Amends s. 943.05, F.S., deleting provisions concerning conditions precedent to the retention of certain fingerprints; requiring the Criminal Justice Information Program to develop a certain identification method.
- Section 6.** Amends s. 943.0542, F.S., requiring specified entities initiate criminal history checks through the clearinghouse; requiring the Department of Law Enforcement to audit certain entities; requiring certain fingerprints be entered into the clearinghouse; requiring a waiver to include specified information; prohibiting providers of child care from specified associations with certain persons; deleting a requirement that the Department of Law Enforcement establish a certain database.
- Section 7.** Amends s. 1002.33, F.S., prohibiting a charter school from employing specified persons.
- Section 8.** Amends s. 1012.32, F.S., revising the procedure for background screenings; expanding the types of background screenings used by certain schools; deleting the right to appeal certain terminations; deleting provisions specifying financial responsibility and reimbursement for background screenings; providing requirements of and procedures for background screenings; providing responsibility for background screening costs.
- Section 9.** Amends s. 1012.465, F.S., conforming provisions to changes made by the act.
- Section 10.** Amends s. 1012.467, F.S., conforming provisions to changes made by the act.
- Section 11.** Amends s. 1012.56, F.S. conforming provisions to changes made by the act.

Section 12. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

As authorized by s. 435.12, F.S., the Care Provider Background Screening Clearinghouse (Clearinghouse) system housed in the Agency for Health Care Administration (AHCA), is a multi-agency enterprise system that shares fingerprint results among specified agencies for the purpose of reducing the overall cost to providers by eliminating duplicate screenings for participating agencies. The AHCA develops a methodology to allocate the cost of the maintenance and support of the Clearinghouse system and allocates the costs proportionally based on the number of determinations made by each participating agency. The total costs include direct staff time for project management, development, and testing.

The bill requires school districts, lab schools, The Florida School for the Deaf and the Blind, the Florida Virtual School, virtual instruction providers, charter schools, hope operators, early learning coalitions, and qualified entities currently using VECHS, to participate in the Clearinghouse; therefore, beginning with Fiscal Year 2023-2024, these entities would be included in the AHCA's cost allocation methodology. As the AHCA will need to evaluate the impact of the inclusion of these new entities, the fiscal impact is currently indeterminant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 26, 2022, the Education & Employment Committee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment differs from the bill as originally filed by:

- Clarifying the incorporation of school districts, lab schools, The Florida School for the Deaf and the Blind, the Florida Virtual School, virtual instruction providers, charter schools, hope operators, early learning coalitions, and qualified entities into the Clearinghouse.
- Providing the process for background screenings to be used by the entities newly incorporated into the Clearinghouse.
- Removing the requirement that FDLE create and annually issue a decal to qualified entities participating in the VECHS.
- Removing the fine for qualified entities that failed to participate in the VECHS and failed to display the FDLE issued decal.
- Removing an exemption from background screening for certain volunteers.

The bill analysis is drafted to the committee substitute adopted by the Education & Employment Committee.