

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1505 Background Screenings

SPONSOR(S): Health & Human Services Committee, Education & Employment Committee, Trabulsy

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Committee	20 Y, 0 N, As CS	Morris	Calamas

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.

CS/CS/HB 1505 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 private schools participating in an educational scholarship program (education entities) to conduct background screenings through the Clearinghouse beginning on January 1, 2023. The bill provides a schedule for rescreening of such individuals as they move into the Clearinghouse.

The bill also authorizes qualified entities to conduct background screenings using the Clearinghouse beginning January 1, 2024, if such entities choose to do so. If a qualified entity chooses to use the Clearinghouse, it must comply with all Clearinghouse requirements and processes for background screening required by law.

Current law authorizes the Secretary of the appropriate agency to exempt applicants from disqualification under certain circumstances for certain offenses under s. 435.07, F.S. However, an individual who is considered a sexual predator, career offender, or sexual offender (unless not required to register) cannot ever be exempted from disqualification. The bill makes a person ineligible for teacher certification if ineligible for an exemption from a disqualifying offense under s. 435.07, F.S.

Under the bill, FDLE must retain fingerprints obtained from background screenings for the purpose of providing arrest notifications subsequent to initial background screenings of education entities and qualified entities. Additionally, FDLE must develop a method for establishing the identity of individuals who undergo background screening using automated biometrics.

Current law requires youth athletic coaches to undergo a Level 1 background screening if the coach works for more than 20 hours per year. The bill revises background screening requirements for youth athletic coaches by requiring coaches to undergo Level 2 screenings and removing the 20 hour cap.

Current law allows subjects of sealed or expunged criminal history records to deny or fail to acknowledge the arrests covered by the sealed or expunged record, with exceptions. The bill prohibits individuals seeking employment at a school of hope and noninstructional individuals who contract with DOE from denying or failing to acknowledge arrests covered by a sealed or expunged record.

The bill has a significant, negative fiscal impact on the Agency for Health Care Administration and no impact on local governments.

The bill provides an effective date of July 1, 2023, unless otherwise expressly provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

Current law establishes standard procedures for criminal history background screening of prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,² and may include criminal records checks through local law enforcement agencies. A Level 1 screening may be paid for and conducted through FDLE's website, which provides immediate results.³ A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁴

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.⁵ Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.⁶ For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.⁷ Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.⁸ For a level 1 screening, this is the only information searched, and once complete, FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.⁹ For level 2 screening, FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.¹⁰ As with a level 1 screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. If the employer or agency finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment.

The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.¹¹

Disqualifying Offenses

¹ Chapter 435, F.S.

² The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited Jan. 5, 2022).

³ 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).

⁴ S. 435.04, F.S.

⁵ S. 435.05(1)(a), F.S.

⁶ S. 435.03(1) and 435.04(1)(a), F.S.

⁷ S. 435.05(1)(b)-(c), F.S.

⁸ *Id.*

⁹ S. 435.05(1)(b), F.S.

¹⁰ S. 435.05(1)(c), F.S.

¹¹ S. 435.05(1)(d), F.S.

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 51 offenses prohibited under Florida law, or similar law of another jurisdiction:¹²

- 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 adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- 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 child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- 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 custody hearing or delivering the child to the designated person.
- 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 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.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- 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.
- Section 810.02, F.S., relating to burglary.
- 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.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is 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.

¹² S. 435.04(2), F.S.
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- 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.
- Section 827.071, F.S., relating to sexual performance by a child.
- 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 of 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.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- 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.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- 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.

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency to exempt applicants from that disqualification under certain circumstances:¹³

- Three years have elapsed since the individual has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a disqualifying felony; or
- The applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a misdemeanor or an offense that was a felony at the time of commission but is now a misdemeanor.

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,¹⁴ career offender,¹⁵ or sexual offender (unless not required to register)¹⁶ cannot ever be exempted from disqualification.¹⁷

Current law does not prohibit a person from becoming certified as a teacher if ineligible for an exemption from a disqualifying offense under s. 435.07, F.S.

Volunteer Employee Criminal History System

¹³ S. 435.07(1), F.S.

¹⁴ S. 775.261, F.S.

¹⁵ S. 775.261, F.S.

¹⁶ S. 943.0435, F.S.

¹⁷ S. 435.07(4)(b), F.S.

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.¹⁸ 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.¹⁹ Organizations that are statutorily required to obtain criminal history record checks on their employees or volunteers may not use VECHS.²⁰

Background Screening of Individuals at Schools

Individuals who work in or provide services to school districts, charter schools, alternative schools, and private schools participating in state school choice scholarship programs²¹ must undergo a fingerprint-based background screening before being permitted access to school grounds.²² The individuals who must undergo background screening fall under three personnel classifications: instructional and noninstructional personnel;²³ noninstructional school district employees and contracted personnel;²⁴ and noninstructional contractors.²⁵ Candidates for educator certification must also undergo background screening.²⁶

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.²⁷ 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.²⁸ Athletic coaches employed by public schools must be certified by the DOE and are subject to the same background screening standards as other individuals seeking certification.²⁹ 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.³⁰

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.³¹

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.³² Any

¹⁸ Section 943.0542(1), F.S.

¹⁹ Section 943.0542(2), F.S.

²⁰ Florida Department of Law Enforcement, *About VECHS*, <https://www.fdle.state.fl.us/Background-Checks/About-Us> (last visited Feb. 11, 2022).

²¹ The background screenings conducted by such private schools are conducted through the VECHS.

²² Sections 1002.421, 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

²³ 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.

²⁴ 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.

²⁵ 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.

²⁶ Sections 1012.315, 1012.32(2)(a), and 1012.56(10)(a), F.S.

²⁷ See ss. 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

²⁸ Sections 1012.315, 1012.32, and 1012.465, F.S.

²⁹ Section 1012.55(2), F.S. See also 1012.56, F.S.; Rule 6A-4.004(4), F.S.

³⁰ 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.*

³¹ Section 1012.32(2), F.S. (flush-left provision at end of subsection).

³² Section 1012.32(3)(a), F.S.; s. 943.05(2), F.S.; rule 11C-6.010(1), F.A.C.

arrest fingerprints FDLE receives through the Criminal Justice Information Program³³ 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.³⁴

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,³⁵ 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 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.³⁶

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:³⁷

- 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;³⁸ and
- Document the findings.

The disqualification list is maintained by the DOE and includes:³⁹

- 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.⁴⁰
- 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 disqualification 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.⁴¹

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.⁴²

³³ Section 943.051, F.S.

³⁴ Section 1012.32(3)(b), F.S.

³⁵ 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).

³⁶ Section 1012.467(7)(a), F.S.

³⁷ Sections 1002.33(12)(g)4. (charter schools), 1002.421(4)(c) (private schools), and 1012.27(6), F.S. (school districts).

³⁸ See s. 1001.10(4)(b), F.S.; see also Florida Department of Education, *Employment Screening Tools*, <https://www.fldoe.org/teaching/professional-practices/employment-screening-tools.stml> (last visited Feb. 11, 2022) (includes links to the Professional Practices' Database of Disciplinary Actions Against Educators and the Teacher Certification Database).

³⁹ Section 1001.10(4)(b), F.S.

⁴⁰ 1012.795, F.S.

⁴¹ Sections 775.082 and 775.083, F.S.

⁴² Section 1012.796(1), F.S.

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.⁴³

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.⁴⁴

Employee Misconduct Reporting Policies

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.⁴⁵ 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.⁴⁶

Care Provider Background Screening Clearinghouse

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities who serve 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 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.⁴⁷ 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 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.⁴⁸ 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 DOE.⁴⁹ Once a person's screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees.⁵⁰ Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013. The Clearinghouse was initially implemented by AHCA on January 1, 2013.

Qualified entities and educational entities are not currently required to conduct background screenings through the Clearinghouse.

Youth Athletic Team Coaches

⁴³ Section 1012.797, F.S.

⁴⁴ Id.

⁴⁵ Section 1006.061(2), F.S.

⁴⁶ Id.

⁴⁷ See Pub. L. No. 92-544 (Oct. 25, 1972); 28 C.F.R. Part 20; 28 C.F.R. s. 50.12.

⁴⁸ Chapter 2012-73, L.O.F.

⁴⁹ Section 435.02(5), F.S. (definition of "Specified agency")

⁵⁰ Agency for Health Care Administration, *Clearinghouse Renewals*,

https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/Renewals.shtml (last visited Feb. 11, 2022).

An independent sanctioning authority is a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in Florida which include one or more minors and are not affiliated with a private school.⁵¹ 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.⁵² An individual may not serve as a youth athletic coach⁵³ 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.⁵⁴

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.⁵⁵ 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.⁵⁶ In specified circumstances, an independent sanctioning authority may grant an exception to an applicant in accordance with s. 435.07(1)(a), F.S.⁵⁷ Examples of possible exceptions include, but are not limited to, an applicant whose criminal record includes a:⁵⁸

- 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.

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.⁵⁹

Sealed and Expunged Criminal History Records

A criminal history record includes any nonjudicial record maintained by a criminal justice agency⁶⁰ that contains criminal history information.⁶¹ Criminal history information is information collected by criminal justice agencies consisting of identifiable descriptions of individuals and notations of arrests, detentions, indictments, information, other formal criminal charges, and criminal dispositions.⁶²

Generally, expunction is the court-ordered physical destruction or obliteration of a criminal history

⁵¹ Sections 1002.01 and 943.0438(1)(b), F.S.

⁵² Section 943.0438(2)(a)1, F.S.

⁵³ "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.

⁵⁴ Chapter 2014-9, L.O.F.

⁵⁵ Section 943.0438(2)(b), F.S.

⁵⁶ Section 943.0438(2)(c), F.S.

⁵⁷ Section 943.0438(2)(b), F.S.

⁵⁸ Section 435.07(1), F.S.

⁵⁹ Section 943.0438(3)(d), F.S.

⁶⁰ Criminal justice agencies include the court, the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), components of the Department of Children and Families (DCF), and other governmental agencies that administer criminal justice. Section 943.045(11), F.S.

⁶¹ S. 943.045(6), F.S.

⁶² S. 943.045(5), F.S.

record or portion of a record by any criminal justice agency having custody of the record.⁶³

A court may order a criminal history record to be sealed, rendering it confidential and exempt from Florida's public records laws.⁶⁴ Additionally, a court may order a criminal history record to be expunged.⁶⁵ If a criminal history record is sealed or expunged, the subject of the record may lawfully deny or fail to acknowledge the arrests covered by the sealed or expunged record, with exceptions for certain state employment positions, professional licensing purposes, purchasing a firearm, applying for a concealed weapons permit, seeking expunction, or if the subject is a defendant in a criminal prosecution.⁶⁶ Such exceptions do not include a school of hope and noninstructional DOE contractors with access to school grounds.

Effect of the Bill

Exemption From Disqualification

The bill makes a person ineligible for teacher certification if ineligible for an exemption from a disqualifying offense under s. 435.07, F.S.

Care Provider Background Screening Clearinghouse

CS/CS/HB 1505 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 private schools participating in an educational scholarship program (education entities, collectively) currently using VECHS to conduct background screenings using the Care Provider Background Screening Clearinghouse (Clearinghouse) beginning January 1, 2023. Education entities must be fully implemented into the Clearinghouse by January 1, 2024, or by a date determined by AHCA.

The bill requires AHCA to follow a staggered schedule when conducting rescreening for education entities entering the Clearinghouse:

- Employees last screened on or before June 30, 2019 must be rescreened by June 30, 2024;
- Employees last screened between July 1, 2019, and June 30, 2021, must be rescreened by June 30, 2025; and
- Employees last screened between July 1, 2021, through December 31, 2021, must be rescreened by June 30, 2026.

The bill also authorizes qualified entities to conduct background screenings using the Clearinghouse beginning January 1, 2024, or a date determined by AHCA, if such entities choose to do so. If a qualified entity chooses to use the Clearinghouse, it must comply with all Clearinghouse requirements and processes for background screening required by law.

The bill requires FDLE to retain fingerprints obtained from background screenings for the purpose of providing arrest notifications subsequent to initial background screenings of education entities and qualified entities. Additionally, FDLE must develop a method for identifying or verifying an individual through automated biometrics for federal approval.

Including education entities and qualified entities in the Clearinghouse will allow such entities to share background screening results and reduce the amount of screenings individuals must undergo in order to volunteer or work for such entities.

⁶³ Criminal history records in FDLE's custody must be retained in all cases for purposes of evaluating subsequent requests by the same person for sealing or expunction or for purposes of recreating the record if a court vacates an order to expunge. Section 943.045(16), F.S.

⁶⁴ Sections 943.059(6) and 119.07(1), F.S.; Art. I, s. 24(a), Fla. Const.

⁶⁵ Section 943.0585(4), F.S.

⁶⁶ Sections 943.059(6) and 943.0585(6), F.S.

Youth Athletic Team Coaches

Current law requires youth athletic coaches to undergo a Level 1 background screening if the coach works for more than 20 hours per year. The bill revises background screening requirements for youth athletic coaches by requiring coaches to undergo Level 2 screenings and removing the 20 hour cap. This means that all youth athletic coaches must undergo a Level 2 background screening, regardless of hours worked.

Sealed and Expunged Criminal History Records

The bill prohibits individuals seeking employment at a school of hope and noninstructional individuals who contract with DOE from denying or failing to acknowledge arrests covered by a sealed or expunged record.

The bill makes various conforming changes.

The bill provides an effective date of July 1, 2023, unless otherwise expressly provided in the bill.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 435.02, F.S., relating to definitions.
- Section 2:** Amends s. 435.04, F.S., relating to level 2 screening standards.
- Section 3:** Amends s. 435.12, F.S., relating to care provider background screening clearinghouse.
- Section 4:** Amends s. 943.0438, F.S., relating to athletic coaches for independent sanctioning authorities.
- Section 5:** Amends s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.
- Section 6:** Amends s. 943.0542, F.S., relating to access to criminal history information provided by the department to qualified entities.
- Section 7:** Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
- Section 8:** Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.
- Section 9:** Amends s. 1002.421, F.S., relating to state school choice scholarship program accountability and oversight.
- Section 10:** Amends s. 1012.32, F.S., relating to qualifications of personnel.
- Section 11:** Amends s. 1012.465, F.S., relating to background screening requirements for certain noninstructional school district employees and contractors.
- Section 12:** Amends s. 1012.467, F.S., relating to noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.
- Section 13:** Amends s. 1012.56, F.S., relating to educator certification requirements.
- Section 14:** Provides an effective date of July 1, 2023, unless otherwise expressly provided in the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
AHCA

The bill has a significant, negative fiscal impact on AHCA. If all education entities and qualified entities utilize the Clearinghouse for background screening, AHCA estimates a need for:⁶⁷

- \$340,000 in recurring funding for ongoing maintenance and support of the Clearinghouse following the implementation of new entities;
- \$1.5 million for an IT system to research, develop, test, and implement new methods for access and arrest alters; and
- \$750,000 in recurring funding for 5 FTEs for ongoing support of Clearinghouse entities, assist with updates, and maintain the Clearinghouse.

Additionally, as authorized by s. 435.12, F.S., the Clearinghouse system housed in AHCA is a multiagency 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. 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 certain private schools currently using VECHS, to participate in the Clearinghouse; therefore, beginning with Fiscal Year 2023-2024, these entities would be included in AHCA's cost allocation methodology, as would qualified entities who choose to utilize the Clearinghouse beginning in 2024. Based on the current \$1 million annual maintenance allocated among current Clearinghouse entities, AHCA estimates cost allocation based on 300,000 annual screenings for qualified entities and 100,000 annual screenings for education entities will result in approximately:⁶⁸

- \$250,000 for qualified entities; and
- \$80,000 for education entities.

⁶⁷ Agency for Health Care Administration, Agency Analysis of 2022 House Bill 1505, Jan. 26, 2022.

⁶⁸ Id.

FDLE

The bill has a significant, negative fiscal impact on FDLE. If all qualified entities in this state choose to utilize the Clearinghouse for background screening, FDLE estimates a need for approximately \$1.322 million.⁶⁹

- \$45,000 in nonrecurring funding for updates to IT systems; and
- \$1.27 million (\$81,720 of which is nonrecurring) for 18 FTE.

Costs may be lower if less than 100 percent of qualified entities choose to participate in the Clearinghouse.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Qualified entities choosing to use the Clearinghouse for background screening, which requires retention of fingerprints, would increase their cost of screening by \$6 per individual, per year. If fingerprints are retained for 5 years, the cost of screening will increase by \$30.⁷⁰

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁶⁹ Florida Department of Law Enforcement, Agency Analysis of 2022 HB 1505, Feb. 1, 2022.

⁷⁰ Id.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2022, the Health and Human Services Committee adopted three amendments and reported the bill favorably. The amendments:

- Make a person ineligible for teacher certification if ineligible for an exemption from a disqualifying offense under s. 435.07, F.S.;
- Prohibit individuals seeking employment at a school of hope and noninstructional individuals who contract with DOE from denying or failing to acknowledge arrests covered by a sealed or expunged record; and
- Restore language repealing the Florida Shared School Results system back to current law keeping the system operational until the move to the Clearinghouse is complete.

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