

The 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 Committee on Criminal Justice

BILL: CS/SB 1830

INTRODUCER: Criminal Justice Committee and Senators Brodeur and Book

SUBJECT: Background Screenings

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1830 amends various statutes and statutory provisions relating to background screenings of individuals who work with children and other vulnerable persons. These 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 (FDLE) 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.

Major features of the bill include:

- Requiring the Florida Department of Education (DOE), school districts, lab schools, the Florida School for the Deaf and the Blind, the Florida Virtual School, virtual instruction providers, charter schools, school of hope operators, early learning coalitions, and qualified entities currently using VECHS to conduct background screenings through the Clearinghouse;
- Providing the process for background screenings to be used by the entities newly incorporated into the Clearinghouse;
- Revising screening requirements for youth athletic coaches by changing the background screening standard from level 1 to level 2 and for instructional personnel and noninstructional personnel by including arrests for certain offenses as disqualifying offenses; and

- Relevant to individuals subject to background screening, requiring the FDLE to develop a method for establishing identification through automated biometrics which may include latent fingerprints, palm prints, facial recognition, or retina scans.

The impact of the bill on the Agency for Health Care Administration (AHCA) and the FDLE has not yet been determined, and no impact was noted by the DOE. Further, the AHCA will need to evaluate the impact of the inclusion of these new entities in the Clearinghouse. This impact is also currently unknown. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Employee Background Screenings - Level 1 and Level 2 Screening Standards (ss. 435.03 and 435.04, F.S.)

Florida law 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 (s. 435.03, F.S.) and “level 2” employment screening (s. 435.04, F.S.).

Section 435.03, F.S., addresses a level 1 screening, which is a name-based demographic screening that includes an employment history check, statewide criminal history record check through the FDLE, and a check of the Dru Sjodin National Sex Offender Public Website,² and may include local criminal records checks through local law enforcement agencies.³ A level 1 screening may be conducted through the FDLE’s website, which provides immediate results.⁴

Any person required by law to be screened pursuant to s. 435.03, F.S., must not have an arrest awaiting final disposition, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under s. 435.04(2), F.S., or similar law of another jurisdiction.⁵

Section 453.04, F.S., addresses a level 2 screening, which is a fingerprint-based search of statewide criminal history records through the FDLE and national criminal history records

¹ Chapter 435, F.S.

² This website, which is operated by the U.S., Department of Justice, contains information from sex offender registries of all 50 states, the District of Columbia, U.S. territories, and self-governing Native American communities/jurisdictions. See <https://www.nsopw.gov/> (last visited on Jan. 25, 2022).

³ Section 435.03(1), F.S.

⁴ *State of Florida Criminal History Records Check*, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited on Jan. 25, 2022).

⁵ Section 435.03(2), F.S. Additionally, the security background investigations under s. 435.03, F.S., must ensure that no person subject to this statute has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, F.S., whether such act was committed in this state or in another jurisdiction.

through the Federal Bureau of Investigation (FBI), and which may include local criminal records checks through local law enforcement agencies.⁶

The security background investigations under s. 435.04, F.S., must ensure that no persons subject to the provisions of this statute have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any state law offense listed in s. 435.04(2), F.S., or similar law of another jurisdiction.⁷

Florida licensure laws require providers licensed by the AHCA to conduct a level 2 background screening for:

- The licensee, if an individual;
- The administrator or a similarly titled person who is responsible for the day-to-day operation of the provider;
- The financial officer or similarly titled individual who is responsible for the financial operation of the licensee or provider;
- Any person who is a controlling interest; and
- Any person, as required by authorizing statutes, seeking employment with a licensee or provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, personal property, or living areas; and any person, as required by authorizing statutes, contracting with a licensee or provider whose responsibilities require him or her to provide personal care or personal services directly to clients, or contracting with a licensee or provider to work 20 hours a week or more who will have access to client funds, personal property, or living areas.⁸

Volunteer Employee Criminal History System

The Volunteer Employee Criminal History System (VECHS) “was implemented in 1999 and is authorized by the National Child Protection Act (NCPA)(1993),⁹ as amended, and Florida Statute 943.0542 (1999).”¹⁰ The VECHS program provides “state and national criminal history record information on applicants, employees, and volunteers to qualified organizations (not individuals) in Florida. With this criminal history information, the organizations can more

⁶ Section 435.4(1)(a), F.S.

⁷ Section 435.04(2), F.S. The extensive list of offenses in this subsection includes, but is not limited to, many violent offenses, including sexual offenses. *Id.* Additionally, the security background investigations under s. 435.04, F.S., must ensure that no person subject to this section has 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, any offense that constitutes domestic violence as defined in s. 741.28, F.S., whether such act was committed in this state or in another jurisdiction.

⁸ Section 408.809(1), F.S.

⁹ Pub. L. 103-209 (Dec. 20, 1993).

¹⁰ *Volunteer & Employee Criminal History System*, Florida Department of Law Enforcement, available at [https://www.fdle.state.fl.us/Background-Checks/VECHS-Home.aspx#:~:text=VECHS%20\(pronounced%20%22vecks%22\),Florida%20Statute%20943.0542%20\(1999\)](https://www.fdle.state.fl.us/Background-Checks/VECHS-Home.aspx#:~:text=VECHS%20(pronounced%20%22vecks%22),Florida%20Statute%20943.0542%20(1999)) (last visited on Jan. 25, 2022).

effectively screen out current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or the disabled.”¹¹

A “qualified entity” is a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care¹² or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.¹³ Qualified entities that register with the FDLE may screen personnel and employees through the submission of fingerprints. Each request must be voluntary and conform to the requirements of the NCPA, as amended.¹⁴

The FDLE provided further information on who is or is not qualified to participate in the VECHS:

The VECHS program is not available to organizations currently required to obtain criminal history record checks on their employees and/or volunteers under other statutory provisions, such as day care centers. Those organizations must continue to follow the statutory mandates that specifically apply to them. If, however, an organization is required to obtain state and national checks on only specific types of employees or volunteers, the VECHS program may be able to process requests for state and national checks on the organization’s other employees or volunteers.

To be qualified to participate in the VECHS program, an organization (public, private, profit, or non-profit) or particular program facilitated by the organization must offer “care” or “care placement services,” specifically to children, the elderly, or the disabled, as defined in Florida Statute 943.0542.¹⁵

Care Provider Background Screening Clearinghouse (s. 435.12, F.S.)

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities, including paid employees and volunteers are subject to background screening requirements. 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. This was time consuming for those involved and increases the cost to the employer or employee.¹⁶

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

¹¹ *Id.*

¹² “Care” means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities. Section 943.0542(1)(a), F.S.

¹³ Section 943.0542(1), F.S.

¹⁴ Section 943.0542(2), F.S.

¹⁵ *About VECHS*, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/Background-Checks/About-Us> (last visited on Jan. 25, 2022).

¹⁶ Florida House of Representatives Staff Analysis (CS/CS/CS/HB 943), dated Feb. 17, 2012, available at <https://www.flsenate.gov/Session/Bill/2012/943/Analyses/h0943e.HHSC.PDF> (last visited on Jan. 25, 2022).

“program” areas and sharing of results has not been allowed. 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.¹⁷

In response to these issues, the Legislature created the Care Provider Background Screening Clearinghouse (Clearinghouse) in 2012.¹⁸ The legislation required the AHCA, in consultation with the FDLE, to create the Clearinghouse. “The purpose of the Clearinghouse is to provide a single data source for background screening results of persons required to be screened by law for employment in positions that provide services to children, the elderly, and disabled individuals. The Clearinghouse allows the results of criminal history checks to be shared among specified agencies¹⁹ when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check....”²⁰

Background Screening of Individuals at Schools

Individuals who work in or provide services to school districts, charter schools, schools of hope, alternative schools, and private schools participating in state school choice scholarship programs must undergo a fingerprint-based background screening before being permitted access to school grounds.²¹ The individuals who must undergo background screening fall under three personnel classifications: instructional and noninstructional personnel;²² noninstructional school district employees and contracted personnel;²³ and noninstructional contractors.²⁴ Candidates for educator certification must also undergo background screening.²⁵

Because they are more likely to have direct contact with students, an extensive list of disqualifying offenses applies to candidates for educator certification, instructional and noninstructional personnel, and noninstructional school district employees and contracted personnel, relevant to these personnel and employees.²⁶ In contrast, a more limited list of

¹⁷ *Id.*

¹⁸ *Id.* See ch. 2012-73, L.O.F.

¹⁹ “Specified 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 Florida Department of Education. See s. 435.02(5), F.S., and *Privacy Policy Acknowledgement Form*, Care Provider Background Screening Clearinghouse, available at https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/docs/Privacy_Policy.pdf (last visited on Jan. 25, 2022).

²⁰ *Care Provider Background Screening Clearinghouse (Clearinghouse)*, Agency for Health Care Administration, available at https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/BGS_results.shtml (last visited on Jan. 25, 2022), citing s. 435.12, F.S.

²¹ Sections 1002.421(1)(m), 1012.32(2), 1012.465(1), and 1012.467(2)(a), F.S.

²² Instructional and noninstructional personnel include individuals who are hired or contracted to fill positions that require direct contact with students in any public school or alternative school or fill positions in a charter school or school of hope. Section 1012.32(2), F.S.

²³ Noninstructional school district employees and contracted personnel include 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.

²⁴ 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) and (2)(a), F.S.

²⁵ Sections 1012.315 and 1012.56(10)(a), F.S.

²⁶ Sections 1012.315, 1012.32(2) (flush left language at the end of the subsection), and 1012.465(2) and (3), F.S.

disqualifying offenses applies to noninstructional contractors, individuals who are not school district employees and have little or no direct contact with students.²⁷

Fingerprints taken for a background screening are submitted to the FDLE for a statewide criminal and juvenile records check and to the FBI for a national criminal records check. 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.²⁸

The FDLE enters and retains in the Biometric Identification System (BIS) the applicant fingerprints submitted for state and national criminal history checks by such agencies or entities to participate in the Applicant Fingerprint Retention and Notification Program (AFRNP) for current and prospective employees, contractors, volunteers, and persons seeking to be licensed or certified.²⁹ The FDLE searches all arrest fingerprints received under s. 943.051, F.S. (Criminal Justice Information Program),³⁰ against the fingerprints retained in the AFRNP.³¹ 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 or the school district with which the person is affiliated.³²

The Florida Shared School Results (FSSR) system allows contractors who have been fingerprinted in a school district to have their criminal history results shared with other school districts in Florida.³³

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 DOE's Professional Practices' Database of Disciplinary Actions Against Educators, Teacher Certification Database, and the disqualification list;³⁴ and
- Document the findings.³⁵

The disqualification list is maintained by the DOE and includes:

²⁷ Section 1012.467(2)(g), F.S.

²⁸ Section 1012.32(2), F.S. (flush-left language at the end of the subsection).

²⁹ Section 1012.32(3)(a), F.S.; s. 943.05(2)(g) and (h), (3), and (4), F.S.; and Rule 11C-6.010(1), F.A.C., available at <https://www.law.cornell.edu/regulations/florida/Fla-Admin-Code-r-11C-6-010> (last visited on Jan. 25, 2022).

³⁰ Section 943.051, F.S.

³¹ Section 1012.32(3)(b), F.S.

³² *Id.*

³³ Section 1012.467(7)(a), F.S., and *Jessica Lunsford Act Information*, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/JLA/Jessica-Lunsford-Act-Information.aspx> (last visited on Jan 25, 2022).

³⁴ See s. 1001.10(5), F.S.

³⁵ Sections 1002.33(12)(g)4. (charter schools), 1002.421(1)(o) (private schools), and 1012.27(6) (school districts), F.S.

- 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 Education Practices Commission (EPC);³⁶
- The identity of any person who has been permanently disqualified by the DOE Commissioner as an owner or operator of a private school participating in a state scholarship program;
- The identity of each person who has been terminated, or has resigned in lieu of termination, from employment as a result of sexual misconduct with a student; and
- The identity of any person who is ineligible for educator certification or employment under s. 1012.315, F.S.³⁷

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.³⁸

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.³⁹

Law enforcement agencies must 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.⁴⁰ Within 24 hours after such notification, the school principal or designee must 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.⁴¹

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 relating to reporting alleged misconduct by instructional personnel, educational support personnel, or school administrators which affects the health, safety, or welfare of a student.⁴² 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.⁴³

³⁶ See s. 1012.795, F.S., regarding the EPC's authority to discipline.

³⁷ Section 1001.10(4)(b), F.S.

³⁸ Section 1012.796(10), F.S. A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

³⁹ Section 1012.796(1), F.S.

⁴⁰ Section 1012.797, F.S.

⁴¹ *Id.*

⁴² Section 1006.061(2), F.S.

⁴³ *Id.*

**Background Screening of Athletic Coaches by an Independent Sanctioning Authority
(s. 943.0438, F.S.)**

Section 943.0438, F.S., requires an independent sanctioning authority⁴⁴ to conduct a level 1 background screening of each current and prospective athletic coach.^{45, 46}

The background screenings must be conducted annually and include a search of the athletic coach's name or other identifying information against state and federal registries of sexual predators and sexual offenders. A background screening conducted by a commercial consumer reporting agency in compliance with the federal Fair Credit Reporting Act using the identifying information previously described that includes a level 1 background screening and a search of that information against the national and sexual predator and sexual offender registries is deemed to satisfy statutory requirements.⁴⁷

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 the statute.⁴⁸

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 screening or if his or her name appears in either registry.⁴⁹ 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.⁵⁰ In specified circumstances, an independent sanctioning authority may grant an exception to an applicant in accordance with s. 435.07(1)(a), F.S.⁵¹ 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

⁴⁴ "Independent sanctioning authority" means a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S. Section 943.0438(1)(b), F.S.

⁴⁵ "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 team based in this state; and has direct contact with one or more minors on the youth athletic team. Section 943.0438(1)(a), F.S.

⁴⁶ Section 943.0438(2)(a), 1., F.S.

⁴⁷ Section 943.0438(2)(a), 1. and 2., F.S.

⁴⁸ Chapter 2014-9, L.O.F.

⁴⁹ Section 943.0438(2)(b), F.S.

⁵⁰ Section 943.0438(2)(c), F.S.

⁵¹ Section 943.0438(2)(b), F.S.

- 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.⁵²

Criminal Justice Information Program (CJIP) (s. 943.05, F.S.)

Section 943.05, F.S., establishes the Criminal Justice Information Program (CJIP) within the FDLE. Among the requirements specified for CJIP are the requirements to:

- Establish, implement, and maintain a statewide automated biometric identification system capable of, but not limited to, reading, classifying, matching, and storing fingerprints, rolled fingerprints, latent fingerprints, palm prints, and facial images;⁵³
- Upon official written request, and subject to the FDLE having sufficient funds and equipment to participate in such a request, from the agency executive director or secretary or from his or her designee, or from qualified entities participating in the volunteer and employee criminal history screening system under s. 943.0542, F.S., or as otherwise required by law, retain fingerprints submitted by criminal and noncriminal justice agencies to the FDLE for a criminal history background screening as provided by rule and enter the fingerprints in the statewide automated biometric identification system previously described,⁵⁴ and
- For each agency or qualified entity that officially requests retention of fingerprints or for which retention is otherwise required by law, search all arrest fingerprint submissions received under s. 943.051, F.S., against the fingerprints retained in the previously described statewide automated biometric identification system.⁵⁵

III. Effect of Proposed Changes:

The bill amends various statutes and statutory provisions relating to background screenings of individuals who work with children and other vulnerable persons to:

- Require school districts, lab schools, the Florida School for the Deaf and the Blind, the Florida Virtual School, virtual instruction providers, charter schools, school of hope operators, early learning coalitions, and qualified entities currently using VECHS, to conduct background screenings through the Care Provider Background Screening Clearinghouse (Clearinghouse);
- Provide the process for background screenings to be used by the entities newly incorporated into the Clearinghouse;
- Revise screening requirements for youth athletic coaches by changing the background screening standard from level 1 to level 2 and for instructional personnel and noninstructional personnel by including arrests for certain offenses as disqualifying offenses; and
- Relevant to individuals subject to background screening, require the FDLE to develop a method for establishing identification through automated biometrics which may include latent fingerprints, palm prints, facial recognition, or retina scans.

⁵² Section 435.07(1), F.S.

⁵³ Section 943.05(2)(a), F.S.

⁵⁴ Section 943.05(2)(g), F.S. These fingerprints are thereafter available for all purposes and uses authorized for arrest fingerprint submissions entered into the statewide automated biometric identification system pursuant to s. 943.051, F.S. *Id.*

⁵⁵ Section 943.05(2)(a), F.S.

- Revise screening requirements for athletic coaches by changing the screening standard from level 1 to level 2;
- Revise screening requirements for noninstructional personnel by including arrests for certain offenses as disqualifying offenses; and
- Require that the Criminal Justice Information Program develop a method for establishing direct identification through automated biometrics, which may include specified information.

Provided below is a more detailed section-by-section analysis of the bill.

Section 1 amends s. 435.02, F.S., relating to definitions, to define the term “educational entities” as including:

- The DOE;
- Each school district unit under s. 1001.30, F.S.;
- Special district units under s. 1011.24, F.S.;
- The Florida School for the Deaf and the Blind under s. 1002.36, F.S.;
- The Florida Virtual School under s. 1002.37, F.S.;
- Virtual instruction programs under s. 1002.45, F.S.;
- Charter schools under s. 1002.33, F.S.;
- School of Hope operators under s. 1002.333, F.S.; and
- Alternative schools under s. 1008.341, F.S.

This term or similar terminology is especially relevant to Sections 3, 8, and 10 of the bill (see descriptions of these sections, *infra*).

Section 2 amends s. 435.04, F.S., relating to level 2 screening standards, to remove an obsolete date regarding electronic submission of fingerprints to the FDLE.

Section 3 amends s. 435.12, F.S., relating to the Clearinghouse, to require the Clearinghouse to allow the results of criminal history checks provided to:

- Educational entities for screening of instructional and noninstructional personnel under ss. 1012.32, 1012.465, and 1012.56, F.S., to be shared among educational entities when a person has applied to be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check;
- Educational entities for screening of persons under s. 1012.467, F.S., to be shared among educational entities when a person has applied to be employed or enters into a contract that requires a state and national fingerprint-based criminal history check;
- Qualified entities for screening of persons qualified as care providers under s. 943.0542, F.S., to be shared among the qualified entities when a person has applied to volunteer, be employed, or enter into a contract that requires a state and national fingerprint-based criminal history check; and
- Early learning coalitions for screening of persons under s. 1002.55, F.S., to be shared among early learning coalitions when a person has applied to be employed or enters into a contract that requires a state and national fingerprint-based criminal history check.⁵⁶

⁵⁶ The bill retains current language that requires the Clearinghouse to allow the results of criminal history checks provided to specified agencies for screening of persons qualified as care providers under s. 943.0542, F.S., to be shared among the

The bill also removes Clearinghouse implementation date language that was only relevant to the Clearinghouse before it became operational, and makes conforming changes consistent with changes previously described.

Section 4 amends s. 943.0438, F.S., relating to revising background screening requirements of athletic coaches, to:

- Require an independent sanctioning authority to conduct a level 2 background screening (instead of the current level 1 screening requirement) of each current and prospective athletic coach;
- Make conforming changes consistent with this level 2 screening requirement (deleting language relevant to a level 1 screening);
- Require an independent sanctioning authority to disqualify any person from acting as an athletic coach according to level 2 standards in s. 435.04, F.S. (rather than level 1 screening standards in s. 453.03, F.S., or identification on a sex offender registry);
- Specify that an exemption from disqualification may not be granted for an offense listed in s. 435.07(4)(c), F.S.; and
- Require (rather than encourage) independent sanctioning authorities for youth athletic teams to participate in VECHS.

Section 5 amends s. 943.05, F.S., relating to the Criminal Justice Information Program (CJIP), to:

- Make conforming changes (deleting language) consistent with changes in the bill relating to screening through the Clearinghouse; and
- Require the CJIP to develop a method for establishing identification through automated biometrics which may include, but is not limited to, the use of latent fingerprints, palm prints, facial recognition, or retina scans.

Section 6 amends s. 943.0542, F.S., relating to access to criminal history information provided by the FDLE to qualified entities, to:

- Require a qualified entity to initiate all criminal history checks through the Clearinghouse;
- Require (rather than authorize) the FDLE to periodically audit qualified entities to ensure compliance with federal law and this statute;
- Require all fingerprints received under this statute to be entered into the Clearinghouse (see description of Section 3 of the bill, *supra*);
- Require that the criminal history release waiver include a statement that the FDLE shall retain the fingerprints of the criminal history background screening of each employee or volunteer as provided by rule and enter the fingerprints in the statewide automated biometric identification system method (see description of Section 5 of the bill, *supra*, regarding automated biometrics);
- Make conforming changes (deleting language and adding references to the Clearinghouse) consistent with changes in the bill relating to screening through the Clearinghouse;
- Delete language that makes a qualified entity solely responsible for the determination of whether the criminal history record shows that its employee or volunteer has been convicted

specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check. *See* s. 435.12(1), F.S. The bill creates paragraphs within subsection (1). The described provision is found in new paragraph (1)(a).

of or is under pending indictment for any crime that bears upon the fitness of the employee or volunteer to have responsibility for the safety and well-being of children; and

- Prohibit a qualified entity that provides care to children from employing or allowing a volunteer who is ineligible for an exemption under s. 435.07(4)(c), F.S.

Section 7 amends s. 1002.33, F.S., relating to charter schools, to require a charter school to prohibit educational support employees, instructional personnel, and school administrators from employment in any position that requires direct contact with students if the employees, personnel, or administrators are ineligible for such employment under s. 435.04(2) or (3), F.S.⁵⁷

Section 8 amends s. 1012.32, F.S., relating to qualifications of instructional and noninstructional personnel, to:

- Require instructional and noninstructional personnel who are hired or contracted to fill positions in a school of hope, and members of the governing board of such school, upon employment, engagement of services, or appointment, to undergo background screening as required under s. 102.465, F.S., or s. 1012.56, F.S., whichever is applicable;
- Make conforming changes (deleting language) consistent with changes in the bill relating to screening through the Clearinghouse;
- Prohibit a person subject to s. 1012.32(2), F.S., who is found ineligible for employment under s. 435.04(2) and (3), F.S., from being employed, engaged to provide services, or serve in any position that requires direct contact with students;⁵⁸
- Provide that a background screening required under ch. 1012, F.S., must comply with the requirements of s. 435.12, F.S., relating to the Clearinghouse;
- Require each educational unit to register with, and initiate criminal history checks through, the Clearinghouse;
- Require that fingerprints be submitted through an educational unit or a vendor approved by the FDLE;
- Require that all fingerprints be submitted electronically to the FDLE, and that the FDLE forward the fingerprints to the FBI for national processing;
- Provide that for any subsequent background screening that requires a national criminal history check, the FDLE must forward the retained fingerprints of the individual to the FBI unless the fingerprints are enrolled in the national retained print arrest notification program;
- Require that all fingerprints submitted to the FDLE be retained by the department as provided under s. 943.05(2)(g) and (h) and (3), F.S., and enrolled in the national retained print arrest notification program at the FBI when the FDLE begins participation in the program; and
- Authorize the cost of the background screening to be borne by the educational entity, the employee, the contractor, or a person subject to background screening.⁵⁹

⁵⁷ This is in addition to the current ineligibility for such employment under s. 1012.315, F.S., or termination or resignation in lieu of termination for sexual misconduct with a student. *See* s. 1022.33(12)(g) 2., F.S.

⁵⁸ Currently, s. 1012.32(2)(d), F.S., provides that a person subject to subsection (2) who is found ineligible for employment under s. 1012.315, F.S., or otherwise found through background screening to have been convicted of any crime involving moral turpitude as defined by rule of the State Board of Education, shall not be employed, engaged to provide services, or serve in any position that requires direct contact with students. The bill retains this language.

⁵⁹ Currently, s. 1012.32(2)(d), F.S., provides, in part, that the cost of the background screening may be borne by the district school board, the charter school, the employee, the contractor, or a person subject to subsection (2). A district school board must reimburse a charter school the cost of background screening if it does not notify the charter school of the eligibility of a

Section 9 amends s. 1012.465, F.S., relating to background screening requirements for certain noninstructional school district employees and contractors, to:

- Require (with some exceptions) noninstructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students, or who have access to or control of school funds to meet level 2 screening requirements of ch. 435, F.S., using the process described in s. 1012.32(3), F.S. (see description of Section 8 of the bill, *supra*); and
- Make conforming changes (deleting language) consistent with changes in the bill relating to screening through the Clearinghouse.

Section 10 amends s. 1012.467, F.S., relating to background screening requirements for noninstructional contractors permitted access to school grounds when students are present, to:

- Require that the screening process described in s. 1012.32(3), F.S. (see description of Section 8 of the bill, *supra*) be used for a fingerprint-based criminal history check required to be performed on each noninstructional contractor who is permitted access to school grounds when students are present, whose performance of the contract with the school or school board is not anticipated to result in direct contact with students, and for whom any unanticipated contact would be infrequent and incidental; and
- Make conforming changes (deleting language) consistent with the changes in the bill relating to screening through the Clearinghouse.

- *Section 11* amends s. 1012.56, F.S., relating to educator certification requirements, to: Provide that each person who seeks certification under ch. 1012, F.S., must be fingerprinted and screened in accordance with s. 1012.32, F.S. (see description of Section 8 of the bill, *supra*) and must not be ineligible for such certification under s. 435.04(2) or (3), F.S., or s. 1012.315, F.S. (currently only s. 1012.315, F.S., is referenced);
- Specify that a current 5-year rescreening must be in accordance with s. 435.12, F.S.; and
- Make conforming changes (deleting language) consistent with the changes in the bill relating to screening through the Clearinghouse.

Section 12 provides that the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

governing board member or instructional or noninstructional personnel within the earlier of 14 days after receipt of the background screening results from the FDLE or 30 days of submission of fingerprints by the governing board member or instructional or noninstructional personnel. The bill deletes this described language.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

As authorized by s. 435.12, F.S., the Care Provider Background Screening Clearinghouse (Clearinghouse) system housed in the 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.

The bill requires the DOE, school districts, lab schools, the Florida School for the Deaf and the Blind, the Florida Virtual School, virtual instruction providers, charter schools, school of hope operators, early learning coalitions, and qualified entities currently using the VECHS, to participate in the Clearinghouse; therefore, the AHCA will need to evaluate the impact of the inclusion of these new entities. An analysis of the impact by AHCA was requested but not received at the time this analysis was completed. Therefore, the impact is currently unknown.

In its analysis of the original bill, the DOE did not note that bill would impact the department.⁶⁰

Further, an analysis of the bill's impact on the FDLE and the AHCA was requested but not received at the time this analysis was completed. Therefore, the impact of the bill on these agencies is currently unknown.

⁶⁰ 2022 Agency Legislative Bill Analysis, Florida Department of Education (Jan. 21, 2022) (on file with the Senate Committee on Criminal Justice).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 435.02, 435.04, 435.12, 943.0438, 943.05, 943.0542, 1002.33, 1012.32, 1012.465, 1012.467, and 1012.56.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 1, 2022:

The committee substitute:

- Defines the term “educational entities” and removes a provision that modifies the definition of “specified agency”;
- Revises the screening process through the Clearinghouse to incorporate “educational entities”;
- Removes a provision that requires an athletic coach who is required to be screened according to level 2 screening standards to be rescreened every five years as specified, unless the fingerprints are continuously retained and monitored by the FDLE in the federal retention program according to the procedures specified in s. 943.05, F.S.;
- Provides that an exemption from disqualification from acting as an athletic coach may not be granted for an offense listed in s. 435.7(4)(c), F.S.;
- Requires independent sanctioning authorities for youth athletic teams to participate in the VECHS;
- Removes a provision that prohibits a qualified entity from employing or allowing a volunteer whose criminal history record disqualifies them under s. 435.04(2) and (3), F.S.;
- Prohibits a qualified entity that provides care to children from employing or allowing a volunteer who is ineligible for an exemption under s. 435.07(4)(c), F.S.;
- Removes a provision that requires the FDLE to design an annually dated compliance decal to be sent to each qualified entity registered with the FDLE to be displayed by each qualified entity in a place easily accessible to the general public; and
- Removes language that requires qualified entities to comply with s. 943.0542, F.S., and authorizes the FDLE to issue a minimum fine of \$1,000 per instance of noncompliance.

B. Amendments:

None.

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