

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 249 Level 2 Background Screenings  
**SPONSOR(S):** Health & Human Services Committee, Trabulsy and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/SB 676

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**FINAL HOUSE FLOOR ACTION:** 115 Y's      0 N's      **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 249 passed the House on May 3, 2023, as CS/SB 676 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on May 3, 2023.

Some individuals who work or volunteer with children or other vulnerable persons, or own or operate businesses or facilities that serve them, as well as many other individuals, are required either by law or by their organization to undergo background screening. Certain state agencies and other public organizations participate in the Care Provider Background Screening Clearinghouse (Clearinghouse) administered by the Agency for Healthcare Administration (AHCA), which streamlines the screening process and allows sharing of results. However, private-sector organizations known as "qualified entities" which are eligible under federal law to use federal criminal history information for screening purposes are not allowed to do so.

The bill allows qualified entities to conduct background screenings through the Clearinghouse beginning January 1, 2026, or a later date as determined by the AHCA. Any qualified entities using the Clearinghouse must use Level 2 screening standards. The bill incorporates qualified entities into Clearinghouse processes and expands Clearinghouse policies to include them, with a delayed effective date for when the Clearinghouse is ready to process screenings for qualified entities. The bill allows qualified entities to obtain background screening records if the individual being screened will be seeking an exemption from disqualification and authorizes qualified entities to grant those exemptions.

The bill also requires the AHCA to make eligibility determinations for screenings through the Department of Education, other education-related entities, and qualified entities. The bill delays existing statutory timeframes for bringing education-related entities into the Clearinghouse.

The bill revises Level 2 screening standards by adding additional offenses and requires the following individuals to undergo a Level 2 screening instead of their current screening standard:

- Individuals who have direct contact with a student in a district school system, a charter school, or a private school that participates in a state scholarship program.
- Youth athletic coaches.

The bill provides for a \$400,000 recurring appropriation from the Health Care Trust Fund and a \$4 million nonrecurring appropriation from the Health Care Trust Fund to the AHCA. The bill has an indeterminate impact on the Department of Law Enforcement, and no fiscal impact on local governments. See Fiscal Comments.

The bill was approved by the Governor on June 12, 2023, ch. 2023-220, L.O.F., and will become effective on July 1, 2024, except as otherwise provided.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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.<sup>1</sup> There are two levels of background screening:

- 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,<sup>2</sup> and may include criminal records checks through local law enforcement agencies. A Level 1 screening may be paid for and conducted through the FDLE's website, which provides immediate results.<sup>3</sup>
- Level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the 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.<sup>4</sup> These screenings typically take at least several days to complete.

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<sup>1</sup> Chapter 435, F.S.

<sup>2</sup> 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 May 8, 2023).

<sup>3</sup> 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 May 8, 2023).

<sup>4</sup> Section 435.04, F.S.

A few examples of individuals who are subject to Level 2 background screening include:

Agency for Health Care Administration	Agency for Persons with Disabilities	Department of Children and Families	Department of Education/ Education-Related Entities	Department of Health
<p>Owners/administrators of ambulatory surgery centers, birth centers, and organ procurement organizations, adult day care centers, nursing homes, and hospitals</p> <p>Employees and contractors providing personal care/services in home health agencies, hospice, crisis stabilization units</p> <p>Employees that have access to client property, funds or living areas with transitional living facilities, home medical equipment providers, and assisted living facilities<sup>5</sup></p>	<p>Direct service providers of individuals with developmental disabilities unrelated to their clients<sup>6</sup></p>	<p>All personnel of any provider contracted with DCF for a program for children<sup>7</sup></p> <p>Owners, directors, chief financial officers, and clinical supervisors of substance abuse treatment service providers</p> <p>Substance abuse treatment provider service personnel who have direct contact with children or adults with developmental disabilities receiving services<sup>8</sup></p> <p>Child care personnel<sup>9</sup></p> <p>Summer camp personnel<sup>10</sup></p>	<p>Owners/chief administrative officers and operators of private schools that intend to participate in state scholarship programs</p> <p>Employees or contracted personnel with direct student contact with scholarship students<sup>11</sup></p>	<p>Medical doctors</p> <p>Podiatric physicians</p> <p>Licensed practical nurses</p> <p>Registered nurses</p> <p>Pharmacy owners</p> <p>Massage therapists</p> <p>Orthotists &amp; Prosthetists<sup>12</sup></p>

Additional examples of required Level 2 screenings include:

- Appointments to the Gaming Control Commission and the executive director of the commission.<sup>13</sup>
- Inspectors general of agencies under the jurisdiction of the Governor.<sup>14</sup>
- Any state agency employees whose positions are deemed by their agencies to involve special trust, responsibility or sensitive location.<sup>15</sup>
- Owners and managers of certified marijuana testing laboratories.<sup>16</sup>

<sup>5</sup> Agency for Health Care Administration, *Who is Required to be Screened?*, <https://ahca.myflorida.com/health-care-policy-and-oversight/bureau-of-central-services/background-screening/screening/who-is-required-to-be-screened> (last visited May 8, 2023).

<sup>6</sup> Section 393.0655(1), F.S.

<sup>7</sup> Section 39.001(2), F.S.

<sup>8</sup> Section 397.451(1), F.S.

<sup>9</sup> Section 402.305(2), F.S.

<sup>10</sup> Section 409.175, F.S.

<sup>11</sup> Florida Department of Education, *Criminal Background Screening Requirement*, [https://www.floridaschoolchoice.org/information/private\\_schools/criminal\\_bs.asp](https://www.floridaschoolchoice.org/information/private_schools/criminal_bs.asp) (last visited May 8, 2023).

<sup>12</sup> Florida Department of Health, Agency analysis of 2023 House Bill 249, p. 3 (March 15, 2023).

<sup>13</sup> Section 16.71(3)(a) and (4)(a), F.S.

<sup>14</sup> Section 20.055(4)(b), F.S.

<sup>15</sup> Section 110.1127(2)(a), F.S.

<sup>16</sup> Section 381.988(1)(d), F.S.

- Recovery residence administrators.<sup>17</sup>
- Any individuals certified through the Florida Certification Board, such as certified community health workers and certified gambling addiction counselors.<sup>18</sup>

Every person required by law to be screened under Florida's background screening statutes, must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>19</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.<sup>20</sup>

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to the FDLE within five working days after receiving it.<sup>21</sup> Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.<sup>22</sup> For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>23</sup> For level 2 screenings, the 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.<sup>24</sup> As with a level 1 screening, the 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.<sup>25</sup>

While Florida law authorizes and specifies different elements comprising Level 1 and Level 2 background screening, the statutes establish distinct requirements for determining whether an individual "passes" a screening only in regard to the criminal history portion of the screening.

### *Criminal History Checks Disqualifying Offenses*

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 52 offenses prohibited under Florida law, or similar law of another jurisdiction:<sup>26</sup>

- 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.

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<sup>17</sup> Section 397.4871(5), F.S.

<sup>18</sup> Florida Certification Board, Florida Certification Board Criminal History Policy, <https://flcertificationboard.org/wp-content/uploads/FCB-Criminal-History-Policy-February-2021.pdf> and Credentials, <https://flcertificationboard.org/credentials/> (last visited May 8, 2023).

<sup>19</sup> Section 435.05(1)(a), F.S.

<sup>20</sup> Section 435.03(1) and 435.04(1)(a), F.S.

<sup>21</sup> Section 435.05(1)(b)-(c), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 435.05(1)(b), F.S.

<sup>24</sup> Section 435.05(1)(c), F.S.

<sup>25</sup> Section 435.05(1)(d), F.S.

<sup>26</sup> Section 435.04(2), F.S.

- 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.
- 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 allows the Secretary of the appropriate agency to exempt applicants from that disqualification under certain circumstances:<sup>27</sup>

- 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,<sup>28</sup> career offender,<sup>29</sup> or sexual offender (unless not required to register)<sup>30</sup> can never be exempted from disqualification.<sup>31</sup>

Current law does not prohibit a person from becoming certified as a teacher if ineligible for an exemption from a disqualifying offense.

### Systems for Processing Background Screenings

Florida has established different programs to facilitate for conducting background screenings. These include the Care Provider Background Screening Clearinghouse (Clearinghouse), which is used by state agencies for statutorily-required screenings, the Volunteer Employee Criminal History System (VECHS), which is used for non-statutorily required screenings, and the Florida Shared School Results (FSSR) system. Level 2 screenings may also be run by state agencies outside of the Clearinghouse if an agency does not participate in the Clearinghouse.

#### *Care Provider Background Screening Clearinghouse*

The Clearinghouse provides the opportunity for participating screening agencies to share the results of criminal history checks and involves maintaining fingerprints as part of the Rap Back Service (discussed below), which allows continual review of fingerprints against new criminal history information.

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<sup>27</sup> Section 435.07(1), F.S.

<sup>28</sup> Section 775.261, F.S.

<sup>29</sup> Section 775.261, F.S.

<sup>30</sup> Section 943.0435, F.S.

<sup>31</sup> Section 435.07(4)(b), F.S.

Given the sensitivity of criminal history information, 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.<sup>32</sup> To address this, in 2012, the Legislature created the 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.<sup>33</sup> Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013. As of December 31, 2022, the Clearinghouse has provided a cost savings of nearly \$115 million to Agency providers, DOH licensees, managed care health plans, DOEVR providers, Medicaid providers, DCF providers, APD providers, DOEA providers, and DJJ providers.<sup>34</sup>

Current designated agencies participating in the clearinghouse include:

- the Agency for Health Care Administration (AHCA);
- the Department of Health;
- the Department of Children and Families;
- the Department of Elder Affairs;
- the Agency for Persons with Disabilities;
- the Department of Education (DOE);
- regional workforce boards; and
- local licensing agencies, when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled.<sup>35</sup>

The following entities are also designated agencies, and were authorized to use the Clearinghouse beginning in January 1, 2023. They must be fully implemented into the Clearinghouse by January 1, 2024, or by a date determined by the AHCA:

- each district unit;
- special district units;
- the Florida School for the Deaf and the Blind;
- the Florida Virtual School;
- virtual instruction programs;
- charter schools;
- hope operators;
- private schools participating in an educational scholarship program; and
- alternative schools.<sup>36</sup>

Current law establishes a schedule for rescreening individuals from the entities joining the Clearinghouse by Jan. 1, 2024, to bring their results into the Clearinghouse. This schedule specifies deadlines based on when individuals were last screened:

- Employees for whom the last screening was conducted on or before June 30, 2019, must be rescreened by June 30, 2024.
- Employees for whom the last screening was conducted between July 1, 2019, and June 30, 2021, must be rescreened by June 30, 2025.
- Employees for whom the last screening was conducted between July 1, 2021, and December 31, 2022, must be rescreened by June 30, 2026.

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<sup>32</sup> See Pub. L. No. 92-544 (Oct. 25, 1972); 28 C.F.R. Part 20; 28 C.F.R. s. 50.12.

<sup>33</sup> Chapter 2012-73, L.O.F.

<sup>34</sup> Agency for Health Care Administration, *Agency Analysis of 2023 House Bill 249*, (Mar. 31, 2023), p. 3.

<sup>35</sup> Section 435.02(5), F.S. (definition of “Specified agency”).

<sup>36</sup> Chapter 2022-154, L.O.F.

Employers whose employees are screened through an agency participating in the Clearinghouse must maintain the status of individuals being screened, updating the Clearinghouse regarding any employment changes within 10 business days.

Screenings are only as good as the date they are run. Without systems to continually match fingerprints against new arrests or convictions, any arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports. The Clearinghouse requires use of the Rap Back Service that allows for constant review of new criminal history information. Once a person's screening record is in the Clearinghouse, that person may avoid the need for some future state screens and related fees for screenings, depending on the screening agencies or organizations.<sup>37</sup>

The Clearinghouse is currently undergoing modernization, due to be completed in April 2024. This must be completed before any additional changes are made to the system.<sup>38</sup>

### *Volunteer Employee Criminal History System*

The 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. Qualified entities that register with the FDLE may screen personnel and employees through the submission of fingerprints. 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.<sup>39</sup> Organizations that are statutorily required to obtain criminal history record checks on their employees or volunteers may not use the VECHS.<sup>40</sup>

Each request must be voluntary and conform to the requirements of the National Child Protection Act of 1993, as amended.<sup>41</sup>

After a qualified entity registers with the FDLE, the department assigns that qualified entity an Originating Agency Identifier (ORI) number by the FDLE to facilitate such screenings. The FDLE periodically audits qualified entities to ensure compliance with federal and state law.<sup>42</sup>

Generally, qualified entities may voluntarily elect to retain the fingerprints of their employees and volunteers and use the Rap Back Service; however, a private school participating in an educational scholarship program, must require each employee and contracted personnel with direct student contact to have their fingerprints retained within this system.<sup>43</sup>

### *Florida Shared School Results System*

Screening results for school 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 FSSR system,<sup>44</sup> 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 the FSSR. As a

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<sup>37</sup> Fingerprints are only retained for five years, so individuals do need to be refingerprinted and rescreened even if they are only working or volunteering with Clearinghouse agencies.

<sup>38</sup> Agency for Health Care Administration, *Agency Analysis of 2023 House Bill 249*, (Mar. 31, 2023), p. 6.

<sup>39</sup> Section 943.0542(1), F.S.

<sup>40</sup> Florida Department of Law Enforcement, *About VECHS*, <https://www.fdle.state.fl.us/Background-Checks/About-Us> (last visited May 8, 2023).

<sup>41</sup> Section 943.0542(2), F.S.

<sup>42</sup> Florida Department of Law Enforcement, *Agency Analysis of 2023 House Bill 2023* (Jan. 30, 2023), p. 2.

<sup>43</sup> *Id.*

<sup>44</sup> Florida Department of Law Enforcement, *Jessica Lunsford Act Information*, <http://www.fdle.state.fl.us/JLA/Jessica-Lunsford-Act-Information.aspx> (last visited May 8, 2022).



result, these individuals must often undergo background screening by multiple school districts using the provider's services.<sup>45</sup>

### Noncriminal Justice Rap Back Service (Fingerprint Retention)

The Noncriminal Justice Rap Back Service is managed by the FBI's Criminal Justice Information Services Division (Division). With the legal authority when an individual's fingerprints are submitted through an approved Next Generation Identification (NGI) connection and retained in the NGI System, the Division has the authority to enroll the fingerprints in the Rap Back Service. Once enrolled, the individual's fingerprints will be subject to future searches in the NGI System. With Rap Back, an electronic notification will be generated if some time later a person in the Clearinghouse engages in any criminal activity where fingerprints are taken and submitted to the NGI System. The screening entities are also notified if any previously unreported criminal activity is updated to the Identity History Summary. Without Rap Back, employers or organizations with volunteers depend on the screened individuals to self-report their own criminal activity or have it discovered as a result of re-fingerprinting, possibly years later.<sup>46</sup>

Rap Back is available for Florida criminal records and national Rap Back will be available after the modernization of the Clearinghouse. Screening entities may be required to use the state Rap Back service, such as when individuals are screened through the Clearinghouse. Qualified entities screening through the VECHS may opt to enroll a screened individual in the state Rap Back Service by requesting, and paying for, retention of fingerprints.

### 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 programs<sup>47</sup> must undergo a fingerprint-based background screening before being permitted access to school grounds.<sup>48</sup> The individuals who must undergo background screening fall under three personnel classifications: instructional and noninstructional personnel;<sup>49</sup> noninstructional school district employees and contracted personnel;<sup>50</sup> and noninstructional contractors.<sup>51</sup> Candidates for educator certification must also undergo background screening.<sup>52</sup>

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.<sup>53</sup> 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 52 disqualifying offenses applicable to employment with public schools and school districts.<sup>54</sup> Athletic coaches employed by public schools must be certified by the DOE and are subject to the same

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<sup>45</sup> Section 1012.467(7)(a), F.S.

<sup>46</sup> Federal Bureau of Investigation, *CJIS Noncriminal Rap Back Service*, <https://www.fbi.gov/video-repository/cjis-non-crim-rapback-2020.mp4/view> (last visited May 8, 2023).

<sup>47</sup> The background screenings conducted by such private schools are conducted through the VECHS.

<sup>48</sup> Sections 1002.421, 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>49</sup> 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.

<sup>50</sup> 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.

<sup>51</sup> 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.

<sup>52</sup> Sections 1012.315, 1012.32(2)(a), and 1012.56(10)(a), F.S.

<sup>53</sup> See ss. 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

<sup>54</sup> Sections 1012.315, 1012.32, and 1012.465, F.S.

background screening standards as other individuals seeking certification.<sup>55</sup> 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.<sup>56</sup> These background screenings are conducted through the Clearinghouse.

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:<sup>57</sup>

- 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 the use of the DOE Professional Practices' Database of Disciplinary Actions Against Educators, Teacher Certification Database, and the disqualification list;<sup>58</sup> and
- Document the findings.

The disqualification list is maintained by the DOE and includes:<sup>59</sup>

- 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.<sup>60</sup>
- 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 the applicable screening standards.

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.<sup>61</sup>

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 program, while omitting approved virtual instruction providers.<sup>62</sup>

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 school 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.<sup>63</sup>

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<sup>55</sup> Section 1012.55(2), F.S. *See also* s. 1012.56, F.S.; r. 6A-4.004(4), F.A.C.

<sup>56</sup> *See* s. 1012.467(2)(b), 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.*

<sup>57</sup> Sections 1002.33(12)(g)4. (charter schools), 1002.421(1)(o) (private schools), and 1012.27(6), F.S. (school districts).

<sup>58</sup> *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 May 8, 2023) (includes links to the Professional Practices' Database of Disciplinary Actions Against Educators and the Teacher Certification Database).

<sup>59</sup> Section 1001.10(4)(b), F.S.

<sup>60</sup> Section 1012.795, F.S.

<sup>61</sup> Sections 775.082 and 775.083, F.S.

<sup>62</sup> Section 1012.796(1), F.S.

<sup>63</sup> Section 1012.797, F.S.

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.<sup>64</sup>

### *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.<sup>65</sup> 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.<sup>66</sup>

### Youth Athletic Team Coaches

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.<sup>67</sup> 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.<sup>68</sup> An individual may not serve as a youth athletic coach<sup>69</sup> 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 statutory requirements.<sup>70</sup>

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.<sup>71</sup> 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.<sup>72</sup> In specified circumstances, an independent sanctioning authority may grant an exception to an applicant in accordance the law.<sup>73</sup> Examples of possible exceptions include, but are not limited to, an applicant whose criminal record includes a:<sup>74</sup>

- 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

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<sup>64</sup> *Id.*

<sup>65</sup> Section 1006.061(2), F.S.

<sup>66</sup> *Id.*

<sup>67</sup> Sections 1002.01 and 943.0438(1)(b), F.S.

<sup>68</sup> Section 943.0438(2)(a)1, F.S.

<sup>69</sup> "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.

<sup>70</sup> Chapter 2014-9, L.O.F.

<sup>71</sup> Section 943.0438(2)(b), F.S.

<sup>72</sup> Section 943.0438(2)(c), F.S.

<sup>73</sup> Section 943.0438(2)(b), F.S.

<sup>74</sup> Section 435.07(1), 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.

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.<sup>75</sup>

## **Effect of the Bill**

### Employee Background Screenings

The bill defines the following terms for the purposes of Florida's background screening statutes:

- "Affiliation" means the status of a person employed or serving as a volunteer or contractor, or seeking to be employed or to serve as a volunteer or contractor, with a qualified entity in a position for which screening is not required by law but is authorized under the National Child Protection Act; and
- "Qualified entity" has the same meaning as the statute that governs the VECHS.

The bill amends the definition of "employment" for the purposes of Florida's background screening statutes to include persons with an affiliation to a qualified entity.

The bill requires Level 2 security background screenings to also include a search of sexual predator and sexual offender registries of any state in which the current or prospective employee resided during the immediately preceding 5 years. These searches are conducted as an element of the Clearinghouse process.

The bill revises the list of Level 2 disqualifying offenses to include offenses relating to female genital mutilation. While additional disqualifying offenses are listed, these are already included in law. The bill incorporates qualified entities and persons with an affiliation to these qualified entities into the procedures for granting an exemption to disqualification. The bill authorizes a qualified entity to grant an exemption in the same manner as other entities performing background screenings in compliance with Florida law.

### Care Provider Background Screening Clearinghouse

The bill authorizes qualified entities to conduct background screenings using the Clearinghouse beginning January 1, 2026, or a date determined by the 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. For instance, the qualified entities will need to maintain in the Clearinghouse the current employment or affiliation status of their employees, volunteers, or other individuals whom the qualified entities have screened. This may increase the administrative requirements on qualified entities. The qualified entities or the individuals being screened by the qualified entity will also need to pay a fee of \$24 for five years' retention of fingerprints in the Clearinghouse.

The bill requires the AHCA to determine the eligibility of the employee or volunteer of a qualified entity using the Clearinghouse beginning January 1, 2026, or a later date determined by the AHCA.

Including qualified entities in the Clearinghouse will allow the qualified entities to share background screening results with each other, reducing the number of screenings some individuals must undergo. This will also require the qualified entities using the Clearinghouse to participate in the automated continual screening of fingerprints against new arrests and convictions (state Rap Back), providing those entities up-to-date information about any disqualifying offenses.

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<sup>75</sup> Section 943.0438(2)(d), F.S.

Aligning qualified entities with other employers, the bill requires that an individual with an affiliation to a qualified entity must be rescreened following a 90-day break in service from a position requiring screening. Furthermore, the bill requires that all employers and qualified entities using the Clearinghouse must maintain and update a record of the status of each individual employed or affiliated with the entity. Beginning January 1, 2024, the bill requires that such record be updated with the Clearinghouse within 5 days of any change in employment or affiliation status.

### Youth Athletic Team Coaches

Current law requires youth athletic coaches, assistant coaches, and referees to undergo a Level 1 background screening if the coach works for more than 20 hours per year. The bill revises background screening requirements to require these individuals, including managers, to undergo Level 2 screenings and removes the 20-hour minimum work requirement. This means that all youth athletic coaches, assistant coaches, managers and referees must undergo a Level 2 background screening, regardless of hours worked. The bill revises the process for background screening and handling individuals who have disqualifying offenses and are requesting exemptions from disqualification to align with the AHCA's new responsibilities regarding screenings for qualifying entities.

### Background Screening of Individuals at Schools

The bill revises the background screening standards for individuals who have direct contact with a student in a district school system, a charter school, or a private school that participates in a state scholarship program by replacing the list of disqualifying offenses with the level 2 screening standards. The bill specifies that the AHCA will make eligibility determination for education-related entities, including positions that involve direct student contact in district school systems, a charter schools, or private schools that participate in a state scholarship program, as well as noninstructional contractors and Florida High School Athletics Association Officials, beginning July 1, 2025, or a later date determined by the AHCA.

The bill also delays the timeframes for bringing education entities into the Clearinghouse. It revises the deadlines for rescreening individuals as follows:

- Employees for whom the last screening was conducted on or before June 30, 2021, must be rescreened by June 30, 2025.
- Employees for whom the last screening was conducted between July 1, 2021, and June 30, 2022, must be rescreened by June 30, 2026.
- Employees for whom the last screening was conducted between July 1, 2022, and December 31, 2023, must be rescreened by June 30, 2027.

Additionally, the FDLE must develop a method for identifying or verifying an individual through automated biometrics for federal approval. The department already uses a method of identifying individuals through automated biometrics (fingerprints).

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

**Department of Law Enforcement:** there is an indeterminate impact on revenue received by the department for background screenings, as the number of future screenings is unknown based on changes to processing for these types of entities and professions:

- For the VECHS employees and current and prospective athletic coaches screened through the Clearinghouse, the state portion of the criminal history check is \$48, of which \$24 is for

the state and national criminal history record check and \$24 is for the five years' retention of fingerprints, deposited into the FDLE's Operating Trust Fund.

- For the VECHS volunteers, state portion of the criminal history check is \$42, of which \$18 is for the state and national criminal history record check and \$24 is for the five years' retention of fingerprints, deposited into the FDLE's Operating Trust Fund.
- For current and prospective athletic coaches *not* screened through the Clearinghouse with no fingerprint retention, the fee for the state portion of the criminal history check is \$24.

2. Expenditures:

**Agency for Health Care Administration:** The AHCA requires contracted staff to research, develop, test and implement the updated system at a total of \$400,000 recurring and \$4 million non-recurring per year for three years. For instance, the Clearinghouse's technology will need to be updated to identify the different types of organizations conducting screenings (such as state agencies versus qualified entities) which accordingly screen under different federal authorities, to ensure proper receipt and dissemination of criminal history information, as required by the FBI.

**Department of Law Enforcement:** there is an indeterminate impact on the FDLE's Biometric Identification System, which is currently being migrated to the new generation of Biometric Identification Systems.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

**Private citizens:** Those individuals who are receiving multiple screenings through the VECHS for which they are paying fees may experience reduced costs if the qualified entities doing the screenings are able to share results through the Clearinghouse.

**Qualified entities:** Those choosing to conduct background screening through the VECHS, which under the bill requires retention of fingerprints, would increase their cost of screening by \$24 per individual, for 5 years of retention, which is paid at the time of screening; they may also experience a workload impact due to additional responsibilities maintaining employees and volunteers' employment and affiliation status in the Clearinghouse. However, if they are currently paying for screenings and are now able to share results, they may experience reduced costs.

**Current and prospective athletic coaches:** The total fiscal impact to the private sector for state and national criminal history record checks with five (5) years of Clearinghouse retention is \$61.25. Of this total amount, the cost for a state and national criminal history record check is \$37.25; the cost for the national portion of the criminal history record check is \$13.25 and the cost for the state portion is \$24, which goes into the FDLE's Operating Trust Fund. Since persons screened pursuant to this bill are eligible be entered in the Clearinghouse, as applicable, \$24 for five (5) years of state fingerprint retention will be paid up front and will go into the FDLE's Operating Trust Fund. Once enrolled in in the federal retention program, there will be no fees required by the FBI for federal fingerprint retention.

D. FISCAL COMMENTS:

The bill provides appropriations for the 2023-2024 fiscal year to the Agency for Health Care Administration of \$400,000 in recurring funds and \$4 million in nonrecurring funds from the Health Care Trust Fund. The 2023-24 General Appropriations Act includes \$4,098,600 relating to the education entities to be incorporated into the Clearinghouse pursuant to chapter 2022-154, Laws of Florida.