

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 Appropriations

BILL: CS/SB 676

INTRODUCER: Appropriations Committee and Senator Grall

SUBJECT: Background Screenings

DATE: April 27, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	Favorable
3.	<u>Kolich</u>	<u>Sadberry</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 676 modifies current background screening standards and requirements for individuals who work with children and other vulnerable persons. The bill:

- Requires a Level 2 security background investigation of current or prospective employees to include a search of the sexual predator and sexual offender registries of any state in which the current or prospective employee resides during the immediate preceding 5 years.
- Authorizes qualified entities to conduct background screenings using the Care Provider Background Screening Clearinghouse (Clearinghouse).
- Requires a qualified entity that chooses to use the Clearinghouse to comply with all Clearinghouse requirements and processes for background screening required by law.
- Requires the Agency for Health Care Administration (AHCA) to review and determine eligibility for all criminal history checks submitted to the Clearinghouse for the Department of Education (DOE) beginning January 1, 2025, or a later date determined by the AHCA, and qualified entities beginning January 1, 2026, or a later date established by the AHCA.
- Updates the rescreening schedule for the DOE because the Clearinghouse will not be ready for the DOE until 2025.
- Requires the Florida Department of Law Enforcement (FDLE) to develop a method for identifying or verifying an individual through automated biometrics for federal approval.
- Requires Level 2 screenings for youth athletic coaches (currently, Level 1 screenings) and removes the 20 hour minimum work requirement.
- 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 standard in s. 435.04(2), F.S.

- Requires the AHCA to review and determine the eligibility of the following individuals beginning January 1, 2025, or a later date determined by the AHCA:
 - Employees in any position that requires direct contact with students in a district school system, a charter school, or a private school that participates in a state scholarship program under ch. 1002, F.S.; and
 - Noninstructional contractors who are permitted access to school grounds when students are present.

The bill also provides that, for the 2023-2024 fiscal year, the sums of \$400,000 in recurring funds from the Health Care Trust Fund and \$4 million in nonrecurring funds from the Health Care Trust Fund are appropriated to the AHCA.

Section 11 of the bill, which contains the appropriations, takes effect July 1, 2023. Changes made to s. 435.12, F.S., in Section 3 of the bill must be implemented by January 1, 2025, or a later date as determined by the AHCA. Except as otherwise expressly provided in the bill and except for Section 13, the effective date section of the bill, which takes effect upon the bill becoming law, the bill takes effect July 1, 2024.

II. Present Situation:

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

Employee Background Screenings

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

Current law establishes standard procedures for criminal history background screening of prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the FDLE and a check of the Dru Sjodin National Sex Offender Public Website,² and may include criminal

¹ Chapter 435, F.S.

² The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited on March 8, 2023).

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.³

A 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.⁴

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.⁵ Information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.⁶

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.⁷ Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.⁸ For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.⁹ 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.¹⁰ 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.¹¹

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:¹²

³ Florida Department of Law Enforcement, State of Florida Criminal History Records Check, available at <https://www.fdle.state.fl.us/Criminal-History-Records/Record-Check> (last visited on March 8, 2023).

⁴ Section 435.04, F.S.

⁵ Section 435.05(1)(a), F.S.

⁶ Sections 435.03(1) and 435.04(1)(a), F.S.

⁷ Section 435.05(1)(b)-(c), F.S.

⁸ *Id.*

⁹ Section 435.05(1)(b), F.S.

¹⁰ Section 435.05(1)(c), F.S.

¹¹ Section 435.05(1)(d), F.S.

¹² Section 435.04(2), F.S.

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.
- Section 810.02, F.S., relating to burglary.
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.

- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.
- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

Exemption from Disqualification

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

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

¹³ Section 435.07(1), F.S.

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

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

Volunteer Employee Criminal History System (VECHS)

The VECHS was enacted in 1999 to implement the National Child Protection Act (NCPA).¹⁸ The VECHS provides state and national criminal history record information on applicants, employees, and volunteers to qualified entities. A "qualified entity" is a business or organization that provides care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.¹⁹ 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 National Child Protection Act of 1993, as amended.²⁰ Organizations that are statutorily required to obtain criminal history record checks on their employees or volunteers may not use VECHS.²¹

Care Provider Background Screening Clearinghouse (Clearinghouse)

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

Policies imposed by the FBI prevent the sharing of criminal history information except within a given "program." Since each regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate "program" areas and sharing of results has not been allowed.²² 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.

¹⁴ Section 775.21, F.S.

¹⁵ Section 775.261, F.S.

¹⁶ Section 943.0435, F.S.

¹⁷ Section 435.07(4)(b), F.S.

¹⁸ Pub. L. 103-209 (Dec. 20, 1993). See Florida Department of Law Enforcement, *Volunteer and Employee Criminal History System*, available at <https://www.fdle.state.fl.us/Background-Checks> (last visited on March 8, 2023).

¹⁹ Section 943.0542(1), F.S.

²⁰ Section 943.0542(2), F.S.

²¹ Florida Department of Law Enforcement, *About VECHS*, available at <https://www.fdle.state.fl.us/Background-Checks/About-Us> (last visited on March 8, 2023).

²² See Pub. L. No. 92-544 (Oct. 25, 1972); 28 C.F.R. Part 20; 28 C.F.R. s. 50.12.

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.²³ Designated agencies include:

- AHCA;
- Department of Health;
- Department of Children and Families;
- Department of Elder Affairs;
- Agency for Persons with Disabilities;
- Department of Education;
- Each district unit under s. 1001.30, F.S.;
- Special district units under s. 1011.24, F.S.;
- Florida School for the Deaf and the Blind under s. 1002.36, F.S.;
- 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.;
- Hope operators under s. 1002.333, F.S.;
- Private schools participating in an educational scholarship program established pursuant to ch. 1002, F.S.;
- Alternative schools under s. 1008.341, F.S.;
- Regional workforce boards providing services as defined in s. 445.002(3), F.S.; and
- Local licensing agencies approved pursuant to s. 402.307, F.S., 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.²⁴

Once a person’s screening record is in the Clearinghouse, that person will avoid the need for any future state screens and related fees.²⁵ Final implementation of the Clearinghouse by the designated state agencies was required by October 1, 2013. The Clearinghouse was initially implemented by the AHCA on January 1, 2013.

School districts, lab schools, the Florida School for the Deaf and the Blind, the Florida Virtual School, virtual instruction providers, charter schools, hope operators, early learning coalitions, and private schools participating in an educational scholarship program (education entities, collectively) currently using VECHS to conduct background screenings are required to use the Clearinghouse beginning in January 1, 2023. Education entities must be fully implemented into the Clearinghouse by January 1, 2024, or by a date determined by the AHCA.

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

²³ Chapter 2012-73, L.O.F.

²⁴ Section 435.02(5), F.S. (definition of “specified agency”).

²⁵ Agency for Health Care Administration, *Clearinghouse Renewals*, available at https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/Renewals.shtml (last visited on March 8, 2023).

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 programs²⁶ must undergo a fingerprint based background screening before being permitted access to school grounds.²⁷ The individuals who must undergo background screening fall under three personnel classifications: instructional and noninstructional personnel;²⁸ noninstructional school district employees and contracted personnel;²⁹ and noninstructional contractors.³⁰ Candidates for educator certification must also undergo background screening.³¹

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.³² 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.³³ Athletic coaches employed by public schools must be certified by the DOE and are subject to the same background screening standards as other individuals seeking certification.³⁴ 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.³⁵ These background screenings are conducted through the Clearinghouse.

Screening results for contractors, both those who have direct contact with students and those who simply have access to school property when students are present, are entered into the FSSR system,³⁶ 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 system. As a result, these individuals must often undergo background screening by multiple school districts using the provider's services.³⁷

²⁶ The background screenings conducted by such private schools are conducted through the VECHS.

²⁷ Sections 1002.421, 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

²⁸ 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.

²⁹ 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.

³⁰ 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.

³¹ Sections 1012.315, 1012.32(2)(a), and 1012.56(10)(a), F.S.

³² See ss. 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

³³ Sections 1012.315, 1012.32, and 1012.465, F.S.

³⁴ Section 1012.55(2), F.S. See also 1012.56, F.S.; Rule 6A-4.004(4), F.S.

³⁵ 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 includes four such offenses. Id.

³⁶ Florida Department of Law Enforcement, *Jessica Lunsford Act Information*, available at <http://www.fdle.state.fl.us/JLA/Jessica-Lunsford-ActInformation.aspx> (last visited on March 8, 2023).

³⁷ Section 1012.467(7)(a), F.S.

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:³⁸

- 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 Professional Practices’ Database of Disciplinary Actions Against Educators, Teacher Certification Database, and the disqualification list;³⁹ and
- Document the findings.

The disqualification list is maintained by the DOE and includes:⁴⁰

- 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.⁴¹
- The identity of any person who has been permanently disqualified by the Commissioner as an owner or operator of a private school participating in a state scholarship program.
- The identity of any person who has been terminated, or has resigned in lieu of termination, from employment as a result of sexual misconduct with a student.
- The identity of any person who is ineligible for educator certification or employment under s. 1012.315, F.S.

An individual on the disqualification list is prohibited from serving or applying to serve as an employee or contracted personnel at any public school, charter school, or private school participating in a state scholarship program. Any individual who knowingly violates this prohibition commits a third degree felony.⁴²

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.⁴³

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

³⁸ Section 1002.33(12)(g)4., F.S. (charter schools), s. 1002.421(1)(o), F.S. (private schools), and s. 1012.27(6), F.S. (school districts).

³⁹ See s. 1001.10(4)(b), F.S.; see also Florida Department of Education, *Employment Screening Tools*, available at <https://www.fldoe.org/teaching/professional-practices/employment-screening-tools.stml> (last visited on March 8, 2023) (includes links to the Professional Practices’ Database of Disciplinary Actions Against Educators and the Teacher Certification Database).

⁴⁰ Section 1001.10(4)(b), F.S.

⁴¹ Section 1012.795, F.S.

⁴² Sections 775.082 and 775.083, F.S.

⁴³ Section 1012.796(1), F.S.

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.⁴⁴

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.⁴⁵

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.⁴⁶ 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.⁴⁷

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.⁴⁸ 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.⁴⁹ An individual may not serve as a youth athletic coach⁵⁰ unless a Level 1 screening has been conducted and the screening does not result in his or her disqualification.

In 2014, the Legislature expanded background screening requirements for athletic coaches, assistant coaches, and referees of independent sanctioning authorities and allowed a background screening conducted by a commercial consumer reporting agency in compliance with federal standards to satisfy the state level requirement so long as such screening includes a Level 1 background screening and a search against the state and federal registries of sexual predators and sexual offenders to meet the requirements under s. 943.0438, F.S.⁵¹

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

⁴⁴ Section 1012.797, F.S.

⁴⁵ *Id.*

⁴⁶ Section 1006.061(2), F.S.

⁴⁷ *Id.*

⁴⁸ Sections 1002.01 and 943.0438(1)(b), F.S.

⁴⁹ Section 943.0438(2)(a)1., F.S.

⁵⁰ "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.

⁵¹ Chapter 2014-9, L.O.F.

name appears in either registry.⁵² 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.⁵³ In specified circumstances, an independent sanctioning authority may grant an exception to an applicant in accordance with s. 435.07(1)(a), F.S.⁵⁴ Examples of possible exceptions include, but are not limited to, an applicant whose criminal record includes a:⁵⁵

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

The sanctioning authority must maintain documentation of the results of each person screened and the written notice provided to any disqualified person for a minimum of five years.⁵⁶

III. Effect of Proposed Changes:

Employee Background Screenings

The bill amends s. 435.04, F.S., to require Level 2 security background investigations of current or prospective employees to include a search of the sexual predator and sexual offender registries of any state in which the current or prospective employee resided during the immediate preceding 5 years. The list of disqualifying offenses in this section is revised to include:

- Section 784.021, F.S., relating to aggravated assault;
- Section 784.045, F.S., relating to aggravated battery;
- Section 784.075, F.S., relating to battery on staff of a detention or commitment facility or on a juvenile probation officer;
- Section 794.08, F.S., relating to female genital mutilation; and
- Under ch. 800, F.S., offenses against students by authority figures.

For purposes of background screening, the bill amends s. 435.02, F.S., to provide definitions for “affiliation” and “qualified entity.”

Care Provider Background Screening Clearinghouse

The bill amends ss. 435.12, 943.05, and 943.0542, F.S., to:

- Authorize 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 example, a qualified entity will need to maintain in the clearinghouse the current employment

⁵² Section 943.0438(2)(b), F.S.

⁵³ Section 943.0438(2)(c), F.S.

⁵⁴ Section 943.0438(2)(b), F.S.

⁵⁵ Section 435.07(1), F.S.

⁵⁶ Section 943.0438(2)(d), F.S.

or affiliation status of their employees, volunteers, or other individuals whom the qualified entities have screened.

- Require the AHCA to review and determine eligibility for all criminal history checks submitted to the Clearinghouse for the DOE beginning January 1, 2025, or a later date established by the AHCA. The Clearinghouse must share eligibility determinations with the DOE and the qualified entities.
- Update the rescreening schedule for the DOE because the Clearinghouse will not be ready for the DOE until 2025. The bill requires rescreening of employees of 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., hope operators under s. 1002.333, F.S., private schools participating in an educational scholarship program established pursuant to ch. 1002, F.S., and alternative schools under s. 1008.341, F.S., in compliance with the following schedule:
 - 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.
- Require the FDLE to develop a method for identifying or verifying an individual through automated biometrics for federal approval.

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

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 amends s. 943.0438, F.S., to revise 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.

Before January 1, 2026, or a later date as determined by the AHCA for the participation of qualified entities in the Clearinghouse under s. 435.12, F.S., an independent sanctioning authority must disqualify any person from acting as an athletic coach as provided in s. 435.04, F.S. (level 2 standards).⁵⁷ On or after January 1, 2026, or a later date as determined by the AHCA, an independent sanction authority cannot allow any person to act as an athletic coach if he or she does not pass the background screening qualifications in s. 435.04, F.S.⁵⁸

⁵⁷ The authority may allow a person disqualified as provided to act as an athletic coach if it determines that the person meets the requirements for an exemption from disqualification under s. 435.07, F.S. See “Present Situation” section of this analysis for a discussion of s. 435.07, F.S.

⁵⁸ The authority may allow a person disqualified as provided to act as an athletic coach if the person has successfully completed the exemption from the disqualification process under s. 435.07, F.S.

Background Screening of Individuals at Schools

The bill amends ss. 1012.315, 1012.467, and 102.56, F.S., to revise 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 standard under s. 435.04(2), F.S.

Beginning January 1, 2025, or a later date determined by the AHCA, the AHCA will determine the eligibility of:

- Employees in any position that requires direct contact with students in a district school system, a charter school, or a private school that participates in a state scholarship program under ch. 1002, F.S.; and
- Noninstructional contractors who are permitted access to school grounds when students are present.

These same dates also apply to referral of applicant records and submission of background screening results to the AHCA under s. 1012.56, F.S. (educator certification requirements).

Reenactments

The bill reenacts ss. 1001.10, 1001.42, 1001.51, 1002.33, 1002.333, 1002.421, 1012.32, 1012.56, 1012.795, and 1012.796, F.S., for the purpose of incorporating the amendments to s. 1012.315, F.S. The bill also reenacts s. 1012.468, F.S., for the purpose of incorporating the amendments made to s. 1012.467, F.S., in a reference to that statute.

Appropriations

The bill provides that, for the 2023-2024 fiscal year, the sums of \$400,000 in recurring funds from the Health Care Trust Fund and \$4 million in nonrecurring funds from the Health Care Trust Fund are appropriated to the AHCA.

Section 11 of the bill, which contains these appropriations, takes effect July 1, 2023.

Effective Dates

The changes made to s. 435.12, F.S., in Section 3 of the bill must be implemented by January 1, 2025, or a later date as determined by the AHCA.

Except as otherwise expressly provided in the bill and except for Section 13, the effective date section of the bill, which takes effect upon the bill becoming law, the bill takes effect July 1, 2024.

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 Art. VII, s. 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

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:

For State Fiscal Year 2023-2024, the bill appropriates \$400,000 in recurring funds and \$4 million in nonrecurring funds from the Health Care Trust Fund to the AHCA for the purpose of implementing this act. According to estimates from the AHCA, implementation of the Clearinghouse is an estimated 18-month process from the time in which the new entity is created. Therefore, the AHCA has also identified the need for future nonrecurring funding in Fiscal Year 2024-2025 and 2025-2026, as system updates required in the bill cannot begin until the Clearinghouse completes modernization, which is due to be completed in April 2024.⁵⁹

⁵⁹ 2023 ACHA Legislative Bill Analysis (SB 676), Florida Agency for Health Care Administration (on file with Senate Appropriations Committee on Criminal and Civil Justice).

The FDLE advised that although there is no programming required, if it is decided that VECHS entities will retain their applicants in the Clearinghouse, this bill combined with other background screening bills adds to the workload on FDLE's Biometric Identification System. FDLE is currently in the process of migrating the current system to the new generation of Biometric Identification Systems. With the state and capacity limitations of the current system, this could cause undue strain.

Additionally, the bill will have an indeterminate impact on revenues remitted to the FDLE's Operating Trust Fund, as the estimated number of individuals falling within the following four areas is undetermined and at the discretion of the qualified entity:

VECHS Employees screened through the Clearinghouse

The total fiscal revenue for the state portion of a state and national criminal history record check with five (5) years of fingerprint retention within the Clearinghouse is \$48 for employees who provide services to children, the elderly, or individuals with disabilities. The cost for the Florida (state) portion of a state and national criminal history record check is \$24 for employees who provide services to children, the elderly, or individuals with disabilities. Since persons screened pursuant to this bill are eligible to 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 FDLE's Operating Trust Fund. Once enrolled in the federal retention program, there will be no fees required by the Federal Bureau of Investigation (FBI) for federal fingerprint retention.

VECHS Volunteers screened through the Clearinghouse

The total fiscal revenue for the state portion of a state and national criminal history record check with five (5) years of fingerprint retention within the Clearinghouse is \$42 for volunteers who provide services to children, the elderly, or individuals with disabilities. The cost for the Florida (state) portion of a state and national criminal history record check is \$18 for volunteers who provide services to children, the elderly, or individuals with disabilities. Since persons screened pursuant to this bill are eligible to 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 FDLE's Operating Trust Fund. Once enrolled in the federal retention program, there will be no fees required by the FBI for federal fingerprint retention.

Current and prospective athletic coaches screened through the Clearinghouse

The total fiscal revenue for the state portion of a state and national criminal history record check with five (5) years of fingerprint retention within the Clearinghouse retention is \$48. These fees will go into the FDLE's Operating Trust Fund. The cost for Florida (state-level) criminal history record checks is \$24. Since persons screened pursuant to this bill are eligible to 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 FDLE's Operating Trust Fund. Once enrolled in the federal retention program, there will be no fees required by the FBI for federal fingerprint retention.

Current and prospective athletic coaches not screened through the Clearinghouse (no fingerprint retention)

The total fiscal revenue for the Florida (state) portion of a state and national criminal history record check is \$24, which goes into FDLE's Operating Trust Fund.⁶⁰

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, 1012.315, 1012.467, and 1012.56.

The bill reenacts the following sections of the Florida Statutes: 1001.10, 1001.42, 1001.51, 1002.33, 1002.333, 1002.421, 1012.32, 1012.56, 1012.795, 1012.796, and 1012.468.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Appropriations on April 25, 2023:

The committee substitute:

- Removes the requirement in the original bill for Level 2 screenings to include employment history checks and a search of child abuse and neglect registries.
- Revises timeframes for bringing additional entities into the Clearinghouse and for the AHCA to determine eligibility.
- Requires agencies and qualified entities using the Clearinghouse to report changes in employment or affiliation within 5 business days.
- Requires the AHCA to make eligibility determinations for those required to be screened by the DOE, other education-related entities, and qualified entities.
- Updates the rescreening schedule for the DOE.
- Aligns requirements for screening of athletic coaches with new process for qualified entities.
- Reverts screening standards for noninstructional contractors to existing law.
- Increases the appropriation for the AHCA to implement the bill, and provides an effective date for the bill section containing this appropriation.
- Revises effective dates.

⁶⁰ 2023 FDLE Legislative Bill Analysis (SB 676) (Feb. 14, 2023), Florida Department of Law Enforcement (on file with Senate Committee on Criminal Justice).

B. Amendments:

None.

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