

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 975 Background Screenings and Certifications

**SPONSOR(S):** Health & Human Services Committee and Health Care Appropriations Subcommittee, Trabulsy and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1008

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**FINAL HOUSE FLOOR ACTION:** 116 Y's

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**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 975 passed the House on February 29, 2024, as amended. The bill was amended in the Senate on March 6, 2024, and returned to the House. The House concurred with the Senate amendments and subsequently passed the bill as amended on March 7, 2024.

Current law requires certain prospective employees to be screened for a history of criminal offenses in order to protect vulnerable persons. Certain criminal offenses disqualify the applicant from employment. Chapter 435, F.S., establishes procedures for criminal history background screening of prospective employees and outlines the screening requirements. There are two levels of background screening: Level 1 and Level 2.

The bill adds additional offenses to the list of disqualifying offenses for Level 2 background screening, and revises the eligibility criteria for exemptions from disqualification. The bill extends the deadline for independent youth athletic team coaches to undergo a Level 2 background screening from July 1, 2024, to January 1, 2025.

Current law requires only specified health care professions to undergo background screening as a requirement for initial licensure; the majority of health care professions licensed by the Department of Health (DOH) are not subject to background screening. The bill revises background screening requirements to apply to the majority of health care professionals licensed by DOH, and requires those licensed prior to July 1, 2025, to comply at their next licensure renewal.

Continuums of Care (CoCs) coordinate local efforts to prevent and end homelessness at the local level. The Department of Children and Families (DCF) requires employees of CoCs and their subcontractors to undergo Level 2 background screening. However, individuals with lived experience of homelessness, who can be helpful in delivering homelessness services, may have criminal histories that prevent passing a background screening. The bill establishes a pathway by which a person who has lived experience with homelessness may qualify for a modified background screening process in order to be employed by certain homeless service providers.

The bill appropriates \$250,000 to DOH to implement the provisions of the bill. The bill has no fiscal impact on local governments.

The bill was approved by the Governor on June 14, 2024, ch. 2024-243, L.O.F., and will become effective July 1, 2024 except for the provisions relating to the background screening of licensed health care professionals which is effective July 1, 2025.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Criminal Background Screening

Certain professions and employment settings<sup>1</sup> are subject to criminal background screening and licensure or employment disqualification for certain past criminal offenses to protect vulnerable persons. For example, section 408.89, F.S., requires certain employees of hospitals and nursing homes to be screened; similarly, sections 458.311, F.S., and 464.018, F.S., require physicians and nurses to be background screened as a condition of licensure. Chapter 435, F.S., establishes procedures for criminal history background screening of prospective employees and outlines the screening requirements. There are two levels of background screening: Level 1 and Level 2.

- Level 1: Screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,<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 FDLE's website, which provides immediate results.<sup>3</sup>
- Level 2: Screening includes, at a minimum, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>4</sup>

##### *Criminal History Checks*

Individuals subject to background screening are disqualified from certain employment and licensure if that have been arrested for and are awaiting final disposition of, been found guilty of regardless of adjudication, 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, or similar offenses in another jurisdiction:<sup>5</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.
- 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.

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<sup>1</sup> S. 435.02, F.S., defines "employee" to mean any person required by law to be screened pursuant to this chapter, including, but not limited to, persons who are contractors, licensees, or volunteers.

<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. Available at [www.nsopw.gov](http://www.nsopw.gov) (last visited March 15, 2024).

<sup>3</sup> Florida Department of Law Enforcement, State of Florida Criminal History Records Check. Available at <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited March 15, 2024).

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

<sup>5</sup> S. 435.04(2), F.S.

- 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.

Current law requires some positions to be screened for additional criminal offenses due to the nature of the position or the populations being served. For example, some positions under the regulatory authority of the Agency for Health Care Administration (AHCA) are screened for additional offenses, such as financial crimes like fraud.<sup>6</sup>

The criminal history check process does not limit disqualification based on when an offense was committed. As such, any history of a listed offense is considered disqualifying regardless of when the offense was committed.

### *Exemptions*

For individuals who are disqualified from employment due to their criminal history, current law includes an exemption process. An exemption allows that individual to be employed in a profession or workplace where background screening is statutorily required despite the disqualifying offense in that person's past. To seek exemption from disqualification, an applicant must submit a request for an exemption from the applicable state agency within 30 days after being notified of a pending disqualification.<sup>7</sup> Current law allows the Secretary of the appropriate state agency to exempt applicants from disqualification if the person paid any court ordered fee, fine, lien, civil judgement, application, costs of prosecution, trust, or restitution, and either:<sup>8</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 individual 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.

Certain criminal backgrounds render a person ineligible for an exemption; a person who is considered a sexual predator,<sup>9</sup> career offender,<sup>10</sup> or registered sexual offender<sup>11</sup> is not eligible for exemption.<sup>12</sup>

### Care Provider Background Screening Clearinghouse

The Care Provider Background Screening Clearinghouse (Clearinghouse) is a single statewide screening program, administered by AHCA, which allows for results of criminal history checks of persons acting as covered care providers to be shared among specified agencies.<sup>13</sup> Agencies participating in the Clearinghouse include:<sup>14</sup>

- AHCA;

<sup>6</sup> See, s. 408.809, F.S.

<sup>7</sup> S. 397.4073(1)(f), F.S.

<sup>8</sup> S. 435.07, F.S.

<sup>9</sup> S. 775.21, F.S.

<sup>10</sup> S. 775.261, F.S.

<sup>11</sup> S. 943.0435, F.S.

<sup>12</sup> S. 435.07(4)(b), F.S.

<sup>13</sup> S. 435.12, F.S.

<sup>14</sup> S. 435.02(5), F.S. Additional entities were added to the list of designated entities beginning in 2023; these entities include district units, special district units, the Florida School for the Deaf and Blind, the Florida Virtual School, virtual instruction programs, charter schools, hope operators, private schools participating in certain scholarship programs, and alternative schools. See also, Ch. 2022-154, L.O.F.

- Department of Health (DOH);
- Department of Children and Families (DCF);
- Department of Elder Affairs (DOEA);
- Agency for Persons with Disabilities (APD);
- Department of Education (DOE);
- 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.

Employers whose employees are screened through an agency participating in the Clearinghouse must maintain the status of individuals being screened and update the Clearinghouse regarding any employment changes within 10 business days of the change.<sup>15</sup>

The Clearinghouse allows for constant review of new criminal history information through the federal Rap Back Service,<sup>16</sup> which continually matches fingerprints against new arrests or convictions that occur after the individual was originally screened. Once a person's screening record is in the Clearinghouse, that person may avoid the need for any future state screens and related fees for screenings, depending on the screening agencies or organizations.<sup>17</sup>

### Health Care Professional Background Screening

The Division of Medical Quality Assurance (MQA), within DOH, has general regulatory authority over health care practitioners.<sup>18</sup> The MQA works in conjunction with 22 professional boards and four councils to license and regulate more than 40 health care professions. Each of these professions is regulated by chapter 456, F.S., which provides general regulatory and licensure authority for the MQA, as well as a profession- or field-specific practice act which outlines requirements and standards that vary by profession.

Under current law, DOH must review the criminal history of licensure applicants and current licensees for certain health care professions. A history of certain criminal charges may preclude an applicant from licensure in some professions, or result in disciplinary action by the appropriate regulatory board. Regardless of whether background screening is required for initial licensure, each licensee at renewal must answer criminal history questions that become part of the review and approval of licensure.<sup>19</sup>

Not all DOH-regulated professions require background screening. The table below lists the health care professions which are required to be background screened by DOH as part of initial licensure, and those which are not:<sup>20</sup>

<sup>15</sup> S. 435.12(2)(c), F.S.; Beginning January 1, 2024, employers must report changes in an employee's status within five business days for employees screened after January 1, 2024.

<sup>16</sup> The Rap Back Service is managed by the FBI's Criminal Justice Information Services Division. For more information, see the Federal Bureau of Investigation, Privacy Impact Assessment for the Next Generation Identification (NGI) Rap Back Service. Available at <https://www.fbi.gov/file-repository/pia-ngi-rap-back-service.pdf/view> (last visited March 19, 2024).

<sup>17</sup> Agency for Health Care Administration, *Clearinghouse Renewals*. Available at [https://ahca.myflorida.com/MCHQ/Central\\_Services/Background\\_Screening/Renewals.shtml](https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/Renewals.shtml) (last visited March 19, 2024). Fingerprints are retained for five years. Employers have an option to renew screenings at the end of the five year period through a "Clearinghouse Renewal" process which allows employee's fingerprints to be retained without being re-fingerprinted.

<sup>18</sup> Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, mental health counselors, and psychotherapists, among others.

<sup>19</sup> Department of Health, *Agency Analysis for HB 975 (2024)*. On file with the Healthcare Regulation Subcommittee.

<sup>20</sup> *Id.*

## Health Care Professions – Background Screening

| Screened   | Non-Screened  |
|--|---|
| Athletic Trainers  | Acupuncturists  |
| Allopathic Physicians (Medical Doctor)   | Audiologists  |
| Resident Physicians, Interns, Fellows, and House Physicians  | Audiology Assistants  |
| Osteopathic Physicians   | Clinical Laboratory Personnel   |
| Osteopathic Resident Physicians/Interns/Fellows  | Clinical Social Workers, Marriage and Family Therapists, and Mental Health Counselors                   |
| Chiropractic Physicians  | Clinical Social Work Interns, Marriage and Family Therapy Interns, and Mental Health Counseling Interns |
| Certified Chiropractic Physician's Assistants  | Dentists  |
| Physician Assistants   | Dental Hygienists   |
| Anesthesiologist Assistants  | Dietitians and Nutritionists  |
| Orthotists, Prosthetists, Pedorthists, Orthotic Fitters, Orthotic Fitter Assistants, O&P Residents | Electrologists  |
| Registered Nurses  | Emergency Medical Technicians   |
| Advanced Practice Registered Nurses  | Genetic Counselors  |
| License Practical Nurses   | Hearing Aid Specialists   |
| Certified Nursing Assistants   | Medical Physicists  |
| Massage Therapists   | Midwifery   |
| Pharmacy Owners  | Nursing Home Administrators   |
| Prescription Department Managers   | Occupational Therapists   |
| Podiatric Physicians   | Opticians   |
| Certified Podiatric X-Ray Assistants   | Optometrists  |
|  | Pain Management Clinic  |
|  | Paramedics  |
|  | Pharmacists   |
|  | Registered Pharmacy Interns   |
|  | Pharmacy Technicians  |
|  | Physical Therapists   |
|  | Physical Therapy Assistants   |
|  | Psychologists   |
|  | Radiological Technicians  |
|  | Respiratory Therapists  |
|  | School Psychology   |
|  | Speech-Language Pathologists  |
|  | Speech-Language Pathology Assistants  |

Current law also requires background screening for applicants seeking licensure by endorsement<sup>21</sup> for specified health care professions. Currently, allopathic physicians, certified nursing assistants, licensed practical nurses, registered nurses, and massage therapists must undergo background screening as part of the licensure by endorsement process. Some health care professionals who are not screened as a requirement for initial licensure may be statutorily required to undergo screening as a prerequisite to employment based on the type of facility wherein they are employed.<sup>22</sup>

<sup>21</sup> Licensure by endorsement is a process of obtaining licensure for health care professionals who have obtained full licensure in another US jurisdiction.

<sup>22</sup> For example, a licensed health care professional employed by a program that provides services to the elderly is required under s. 430.0402, F.S., to undergo background screening if the health care professional is a direct service provider who was not otherwise

Health care professionals in screened professions, or those seeking employment in facilities that are statutorily required to background screen employees, may seek an exemption from disqualification due to criminal history. Such individuals may be granted an exemption from disqualification<sup>23</sup> after DOH reviews their background screening. In Fiscal Year 2022-2023, the DOH Background Screening Unit received over 432 exemption applications.<sup>24</sup>

The licensure applicants for screened professions are required to pay for the costs of the fingerprinting process and the cost of retaining the fingerprints.<sup>25</sup> Once licensed, the health care practitioner in screened professions pays \$43.25 every five years for fingerprint retention.<sup>26</sup> All fingerprints received as part of the initial licensure process as required under s. 456.0135, F.S., are entered into the Clearinghouse.<sup>27</sup>

Last fiscal year, DOH paid \$108,414 to access the background screening results for health care professionals through the Clearinghouse.<sup>28</sup>

### *Background Screening Process*

The regulatory board for each profession which requires a background screening establishes criteria for the evaluation of criminal history. DOH then applies a board-approved matrix to review the background screening results to ensure that licensure qualifications have been met.<sup>29</sup> For applicants in a screened profession, the background screening requirement is often the last requirement completed to become a qualified applicant – meaning all licensure requirements are fulfilled and a license is issued. DOH will notify the licensure applicant if a required background screening was not completed, submitted through the proper channels, or if a criminal history hit on that screening was reviewed by a staff member and needs additional documentation.<sup>30</sup>

When an applicant's background screening includes criminal history, the outcome is dependent upon the nature of the offense. Statute outlines specific offenses which would result in a "failed" screening.<sup>31</sup> The outcome of a screening including a criminal history can be an approval by DOH staff after additional information and review, based on scenarios pre-determined by the regulatory board to be allowable; a requirement to appear at a board meeting for in-person review; or denial. If denied, the applicant has the right to appeal. If an applicant receives a letter to appear before the board, they have three board meetings at which to attend, or the board may deny the application without the person present.<sup>32</sup>

Background screening reviews have increased more than 40 percent since 2015 due to an increase in licensure of existing screened professions, as well as the establishment of new licensure pathways requiring screening, such as the multistate licensing compacts. Out of the 17,532 initial applicant files reviewed due to criminal charges in the Fiscal Year 2022-2023, 87.9 percent were for the Board of Nursing, 4.8 percent for the Board of Massage, 4.5 percent for the Board of Medicine, 0.06 percent for

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screened as a prerequisite for licensure. For more information on screening requirements based on facility type, see, Florida Agency for Health Care Administration, *Who is Required to be Screened?* Available at <https://ahca.myflorida.com/health-care-policy-and-oversight/bureau-of-central-services/background-screening/screening/who-is-required-to-be-screened#> (last visited March 15, 2024).

<sup>23</sup> S. 435.07, F.S., establishes the exemption process.

<sup>24</sup> *Supra*, note 19.

<sup>25</sup> S. 456.0135(3), F.S.

<sup>26</sup> *Supra*, note 19.

<sup>27</sup> S. 456.0135(4), F.S.

<sup>28</sup> *Supra*, note 19.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See, s. 435.04, F.S., for the full list of disqualifying offenses. See also, S. 456.0135(5), F.S., expressly lists criminal violation of s. 784.03, F.S., relating to battery, if the victim is a vulnerable adult as defined in s. 415.102, or a patient or resident of a facility licensed under chs. 395, 400, or 429, F.S.

<sup>32</sup> *Supra*, note 19.

the Board of Chiropractic Medicine, 0.08 percent Osteopathic Medicine and 2.66 percent were for the remaining boards.<sup>33</sup>

### *Background Screening for License Renewal & Monitoring*

Some professions are required to undergo subsequent national criminal history checks for each licensure renewal, including allopathic and osteopathic physicians, chiropractors, and podiatrists.<sup>34</sup> In such cases, DOH must request FDLE to forward the retained fingerprints of the applicant to the Federal Bureau of Investigation unless the fingerprints are enrolled in the national retained print arrest notification program.

Once licensed, practitioners in screened professions with ongoing screening requirements have their fingerprints retained with FDLE so new charges are found through rerunning the criminal history checks. Licensees are also required to report any criminal charges when they occur. The process of reviewing new criminal charges may disrupt the licensee's ability to practice.<sup>35</sup>

A licensee who does not pay to retain their prints receives notification from DOH when those prints are expiring that fingerprints must be retained or renewed. DOH employs strategies to ensure compliance by the licensee, such as reminders, email notifications, and letters. Approximately 62,364 licensees, 4.3 percent of all licensees, are required to renew their fingerprints per year. Of those, approximately 28 percent fail to do so; failure to renew fingerprints results in disciplinary cases which may ultimately cause a loss of licensure.

When a case has been open for approximately a year and the licensee has not complied, an investigative report is completed, and the case is sent to DOH Prosecution Services Unit for prosecution as a violation. Since 2019, DOH has opened a total of 39,438 cases for failure to renew fingerprints; currently, there are 14,069 open cases.<sup>36</sup>

Background checks completed for applicants whose licensure applications were received before January 1, 2013, are stored within FDLE's SHIELD system, outside of the Clearinghouse. DOH runs a background check through FDLE for specific practitioners who have renewed their license in this system. In Fiscal Year 2022-2023, DOH paid over \$1,229,448 to FDLE for 45,519 background checks.<sup>37</sup>

### Homelessness

Homelessness can be defined in several different ways. Generally, a person is considered to be experiencing homelessness if that person stays in a shelter, lives in transitional housing, or sleeps in a place not meant for human habitation or outdoors.<sup>38</sup> To receive federally funded homelessness services, a person is considered homeless if he or she:<sup>39</sup>

- Is living in a place not meant for human habitation, in emergency shelter, in transitional housing, or exiting an institution where the person temporarily resided;<sup>40</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> S. 456.039(4), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Centers for Disease Control and Prevention, *About Homelessness* (2022). Available at <https://www.cdc.gov/orr/science/homelessness/about.html> (Last visited March 19, 2024).

<sup>39</sup> 24 C.F.R. 578.3.

<sup>40</sup> This includes a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground; a supervised publicly or privately operated shelter designed to provide temporary living arrangement; or exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

- Will imminently lose a primary nighttime residence within 14 days and lacks resources or support networks to remain in permanent housing;<sup>41</sup>
- Is part of a family with children or an unaccompanied youth who is unstably housed and likely to continue in that state; or
- Is fleeing or attempting to flee from domestic violence, has no other residence, and lacks the resources or support networks to obtain permanent housing.

Annually, the United States Department of Housing and Urban Development (HUD) releases what is known as a point-in-time snapshot (PIT) or a count of the number of individuals who experience homelessness on a single night. Based on the 2023 PIT, roughly 653,100 people in America experienced homelessness on a single night. Sixty percent experienced sheltered homelessness (i.e., living in emergency shelter, transitional housing, or a safe haven program) whereas 40 percent were unsheltered. In 2022-2023, the number of individuals experiencing homelessness increased by 12 percent, or roughly 70,650 additional individuals. This is the highest PIT count of persons experiencing homelessness since reporting began in 2007.<sup>42</sup>

Experiencing homelessness negatively effects a person's mental and physical health. Rates of mortality, mental illness, communicable diseases, sexually transmitted diseases, and substance abuse are higher among homeless populations.<sup>43</sup> Services and programs at the state and federal level provide support to individuals experiencing homelessness that attempt to address the associated effects of homelessness.<sup>44</sup>

### *Homelessness in Florida*

In a 2023 PIT count of Florida's homeless population, an estimated 30,809 individuals were experiencing homelessness, with 15,706 considered unsheltered homeless (i.e., living outside in a car, park, or another place not meant for human habitation). The 2023 PIT count represents a 34 percent increase from the 11,746 individuals who were experiencing homelessness in 2022.<sup>45</sup>

The State Office on Homelessness (Office) within the Department of Children and Families (DCF) was established in 2001 as a central point of contact within state government on issues relating to homelessness.<sup>46</sup> The Office coordinates resources and programs across all levels of government and with private providers that serve the homeless pursuant to policies set by the Council on Homelessness<sup>47</sup> and available funding.<sup>48</sup>

### *Continuums of Care*

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<sup>41</sup> Provided that the primary nighttime residence will be lost within 14 days of the date of application for homeless assistance; no subsequent residence has been identified; and the individual lacks the resources or support networks.

<sup>42</sup> U.S. Department of Housing and Urban Development, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress* (2023). Available at <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf> (last visited March 19, 2024).

<sup>43</sup> Richards, J. & Kuhn, R., *Unsheltered Homelessness and Health: A Literature Review* (2022). *American Journal of Preventative Medicine*, 2(1). <https://doi.org/10.1016/j.focus.2022.100043>

<sup>44</sup> US Department of Health and Human Services, *Homelessness*. Available at <https://www.hhs.gov/programs/social-services/homelessness/index.html> (last visited March 19, 2024).

<sup>45</sup> Department of Children and Families, *Council on Homelessness Annual Report* (2023). Available at <https://www.myflfamilies.com/sites/default/files/2023-07/Florida%27s%20Council%20On%20Homelessness%20Annual%20Report%202023.pdf> (last visited March 19, 2024).

<sup>46</sup> Ch. 2001-98, L.O.F.

<sup>47</sup> The Council on Homelessness is an inter-agency body which develops statewide policy and advises the State Office on Homelessness on how to reduce homelessness in the state. See, s. 420.622, F.S.

<sup>48</sup> S. 420.622(3), F.S.

A Continuum of Care (CoC) is an entity coordinating community efforts to prevent and end homelessness in a geographic area designated by the Office.<sup>49</sup> CoCs are responsible for organizing and delivering housing and services to meet the needs of people who are homeless as they move to stable housing and self-sufficiency.<sup>50</sup> CoCs are composed of representatives from local organizations including, but not limited to:<sup>51</sup>

- Nonprofit homeless service providers;
- Victim services providers;
- Faith-based organizations;
- Governments;
- Businesses;
- Advocates;
- Public housing agencies;
- School districts;
- Social service providers;
- Mental health agencies;
- Hospitals;
- Universities;
- Affordable housing developers;
- Law enforcement; and
- Organizations that serve homeless and formerly homeless persons.

CoC lead agencies implement policies and provide direct services within their respective catchment areas. There are currently 27 CoC lead agencies distributed across the state.<sup>52</sup>

Each CoC must create a continuum of care plan to implement an effective and efficient housing crisis response system to prevent and end homelessness in its designated catchment area. A continuum of care plan must include all of the following:<sup>53</sup>

- Outreach to unsheltered individuals and families to link them with appropriate housing interventions;
- A coordinated entry system that is compliant with federal requirements and is designed to coordinate intake, utilize common assessment tools, prioritize households for housing interventions, and refer households to the appropriate housing intervention;
- Emergency shelter, designed to provide safe temporary shelter while the household is in the process of obtaining permanent housing;
- Supportive services, designed to maximize housing stability once the household is in permanent housing;
- Permanent supportive housing, designed to provide long-term affordable housing and support services to persons with disabilities who are moving out of homelessness;
- Rapid ReHousing, as specified in s. 420.6265, F.S.;
- Permanent housing, including links to affordable housing, subsidized housing, long-term rental assistance, housing vouchers, and mainstream private sector housing; and
- An ongoing planning mechanism to end homelessness for all subpopulations of persons experiencing homelessness

CoCs receive state and federal funding through DCF.<sup>54</sup>

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<sup>49</sup> The catchment areas designated by the State Office must be consistent with the federally-recognized catchment areas designated by HUD as a condition for receiving federal homeless assistance grant funding. See, s. 420.6225, F.S.

<sup>50</sup> *Supra*, note 45.

<sup>51</sup> S. 420.621(1), F.S.

<sup>52</sup> *Supra*, note 45.

<sup>53</sup> S. 420.6225, F.S.

<sup>54</sup> *Id.*

## *Background Screening of Homeless Service Provider Employees*

People with lived experience of homelessness typically have the best understanding of the reality of the work to prevent and end homelessness. From a programmatic perspective, people with lived experience of homelessness bring insight through a personal familiarity with the barriers people face, the gaps in services, and the interventions that are the most effective.<sup>55</sup> On a person-to-person level, people with lived experience are often more easily able to meet people where they are and truly understand their struggle.<sup>56</sup>

People who are experiencing homelessness present with complex needs to be addressed by service providers. This population is more likely to be experiencing mental illness, communicable diseases, sexually transmitted diseases, and substance abuse than the general population.<sup>57</sup> Homelessness is increasingly criminalized,<sup>58</sup> and people experiencing homelessness and extreme poverty may be driven to commit crimes as a means of survival. As a result, homeless individuals have frequent interactions with law enforcement, and more than half of people experiencing homelessness in the US have been previously incarcerated.<sup>59</sup> The existence of a criminal record creates barriers to permanent housing and employment once the underlying causes of a person's homelessness have been addressed.<sup>60</sup>

DCF interprets current law as subjecting contractors and subcontractors to background screening as a condition of their contract with the department. As such, DCF requires employees of CoCs and their subcontractors to undergo Level 2 background screening as a prerequisite to employment.<sup>61</sup> This presents a barrier to CoCs hiring people with lived experience of homelessness who may have a criminal history as a result of their lived experience.

Potential employees who are disqualified through background screening are eligible for exemption through the agency as described above.<sup>62</sup> According to the Florida Coalition to End Homelessness, based on their experience with CoCs, obtaining an exemption from disqualification is a lengthy and time-consuming process. Individual exemption requests can take more than six months to process and receive final approval through the department; a period of time which an individual is not able to work in the role which they have been hired for. This results in qualified individuals with relevant lived experiences to the population they're seeking to serve being screened out, and further limiting the pool of eligible employees.<sup>63</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. An athletic coach is a person authorized by such an independent sanctioning authority to work as a coach, assistant coach, or referee, for compensation or as a volunteer, for a youth athletic team and has direct contact with one or more minors on the youth athletic team.<sup>64</sup>

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<sup>55</sup> HUD Exchange, *Centering Lived Experience*. Available at <https://www.hudexchange.info/programs/coc/centering-lived-experience/> (last visited March 18, 2024).

<sup>56</sup> United States Interagency Council on Homelessness, *The Value of Lived Experience in the Work to End Homelessness* (2018). Available at <https://www.usich.gov/news-events/news/value-lived-experience-work-end-homelessness> (last visited March 18, 2024).

<sup>57</sup> *Supra*, note 43.

<sup>58</sup> United States Interagency Council on Homelessness. *Collaborate, Don't Criminalize: How Communities Can Effectively and Humanely Address Homelessness* (2022). Available at <https://www.usich.gov/news-events/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address> (last visited March 18, 2024).

<sup>59</sup> US Justice Department, Bureau of Justice Assistance, *Responding to Homelessness: Police-Mental Health Collaboration Toolkit*. Available at <https://bja.ojp.gov/program/pmhc/responding-homelessness#3-0> (last visited March 18, 2024).

<sup>60</sup> *Id.*

<sup>61</sup> Department of Children and Families, *Agency Bill Analysis for HB 563* (2024). On file with the Health & Human Services Committee.

<sup>62</sup> See, s. 435.07, F.S.

<sup>63</sup> Correspondence with Leeanne Sacino, Executive Director of the Florida Coalition to End Homelessness. On file with the Health & Human Services Committee.

<sup>64</sup> S. 943.0438(1), F.S.

Currently, 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. An individual may not serve as a youth athletic coach unless a Level 1 screening has been conducted and the screening does not result in his or her disqualification.<sup>65</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>66</sup>

In 2023, the Legislature revised the background screening requirements for youth athletic team coaches to require all youth athletic coaches, assistant coaches, referees, and managers undergo Level 2 background screening. Under current law, this requirement is effective July 1, 2024.<sup>67</sup>

## **Effect of the Bill**

### Employee Background Screening

The bill adds additional offenses to the list of disqualifying offenses for Level 2 background screening. The bill adds offenses prohibited under any of the following provisions of state law, or similar laws in other jurisdictions:

- Section 39.205, F.S., relating to the failure to report child abuse, abandonment, or neglect;
- Section 414.39, F.S., relating to fraud, if the offense was a felony;
- Section 787.06, F.S., relating to human trafficking;
- Section 787.07, F.S., relating to human smuggling;
- Section 831.311, F.S., relating to the unlawful sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks for controlled substances;
- Section 836.10, F.S., relating to written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism;
- Section 859.01, F.S., relating to poisoning food or water; and
- Section 873.01, F.S., relating to the prohibition on the purchase or sale of human organs and tissue.

### *Exemptions*

The bill also revises the eligibility criteria for exemptions from disqualification due to failure to pass a background screening. The bill reduces the period of time which must have elapsed since the applicant completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony, from three years to two years.

Current law requires a person to have paid in full any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution before applying for an exemption to background screening.<sup>68</sup> When a person is deemed to be indigent the clerk of court may convert any outstanding fee, fine or court cost to a civil judgment. This removes these outstanding amounts from the criminal justice system and places them within the civil justice court system. The bill removes the requirement that a civil judgment must be paid in order for a person to be eligible for an exemption. This allows a presumably indigent individual the opportunity to obtain licensure but does not extinguish that individual's responsibility for payment for any amount owed under a civil judgment.

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<sup>65</sup> S. 943.0438(2), F.S.

<sup>66</sup> S. 943.0438, F.S.

<sup>67</sup> Ch. 2023-220, L.O.F.

<sup>68</sup> S. 435.07(1)(b), F.S.

## Background Screening for Health Care Professionals

The bill requires additional health care professions licensed by DOH to undergo background screening as a requirement for initial licensure. The following professions will now be required to pass a background screening in order to be licensed:

- Acupuncturists;
- Anesthesiologist Assistants;
- Audiologists;
- Audiologist Assistants;
- Clinical Laboratory Personnel;
- Mental Health Professionals;<sup>69</sup>
- Registered Mental Health Profession Interns;<sup>70</sup>
- Dentists;
- Dentists seeking a limited health access license;
- Dental Hygienists;
- Dieticians;
- Electrologists;
- Genetic Counselors;
- Hearing Aid Specialists;
- Medical Physicists;
- Nursing Home Administrators;
- Occupational Therapists;
- Opticians;
- Optometrist;
- Pharmacists;
- Physical Therapists;
- Physical Therapist Assistants;
- Physician Assistants;
- Psychologists and School Psychologists;
- Radiology Technicians;
- Respiratory Therapists;
- Speech-Language Pathologists; and
- Speech-Language Pathology Assistants.

The new background screening requirement applies to applicants seeking initial licensure to practice any of these professions beginning July 1, 2025. Those licensed prior to July 1, 2025, must submit to such background screening upon their next licensure renewal that takes place on or after July 1, 2025. The bill prohibits DOH from renewing the license of a health care practitioner after July 1, 2025, until they have complied with the background screening requirements. DOH estimates that 42,467 additional applicants for initial licensure will need to be screened annually upon implementation of the bill; a 32 percent increase over 2023.<sup>71</sup>

The bill makes conforming changes to the practice acts of health care professions effected by the background screening requirement as to state the background screening requirement in the initial licensure requirements of each profession. The bill makes additional conforming changes throughout the practice acts to correct references that are affected by numbering changes due to the new licensure requirements.

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<sup>69</sup> Mental health professionals include clinical social workers, mental health counselors, and marriage and family therapists licensed under ch. 491, F.S.

<sup>70</sup> *Id.*

<sup>71</sup> *Supra*, note 19.

## Background Screening of Homeless Service Provider Employees

The bill also establishes a pathway by which a person who has lived experience with homelessness may qualify for a less stringent background screening process in order to be employed by certain homeless service providers. This will allow homeless service providers to employ qualified individuals who may not otherwise be able to pass the criminal background screening typically required by DCF.

To accomplish this, the bill creates a category of “persons with lived experience” who are eligible to apply for employment with the State Office or a CoC (hiring entity) through a modified background screening process. Under the bill, a person who has past or present experience with homelessness pursuant to federal law<sup>72</sup> may qualify as a person with lived experience.

The bill allows the hiring entity to certify that the applicant is a qualified applicant with relevant lived experience if the applicant has received homeless services in the past. The hiring entity must submit documentation to DCF verifying that the applicant has received homeless services when requesting the background check of the applicant.

Under the bill, an applicant who has been certified as a person with lived experience is then subject to a modified background screening. The background screening must ensure that the applicant has not been arrested for and is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has not been adjudicated delinquent and the record has been sealed or expunged for:

- Any felony during the previous three years; or
- Any offense prohibited under any of the following laws of Florida or similar laws of another jurisdiction:
  - 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 409.920, F.S., relating to Medicaid provider fraud, if the offense was a felony of the first or second degree;
  - Section 415.111, F.S., relating to criminal penalties for abuse, neglect, or exploitation of vulnerable adults;
  - Any offense that constitutes domestic violence, as that term is defined in s. 741.28, F.S.;
  - Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this paragraph;
  - Section 782.04, F.S., relating to murder;
  - Section 782.07, F.S., relating to manslaughter or aggravated manslaughter of an elderly person, a disabled adult, a child, an officer, a firefighter, an emergency medical technician, or a paramedic;
  - 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 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 leading, taking, enticing, or removing a child beyond the state limits, or concealing the location of a child, with criminal intent pending custody proceedings;

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<sup>72</sup> A person who has lacked a fixed, regular, and adequate nighttime residence is generally considered homeless. See, 24 C.F.R. § 578.3, for all of the situations which constitute being “homeless.”

- Section 787.04(3), F.S., relating to leading, taking, or removing a child beyond the state lines, or concealing the location of a child, with criminal intent pending dependency proceedings or proceedings concerning alleged abuse or neglect of a child;
- 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, a destructive device, or any 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;
- Section 794.08, F.S., relating to female genital mutilation;
- Section 796.07, F.S., relating to procuring another to commit prostitution, except for those offenses expunged pursuant to s. 943.0583, F.S.;
- 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;
- Section 812.13, F.S., relating to robbery;
- Section 812.131, F.S., relating to robbery by sudden snatching;
- Section 812.133, F.S., relating to carjacking;
- Section 812.135, F.S., relating to home-invasion robbery;
- Section 817.034, F.S., relating to communications fraud, if the offense is a felony of the first degree;
- Section 817.234, F.S., relating to false and fraudulent insurance claims, if the offense is a felony of the first or second degree;
- Section 817.50, F.S., relating to fraudulently obtaining goods or services from a health care provider and false reports of a communicable disease;
- Section 817.505, F.S., relating to patient brokering;
- Section 817.568, F.S., relating to fraudulent use of personal identification, if the offense was a felony of the first or second degree;
- 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 831.30, F.S., relating to fraud in obtaining medicinal drugs;
- Section 831.31, F.S., relating to the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver of any counterfeit controlled substance, if the offense was a felony;
- 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 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 obscenity;
- 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, if the offense was a felony of the first or second degree or greater severity;
- Section 895.03, F.S., relating to racketeering and collection of unlawful debts;
- Section 896.101, F.S., relating to the Florida Money Laundering Act;
- 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.

The bill allows an applicant that is disqualified through the modified background screening process to apply to DCF for an exemption pursuant to s. 435.07, F.S. The bill requires DCF to accept or reject the exemption within 90 days of receiving the application.

#### Youth Athletic Team Coaches

The bill extends the deadline for independent youth athletic team coaches to undergo a Level 2 background screening from July 1, 2024, to January 1, 2025.

The effective date of this bill is July 1, 2024; except for the provisions relating to the background screening of licensed health care professionals which is effective July 1, 2025.

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

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

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

According to FDLE, the total fiscal revenue for the state portion of a state and national criminal history record check with five years of fingerprint retention within the Clearinghouse retention is \$48 per person. These fees will go into FDLE's Operating Trust Fund.<sup>73</sup>

#### **2. Expenditures:**

For Fiscal Year 2024-2025, the bill appropriates \$250,000 in non-recurring funds from the Medical Quality Assurance Trust Fund to DOH to implement the provisions of the bill.

The provisions of the bill relating to homeless service providers will have an insignificant, indeterminate impact on DCF which can be absorbed by existing resources.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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<sup>73</sup> Florida Department of Law Enforcement, *Legislative Bill Analysis for HB 975 (2024)*, p. 3. On file with the Health & Human Services Committee.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care providers previously not required to undergo a background screening will incur the cost associated with obtaining a background screening. These costs amount to \$61.25 per person for applicants screened and retained within the Care Provider Background Screening Clearinghouse. This amount does not include additional servicing fees which may be assessed by the screening service provider.<sup>74</sup>

D. FISCAL COMMENTS:

Upon full implementation of the background screening requirements for licensed health care practitioners on July 1, 2025, DOH estimates that 21 full-time equivalent (FTE) positions will be required within the Medical Quality Assurance Services program. The total estimated annual cost is \$4,284,501.<sup>75</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> *Supra*, note 19.