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**Joint Meeting of the**

**Criminal & Civil Justice Policy Council  
Rep. Snyder, Chair**

**Elder & Family Services Policy Committee  
Rep. Anderson, Chair**

**Health Care Services Policy Committee  
Rep. Kreegel, Chair**

**Tuesday, November 3, 2009  
10:00 AM  
Webster Hall (212 Knott Building)**

**Larry Cretul  
Speaker**



# **The Florida House of Representatives**

## **Criminal & Civil Justice Policy Council**

**Larry Cretul**  
Speaker

**William Snyder**  
Chair

**November 3, 2009**

**AGENDA**  
**10:00 AM – 12:00 PM**  
**Webster Hall**

**I. Call Meeting to Order**

**II. Presentations on Background Screening by the following:**

**Bill McCollum, Attorney General**

**Mark Zadra, Assistant Commissioner**  
**Public Safety Services**  
**Florida Department of Law Enforcement**

**Marian Lambeth, Chief**  
**Office of Professional Practices Services**  
**Florida Department of Education**

**George Sheldon, Secretary**  
**Florida Department of Children and Family Services**

**Molly McKinstry, Bureau Chief**  
**Long Term Care Services**  
**Agency for Health Care Administration**

**III. Adjourn**





# STATE OF FLORIDA

**BILL McCOLLUM**  
**ATTORNEY GENERAL**

October 5, 2009

The Honorable Larry Cretul  
Speaker, The Florida House of Representatives  
Room 420, The Capitol  
Tallahassee, FL 32399-1300

A handwritten signature in cursive script, appearing to read "Larry", written over the printed name of the speaker.

Dear Speaker Cretul:

In 2007, the Clemency Board voted to provide ex-felons, under certain conditions, automatic restoration of their civil rights. In my strong opposition to the proposal, I raised concerns about high recidivism rates among ex-felons and the significant workload increase on the Parole Commission.

Sadly, my fears have been realized. The operational audit on the Restoration of Civil Rights released by the Auditor General last month identified numerous errors in the small 203 case sample they reviewed. In the past two and a half years, approximately 140,000 individuals have had their rights automatically restored. Given the error rate in the small sample examined, I am afraid there may be thousands of ex-felons who should never have had their rights restored and who are now posing a potential threat to the safety and well-being of our citizens. For this reason, I am asking you to consider having the Auditor General conduct an operational audit of all automatic restoration cases that have been processed by the Parole Commission since automatic restoration began.

Recent news reports have also highlighted the fact that more than 8,700 ex-felons in Florida have been given the opportunity to work in child care centers and nursing homes with disastrous results. For example, one Central Florida woman, who pleaded guilty to aggravated assault which included encouraging an accomplice to slice the victim's face with a knife, was given an exemption by an agency to work in a nursing home. While working in the nursing home she stole more than \$36,000 from patients at the facility. With her violent criminal background, she should have never been given the opportunity to work in a position of trust. I have directed my office to thoroughly review any current laws and policies that allow ex-felons with serious offenses to work with Florida's most vulnerable. I will bring any legislative proposals that come as a result of this review to you for your consideration in the upcoming legislative session. Of particular concern to me are ss. 110.1127 and 435.07, F.S., authorizing agencies to

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STATE OF FLORIDA  
ATTORNEY GENERAL

grant exemptions from employee security checks for those working with the developmentally disabled, vulnerable adults, and child care providers.

Additionally, the safe harbor for convicted felons provided in s. 112.011, F.S., currently prohibits an agency from denying a license to a convicted felon who has had his or her civil rights restored, unless the crime is directly related to the occupation. I believe this safe harbor provision should be eliminated and instead, agencies should be given greater regulatory authority to protect the public through stronger standards for denial of a license without any exemptions.

As the Attorney General of Florida, my top priority is ensuring the people of Florida are safe. I know you share this commitment, and I look forward to working with you on this very important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill McCollum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bill McCollum



**Criminal History Record Check Processes**

House Criminal and Civil Justice Policy Council  
November 3, 2009  
Florida Department of Law Enforcement

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**State and National Criminal History Record Checks**

- FDLE provides criminal history check processing assistance to certain employers as required by Florida Statute
- FDLE is dependent upon an existing state statute providing authorizing language and approved by the FBI under federal law (US PL92-544)
- Requires a fingerprint submission
- Fee based
  - State standard fee set by law at \$24.00
  - FBI fee
    - \$19.25 if electronically submitted
    - \$30.25 by paper card

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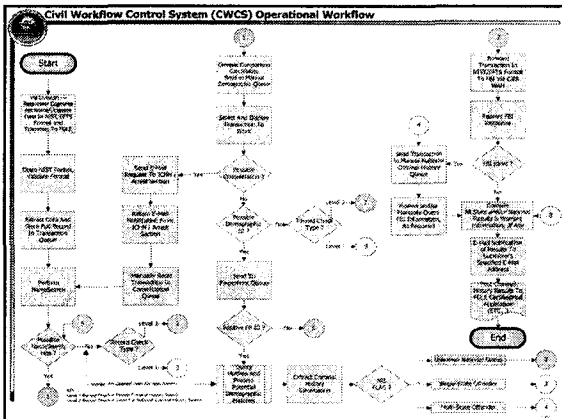
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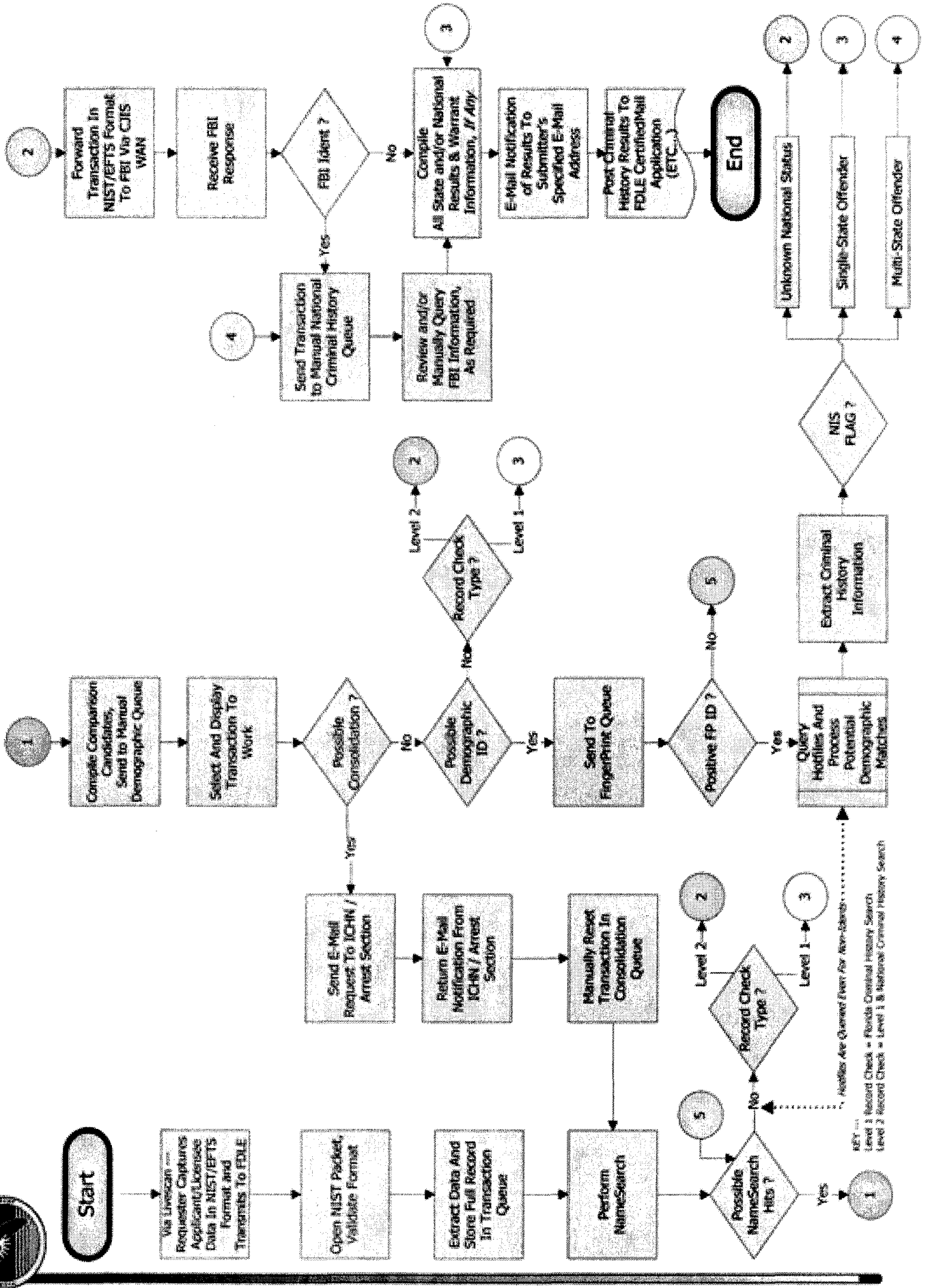
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See next page

# Civil Workflow Control System (CWCS) Operational Workflow





### Fingerprint Submission

- Today only approximately 25% of applicant fingerprints are submitted to FDLE by the traditional ink printed hard card and mailed
- Approximately 75% are now captured utilizing technology via a livescan device and then electronically submitted
- Examples of Electronic Customers
  - Dept. of Agriculture
  - Dept. of Children and Families
  - Dept. of Juvenile Justice
  - Dept. of Business and Professional Regulation
  - Public and Private Schools
- An agency can purchase a livescan device or utilize a vendor as a service provider

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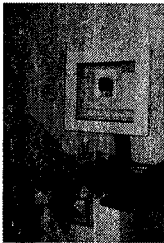
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### Live Scan Devices

- Located in every school district
- DCF contracted providers
- 197 in law enforcement agencies, university and school police
  - In jails, however, these are in secure areas and have a different workflow
- 7 FDLE offices
- DHSMV



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### Fingerprint Processing and Result Dissemination

<u>Hard Card Submission</u>	<u>Electronic Card Submission</u>
<input type="checkbox"/> Mailed to FDLE	<input type="checkbox"/> Secure electronic email to FDLE
<input type="checkbox"/> Result mailed to employer (within 5 days)	<input type="checkbox"/> Electronic submission to FBI
<input type="checkbox"/> Card mailed to FBI	<input type="checkbox"/> Results in 2-3 days
<input type="checkbox"/> FBI result (4-6 weeks)	<input type="checkbox"/> Bundled results available to employer via secure application
<input type="checkbox"/> Separate responses mailed to employer	<input type="checkbox"/> "End to End Electronics"

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**Benefits of Electronic Submission** 

- Reduced processing time
- Improved quality of prints for searching
- Reduction in potential missed identifications
- "One stop shopping": state and national results are bundled together
- Enables retention of prints if authorized

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**DOJ Recommendations on Background Screening** 

- Electronic Submission
- At place of business of employer or
- At service centers established by agency or through outsourcing
- At location other than law enforcement agency
- Convenient access 

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**Identified Concern**

- Fingerprints not always submitted (many conduct state only name checks)
  - National Efficacy Study:
    - 11.7% of applicants with criminal history would not have been detected without fingerprint based search.
    - reliance on name checks alone, can mean large numbers of persons employed or volunteering in positions for which they are unfit and pose societal risks
  - Florida is a transient state
- Recommendation
  - Require all checks to be fingerprint based state and national checks

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**Identified Concern**

- Persons begin working while awaiting the results of criminal history check screening
  - Policy decisions instituted prior to the ability to reduce turnaround time via electronic submission of fingerprints
  - **Recommendation**
    - Require electronic submission of prints
      - Results received within two to three working days
      - Legislature could require evaluation of criminal history check results prior to authorizing employment or licensing

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**Considerations**

- Using Existing Live Scans
  - Resource Intensive
  - Already being fully utilized
  - Payment and billing options difficult
  - Not always located in rural areas
- Using Service Provider
  - FBI discounts cost for electronic submission by \$11.00
  - State agency(s) could enter into agreement with service provider not to exceed difference in cost.



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**Retained Prints and Arrest Notification**

- FDLE retains fingerprints where authorized by law
- Incoming Florida arrests run against retained print file
- FDLE notifies employing or licensing agency of arrests
- Retained Print Customers
  - Public and private schools
  - Seaports
  - Dept. Juvenile Justice
  - Professional guardians
  - Criminal justice agencies
  - Racinos
  - Beginning Oct. 2010, Mortgage brokers and Loan Originators

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 **Retained Prints** (cont.)

- \$6 per print retained annually after first year
- Fingerprints must be submitted electronically
- Agencies manage retained print file
  - Request deletion for persons no longer of interest
  - Charged annually for only those prints actually retained
- Agencies must maintain tracking system
  - Take appropriate action upon notification of arrest and any subsequent judicial action

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 **Benefits of Retained Prints**

- Agencies receive immediate notification when arrest occurs
- Agencies no longer have to conduct rechecks for employees
  - Only notified when an arrest occurs based on a biometric
  - Not having to rescreen rap sheets for all employees

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 **Retained Prints** 

- FBI plans to have retained print capability and arrest notification within its Next Generation Identification (NGI). This capability is planned for 2013.
- Retaining prints now will put agencies in position to take advantage of national rap back program
- Until then, agencies can resubmit to FBI without having to recollect fingerprints and cost is only that of FBI check

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**Identified Concern**

How does an agency know if disqualifying crimes are committed post employment/licensing

- Agencies have to rescreen all those licensed or employed
- May often require a new set of fingerprints

Recommendation

- Retain fingerprints with arrest notifications



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**Summary of Recommended Actions**

- Require electronic submission of fingerprints
- Authorize retention upon request of agency, or as mandated by legislature, with privacy notice to the applicant (notice required by FBI)
- Authorize retention at FBI pending capability
- Regulate service providers
  - Licensing or certification
  - Criminal history check on employees to alleviate potential fraud and ensure integrity of systems

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Florida Department of  
Law Enforcement

Gerald M. Bailey  
*Commissioner*

**Criminal Justice Information Services**  
Post Office Box 1489  
Tallahassee, Florida 32302-1489  
(850) 410-8161  
www.fdle.state.fl.us

Charlie Crist, *Governor*  
Bill McCollum, *Attorney General*  
Alex Sink, *Chief Financial Officer*  
Charles H. Bronson, *Commissioner of Agriculture*

**CRIMINAL HISTORY RECORD CHECKS / BACKGROUND CHECKS  
FACT SHEET  
OCTOBER 1, 2009**

**Definitions:**

**Criminal History Record Check:** The term “background check” is often used interchangeably with “criminal history check” or “criminal history record check” which causes some confusion. Some companies use the phrase “background check” to include drivers record, credit history, or interviews with neighbors and employers. From the Florida Department of Law Enforcement (FDLE) perspective, a background check is a criminal history record check to determine if a person has been arrested and/or convicted of a crime. For the purposes of this paper, it is a search of the following databases:

- the Florida Computerized Criminal History (CCH) Central Repository for Florida arrests (**STATE CHECK**),
- the Florida Computerized Criminal History Central Repository for Florida arrests AND the national criminal history database at the FBI for federal arrests and arrests from other states (**STATE AND NATIONAL CHECK**) and
- the Florida Crime Information Center for warrants and domestic violence injunctions (**HOT FILES CHECK**).

A national criminal history record check is based on the submission of fingerprints. State criminal history record checks are based on a name (and other descriptors) or fingerprints.

**Level 1 and Level 2 Background Checks:** Level 1 and Level 2 Background Checks are terms used in Florida Statutes to convey the method of the criminal history record check and the extent of the data searched. However, the terms may also refer to certain disqualifying offenses if certain statutes are referenced. Level 1 and Level 2 are terms that pertain only to Florida and are not used by the FBI or other states. They are defined in Chapter 435, Florida Statutes (F.S.), but are used elsewhere in statute without definition and appear not to be associated with all of the provisions in Chapter 435, F.S.

- **Level 1** generally refers to a state only name based check AND an employment history check.
- **Level 2** generally refers to a state and national fingerprint based check and consideration of disqualifying offenses, and applies to those employees designated by law as holding positions of responsibility or trust. Section 435.04, F.S., mandates Level 2 security background investigations be conducted on employees, defined as individuals required by law to be fingerprinted pursuant to Chapter 435, F.S.

**It should be noted that both the state and national criminal history databases can be searched for arrests, warrants, and other information pertaining to an individual. However, neither database has the capability of searching for specific offenses within an individual record.**

## Frequently Asked Questions Regarding Criminal History Record Information

### 1. Are local criminal history record checks available?

Yes. Local criminal history record checks can be obtained directly from each county and reflects criminal history information solely from their jurisdiction.

### 2. Are state only criminal history record checks available?

Yes. FDLE provides public access to Florida criminal history information consistent with Section 943.053, F.S. The fee for a state criminal history record check has been statutorily set at \$24.00 per record check. These checks are performed by a name request or submitting a fingerprint card.

State criminal history record checks can be obtained by mail at:

Florida Department of Law Enforcement  
Attn: Criminal History Services  
Post Office Box 1489  
Tallahassee, FL 32302-1489

Requests should include a return address, the subject's name any known aliases, date of birth or approximate age, race, sex and social security number (optional). A check or money order for \$24.00, made payable to FDLE, per record check must accompany the request. This process takes approximately five business days excluding postal delivery time.

State criminal history record checks can also be obtained online through our Computerized Criminal History on the Internet (CCH Inet) service at <https://www2.fdle.state.fl.us/CCHinet/>. The \$24.00 fee will be made payable by a valid credit card (Visa, MasterCard, Discover or American Express). Users will process the criminal history record check online with the results presented during the session. Requests for certified (notarized) criminal history results can not be processed through CCH Inet. Such requests must be made via mail.

Contact Criminal History Services at (850) 410-8109 or [BackgroundChecks@fdle.state.fl.us](mailto:BackgroundChecks@fdle.state.fl.us) for questions regarding state only criminal history record checks.

### 3. Is there a presumption against negligent hiring when an employer conducts a background investigation of a prospective employee?

Yes. Pursuant to Section 768.096, F.S., in the case of an intentional tort, an employer is presumed not to have been negligent in hiring an employee if before hiring the employee, the employer conducted a background investigation of the prospective employee and the information did not reveal any information that reasonably demonstrated unsuitability of the prospective employee for the work to be performed or for general employment. The background investigation must include a criminal background investigation.

The statute specifically provides if an employer requests and obtains from FDLE a state criminal history record check, the employer has satisfied the criminal background investigation requirement for the presumption.

**4. Can I get warrant information or sexual offender/predator information without performing a criminal history record check?**

Yes. Independent of a criminal history record check, the public can access this information free of charge. FDLE's Public Access System at <http://pas.fdle.state.fl.us/pas> provides information on wanted persons and missing persons.

Sexual offender and predator information can be obtained at <http://offender.fdle.state.fl.us>. This site allows the public to perform several types of searches including by offender, neighborhood and email address.

**5. What are the requirements for a state criminal history record check and national criminal history record check?**

**State Check:** May be obtained by submitting a name request or by submitting a fingerprint card.

**National Check:** The following must be in place, as required by the FBI, to receive a national criminal history record check:

- A statute must exist as a result of a legislative enactment;
- It must require the fingerprinting of applicants who are subject to a national criminal history record check;
- It must expressly ("submit to the FBI") or by implication ("submit for a national check") authorize the use of FBI records for the screening of applicants;
- It must identify the specific category(ies) of licensees/employees falling within its authority;
- It must not be against public policy;
- It may not authorize receipt of the criminal history record information by a private entity;
- The recipient of the criminal history record check results must be a governmental entity;
- The entity must sign a User Agreement indicating it will comply with the terms and conditions set forth in rule by the FBI; and
- The fingerprint submission must be first processed through the state repository for a search of its records.



**6. What entities are statutorily authorized to receive a state and national criminal history background check?**

<b>STATUTORY REFERENCE (F.S.)</b>	<b>REGULATORY AGENCY</b>	<b>GROUPS SUBJECT TO CHECK</b>
435.04, 112.0455	Agency for Health Care Administration (AHCA); Division of Health Quality Assurance (HQA)	Drug free workplace labs
435.04, 381.60225	AHCA; Division of HQA	Organ transplant advisory council
435.04, 383.305	AHCA; Division of HQA	Birth centers
435.04, 390.015	AHCA; Division of HQA	Abortion clinics
435.04, 400.906	AHCA; Division of HQA	Prescribed pediatric extended care centers
435.04, 400.962	AHCA; Division of HQA	Intermediate care facilities for developmentally disabled
435.04, 395.003	AHCA; Division of HQA	Hospitals and surgical facilities
435.04, 395.0199	AHCA; Division of HQA	Private utilization review
435.04, 400.071	AHCA; Division of HQA	Nursing homes
435.04, 429.174	AHCA; Division of HQA	Assisted living facilities
435.04, 400.931	AHCA; Division of HQA	Home medical equipment providers
435.04, 400.509	AHCA; Division of HQA	Companion and homemaker service agencies
435.04, 394.875	AHCA; Division of HQA	Crisis stabilization units and residential treatment facilities
435.04, 400.980	AHCA; Division of HQA	Health care services pools
435.04, 400.991	AHCA; Division of HQA	Health care clinics
435.04, 400.471	AHCA; Division of HQA	Home health agencies
435.04, 400.506	AHCA; Division of HQA	Nurse registries
435.04, 429.67	AHCA; Division of HQA	Adult family-care homes

<b>STATUTORY REFERENCE (F.S.)</b>	<b>REGULATORY AGENCY</b>	<b>GROUPS SUBJECT TO CHECK</b>
435.04, 429.909	AHCA; Division of HQA	Adult day cares
435.04, 400.6065	AHCA; Division of HQA	Hospices
435.04, 400.801	AHCA; Division of HQA	Homes for special services
435.04, 400.805	AHCA; Division of HQA	Transitional living facilities
435.04, 483.101	AHCA; Division of HQA	Clinical laboratories
435.04, 483.30	AHCA; Division of HQA	Multiphasic health testing services
400.215, 435.04	AHCA; Division of HQA	Employees of nursing facilities licensed under part II
409.907	AHCA; Division of Medicaid	Medicaid providers
68.07(2)(a)	Clerks of the Court	Name change petitioner
744.3135	Clerks of the Court	Non professional guardians
744.3135	Clerks of the Court, Department of Elder Affairs (DOEA)	Professional or public guardians
957.13	Private Correctional Facilities	Private correctional facility employment
943.13	Criminal Justice Agencies	Criminal justice employment
943.14(8)	Criminal Justice Training Schools	Criminal justice training school applicants
849.086	Dept. of Business and Professional Regulation (DBPR); Division of Pari-mutuel wagering	Card room occupational licensees
550.105, 550.054	DBPR; Division of Pari-mutuel wagering	Pari-mutuel wagering permits; racetrack employees
551.107	DBPR; Division of Pari-mutuel wagering	Slot machine licensees
561.17(1)	DBPR; Division of Alcoholic Beverages and Tobacco	Alcoholic beverage manufacturer, bottler, distributor, seller

STATUTORY REFERENCE (F.S.)	REGULATORY AGENCY	GROUPS SUBJECT TO CHECK
498.031	DBPR; Division of Florida Land Sales	Subdivider registration licensees
326.004	DBPR; Division of Mobile Homes	Yacht and ship brokers licensees
468.525, 468.524(4)(c)	DBPR; Division of Professions	Employee leasing companies
468.453	DBPR; Division of Professions	Athlete agent licensees
468.402, 468.403	DBPR; Division of Professions	Talent agency licensees
548.024	DBPR; Division of Professions	Pugilistic exhibitions license
489.115	DBPR; Division of Professions	Construction industry licensees
475.175	DBPR; Division of Real Estate	Real estate licensees
468.433	DBPR; Division of Real Estate	Licensing of community association managers
475.615	DBPR; Division of Real Estate	Real estate appraiser applicants
402, 409, 435.04	Dept. of Children and Families (DCF)	Child care facility, family day care home, family foster home, residential child caring agency, child placing agency, summer or recreation camp owners and operators
394, 435.04	DCF	As above plus "mental health facilities and programs providing care for children – directors, professional clinicians, staff members and volunteers"
393, 435.04	DCF, Agency for Persons with Disabilities (APD)	As above plus "day care or residential caretakers providing treatment to retarded or developmentally disabled individuals (children or adults)"
397, 435.04	DCF	As above plus "treatment resource personnel including program directors, staff volunteers and foster parents providing alcohol/drug abuse treatment for minors"
39.0138, 435.04	DCF	As above plus "persons considered for placement of dependent children"
984, 985, 435.04	DCF, Dept. of Juvenile Justice (DJJ)	As above plus "juvenile delinquency programs personnel providing care for children"

<b>STATUTORY REFERENCE (F.S.)</b>	<b>REGULATORY AGENCY</b>	<b>GROUPS SUBJECT TO CHECK</b>
552.092(2)	Dept. of Financial Services (DFS); Bureau of Fire Investigation	Explosive blasters/dealers/users Manufacture-distribution
633.34(3)	DFS; Bureau of Fire Standards and Training	Firefighters
648.34(4)	DFS; Division of Agent and Agency Services	Bail bond agents
624.34	DFS; Division of Agent and Agency Services	Insurance agents
624.34, 626.171, 626.172, 626.201	DFS; Division of Agent and Agency Services	Insurance licensure
215.5586	DFS; Division of Agent and Agency Services	Hurricane mitigation inspectors
497.142	DFS; Division of Funeral, Cemetery and Consumer Services	Funeral and cemetery related licensees
517.12(7)	DFS; Division of Securities	Securities dealers and associates, investment advisors
494.0033(2)	DFS; Office of Financial Regulation	Mortgage brokers and solicitors
537.004	DFS; Office of Financial Regulation	Title loan lenders
560.141	DFS; Office of Financial Regulation	Money services business licensees
320.27, 320.77, 320.771	Dept. of Highway Safety and Motor Vehicles (DHSMV); Division of Motor Vehicles	Motor vehicle, mobile home and recreational vehicle dealers licensees
539.001(5)	Dept. of Agriculture and Consumer Services (DOACS); Division of Consumer Services	Pawn broker licensees
790.06	DOACS; Division of Licensing	Concealed weapon/firearm licensees
493.6105(3), 493.6108(1)	DOACS; Division of Licensing	Private investigative agencies, private investigators, private security and repossessioners
220.187	Dept of Education (DOE) – Office of Independent Education and Parental Choice	Owner or operator of eligible nonprofit scholarship-funding organization

<b>STATUTORY REFERENCE (F.S.)</b>	<b>REGULATORY AGENCY</b>	<b>GROUPS SUBJECT TO CHECK</b>
1012.35, 1012.32, 1012.465, 1012.56	DOE - Public school boards	Public school system employment/certification/contractors
413.011(7)	DOE – Division of Blind Services	Division employees
943.0542	FDLE; Volunteer and Employee Criminal History System (VECHS)	Qualified entities under the National Child Protection Act
454.026	Florida Bar	Bar applicants
24.108(4)	Florida Lottery	Lottery vendors, lottery retailers, and lottery employees
499.63	Dept. of Health (DOH); Division of Health Access	Ether license for manufacturers, distributors and dealers; ether permit for purchasers
499.012(4)	DOH; Division of Health Access	Prescription drug wholesaler permit
458.311, 458.313, 458.319	DOH; Division of Medical Quality Assurance (MQA)	Physicians license and renewal
459.0055, 459.008	DOH; Division of MQA	Osteopathic physicians license and renewal
460.406, 460.407	DOH; Division of MQA	Chiropractors
461.006, 461.007	DOH; Division of MQA	Podiatrists
456.0391	DOH; Division of MQA	Advanced registered nurse practitioners
400.215, 464.203	DOH; Division of MQA	Certified nursing assistants
468.803	DOH; Division of MQA	Orthotist, Prosthetist and Pedorthist
464.009	DOH; Division of MQA	Nursing applicants for endorsement licensure
465.022	DOH; Division of MQA	Pharmacy permits and prescription department managers
2001-299, Laws of Florida	Hillsborough County Public Transportation Commission	Certification and public vehicle driver's licenses
285.18(3)	Miccosukee and Seminole Tribe Police Dept.	Tribal education, Head Start or day care programs
285.18(3)	Miccosukee and Seminole Tribe Police Dept.	Tribal government employment

<b>STATUTORY REFERENCE (F.S.)</b>	<b>REGULATORY AGENCY</b>	<b>GROUPS SUBJECT TO CHECK</b>
285.18(3)	Miccosukee and Seminole Tribe Police Dept.	Tribal gaming employees, primary management officials and persons having a financial interest in a class II Indian tribal gaming enterprise
538.09	Dept. of Revenue (DOR)	Second hand dealer licensees
538.25	DOR	Secondary metals recycler licensees
206.026(5)	DOR	Motor fuel licensees
961.05	Office of the Attorney General	Applicants for compensation for wrongful incarceration
311.12(3)	Seaport authorities	Seaport applicants
110.1127	State agencies	Designated state employees
427.012	Dept. of Transportation (DOT); Commission for the Transportation Disadvantaged	Candidates for appointment
125.5801 plus individual County ordinance	VOLUNTARY: Various County governments and municipalities	Various County government employees and volunteers
166.0442 plus individual City ordinance	VOLUNTARY: Various County governments and municipalities	Various City government employees and volunteers
373.6055	Water Management Districts	Water management facility employees and designees

**7. What is the cost of a criminal history record check?**

<b>CUSTOMER TYPE</b>	<b>State Fee</b>	<b>Federal Fee <u>HARD CARD</u></b>	<b>Federal Fee <u>ELECTRONIC</u></b>	<b>State Fee + Federal Fee <u>HARD CARD</u></b>	<b>State Fee + Federal Fee <u>ELECTRONIC</u></b>
<b>Applicant / Licensees --- Required Checks</b>					
<b><u>Department of Children &amp; Families, Department of Juvenile Justice and Department of Elder Affairs Vendors</u></b> (examples include – day care center employees, juvenile treatment centers)	<b>\$8.00</b>	<b>\$30.25</b>	<b>\$19.25</b>	<b>\$38.25</b>	<b>\$27.25</b>
<b><u>Department of Agriculture &amp; Consumer Services</u></b> (examples include – concealed weapon permit applicants, security guards)	<b>\$15.00</b>	<b>\$30.25</b>	<b>\$19.25</b>	<b>\$45.25</b>	<b>\$34.25</b>
<b><u>Criminal Justice Applicants</u></b> (examples include – law enforcement, corrections, correction probation officers)	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b><u>All other applicant required checks</u></b> (examples include – realtors, insurance agents, school employees, Florida Bar applicants, foster care, doctors, nursing home employees)	<b>\$24.00</b>	<b>\$30.25</b>	<b>\$19.25</b>	<b>\$54.25</b>	<b>\$43.25</b>
<b>Volunteer and Employee Criminal History System (VECHS) --- Allowed Checks</b>					
<b><u>Employees</u></b> (employees of a <i>qualified entity</i> that provides care to children, elderly or disabled persons - -- that are not specifically required under the applicant groups above)	<b>\$24.00</b>	<b>\$30.25</b>	<b>\$19.25</b>	<b>\$54.25</b>	<b>\$43.25</b>
<b><u>Volunteers</u></b> (volunteers of a <i>qualified entity</i> that provides care to children, elderly or disabled persons --- that are not specifically required under the applicant groups above)	<b>\$18.00</b>	<b>\$15.25</b>	<b>\$15.25</b>	<b>\$33.25</b>	<b>\$33.25</b>

CUSTOMER TYPE	State Fee	Federal Fee <u>HARD CARD</u>	Federal Fee <u>ELECTRONIC</u>	State Fee + Federal Fee <u>HARD CARD</u>	State Fee + Federal Fee <u>ELECTRONIC</u>
<b>Public Record Checks --- Allowed Checks</b>					
Requests From General Public, Businesses, and Any Governmental or Non-Governmental Entity	\$24.00	Federal Checks Not Allowed	Federal Checks Not Allowed	Federal Checks Not Allowed	Federal Checks Not Allowed

**8. How is the cost established and what are they used for?**

The cost of each request for a criminal history record check is mandated by federal laws and Section 943.053, F.S. These fees are used to offset the cost of producing the record information and reflect the total cost of creating, storing, maintaining, updating, retrieving, improving and providing criminal history information in a centralized, automated database and also include personnel, technology and infrastructure expenses.

**9. What are the costs associated with criminal history record checks for school district personnel and contractors?**

The total cost of the criminal history record check is \$43.25 (\$24.00\* for the state check and \$19.25 for the national check). Applicants may incur additional costs assessed by individual school districts and Cogent (or another livescan service provider). In accordance with Section 1012.467(2)(a), F.S., the fee charged by school districts for contractor identified checks may not exceed 30% of the total amount charged by FDLE and the FBI. Any questions related to these fees should be directed to the applicable school district or the Florida Department of Education.

\*This amount for the state check may vary based on legislative policy.

**NOTE: *If a customer chooses to make electronic submissions via a livescan service provider, the service provider may assess a fee in addition to the criminal history record check fee.***

**10. Besides the agencies statutorily required to conduct criminal history record checks, are there others who are allowed to request criminal history checks on individuals?**

Yes. Private citizens, companies and governmental entities are authorized under Florida's public records law to request a state only criminal history record check (See Question 2). Examples of these entities include grocery stores, taxi drivers, summer camp employees, etc. Additionally, provisions of the National Child Protection Act, implemented through FDLE's Volunteer and Employee Criminal History System (VECHS) program, authorize criminal history record checks of employees and volunteers of certain qualified entities that provide care to children, the elderly or disabled persons. See Questions 36-40 below for more information about the VECHS program.



**11. What issues should be considered when determining if a criminal history record check is out of date?**

Section 943.051, F.S., established FDLE, Division of Criminal Justice Information Services, as the central repository of criminal history information for the state of Florida. Over one million arrests a year are added to the repository. Additionally, information such as warrants, domestic violence injunctions/protection orders, probation or supervision release status, sexual predator/offender, career criminal offender, etc. are added on a daily basis. Therefore, criminal history record check results are only accurate as of the date they were performed.

**12. Are there Florida criminal history records included in the state repository, but not at the FBI?**

Yes. FDLE has records the FBI does not have access to because they are not collected at the FBI.

**13. What information from a state and national criminal history background check can be disclosed to a private employer?**

Pursuant to federal law, regulatory and employing agencies may not share any information obtained from a state and national criminal history record check with a private entity. However, these agencies can indicate whether or not the person is eligible for licensing or employment based on their established criteria. Prior to being granted access to the records, authorized agencies must sign a Criminal Justice or Non-Criminal Justice User Agreement with FDLE agreeing to abide by state and federal law.

**14. When can a non-governmental agency receive the results of a state and national background check?**

Non-governmental entities are not authorized to receive both state and national criminal history information under statutory licensing and employment provisions. The only time non-governmental entities are eligible to obtain national criminal history information is through the VECHS program, which is described in detail in Questions 36-40 below.

**15. Can agencies share the results of a state and national check with other agencies that require similar checks?**

Although generally state and national criminal history information may not be shared between agencies, exceptions apply only if the purposes of the criminal history record checks are the same and the agencies are both entitled to the same information. Thus, school districts may share criminal history information with other school districts because the checks are conducted for the same purpose and all districts receive the same data (for example, they receive sealed criminal history information). Likewise, a county health department could share with another county health department because criminal history record checks are conducted for the same purpose and they receive the same data.

Sharing of criminal history information is not allowed when it has been obtained for different purposes, even if the data received is the same. For example, criminal history information received by the Department of Financial Services for licensing insurance agents may not be shared with the Department of Agriculture and Consumer Affairs for licensing of security guards.

For those entities participating in the VECHS program, criminal history information sharing between VECHS entities is permitted in accordance with the User Agreement. Entities must contact the VECHS Unit at (850) 410-8324 for entity verification before sharing criminal history information.

**16. Are agencies required to conduct a recheck on individuals who previously received a criminal history record check?**

FDLE does not have any requirements for rechecks. However, some employees are required by law or policy to have periodic state and/or national criminal history record checks through the regulatory or licensing agency. The recheck may be required at regular intervals as decided by legislative policy.

**17. Can a copy of the FDLE and FBI criminal record be provided to applicants if they are denied employment, licensing, or the opportunity to volunteer?**

Yes. Applicants may be shown their own criminal record. A copy may also be provided, however, applicants must be cautioned the record may **not** be used for any other purpose. Applicants are not allowed to provide a copy of the record to any other organization.

**18. Is sealed or expunged information released as part of a criminal history record check?**

Sealed information is disseminated only to those agencies authorized by provisions in Section 943.059, F.S. Agencies not specified in the statutes are not provided sealed criminal history information.

Expunged criminal history information is not disseminated. However, a notification that a record has been expunged is provided to agencies consistent with provisions in Section 943.0585, F.S. Agencies not specified in the statutes are not provided the expunged notification.

**19. What are Hot File notifications?**

Hot File notifications consist of information that may not be part of the Computerized Criminal History (CCH) system. Some examples may include: warrants, domestic violence injunctions/protection orders, deported felons, missing persons, probation or supervision release status, career criminal offender, etc.

NOTE: A name search of this file is completed for each submitted transaction and any identified information is returned in the completed results as appropriate. The "hot file" information you receive is not based on a fingerprint comparison so it may or may not be the applicant. The agency that entered the information can be contacted to learn more about the record. In addition, system generated notifications are sent to the appropriate criminal justice agency notifying them of the criminal history record check request. These messages will include information on the entity making the request as well as demographic data regarding the subject of the transaction.

**20. If a state and national criminal history record check is conducted, is it necessary to conduct a separate check of the sex offender registry for registered sex offenders?**

No. If the state and national fingerprint based criminal history record check is completed, the agency will be notified of all persons designated as sexual predators or offenders in Florida and in the national system.

**21. How long does it take to complete a state and national criminal history record check when an inked fingerprint card or “hard card” is submitted?**

The state portion of the criminal history record check is processed within five working days. When the FDLE processing is completed, the fingerprint card is then forwarded overnight to the FBI. The FBI typically takes two to six weeks to complete the national portion of the criminal history record check.

NOTE: Regulatory agencies often have their own internal processes to complete, resulting in a delay, before the fingerprint card is forwarded to FDLE.

**22. What is the Civil Workflow Control System (CWCS)?**

Many entities in Florida are required to perform criminal history background checks on potential employees, licensees or other related positions. Routinely, these record checks have been completed using the traditional inked fingerprint card. While extremely accurate and useful, the process of collecting, transporting and processing these inked cards is both labor intensive and time-consuming. Recent improvements in technology have opened the door for modernizing this process, allowing an opportunity to improve services to the citizens of Florida. In response, the Florida Department of Law Enforcement (FDLE) developed the Civil Workflow Control System (CWCS). CWCS, pronounced “QUICKS”, is an automated system used to receive, process and respond to electronic requests for applicant criminal history record checks. Processing that once took several weeks with fingerprint cards now takes 24 to 72 hours with electronic submissions. CWCS allows different types of applicants to be scanned on a single device and allows input from a variety of livescan devices that adhere to FDLE and FBI standards and requirements.

The e-Government Criminal History Services can be contacted at (850) 410-8161 or [ApplicantChecks@fdle.state.fl.us](mailto:ApplicantChecks@fdle.state.fl.us) for questions regarding the CWCS system.

**23. What steps must be completed to use the CWCS system for the electronic submission of criminal history record checks?**

FDLE has established a five-step process to be completed when bringing any new civil applicant livescan into the agency’s internal computer processing environment.

- **Step 1:** The livescan device must successfully pass the FBI **CERTIFICATION** processes;
- **Step 2:** Potential customers must submit a livescan registration form for each potential device. Each specific livescan device must pass a **QUALIFICATIONS** test to ensure that the equipment is capable of transmitting an approved standard fingerprint format to FDLE via the internet;

- **Step 3:** Appropriate data must be submitted from each qualified livescan device into a test system and must pass **VALIDATION** routines administered by the FDLE;
- **Step 4:** Accepted customers (excluding those classified specifically as livescan service providers) must submit individual **REGISTRATION** forms provided by FDLE for each account (based on the Originating Agency Identifier, referred to as an ORI number) they will be using. This step ensures the submitter and recipient are in full compliance with all applicable statutes governing the submission and receipt of state and/or federal criminal history information. Additionally, this step confirms the appropriate invoice and/or payment information;
- **Step 5:** After successfully completing the above steps, customers begin **OPERATIONS** by submitting electronic requests for criminal history record checks.

Additionally, if the purchase of a livescan device is not an option, there are numerous service providers within the state of Florida. Each of these service providers is required to register and certify their devices with FDLE before submitting electronic criminal history record check requests on behalf of an agency.

**24. How long does it take to complete a state and national criminal history record check when fingerprints are submitted electronically?**

Typically, state and national criminal history record checks are completed within two to three working days of receiving the electronic submission. When a transaction is complete within the CWCS system, the results are posted to Certified Mail, a secure FDLE web mail application. The results will include both state and national criminal history information, as well as any warrants and other information related to the individual.

A result notification email is sent to the email address designated by the customer and will contain a link to this Certified Mail application. This notification will also contain descriptive information specific to the transaction.

**25. Which entities submit electronic requests for criminal history record checks?**

Currently there are many agencies submitting electronically, including all 67 school districts, the Department of Business and Professional Regulations (DBPR), the Department of Children and Families (DCF), the Department of Agriculture and Consumer Services (DOACS), local counties and some private companies.

**APPLICANT FINGERPRINT RETENTION AND NOTIFICATION PROGRAM (AFRNP)**

**26. What is the Applicant Fingerprint Retention and Notification Program (AFRNP)? And, what is meant by arrest hit notifications?**

In response to various legislative mandates, for the retention of certain electronically submitted applicant fingerprints and monitoring for new arrests, FDLE developed the AFRNP. All incoming Florida arrest fingerprints are searched against fingerprints retained in the AFRNP. When the subject of retained fingerprints is identified with fingerprints of an incoming Florida arrest, FDLE notifies the licensing or employing agency of the arrest

(referred to as arrest hit notifications). The arrest hit notification will include the name of the arresting agency.

***FDLE retains only those applicant fingerprints authorized by law. All other applicant prints submitted to FDLE ARE NOT retained in our database.***

**27. Will the AFRNP provide arrest hit notifications for arrests outside the state of Florida?**

The AFRNP can only conduct searches against incoming Florida arrest fingerprints. Arrests made in other states or by the federal government will NOT result in arrest hit notifications, as access to these arrests is restricted by federal law. Information on arrests in other states or the federal government is available only upon a fingerprint submission.

**28. How does the quality of fingerprints submitted into the AFRNP affect arrest hit notifications?**

The quality of fingerprints submitted into the AFRNP has a direct effect on the search and the resulting arrest hit notification. While it is not expected to be a frequent occurrence, it should be understood that if the submitted fingerprints for an applicant were of sub-standard quality or if the fingerprints submitted on an arrested individual were of sub-standard quality, the identification of these persons as the same may not occur and an arrest notification may not be made. Additionally, until the arrest fingerprint submission is received by FDLE, we will have no way to identify the arrested person as the individual retained in AFRNP.

**29. What is the cost associated with the retention of fingerprints?**

The cost for the retention of applicant fingerprints is \$6 per year per applicant. The retention of fingerprints eliminates the necessity to have a state criminal history record recheck at a cost of \$24, since all incoming Florida arrest information is continuously compared to the retained applicant database. If a recheck is required, it would only be for a national criminal history record check.

FDLE is not collecting the retention fee until our computer systems are updated; entities will be notified well in advance of the fee being instituted.

**30. Do other states retain applicant fingerprints?**

Yes. There are other states retaining applicant fingerprints and providing subsequent arrest notifications.

**31. Does the FBI retain applicant fingerprints at the national level?**

No. The FBI does not retain applicant fingerprints submitted by the states.

**32. What agencies are currently authorized to have applicant fingerprints retained?**

The school districts were the first agencies to have applicant fingerprints retained in 2004. In 2005-2006, seaports, the Department of Juvenile Justice (employees and caretakers) and Department of Business and Professional Regulations (Slot machine occupational licensees) were added. In subsequent years, the Department of Elder Affairs (Statewide Public Guardianship Office), the Clerk of Courts (guardianship), criminal justice agencies

(sworn personnel) and VECHS private schools (state school choice scholarship program participants) also started having applicant fingerprints retained.

**33. Are school district volunteers required to have criminal history record checks?**

No. The decision to conduct criminal history checks on volunteers remains a local decision, but schools are required by Florida law to check volunteers' names against the state sex offender registry which is available via the Internet at no charge. If a school district chooses to perform state and national criminal history on volunteers, those checks **MUST** be conducted through the VECHS program and not through the regular submission method with other personnel fingerprints.

Additionally, Section 943.04351, F.S., requires checks of the sexual offender/predator registry for certain volunteers, appointees or employees.

**34. Is FDLE authorized to retain volunteers' fingerprints?**

No. FDLE does not have authority to retain any volunteer fingerprints.

In the case of school districts, volunteers' fingerprints should not be submitted in the same manner as employees and contractors, since employee/contractor fingerprints are retained and volunteer fingerprints are not. If state and national checks are desired on volunteers, they should be submitted through the VECHS program under the authority of the National Child Protection Act.

**35. How can different school districts access the criminal history records of contractors screened in another school district?**

As mandated by Section 1012.467, F.S., FDLE developed the Florida Shared School Results (FSSR) application which allows school districts an automated option for sharing criminal history information with other school districts. Criminal history record check responses, resulting from appropriately identified background checks submitted on vendor/contractors, are posted to the FSSR system and maintained for five years from the date of the original criminal history record check.

School districts can then access the results and view the same criminal history record and subsequent arrest notifications received by the original school district. The sharing of criminal history information between districts reduces the need for these persons to be fingerprinted multiple times and pay fees for criminal history record checks in each county in which the individual works.

**FLORIDA'S VOLUNTEER AND EMPLOYEE CRIMINAL HISTORY SYSTEM (VECHS)**  
**NATIONAL CHILD PROTECTION ACT**

**36. What is the Volunteer and Employee Criminal History System (VECHS) program?**

The VECHS program allows for qualified entities to obtain state and national criminal history record checks on individuals working with children, the elderly or the disabled. The authority

for these checks is granted under the National Child Protection Act (NCPA), which is implemented through the VECHS program, under Section 943.0542, F.S.

NOTE: Entities required to conduct state and national criminal history record checks under other statutory provisions, on all or specific employees/volunteers, must continue to comply with those statutes and the procedures that specifically apply to them. Requests for these required criminal history record checks may not be processed through the VECHS Program, pursuant to state and federal law.

**37. What is the difference between the National Child Protection Act (NCPA) and the Volunteers for Children Act (VCA)?**

The NCPA and VCA refer to the same basic law. For the purposes of criminal history record checks, the NCPA and VCA permits qualified entities working with children, the elderly and the disabled access to state and national criminal history information

**38. What is a "qualified entity"? Who can obtain criminal history background checks under the NCPA and Section 943.0542, Florida Statutes?**

To qualify for the VECHS Program, an entity must provide some type of "care" or "care placement services" for children, the elderly or the disabled; even if it is only a limited part of the entity's overall business. Once qualified to participate in the program, an entity may request criminal history information on all current and prospective employees and volunteers, not only those who work with vulnerable persons. A qualified entity may also request criminal history information on employees or volunteers who have or who seek to have unsupervised access to the populations described above.

"Qualified entities" are authorized to obtain criminal history record information as described under the NCPA and related federal guidelines. Under the NCPA and Florida statute, a "qualified entity" is a business or organization, whether public, private, for profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services. "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

**39. How does an organization enroll in the VECHS program?**

If an entity meets the criteria of a "qualified entity", they may download and complete a copy of the VECHS Qualified Entity Application and the VECHS User Agreement at <http://www.fdle.state.fl.us/BackgroundChecks> or contact the VECHS Unit at (850) 410-VECHS (850-410-8324), to request a copy of each document.

**40. Can qualified entities share criminal history information with other qualified entities?**

Yes. Criminal history information may be obtained from other VECHS entities, if the employee or volunteer agrees to this on the VECHS Waiver Statement and Agreement form, required to be signed when he/she was fingerprinted, and if the transfer of information is recorded by the other qualified entity on its Dissemination Log. The restrictions on this process are described in the User Agreement. Entities must contact the VECHS Unit at (850) 410-8324 for entity verification before sharing criminal history information.





**Florida Department of Education  
Background Screening: Lessons Learned and Best Practices  
November 3, 2009**

<b>Year 2004- SB 2986- Education Personnel</b>		
<b>Procedure</b>	<b>Positive</b>	<b>Challenges</b>
Electronic submission	Results are received within 72 hours or less	Requires manpower, procedures and applications on behalf of the receiving agency to timely review the swifter results
Retention of Fingerprints	Provides subsequent arrest notification to employer	Requires individuals who may have already been printed to be re-fingerprinted
Increase of parties required to undergo screening (charter schools, alternative schools, interns, and non-instructional personnel and contractors)	Screens more individuals who are in contact with students	Volume of individuals who must be fingerprinted and results that must be screened
		Cost of screenings
Struck provision for a "break in service"	Requires employees who break service to undergo a new state and federal fingerprint based criminal history check	
<b>Year 2005: SB 1877 -The Jessica Lunsford Act</b>		
<b>Procedure</b>	<b>Positive</b>	<b>Challenges</b>
Increased requirement for screening of contractors and vendors to include those who are "on school grounds when students are present."	Screens more individuals who have potential to be in contact with students on public school grounds	Broad wording caused great impact; an individual contracted with a public school or district was essentially required to undergo a fingerprint criminal history check
		Screening standards varied from district to district.
		Vendors were often required to undergo multiple printing for each school district making it very costly.

**Florida Department of Education  
Background Screening: Lessons Learned and Best Practices  
November 3, 2009**

<b>Year 2007: SB 988- High Risk Offenders</b>		
<b>Procedure</b>	<b>Positive</b>	<b>Challenges</b>
Created exemptions to the fingerprint based criminal history check for contractors/vendors	Exemptions typically require other safeguards and allow for discretionary decisions	Districts are hesitant to issue exemptions
Established screening standards for contractors/vendors with (9) disqualifying offenses	Sets minimum standards	
Requires immediate suspension of individuals convicted of a disqualifying offense	Removes individual from access to children	
Allows access if the contractor has a full pardon or restoration of civil rights		
Required automatic purge of fingerprint record 5 years from date of submission	Establishes a distinct standard to separate contractor/vendors from employees	Individuals often serve in two roles, and the distinction requires two separate fingerprintings
		Recordkeeping/ Records Management
Required sharing and verification of information through a system	Makes information readily accessible	Manpower to create and maintain the system
<b>Year 2008: SB 1712- Ethics in Education</b>		
<b>Procedure</b>	<b>Positive</b>	<b>Challenges</b>
Requires districts to establish clear standards of ethical conduct and to require training on the standards	Clearly states expectations and holds employees responsible to uphold the standards	Standards vary slightly from district to district
	Establishes minimum standard of conduct	

**Florida Department of Education  
Background Screening: Lessons Learned and Best Practices  
November 3, 2009**

Prohibits confidentiality agreements	Allows for informed employment decisions	
Requires administrators to share a former educator's misconduct when providing a reference to another education setting	Allows for informed employment decisions	Former employer can choose not to give a reference
		Requirement is limited to other educational settings
		Candidate may fail to acknowledge employer
Requires professionals to report misconduct of other professionals	Ensures professional integrity	Individuals are often hesitant to report members of their own profession
		No confidentiality protection to the reporter
Required the posting of a notice at each school site on the reporting of misconduct	Makes the information on what and how to report publicly available.	Difficult to monitor and measure compliance
	Creates an awareness of appropriate and inappropriate behavior	
Required employment history checks before employing: Previous employers, Licensure status / alerts Prior discipline of license	Allows for informed employment decisions	Some privacy issues when there is a pending investigation at the licensure level
Established (49) disqualifying offenses for instructional personnel and school administrators	Deems ineligible individuals convicted of any of the offense	Allows no discretion on acts committed when the person was very young or many years prior
		Disqualification does not apply if not convicted/guilty
Cleaned language regarding background screening	Understanding and the application of screening standards improved	

**Florida Department of Education**  
**Background Screening: Lessons Learned and Best Practices**  
**November 3, 2009**

**Best Practices: *Ensuring the safety of students enrolled in Florida public schools.***

1. The requirement for fingerprint records to be submitted in an electronic/digital format.
2. The retention of fingerprint records which allows the Florida Department of Law Enforcement to notify an employer of an employee's in-state arrest.
3. The requirement of a national criminal history check in successive years of employment (for public school employees every 5<sup>th</sup> year).
4. The requirement for a new state and federal criminal history check if an employee has a break in service, no grace period.
5. The requirement to self-report arrests for certain offenses involving children and controlled substances and a self-report following the plea or disposition of any criminal offense.
6. The requirement to report colleagues/co-workers for professional misconduct, which may or may not be criminal in nature.
7. Mandated reports of misconduct by licensed individuals to the licensing agency.
8. The requirement that, prior to hiring, employers verify and document the employment history of an applicant.
9. The requirement that, prior to hiring, employers verify the status of an applicant's professional license(s) to determine if the license has been disciplined.
10. Establish disqualifying offenses with little, if any, discretion to issue an exemption.
11. Requirement for an employer to immediately reassign an employee to a position of no contact when there is an allegation of misconduct involving the health safety and welfare of a student.





**State of Florida  
Department of Children and Families**

**Charlie Crist**  
*Governor*

**George H. Sheldon**  
*Secretary*

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September 30, 2009

The Honorable Jeff Atwater  
President of the Senate  
409 Capitol  
404 S. Monroe Street  
Tallahassee, Florida 32399

The Honorable Larry Cretul  
Speaker of the House  
422 Capitol  
402 S. Monroe Street  
Tallahassee, Florida 32399

Dear Mr. President and Mr. Speaker:

Over the past few days, a series of articles in the Sun Sentinel focused on laws and rules that permit people with criminal convictions to work for weeks in facilities serving children and vulnerable adults while background checks are still being completed.

The law allowing this situation undoubtedly reflects a decision made by past legislatures that the slowness of background checks made it necessary to permit this kind of employment. Historically and, to some degree still, paper fingerprints have been used as the basis for background checks. This process is slow and cumbersome and can take weeks, even months, to get results from State and Federal databases.

Today, technology offers an alternative that allows us to better ensure the safety of our children and vulnerable adults. With an average of over 100,000 persons applying each year for employment in a position of trust with employers this Department licenses, we need a faster, more efficient system to protect our vulnerable citizens.

Digitized fingerprints can be analyzed within hours rather than weeks.

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1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

President Jeff Atwater  
Speaker Larry Cretul  
September 30, 2009  
Page Two

The Department has spent several months reviewing our process of screening applicants. We are now implementing a system that requires the digitized fingerprinting of prospective employees in the public and private sector. This change can reduce to a matter of days the time lag between the person's hiring and the determination of any statutory disqualification. This creates an opportunity for the Legislature to consider a change in the statute to require the completion of the background screening before an applicant starts working in one of these covered positions. No person should be allowed to start employment until this clearance is completed.

One background check is not enough. Throughout the time of employment of any persons who hold a position of trust working with children or frail adults, the digitized fingerprints should be retained and scanned against the criminal histories held by FDLE. Such a scan would give the agency or the employer the notice needed to make personnel decisions that better protect those that this agency is empowered to protect.

As pointed out by the Sun Sentinel, the matter of exemptions is also a critical part of this issue. The statute lists specific crimes that disqualify an individual from certain employment but gives various state agencies, including this Department, the Agency for Persons with Disabilities and the Agency for Health Care Administration, the authority to grant exemptions. Past legislatures have adopted the belief that rehabilitation is possible. The current statute gives applicants the ability to demonstrate their rehabilitation, if they present "clear and convincing evidence." We must, however, err on the side of caution when those individuals work with children or frail adults.

This Department reviewed more than 125,000 requests for background screening in FY 2007-08. In the vast majority, there were no disqualifying offenses, and the Department sent the employer a letter of clearance. Of the 2,600 who were disqualified and who contacted the Department to inquire about an exemption, 650 actually applied, and 440 exemptions were granted.

The Sun Sentinel cited one exemption application that was granted through an administrative appeal after this Department twice refused to grant it. The Division of Administrative Hearings determined that the applicant had met the legal standard of evidence proving his rehabilitation.

Our review of this process has convinced me that we need to both tighten and streamline our procedures and make statutory changes as well.

President Jeff Atwater  
Speaker Larry Cretul  
September 30, 2009  
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Internally, I have taken the following steps:

- 1) No exemption will be granted in the Department without my personal approval until such time as I am confident that a system is in place that guarantees statewide consistency and assures a thorough and fair process has been followed.
- 2) The process is being further streamlined to eliminate a layer of bureaucratic requirements and at the same time protect our children and vulnerable adults.
- 3) The results of the in-state screenings will also be sent to DCF as well as directly to the prospective employer.
- 4) I have also directed that all internal procedures be reviewed and rewritten to implement a streamlined approach when exemptions are processed and granted. As such, the internal review committee and in-house hearing have been eliminated. Further the decision to deny an exemption will be made by the Regional Criminal Justice Coordinator; however, if that staff member determines that an exemption should be granted, to insure statewide consistency, the final decision to grant the exemption will be made by the Regional Director.

There are several items the Legislature may want to consider for all agencies issuing exemptions as statutory changes. These are:

- 1) Increase the waiting period required before requesting an exemption from disqualification to 5 years, rather than the present 3 years;
- 2) Change the point at which the waiting period begins. For those who are going to work with children and vulnerable adults, instead of the date of the offense being the point in which the 5 years starts, start the time to apply for an exemption upon release from criminal sanctions – imprisonment, parole, or probation.
- 3) Grant agencies specific authority to impose conditions on the exemption or to revoke it at any time.
- 4) Give agencies the authority to review individual exemptions at least every three years.
- 5) Give agencies the authority to retain digitized fingerprints.

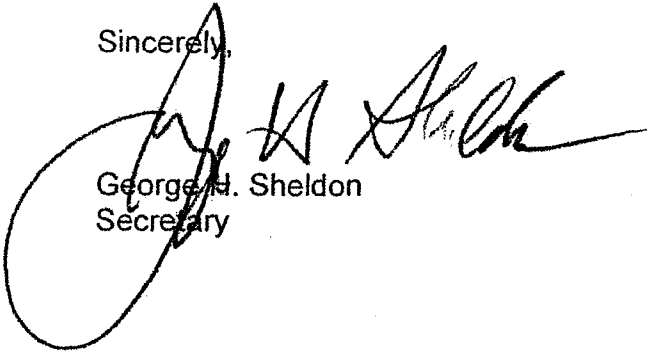


President Jeff Atwater  
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September 30, 2009  
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- 6) Require that before a person can begin employment in any position of trust, the background screening must be completed and the reports received by the employer and the state agency.
- 7) Grant rule-making authority to any agency authorizing an exemption.

I look forward to working with you on this issue throughout this next legislative session.

Sincerely,



George H. Sheldon  
Secretary



## Criminal Background Screening Overview

Molly McKinstry, Chief  
Bureau of Long Term Care Services  
Agency for Health Care Administration  
November 3, 2009

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### Agency for Health Care Administration Responsibilities

- Division of Health Quality Assurance
- State Licensure of Health Care Providers (Facilities and Services)
  - Federal Certification for Medicare / Medicaid
- Division of Medicaid
- Medicaid Program Administration
  - Medicaid Provider Enrollment

Agency for Health Care Administration

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### Agency for Health Care Administration Criminal Background Screening

- ▶ AHCA Employee Screening - Level 2
- ▶ Medicaid Provider Enrollment - Level 2
  - ▶ Institutional Providers are Exempt: Hospitals, Nursing Homes, Assisted Living Facilities
- ▶ Employment Screening - State Licensure
  - Administrators - Level 2
  - Chief Financial Officers - Level 2
  - Staff Varies by Provider Type - Level 1 or Level 2
    - Any Access to Clients/Client Funds
    - Direct Care Staff
    - No Staff Screening

Agency for Health Care Administration

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### Licensed Health Care Provider Examples

#### Acute Care

- ▶ Hospitals
- ▶ Ambulatory Surgery Centers

#### Residential Care

- ▶ Nursing Homes
- ▶ Assisted Living Facilities
- ▶ Intermediate Care for Developmentally Disabled

#### Home Care

- ▶ Home Health Agencies
- ▶ Home Medical Equipment

Agency for Health Care Administration

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### AHCA Criminal Background Screening Laws

#### ▶ Chapter 435 – Majority of Requirements

- Time Frames for Screening
- Disqualifying Offenses
- Exemption Process

#### ▶ Chapter 408, Part II – Uniform Licensing Standards

- Administrators and Chief Financial Officers
- Additional Disqualifying Offenses

#### ▶ Individual Licensing Statutes

- Staff Screening
- Level of Staff Screening
- Criteria for Use of Prior Screening Results

#### ▶ Chapter 409, Medicaid Participation

Agency for Health Care Administration

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### Criminal Background Screening Processing

#### ▶ Accept Screening Requests by Mail and Online from Health Care Providers

- ▶ Forward Requests to FDLE for Processing
- ▶ Post FDLE Results Online and Send to Provider
- ▶ Level 2 Requests Mailed In, Scanned to FDLE

#### ▶ Background Screening Database

- Maintain Database of Results
- Provider User Accounts
- Online Requests for Level 1

#### ▶ Accept Requests for Exemptions from Disqualification from Individuals

Agency for Health Care Administration

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**Criminal Background Screening Process**

- ▶ Employers May Request Level 1 Screening
  - Through AHCA
  - Directly from FDLE
  - Through a Third Party from FDLE
- ▶ Employers Must Request Level 2 Screening through AHCA

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**Determining Compliance**

- ▶ Biennial License Applications
  - Administrators
  - Chief Financial Officers
- ▶ Inspection Process
  - Staff Screening Review
  - Sample during Routine Inspections
  - Focused during Complaint Inspections

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**Interagency Coordination**

Department of Health Coordination / Interface

Interagency Workgroups

- ▶ 2000 Report: A Report on Effectiveness of Background Screening
  - Central Screening
  - Uniform Screening
  - Disqualifying Offenses Review
- ▶ 2001 Report: Report of the Interagency Workgroup on Background Screening
  - Expand Disqualifying Offenses
  - Require Rescreening

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**Criminal Background Screening Laws  
Recent Changes**

- ▶ 2009 Senate Bill 1986 (Companion HB 651)
- ▶ Amended Chapter 408, Part II – AHCA Licensed Providers
- ▶ Expanded Disqualifying Criminal Violations
- ▶ Applies to Persons Hired After October 1, 2009

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**New Criminal Violations (SB 1986)**

- ▶ Criminal Fraud: Insurance Fraud, Patient Brokering, Identity Theft, Credit Card Fraud, Forgery
- ▶ Medicaid Fraud
- ▶ Updated Crimes Related to:
  - Burglary, Assault, Battery, Culpable Negligence
  - Certain Drug-Related Crimes: Sale, Manufacture or Delivery of Counterfeit Controlled Substance
  - Domestic Violence – Already Disqualifying/ Correct Statutory Reference

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**Questions?**

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**Required  
Screenings**

**BACKGROUND SCREENING OF SELECT AGENCIES**

The following is a current list of screenings as required by Florida Statute for employees of licensed facilities as well as staff of agencies and direct service workers.

Facility/Service/Employee Type	Owner / Administrator	Financial Officer	Direct Care Staff	Controlling Interests	Other Staff	Authorizing Statute for Staff
<b>Agency for Health Care Administration</b>						
Abortion Clinics	Level 2	Level 2	--	Level 2	---	408.809
Adult Day Care Centers	Level 2	Level 2	Level 1	Level 2	---	429.919
Adult Family Care Homes	Level 2	--	Level 1	Level 2	---	429.67
Ambulatory Surgery Centers	Level 2	Level 2	--	Level 2	---	408.809
Assisted Living Facilities	Level 2	Level 2	Level 1	Level 2	---	429.174
Birth Centers	Level 2	Level 2	--	Level 2	---	408.809
Clinical Laboratories:					---	408.809
Certificate of Exemption (Waived Testing Only)	--	--	--			
Clinical Laboratories Performing Non-waived Testing (including physician performed microscopic tests)	Level 2	Level 2	--	Level 2		
Drug Free Workplace	Level 2	Level 2	--	Level 2	---	408.809
Health Care Service Pools	Level 2	Level 2	Level 1 and Level 2	Level 2	---	400.980(6)
Health Care Clinics	Level 2 (includes owners with 10% or more interest in clinic)	Level 2	Level 2 (includes Medical Director, Clinical Director and all licensed health care providers)	Level 2	---	400.991
Home Health Agencies	Level 2	Level 2	Level 1 and Level 2	Level 2	---	400.512
Homemaker, Sitter, Companion Agencies	Level 2	Level 2	Level 1	Level 2	---	400.512
Home Medical Equipment Providers	Level 2	Level 2	Level 1	Level 2	---	400.953 and 400.955



Facility/Service/Employee Type	Owner / Administrator	Financial Officer	Direct Care Staff	Controlling Interests	Other Staff	Authorizing Statute for Staff
Homes for Special Services	Level 2	Level 2	--	Level 2	---	408.809
Hospice	Level 2	Level 2	Level 1	Level 2	---	400.6065
Hospitals	Level 2	Level 2	--	Level 2	---	408.809
ICF/DDs	Level 2	Level 2	Level 2	Level 2	---	400.964
Medicaid Contracted Facilities	Level 2	Level 2	Level 2	--	---	408.809
Multiphasic Health Testing Centers	Level 2	Level 2	--	Level 2	---	408.809
Nurse Registries	Level 2	Level 2	Level 1 and Level 2	--	---	400.512
Nursing Homes	Level 2	Level 2	Level 1 and Level 2	Level 2	Level 1 and Level 2	400.215
Organ Procurement Organizations, Tissue Banks, Eye Banks	Level 2	Level 2	--	Level 2	---	408.809
Prescribed Pediatric Extended Care Centers	Level 2	Level 2	--	Level 2	---	408.809
Risk Managers <i>(Risk Managers are licensed individuals)</i>	Level 2	**	**	**	---	408.809
Residential Treatment Centers	Level 2	Level 2	Level 2	Level 2	---	394.4572
Residential Treatment Facilities	Level 2	Level 2	Level 2	Level 2	---	394.4572
Transitional Living Facilities	Level 2	Level 2	--	Level 2	---	408.809
<b>Agency for Persons with Disabilities</b>						
Group Homes	Level 2	Level 2	Level 2	Level 2	Level 2 (e.g. volunteers > 40 hrs.)	393.0655
Foster Homes	Level 2	Level 2	Level 2	Level 2	Level 2 (e.g. volunteers > 40 hrs.)	393.0655
Residential Habilitation Centers	Level 2	Level 2	Level 2	Level 2	Level 2 (e.g. volunteers > 40 hrs.)	393.0655

Facility/Service/Employee Type	Owner / Administrator	Financial Officer	Direct Care Staff	Controlling Interests	Other Staff	Authorizing Statute for Staff
Developmental Disability Centers	Level 2	Level 2	Level 2	Level 2	Level 2 (e.g. volunteers> 40 hrs.)	393.0655
Adult Day Training Programs	Level 2	Level 2	Level 2	Level 2	Level 2 (e.g. volunteers> 40 hrs.)	393.0655
Comprehensive Transitional Education Programs	Level 2	Level 2	Level 2	Level 2	Level 2 (e.g. volunteers> 40 hrs.)	393.0655
Direct Service Workers (e.g. support coordinator, supported living coach, supported employment coach)	Level 2	Level 2	Level 2	Level 2	Level 2 (e.g. volunteers> 40 hrs.)	393.0655
APD Employees	NA	NA	Level 2	NA	Level 2 (e.g. volunteers> 40 hrs.)	110.1127, 393.0655
<b>Department of Children and Families</b>						
Child Care Facilities (includes Family Day Care Homes, Large Family Child Care Homes, Registered Family Day Care Homes, and Religious Exempt Child Care Facilities)	Level 2	Level 2	Level 2	Level 2	Level 2 (e.g. All house hold members, volunteers >40 hrs)	402.305
Community Based Care Lead Agencies	Level 2	Level 2	Level 2	Level 2	Level 2	409.175
Foster homes	Level 2	Level 2	Level 2	Level 2	Level 2	409.175
Child placing agencies	Level 2	Level 2	Level 2	Level 2	Level 2	409.175
Residential Child Caring Agencies	Level 2	Level 2	Level 2	Level 2	Level 2	409.175
Addiction Receiving Facilities	Level 2	Level 2	Level 2 (in contact with patients under age 18 or adults with dev. disability)	Level 2	Level 2	397.451

Facility/Service/Employee Type	Owner / Administrator	Financial Officer	Direct Care Staff	Controlling Interests	Other Staff	Authorizing Statute for Staff
Detox Facility	Level 2	Level 2	Level 2 (in contact with patients under age 18 or adults with dev. disability)	Level 2	Level 2	397.451
Inpatient Treatment Facility	Level 2	Level 2	Level 2 (in contact with patients under age 18 or adults with dev. disability)	Level 2	Level 2	397.451
Residential Facility	Level 2	Level 2	Level 2 (in contact with patients under age 18 or adults with dev. disability)	Level 2	Level 2	397.451
Day or Night Treatment Facility	Level 2	Level 2	Level 2 (in contact with patients under age 18 or adults with dev. disability)	Level 2	Level 2	397.451
Outpatient Treatment Facility	Level 2	Level 2	Level 2 (in contact with patients under age 18 or adults with dev. disability)	Level 2	Level 2	397.451
Medication and Methadone Treatment Facility	Level 2	Level 2	Level 2 (in contact with patients under age 1 or adults with dev. disability )	Level 2	Level 2	397.451
Florida Civil Commitment Center (serves sexually violent predators)	Level 2	Level 2	Level 2	--	Level 2	Contractual requirement.
Treasure Coast Forensic Treatment Center (private forensic mental health treatment facility)	Level 2	Level 2	Level 2	--	Level 2	Contractual requirement.
North Florida Evaluation and Treatment Center (public forensic mental health treatment facility)	Level 2	Level 2	Level 2	--	Level 2	435.04, 110.1127
DCF employees	--	--	Level 2	--	Level 2	110.1127
<b>Department of Health</b>						

Facility/Service/Employee Type	Owner / Administrator	Financial Officer	Direct Care Staff	Controlling Interests	Other Staff	Authorizing Statute for Staff
Adv. Reg. Nurse Practitioner by Endorsement	---	---	Level 2	---	---	464.009(4), 456.0391(4)(a)
Certified Nursing Asst. by Examination in FL > 5 years	---	---	Level 1	---	---	400.215
Certified Nursing Asst. by Examination in FL < 5 years	---	---	Level 2	---	---	400.215
Certified Nursing Asst. by Reciprocity	---	---	Level 2	---	---	400.215
Licensed. Practical Nurse by Examination	---	---	Level 1	---	---	464.008(1)(b)
Licensed Practical Nurse by "Endorsement	---	---	Level 2	---	---	464.009(4)
Registered Nurse by Examination	---	---	Level 1	---	---	464.008(1)(b)
Registered Nurse by Endorsement	---	---	Level 2	---	---	464.009(4)
Chiropractic Physicians	---	---	Level 2	---	---	460.406(1)(f) & 456.039(4)(a)
Medicine	---	---	Level 2	---	---	458.311(2)(g) & 456.039(4)(a)
Osteopathic Physicians	---	---	Level 2	---	---	459.0055(1)(j) & 456.039(4)(a)
Orthotists, Prosthetists, Pedorthists, Orthotic Filters, Orthotic Filter Assistants, O & P Residents	---	---	Level 2	---	---	468.803(2)(a)
Drug Wholesales/Certif. Designated Representative	---	---	---	---	Level 2	499.012
Pharmacy Owners	Level 2	---	---	---	---	465.022

Facility/Service/Employee Type	Owner / Administrator	Financial Officer	Direct Care Staff	Controlling Interests	Other Staff	Authorizing Statute for Staff
Prescription Department Manager	Level 2	---	---	---	---	465.022
Podiatric Physicians	---	---	Level 2	---	---	461.006(1)(3) & 456.039(4)(a)
All non-physician Health Care Providers	Level 2	---	Level 2	---	---	391.026(10)
<b>Department of Elder Affairs</b>						
DOEA employees, professional guardians and volunteers	---	---	Level 2	---	Level 2	435.04, 943.0542
In Home Respite Care	---	---	Level 1 (If provided through Senior Companion Program)  Level 2 (If provided through RELIEF Program)	---	---	--
Facility Based Respite Care	---	---	Level standards applicable to the facility type	---	---	--
Facility or In Home Personal Care	---	---	Level 1	---	---	400.512
<b>Department of Education</b>						
Public School/ District <ul style="list-style-type: none"> <li>• Instructional personnel</li> <li>• Non- instructional personnel</li> <li>• Contractors/vendors</li> </ul>	---	---	---	---	Level 2	1012.165, 1012.32
Voluntary Prekindergarten (VPK) –Public School <ul style="list-style-type: none"> <li>• Instructional personnel</li> <li>• Non- instructional personnel</li> <li>• Contractors/vendors</li> </ul>	---	---	---	---	Level 2	1002.63. 1002.61 (VPK) 1012.465 1012.32

Facility/Service/Employee Type	Owner / Administrator	Financial Officer	Direct Care Staff	Controlling Interests	Other Staff	Authorizing Statute for Staff
Voluntary Prekindergarten (VPK) – Private School	Level 2	---	---	---	Level 2 (Director, Instructor and Assistant)	1002.63 1002.61 1012.465 1012.32
McKay and Florida Tax Credit Scholarship Programs <ul style="list-style-type: none"> <li>• Instructional personnel and administrators</li> <li>• Non- instructional personnel with direct child contact</li> </ul>	---	---	---	---	Level 2	1002.421 1012.315 435.04
McKay Scholarship Program Contractors/Vendors	---	---	---	---	---	---
All DOE employees	---	---	---	---	Level 2	110.1127 435.04 435.06 413.011(7)
<b>Guardian Ad Litem</b>						
Paid staff and certified volunteers	---	---	Level 1	---	---	39.821
<b>Department of Juvenile Justice</b>						
All DJJ Employees, volunteers, mentors, interns	Level 2	---	Level 2	Level 2	---	985.644
All Contract Provider employees, volunteers, mentors, interns, owners and operators	Level 2	---	Level 2	Level 2	---	985.644
Detention Centers	Level 2	---	Level 2	Level 2	---	985.644
Probation Offices	Level 2	---	Level 2	Level 2	---	985.644

Facility/Service/Employee Type	Owner / Administrator	Financial Officer	Direct Care Staff	Controlling Interests	Other Staff	Authorizing Statute for Staff
Residential Treatment Centers	Level 2	---	Level 2	Level 2	---	985.644
Prevention Service Providers/Programs	Level 2	---	Level 2	Level 2	---	985.644
<b>Department of Veterans' Affairs</b>						
Nursing and domiciliary homes	---	---	Level 1 and Level 2	---	---	400.215, 429.174

**Relevant  
Statutes**



## CHAPTER 435, F.S.

### EMPLOYMENT SCREENING

435.01 Applicability of this chapter.

435.02 Definitions.

435.03 Level 1 screening standards.

435.04 Level 2 screening standards.

435.05 Requirements for covered employees.

435.06 Exclusion from employment.

435.07 Exemptions from disqualification.

435.08 Payment for processing of fingerprints and state criminal records checks.

435.09 Confidentiality of personnel background check information.

435.10 Sharing of personnel information among employers.

435.11 Penalties.

**435.01 Applicability of this chapter.**--Whenever a background screening for employment or a background security check is required by law for employment, unless otherwise provided by law, the provisions of this chapter shall apply.

**History.**--s. 47, ch. 95-228.

**435.02 Definitions.**--For the purposes of this chapter:

(1) "Employee" means any person required by law to be screened pursuant to the provisions of this chapter.

(2) "Employer" means any person or entity required by law to conduct screening of employees pursuant to this chapter.

(3) "Licensing agency" means any state or county agency which grants licenses or registration permitting the operation of an employer or is itself an employer. When there is no state licensing agency or the county licensing agency chooses not to conduct employment screening, "licensing agency" means the Department of Children and Family Services.

**History.**--s. 47, ch. 95-228; s. 207, ch. 99-8.

### **435.03 Level 1 screening standards.--**

(1) All employees required by law to be screened shall be required to undergo background screening as a condition of employment and continued employment. For the purposes of this subsection, level 1 screenings shall include, but not be limited to, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement, and may include local criminal records checks through local law enforcement agencies.

(2) Any person for whom employment screening is required by statute must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- (a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- (b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- (c) Section 415.111, relating to abuse, neglect, or exploitation of a vulnerable adult.
- (d) Section 782.04, relating to murder.
- (e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (f) Section 782.071, relating to vehicular homicide.
- (g) Section 782.09, relating to killing of an unborn quick child by injury to the mother.
- (h) Section 784.011, relating to assault, if the victim of the offense was a minor.
- (i) Section 784.021, relating to aggravated assault.
- (j) Section 784.03, relating to battery, if the victim of the offense was a minor.
- (k) Section 784.045, relating to aggravated battery.
- (l) Section 787.01, relating to kidnapping.
- (m) Section 787.02, relating to false imprisonment.
- (n) Section 794.011, relating to sexual battery.
- (o) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.

- (p) Chapter 796, relating to prostitution.
  - (q) Section 798.02, relating to lewd and lascivious behavior.
  - (r) Chapter 800, relating to lewdness and indecent exposure.
  - (s) Section 806.01, relating to arson.
  - (t) Chapter 812, relating to theft, robbery, and related crimes, if the offense was a felony.
  - (u) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
  - (v) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
  - (w) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
  - (x) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
  - (y) Section 826.04, relating to incest.
  - (z) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
  - (aa) Section 827.04, relating to contributing to the delinquency or dependency of a child.
  - (bb) Former s. 827.05, relating to negligent treatment of children.
  - (cc) Section 827.071, relating to sexual performance by a child.
  - (dd) Chapter 847, relating to obscene literature.
  - (ee) Chapter 893, 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.
  - (ff) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- (3) Standards must also ensure that the person:
- (a) For employees and employers licensed or registered pursuant to chapter 400 or chapter 429, and for employees and employers of developmental disabilities centers as defined in s. 393.063, intermediate care facilities for the developmentally disabled as defined in s. 400.960, and mental health treatment facilities as defined in s. 394.455, meets the requirements of this chapter.

(b) Has not committed an act that constitutes domestic violence as defined in s. 741.28.

**History.**--s. 47, ch. 95-228; s. 15, ch. 96-268; s. 21, ch. 96-322; s. 3, ch. 98-417; s. 87, ch. 2000-153; s. 45, ch. 2000-349; s. 62, ch. 2001-62; s. 50, ch. 2003-1; s. 4, ch. 2004-267; s. 3, ch. 2005-119; s. 89, ch. 2006-197; s. 61, ch. 2006-227; s. 109, ch. 2007-5; s. 16, ch. 2008-244.

**435.04 Level 2 screening standards.--**

(1) All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall include, but not be limited to, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- (a) Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- (b) Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- (c) Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- (d) Section 782.04, relating to murder.
- (e) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (f) Section 782.071, relating to vehicular homicide.
- (g) Section 782.09, relating to killing of an unborn quick child by injury to the mother.
- (h) Section 784.011, relating to assault, if the victim of the offense was a minor.
- (i) Section 784.021, relating to aggravated assault.
- (j) Section 784.03, relating to battery, if the victim of the offense was a minor.
- (k) Section 784.045, relating to aggravated battery.
- (l) Section 784.075, relating to battery on a detention or commitment facility staff.

- (m) Section 787.01, relating to kidnapping.
- (n) Section 787.02, relating to false imprisonment.
- (o) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- (p) Section 787.04(3), 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.
- (q) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- (r) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- (s) Section 794.011, relating to sexual battery.
- (t) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (u) Chapter 796, relating to prostitution.
- (v) Section 798.02, relating to lewd and lascivious behavior.
- (w) Chapter 800, relating to lewdness and indecent exposure.
- (x) Section 806.01, relating to arson.
- (y) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (z) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (aa) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (bb) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (cc) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (dd) Section 826.04, relating to incest.
- (ee) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (ff) Section 827.04, relating to contributing to the delinquency or dependency of a child.

- (gg) Former s. 827.05, relating to negligent treatment of children.
  - (hh) Section 827.071, relating to sexual performance by a child.
  - (ii) Section 843.01, relating to resisting arrest with violence.
  - (jj) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
  - (kk) Section 843.12, relating to aiding in an escape.
  - (ll) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
  - (mm) Chapter 847, relating to obscene literature.
  - (nn) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.
  - (oo) Chapter 893, 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.
  - (pp) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
  - (qq) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
  - (rr) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
  - (ss) Section 944.47, relating to introduction of contraband into a correctional facility.
  - (tt) Section 985.701, relating to sexual misconduct in juvenile justice programs.
  - (uu) Section 985.711, relating to contraband introduced into detention facilities.
- (3) The security background investigations conducted under this section for employees of the Department of Juvenile Justice must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:
- (a) Section 784.07, relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.
  - (b) Section 810.02, relating to burglary, if the offense is a felony.

(c) Section 944.40, relating to escape.

The Department of Juvenile Justice may not remove a disqualification from employment or grant an exemption to any person who is disqualified under this section for any offense disposed of during the most recent 7-year period.

(4) Standards must also ensure that the person:

(a) For employees or employers licensed or registered pursuant to chapter 400 or chapter 429, does not have a confirmed report of abuse, neglect, or exploitation as defined in <sup>1</sup>s. 415.102(6), which has been uncontested or upheld under s. 415.103.

(b) Has not committed an act that constitutes domestic violence as defined in s. 741.30.

(5) Under penalty of perjury, all employees in such positions of trust or responsibility shall attest to meeting the requirements for qualifying for employment and agreeing to inform the employer immediately if convicted of any of the disqualifying offenses while employed by the employer. Each employer of employees in such positions of trust or responsibilities which is licensed or registered by a state agency shall submit to the licensing agency annually or at the time of license renewal, under penalty of perjury, an affidavit of compliance with the provisions of this section.

**History.**--s. 47, ch. 95-228; s. 16, ch. 96-268; s. 22, ch. 96-322; s. 4, ch. 98-417; s. 5, ch. 99-284; s. 88, ch. 2000-153; s. 7, ch. 2001-125; s. 5, ch. 2004-267; s. 4, ch. 2005-119; s. 111, ch. 2006-120; s. 90, ch. 2006-197; s. 110, ch. 2007-5; s. 3, ch. 2007-112; s. 66, ch. 2009-223.

<sup>1</sup>Note.--Repealed by s. 26, ch. 2000-349.

**435.05 Requirements for covered employees.**--Except as otherwise provided by law, the following requirements shall apply to covered employees:

(1)(a) Every person employed in a position for which employment screening is required must, within 5 working days after starting to work, submit to the employer a complete set of information necessary to conduct a screening under this section.

(b) For level 1 screening, the employer must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. The Florida Department of Law Enforcement will conduct a search of its records and will respond to the employer agency. The employer will inform the employee whether screening has revealed any disqualifying information.

(c) For level 2 screening, the employer or licensing agency must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. The Florida Department of Law Enforcement will conduct a search of its criminal and juvenile records and will request that the Federal Bureau of Investigation conduct a search of its records for each employee for whom the request is made. The Florida Department of Law Enforcement will respond to the employer or licensing agency, and the employer or licensing agency will inform the employee whether screening has revealed disqualifying information.

(d) The person whose background is being checked must supply any missing criminal or other necessary information to the employer within 30 days after the employer makes a request for the information or be subject to automatic disqualification.

(2) Unless otherwise prohibited by state or federal law, new employees may be placed on probationary status pending a determination of compliance with minimum standards set forth in this chapter.

(3) Each employer required to conduct level 2 background screening must sign an affidavit annually or at the time of license renewal, under penalty of perjury, stating that all covered employees have been screened or are newly hired and are awaiting the results of the required screening checks.

**History.**--s. 47, ch. 95-228; s. 208, ch. 99-8; s. 46, ch. 2000-349; s. 63, ch. 2001-62; s. 21, ch. 2004-267; s. 67, ch. 2009-223.

#### **435.06 Exclusion from employment.--**

(1) When an employer or licensing agency has reasonable cause to believe that grounds exist for the denial or termination of employment of any employee as a result of background screening, it shall notify the employee in writing, stating the specific record which indicates noncompliance with the standards in this section. It shall be the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. The only basis for contesting the disqualification shall be proof of mistaken identity.

(2) The employer must either terminate the employment of any of its personnel found to be in noncompliance with the minimum standards for good moral character contained in this section or place the employee in a position for which background screening is not required unless the employee is granted an exemption from disqualification pursuant to s. 435.07.

(3) Any person who is required to undergo employment screening and who refuses to cooperate in such screening or refuses to submit the information necessary to complete the screening, including fingerprints when required, shall be disqualified for employment in such position or, if employed, shall be dismissed.

**History.**--s. 47, ch. 95-228.

**435.07 Exemptions from disqualification.--**Unless otherwise provided by law, the provisions of this section shall apply to exemptions from disqualification.

(1) The appropriate licensing agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

(a) Felonies committed more than 3 years prior to the date of disqualification;

(b) Misdemeanors prohibited under any of the Florida Statutes cited in this chapter or under similar statutes of other jurisdictions;

(c) Offenses that were felonies when committed but are now misdemeanors;



- (d) Findings of delinquency; or
- (e) Commissions of acts of domestic violence as defined in s. 741.30.

For the purposes of this subsection, the term "felonies" means both felonies prohibited under any of the Florida Statutes cited in this chapter or under similar statutes of other jurisdictions.

- (2) Persons employed by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this section without the 3-year waiting period.
- (3) In order for a licensing department to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if continued employment is allowed. The decision of the licensing department regarding an exemption may be contested through the hearing procedures set forth in chapter 120.
- (4) Disqualification from employment under subsection (1) may not be removed from, nor may an exemption be granted to, any personnel who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03 solely by reason of any pardon, executive clemency, or restoration of civil rights.
- (5) Exemptions granted by one licensing agency shall be considered by subsequent licensing agencies, but are not binding on the subsequent licensing agency.

**History.**--s. 47, ch. 95-228; s. 47, ch. 2000-349; s. 64, ch. 2001-62; s. 29, ch. 2004-267; s. 9, ch. 2005-128.

**435.08 Payment for processing of fingerprints and state criminal records checks.**--Either the employer or the employee is responsible for paying the costs of screening. Payment shall be submitted to the Florida Department of Law Enforcement with the request for screening.

**History.**--s. 47, ch. 95-228; s. 209, ch. 99-8; s. 48, ch. 2000-349.

**435.09 Confidentiality of personnel background check information.**--No criminal or juvenile information obtained under this section may be used for any purpose other than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. The criminal records and juvenile records obtained by the department or by an employer are exempt from s. 119.07(1).

**History.**--s. 47, ch. 95-228; s. 282, ch. 96-406; s. 49, ch. 2000-349.

**435.10 Sharing of personnel information among employers.--**Every employer of employees covered by this chapter shall furnish copies of personnel records for employees or former employees to any other employer requesting this information pursuant to this section. Information contained in the records may include, but is not limited to, disciplinary matters and any reason for termination. Any employer releasing such records pursuant to this chapter shall be considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the employer maliciously falsified such records.

**History.--**s. 47, ch. 95-228.

**435.11 Penalties.--**

(1) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

(a) Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications for a position of special trust.

(b) Use records information for purposes other than screening for employment or release records information to other persons for purposes other than screening for employment.

(2) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use juvenile records information for any purposes other than specified in this section or to release such information to other persons for purposes other than specified in this section.

**History.--**s. 47, ch. 95-228; s. 283, ch. 96-406.

**Section 112.011 Felons; removal of disqualifications for employment, exceptions.--**

(1)(a) Except as provided in s. 775.16, a person shall not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the position of employment sought.

(b) Except as provided in s. 775.16, a person whose civil rights have been restored shall not be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a license, permit, or certificate is required to be issued by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person whose civil rights have been restored may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, trade, vocation, profession, or business by reason of the prior conviction for a crime if the crime was a felony or first degree misdemeanor and directly related to the specific occupation, trade, vocation, profession, or business for which the license, permit, or certificate is sought.

(2)(a) This section shall not be applicable to any law enforcement or correctional agency.

(b) This section shall not be applicable to the employment practices of any fire department relating to the hiring of firefighters. An applicant for employment with any fire department with a prior felony conviction shall be excluded from employment for a period of 4 years after expiration of sentence or final release by the Parole Commission unless the applicant, prior to the expiration of the 4-year period, has received a full pardon or has had his or her civil rights restored.

(c) This section shall not be applicable to the employment practices of any county or municipality relating to the hiring of personnel for positions deemed to be critical to security or public safety pursuant to ss. 125.5801 and 166.0442.

(3) Any complaint concerning the violation of this section shall be adjudicated in accordance with the procedures set forth in chapter 120 for administrative and judicial review.

**History.**--ss. 1, 2, 3, ch. 71-115; s. 1, ch. 73-109; s. 20, ch. 81-24; s. 30, ch. 88-122; s. 1, ch. 90-266; s. 678, ch. 95-147; s. 3, ch. 2002-169.

**Section 110.1127, F.S. Employee security checks.--**

(1) Each employing agency shall designate those employee positions that, because of the special trust or responsibility or sensitive location of those positions, require that persons occupying those positions be subject to a security background check, including fingerprinting, as a condition of employment.

(2)(a) All positions within the Division of Treasury of the Department of Financial Services are deemed to be positions of special trust or responsibility, and a person may be disqualified for employment in any such position by reason of:

1. The conviction or prior conviction of a crime which is reasonably related to the nature of the position sought or held by the individual; or
2. The entering of a plea of nolo contendere or, when a jury verdict of guilty is rendered but adjudication of guilt is withheld, with respect to a crime which is reasonably related to the nature of the position sought or held by the individual.

(b) All employees of the division shall be required to undergo security background investigations, including fingerprinting, as a condition of employment and continued employment.

(3)(a) All positions in programs providing care to children, the developmentally disabled, or vulnerable adults for 15 hours or more per week; all permanent and temporary employee positions of the central abuse hotline; and all persons working under contract who have access to abuse records are deemed to be persons and positions of special trust or responsibility, and require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter.

(b) The employing agency may grant exemptions from disqualification from working with children, the developmentally disabled, or vulnerable adults as provided in s. 435.07.

(c) All persons and employees in such positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.

(d) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications for a position of special trust;
2. Use records information for purposes other than screening for employment or release records information to other persons for purposes other than screening for employment.

(e) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use juvenile records information for any purposes other than specified in this section or to release such information to other persons for purposes other than specified in this section.

(4) Any person who is required to undergo such a security background investigation and who refuses to cooperate in such investigation or refuses to submit fingerprints shall be disqualified for employment in such position or, if employed, shall be dismissed.

(5) Such background investigations shall be conducted at the expense of the employing agency. When fingerprinting is required, the fingerprints of the employee or applicant for employment shall be taken by the employing agency or by an authorized law enforcement officer and submitted to the Department of Law Enforcement for processing and forwarding, when requested by the employing agency, to the United States Department of Justice for processing. The employing agency shall reimburse the Department of Law Enforcement for any costs incurred by it in the processing of the fingerprints.

**History.**--s. 1, ch. 83-185; s. 2, ch. 85-54; s. 4, ch. 87-238; s. 15, ch. 88-337; s. 37, ch. 89-294; s. 2, ch. 90-225; s. 22, ch. 90-360; s. 4, ch. 91-33; s. 75, ch. 91-45; s. 17, ch. 91-57; s. 29, ch. 91-71; s. 229, ch. 91-224; s. 44, ch. 92-58; s. 13, ch. 92-279; s. 55, ch. 92-326; s. 8, ch. 93-156; s. 16, ch. 94-134; s. 16, ch. 94-135; s. 1398, ch. 95-147; s. 10, ch. 95-158; s. 33, ch. 95-228; s. 120, ch. 95-418; s. 4, ch. 96-268; s. 3, ch. 96-399; ss. 28, 29, ch. 96-406; s. 6, ch. 97-296; s. 52, ch. 2000-349; s. 6, ch. 2001-43; s. 112, ch. 2003-261; s. 36, ch. 2004-267.

**Section 943.053, F.S. Dissemination of criminal justice information; fees.--**

(1) The Department of Law Enforcement shall disseminate criminal justice information only in accordance with federal and state laws, regulations, and rules.

(2) Criminal justice information derived from federal criminal justice information systems or criminal justice information systems of other states shall not be disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency.

(3)(a) Criminal history information, including information relating to minors, compiled by the Criminal Justice Information Program from intrastate sources shall be available on a priority basis to criminal justice agencies for criminal justice purposes free of charge. After providing the program with all known identifying information, persons in the private sector and noncriminal justice agencies may be provided criminal history information upon tender of fees as established in this subsection and in the manner prescribed by rule of the Department of Law Enforcement. Any access to criminal history information by the private sector or noncriminal justice agencies as provided in this subsection shall be assessed without regard to the quantity or category of criminal history record information requested.

(b) The fee per record for criminal history information provided pursuant to this subsection and s. 943.0542 is \$24 per name submitted, except that the fee for vendors of the Department of Children and Family Services, the Department of Juvenile Justice, and the Department of Elderly Affairs shall be \$8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services shall be \$15 for each name submitted; and the fee for requests under s. 943.0542, which implements the National Child Protection Act, shall be \$18 for each volunteer name submitted. The state offices of the Public Defender shall not be assessed a fee for Florida criminal history information or wanted person information.

(4) Criminal justice information provided by the Department of Law Enforcement shall be used only for the purpose stated in the request.

(5) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, the department shall make online access to Florida criminal justice information available to each judge in the state courts system for the purpose of assisting judges in their case-related decisionmaking responsibilities. Such online access shall be provided without charge to the state courts system. Sealed records received by the courts under this section remain confidential and exempt from the provisions of s. 119.07(1). The information provided pursuant to this section shall not take the place of any information required to be provided to the courts by any other agency or entity. Information provided under this section shall be used only for the official court business for which it was requested and may not be further disseminated.

(6) Notwithstanding any other provision of law, the department shall provide to the Florida Department of Revenue <sup>1</sup>Child Support Enforcement access to Florida criminal records which are not exempt from disclosure under chapter 119, and to such information as may be lawfully available from other states via the National Law Enforcement Telecommunications System, for the purpose of locating subjects who owe or potentially owe support, as defined in s. 409.2554, or to whom such obligation is owed pursuant to Title IV-D of the Social Security Act. Such information may be provided to child support enforcement authorities in other states for these specific purposes.

(7) Notwithstanding any other provision of law, the department shall provide to each office of the public defender online access to criminal records of this state which are not exempt from disclosure under chapter 119 or confidential under law. Such access shall be used solely in support of the duties of a public defender as provided in s. 27.51 or of any attorney specially assigned as authorized in s. 27.53 in the representation of any person who is determined indigent as provided in s. 27.52. The costs of establishing and maintaining such online access shall be borne by the office to which the access has been provided.

(8) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, the sheriff of any county that has contracted with a private entity to operate a county detention facility pursuant to the provisions of s. 951.062 shall provide that private entity, in a timely manner, copies of the Florida criminal history records for its inmates. The sheriff may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1).

(9) Notwithstanding the provisions of s. 943.0525, and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, the Department of Corrections shall provide, in a timely manner, copies of the Florida criminal history records for inmates housed in a private state correctional facility to the private entity under contract to operate the facility pursuant to the provisions of s. 944.105. The department may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1).

(10) Notwithstanding the provisions of s. 943.0525 and any user agreements adopted pursuant thereto, and notwithstanding the confidentiality of sealed records as provided for in s. 943.059, the Department of Juvenile Justice or any other state or local criminal justice agency may provide copies of the Florida criminal history records for juvenile offenders currently or formerly detained or housed in a contracted juvenile assessment center or detention facility or serviced in a contracted treatment program and for employees or other individuals who will have access to these facilities, only to the entity under direct contract with the Department of Juvenile Justice to operate these facilities or programs pursuant to the provisions of s. 985.688. The criminal justice agency providing such data may assess a charge for the Florida criminal history records pursuant to the provisions of chapter 119. Sealed records received by the private entity under this section remain confidential and exempt from the provisions of s. 119.07(1). Information provided under this section shall be used only for the criminal justice purpose for which it was requested and may not be further disseminated.

(11) A criminal justice agency that is authorized under federal rules or law to conduct a criminal history background check on an agency employee who is not certified by the Criminal Justice Standards and Training Commission under s. 943.12 may submit to the department the fingerprints of the noncertified employee to obtain state and national criminal history information. Effective January 15, 2007, the fingerprints submitted shall be retained and entered in the statewide automated fingerprint identification system authorized by s. 943.05 and shall be available for all purposes and uses authorized for arrest fingerprint cards entered in the statewide automated fingerprint identification system pursuant to s. 943.051. The department shall search all arrest fingerprint cards received pursuant to s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system pursuant to this section. In addition to all purposes and uses authorized for arrest fingerprint cards for which submitted fingerprints may be used, any

arrest record that is identified with the retained employee fingerprints must be reported to the submitting employing agency.

(12) Notwithstanding any other provision of law, when a criminal history check or a duty to disclose the absence of a criminal history check is mandated by state law, or when a privilege or benefit is conferred by state law in return for exercising an option of conducting a criminal history check, the referenced criminal history check, whether it is an initial or renewal check, shall include a Florida criminal history provided by the department as set forth in this section. Such Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the department for each request. When a national criminal history check is required or authorized by state law, the national criminal history check shall be submitted by and through the department in the manner established by the department for such checks, unless otherwise required by federal law. The fee for criminal history information as established by state law or, in the case of national checks, by the Federal Government, shall be borne by the person or entity submitting the request, or as provided by law. Criminal history information provided by any other governmental entity of this state or any private entity shall not be substituted for criminal history information provided by the department when the criminal history check or a duty to disclose the absence of a criminal history check is required by statute or is made a condition of a privilege or benefit by law.

**History.**--s. 5, ch. 80-409; s. 1, ch. 94-168; s. 92, ch. 94-209; s. 21, ch. 96-388; s. 74, ch. 97-170; s. 10, ch. 98-94; s. 3, ch. 98-207; s. 10, ch. 99-300; s. 9, ch. 2001-127; s. 55, ch. 2001-158; s. 134, ch. 2003-402; s. 1, ch. 2003-403; s. 67, ch. 2004-267; s. 21, ch. 2006-2; s. 116, ch. 2006-120; s. 9, ch. 2006-176; s. 1, ch. 2008-112; s. 2, ch. 2008-249.

**Note.**--The reference appears to be to the Division of Child Support Enforcement of the Department of Revenue formerly provided for in s. 20.21(2)(h); references to divisions within the department were deleted from s. 20.21 by s. 2, ch. 97-287.

### **943.0542 Access to criminal history information provided by the department to qualified entities.--**

(1) As used in this section, the term:

(a) "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(b) "Qualified entity" means a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

(2)(a) A qualified entity must register with the department before submitting a request for screening under this section. Each such request must be voluntary and conform to the requirements established in the National Child Protection Act of 1993, as amended. As a part of the registration, the qualified entity must agree to comply with state and federal law and must so indicate by signing an agreement approved by the department. The department may periodically audit qualified entities to ensure compliance with federal law and this section.



(b) A qualified entity shall submit to the department a request for screening an employee or volunteer or person applying to be an employee or volunteer on a completed fingerprint card, or the request may be submitted electronically. The qualified entity must maintain a signed waiver allowing the release of the state and national criminal history record information to the qualified entity.

(c) Each such request must be accompanied by a fee for a statewide criminal history check by the department established by s. ~~943.053~~>943.053, plus the amount currently prescribed by the Federal Bureau of Investigation for the national criminal history check in compliance with the National Child Protection Act of 1993, as amended.

(d) Any current or prospective employee or volunteer who is subject to a request for screening must indicate to the qualified entity submitting the request the name and address of each qualified entity that has submitted a previous request for screening regarding that employee or volunteer.

(3) The department shall provide directly to the qualified entity the state criminal history records that are not exempt from disclosure under chapter 119 or otherwise confidential under law. A person who is the subject of a state criminal history record may challenge the record only as provided in s. 943.056.

(4) The national criminal history data is available to qualified entities to use only for the purpose of screening employees and volunteers or persons applying to be an employee or volunteer with a qualified entity. The department shall provide this national criminal history record information directly to the qualified entity as authorized by the written waiver required for submission of a request to the department.

(5) The determination whether the criminal history record shows that the employee or volunteer has been convicted of or is under pending indictment for any crime that bears upon the fitness of the employee or volunteer to have responsibility for the safety and well-being of children, the elderly, or disabled persons shall solely be made by the qualified entity. This section does not require the department to make such a determination on behalf of any qualified entity.

(6) The qualified entity must notify in writing the person of his or her right to obtain a copy of any background screening report, including the criminal history records, if any, contained in the report, and of the person's right to challenge the accuracy and completeness of any information contained in any such report and to obtain a determination as to the validity of such challenge before a final determination regarding the person is made by the qualified entity reviewing the criminal history information. A qualified entity that is required by law to apply screening criteria, including any right to contest or request an exemption from disqualification, shall apply such screening criteria to the state and national criminal history record information received from the department for those persons subject to the required screening.

(7) The department may establish a database of registered qualified entities and make this data available free of charge to all registered qualified entities. The database must include, at a minimum, the name, address, and phone number of each qualified entity.

(8) A qualified entity is not liable for damages solely for failing to obtain the information authorized under this section with respect to an employee or volunteer. The state, any political subdivision of the state, or any agency, officer, or employee of the state or a political subdivision is not liable for damages for providing the information requested under this section.

(9) The department has authority to adopt rules to implement this section.

**History.**--s. 1, ch. 99-300; s. 3, ch. 2008-249.