

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 477 Background Screening
SPONSOR(S): Sprowls and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 970

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	12 Y, 0 N	Beagle	Fudge
2) Appropriations Committee		Seifert	Leznoff
3) Education Committee			

SUMMARY ANALYSIS

Currently, the law governing educator background screening does not include instructional personnel employed by state-approved virtual instruction providers in the Florida Shared School Results system (FSSR), an existing database designed to enable school districts to share background screening results of vendors and other individuals who contract with multiple districts. This often results in duplicative screening of these individuals, as school districts contracting with the virtual instruction provider have no way to share screening results. Among other things, the bill requires the Florida Department of Law Enforcement (FDLE) to enter background screening results of instructional personnel employed by such virtual instruction providers into the FSSR.

The bill also adds nine new crimes to the current list of 51 disqualifying offenses for educator certification and employment in positions requiring direct contact with students to include crimes relating to failure to report child abuse; evidencing prejudice while committing an offense, if reclassified as a felony; attempted felony murder; killing of an unborn child by injury to mother; human trafficking; weapons of mass destruction or hoax weapons of mass destruction; bribery; poisoning food or water; and treason. Except for failure to report child abuse, each of these crimes is already specified in State Board of Education rule as grounds to suspend or dismiss instructional personnel.

The bill updates processes for retention and sharing of background screening results to align state law with the anticipated federal implementation of the national retained arrest print notification program. It also requires FDLE to identify in rule the fee assessed by the FBI for participation in the national retention program and limits screening fees school districts may charge to certain personnel and contractors.

Among other technical and conforming changes, the bill:

- Provides immunity from civil and criminal liability to employees of approved virtual instruction providers who share criminal history information in good faith while conducting background checks.
- Specifically applies statutory requirements regarding Department of Education investigations, complaints, and disciplinary action against an educator's certificate to instructional personnel employed by approved virtual instruction providers.
- Adds specific reference to approved virtual instruction providers and charter schools as educational providers that law enforcement agencies must notify when employees are charged with certain crimes.
- Specifies that the crimes for which such notice must be provided include the disqualifying offenses for educator certification and employment.
- Incorporate by reference the newly amended disqualifying offenses for educator certification and employment with other sections of law that reference to such offenses.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Virtual Instruction Programs

Virtual instruction programs are programs of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.¹ The purpose of these programs is to make instruction available to students using online and distance learning technology in the nontraditional classroom.² School districts are required to make virtual instruction available to all enrolled students.³ A school district may:

- Contract with the Florida Virtual School (FLVS) or establish a franchise of the FLVS.
- Contract with a provider approved by the Department of Education (DOE) for a full-time school district virtual instruction program.
- Enter into an agreement with another school district to allow its students to participate in a virtual instruction program provided by the other school district.
- Establish school district operated part-time or full-time kindergarten through grade 12 virtual instruction programs for students enrolled in the school district.
- Enter into an agreement with a virtual charter school authorized by the school district.⁴

The law designates the FLVS, school district FLVS franchises, and Florida College System institutions as “approved providers.” The law also prescribes a process in which other virtual instruction providers may obtain Department of Education (DOE)-approval to offer services to public school districts. Among other things, an approved virtual instruction provider must document that it requires all instructional staff to be Florida-certified teachers and background screens its employees using state and national criminal history records. Thus, instructional personnel employed by approved virtual instruction providers are subject to the same background screening requirements as Florida-certified educators in brick-and-mortar public schools.⁵

Background Screening

Individuals who work in or provide services to school districts, charter schools, alternative schools, and private schools participating in state school choice scholarship programs must undergo a fingerprint-based background screening before being permitted access to school grounds.⁶ The individuals who must undergo background screening fall under three personnel classifications -- instructional and noninstructional personnel,⁷ noninstructional school district employees and contracted personnel,⁸ and noninstructional contractors.⁹ Candidates for educator certification must also undergo background screening.¹⁰

¹ Section 1002.45(1)(a)2., F.S.

² Section 1002.45(1)(b), F.S. In 2008, the Florida Legislature required all school districts to provide a virtual instruction program beginning with the 2009-10 academic year. Section 4, ch. 2008-147, L.O.F.

³ Section 1002.45(1)(b), F.S.

⁴ Section 1002.45(1)(c), F.S.

⁵ Section 1002.45(2)(a)3., F.S.; see ss. 1012.315, 1012.32, and 1012.56, F.S.

⁶ Sections 1002.421, 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

⁷ Instructional and noninstructional personnel are individuals who are hired or contracted to fill positions that require direct contact with students in any public school. Section 1012.32(2), F.S.

⁸ Noninstructional school district employees and contracted personnel are individuals who are permitted access to school grounds when students are present; who have direct contact with students; or who have access to, or control of, school funds. Section 1012.465(1), F.S.

⁹ Noninstructional contractors are vendors or contractors who are not school district employees, are permitted access to school grounds when students are present, and have little or no direct contact with students. Section 1012.467(1)(a), F.S.

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

The background screening requirements for each personnel classification vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students.¹¹ Because they are more likely to have direct contact with students, candidates for educator certification, instructional and noninstructional personnel, and noninstructional school district employees and contracted personnel must be screened against a distinct list of 51 disqualifying offenses applicable to employment with public schools and school districts.¹² In contrast, noninstructional contractors, individuals who are not school district employees and have no direct contact with students, are screened against a statutory list of 12 disqualifying offenses.¹³

Fingerprints taken for a background screening are submitted to the Florida Department of Law Enforcement (FDLE) for statewide criminal and juvenile records checks and to the Federal Bureau of Investigation (FBI) for national criminal records checks. The cost of the background screening may be borne by the district school board, the charter school, or the individual who is subject to the screening requirements.¹⁴

FDLE enters and retains the fingerprints in the Automated Fingerprint Identification System (AFIS), and retains them in the Applicant Fingerprint Retention and Notification Program (AFRNP) database.¹⁵ Any arrest fingerprints FDLE receives through the Criminal Justice Information Program¹⁶ must then be searched against the fingerprints retained in the AFRNP. Any arrest record that is identified with the retained fingerprints of a person subject to the background screening must be reported to the employing or contracting school district.¹⁷

Fees¹⁸ are charged for each initial background screening and each five-year renewal thereafter. In addition, each school district must participate in the search process and pay an annual fee of \$6 for each record retained in the AFRNP database.¹⁹ The initial entry of an applicant's fingerprints into the AFRNP database must be accompanied by a state or a state and national criminal history records check. For noninstructional contractors, fingerprints are purged from the AFRNP database five years after the date they are initially submitted, and the annual retention fee for the five-year period must be paid in total at the time of submission.²⁰

Currently, fingerprints submitted by states are not retained by the FBI for purposes of national background screening.²¹ However, a national retained print arrest notification program is in development, but has not yet been implemented. The program will allow applicant fingerprints to be retained by the FBI and searched against incoming arrest fingerprints nationwide in a manner similar to the AFRNP in Florida. Participation in the program will allow FDLE to be notified when a school district employee or contractor subject to background screening requirements is arrested in another state. Participation in the national retained print arrest notification program is subject to a one-time \$13.00 fee per each set of retained fingerprints.²²

Screening results for contractors, both those who have direct contact with students and those who simply have access to school property when students are present, are entered into the Florida Shared

¹¹ See ss. 1012.32(2), 1012.465(2), and 1012.467(2)(a), F.S.

¹² Sections 1012.315, 1012.32, and 1012.465, F.S.

¹³ See s. 1012.467(2)(g), F.S. The law references eight specific offenses plus crimes involving lewd and lascivious behavior in ch. 800, F.S., which include four such offenses. *Id.*

¹⁴ Section 1012.32(2), F.S. (flush-left provision at end of subsection).

¹⁵ Section 1012.32(3)(a), F.S.; s. 943.05(2), F.S.; rule 11C-6.010(1), F.A.C.

¹⁶ Section 943.051, F.S.

¹⁷ Section 1012.32(3)(b), F.S.

¹⁸ The total fee charged for background screening is \$38.75, which includes \$24 per name for the state records check and \$14.75 for the federal records check. See s. 943.053(3)(b), F.S.; Florida Department of Law Enforcement, *Criminal History Record Checks/Background Checks Fact Sheet*, <http://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#13> (last visited Feb. 27, 2015)[hereinafter *Background Checks Fact Sheet*].

¹⁹ See ss. 1012.56(10)(b), 1012.465(2), and 1012.467(2)(a), F.S.

²⁰ Rule 11C-6.010(6)-(7), F.A.C.

²¹ *Background Checks Fact Sheet*, *supra* note 18.

²² Florida Department of Law Enforcement, *Legislative Bill Analysis for HB 477* (2015).

School Results (FSSR) system,²³ which allows the results to be shared with other school districts through a secure internet website or other secure electronic means. However, the screening results for instructional personnel hired or contracted by an approved virtual instruction provider are not included in FSSR. As a result, these individuals must often undergo background screening by multiple school districts using the provider's services.²⁴

In addition to fingerprint-based background screening, before employing instructional personnel or school administrators in any position that requires direct contact with students, school districts, charter schools, and private schools participating in a state school choice scholarship program must:

- Conduct an employment history check of the individual's previous employer. If unable to contact a previous employer, efforts to contact the employer must be documented;
- Screen the individual through use of the DOE Professional Practices' Database of Disciplinary Actions Against Educators and Teacher Certification Database;²⁵ and
- Document the findings.²⁶

Additionally, DOE is required to investigate complaints or allegations made against certified educators and initiate proceedings to suspend or revoke the educator's certificate if grounds exist to do so. The law specifically references certified educators employed by traditional public schools, charter schools, and private schools participating in a state school choice scholarship programs, while omitting approved virtual instruction providers.²⁷

The law also requires law enforcement agencies to notify a district school superintendent within 48 hours if a school district employee is charged with any felony or misdemeanor involving the abuse of children or sale or possession of controlled substances. The law also requires that notice regarding these crimes be provided to other education providers, such as the Florida School for the Deaf and the Blind, university lab schools, and private K-12 schools. However, it does not specifically reference approved virtual instruction providers and charter schools.²⁸

Effect of Proposed Changes

The bill revises Florida law governing educator background screening to:

- Prevent duplicative screening of instructional personnel employed by approved virtual instruction providers;
- Specify additional disqualifying offenses for educator certification and employment in positions that require direct contact with students;
- Clarify confusion regarding which disqualifying offenses apply to noninstructional school district employees and contractors; and
- Update processes for criminal records retention and sharing to align state law with the anticipated federal implementation of the national retained arrest print notification program.

Accordingly, the bill increases accountability of virtual instruction providers by requiring each virtual instruction provider seeking "approved provider" status to submit to DOE an "affidavit under penalty of perjury" stating that all instructional personnel have undergone background screening and hold a valid Florida educator certificate in good standing. This change clarifies the type of documentation that must

²³ *Background Checks Fact Sheet*, *supra* note 18.

²⁴ Section 1012.467(7)(a), F.S.

²⁵ See s. 1001.10(5), F.S.; see also Florida Department of Education, *Employment Screening Tools*, <http://www.fldoe.org/edstandards/est.asp> (last visited Feb. 27, 2015) (includes links to the Professional Practices' Database of Disciplinary Actions Against Educators and the Teacher Certification Database). The Teacher Certification Database is also known as the Bureau of Educator Certification's Partnership Access and Services System (BEC-PASS). Florida Department of Education, *Technical Assistance Paper, Senate Bill 1712, No. K12: 2008-129*, at 4 (July 31, 2008), available at <http://www.fldoe.org/edstandards/pdfs/SB1712TAP.pdf>.

²⁶ Sections 1002.33(12)(g)4. (charter schools), 1002.421(4)(c) (private schools), and 1012.27(6), F.S. (school districts).

²⁷ Section 1012.796(1), F.S.

²⁸ Section 1012.797(1), F.S.

be provided to DOE regarding educator certification and background screening and provides consequences for provision of false information.

The bill also requires FDLE to enter background screening results into the FSSR for:

- Noninstructional school district employees who have direct contact with students or who have access to or control of school funds.
- Contractual personnel who provide instructional, rehabilitative, medical, or psychological services, or other services relating to the education, care, custody, or safety of students, that involve direct contact with students.
- Contractual personnel who have access to or control of school funds.
- Instructional personnel employed or contracted by approved virtual instruction providers.

When fully implemented by the FBI, FDLE must also enroll fingerprints for these individuals in the national retained arrest print notification program. This change will prevent instructional personnel employed or contracted by approved virtual instruction providers from being required to undergo duplicative background screenings. Additionally, the bill:

- Provides immunity from civil and criminal liability to employees of approved virtual instruction providers who share criminal history information in good faith while conducting background checks.
- Specifically applies statutory requirements regarding DOE investigations, complaints, and disciplinary action against an educator's certificate to instructional personnel employed by approved virtual instruction providers.
- Adds specific reference to FLVS, approved virtual instruction providers, and charter schools as educational providers that law enforcement agencies must notify when employees are charged with certain crimes.
- Specifies that the crimes for which such notice must be provided include the disqualifying offenses for educator certification and employment.

The bill adds nine new crimes to the current statutory list of 51 disqualifying offenses for educator certification and employment to include:

- Section 39.205, F.S., relating to failure to report child abuse;
- Section 775.085, F.S., relating to evidencing prejudice while committing an offense, if reclassified as a felony;
- Section 782.051, F.S., relating to attempted felony murder;
- Section 782.09(1), F.S., relating to killing of an unborn child by injury to mother;
- Section 787.06, F.S., relating to human trafficking;
- Section 790.166, F.S., relating to weapons of mass destruction or hoax weapons of mass destruction;
- Section 838.015, F.S., relating to bribery;
- Section 859.01, F.S., relating to poisoning food or water; and
- Section 876.32, relating to treason.

Except for failure to report child abuse, each of these crimes is already specified in State Board of Education rule as grounds to suspend or dismiss instructional personnel.²⁹

The law regarding noninstructional school district employee and contracted personnel background screening requires such individuals to be screened against the list of disqualifying offenses for educator certification and employment, but also includes several references to "level 2"³⁰ background screening. Level 2 screening is a different list of disqualifying offenses than the one used to screen applicants for

²⁹ See rule 6A-5.056(8), F.A.C.; s. 1012.32(1), F.S. (authorizing the State Board of Education to adopt additional disqualifying offenses in rule in addition to the offenses specified in s. 1012.315, F.S.).

³⁰ See s. 435.04, F.S.

educator certification and employment. The bill removes incorrect references to level 2 background screening to clarify the applicable disqualifying offenses.

In addition, the bill requires FDLE to enroll fingerprints received in performing background checks for school districts in the national retained arrest print notification program once the program is operational and FDLE begins participation. Once participating in the national retention program, FDLE must notify school districts whenever the FBI identifies an arrest record with the retained fingerprints of a school district employee or contractor. After beginning participation in the national retention program, FDLE must enroll the fingerprints of all individuals screened before such participation into the national database within two years. Furthermore, the bill provides that rescreening is necessary for a certified educator at the time of the educator's five-year certification renewal only if his or her fingerprints have not yet been enrolled in the national retention program.

The bill requires FDLE to identify in rule the fee assessed by the FBI for participation in the national retained arrest print notification program. The bill also provides that the fee charged by school districts to approved virtual instruction provider personnel, noninstructional school district personnel, and contractors who have direct contact with students may not exceed 30 percent of the total fee assessed by FDLE and FBI for background screening.

The bill eliminates an obsolete provision relating to reciprocity of level 2 background screening for Florida High School Athletic Association officials. Such officials are not contracted by school districts, thus reference to reciprocity is unnecessary.

The bill reenacts the following sections for the purpose of incorporating by reference the list of disqualifying offenses amended by the bill:

- Section 1001.42(7), F.S.;
- Section 1002.33(12)(g), F.S.;
- Section 1002.36(7)(g);
- Section 1002.421(4)(a), F.S.;
- Section 1012.32(1) and (2), F.S.;
- Section 1012.56(10)(a) and (c), F.S.; and
- Section 1012.795(1)(n), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 1002.45, F.S., revising requirements relating to background screening of instructional personnel in virtual instruction programs.

Section 2. Amends s. 1012.315, F.S., providing additional offenses that determine ineligibility for educator certification or employment in a position that requires direct contact with students.

Section 3. Amends s. 1012.32, F.S., revising requirements for the retention, search, and reporting of fingerprints of school personnel; providing for FDLE participation in the national retained print arrest notification program; providing for fees.

Section 4. Amends s. 1012.465, F.S., revising background screening requirements for certain school district employees, certain contractual personnel, and instructional personnel in virtual instruction programs.

Section 5. Amends s. 1012.467, F.S., requiring the fingerprints of certain noninstructional contractors to be enrolled in the national retained print arrest notification program; requiring arrest fingerprints to be searched against state and federal retained fingerprints; providing for fees to be established in rule.

Section 6. Amends s. 1012.56, F.S., revising provisions relating to background rescreening for educator certification.

Section 7. Amends s. 1012.796, F.S., including individuals employed by virtual instruction providers in provisions regarding certified educator disciplinary actions.

Section 8. Amends s. 1012.797, F.S., revising provisions relating to notification to education providers regarding employees charged with crimes.

Section 9. Reenacts s. 1001.42(7), F.S., relating to district school board powers and duties, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 10. Reenacts s. 1002.33(12)(g), F.S., relating to charter schools, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 11. Reenacts s. 1002.36(7)(g), F.S., relating to the Florida School for the Deaf and the Blind, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 12. Reenacts s. 1002.421(4)(a), F.S., relating to accountability of private schools participating in state school choice scholarship programs, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 13. Reenacts s. 1012.32(1) and (2), F.S., relating to qualifications of personnel, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 14. Reenacts s. 1012.56(10)(a) and (c), relating to educator certification requirements, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 15. Reenacts s. 1012.795(1)(n), F.S., relating to Education Practices Commission authority to discipline, to incorporate the amendment made to s. 1012.315, F.S., in reference thereto.

Section 16. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may eventually lessen the long-term cost of background screening for educators and other personnel required to undergo background screening. Once FDLE begins participation in the national retained print arrest notification program, these individuals will be required to pay a one-time fee of \$13 for retention of each set of fingerprints, so long as the person is employed by or contracting with the school district, instead of a \$16.50 fee at each five-year rescreening.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FDLE to identify by rule the amount of the fee assessed by the FBI for participation in the national retained print arrest notification program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.