

Criminal & Civil Justice Policy Council

Tuesday, January 12, 2010

8:30 AM

404 HOB

**Larry Cretul
Speaker**

**William Snyder
Chair**



The Florida House of Representatives

Criminal & Civil Justice Policy Council

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January 12, 2010

AGENDA

8:30 AM – 10:00 AM

404 House Office Building

I. Call Meeting to Order

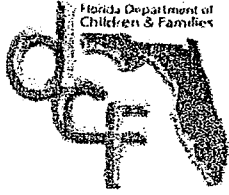
II. Presentations on Background Screening by the following:

George Sheldon, Secretary
Florida Department of Children and Family Services

Kent Perez, General Counsel
Office of the Attorney General

Donna Uzzell, Director
Criminal Justice Information Program at FDLE
Florida Department of Law Enforcement

III. Adjourn



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

Charlie Crist
Governor

George H. Sheldon
Secretary

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.

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

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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.

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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:

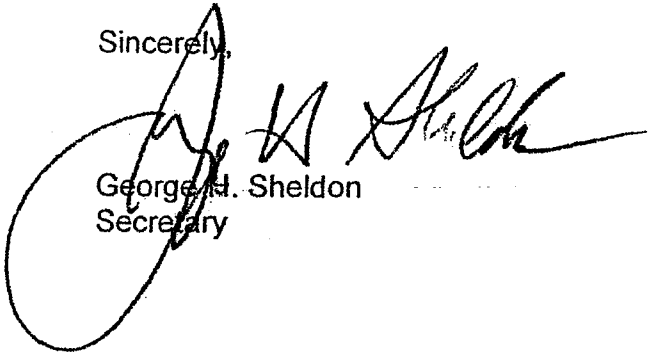
- 1) Increase the waiting period required before requesting an exemption from disqualification to 5 years, rather than the present 3 years;
- 2) Change the point at which the waiting period begins. For those who are going to work with children and vulnerable adults, instead of the date of the offense 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.

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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 M. Sheldon
Secretary

1 A bill to be entitled
2 An act relating to

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsection (5) of section 435.04, Florida
7 Statutes, is amended to read:

8 435.04 Level 2 screening standards.--

9 (5) Under penalty of perjury, all employees in such
10 positions of trust or responsibility shall attest to meeting
11 the requirements for qualifying for employment and agreeing
12 to inform the employer immediately if convicted of any of
13 the disqualifying offenses while employed by the employer.
14 Each employer of employees in such positions of trust or
15 responsibilities which is licensed or registered by a state
16 agency shall submit to the licensing agency annually or at
17 the time of license renewal, under penalty of perjury, an
18 affidavit of compliance with the provisions of this section.
19 If at any time, an employer becomes aware that a person in a
20 position of trust has been arrested for a disqualifying
21 offense, the employer shall remove the employee from contact
22 with children or vulnerable adults until such time as the
23 disposition of the offense.

24 Section 2. Section 435.05, Florida Statutes, is
25 amended to read:

26 435.05 Requirements for covered employees.--Except as
27 otherwise provided by law, the following requirements shall
28 apply to covered employees:

Coding: Words underlined are additions; words ~~stricken~~ are deletions.

29 (1) (a) Every person employed in a position for which
30 employment screening is required must, within 5 working days
31 after starting to work submit to the employer a complete set
32 of information necessary to conduct a screening under this
33 section, except that the employer must report the results of
34 the screening to the licensing agency before a person may be
35 employed in a position of trust. Until such time as the
36 results of the background screening are reported to the
37 Department of Children and Family Services, a person may not
38 serve in any capacity at a child care or an assisted living
39 facility. If the results of the screening show any
40 disqualifying offense as set forth in this chapter, the
41 employer may not hire that person until the person has
42 applied for an exemption from disqualification and has been
43 granted an exemption by the licensing agency. If a person
44 has applied for employment, the employer may not hire such
45 person until such time as the employment screening process
46 is completed. If an application from disqualification must
47 be filed for an exemption based on disqualification from
48 employment, the person may not be hired until such time as
49 he or she has been granted an exemption from
50 disqualification.

51 (b) For level 1 screening, the employer must submit the
52 information necessary for screening to the Florida
53 Department of Law Enforcement within 5 working days after
54 receiving it. The Florida Department of Law Enforcement will
55 conduct a search of its records and will respond to the
56 employer agency. The employer will inform the employee

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57 whether screening has revealed any disqualifying
58 information.

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

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

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

80 (3) Each employer required to conduct level 2
81 background screening must sign an affidavit annually or at
82 the time of license renewal, under penalty of perjury,
83 stating that all covered employees have been screened or are

Coding: Words underlined are additions; words ~~stricken~~ are deletions.

84 newly hired and are awaiting the results of the required
85 screening checks.

86 Section 3. Section 435.07, Florida Statutes, is
87 amended to read:

88 435.07 Exemptions from disqualification.--Unless
89 otherwise provided by law, the provisions of this section
90 shall apply to exemptions from disqualification.

91 (1) Except as noted in subsection (10), below, the
92 appropriate licensing agency may grant, deny, or revoke to
93 any employee or applicant for employment otherwise
94 disqualified from employment an exemption from
95 disqualification for:

96 (a) Felonies for which the employee or applicant was
97 found guilty of, regardless of adjudication, or entered a
98 plea of nolo contendere or guilty to any offense prohibited
99 under any provision in s.435.04 (2) and for which the
100 employee or applicant was adjudicated and released from
101 sanctions committed more than 5~~3~~ years prior to the date of
102 his or her applying for the exemption;

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

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

108 (d) Findings of delinquency; or

109 (e) Commissions of acts of domestic violence as defined
110 in s. 741.30.

111

Coding: Words underlined are additions; words ~~stricken~~ are deletions.

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

116 (2) A licensing agency may in granting an exemption
117 impose specific conditions or requirements for which the
118 person will be responsible for meeting or keeping current in
119 order for the exemption to be granted and remain in effect.
120 Should the person fail to meet or keep current the
121 conditions or requirements imposed by the licensing agency
122 for granting of the exemption, the licensing agency may
123 revoke the exemption.

124 (3) Persons employed by or who have applied for
125 employment with treatment providers who treat adolescents 13
126 years of age and older who are disqualified from employment
127 solely because of crimes under s. 817.563, s. 893.13, or s.
128 893.147 may be exempted from disqualification from
129 employment pursuant to this section without the 53-year
130 waiting period.

131 (4) In order for a licensing department to grant an
132 exemption to any employee, the employee must demonstrate by
133 clear and convincing evidence that the employee should not
134 be disqualified from employment. Employees seeking an
135 exemption have the burden of setting forth sufficient
136 evidence of rehabilitation, including, but not limited to,
137 the circumstances surrounding the criminal incident for
138 which an exemption is sought, the time period that has
139 elapsed since the incident, the nature of the harm caused to

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140 the victim, and the history of the employee since the
141 incident, or any other evidence or circumstances indicating
142 that the employee will not present a danger if continued
143 employment is allowed. A licensing agency may not consider
144 an application for an exemption until 5 years after the
145 completion of the terms and conditions of a sentence
146 imposed, whether served during actual imprisonment,
147 probation, or parole. The licensing department may consider
148 as part of its deliberations of the employee's
149 rehabilitation the fact that the employee has, subsequent to
150 the conviction of the disqualifying offense for which the
151 exemption is being sought, been arrested for another
152 disqualifying offense even if the disposition of such
153 subsequent arrest was reduced to a lesser offense through an
154 agreement with the state regardless of the outcome of the
155 arrest. The decision of the licensing department regarding
156 an exemption may be contested through the hearing procedures
157 set forth in chapter 120.

158 (5) Disqualification from employment under subsection
159 (1) may not be removed from, nor may an exemption be granted
160 to, any personnel who is found guilty of, regardless of
161 adjudication, or who has entered a plea of nolo contendere
162 or guilty to, any felony covered by s. 435.04 solely by
163 reason of any pardon, executive clemency, or restoration of
164 civil rights.

165 (6) Exemptions granted by one licensing agency shall be
166 considered by subsequent licensing agencies, but are not
167 binding on the subsequent licensing agency.

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168 (7) (a) Any exemption from disqualification granted
169 pursuant to this section shall be reviewed by the licensing
170 agency at a minimum of every three years from the granting
171 of an exemption to ensure that the rehabilitation is still
172 effective.

173 (b) The licensing agency shall contract with the
174 appropriate entity to perform fingerprints by live scans.

175 (c) In determining whether a person who has been
176 granted an exemption should continue to be exempt from
177 disqualification, the agency may consider, at the time of
178 any review or at any time between the required reviews,
179 evidence of the person's pattern of specific behavior and
180 actions since the time the exemption was granted. Evidence
181 to be considered shall include but not be limited to arrests
182 subsequent to the date of the issuance of the exemption.

183 (8) Licensing agencies may retain copies of the
184 fingerprints of employees in a digitized format. Such
185 retained fingerprints may be continuously reviewed to insure
186 that there have been no additional arrests or disqualifying
187 events involving employees.

188 (a) All fingerprints submitted to the Department of Law
189 Enforcement by the licensing agency may be retained by the
190 Department of Law Enforcement in a manner provided by rule
191 and entered in the statewide automated fingerprint
192 identification system authorized by s. 943.05(2) (b). Such
193 fingerprints shall thereafter be available for all purposes
194 and uses authorized for arrest fingerprint cards entered in

Coding: Words underlined are additions; words ~~stricken~~ are deletions.

195 the statewide automated fingerprint identification system
196 pursuant to s. 943.051.

197 (b) The Department of Law Enforcement shall search all
198 arrest fingerprint cards received under s. 943.051 against
199 the fingerprints retained in the statewide automated
200 fingerprint identification system under paragraph (a). Any
201 arrest record that is identified with the retained
202 fingerprints of a person subject to the background screening
203 under this section shall be reported to the licensing agency
204 which shall utilize the information to insure that there
205 have been no additional arrests or disqualifying events. The
206 Department of Law Enforcement shall adopt a rule setting the
207 amount of the annual fee to be imposed upon the licensing
208 agency for performing these searches and establishing the
209 procedures for the retention of fingerprints and the
210 dissemination of search results. The fee shall be borne by
211 the person fingerprinted.

212 (9) The licensing agency shall immediately revoke any
213 exemption from disqualification upon a determination that
214 the employee committed an additional disqualifying offense.
215 If the agency determines, based upon the exemption reviews
216 provided for in this subsection, that the person no longer
217 meets the level of rehabilitation upon which the agency
218 granted the exemption the agency may revoke the exemption.

219 (10) An agency may not grant an exemption from
220 disqualification for any person if the person has a record
221 of a felony or misdemeanor conviction for an offense of a
222 violent or sexual nature against a child.

Coding: Words underlined are additions; words ~~stricken~~ are deletions.

223 (11) To the extent possible, all fingerprints required
224 by this chapter shall be digitized and submitted
225 electronically.

226 (12) Any licensing agency which grants an exemption to
227 disqualification for employment may develop rules necessary
228 for the implementation of this section. The licensing agency
229 may also adopt rules for the imposition of conditions upon
230 and the review or revocation of individual exemptions from
231 disqualification.

232 Section 4. This act shall take effect on July 1, 2010.

233

234

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236

Coding: Words underlined are additions; words ~~stricken~~ are deletions.



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 that reads "Larry Cretul".

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

09 OCT -5 PM 12:14

OFFICE OF THE 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

Draft 2 11-20-09

112.011 Disqualification for licensing and employment based on criminal conviction.-- ~~Felons; removal of disqualifications for employment, exceptions.--~~

(1)(a) Except as provided in s. 775.16, a person shall may 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, or relevant to the standards determined by the regulatory authority, state agency or political subdivision, or municipality to be necessary and reasonably related to the protection of the public health, safety, or welfare.

(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, or relevant to the standards determined by the regulatory authority, state agency or political subdivision, or municipality, to be necessary and reasonably related to the protection of the public health safety and welfare with, the specific occupation, trade, vocation,

profession, or business for which the license, permit, or certificate is sought. Nothing herein shall restrict in any manner a constitutional grant of clemency by the Governor or the Governor and Cabinet, however made or conditioned.

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

(b) This section ~~shall~~ does not ~~be applicable~~ apply 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~~ does not ~~be applicable~~ apply 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.

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.

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 provided the crime has not been identified by the agency as relevant to the standards determined by the agency to be necessary and reasonably related to the protection of the public's health safety and welfare as it relates to the occupation, trade, vocation, profession, or business, and provided the exemption is only granted for:

(a) Felonies committed more than 5 ~~3~~-years prior to the date

of disqualification and for which all sanctions, and conditions of probation or release have been satisfied;

(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~~ may be considered by subsequent licensing agencies, but are not binding on the subsequent licensing agency.

(6) Agencies shall have the authority to impose reasonable restrictions and conditions on an exemption granted an employee. Agencies may review and revoke an exemption at any time based on information related to the standards determined by the agency to be necessary and reasonably related to the protection of the public health safety and welfare.




Criminal History Record Check Processes

January 12, 2010
Florida Department of Law Enforcement



State and National Criminal History Record Checks

- FDLE provides criminal history check processing as required by statute
- Provisions in state law are approved by the FBI under federal law (US PL92-544)
- Requires a fingerprint submission
- Fee based
 - State fee set by law at \$24.00
 - FBI fee
 - \$19.25 if electronically submitted
 - \$30.25 if paper card




Fingerprint Submission

- 25% of applicant fingerprints submitted by hard card
- 75% captured using submitted electronically
- Examples of Electronic Customers
 - Agency for Health Care Administration
 - 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, utilize a vendor as a service provider or scan inked cards


Live Scan Devices

- Located in every school district
- DCF contracted providers
- 197 in law enforcement agencies, university and school police
 - In jails these are in secure areas and have a different workflow
- 7 FDLE offices
- DHSMV
- 21 Service Providers as noted on FDLE Website



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




Legislative Recommendation

- Require agencies to submit electronically
 - Agencies could work together to develop a contract with a vendor at no additional cost to agency and with limited impact to customer
 - Reduced turnaround time allows legislature to revisit the policy of allowing persons to begin work prior to screening.

Oversight of Service Providers for Fingerprint Submissions

- Issue: Ensuring integrity of the process
 - security of the information obtained
 - proper identification of persons whose prints are being submitted
- Recommendation: Authorize state and national background checks for vendors and their employees and provide a method for oversight and accountability.

Identified Concern



- Fingerprints not always submitted (many conduct state only name checks)
 - Interstate Identification Index Name Check Efficacy: Report of the National Task Force to the US Attorney General July 1999
 - 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

Legislative Recommendation

- Consider requiring all checks to be state and national fingerprint based checks
- Remove references to Level I and Level II screening in chapter 438 and replace with "State Only" or "State and National Check" respectively
 - Note: if first recommendation is accepted there is no need for "State Only"

Retained Prints and Arrest Notification

- FDLE retains fingerprints where authorized by law
- Incoming Florida arrests run against retained prints
- 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

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


Legislative Recommendation

- Authorize Agencies to retain fingerprints
- Authorize rescreen with FBI in min. 5 yrs
- Allow agencies to have a designated length of time to resubmit fingerprints for those employees not currently retained (recommend somewhere between 2 to 5 years)

Retained Prints Issues To Be Addressed

- **Fees:**
 - \$5 per print retained annually after first year
 - Who will pay the fee and how will it be collected?
- **Management of prints:**
 - Agencies manage retained print file and request deletion for persons no longer of interest
 - Charged annually for only those prints actually retained
 - What will be the workload impact for agencies retaining prints?
- **Management of Hit Notifications:**
 - Agencies must maintain tracking system
 - Take appropriate action upon arrest notification and subsequent judicial action
 - Agencies must develop a tracking mechanism prior to retention and notification
 - May need legislation to allow them to take action on arrest

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

Legislative Recommendation

- Designate an interim committee to identify issues
 - Are there duplicate checks
 - Can information be shared between agencies
 - Should agencies rely on previous checks
- Committee to workshop issues and provide recommendations

Sample Policy Issues and Concerns

- How long would the state allow a person to be unaffiliated with an agency and not have to undergo a background check?
- If a person is in a state database, without the resubmission of prints, how do you know that you are checking the right person?
- If there is centralized screening what agency would do the screening and would the same criteria be used for each entity?
- What statutes and policy issues would need to be addressed at the FBI to authorize such centralized screening?

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
- Provide oversight on service providers
 - Licensing, certification or through contract
 - Criminal history check on employees to alleviate potential fraud and ensure integrity of systems
- Create interim committee to study issues and any unintended consequences provide report

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.

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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 ¹s. 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.

¹Note.--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 ¹Child 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.