

Interagency Background Screening Workgroup

Report to Governor Rick Scott

October 14, 2011

Introduction

During the 2011 Legislative Session, the Florida House of Representatives and the Florida Senate passed Senate Bill 1992, relating to Background Screening. Governor Rick Scott subsequently vetoed the legislation and noted his concerns with the legislation. In the veto message, the Governor agreed with the importance of creating a workgroup to look at the background screening process. Accordingly, under direction of the Executive Office of the Governor, in coordination with the Governor's Office of Policy and Budget for Health and Human Services, a statewide interagency background screening workgroup was created. This workgroup was tasked with developing a strategy for the criminal background screening of the professionals, lay persons and volunteers that serve vulnerable populations within the State and recommending potential legislative changes to implement this strategy.

The workgroup is composed of The Department of Children and Family Services, the Agency for Health Care Administration, the Department of Elder Affairs, the Department of Health, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Law Enforcement, and the Department of Education, Division of Vocational Rehabilitation and Division of Blind Services. Executive leadership of each agency appointed appropriate individuals to represent the agency on the workgroup. Activities of the workgroup have been coordinated by the Department of Elder Affairs. The workgroup has had three full workgroup meetings, a public testimony meeting, an operational subgroup meeting, and a legislative subgroup meeting. It is through these meetings and the submission of additional public comments that the workgroup has developed its recommendations.

There were ten issues addressed by the workgroup. For each issue, the workgroup provided one or more recommendations. These issues and recommendations are intended to be applicable to specific agencies that license or conduct suitability background screening for persons working or volunteering with vulnerable populations (children, elderly or disabled persons). In this report, "agency" or "agencies" refers to those listed above. In addition, the Florida Department of Law Enforcement (FDLE) will be working with this group to ensure state and federal requirements are met.

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ISSUE 1: Need for Sharing Criminal History Information

As a public safety issue, the legislature has set policy that requires certain persons who work or volunteer with children, elderly or disabled persons to have state and national background checks; persons who have disqualifying crimes are not allowed to work or volunteer with these vulnerable populations. In meetings with providers and in testimony heard at public meetings, it was reported that there are occasions when a person who works or volunteers under the regulation of more than one agency dealing with these populations is screened multiple times at a cost to the applicant or provider. Portability of the criminal history record in the past was not authorized by federal law. The FDLE is working with the Federal Bureau of Investigation to find a possible solution consistent with federal guidelines that will allow agencies to share the criminal history information for persons who are working or volunteering with this specifically defined population. In order to utilize this solution, however, there are several requirements the state will need to incorporate which include:

- Fingerprints of applicants will be retained so that Florida arrest information will be immediately available to ensure the criminal history information is kept current. When the national retention program becomes available, these fingerprints will be forwarded to the Federal Bureau of Investigation for enrollment in the federal Rap Back program.
- Photographs will be taken of individuals being fingerprinted to ensure that the criminal record information accessed by secondary agencies and providers belongs to the person seeking to be licensed, employed, or volunteering.
- A waiver or acknowledgement by the person being fingerprinted indicating that his or her criminal history information may be shared with these defined state agencies will be required.
- Agencies will receive the same results, that is, all should receive sealed and expunged information or all should not receive this data.
- Mechanisms will have to be in place to provide security for criminal history information that is shared, ensuring that each release is logged and that each interested agency is notified of new arrests on the applicant.
- A shared database will exist consisting of criminal history record information that agencies use to screen applicants. This shared database shall include the photograph of the applicant, the waiver (or acknowledgement), the state and national criminal history information and any

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subsequent arrest information on the applicant. The database shall keep a record of all dissemination of criminal history information to other agencies. The database shall allow providers, day care employers and other similar employers to access whether the applicant is qualified to work or volunteer under the screening(s) that the agencies have conducted using the criminal history record information that is available in the centralized database. The database shall be housed at the Agency for Health Care Administration. The Agency for Health Care Administration shall work with the FDLE to ensure that all state and federal standards are met and with the other agencies to ensure that the needs of these agencies are met.

RECOMMENDATION 1: Pursue the necessary legislative changes needed to fulfill these requirements in order to avoid the need for redundant criminal history record checks.

ISSUE 2: Scope and Timing of Screenings

Concern has been raised that there are some persons or professions where the criminal history record check has been conducted and the applicant would not need to have a new criminal history record check with a photograph in order to be added to the shared database. It is not the intent to have anyone submit fingerprints for a criminal history record check unnecessarily. New applicants submitting fingerprints to FDLE will have these fingerprints retained; these applicants will be added to the shared database and be eligible for use by other agencies. Applicants who are already licensed, employed or volunteering who do not have a need to have their criminal history used by another agency, will not be added to the database unless they are subject to a fingerprint-based rescreening or if they are applying under a different agency other than the one which did the original screening. This is essentially a “day one forward” approach.

Changes in Senate Bill 1992 required all employees to be screened every 5 years beginning August 1, 2010. Many of the employees working at the time of the law change had been previously screened and qualified using different criteria. However, requiring everyone to be rescreened at the onset of the law would have had a major financial impact on providers and an overwhelming volume of workload for AHCA. Therefore, staggering the requirements for rescreening over a 3-year period will potentially balance out the costs and the workload.

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RECOMMENDATION 2: Add language to section 408.809, F.S. to provide a rescreening schedule over a three year period for individuals continuously employed with health care providers.

ISSUE 3: FDLE Ability to Contract with Finger Printing Entities

All fingerprints submitted to the FDLE must be in electronic format. These electronic fingerprints are taken at Live Scan devices at three types of entities:

1. Organizations that take fingerprints for the organization's own employees, volunteers, contract personnel or others directly associated with the organization.
2. Criminal justice agencies which may take fingerprints for persons needing to have fingerprints taken.
3. Live Scan Service Providers that are private companies and which, as a business enterprise, provide fingerprinting services to persons needing these services who are getting their fingerprints taken for a variety of licensing and employment purposes.

There are currently no state standards regulating these submissions except for Federal Bureau of Investigation technical requirements. The integrity of the entire process starts with ensuring the identity of the person whose fingerprints are being submitted. The concern is that currently the person taking the fingerprints may not check the photo identification of the applicant, allowing him or her to provide the name and identifying information of another individual resulting in the applicant's name and identifying information being associated with someone else's fingerprints. Assuming that the applicant has a criminal record and the imposter does not, the result is that the criminal record would not be identified. Some Live Scan Service Providers provide fingerprint cards to individuals and allow the applicant to take his or her own fingerprints. The fingerprints are then provided to a company which scans the fingerprints and sends to FDLE where they look like other submissions. There is no integrity in the process in these scenarios.

Currently, Live Scan Service Providers must pay for the state and national criminal history checks for fingerprints they submit using a credit card. It is costly for the state to incur the credit card fees that are associated with submissions from Live Scan Service Providers and other private entities. It is not

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customer friendly for these companies. To ensure that unnecessary fees are not incurred and to satisfy the requests of private businesses, FDLE needs legislative authority to invoice these private organizations.

RECOMMENDATION 3: *Include language in statute that will allow FDLE to enter into a no-cost contract with private and public organizations submitting fingerprints for the organization's own employees, volunteers, contract personnel or others directly associated with the organization and Live Scan Service Providers that are private businesses. FDLE shall also enter into a no-cost contract with any private organization which is retaining fingerprints of its employees, volunteers, contract personnel or others directly associated with the organization. These contracts must ensure that:*

- ***Personnel responsible for taking fingerprints meet current standards for identity verification and recording legible fingerprints.***
- ***FDLE and Federal Bureau of Investigations technical standards are met.***
- ***Fingerprint images meet quality fingerprint capture requirements.***
- ***The payment for the FDLE and FBI fees will be collected by the organization. FDLE will provide an invoice of the fees due FDLE. Any organization which does not pay timely shall not be allowed to submit fingerprints to FDLE or continue fingerprints in the retention program.***

ISSUE 4: Background Screening Fees

There are costs associated with the Live Scan Service Provider rolling the fingerprints and taking the photographs, the state and national background check, and the retention of fingerprints. The goal is to allow for sharing without significantly increasing the costs for the applicant or providers. Because the sharing of the criminal history information is under a different federal law (will be under the National Child Protection Act rather than under Public Law 92-544), the fee structure will change for volunteers. Applicants who pay \$24 will continue at that fee; volunteers will have a reduced fee of \$18 at the state level. The Federal Bureau of Investigations fee is \$19.25 but there is a reduced fee of \$15.25 for volunteers. Over a 5 year period, taking into account the required fingerprint retention fee as well as the original criminal history record check, the costs under the Workgroup proposal would be approximately the same as they are now. The applicants and providers, however, would have the benefits of portability and persons who are screened multiple times will not be billed for each screen.

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Background Screening Fees

Employee Applicant

Fee Type	Current	Proposed
FBI	\$19.25	\$19.25
FDLE	\$24.00	\$24.00
Live Scan	\$11.00	\$11.00
Photo	\$0.00	\$2.00-\$5.00
State Retention	\$0.00	\$ 24.00
Total Initial Cost	\$54.25	\$80.25-\$83.25
Five year rescreen	\$54.25	\$19.25
Total**	\$108.50	\$99.50-\$102.50*

Volunteer Applicant

Fee Type	Current	Proposed
FBI	\$19.25	\$15.25
FDLE	\$24.00	\$18.00
Live Scan	\$11.00	\$11.00
Photo	\$0.00	\$2.00-\$5.00
State Retention	\$0.00	\$24.00
Total Initial Cost	\$54.25	\$70.25-\$73.25
Five year rescreen	\$54.25	\$15.25
Total**	\$108.50	\$85.50-\$88.25*

*These do not include FDLE retention after initial five years, which will be determined when retention fee is set by FBI

**This total assumes a one-time retention. It does not account for rescreen fees after the first five-year mark, as that figure may differ from the current \$24.00.

The fees for any given applicant are roughly the same at the five year point under the current and proposed models. For applicants who are currently submitting multiple fingerprints the costs

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reduce dramatically. The following provides one example of the impact in the change in the fee structure.

RECOMMENDATION 4: *Include in statute that the state retention fee be collected at the time of the initial screening.*

EXAMPLE

An individual is training to become a Certified Nursing Assistant (CNA). In order to complete training, this individual must go through a background screening at a cost of \$54.25. Following the completion of the required training, he/she qualifies for a CNA license. In order to obtain the license, he/she must complete a second background screening at a cost of \$54.25. Upon licensure, this individual seeks employment in their field. Four months after licensing is received, he/she finally gains employment as a CNA. Because of the time lapse from when license was obtained (in excess of 90 days), the employer requires a background screening at a cost of \$54.25. Because of the current rules in place, this individual had to pay a total of **\$162.75** in background screening costs. The proposed modifications would have cost this person a one-time fee of approximately \$83.25, saving this individual nearly **\$80.00** in background screening costs.

ISSUE 5: Common Offenses

The workgroup discussed the possibility of developing a common list of offenses for all of the participating agencies and incorporating this list into Chapter 435, F.S. It is imperative that all agencies regulating employers working with vulnerable populations use the same screening criteria. All of the partner agencies in this workgroup discussed and agreed to recommend the most comprehensive list of offenses currently in statute for all of the agencies. In addition, AHCA proposed the addition of several new offenses and the workgroup agreed to recommend the addition of these new offenses. They are:

- Section 817.02, obtaining property by false personation.
- Chapter 895, relating to racketeering and illegal debts.
- Section 896.101, relating to Florida Money Laundering Act.
- Any person who is a principal in the first degree, an accessory after the fact, attempts, solicits or conspires to commit a disqualifying offense as defined in Chapter 777, F.S.

In conjunction with the common offenses being placed in Chapter 435, F.S., the offenses currently listed in the various statutes governing each agency would be removed from their section of statute and

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a reference to the common list of offenses would need to be inserted. The reasoning for this recommendation stems from goal of attempting to reduce duplicative screening and streamline the screening process. Also, in order to streamline screening processes it is imperative that the criteria is standardized.

RECOMMENDATION 5: *Add language in Section 409.221(4), F.S. and Section 409.913(13), F.S. to further align the screening requirements for entities under the jurisdiction of the Agency for Health Care Administration.*

ISSUE 6: Requirements for Covered Employees and Employers

In order to retain prints, the regulating agency must be able to notify the employer(s) of a change in eligibility status.

RECOMMENDATION 6: *Add language in Section 435.05, F.S. that will require the employer to register and maintain the employment status of all applicants. In addition, it is also recommended that clarifying language is added to require the employer to maintain a copy of the required attestation for each employee personnel file.*

ISSUE 7: Clarifying Exemptions from Disqualification

In order to reduce workload issues, it is important to clarify that those individuals who do not meet the statutory criteria to be considered for an exemption may not apply for an exemption from disqualification and are not subject to the hearing procedures in Section 120, F.S.

RECOMMENDATION 7: *Add language to further clarify that persons considered not eligible to apply for an exemption are not subject to an appeal through the Department of Administrative Hearings is recommended to be added.*

ISSUE 8: Access to Sealed and Expunged Records

A necessary component for the operation of the centralized shared database is to ensure that all participating agencies be included in Sections 943.0585 and 943.059(4)(a)(5), F.S. relating to court ordered expunction and sealing of criminal records.

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RECOMMENDATION 8: Add the following agencies and include their statutes in these sections:

- *Department of Health*
- *Department of Elder Affairs*
- *Department of Education, Division of Vocational Rehabilitation*
- *Department of Education, Division of Blind Services*

ISSUE 9: Potential Changes to Chapter 430, F.S.

The workgroup looked at and agreed to recommend changes in the background screening statutes in Chapter 430, F.S.

RECOMMENDATION 9A: Add two technical clarifying components to the definition of direct service provider. This includes adding “volunteer” to the definition of who a direct service provider is and including “personal identification information” to the list of items that constitute direct, face-to-face contact.

The workgroup also addressed the concerns noted by the Governor with the volunteer exemption that was included in the vetoed legislation.

RECOMMENDATION 9B: Add the exemption for volunteers who assist on an intermittent basis for less than 20 hours per month, with qualifications. Prior to this exemption being granted, the volunteer must be screened by the employer by determining if the person is listed in the National Sex Offender Registry and the Florida Department of Law Enforcement Career Offender Database. If there are no hits in these two databases, then the volunteer exemption would be valid. If there were hits in either of these two databases, the volunteer would have to go through a Level 2 background screening and any resulting exemption process if there is a disqualifying offense, prior to being allowed to provide services as a direct service provider.

RECOMMENDATION 9C: Include an exemption from a Level 2 background screen for those individuals who meet the definition of direct service provider and who are either related to the client by blood or marriage.

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ISSUE 10: DOE, Division of Vocational Rehabilitation and Division of Blind Services Background Screening Authority

During the 2010 Legislative Session, CS/HB 7069 (Chapter 2010-114, L.O.F.), was passed which substantially rewrote the requirements and procedures for background screening of the persons and businesses that deal primarily with vulnerable populations (Agencies include Department of Children and Families, Agency for Health Care Administration, Department of Elder Affairs, Agency for Persons with Disabilities, Department of Juvenile Justice and Guardian Ad Litem program). The Department of Education, Division of Vocational Rehabilitation and Division of Blind Services were not listed among those agencies serving these individuals.

While general background screening requirements are found generally in Ch 435, F.S., there is no corresponding authority for background screening of vendors or providers and their employees contained in Ch. 413, Parts I and II, F.S., relating to the Division of Blind Services and the Division of Vocational Rehabilitation respectively, even though the divisions serve people with a wide range of disabilities, including individuals with developmental disabilities and individuals who are blind or visually impaired. It is the view of the workgroup that a legislative proposal is needed which will give both of the divisions clear authority to conduct background screening checks on certain providers and their employees providing direct services to customers.

The Division of Blind Services has specific statutory authority (s. 413.011(7) F.S.) to conduct Level 2 screening on their employees, however such language is not contained in the Division of Vocational Rehabilitation statutes.

The Division of Vocational Rehabilitation maintains a registry of direct service providers to make effective consumer referrals for necessary services and to authorize payments to providers for services rendered. Section 413.208, F. S., requires the division to “certify” providers of direct services to VR customers but with no specific certification requirements. This language is confusing in that statutory certification standards for other professions and occupations may include examinations, licensure and fee requirements such as those utilized by some of the professions currently required to undergo background screening.

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RECOMMENDATION 10A: *Add legislative language which would establish the following:*

- *Creates a definition for “direct service providers” of the Division of Vocational Rehabilitation and requires them to obtain level 2 background screening. The screening is required for certain employees of direct service providers that are corporations, individuals that are direct service providers, and employees of direct service providers that provide vocational rehabilitation or independent living services directly or indirectly to vulnerable persons, as defined in s. 435.02(5). (“Direct service provider” means an entity and its associated individuals who, directly or indirectly, provide employment services, supported employment services, independent living services, self-employment services, personal assistance services, vocational evaluation or tutorial services, or rehabilitation technology services to vulnerable persons, as defined in s. 435.02.)*
- *Requires the direct service employer to pay for the screening.*
- *Provides for legal challenges for direct service providers disqualified from employment due to a background screening result.*
- *Authorizes the Division of Vocational Rehabilitation to require all employees and applicants for employment to undergo personnel screening and security background investigations using the level 2 standards.*
- *Codifies VR’s practice of registering rather than certifying direct service providers. This technical amendment clarifies that VR is not providing more extensive qualification standards that could be utilized as part of the joint background screening effort.*

RECOMMENDATION 10B: *Add language which would establish the following for the Division of*

Blind Services:

- *Requires Community Rehabilitation Programs and other direct service providers to obtain level 2 background screening. The screening is required for certain employees of Community Rehabilitation Programs that are direct service providers, and employees of direct service providers that provide services directly or indirectly to vulnerable persons, as defined in s. 435.02(5).*

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- ***Requires the Community Rehabilitation Programs and other direct service providers to pay for the screening.***
- ***Provides for legal challenges for Community Rehabilitation Program employees disqualified from employment due to a background screening result.***

Summary

The workgroup has made the aforementioned recommendations to Governor Rick Scott based on information and discussions from the various workgroup meetings, including public comment. The Interagency Background Screening Workgroup stands ready to provide additional information, elaborate on any of the above recommendations, modify any recommendations, or develop suggested statutory language as is deemed necessary by the Executive Office of the Governor, in conjunction with Governor's Office of Policy and Budget for Health and Human Services.

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Addendum

One issue that the workgroup spent a significant amount of time discussing was the absence in statute of a regulatory scheme for those live scan service providers. The workgroup has decided to leave out a recommendation for creating this type of regulatory structure, since it was seen as being outside the scope of the charter of the workgroup.

The workgroup did recommend giving FDLE the authority to contract through no-cost, non-competitive contracts with live scan vendors. This is one of the two parts of oversight that FDLE has proposed.