## WHAT ARE LEVEL 1 AND LEVEL 2 BACKGROUND SCREENINGS?

Level 1 and Level 2 Background Checks are terms used in Florida Statutes to describe the method and nature of the criminal history record check. Level 1 and Level 2 are terms that pertain only to Florida and are not used by the FBI or other states.

- Level 1 (s. 435.03(1), F.S.,) generally refers to a state-only name-based check, and an employment history check, as well as a check of the Dru Sjodin National Sex Offender Public Website. It may include a local criminal records check.
- Level 2 (s. 435.04(1), F.S.) generally refers to a state and national fingerprint-based check through FDLE and the FBI. It may include a local criminal records check.<sup>1</sup>

Both Level 1 and Level 2 have the same disqualifying offenses.

## WHAT ARE LEVEL 1 and 2 DISQUALIFYING OFFENSES?

Level 1 and 2 standards provide that no persons have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction<sup>2</sup>:

- (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 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- (e) Section 782.04, relating to murder.
- (f) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (g) Section 782.071, relating to vehicular homicide.
- (h) Section 782.09, relating to killing of an unborn child by injury to the mother.
- (i) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- (j) Section 784.011, relating to assault, if the victim of the offense was a minor.
- (k) Section 784.03, relating to battery, if the victim of the offense was a minor.

<sup>2</sup> Ss. 435.03(2) and 435.04(2), F.S.

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<sup>&</sup>lt;sup>1</sup> Florida Department of Law Enforcement, Criminal History Record Checks/Background Checks Fact Sheet, <a href="https://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#2">https://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#2</a> (accessed 5/12/15). No separate check of sex offender databases is needed due to the nature of the search.

- (I) Section 787.01, relating to kidnapping.
- (m) Section 787.02, relating to false imprisonment.
- (n) Section 787.025, relating to luring or enticing a child.
- (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) Section 794.05, relating to unlawful sexual activity with certain minors.
- (v) Chapter 796, relating to prostitution.
- (w) Section 798.02, relating to lewd and lascivious behavior.
- (x) Chapter 800, relating to lewdness and indecent exposure.
- (y) Section 806.01, relating to arson.
- (z) Section 810.02, relating to burglary.
- (aa) Section 810.14, relating to voyeurism, if the offense is a felony.
- (bb) Section 810.145, relating to video voyeurism, if the offense is a felony.
- (cc) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (dd) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (ee) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (ff) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (gg) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (hh) Section 826.04, relating to incest.
- (ii) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (jj) Section 827.04, relating to contributing to the delinquency or dependency of a child.
- (kk) Former s. 827.05, relating to negligent treatment of children.
- (II) Section 827.071, relating to sexual performance by a child.
- (mm) Section 843.01, relating to resisting arrest with violence.
- (nn) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- (oo) Section 843.12, relating to aiding in an escape.
- (pp) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- (qq) Chapter 847, relating to obscene literature.
- (rr) Section 874.05, relating to encouraging or recruiting another to join a criminal gang.

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- (ss) 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.
- (tt) Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- (uu) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- (vv) Section 944.40, relating to escape.
- (ww) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- (xx) Section 944.47, relating to introduction of contraband into a correctional facility.
- (yy) Section 985.701, relating to sexual misconduct in juvenile justice programs.
- (zz) Section 985.711, relating to contraband introduced into detention facilities.

S. 435.07, F.S., permits individuals generally to seek exemptions from disqualification in accordance with criteria provided in that subsection, though other sections of law may prohibit such exemptions in certain circumstances. Disqualification may not be exempted for sexual predators, career offenders, and sexual offenders (unless the requirement to register as a sexual offender has been removed).

# HOW DOES BACKGROUND SCREENING THROUGH THE CLEARINGHOUSE COMPARE TO OTHER METHODS?

A fingerprint-based search of national criminal information offers the greatest amount of information about a person's criminal history. There are 2 options for conducting this search in Florida (see chart).

Issue	State Agency Screening Process	Volunteer and Employee Criminal History System (VECHS) <sup>3</sup>
Purpose	To exercise the police powers of the state to establish a specific condition of licensure or employment by a state-licensed entity.	To allow voluntary screening of individuals working with vulnerable populations who are not otherwise required by the state to be screened.
Who uses the system	State agencies (see schedule, below)	Organizations provide "care" as defined by the National Child Protection Act, as amended, and s. 943.0542, F.S.
Who is screened	Individuals mandated by statute or administrative rule to be background screened as a condition of employment, obtaining a state license or other	Employees or volunteers of organizations that provide "care" as defined by the National Child Protection Act, as amended, and s. 943.0542, F.S.

<sup>&</sup>lt;sup>3</sup> The Volunteer and Employee Criminal History System (VECHS) was implemented in 1999 and is authorized by the National Child Protection Act to provide access to both state and national criminal history information. Only qualified organizations (not an individual or state agency) can access VECHS.

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Issue	State Agency Screening Process	Volunteer and Employee Criminal History System (VECHS) <sup>3</sup>
	operational authorization; this may include volunteers and contractors. <sup>4</sup> . Employers may only use the state system for these screenings.	
Information reviewed	State and national criminal history check; basic demographic search of state databases for other criminal history or judicial action not resulting in an arrest, such as recent and unprocessed arrests, open warrants, and domestic violence injunctions	State and national criminal history record (RAP sheet) that shows arrests/and or convictions for Florida and other states, if any; notification of any warrants or domestic violence injunctions that the person may have
Outside review involved	The state agency reviews results to see if any disqualifying offenses are found and notifies employer. Unless exemption from disqualifying offenses is obtained, individual cannot work in position.	No—only the hiring entity receives results
Who can see results	Entity authorized in statute; for child care facilities and similar organizations, this is DCF.	Entities receiving results can only show them to other parties to VECHS system (DCF is not a party so could not see the results of Boys & Girls Clubs screenings through this system, for instance)
Ongoing monitoring for "hits"	Yes	NoVECHS background screenings provide a snapshot of that person's criminal history at that particular point in time. It does not cover any criminal activity that may occur once the file is completed, though the qualifying entity requesting the screening can ask fingerprints to be maintained for ongoing monitoring pursuant to ch. 943, F.S.
Total state and federal costs per screen	Varies; for example, \$22.75 for DCF and \$40.50 for school district personnel and contractors. This does not include any applicable retention fees, and livescan vendors may charge an additional fee.	\$38.75 for employees; \$31.50 for volunteers. This does not include any applicable retention fees, and livescan vendors may charge an additional fee.

## WHY DID THE LEGISLATURE CREATE THE CARE PROVIDER BACKGROUND SCREENING CLEARINGHOUSE?

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida and are statutorily subject to background screening. However, due to restrictions placed on the

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<sup>&</sup>lt;sup>4</sup> s. 435.02(2), F.S., defines "employee" as "any person required by law to be screened pursuant to this chapter, including but not limited to, persons who are contractors, licensees, or volunteers." For instance, s. 985.655(3)(a) requires personnel staffing DJJ contractors' programs for children to have a level 2 screening.

sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting. This proves frustrating and costly to those involved.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given "program." Since each state regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate "program" areas and sharing of results has not been allowed. The purpose of the Clearinghouse is to create a single "program" of screening individuals who have direct contact with vulnerable persons. The Clearinghouse was created under AHCA in accordance with agreements with the FBI about the use and sharing of criminal history information.<sup>5</sup>

## WHAT IS THE SCHEDULE FOR AGENCIES' JOINING THE CLEARINGHOUSE?

The Care Provider Background Screening Clearinghouse (Clearinghouse) was first implemented January 1, 2013. Dates agencies joined or will join are:<sup>6</sup>

Agency	Date
Agency for Health Care Administration (AHCA)	January 1, 2013
Department of Health (DOH)	January 1, 2013
Managed Care Health Plans	November 1, 2013
Vocational Rehabilitation (DOE-VR)	May 2014
Medicaid Providers	March 2, 2015
Department of Children and Families (DCF)	Fully implemented by July 1, 2015 (summer camp and
	mental health providers are in now; others joining soon)
Agency for Persons with Disabilities	Fully implemented by July 1, 2015
Department of Juvenile Justice (DJJ)	Fall 2015
Department of Elder Affairs (DOEA)	Fall 2015

# OTHER THAN THROUGH THE CLEARINGHOUSE, ARE THERE ANY PROVISIONS FOR SHARING BACKGROUND SCREENING INFORMATION?

Section 402.3057, F.S., provides limited opportunities for certain individuals to avoid being rescreened:

Any provision of law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, and teachers and noninstructional personnel who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of

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<sup>&</sup>lt;sup>5</sup> Bill Analysis, HB 943 (2012), House HHS Committee, published 2/17/12.

<sup>&</sup>lt;sup>6</sup> Email from Molly McKinstry, Re: Care Provider Background Clearinghouse, received May 8, 2015.

perjury attest to the completion of such fingerprinting or screening and to compliance with the provisions of this section and the standards for good moral character as contained in such provisions as ss.  $\underline{110.1127}(2)(c)$ ,  $\underline{393.0655}(1)$ ,  $\underline{394.457}(6)$ ,  $\underline{397.451}$ ,  $\underline{402.305}(2)$ , and  $\underline{409.175}(6)$ , shall not be required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Based on authority in this section, DCF accepts a statement on school board letterhead that an individual has been level 2 background screened in lieu of conducting another screening. However, this does not operate in reverse—DOE cannot accept a letter from DCF attesting to a screening being done.

# HOW DO SCREENING STANDARDS FOR SCHOOL DISTRICT PERSONNEL COMPARE TO LEVEL 2 STANDARDS?

Section 1012.465, F.S. requires a level 2 background screening for noninstructional or contract personnel who meet certain requirements. Section 1012.56, F.S., requires that instructional personnel and administrators shall not have convictions for any disqualifying offenses listed in s. 1012.315, F.S. There is no opportunity for exemption from disqualification, unlike for Level 2 screenings. The level 2 screening standards are very similar to s. 1012.35, F.S., standards, though there are some differences. Additionally, s. 1012.32, F.S., all individuals hired by a school district must be of good moral character. According to DOE, most school districts use a Level 2 background screening to determine good moral character.

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<sup>&</sup>lt;sup>7</sup> For example, s. 1012.35, F.S., includes as disqualifying offenses misdemeanors under s. 787.025, relating to luring or enticing a child. It also includes felony offenses under s. 794.08, relating to female genital mutilation. It does not include Level 2 disqualifying offenses such as s. 782.071, relating to vehicular homicide, or s. 782.09, relating to killing of an unborn child by injury to its mother.