



The Florida Senate

Interim Project Report 98-62

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Committee on Ways and Means

Senator Donald C. Sullivan, Chairman

IMPROVING THE COST-EFFECTIVENESS OF MANDATORY BACKGROUND CHECKS

SUMMARY

During the last decade there has been a proliferation of statutorily required background checks for numerous programs, licenses, and other purposes. Some of these are paid for by the program and others are paid for by individual applicants. This project was initiated to determine whether duplicative or unnecessarily repetitive background screenings occur frequently enough to warrant review. As a result of discussions held with representatives of state agencies and other entities involved with a significant volume of background screenings, it was determined that there is unnecessary duplication and cost to both state agencies and private applicants. These instances occur mostly with regard to screening of school personnel and social service/health care entities. Remedies for this duplication can be made without changes to current law. School districts already have the authority to share screening results for applicants but have not yet adopted the policies and procedures to do so. Information may also be shared among other agencies provided that fingerprint cards submitted to the FBI cite all of the statutorily authorized purposes for which the non-criminal justice (civil purpose) criminal history checks are requested. Agencies with jurisdiction over the same applicants or entities being screened must collaborate on developing a joint listing of statutory citations to be listed on fingerprint cards for applicants they have in common. These same agencies must also develop procedures to notify each other when timely screening information is available for applicants, and to efficiently access each other's data. The Florida Department of Law Enforcement (FDLE) should continue to educate those agencies requesting screenings on how sharing of information is currently permissible, and should do this through both written communications and one-day seminars. FDLE should also continue to research methods and costs for further automating civil criminal history checks,

working collaboratively with other state agencies to develop proposals and supporting budget requests.

BACKGROUND

Chapter 435, Florida Statutes (F.S.), provides definitions, procedures, and general requirements for employment screening. Section 435.01, F.S., states: "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 apply."

Two "levels" of screening are defined. Level 1 screenings basically include a criminal history check through the Florida Department of Law Enforcement (FDLE), but are not limited to that information alone for purposes of employment screening. The FDLE database includes all criminal history for serious arrests in Florida submitted by local agencies. FDLE charges \$15 for a Level 1 background check. (The exceptions to this \$15 charge are that the Department of Children and Families' vendors, the Department of Juvenile Justice, and the Department of Elder Affairs' vendors may not be charged more than \$8 per check, pursuant to the 1998-99 General Appropriations Act proviso language associated with Specific Appropriation 1047.)

Level 2 screening is referred to in statute as a "security background investigation" which adds to the Level 1 screening the requirement for a set of fingerprints to be submitted to the Federal Bureau of Investigation (FBI) for use in searching for criminal history at the national level. The FBI charges \$24 for the level 2 fingerprint screening; this payment is made through FDLE. Persons subject to either of these statutorily required screenings must not have been found guilty of any of the enumerated violations in the chapter.

Many statutorily required background checks simply reference the requirements of Chapter 435, while others specify additional screening parameters such as the types of criminal offenses which disqualify an applicant from a specific type of licensure or employment, or such as an abuse registry screening in addition to the FDLE/FBI criminal history checks. In some cases, the FDLE and FBI criminal history information is only a part of a more expanded investigation conducted for the unique purposes of the program. One example of this is the Medicaid Program's contract with a private contractor to investigate service providers for fraud.

There are so many specific requirements for background screening in the statutes that a comprehensive listing of all the required classes of employees, license applicants, or other purposes requiring screening would be too lengthy to list here and would add no practical value to this report. Nevertheless, to help the reader grasp the breadth of this issue, some of those requiring screening include: law enforcement personnel; correctional system and other criminal justice/juvenile justice personnel and contractors; special process servers; concealed weapon license applicants; cardroom license applicants; motor vehicle dealer license applicants; employees of alarm system agents; private investigators and repossession agents; home solicitation sales permit applicants; secondhand dealers and metal recyclers; insurance agents and other insurance company employees; bail bond agents; school teachers and other non-instructional school system personnel, both public and private; numerous medical/health care entities, workers and professionals; certain personal service providers such as companions and sitters; mental health and substance abuse treatment workers; persons who work with developmentally disabled clients; child care and adult day care workers and volunteers; child-placing agencies; foster care workers, citizen review panel members and volunteers; guardians ad litem; Medicaid Program service providers; certain state employees such as Department of Lottery workers, Department of Insurance Treasury workers, and Department of Children and Families Abuse Hotline workers; and many other employees, license applicants and service providers.

This project was initiated for the purpose of identifying ways to streamline the process for this multitude of required background checks and to identify any instances of duplication that may be eliminated. However, the scope of this study was carefully limited so as not to revisit all of the policy decisions embodied in statute as to who should be screened, for what purposes,

how frequently, and to what standards. These policies, while certainly contributing greatly to the workload involved with screenings, should be examined on a case by case basis as needed by policy makers and staff who have expertise in the respective specialty areas.

METHODOLOGY

This project began with a review of Florida Statutes that require background screenings. Senate staff of the Committee on Children and Families, the Committee on Health Care, and the Committee on Criminal Justice conducted a search of their respective statutory jurisdictions to assist in this review. After cataloging a substantial portion of the innumerable statutory references, it became clear that it would be necessary to focus the project on some selected subset of these references. Using data provided by FDLE on the number of background checks conducted by identifiable groups, the highest volume groups were selected for further review. These identifiable groups were: miscellaneous licensing and employment checks through various state agencies; local school district checks; Department of Children and Families caretaker checks; and criminal justice employment checks. A number of contacts were made with the appropriate persons in these areas to discuss duplication or other issues relating to background screening. In addition, several meetings were conducted with staff from health, regulatory, and social service agencies to explore ways to streamline the screening process for persons or entities for whom those agencies hold overlapping responsibility. With the assistance of FDLE staff at all of those meetings, a number of resolutions were recognized. While some of those resolutions are currently being pursued by the agencies, this report will describe and affirm those steps that can be taken to eliminate some of the duplication.

FINDINGS

During calendar year 1997, FDLE responded to 1,492,565 requests for criminal history record checks. Of these, 199,365 were related to firearms checks, and 588 were from persons requesting their own records. Of the remaining 1,292,612 record checks, 396,145 were Level 2 screenings for applicants as required by Florida Statutes. For these screenings, fingerprint cards were submitted to the FBI for comparison with national records (except for those instances where FDLE had a "hit" for the fingerprint card in the state database, which obviated the need for the FBI to search their files).

Another 896,467 record checks were Level 1 screenings conducted as "Public Records" requests. These requests were made both for statutory requirements and for private purposes by companies or individuals. Unfortunately, FDLE does not have a way of identifying how many of these requested screenings were required by statute. Therefore, **the total number of background screenings conducted during 1997 to meet statutory requirements is not known.**

For the Level 2 screenings for applicants, FDLE was able to write a special program to estimate the number of screenings requested from various sources. The results showed that an estimated 120,654 requests were made by various state agencies for 24 purposes ranging from security checks for prospective employees to professional licenses and certifications. Another 82,612 requests were received from local school districts, mostly for non-instructional school personnel. The Department of Children and Families submitted approximately 81,888 requests for caretaker screenings. And finally, criminal justice agencies submitted approximately 28,846 requests for screening of prospective employees.

The Level 2 screenings are the more costly and time consuming (waiting for a response from the FBI for fingerprint card identification). Further, as will be discussed below, much of the duplication in screening has occurred due to restrictions on sharing the federal data. For these reasons, most of the discussions with contact persons focused on these screenings.

FDLE PROCESSING

Meetings were held with FDLE staff to discuss the processing of the background screenings. For automated requests for Florida criminal history checks, FDLE is maintaining a two day turnaround time. For the same requests made via manual correspondence, FDLE has a five day turnaround. The screenings which require submission of fingerprint cards for FBI identification typically have a split turnaround, in that the FDLE criminal history check results are forwarded to the requestor before the FBI response is received.

FDLE staff indicated that they have instituted several procedural changes to expedite processing of the fingerprint cards. First, all fingerprint cards received by FDLE are sent to the FBI via overnight express, reducing the processing time from FDLE.

Second, under a new agreement initiated by FDLE with the FBI in September of 1998, FDLE is accessing the federal National Crime Information Center (NCIC) and conducting a name search for each fingerprint card received (if no match containing an FBI record number is first found in the FCIC system). For any names found to have a criminal history on the NCIC, FDLE is flagging those fingerprint cards and requesting expedited review from the FBI. This procedure is expected to yield an average turnaround time of three to five days from the FBI. FDLE staff indicate that according to an FBI official 11 percent of the name searches conducted through the NCIC fail to find a match when one does exist. This occurs because the names are spelled incorrectly, a maiden or other name is used, or an intentional alias is provided. Conversely, 89 percent of the name searches do find a match where one exists, allowing FDLE to flag those fingerprint cards for expedited FBI identification to confirm the match. (Even though this preliminary name search may result in a "hit" on the NCIC, FDLE cannot inform the requesting agency of this possible match due to prohibitions in federal law. They must wait for the positive identification based on the fingerprint card to be made by the FBI.)

For all other fingerprint cards submitted to the FBI, FDLE has no data to indicate what the actual turnaround time is, since the results are sent from the FBI directly to the requesting agency, and not to or through FDLE. Anecdotal information received by FDLE from other agencies is that this turnaround can range from five days to two months. Many employers in Florida allow an employee to begin working once the FDLE results for Florida criminal history are received, but only in a conditional status until the FBI results are received. This varies, of course, depending on the sensitivity of the employment situation, and is controlled by law in some cases.

FDLE staff have also learned that in the near future the FBI will have the capacity to receive and return civil fingerprint checks via electronic means. This Integrated Automated Fingerprint Identification System (IAFIS) capability is projected to be in place by July 31, 1999. (Recently, however, FDLE was informed that electronic submission via an alternate system, the Electronic Fingerprint Image Processing System (EFIPS) could be possible as early as January of 1999. The EFIPS will simply transmit the fingerprint and the demographic

data; it will not provide any fingerprint search mechanism.)

For Florida entities involved in level 2 screenings, use of the IAFIS system would require access to equipment called a livescan which computerizes fingerprints as they are rolled on a horizontal glass screen, eliminating the need for inked cards. Each livescan currently costs around \$55,000, and FDLE has been spearheading implementation of these systems in local criminal justice agencies for several years now.

To expand the use of the FDLE system to applicant (civil) background screenings would require added computer hardware, programming, and personnel at the headquarters level, along with the funding to place the livescan units in strategic locations in the field for civil screenings. The current AFIS is programmed to not only identify fingerprints but also to create a criminal record to be maintained in a database. Use of this technology for applicant screenings would require not only more hardware for capacity and separate processing, but would also require extensive programming to process in a very different way from the criminal searches.

Along with the potential for an applicant AFIS, other relatively inexpensive equipment is now available which can scan hard copy fingerprint cards and send the image electronically, much like a facsimile machine. According to FDLE staff these Interim Distributed Imaging System (IDIS) boxes cost around \$15,000 each and could be used in out-posted facilities so that fingerprint cards could be scanned and transmitted to FDLE. However, developing a strategy around these IDIS boxes would not be as efficient as pursuing an applicant AFIS, because the images transmitted by these boxes would need to be printed out by FDLE and resent to the FBI, just as the hardcopy cards are now sent. In fact, IDIS is designed solely for storing and transferring information. It would have to be specifically programmed to print a fingerprint card and would not provide any search ability as is available through an AFIS.

SCHOOL DISTRICT BACKGROUND CHECKS

As mentioned above, FDLE estimates that 82,612 background checks were conducted during 1997 for school district employees. Staff contacted in the Office of Professional Practices within the Department of Education (DOE) indicated that the only significant issue relating to background checks is that of multiple

district applicants. In some school districts, applicants are not required to submit to the screening requirements until after a job offer is made, but in others, such as in Leon County, all applicants are required to pay for the level 2 screening and submit a fingerprint card upon application for employment. If these applicants also apply for work in other school districts, they may be required to pay again for the same screening.

At the request of Senate staff, DOE contacted eight school districts around the state to ask whether those districts accept the criminal history reports from other school districts for applicants. The school districts contacted were Broward, Dade, Duval, Escambia, Palm Beach, Pinellas, Santa Rosa, and Seminole. All of the districts indicated they allow individuals to begin working prior to receiving the results of the federal fingerprint check, yet none of these districts would accept the criminal history reports from another district. This lack of cooperative effort on the part of school districts creates unnecessary cost to applicants who may apply in more than one district.

In discussions with FDLE staff on this point, it was learned that all of the 67 school districts are deemed to be one entity for purposes of sharing criminal history information from both the state and federal level. In fact, FDLE communicated this in writing to school districts in a memorandum dated December 10, 1996, after approval by the FDLE legal staff. A school district could literally make a photocopy of the screening results received on an individual and send it to the appropriate personnel requesting it in another school district. Unfortunately, discussions with a few school system representatives have shown that school districts may not have been aware of this option, or may be hesitant to rely on such a procedure for fear of legal liability should errors occur. While the issue of timeliness of the background check may still need to be considered by each school district, (a previous check could be used for up to two years provided there is no break in service) there is no other reason why an applicant could not request that one school district use the results of his or her background check received by another school district.

SOCIAL SERVICE AND HEALTH CARE SCREENINGS

As cited above, the Department of Children and Families (DCF) submitted an estimated 81,888 requests for screening in 1997. Beyond this number, recent

legislation will swell the number of screenings conducted each year for social service and health care related personnel and entities.

During the 1998 legislative session, Committee Substitute for House Bills 3089 & 171 (CS/HB 3089&171 is now Chapter 98-248, Laws of Florida) was passed, and this law requires background screening for specified existing and prospective nursing home personnel in addition to those previously required by law. According to the bill analysis completed by staff of the House Committee on Elder Affairs and Long Term Care, 30,250 screenings will be required in the first year after October 1, 1998. Of these, 6,040 will be level 2 screenings. The new law also requires the Agency for Health Care Administration (AHCA) to develop and maintain a database of all screenings conducted and to act as the intermediary between nursing homes and FDLE. Nursing homes will submit screening requests to AHCA, who will then submit them electronically to FDLE, and will likewise return the FDLE response to the nursing home. According to staff of the House Committee on Elder Affairs and Long Term Care, this requirement was included in the law to help avoid duplicative screenings as nursing home employees move from one job to the next or when they apply for concurrent employment in more than one facility.

One option which could be researched would be that of FDLE submitting a response to both AHCA and to the requesting nursing home. As will occur already, AHCA would still be able to include that response in its database so that the next inquiry on the same individual would not have to generate a request to FDLE. But the requesting nursing home would not have to wait for AHCA to turn around the FDLE response. The efficacy of this option would have to be weighed against the increased workload it may entail for FDLE and against whether the time savings would be significant enough to warrant the added cost.

CS/CS/SB 714 also passed during the 1998 legislative session (now Chapter 98-171, Laws of Florida). This bill created mandatory background screening as of July 1, 1998: for licensure of certain laboratories, birth centers, abortion clinics, intermediate care facilities for the developmentally disabled, pediatric extended care centers, mental health crisis stabilization units or residential treatment facilities, any facility operated under Chapter 395, Florida Statutes (hospitals, ambulatory surgical centers, and mobile surgical units), nursing homes, assisted living facilities, home health agencies, nurse registries, adult day care centers, hospice

centers, homes for special services, transitional living facilities, multiphasic health testing centers, and designated health care services; for certification of an organ procurement organization, a tissue bank, or an eye bank; for registration as a utilization review agent; and for employment in an adult day care center or a hospice. AHCA is responsible for conducting a review of the effectiveness of these new requirements by January 1, 2001, and the new statutory screening provisions of this bill shall stand repealed on June 30, 2001 unless reenacted by the Legislature.

Because of the number of background checks now required for social service and health care volunteers, professionals and service providers, and the interrelationships among all of these, several meetings were conducted jointly with representatives from DCF programs, AHCA, the Department of Health (DOH), and FDLE to identify issues related to screening.

While a number of issues were expressed by the participants, many were related to the new workload burdens faced by the agencies and on other internal problems with handling the screening process. One issue, however, which relates directly to the focus of this study is that of separate agencies sharing the results of a screening with each other for the same applicant. The most prevalent instance of duplicated cost and effort occurs when a person or entity is licensed by one agency, and within the same time frame enrolls as a service provider in the Medicaid program. Medicaid program staff indicated that approximately 250 providers are being screened each month. Currently, the applicant must pay twice for the screening: once at licensure, and again at Medicaid enrollment. As a result of the meetings held with agency staff and FDLE, it was determined that this duplication could be eliminated without a change of law. FDLE staff advised the agencies that they may indeed share the results of both the state and federal criminal history checks.

For the federal response, the information may be shared if the fingerprint card submitted to the FBI includes all of the statutory references for which the screening is being conducted. In other words, as long as each agencies' statutorily authorized purposes for the background check are listed on the fingerprint card, the FBI will allow those agencies to share copies of the results.

After some discussion on the issue of sharing results, the meeting participants agreed that an agency responsible for the initial licensure of an individual or

entity should make the first request for the background screening and then set up procedures to share the results with other agencies having subsequent jurisdiction over that individual or entity, such as the Medicaid program. The first step in achieving this type of coordinated process would be for the agencies having jurisdiction over the same entities to collaborate on developing a set of statutory references to be included on the fingerprint card submitted by the agency first engaged with the screened entity. That first agency would then need to develop procedures for transmitting the information to the other agencies involved, or making a database of screening results accessible to those agencies. Likewise, agencies who know that an individual or entity under their jurisdiction may have first contact with another agency would need to develop procedures to obtain timely and sufficient screening results from other agencies without requiring the applicant to pay for another screening request. Department of Health staff indicated that they are presently researching how they may obtain screening results from other existing sources without requiring a rescreening. One exception to this general scenario occurs where one agency is authorized to receive Florida sealed information or notification of expunged information and another agency is not. Special procedures would need to be followed by the two agencies in these instances with the assistance of FDLE.

Also as a result of the meetings with health and social service representatives, FDLE concluded that a revision to the standard user agreement between FDLE and any agency requesting level 2 screening results should be made to clarify the circumstances under which agencies may share the information. While this by itself may spur agencies to eliminate duplicative screening requirements, it may also be useful to have FDLE hold informational seminars for all agencies submitting screening requests.

OTHER AGENCIES REQUESTING SCREENINGS

Contact was made with the Florida Sheriffs Association regarding background screening for local law enforcement personnel. No concerns or problems were identified. Board of Regents staff also assisted in contacting two universities deemed representative of the statewide system (Florida State University and the University of South Florida) to see if they had any concerns or issues concerning screening of State University System police personnel. Again no issues were raised.

The Inspector General's Office in the Department of Juvenile Justice (DJJ) estimates that DJJ submits over 18,000 background checks each year for employees and service providers. There is some overlap between DJJ and DCF in that some providers have concurrent contracts with both agencies. However, the DJJ screening procedures, published in October of 1995, specifically provide that DJJ will assume the lead in submitting the screening requests and will then share the results with DCF. In addition, the DJJ procedures include a waiver option for all providers who are also certified teachers, certified law enforcement officers, or sworn law enforcement officers. They may waive the final screening check requirement if they submit previous background screening results. The DJJ Inspector General's Office indicated that they were not aware of any issues of duplicated effort or other problems associated with background screenings.

Staff of the Department of Business and Professional Regulation (DBPR) reviewed all of the professions they license and found no significant "overlap" wherein a person or entity would generally obtain more than one license, requiring duplicative background screening. One exception mentioned, however, is that realtors sometimes apply for licensure as a Community Association Manager and have to be screened again, but DBPR staff indicated that this doesn't occur to a significant extent.

Staff of the Department of State reported one instance of duplication in background screening wherein an applicant must pay twice. This occurs when an applicant seeks licensure as a private investigator under Chapter 493, Florida Statutes, and already holds a license to carry a concealed weapon issued under Chapter 790, F.S. This particular instance of duplication, however, is specifically required by law. Paragraph 403.6115(17), F.S., states: "No person is exempt from the requirements of this section by virtue of holding a concealed weapon or concealed firearm license issued pursuant to s. 790.06." Other than this issue, Department of State staff reported no other duplicative screening issue. They also indicated that any repetitive screenings they conduct are also specifically required by law. The response time from the FBI is a concern, but future methods for electronic submission of fingerprint cards (discussed above) may address this.

The Department of Insurance Bureau of Agent Licensing reports no problems of duplication with their screening requests. In fact, they have procedures in place to exempt an individual agent applicant from the

screening if the Division of Insurer Services has completed a background investigation for the agent's corporate entity.

Staff of the Department of Corrections (DOC) are currently studying their background *investigation* procedures and requirements, but report no problems with the background *screening* portion of those investigations. The DOC background investigations conducted for all certified officers are very extensive, and field staff have voiced some concern regarding the work involved, the paperwork required, and the length of time to complete. However, DOC does maintain a database on both background investigations and drug tests conducted to avoid duplication of effort when employees move to different institutions.

RECOMMENDATIONS

1. Each of the 67 school boards should adopt policies and develop procedures to facilitate sharing of screening results for multiple district applicants. The DOE should initiate and help coordinate these efforts and should act as liaison between the individual school boards and FDLE.
2. Agencies with jurisdiction over the same applicants or entities being screened should collaborate on developing a joint listing of statutory authorizations to be stamped or printed on fingerprint cards for applicants they have in common. These same agencies should also develop procedures to notify each other when timely screening information is available for applicants, and to efficiently access each other's data. Procedures should also include asking each applicant if they have submitted to a background screening within a specified time frame so the agency will know of possible sources from which the results could be obtained.
3. The FDLE should ensure that revised user agreements with non-criminal justice entities are written and distributed which will clarify the information sharing options and requirements for background checks.
4. The FDLE should conduct one or more seminars in convenient locations for state agencies and other criminal history customers who submit fingerprint cards to educate the users on screening parameters and possibilities for sharing screening results. The scope of the conferences should be limited to discussions relating to how current screening requirements may be met in the most efficient and cost effective manner.
5. The FDLE should continue to explore the use of electronic submission and response for fingerprint cards for non-criminal justice background screenings, working collaboratively with other state agencies to develop proposals and supporting budget requests.
6. The 1999 Legislature should consider language in either substantive law or General Appropriations Act proviso requiring state agencies to collaborate on implementing interagency procedures for sharing screening results as recommended above, and to report to the Legislature their efforts and results.

COMMITTEE(S) INVOLVED IN REPORT (*Contact first committee for more information.*)

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