

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Committee

BILL: CS/CS/SB 2280

INTRODUCER: Education Committee, Criminal Justice Committee and Senator Argenziano

SUBJECT: High Risk Offenders

DATE: March 28, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cannon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>deMarsh-Mathues</u>	<u>Matthews</u>	<u>ED</u>	<u>Fav/CS</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>EA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill makes the following changes to the Jessica Lunsford Act provision requiring fingerprint-based background checks for contractors who are permitted on school grounds when students are present:

- Continues to subject certain school contractors to Level 2 background screenings;
- Provides a list of offenses that disqualifies a contractor from having access to school grounds when students are present;
- Exempts from certain fingerprint-based background checks those contractors who are under the direct supervision of persons who meet the screening requirements or who are separated from students by a fence and who have undergone a search of the state and national registry of sexual predators and sexual offenders;
- Exempts from fingerprint-based background checks certain instructional personnel who work with children with disabilities and who have undergone and meet current background screening requirements;
- Subjects exempt contractors to a search of the state and national registry of sexual predators and sexual offenders;
- Provides immunity from civil and criminal liability for those school districts and schools who share certain background check information in good faith;
- Clarifies that contractors who contract directly with schools are also required to undergo Level 2 background checks;
- Specifies that certain fingerprint-based background checks need to be performed every three years;
- Allows fingerprints to be taken by law enforcement, district or public school personnel, or a private entity;

- Requires the reporting to an employer or contractor within 48 hours if a contractor is charged with any disqualifying offense;
- Provides that willful failure to report charges for any disqualifying offense to an employer or a contractor is a 1st degree misdemeanor;
- Caps fees for the fingerprint-based background checks at no more than 30 percent of the total state and Federal Bureau of Investigation (FBI) costs;
- Requires costs to be borne by the district school board, contractor, or school;
- Requires suspension of contractors pending an appeal of a decision to deny access;
- Allows for contesting denial of access based on mistaken identity;
- Exempts from the background screening requirements law enforcement and certain personnel who are currently required to have Level 2 background checks for licensure, employment, or other purposes;
- Requires a person to report that he or she submitted to a fingerprint-based background check in another district and requires school districts to use a shared system to verify the information at no charge;
- Requires districts to accept certain fingerprint-based background check results from other districts; and
- Requires the Florida Department of Law Enforcement (FDLE) to implement a system for school districts to share the results of the background checks and provides FDLE with rulemaking authority.

In addition, the bill requires all driver's licenses or identification cards issued to sexual predators or sexual offenders to have on the front of the card the marking "775.21, F.S." for a person designated as a sexual predator and "943.0435, F.S." for a person designated as a sexual offender.

The bill provides that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings are not displayed or have been altered.

This bill amends sections 322.141, 322.212, 775.21, 943.0435, 944.607, and 1012.465, and creates sections 1012.467 and 1012.468 of the Florida Statutes. The bill also creates an unnumbered section of law.

II. Present Situation:

Legislative History on School Criminal History Background Checks

For the past three consecutive years the Legislature has increasingly required individuals who come in contact with students to submit to Level 2 background checks conducted by FDLE and the FBI.¹

Section 1012.32, F.S., (2003) required all instructional and noninstructional personnel hired to fill positions having direct contact with students to submit fingerprints for criminal background checks conducted by the FDLE and the FBI. The Department of Education interpreted the term

¹ Level 2 background screening standards (disqualifying offenses) are enumerated in s. 435.04, F.S.

“personnel” to include contractors. Accordingly, contractors having direct contact with students would have to meet Level 2 background checks (state and federal).

In 2004, the Legislature codified the Department of Education’s interpretation by specifically requiring school district contractors with direct student contact to undergo Level 2 criminal history records checks (state and federal). (s. 1012.465, F.S., (2004)).²

Section 1012.32, F.S., provides that persons “found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed, engaged to provide services, or serve in any position requiring direct contact with students.”

Section 21 of the Jessica Lunsford Act –Fingerprinting Contractors on School Grounds When Students are Present

In 2005, the Legislature enacted section 21 of the Jessica Lunsford Act (Chapter 2005-028, Laws of Florida). The legislation was passed following the assault and murder of 9-year-old Jessica Lunsford in Homosassa Springs, Florida. The crime was allegedly committed by a sexual offender who had worked as a subcontracted brick mason at Jessica Lunsford’s elementary school. While the act focused primarily on measures to track, detain, and monitor sexual offenders and predators, section 21 specifically related to individuals with access to school grounds when students are present.

Section 1012.465, F.S., was amended by the act to expand the law to require Level 2 background checks not only for contractors with direct student contact (as required by the 2004 law), but also for those who are on school grounds when students are present.

The practical impact of the legislation was to require school districts to conduct a fingerprint-based Level 2 background screening of contractors – such as a construction worker or soda machine vendor – who visit schools during classes and determine whether the individual has been convicted of a crime involving moral turpitude. The costs associated with the background screenings has been borne by the district, the contractor, or the individual. Parents or guardians who visit school to pick up their children were not addressed by the Lunsford Act – instead school districts adopt their own policies for screening visitors. Volunteers were also not addressed in the Jessica Lunsford Act, although Chapter 2004-81, Laws of Florida, required government entities who use volunteers at places where children regularly congregate to conduct a search against the sex offender registry maintained by FDLE.³

Section 21 of the Jessica Lunsford Act -- Implementation Issues

After the passage of the Jessica Lunsford Act, the district school boards, the Department of Education, and the Florida Department of Law Enforcement experienced implementation problems associated with the unexpected volume of contractors who needed Level 2 background checks. Numerous complaints arose from school officials, vendors, contractors, subcontractors, charter bus drivers, athletics officials, photographers, visiting performers, class ring sales personnel, engineers, architects, utility workers, food and health service personnel, and other impacted contractors. Many of the complaints were as follows:

² Section 9, Chapter 2004-295, L.O.F.

³ Section 943.04351, F.S.

- School districts expressed concerns about the volume of fingerprinting/background screenings that were required under the new law;⁴
- School districts expressed liability concerns about sharing criminal history information and about failing to identify every possible person who is required to be fingerprinted;
- Contractors who work in multiple school districts opposed the costs for redundant Level 2 background checks;
- Contractors opposed the additional processing fees imposed by the school districts as well as the wide variability in the Level 2 background check fees charged by the different school districts;⁵
- Contractors and school officials questioned whether Level 2 background checks were necessary for those contractors (for example, the express mail delivery person or person who refilled the soda machine) who go on school grounds for short or incidental visits or who are directly supervised for the duration of their visit; and
- Contractors who are already required to undergo a Level 2 background screening for the purpose of their employment, certification, or licensure expressed frustration over being required to undergo redundant Level 2 background checks.

Contractors expressed frustration over the different screening standards and moral turpitude standard.⁶ Because there is no statutory definition of moral turpitude, each school district determines whether or not a contractor with a criminal history should be allowed on school grounds. Contractors claim that this school district discretion results in inconsistency in banning a contractor from school grounds – a claim that may be particularly burdensome for contractors who work in multiple districts. Some complaints also arose about contractors being inappropriately banned from school grounds for minor crimes or for crimes committed decades ago.

Shortly after the effective date of the act, the Florida Department of Education (DOE) issued in August of 2005 a technical assistance paper to help the school districts in implementing the provisions of the act.⁷ The technical assistance paper encouraged districts to share Level 2 background check results with other public school districts to reduce the time and fiscal impact on certain contractors who may be providing services in multiple districts.

Also in August of 2005, the President of the Senate and Speaker of the House of Representatives formally requested Commissioner Tunnell with FDLE to implement an Internet-based system to allow for Level 2 background check results provided to the school districts to be shared with

⁴ FDLE experienced a 196 percent increase for the month of September, and a 178 percent increase for the month of October for fingerprint submissions from school districts compared to 2004.

⁵ According to a survey of school districts conducted by the Joint Committee on Intergovernmental Relations in December of 2005, 16 school districts charged contractors \$67 or higher for the background screenings – representing a “profit margin” or processing fee in excess of 30 percent. The fees ranged widely with 4 districts charging over \$90. School districts reported that these fees were used to cover district administrative costs and contractor identification badges.

⁶ According to a survey of school districts conducted by the Joint Committee on Intergovernmental Relations in December of 2005, 31 districts reported the use of Level 2 screening standards (19 using only Level 2 screening standards and 12 using a combination of Level 2 standards, a moral turpitude standard and possibly another standard), 7 districts reported using only a moral turpitude standard, and 5 districts reported the use of a standard other than moral turpitude or Level 2 standards.

⁷ See <http://info.fldoe.org/docushare/dsweb/Get/Document-3151/k12%2005-107a>

other school districts. FDLE developed the Florida Shared School Results (FSSR) system which became available to school districts on September 30, 2005.⁸ After a school district requests a Level 2 background check from FDLE, the department posts the results on a secure website that is accessible to the school districts. Other school districts can then access the results and view the same criminal history record that was received by the original school district. The information is searchable by name, social security number, or submitting agency. This new system was designed to lessen the redundancy of background screenings for contractors who do business with multiple school districts.

Instructional Personnel

Section 1012.32, F.S., subjects instructional employees and contractors to Level 2 background checks upon employment or engagement to provide services and every five years thereafter. Instructional personnel include kindergarten through grade 12 staff members whose functions include the provision of direct instructional services to students or who provide direct support in the learning process of students (e.g., classroom teachers, student personnel services personnel, other instructional staff, and education paraprofessionals).⁹

Direct Services Providers and Child Care Personnel

Section 393.0655, F.S., relating to persons with developmental disabilities, requires direct service providers to undergo Level 2 background screening, employment history checks, and local criminal history records checks. Direct service providers are individuals who are unrelated to their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under s. 393.067, F.S., and any other person, including volunteers, who provide care or services. It also includes individuals who have access to a client's living areas or who have access to a client's funds or personal property.

The law provides that every individual employed in a position for which employment screening is required must submit, within five working days after beginning employment, to the employer complete information necessary to conduct a screening.¹⁰ The law is silent on the frequency of background screening that must be conducted under s. 393.0655, F.S.

Section 402.305, F.S., provides licensure standards that are applicable to child care facilities, regardless of the origin or source of fees used to operate the facility or the type of children served. Child care personnel who are subject to Level 2 background screening include all owners, operators, employees, and volunteers working in a child care facility.¹¹ It also includes persons who work in child care programs, which provide care for children 15 hours or more each week in public or nonpublic schools, summer day camps, family day care homes, or those programs otherwise exempted under s. 402.316, F.S. It does not include public or nonpublic school personnel who are providing care during regular school hours, or after hours for activities related to a school's program for grades kindergarten through 12.

⁸ See http://www.fdle.state.fl.us/alerts/jla_schools.html

⁹ Section 1012.01(1), F.S.

¹⁰ Section 435.05, F.S.

¹¹ Section 402.302(3), F.S.

Screening is valid for five years, at which time a statewide re-screening must be conducted, including an FDLE criminal history records check and a local criminal records check. In addition, child care personnel must be re-screened following a break in employment in the child care industry which exceeds 90 days.¹²

Sexual Predator Registration

As of November 17, 2005, there were 5,492 sexual predators in the state registry. Section 775.21, F.S., provides that a person convicted of an enumerated sexual offense must be designated a “sexual predator.” Specifically, a person must be designated a sexual predator if he or she has been convicted of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of one of the following offenses:
 - a. Kidnapping or false imprisonment where the victim is a minor and the defendant is not the victim’s parent;
 - b. Sexual battery;
 - c. Lewd or lascivious offenses;
 - d. Selling or buying a minor for child pornography; or
 - e. A violation of a similar law of another jurisdiction.
2. Any felony violation of one of the following offenses where the offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, one of the following offenses:
 - a. Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim’s parent;
 - b. Sexual battery;
 - c. Procuring a person under the age of 18 for prostitution;
 - d. Lewd or lascivious offenses;
 - e. Lewd or lascivious battery on an elderly person;
 - f. Promoting sexual performance by a child;
 - g. Selling or buying a minor for child pornography; or
 - h. A violation of a similar law of another jurisdiction.

If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections (DOC), or is not in the custody of a private correctional facility, and the predator establishes or maintains a residence in this state, the predator must initially register in person at a FDLE office, or at the sheriff’s office in the county of residence within 48 hours after establishing permanent or temporary residence.

Within 48 hours of initial registration, a sexual predator who is not incarcerated and who resides in the community, including a predator under DOC supervision, must register at a driver’s license office of the Department of Highway Safety and Motor Vehicles (DHSMV) and present proof of registration, provide specified information, and secure a driver’s license, if qualified, or an identification card. Each time a sexual predator’s driver’s license or identification card is subject to renewal, and within 48 hours after any change in the predator’s residence or name, he or she must report in person to a driver’s license facility of the DHSMV and is subject to

¹² Rule 65C-22.006(5)(d), F.A.C., relating to child care standards.

specified registration requirements. This information is provided to FDLE which maintains the statewide registry of all sexual predators and sexual offenders (discussed further below). The department maintains a searchable web-site containing the names and addresses of all sexual predators and offenders as well as a toll-free telephone number.

Registration procedures are also provided for sexual predators who are under federal supervision, in the custody of a local jail, designated as a sexual predator (or another sexual offender designation) in another state and establish or maintain a residence in this state, or are enrolled, employed, or carrying on a vocation at an institution of higher education in this state.

Procedures are provided for notifying communities about certain information relating to sexual predators, much of which is compiled during the registration process. A sexual predator must report in person every six months to the sheriff's office in the county in which he or she resides to reregister.

A sexual predator's failure to comply with registration requirements is a third degree felony. A sexual predator who has been convicted of one of a list of enumerated offenses when the victim of the offense was a minor is prohibited from working or volunteering at any business, school, day care center, park, playground, or other place where children regularly congregate. A violation of this provision is a third degree felony.

Sexual Offender Registration

As of November 17, 2005, there were 30,583 sexual offenders in the state registry. The distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. Specifically, a sexual offender is a person who has been convicted of one of the following offenses and has been released on or after October 1, 1997:

- a. Kidnapping, false imprisonment, or luring or enticing a child where the victim is a minor and the defendant is not the victim's parent;
- b. Sexual battery;
- c. Procuring a person under the age of 18 for prostitution;
- d. Lewd or lascivious offenses;
- e. Lewd or lascivious battery on an elderly person;
- f. Promoting sexual performance by a child;
- g. Selling or buying a minor for child pornography;
- h. Selling or showing obscenity to a minor;
- i. Using a computer to solicit sexual conduct of or with a minor;
- j. Transmitting child pornography;
- k. Transmitting material harmful to minors; or
- l. Violating a similar law of another jurisdiction.

A sexual offender is required to report and register in a manner similar to a sexual predator. Failure of a sexual offender to comply with the registration requirements is a third degree felony.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 322.141, F.S., effective August 1, 2006, to provide that all driver's licenses or identification cards issued or reissued to sexual predators or sexual offenders must have on the front of the card the following:

- For a person designated as a sexual predator under s. 775.21, F.S., the marking "775.21, F.S."
- For a person subject to registration as a sexual offender under s. 943.0435, F.S., the marking "943.0435, F.S."

Section 2 of the bill amends s. 322.212, F.S., effective August 15, 2006, to provide that it is unlawful for any person to have in his or her possession a driver's license or identification card upon which the sexual predator or sexual offender markings required by s. 322.141, F.S., are not displayed or have been altered.

Sections 3, 4, and 5 of the bill amend the sexual predator and sexual offender statutes to specify that the driver's license or identification card a predator or offender is required to secure must comply with s. 322.141(3), F.S.

Section 6 of the bill amends s. 1012.465, F.S., to expand the definition of contractual personnel to include contracts with a school. Current law specifies that contractual personnel include a vendor, individual, or entity under contract with a school district. This change in law, if enacted, will have the practical effect of clarifying that contractors who contract directly with schools, such as athletic officials, are required to undergo background screening unless exempted.

Section 7 of the bill creates a new section of law in the Florida School Code governing the permitted access to school grounds when students are present by noninstructional contractors. Subsection (1) of the newly created statute defines the terms "noninstructional contractor," "convicted," and "school grounds." The bill modifies the definition of contractor to include any vendor, individual, or entity under contract with a school or school board who receives remuneration for services performed for the school or district, but who is otherwise not considered an employee of the school district. It also includes any employee of a contractor who performs services for the school district or school under the contract and any subcontractors.

Subsection (2)(a) provides the process for the fingerprint-based background screening of contractors, enumerates the responsibilities of the school district and the contractor being screened, and prohibits individuals convicted of certain crimes from having access to school grounds. The school districts are required to screen the results of the criminal history check using the disqualifying offenses and promptly provide the results to the shared system through a secure Internet website.

The bill specifies that the cost of the criminal history check may be borne by the district school boards, the school, or the contractor. The bill also caps the fees of the background screenings to no more than 30 percent of total state (FDLE) and FBI costs.

Subsection (2)(a) of the bill specifies that state and federal criminal history checks need to be performed every three years and that fingerprints may be taken by either an authorized law enforcement agency or an employee of a school district, school, or a private entity who is trained to take fingerprints.

Subsection (2)(b) requires the school districts to use the shared system and to not charge an individual an additional fee for verifying the results of his or her criminal history check.

Subsection (2)(c) provides the following list of offenses that disqualifies a contractor from having access to school grounds when students are present:

- Any offense in s. 943.0435(1), F.S., relating to the registration of individuals as sexual offenders;¹³
- Sexual misconduct with certain developmentally disabled clients;
- Sexual misconduct with certain mental health patients;
- Terrorism;
- Murder;
- Kidnapping;
- Lewdness and indecent exposure;
- Incest; or
- Abuse, aggravated abuse, and neglect of a child.

Subsections (3) and (4) requires that contractors who have been convicted of a disqualifying offense be immediately suspended from having access to school grounds unless the contractor has had a full pardon or has had his or her civil rights restored.

Subsection (5) requires the school district to notify a contractor when access to school grounds has been denied. The section of the bill also specifies that the only basis for contesting the denial of access is proof of mistaken identity.

Subsection (6) requires the contractor to report to his or her employer within 48 hours if charged with any disqualifying offense. A contractor who willfully fails to report charges for any disqualifying offense to an employer or to a contractor commits a 1st degree misdemeanor.

Subsection (7) requires FDLE to implement a system for school districts to share the results of criminal history checks. The bill also provides FDLE with rulemaking authority and provides immunity from civil and criminal liability for those persons who share information in good faith.¹⁴

¹³ Kidnapping where victim is a minor and the defendant is not the victim's parent, false imprisonment, luring and enticing a child, sexual battery, procuring a person under age 18 for prostitution, lewd or lascivious offenses, lewd or lascivious battery on an elderly person, promoting sexual performance by a child, selling or showing obscenity to a minor, using a computer to solicit sexual conduct of or with a minor, transmitting child pornography, transmitting material harmful to minors, selling or buying minors.

¹⁴ An employee of a school district, a charter school, a lab school, a charter lab school, or the Florida School for the Deaf and the Blind.

Section 8 of the bill creates a new section in the Florida School Code, which exempts certain individuals from the fingerprint-based criminal history checks.

Subsection (1) of the newly created statute defines the term “noninstructional contractor.”

Subsection (2) requires school districts to exempt the following contractors from the fingerprint-based background screening requirements:

- Contractors who are under the direct supervision (physical presence and within line of sight) of persons who meet the screening requirements;
- Contractors who are required to undergo a Level 2 background screening process for licensure, employment, certification, or other purposes;
- Law enforcement officers who are assigned to or dispatched to school grounds by their employer; and
- Contractors who remain at a separate and secure site that has perimeter fencing on school grounds.

If a contractor is no longer under the direct supervision of a person who meets the screening requirements, he or she is not permitted on school grounds when students are present until the screening requirements are met.

Subsection (3) requires contractors who are exempt from fingerprint-based criminal history background checks to be subject to a search of the state and national registry of sexual predators and sexual offenders. A contractor who is identified as being a registered sexual predator or sexual offender shall not be permitted on school grounds when students are present.

Subsection (4) requires districts to accept background screening results from other districts and not subject any contractor to additional criminal history background screenings.

Section 9 of the bill exempts from the screening requirements in s. 1012.32, F.S., instructional personnel who work with children with disabilities and who have already undergone and meet Level 2 background screening requirements. These individuals are exempt if they have completed the criminal history check within five years of having direct contact with students, are re-screened every 5 years, and meet the Level 2 standards.

Section 10 of the bill provides an effective date of July 1, 2006, except for the amendments to s. 322.141, F.S., (August 1, 2006), and s. 322.212, F.S., (August 15, 2006).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although not quantifiable, contractors will financially benefit because of the following provisions in the bill that: exempt contractors who are directly supervised from undergoing the more expensive Level 2 background screening; require a fee cap; prohibit redundant screenings by requiring school districts to share results; and allow contractors to choose which qualified entity they use to submit fingerprints.

C. Government Sector Impact:

Exemptions from Fingerprint Requirements:

Although not quantifiable, the provision in the bill that exempts contractors who are directly supervised from undergoing the more expensive Level 2 background screening may provide a less burdensome volume of cases for school districts that are required to process the criminal history background checks. School districts may also experience a reduction in workload as a result of the exemption for instructional personnel who meet the background screening requirements under ss. 393.0655 or 402.305, F.S.

Likewise, the provision in the bill that exempts contractors who are directly supervised from undergoing the more expensive Level 2 background screening may also reduce the revenue received by the FDLE in processing the criminal history background checks.

Cap on Fees

The bill limits the amount of fees that a school district is permitted to charge for a federal and state criminal history check of a contractor if a fee is required by the district. Currently, the combined fee for the FDLE and FBI check is \$47, \$23 for the FDLE check and \$24 for the FBI check. The bill provides that any fee for a check of a state and federal criminal history that is required by a school district under the newly created s. 1012.467, F.S., may not exceed the sum of fees charged by FDLE and the FBI, plus an additional administrative fee specified by the school district, which may not exceed 30 percent of the sum of the other specified fees. This provision could reduce the revenue generated by school districts from the additional fees above the 30 percent margin.

Driver's License Designation:

The Department of Highway Safety and Motor Vehicles estimated that the provisions of the bill would cost \$211,312.00 during the first year. The projection is based upon the following calculations and presented for two different postage options:

Registered Sexual Predators: 3,708
 Registered Sexual Offenders: 27,023
 Total: 30,731

Option 1	Card Cost \$1.56	\$47,940.00
	With Standard Postage (1st Class)	\$ 9,465.00
	Programming	\$30,000.00
	Total	\$87,405.00
Option 2		
	Card Cost \$1.56	\$47,940.00
	With Standard Postage (Certified/Return Receipt)	\$133,372.00
	Programming	\$30,000.00
	Total	\$211,312.00

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
