

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 428

INTRODUCER: Senators Rich and Aronberg

SUBJECT: Human Services Personnel

DATE: March 8, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Pre-meeting
2.	_____	_____	HR	_____
3.	_____	_____	HA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 428 creates Protecting Florida’s Most Vulnerable Citizens Act.

The bill amends background screening standards for applicants or employees of child care or assisted living facilities, and revises agency standards for granting exemptions from disqualification for employment.

It requires that all child welfare services staff must demonstrate core competency by earning and maintaining child welfare certification. The Department of Children and Family Services (DCF) is required to designate a credentialing entity to administer the certification process.

SB 428 is effective July 1, 2010.

This bill substantially amends ss. 402.305, 402.30501, 402.40, 411.01, 429.14, 429.174, 435.05, 435.07, 1002.55, 1002.57, and 1002.59, Florida Statutes:

II. Present Situation:

Currently, Florida has one of the largest vulnerable populations in the country, with over 25 percent of the state’s population 65 and older, and many children and disabled adults. These vulnerable populations require special care as they are at an increased risk of abuse.

In 1995, the Florida Legislature determined it necessary to have criminal history background checks conducted to protect vulnerable persons and so created standard procedures for the screening of prospective employees. Chapter 435, F.S., outlines the standards for “Level 1” and

“Level 2” employment screening. The Florida Department of Law Enforcement (FDLE) provides criminal history checks to the employer.

In September, 2009, the Fort Lauderdale Sun Sentinel published a series of articles following its six month investigation of Florida's background screening system for caregivers of children, the elderly and disabled.¹ The newspaper obtained screening databases from the Agency for Health Care Administration (AHCA), the Department of Children and Families (DCF), and Broward County. Among its findings:

- Since 1985, DCF has granted exemptions to more than 6,500 people with criminal records to work in child care, substance abuse and mental health counseling, and with the disabled.
- Lack of proof that a nationwide criminal check on employees had been conducted is the most frequent violation found by state inspectors in day care centers. Screening problems are among the four most common violations in assisted living facilities, adult day cares, and nursing agencies. Home health agencies and nursing homes are also cited, but less frequently.
- Florida seniors and disabled adults have been beaten, neglected, and robbed by caregivers with criminal records.
- More than 3,500 people with criminal records - including rape, robbery and murder - have been allowed to work with the elderly, disabled, and infirm through exemptions granted by the state over the past two decades.
- Hundreds of employees are working with vulnerable persons because employers failed to check their backgrounds or kept them on the job despite their criminal pasts.
- Facility owners and administrators require a nationwide FBI check, but not employees caring for patients. With some exceptions, they are checked only for crimes in Florida.
- For most businesses, employees can begin work before screening results were returned.
- At nursing homes, some employees had worked as long as seven years without having had a background check completed.

The newspaper performed analyses to determine how many exemptions were granted, who obtained them and for what crimes. FDLE crosschecked the newspaper's list of 8,750 people granted exemptions against its criminal database and found:

- 1,818 people were re-arrested, 1,067 of them on felony charges.
- The crimes included 3,123 felonies and 3,321 misdemeanors.
- The majority of the felonies were drug- and theft-related but also included child molestation, sex offenses, murder, arson, extortion, kidnapping, and cruelty toward a child.²

¹ Sun Sentinel. *Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes*. The entire series of articles may be found at <http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html,0,3829069.htmlstory> (Last visited March 3, 2010).

² A full report of the FDLE results can be found at <http://www.sun-sentinel.com/media/acrobat/2009-09/49418865.pdf> . (Last visited March 3, 2010).

Background Screenings

The provisions of ch. 435, F.S., apply whenever a Level 1 or Level 2 screening for employment is required by law. Screenings can be done following Level 1 or Level 2 standards, depending on what direction is provided in a specific statute.³

Level 1 screenings⁴ are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through enforcement agencies. Anyone undergoing a Level 1 screening must not have been found guilty of any of the offenses enumerated in s. 435.03(2), F.S.

A Level 2 screening⁵ consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigations (FBI) databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the offenses for Level 1 or the offenses enumerated in ss. 435.04(2) and (4), F.S..

Additionally, pursuant to s. 435.04(3), F.S., the security background investigations conducted for employees and contractors of the Department of Juvenile Justice (DJJ) must ensure that no persons have been found guilty of any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- Section 784.07, relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers.
- Section 810.02, relating to burglary, if the offense is a felony.
- Section 944.40, relating to escape.

The Department of Juvenile Justice may not remove a disqualification from employment to any person who is disqualified for any offense disposed of during the most recent 7-year period.

There are two additional requirements that are unique to the Level 2 screening process. Employees undergoing a Level 2 screening are required to inform an employer immediately if they are convicted of any of the disqualifying offenses listed in the statute during the time they are employed. In addition, each employer that is licensed by a state agency must attest upon each renewal that it is in compliance with the screening provisions.⁶

In addition to Level 1 and Level 2 disqualifying offenses, during the 2009 Legislative Session additional disqualifying offenses were added to s. 408.809(5), F.S., for screening done under the purview of AHCA.⁷ These offenses apply to both Level 1 and Level 2 screenings.

³ A Level 1 screening is referred to as a “background screening” in s. 435.03, F.S., while a Level 2 screening is referred to as a “security background investigation” in s. 435.04, F.S.

⁴ Level 1 screenings are outlined in s. 435.03, F.S.

⁵ Level 2 screenings are outlined in s. 435.04, F.S.

⁶ *Id.* at s. 435.04(5), F.S.

⁷ Section 50, Chapter 2009-223, Laws of Florida

Exemptions from Disqualification

If a person is disqualified from applying for employment in a facility through a Level 1 or Level 2 background screening, ch. 435, F.S., provides a mechanism for those individuals to pursue an exemption from disqualification. An agency may grant an exemption from disqualification to any applicant or employee otherwise disqualified for:

- Felonies committed more than three years prior to the date of disqualification;
- Misdemeanors;
- Offenses that were felonies when committed but are now misdemeanors;
- Findings of delinquency; or
- Commissions of acts of domestic violence as defined in s. 741.30.⁸

Once an application for exemption is received, the agency determines if a hearing is warranted. A notice is sent to the applicant to request a personal interview. The informal interview is typically conducted by telephone. The review officer poses questions regarding the applicant's criminal/abuse history, work history, and his or her motivations for seeking employment. A review committee decides whether to grant or deny the application based on this interview, and the applicant is notified by mail in 14 days.⁹

Pursuant to s. 435.07, F.S., an applicant seeking an exemption must demonstrate by clear and convincing evidence that they should not have been disqualified. The applicant must give sufficient evidence of rehabilitation, which could include:

- An explanation of the circumstances surrounding the criminal incident for which an exemption is sought,
- The time period that has elapsed since the incident,
- The nature of the harm caused to the victim,
- The history of the employee since the incident, or
- Any other evidence indicating that the employee will not present a danger in continued employment.¹⁰

If one agency grants an exemption, it is not binding on other agencies.¹¹

Since 2006, nearly 44 percent of the total applications for exemption processed by AHCA have been granted. The Sun Sentinel reported that one in five people granted exemptions were re-arrested after having been granted the exemption.¹²

⁸ Section 435.07(1), F.S.

⁹ A decision is contestable under the traditional administrative appeal process found in chapter 120, F.S.

¹⁰ Section 435.07(3), F.S.

¹¹ Section 435.07(5), F.S.

¹² Sun Sentinel. *Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes*, <http://www.sun-sentinel.com/news/sfl-trust-florida-criminals-child-elder-care-html.0,3829069.htmlstory> (Last visited March 3, 2010).

Child Welfare Certification

Section 402.40, F.S., establishes the statutory framework for DCF's child welfare training. The department is required by this section to provide a systematic approach to staff development and training for persons providing child welfare services using child welfare training academies across the state. This includes direct care, legal, and supervisory staff, as well as support staff with direct contact with the children and families in the dependency system, who may provide intake, preprotective services, protective investigations, protective services, foster care, shelter and group care, adoption, related services, counseling, supervision, or any custody and care service. The training requirements of s. 402.40, F.S., apply to both department staff and staff of contract providers offering these services. All dependency staff are required to successfully complete a training program that is specific to their areas of responsibilities.¹³

The Department contracts with Florida's Center for the Advancement of Child Welfare Practice at the Louis de la Parte Florida Mental Health Institute at the University of South Florida (the Center). It provides needed information and support to identify, expand, and transfer expert knowledge and best practices in child welfare case practice, direct services, management, finances, policy, and organizational development to child welfare and child protection staff throughout Florida. The Center serves Child Protective Investigation professionals of DCF and various Sheriff's Offices, Child Welfare Legal Services provided by DCF and the Attorney General or State's Attorney Offices, and Community-Based Care Lead Agencies.¹⁴

A Child Welfare Training Trust Fund is established in s. 402.40(4), F.S., for the purpose of funding a comprehensive system of child welfare training. Funds deposited into this fund include \$1.00 for every noncriminal traffic infraction collected pursuant to ss. 318.14(10)(b), or 318.18, F.S., \$1.50 for every certificate of birth request pursuant to s. 382.0255, F.S., and \$5.00 for every dissolution of marriage petition filed. In addition, the department receives funding from the Title IV-E Foster Care Grant, Title IV-E Adoption Assistance Grant, Medicaid Administration Grant, and Temporary Assistance for Needy Families (TANF) grant for child welfare training.

Section 402.731(1), F.S., authorizes DCF to create certification programs for its employees and contract providers. The child protection system training developed to meet these requirements includes a pre-service training program for new child protection staff. Specific training is also offered for supervisors and foster parents, or district staff to provide to foster parents. Advanced training is available on topics such as sexual abuse, interviewing, domestic violence, cultural competence, substance abuse, and casework practice.

¹³ Section. 402.40(3), F.S.

¹⁴ See The Center for the Advancement of Child Welfare Practice, available at <http://centerforchildwelfare.fmhi.usf.edu/Pages/Default.aspx> (last visited March 8, 2010).

III. Effect of Proposed Changes:

The bill provides a short title: Protecting Florida's Most Vulnerable Citizens Act.

Background Screening:

- It amends ss. 402.305 to require that a child care owner or operator must provide DCF with the results of the level 2 screening before the applicant may begin employment at the facility. If the screening results show a disqualifying offense, he or she may not be hired until an exemption from the disqualification is applied for and granted. DCF is barred from granting an exemption to a person working with children or the developmentally disabled if he or she has a record for any offense of a violent or sexual nature against a child or vulnerable adult.
- The bill amends ss. 429.14 and 429.174, F.S., to prohibit AHCA from granting an exemption to a person seeking to be employed by an assisted living facility if he or she has a record for any offense of a violent or sexual nature against a child or vulnerable adult. The facility may not hire any person whose screening results disclose a disqualifying offense until the person applies for and is granted an exemption by the appropriate licensing agency.
- Section 429.174 is further amended to require that owners or administrators of assisted living facilities report the results of the screening to the appropriate licensing agency before the applicant may begin employment at the facility. If the screening results show a disqualifying offense, the person may not be hired until an exemption from the disqualification is applied for and granted. The bill prohibits AHCA from granting an exemption to a person seeking to be employed by an assisted living facility if he or she has a record for any offense of a violent or sexual nature against a child or vulnerable adult.
- It amends s. 435.05 to require that owners or administrators of child care or assisted living facilities report the results of background screenings to the appropriate licensing agency before the applicant may begin employment at the facility, and adds this requirement as an exception to their annual license renewal affidavit of background screening compliance. If the screening results show a disqualifying offense, the person may not be hired until an exemption from the disqualification is applied for and granted.

Exemptions from Disqualification. The bill amends s. 435.07, F.S., to specify limitations on and processes for agencies to grant, deny, or revoke an exemption for disqualification.

- For employees disqualified from exemptions, licensing agencies are given specific authority to grant, deny or revoke general, limited, or conditional licenses.
- An exemption may be granted to a person who committed a felony more than five years prior to the date of disqualification for which the person has completed all terms and conditions of the sentence imposed.

- The five-year period (increased from three years in current law) does not apply to persons employed by or seeking employment with treatment providers who treat those aged 13 and older who are disqualified solely because of certain drug-related offenses.¹⁵
- A licensing agency is prohibited from considering an application for exemption from a person applying to work at a child care or assisted living facility until five years after the completion of all terms and conditions of the sentence imposed, whether in prison, or on probation or parole.
- Licensing agencies may adopt rules relating to conditions upon, and review or revocation of, exemptions from disqualification.
- Fingerprints may be retained by licensing agencies as provided by rule.
- At least every three years licensing agencies must review each exemption it granted to ensure that the employee's rehabilitation was effective and that no additional disqualifying offenses have been committed.
- If it is determined that an employee has committed an additional disqualifying offense, the agency must immediately revoke the exemption.

The bill amends ss. 402.30501, 411.01, 1002.55, 1002.57, and 1002.59, F.S., to conform cross-references.

It reenacts ss. 402.302(3); 402.3055(b), (d), and (g); 402.3057; 402.308(3)(d) and (4)(d); 402.313(3); 402.3131(2); and 409.1757, F.S., in order to incorporate the amendment to s. 402.305 made by this bill.

Child Welfare Certification

- The bill creates a definition of child welfare certification to mean a professional credential awarded to a person who demonstrates core competencies in any child welfare service area. The credential is awarded by DCF or a credentialing entity it designates. Core competency is defined to mean having the knowledge, skills and abilities necessary to perform child welfare services.
- All persons providing child welfare services in this state are mandated to demonstrate core competency by earning and maintaining child welfare certification.
- The department is required to designate a credentialing entity to administer a statewide child welfare certification process, and is directed to collaborate with the entity to develop minimum standards for certification.
- The bill reiterates that any person providing child welfare services must demonstrate core competencies as evidenced by the child welfare certification.
- DCF must develop minimum trainer qualifications for the trainers in its Training Academies.

The bill provides an effective date of July 1, 2010.

¹⁵ The unlawful sale of, or manufacture, possession, delivery, or distribution of certain controlled substances; or the use, possession, manufacture, delivery, transportation, or advertisement of drug paraphernalia. *See* ss. 817.563, 893.13, and 893.147, F.S., respectively.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Current and prospective employees of child care and assisted living facilities will be affected by the changes in the disqualifying offenses and exemption process created by this bill. To the extent that it specifies uniform standards by which licensing agencies may address these exemptions, employers and employees may benefit.

All child welfare services staff will be required to obtain a child welfare certification credential. While not directly stated in the bill, it can be inferred that those who are unable to obtain a credential will be terminated from their employment.

It is unclear whether existing staff will be required to pay the costs associated with the training required to obtain the certification, or if those costs will be borne by their current employers.

C. Government Sector Impact:

Agencies are given specific rulemaking authority to adopt rules relating to conditions upon, and review or revocation of, exemptions from disqualification.

DCF is directed to designate one credentialing entity to administer the certification process. However, the bill does not specify the standards by which DCF should make that designation. If the legislature intends it to be through some sort of competitive process, DCF will need time to complete the solicitation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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