

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 156

INTRODUCER: Senator Smith

SUBJECT: After-school Programs

DATE: November 30, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	<b>Pre-meeting</b>
2.			CJ	
3.			AHS	
4.			RC	

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**I. Summary:**

SB 156 deletes legislative intent language and background screening requirements regarding certain not-for-profit membership associations. The bill defines the term “not-for-profit organization” in relation to after-school programs and exempts such organizations from regulations applied to child care facilities. The bill requires certain employees of such organizations to meet the requirements of Level 2 background screening and the Care Provider Background Screening Clearinghouse. The bill creates the Not-for-Profit After School Program Standards Study Group and directs the Study Group to provide the Governor and Legislature with a report by January 1, 2017.

**II. Present Situation:**

**Legislative Intent Related to Child Care and Child Care Facilities**

Florida law provides a regulatory framework designed to promote the growth and stability of the child care industry and to facilitate the safe physical, intellectual, motor, and social development of children.<sup>1</sup>

The Florida Legislature has stated its intent to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care.<sup>2</sup> To further that intent, laws were enacted to:

- Establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to approve county administration and enforcement to regulate conditions in such facilities through a program of licensing;<sup>3</sup> and to

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<sup>1</sup> Section 402.26, F.S.

<sup>2</sup> Section 402.301, F.S.

<sup>3</sup> Sections 402.301 - 402.319, F.S.

- Require that all owners, operators, and child care personnel shall be of good moral character.<sup>4</sup>

### **Child Care**

Child care is defined as the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.<sup>5</sup>

Child care is typically thought of as care and supervision for children under school age. However, the definition of child care does not specify a maximum or minimum age and Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- The term “indoor recreational facility” means an indoor commercial facility which is established for the primary purpose of entertaining children in a planned fitness environment through equipment, games, and activities in conjunction with food service and which provides child care for a particular child no more than 4 hours on any one day. An indoor recreational facility must be licensed as a child care facility.<sup>6</sup>
- A “school-age child care program” is defined as any licensed child care facility serving school-aged children<sup>7</sup> or any before and after school programs that are licensed as a child care facility and serve only school-aged children.<sup>8</sup>
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements provided in ss. 402.305 and 402.3055, F.S.<sup>9</sup>

### **Child Care Facilities**

The term “child care facility” is defined to include any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether or not it is operated for profit.<sup>10</sup> The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and

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<sup>4</sup> Section 402.301(2), F.S. Good moral character is based upon screening that shall be conducted as provided in ch. 435, F.S., using the Level 2 standards for screening set forth in that chapter. *See* s. 402.305(2)(a), F.S.

<sup>5</sup> Section 402.302(1), F.S.

<sup>6</sup> Section 402.302(10), F.S.

<sup>7</sup> Chapter 65C-22.008, F.A.C. “School-age child” means a child who is at least 5 years of age by September 1 of the beginning of the school year and who attends kindergarten through grade five.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 402.302, F.S.

- Operators of transient establishments, as defined in ch. 509, F.S.,<sup>11</sup> which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the Level 2 screening requirements of ch. 435, F.S.<sup>12</sup>

Every child care facility in the state is required to have a license that is renewed annually.<sup>13</sup> The Department of Children and Families (department) or the local licensing agencies<sup>14</sup> approved by the department are responsible for the licensure of such child care facilities.<sup>15</sup>

### **Additional Exemptions**

The Legislature has exempted child care facilities which are an integral part of church or parochial schools that meet specified criteria from all child care facility regulations but the background screening requirements. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.<sup>16</sup>

The exemption for membership organizations, such as the Boys and Girls Clubs, Big Brothers, Big Sisters, and the Boy Scouts and Girl Scouts, was broader and, until this year, allowed personnel to have contact with children without undergoing background screening.<sup>17</sup> However, SB 7078 (2015) required employees of membership organizations and that work in child care programs to be subject to background screening.

### **Background Screening**

Currently, Florida has one of the largest vulnerable populations in the country with 21 percent of residents under the age of 17 and 18 percent over the age of 65, as well as children and older adults with disabilities.<sup>18</sup> These vulnerable populations require special care as they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

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<sup>11</sup> "Transient public lodging establishment" is defined by s. 509.013, (4)(a)1., F.S., as any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

<sup>12</sup> Section 402.302(2), F.S.

<sup>13</sup> Section 402.308(1), F.S.

<sup>14</sup> Currently, there are five counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota. Department of Children and Families, *House Bill 11 Analysis* (Dec. 8, 2014).

<sup>15</sup> Section 402.308, F.S.

<sup>16</sup> Section 402.316, F.S.

<sup>17</sup> Chapters 74-113 and 87-238, Laws of Florida.

<sup>18</sup> University of Florida. Bureau of Economic and Business Research, College of Liberal Arts and Sciences. *Florida Estimates of Population 2014* (April 1, 2014), available at <http://edr.state.fl.us/Content/population-demographics/data/PopulationEstimates2014.pdf>. (last visited Sept. 22, 2015).

In September 2009, the Fort Lauderdale Sun-Sentinel published a series of articles detailing its 6-month investigation into Florida's background screening system for caregivers of children, the elderly and disabled.<sup>19</sup> To address the issues raised by the series, the Legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of persons and businesses that deal primarily with vulnerable populations.<sup>20</sup>

Major changes to the state's background screening laws included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified.
- Increasing all Level 1 screening to Level 2 screening.<sup>21</sup>
- Requiring all fingerprint submissions to be done electronically no later than August 1, 2012, or earlier. However, for those applying under the Agency for Health Care Administration, electronic prints were required as of August 1, 2010.
- Requiring certain personnel who dealt substantially with vulnerable persons and who were not presently being screened, including persons who volunteered for more than 10 hours a month, to begin Level 2 screening.
- Adding additional serious crimes to the list of disqualifying offenses for Level 1 and Level 2 screening.
- Authorizing agencies to request the retention of fingerprints by Florida Department of Law Enforcement (FDLE).
- Providing that an exemption for a disqualifying felony may not be granted until after at least 3 years from the completion of all sentencing sanctions for that felony.
- Requiring that all exemptions from disqualification be granted only by the agency head.
- Rewriting all screening provisions for clarity and consistency.

### **Care Provider Background Screening Clearinghouse**

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities, including paid employees and volunteers are subject to background screening requirements. However, due to restrictions placed on the 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 is time consuming for those involved and increases the cost to the employer or employee.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given "program." Since each 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. In

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<sup>19</sup> Sun Sentinel. *Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes*.

<sup>20</sup> Chapter 2010-114, Laws of Florida.

<sup>21</sup> Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. Anyone undergoing a Level 1 screening must not have been found guilty of any of the specified offenses. Section 435.03, F.S. A Level 2 screening consists of a fingerprint-based search of FDLE and the 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 additional specified offenses. Section 435.04, F.S.

addition, screenings are only as good as the date they are run. Arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports.

As a result, the legislature created the Care Provider Background Screening Clearinghouse (clearinghouse) in 2012.<sup>22</sup> The purpose of the clearinghouse is to create a single “program” to screen individuals who have direct contact with vulnerable persons. The clearinghouse is created within the Agency for Health Care Administration (AHCA) and is to be implemented in consultation with FDLE. The clearinghouse is a secure web-based system and was implemented on September 30, 2013, and allows for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.<sup>23</sup>

Fingerprints of individuals having contact with vulnerable persons providers are retained by FDLE, meaning the electronically scanned image of the print is stored digitally. The FDLE searches the retained prints against incoming Florida arrests and is required to report the results to AHCA for inclusion in the clearinghouse, thus avoiding the need for future screens and related fees.<sup>24</sup>

A digital photograph of the person screened will be taken at the time the fingerprints are taken and retained by FDLE in electronic format, as well. This enables accurate identification of the person when they change jobs or are otherwise presented with a situation requiring screening and enables the new employer to access the clearinghouse to verify that the person has been screened, is in the clearinghouse, and is who they say they are. Once a person’s fingerprints are in the clearinghouse, they will not have to be reprinted in order to send their fingerprints to the FBI which reduces fees.<sup>25</sup>

### **Attorney General Advisory Legal Opinion**

In 2000, the Florida Office of the Attorney General issued an opinion relating to child care, child care facilities and licensure. At issue was whether or not the child care programs operated by the YMCA or other membership organizations were exempt from licensure by the department as child care facilities. The opinion stated that programs operated by YMCAs and other membership organizations that fall within the definition of a “child care program” are not exempt from licensure by the Department of Children and Families.<sup>26</sup>

### **III. Effect of Proposed Changes:**

**Section 1** deletes language stating the Legislature’s intent regarding certain not-for-profit membership associations. It also deletes the requirement that all personnel as defined in

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<sup>22</sup> Section 435.12, F.S.

<sup>23</sup> “Specified agency” means the Department of Health, the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Department of Elderly Affairs, the Department of Juvenile Justice, the Agency for Persons with Disabilities, and local licensing agencies approved pursuant to s.402.307, F.S., when these agencies are conducting state and national criminal history background screening on persons who work with children or persons who are elderly or disabled. Section 435.02(5), F.S.

<sup>24</sup> Section 435.12, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Op. Att’y Gen. Fla. 2000-67 (2000).

s. 402.302, F.S., of such associations shall meet background screening requirements pursuant to ss. 402.305 and 402.3055, F.S.

**Section 2** creates s. 1006.05, F.S., related to after-school programs of not-for-profit associations. The bill provides the legislative finding that after-school programs improve learning and the academic success of students that participate in them. As used in this section, the term “not-for-profit organization” means an organization that meets all of the following criteria:

- Conducts school-based or facility-based after-school programs only for children and youth ages 6 to 18.
- Provides assistance through such programs with homework, delinquency prevention, life skills, and the development of good character.
- Operates 5 days a week or more during the school year and operates during school holidays and the summer months.
- Charges only a nominal fee or no fee.
- Meets the standards for quality set by the Not-for-Profit After School Program Standards Study Group if such standards are adopted by the Legislature.

The bill states that ss. 402.305 through 402.319, F.S., related to regulation of child care facilities, do not apply to not-for-profit organizations as defined in this section.

The bill requires an employee of a not-for-profit organization who works directly with children and youth participating in an after-school program to meet the background screening requirements of s. 435.04, F.S., (Level 2 screening) and s. 435.12, F.S., (creating the Care Provider Background Screening Clearinghouse).

**Section 3** provides an unnumbered section of law to create the Not-for-Profit After School Program Standards Study Group. The Study Group is created to recommend reasonable and affordable minimum health, sanitation, and safety standards for after-school programs provided by not-for-profit organizations as defined in s. 1006.05, F.S. The Study Group is to consist of seven members and must include:

- A member of the Senate appointed by the President of the Senate.
- A member of the House of Representatives appointed by the Speaker of the House of Representatives.
- The Commissioner of Education or his or her designee.
- Three members appointed by the Governor representing the Florida AfterSchool Network, the Florida Alliance of the Boys and Girls Clubs, and a provider of a not-for-profit after-school program, respectively.
- One member appointed by the Governor as a consumer representative whose child is attending or has attended an after-school program provided by a not-for-profit organization.

The Study Group shall submit its report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2017.

**Section 4** provides that the bill shall take effect upon becoming a law.

**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:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 2 of the bill creates s. 1006.05, F.S., to define after-school programs of not-for-profit organizations. This section places governance of such programs under the Department of Education. The bill also states that certain employees of these after-school programs must meet the background screening requirements of s. 435.12, F.S., which creates the Care Provider Background Screening Clearinghouse. Section 435.12, F.S., provides that “specified agencies” participate in the clearinghouse. Section 435.02, F.S., provides the definition of “specified agency.” That definition does not include the Department of Education (although it does include the Division of Vocational Rehabilitation within the Department of Education). Therefore, it is unclear whether employees of after-school programs may undergo background screening via the Care Provider Background Screening Clearinghouse, as the bill currently provides.

**VIII. Statutes Affected:**

This bill substantially amends section 402.301 of the Florida Statutes.

This bill creates section 1006.05 of the Florida Statutes and an unnumbered section of law.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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