The background of the page features a large, faded seal of the State of Florida. The seal is circular and contains the text "SEAL OF THE STATE OF FLORIDA" at the top and "IN GOD WE TRUST" at the bottom. The central image of the seal depicts a woman in a long dress standing on a shore, looking out at a body of water with a large palm tree in the foreground and a ship in the distance.

Report of the Interagency Workgroup on Background Screening

December 2001

Background and Legislative Charge

In 1998, as a part of Florida's effort to ensure a safe living environment for the elderly and other vulnerable populations, the legislature established mandatory background screening for certain individuals applying to operate or be employed in a health care facility licensed by the Agency for Health Care Administration. This legislation included a sunset provision for the background screening program effective June 30, 2001, unless reviewed and reenacted. In preparation for the sunset review, the Agency was directed to conduct a study of the effectiveness of the background screening requirements in preventing persons with specified criminal histories from owning, operating or working within health care facilities. To accomplish this study, the Agency assembled an interagency workgroup that included a representative from each of the following:

- ❑ The Statewide Prosecutor's Office;
- ❑ The Attorney General's Office;
- ❑ The Department of Children and Families; and
- ❑ The Department of Elder Affairs.

With the assistance of this group and various health care associations and other interested individuals, the study concluded that background screening did serve as an effective method in reducing the incidence of victimization by caregivers. In an effort to improve the background screening system, the workgroup proposed three recommendations:

1. Establish a centralized screening unit to process screening requests and maintain a database for purposes of licensure, certification, enrollment and exemption processes.
2. Review and amend legislation to ensure uniform screening requirements among licensed facilities and health care service providers.
3. Create an interagency task force to amend Chapter 435, *Florida Statutes* (F.S.) to prepare for legislative approval an updated listing of criminal offenses, address statute of limitation issues and identify civil actions considered for disqualification.

The legislature responded to these recommendations by enacting Chapter 2001-67, *Laws of Florida* which called for the reconvening of the interagency workgroup to study uniform screening requirements and amendments to Ch. 435, F.S. This legislation also provided for the addition of three members to the workgroup including a representative from the Department of Health, the Senate and the House of Representatives.

The workgroup held three public meetings focusing on the assigned task. The following is a summary of discussions, recommendations and proposed legislation resulting from these meetings.

ISSUE 1: Create Uniform Screening Requirements

With the onset of the 1998 background screening legislation, many health care facilities were required to begin or enhance existing screening processes. Facilities licensed under ch. 400, F.S. were particularly affected by this new legislation. This chapter contains the licensure processes for 14 facility types including nursing homes, assisted living facilities, home health agencies, nurse registries, hospices, health care services pools and home medical equipment providers. Each facility type had unique screening requirements which often became confusing, especially for providers that held licenses for several entities.

Secondly, facilities often have internal screening policies in addition to the minimum state standards. For example, assisted living facilities are required to screen staff that provide direct care services, but many facilities choose to screen all employees. While obtaining a screening is not an issue, an employee who is not required by law to be screened but is considered disqualified because of a criminal offense listed in sec. 435.03 or 435.04, F.S. does not have due process rights to apply for an exemption from disqualification. Therefore, he or she may be kept from obtaining employment within the health care field.

A third issue that was presented by workgroup members was the disparity often found between the criminal history information obtained from a Level 1 statewide screening and a Level 2 national screening. A Level 1 screening is strictly a demographic search of the Florida Department of Law Enforcement's (FDLE) criminal history repository. This screening provides a quick response to the requestor of felony and serious misdemeanor offenses that occurred within the state. The record may also include judicial information if the data were submitted to FDLE. However, the history obtained from this search is only as good as the information given to the officer at the time of the arrest and/or the information given to the facility conducting the screening. For example, an individual with a criminal history may present an alias, as well as other misleading information at the time of the arrest. While this information may be in FDLE's repository, it may be overlooked during the screening process if the demographics provided for the search are dissimilar. A Level 2 screening is considered a more accurate screening method because the individual submits a fingerprint card. The search is then based on the demographic information as well as the fingerprints.

Currently, several state agencies require a Level 2 screening for their employees and/or providers, including the Department of Children and Families and the Department of Juvenile Justice. Therefore, a suggestion was made to consider requiring all health care providers who currently must undergo screening by law to complete a Level 2 search. However, a concern was raised regarding the increased cost to providers. Presently, the cost of a Level 1 search is \$15.00, whereas a Level 2 costs \$39.00. This would present a significant increase per employee to be screened.

The workgroup reviewed statistics regarding the percentages of individuals disqualified by a Level 1 search versus a Level 2 search. The Department of Children and Families reports that 20-25 percent of the records with criminal histories come from the FBI search. Data from the

Agency's Background Screening Unit (BGS) indicates in fiscal year 2000-01 that 19 percent of Level 1 screenings have a criminal history with 3 percent disqualified and 5 percent potentially disqualified. Level 2 data show approximately 10-13 percent of screenings have a criminal history with 2 percent disqualified and 3-7 percent potentially disqualified (see Appendix 2). While these percentages appear lower than previous years, they may indicate that background screening is serving as a deterrent for some individuals wanting to work within the health care field. In considering the associated costs coupled with the reported number of disqualified employees, the workgroup resolved to develop standards for all facilities licensed in ch. 400, F.S. that essentially mirror the current screening requirements for long-term care facilities. Hence, the standard would require a Level 1 unless the individual has not resided in the state for the previous five years. Then the individual would undergo a Level 2 screening.

In an effort to offset costs of conducting fingerprint screenings, the workgroup agreed to add to the proposed legislation the use of Level 2 results in compliance with nursing licensure as agreed upon by the Department of Health – Board of Nursing. The Agency also provides a way in which facilities can reduce screening costs by utilizing a live web site that is directly connected to the screening results database maintained by BGS. Any licensed facility can access the web site utilizing an assigned user code and password to obtain the results of any criminal history processed through BGS. This allows facilities to access their screening results quickly and to discern whether an individual may already have screening results that can be utilized. Current data shows that the live web site is receiving approximately 2,500 queries a month.

The workgroup also considered requirements for volunteers and students working within the facilities. The provisions would entail the exemption of screening requirements for students, provided they are under the direct supervision and in the physical presence of a licensed health care professional who meets the screening requirements. Additionally, volunteers who provide services in a facility for less than 40 hours per month would also be exempt from screening processes provided that they are under direct and constant supervision by persons who meet the screening requirements. These provisions reflect requirements that have been imposed in other standards for health care providers such as mental health programs and juvenile justice facilities.

Various health care associations opposed the possibility of student and volunteer screening requirements. The Florida Health Care Association conducted a survey of approximately 80 members that constitute their board of directors, legislative committee and nursing services/CNA taskforce. Results of the survey indicate that 61 percent of volunteers within their facilities work less than 40 hours per month and 100 percent are reportedly supervised, suggesting that approximately 39 percent of volunteers might have to undergo background screening if required. The Florida Association of Homes for the Aging (FAHA) polled their members and with 38 responses they report that on average per facility, 80 regular volunteers reside in independent living units within their campus, 19 are a family member of a resident and 39 are retirees. FAHA and several responding facilities contend that background screening would invade the privacy of these volunteers. The survey also showed that 89

percent work less than 40 hours a month and 62.64 percent are under direct and constant supervision, signifying that approximately 20-40 percent of volunteers may have to undergo screening if required. While some respondents state that cost is an issue, one respondent summarized a comment regarding the lack of known adverse incidents warranting the screening of volunteers, with “why wait till one happens?”

Although the purpose of the screening requirements was to provide guidance for facilities that frequently utilize students and volunteers, the workgroup concluded that the potential impact to facilities included increased costs and possibly less volunteer participation, therefore no screening recommendations will be presented for these individuals at this time.

The workgroup also considered screening requirements for non-licensed, non-certified employees of hospitals licensed under ch. 395, F.S. Currently, the only criminal history screening requirement is for the administrators of hospitals. Several entities voiced concern that hospital patients are also under risk for abuse, neglect and exploitation. However, statistics presented from the Department of Children and Families, Adult Protective Services for verified or indication of abuse, neglect and exploitation reports (see Appendix 3) indicated that hospitals have few reports (2.22 percent of all reports) compared to 52.64 percent for nursing homes and 23.73 percent for assisted living facilities. Based on these numbers, the workgroup determined that the potential for abuse, neglect and exploitation mainly lies within residential facilities as opposed to transient facilities such as hospitals where the average length of a patient stay is short. Therefore, no additional screening requirements will be proposed for hospitals at this time.

To provide uniformity among facilities licensed under ch. 400 F.S., members of the workgroup recommend removing all references to background screening throughout the chapter and creating a background screening section that all facilities will follow. The inclusion of these standards would provide for Level 1 screening for all employees who provide direct care or have direct access to the resident and their personal property, including finances. The standards would also require that any individual who has not resided in the state for the previous five years undergo a Level 2 screening.

ISSUE 2 – Modifications to Chapter 435, *Florida Statutes*

The enactment of Chapter 95-228, *Laws of Florida* created a criminal offense of luring and enticing children (s. 787.025, F.S.), amended several chapters relating to abuse and neglect, and created ch. 435, F.S., relating to background screening requirements for employment purposes. Originally, there were two bills that were eventually combined and presented together before the legislature. At that time, a sentence taken from the end of the bill regarding the establishment of the criminal offense of luring and enticing children was inadvertently placed in the last section of the joint bill — consequently affecting the entire bill.

Ch. 95-228, sec. 64, at 2076, *Laws of Florida*, states “except as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date.” Subsequently, the legal interpretation of this phrase in regards to background screening is that an individual who committed a criminal offense as outlined in sec. 435.03 or 435.04, F.S. prior to October 1995 is not considered to be disqualified from employment.

An amendment would strike the October 1, 1995 effective date of section 64. See *Proposed Legislative Language* on page 14.

Chapter 435 should apply to the screening of employees in the health care industry or any entity providing services to vulnerable populations for all convictions occurring prior to October 1, 1995 as well as after that date. The statute is remedial in nature and is intended to apply retroactively to all disqualifying convictions. The Agency and other departments are to specifically include all convictions as potentially disqualifying offenses when determining whether a worker is rehabilitated and qualified to work with children, residents and patients under their care. With this intent, the workgroup recommends that the section be amended to remove the reference to October 1, 1995 in determining the eligibility of an individual to provide services to vulnerable populations (see Proposed Legislation, pg. 14).

In regards to the criminal offenses listed in ch. 435, F.S., the standards for Level 2 offenses were updated in 1998 and in 2000, but there are still several technical changes to be made to both levels and additional offenses to be considered. In proposing modifications, the workgroup determined that several entities utilize chapter 435 for screening purposes and each may have varying priorities in the types of disqualifying offenses that are appropriate to the population served. Therefore, the first committee recommendation was to maintain a generic list of level 1 and level 2 disqualifying offenses and that additional sections be created to address specific populations, particularly for health care professionals.

Proposed technical changes to be made to the statute are included under *Proposed Legislative Language* beginning on page 11.

Mainly, these modifications relate to either a change in the law or an error in the original production of the offenses. Other changes include a recommendation to place a statute of limitations on the offense of prostitution of 10 years. This particular offense is considered

more of a self-destructive crime as opposed to a persons or property crime, and is often found to be part of a lifestyle pattern or crime of circumstance. Therefore, the workgroup determined that an individual who had not been arrested in 10 years for this offense had likely changed their lifestyle. Should the statute of limitation be included, an individual who does not have any other disqualifying offenses and has not been charged with prostitution within the time period would be considered eligible for employment.

| Chapter Reference | Offense | Change/Addition | Comments |
|--------------------------|---|--|---|
| Section 415.111 | Relating to adult abuse, neglect, or exploitation of aged persons or disabled adults. | Section now lists criminal penalties for certain offenses. | List as Former sec. 415.111 |
| Section 741.28(1) | Def. of domestic violence | Change current reference number | Listed incorrectly in current statute. Maintain 741.30 for DCF to use for injunction. |
| Chapter 794 | Sexual battery | Modify to list chapter | Currently lists definition of sexual battery |
| Chapter 796 | Prostitution | Modify to include statute of limitation of 10 years. | Considered more of a self-destructive, victimless crime. |
| Section 798.02 | Lewd and lascivious behavior | Delete | This section (Adultery; Cohabitation) refers to a man and woman, not being married to each other, lewdly and lasciviously associate and cohabit together...Rest of offense description listed would most likely be charged under Chap. 800. |
| Section 827.05 | Negligent treatment of children | Repealed | List as Former sec. 827.05 |
| Chapter 847 | Obscene literature; profanity | Correct reference. | Currently listed in 435 as Chapter 874. |

For the generic list of offenses, the workgroup recommends several additions to include those listed in Appendix 4. See *Proposed Legislative Language*, beginning on page 11.)

The recommendation to add these offenses was based primarily on the intent of the individual that committed them. For instance, possessing and discharging weapons are common offenses that signify a disregard for the safety of others. Voyeurism is closely related to sex offenses that are currently disqualifying, and at the felony level, the offender would have at least two arrests for this particular crime. Lastly, the upgrade of all felonies contained in the chapter relating to assault and battery was based on the inclusion of several other offenses within the chapter that are serious crimes including felony battery and stalking.

| Chapter Reference | Offense | Change/Addition | Comments |
|--------------------------|--|--|---|
| Chapter 784 | Assault/battery/culpable negligence | Include whole chapter disqualifying if felony. | Currently lists Aggrav. Battery and Aggrav. Assault as disqualifying. There are various other references in chapter that should be considered such as stalking. |
| Section 790.115 | Possessing or discharging weapons or firearms on school prop. or school function | Add to current offenses in Level 1. Currently in Level 2 offenses. | Displaying and discharging weapons is considered personal threat. |
| Section 790.15 | Discharging firearm in public. | Add to current offenses only if felony. | Displaying and discharging weapons is considered personal threat. |
| Section 806.31 | Arson resulting in injury to another | Consider for addition | Current references only 806.01 relating to arson. |
| Chapter 810.14 | Voyeurism | Consider for addition if a felony. | Offense violates personal privacy – related to sex offense. |

In determining offenses specifically directed towards health care professions, the workgroup considered offenses such as theft, fraud, forgery and uttering, which are crimes indicative of exploitation of the elderly. *The National Elder Abuse Incidence Study: Final Report* published by the U.S. Administration on Aging in 1998 established that financial/material exploitation accounted for 30.2 percent of substantiated reports of elder maltreatment in 1996. Statistics from the Florida Department of Children and Families indicates 104 allegations of exploitation from nursing homes, assisted living facilities, or home health settings that were either verified or had some indication of exploitation in the fiscal year 2000-01. A 1999 report published by the National Center of Elder Abuse (NCEA) stated that a troubling characteristic of financial crime is its repetitive nature. Victims are likely to become targets for re-victimization and offenders are likely to re-offend. In reviewing 64 exemption cases currently under review in the Background Screening Unit, approximately 10 percent of cases had burglary charges, 5 percent had fraud charges and another 10 percent had forgery charges in addition to other disqualifying offenses.

| Chapter Reference | Offense | Change/Addition | Comments |
|--------------------------|------------------------------|------------------------|--|
| Chapter 810.02 | Burglary | Consider for addition | Very common offense; often confused with Ch. 812 related to theft charges. |
| Section 831.01 | Forgery | Consider for addition | Very common offense, particularly in elderly victims. |
| Section 831.02 | Uttering forged instruments. | Consider for addition | Very common offense, particularly in elderly victims. |

In light of these statistics and other current legislation pertaining to these issues, the workgroup recommended to strengthen the disqualifying offenses for individuals licensed, certified or employed within health care facilities by adding sections related to Burglary, Fraud and Uttering and Forgery (See Appendix 4 for specific definitions of offenses. See *Proposed Legislative Language* beginning on the facing page.)

The last recommended change to ch. 435, F.S. includes the establishment of a re-screening requirement. Currently, there are no re-screening directives unless the individual changes employment and the new employer conducts a screening. Nevertheless, current standards allow a facility to use a criminal history screening from a previous employer, which suggests that a person could be hired based on an outdated screening. The workgroup, therefore proposes a five-year re-screening requirement. (See *Proposed Legislative Language* beginning on the facing page.)

Proposed Legislative Language

Chapter 400, Florida Statutes – Background Screening Requirements

- 1). Upon receipt of a completed, signed and dated application for licensure or registration, the agency shall require background screening of the applicant in accordance with the level 2 standards for screening set forth in chapter 435. As used in this subsection, the term “applicant” means the facility administrator, or similarly titled individual responsible for the day-to-day operation of the facility, and the facility financial officer, or similarly titled individual who is responsible for the financial operation of the facility.
- 2). The agency may require background screening for a member of the board of directors of the licensee or an officer, a general or limited partner, or an individual owning 5 percent or more of the licensee if the agency has probable cause to believe that such individual has been convicted of an offense prohibited under Sec. 435.04, F.S. (Level 2 standards).
- 3). Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (1). Proof of compliance with background screening within the previous 5 years to fulfill the requirements of the Department of Children and Families or the Department of Insurance pursuant to chapter 651, F.S. as part of an application for a certificate of authority to operate a continuing care retirement community is acceptable in fulfillment of the Department of Law Enforcement and Federal Bureau of Investigation background check.
- 4). A provisional license or registration may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification from exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A license or registration may be granted to the applicant upon the agency’s receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of an exemption from disqualification by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency’s receipt of the report from the Federal Bureau of Investigation; however, the person may not continue to serve if the report indicates any violation of background screening standards and an exemption from disqualification has not been requested of and granted by the agency as set forth in chapter 435.

- 5). Each applicant must submit to the agency, with its application, a description and explanation of any conviction of an offense prohibited under sec. 435.04, F.S. (level 2 standards) by a member of the board of directors, its officers, or any individual owning 5 percent or more of the applicant. This requirement shall not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit or organization include in the application a statement affirming that the director's relationship to the corporation satisfies these requirements of this paragraph.
- 6). The agency shall require background screening as provided in chapter 435 for all employees or prospective employees of facilities licensed or registered under this chapter who are expected to, or whose responsibilities may require them to:
 - a) Provide personal care or services to residents;
 - b) Have access to resident living areas; or
 - c) Have access to resident funds or other personal property.
- 7). Employers and employees shall comply with the requirements of s. 435.05.
 - a) Notwithstanding the provisions of s. 435.05(1), facilities must have in their possession evidence that level 1 screening has been completed before allowing an employee to begin working with patients as provided in subsection (1). All information necessary for conducting background screening using level 1 standards as specified in s. 435.03(1) shall be submitted by the facility to the agency. Results of the background screening shall be provided by the agency to the requesting facility.
 - b) The agency shall require level 2 background screening as provided in chapter 435, F.S. for all employees or prospective employees of intermediate care facilities for the developmentally disabled licensed under s. 400.962, who are expected to be, or whose responsibilities are such that they would be considered to be a direct service provider.
 - c) Employees qualified under the provisions of paragraph (a) who have not maintained continuous residency within the state for the 5 years immediately preceding the date of request for background screening must complete level 2 screening, as provided in chapter 435. Such employees may work in a conditional status up to 180 days pending the receipt of written findings evidencing the completion of level 2 screening. Proof of compliance of level 2 screening through the Department of Health for the purpose of licensure or certification within previous 5 years is acceptable in fulfillment of this requirement. Level 2 screening

shall not be required of employees or prospective employees whose residence has been verified by the employer and who attest in writing under penalty of perjury that they meet the residency requirement.

Completion of level 2 screening shall require the employee or prospective employee to furnish to the facility a full set of fingerprints to enable a criminal background investigation to be conducted. The facility shall submit the completed fingerprint card to the agency. The agency shall establish a record of the request in the database provided for in paragraph (d) and forward the request to the Department of Law Enforcement, which is authorized to submit the fingerprints to the Federal Bureau of Investigation for a national criminal history records check. The results for the national criminal history records check shall be returned to the agency, which shall maintain the results in the database provided for in paragraph (d).

The agency shall notify the administrator of the requesting facility or the administrator of any other facility licensed under chapter 393, chapter 394, chapter 395, chapter 397, or this chapter as requested by such facility, as to whether or not the employee has qualified under level 1 or level 2 screening. An employee or prospective employee who has qualified under level 2 screening and has maintained such continuous residency within the state shall not be required to complete a subsequent level 2 screening as a condition of employment at another facility.

- d) The agency shall establish and maintain a database of background screening information which shall include the results of both level 1 and level 2 screening. The Department of Law Enforcement shall timely provide to the agency, electronically, the results of each statewide screening for incorporation into the database. The agency shall, upon request from any facility, agency, or program required by or authorized by law to screen its employees or applicants, notify the administrator of the facility, agency or program of the qualifying or disqualifying status of the employee or applicant named in the request.
 - e) Applicants and employees shall be excluded from employment pursuant to s. 435.06.
- 8). The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening shall be submitted to the agency. The facility may reimburse employees for these costs.
- 9) a) As provided in s. 435.07, the agency may grant an exemption from disqualification to an employee or prospective employee who has not received a professional license or certification from the Department of Health.
- b) As provided in s. 435.07, the appropriate regulatory board within the Department of Health, or that department itself when there is no board, may grant an exemption

from disqualification to an employee or prospective employee who is subject to this section and who has received a professional license or certification from the Department of Health or regulatory board within that department.

- 10). Any provision of law to the contrary notwithstanding, persons who have been screened and qualified as required by this section and who have not been unemployed for more than 180 days thereafter, and who under penalty of perjury attest to not having been convicted of a disqualifying offense since the completion of such screening shall not be required to be re-screened. An employer may obtain, pursuant to s. 435.10, written verification of qualifying screening results from the previous employer or other entity which caused such screening to be performed.
- 11). The agency and the Department of Health shall have authority to adopt rules pursuant to the Administrative Procedure Act to implement this section.
- 12). There is no monetary or unemployment liability on the part of, and no cause of action for damages arising against an employer that, upon notice of a disqualifying offense listed under chapter 435 or an act of domestic violence, terminates the employee against whom the report was issued, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.

Chapter 95-228, Section 64, at 2076, *Laws of Florida*

Legislative intent: This amendment is to clarify the original legislative intent envisioned in Chapter 95-228, section 64 at 2076, *Laws of Florida*, creating chapter 435, *Florida Statutes*.

Specific legislative intent: This act specifically reverses *Guest v. Department of Juvenile Justice*, 786 So. 2nd 677, (Fla. 1st DCA 2001), which interprets the effective date clause of 95-228, section 64, LOF to the contrary.

All disqualifying offenses shall be considered when processing an application for background screening.

Section 435.03 - Level 1 screening standards.--

(1) All employees required by law to be screened shall be required to undergo background screening as a condition of employment and continued employment. For the purposes of this subsection, level 1 screenings shall include, but not be limited to, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement, and may include local criminal records checks through local law enforcement agencies.

(2) Any person for whom employment screening is required by statute must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- (a) **Former s. 415.111**, relating to abuse, neglect, or exploitation of a vulnerable adult.
- (b) Section 782.04, relating to murder.
- (c) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (d) Section 782.071, relating to vehicular homicide.
- (e) Section 782.09, relating to killing of an unborn child by injury to the mother.
- (f) **Chapter 784, relating to assault, battery and culpable negligence if the offense was a felony.**
- (g) Section 784.011, relating to assault, if the victim of the offense was a minor.
- ~~(h) Section 784.021, relating to aggravated assault.~~
- (h) Section 784.03, relating to battery, if the victim of the offense was a minor.
- ~~(i) Section 784.045, relating to aggravated battery.~~
- (i) Section 787.01, relating to kidnapping.
- (j) Section 787.02, relating to false imprisonment.
- (k) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.**
- (l) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.**
- (m) Section 790.15, relating to discharging a firearm in public if the offense was a felony.**
- (n) Section 790.19, relating to the shooting into or throwing deadly missiles into dwellings...**
- (n) **Chapter 794**, relating to sexual battery.
- (o) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (p) Chapter 796, relating to prostitution **if the offense occurred within the previous 10 years.**
- ~~(o) Section 798.02, relating to lewd and lascivious behavior.~~

- (q) Chapter 800, relating to lewdness and indecent exposure.
 - (r) Section 806.01, relating to arson.
 - (s) **Section 806.031, relating to arson resulting in injury to another.**
 - (t) **Section 810.14, relating to voyeurism if the offense was a felony.**
 - (u) Chapter 812, relating to theft, robbery, and related crimes, if the offense was a felony.
 - (v) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
 - (w) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
 - (x) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
 - ¹(y) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
 - (z) Section 826.04, relating to incest.
 - (aa) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
 - (bb) Section 827.04, relating to contributing to the delinquency or dependency of a child.
 - (cc) Former s. 827.05, relating to negligent treatment of children.
 - (dd) Section 827.071, relating to sexual performance by a child.
 - (ee) Section 843.01, relating to resisting arrest with violence.
 - (ff) Chapter 847, relating to obscene literature.
 - (gg) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- (3) Standards must also ensure that the person has not committed an act that constitutes domestic violence as defined in s. 741.28(1) or committed a violation of any order for injunction for protection as described in s. 741.30 or 741.31.
- ~~(a) For employees and employers licensed or registered pursuant to chapter 400, and for employees and employers of developmental services institutions as defined in s. 393.063, intermediate care facilities for the developmentally disabled as defined in s. 393.063, and mental health treatment facilities as defined in s. 394.455, meets the requirements of this chapter.~~
- (4) All persons employed in health care facilities licensed or registered by the Agency**

for Health Care Administration and individuals seeking professional licensure or certification by the Department of Health who are designated by law to undergo background screening must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under this section and the following provisions or under any similar statute of another jurisdiction:

- (a) Section 810.02, relating to burglary**
- (b) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photo-electronic, or photo-optical systems**
- (c) Section 817.505, relating to patient brokering**
- (d) Section 817.568, relating to personal identification theft**
- (e) Section 817.61, relating to fraudulent use of credit cards if the offense was a felony**
- (f) Section 831.01, relating to forgery**
- (g) Section 831.02, relating to uttering forged instruments**
- (h) Section 831.07, relating to forging bank bills or promissory notes**
- (i) Section 831.09, relating to uttering forged bills**
- (j) Section 831.31, relating to the sale, manufacture, delivery or possession with the intent to sell any counterfeit controlled substance if the offense was a felony.**

History.--s. 47, ch. 95-228; s. 15, ch. 96-268; s. 21, ch. 96-322; s. 3, ch. 98-417; s. 87, ch. 2000-153; s. 45, ch. 2000-349; s. 62, ch. 2001-62.

¹Note.--As enacted by s. 21, ch. 96-322. This version is published as the last expression of legislative will (see Journal of the Senate 1996, pp. 519 and 1513). Substantially similar language was enacted as paragraph (u) by s. 15, ch. 96-268, and that version, redesignated as paragraph (v), reads:

(v) Section 825.103, relating to exploitation of an elderly person or disabled adult.

435.04 Level 2 screening standards.--

(1) All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall include, but not be limited to, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the

following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

- (a) **Former s. 415.111**, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- (b) Section 782.04, relating to murder.
- (c) Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (d) Section 782.071, relating to vehicular homicide.
- (e) Section 782.09, relating to killing of an unborn child by injury to the mother.
- (f) **Chapter 784, relating to assault, battery and culpable negligence if the offense was a felony.**
- (g) Section 784.011, relating to assault, if the victim of the offense was a minor.
- ~~(g) Section 784.021, relating to aggravated assault.~~
- (h) Section 784.03, relating to battery, if the victim of the offense was a minor.
- ~~(i) Section 784.045, relating to aggravated battery.~~
- (j) Section 784.075, relating to battery on a detention or commitment facility staff.
- (k) Section 787.01, relating to kidnapping.
- (l) Section 787.02, relating to false imprisonment.
- (m) Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- (n) Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- (o) Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- (p) Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- (q) **Section 790.15, relating to discharging a firearm in public if the offense was a felony.**
- (r) **Section 790.19, relating to the shooting into or throwing deadly missiles into dwellings...**
- (s) Section 794.011, relating to sexual battery.

- (t) Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- (u) Chapter 796, relating to prostitution **if the offense occurred within the previous 10 years.**
- ~~(t) Section 798.02, relating to lewd and lascivious behavior.~~
- (v) Chapter 800, relating to lewdness and indecent exposure.
- (w) Section 806.01, relating to arson.
- (x)Section 806.031, relating to arson resulting in injury to another.**
- (y)Section 810.14, relating to voyeurism if the offense was a felony.**
- (z) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (aa) Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (bb) Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (cc) Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (dd) Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (ee) Section 826.04, relating to incest.
- (ff) Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- (gg) Section 827.04, relating to contributing to the delinquency or dependency of a child.
- (hh) Former s. 827.05, relating to negligent treatment of children.
- (ii) Section 827.071, relating to sexual performance by a child.
- (jj) Section 843.01, relating to resisting arrest with violence.
- (kk) Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- (ll) Section 843.12, relating to aiding in an escape.
- (mm) Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- (nn) Chapter 847, relating to obscene literature.

(oo) Section 874.05(1), relating to encouraging or recruiting another to join a criminal gang.

(pp) Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.

(qq) Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.

(rr) Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

(ss) Section 944.47, relating to introduction of contraband into a correctional facility.

(tt) Section 985.4045, relating to sexual misconduct in juvenile justice programs.

(uu) Section 985.4046, relating to contraband introduced into detention facilities.

(3) The security background investigations conducted under this section for employees of the Department of Juvenile Justice must ensure that no persons subject to the provisions of this section have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

(a) 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.

(b) Section 810.02, relating to burglary, if the offense is a felony.

(c) Section 944.40, relating to escape.

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

(4) All persons employed in health care facilities licensed or registered by the Agency for Health Care Administration and individuals seeking professional licensure or certification by the Department of Health who are designated by law to undergo background screening must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under this section and the following provisions or under any similar statute of another jurisdiction:

(a) Section 810.02, relating to burglary

(b) Section 817.034, relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photo-optical systems

(c) Section 817.505, relating to patient brokering

(d) Section 817.568, relating to personal identification theft

(e) Section 817.61, relating to fraudulent use of credit cards if the offense was a felony

- (f) Section 831.01, relating to forgery
- (g) Section 831.02, relating to uttering forged instruments
- (h) Section 831.07, relating to forging bank bills or promissory notes
- (i) Section 831.09, relating to uttering forged bills
- (j) Section 831.31, relating to the sale, manufacture, delivery or possession with the intent to sell any counterfeit controlled substance if the offense was a felony.

Employees of the Department of Children and Families screened pursuant to sec. 110.1127 are not subject to this provision.

(5) Standards must also ensure that the person:

~~(a) For employees or employers licensed or registered pursuant to chapter 400, does not have a confirmed report of abuse, neglect, or exploitation as defined in ⁺s. 415.102(6), which has been uncontested or upheld under s. 415.103.~~

(a) Has not committed an act that constitutes domestic violence as defined in s. 741.28 **or committed a violation of any order for injunction for protection as described in s. 741.30 or 741.31.**

(6) Under penalty of perjury, all employees in such positions of trust or responsibility shall attest to meeting the requirements for qualifying for employment and agreeing to inform the employer immediately if convicted of any of the disqualifying offenses while employed by the employer. Each employer of employees in such positions of trust or responsibilities which is licensed or registered by a state agency shall submit to the licensing agency annually, under penalty of perjury, an affidavit of compliance with the provisions of this section.

History.--s. 47, ch. 95-228; s. 16, ch. 96-268; s. 22, ch. 96-322; s. 4, ch. 98-417; s. 5, ch. 99-284; s. 88, ch. 2000-153; s. 7, ch. 2001-125.

¹**Note.**--Repealed by s. 26, ch. 2000-349.

Proposed Section 435.12 Minimal requirements for re-screening

- (1) **A screening under this chapter is valid for 5 years at which time a statewide rescreening shall be conducted. The 5 year re-screening shall include, at a minimum, a statewide criminal check through the Department of Law Enforcement.**
- (2) **Rescreening shall also be required if there is a break in service that exceeds 90 days, in which case the same screening that was required prior to the break in service will be repeated.**
- (3) **The employer or licensing agency may grant a leave of absence for military leave, maternity leave, or medical leave, including family sickness leave for up to 6 months. Re-screening is not required under such circumstances when the leave is pre-approved.**
- (4) **Personnel who have been fingerprinted pursuant to this chapter and teachers and non-instructional personnel who have been fingerprinted pursuant to chapter 231, who have not been unemployed for more than 90 days thereafter, and who attest to the completion of such fingerprinting**

and to compliance with the provisions of this section shall not be required to be refingerprinted in order to comply with any caretaker screening or fingerprinting requirements.

APPENDIX 1: Workgroup Members

Agency for Health Care Administration

Jeffrey N. Gregg, Chief
Bureau of Health Facility Regulation

Christine Messana, Senior Attorney
General Counsel's Office

CaraLee S. Starnes, Manager
Background Screening Unit

Glenda Ricks, Health Facilities Consultant
Background Screening Unit

Senate

The Honorable Ginny Brown-Waite
District 10

House of Representatives

The Honorable Ken Littlefield
District 61

Office of the Attorney General

Beth Blechman, Assistant Statewide Prosecutor
Special Counsel for Health Care Fraud Prosecutions
Office of Statewide Prosecution, South Florida Bureau

Stephanie A. Feldman, Assistant Statewide Prosecutor
Health Care Fraud Priority Leader
Office of Statewide Prosecution, South Florida Bureau

Paul Martin, Senior Assistant Attorney General
General Civil Division
Administrative Law Section

Department of Children and Families

Susan Fairchild, Statewide Screening Coordinator
Florida Abuse Hotline

Department of Elder Affairs

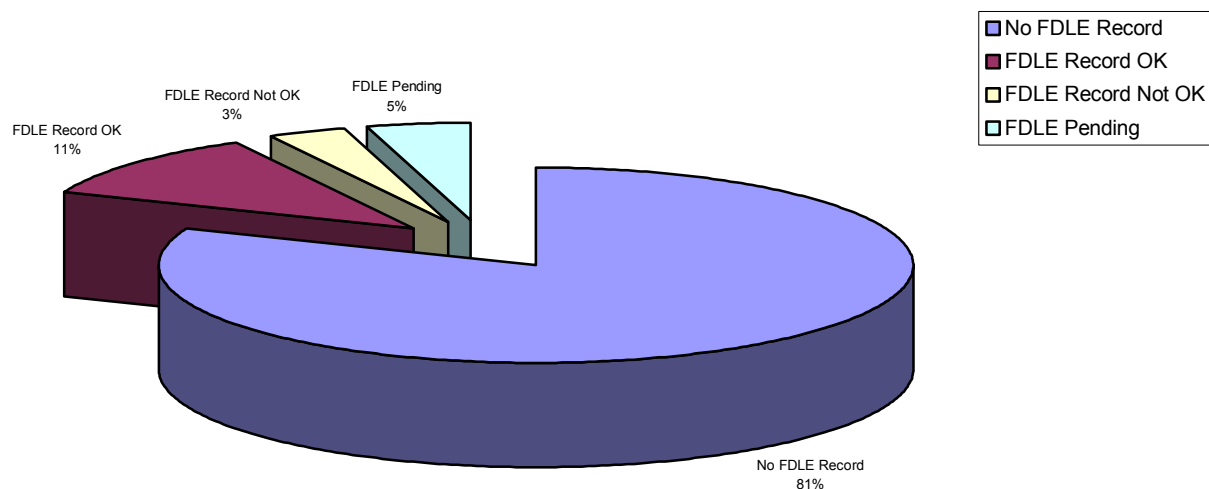
Gail LaRosa, Senior Management Analyst
Division of Statewide Community Based Services

Department of Health

Dr. Ruth Stiehl, Executive Director
Board of Nursing

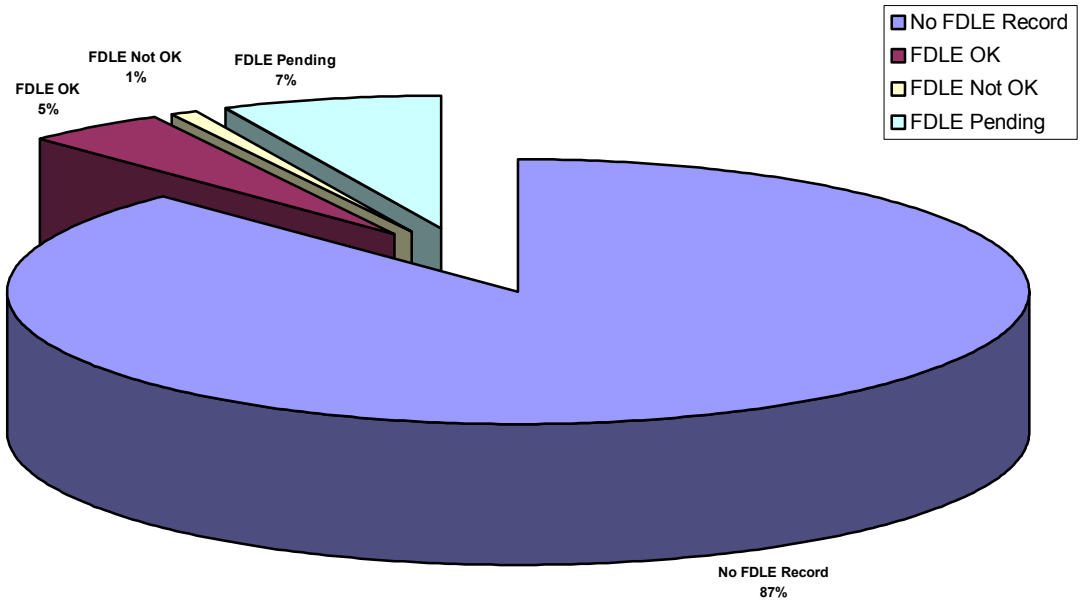
APPENDIX 2: Profile of Background Screening Results in FY 2000 - 2001

LEVEL 1 - FDLE Results for FY 2000-01



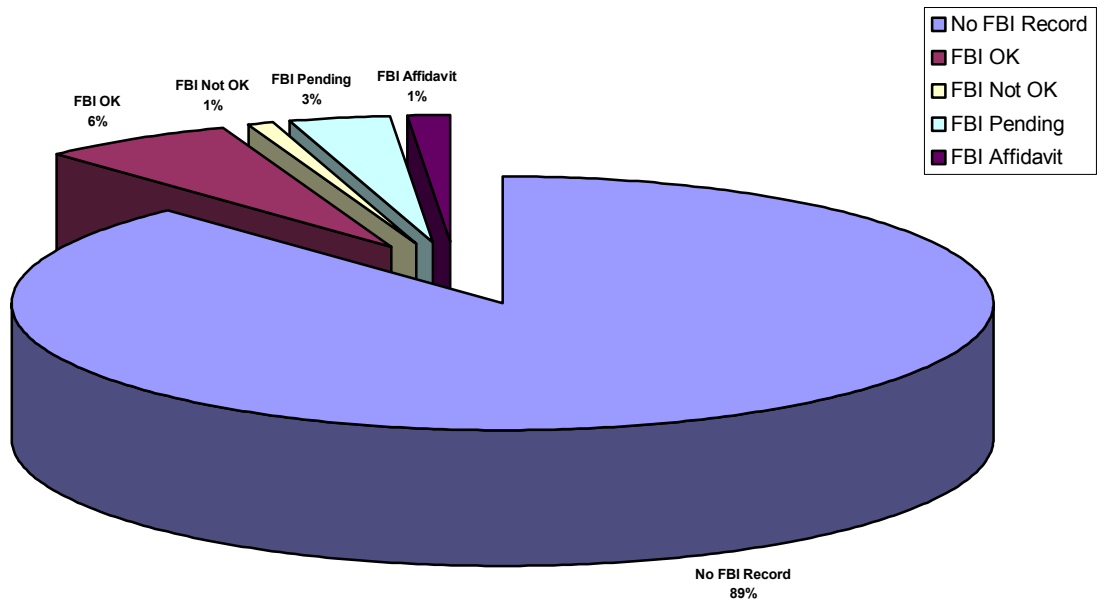
TOTAL # OF LEVEL 1 SCREENINGS FOR FY = 21,702

LEVEL 2 - FDLE Results for FY 2000-01



TOTAL # OF LEVEL 2 FDLE RESULTS FOR FY = 14,052

LEVEL 2 - FBI Results for FY 2000-01



TOTAL # OF LEVEL 2 FBI RESULTS FOR FY = 12,472

**APPENDIX 3:
DCF Adult Protective Services Verified or Indication of
Abuse, Neglect and Exploitation Reports, 1999 - 2001**

APPENDIX 4:

Proposed Criminal Offenses to Be Added to Ch. 435, F.S.

Chapter 784 – Assault, Battery, Culpable Negligence - Include all felony offenses

Current Listings

Section 784.011, relating to assault (misdemeanor) if the victim of the offense was a minor.

Section 784.021, relating to aggravated assault (felony).

Section 784.03, relating to battery (misdemeanor) if the victim of the offense was a minor.

Section 784.045, relating to aggravated battery (felony).

Additional Listings

Section 784.041, Felony battery. A person commits felony battery if actually and intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement.

NOTE: Different from aggravated battery – which may include a deadly weapon.

Section 784.048(3), Stalking. Any person who willfully, maliciously, and repeatedly follows or harasses another person and makes a credible threat with the intent to place that person in reasonable fear of death or bodily injury commits the offenses of aggravated stalking, a felony.

Section 784.048(4), Stalking. Any person who, after an injunction for protection against repeat violence or an injunction for protection against domestic violence or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously and repeatedly follows or harasses another person commits the offense of aggravated stalking, a felony.

Section 784.048(5), Stalking. Any person who willfully, maliciously, and repeatedly follows or harasses a minor under 16 years of age commits the offense of aggravated stalking, a felony.

Chapter 790 – Weapons and Firearms

Section 790.115, Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited

A person who exhibits any sword, sword cane, firearm, electric weapon or devise, destructive device, or other weapon, including a razor blade, box cutter, or knife, except as authorized in support of school-sanctioned activities, in the presence of one or more persons in a rude, careless, angry or threatening manner and not in lawful self-defensive, at a school-sponsored event or on the grounds or facilities of any school, school bus, or school bus stop or within 1,000 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, during school hours or during the time of a sanctioned school activity, commits a felony.

Section 790.15, Discharging firearm in public. ...any person who knowingly discharges a firearm in any public place or on the right-of-way of any paved public road, highway, or street or whosoever knowingly discharges any firearm over the right-of-way of any paved public road, highway, or street or over any occupied premises commits a misdemeanor.

Any occupant of any vehicle who knowingly and willfully discharges any firearm from the vehicle within 1,000 feet of any person commits a felony.

Any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly directs any other person to discharge any firearm from the vehicle commits a felony.

Section 790.19. Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles.

Chapter 806 – Arson and Criminal Mischief

Current Listing

Section 806.01, relating to arson. This section refers to the willful and unlawful damage to a dwelling, structure or property by fire or explosion, whether occupied or not.

Additional Listing

Section 806.031, arson resulting in injury to another. This section refers to the act of arson that results in any bodily harm to a firefighter or any other person, regardless of intent or lack of intent to cause harm.

Chapter 810 – Burglary and Trespass

Section 810.02, Burglary. A person who enters or remains in a dwelling, structure or conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain commits burglary, which is a felony.

Section 810.095, Trespass on school property with firearm or other weapon. It is a felony for a person who is trespassing upon school property to bring onto, or to possess on such school property, any weapon or firearm.

Section 810.14, Voyeurism. A person commits the offense of voyeurism when he or she, with lewd, lascivious or indecent intent, secretly observes, photographs, films, videotapes, or records another person when such other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy.

Chapter 817 – Fraudulent Practices

Section 817.034, Florida Communications Fraud Act. Any person who engages in a scheme to defraud and obtains property thereby through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems is guilty of a felony.

Section 817.505, Patient brokering prohibited. Unlawful for any person, including any health care provider or health care facility to offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage from a health care provider or health care facility.

Section 817.568, Criminal use of personal identification information. Any person who willfully and without authorization fraudulently uses, or possesses with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent, commits the offense of fraudulent use of personal identification information, which is a felony.

Section 817.60, Theft – obtaining credit card through fraudulent means. Any person who takes a credit card from the person, possession, custody or control of another without consent or who, with knowledge that it has been so taken, receives the credit card with intent to use, sell or transfer to a person other than the issuer or the cardholder is guilty of a misdemeanor.

Chapter 831 – Forgery and Counterfeiting

Section 831.01, Forgery. Whoever falsely makes, alters, forges or counterfeits a public record, certificate....writing, insurance, promissory note ...shall be guilty of a felony.

Section 831.02, Uttering forged instruments. Whoever utters and publishes as true a false, forged or altered record, deed, instrument or other writing knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person shall be guilty of a felony.

Section 831.07, Forging bank bills or promissory notes. Whoever falsely makes, alters, forges or counterfeits a bank bill or promissory note payable to the bearer thereof, or to the order of any person, issued by an incorporated banking company established in this state, or within the U.S., or any foreign province, state or government, with intent to injure any person, shall be guilty of a felony.

Section 831.09, Uttering forged bills. Whoever utters or passes or tenders in payment as true, any such false, altered, forged or counterfeit note, or any bank bill or promissory note, payable to the bearer thereof or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud any person, shall be guilty of a felony.

Section 831.30, Medicinal drugs; fraud in obtaining. Whoever falsely makes, alters or forges any prescription for medicinal drugs other than a drug controlled by chapter 893 commits a misdemeanor.

Section 831.31, Counterfeit controlled substance; sale, manufacture, delivery or possession with intent to sell, manufacture or deliver. It is unlawful for any person to sell, manufacture, or deliver or to possess with intent to sell, manufacture, or deliver a counterfeit controlled substance.

APPENDIX 5: Workgroup Meeting Minutes

Background Screening Interagency Workgroup

August 1, 2001

9:00 a.m. – 12:00 p.m.

WORKGROUP MINUTES

Meeting Called to Order: Mr. Jeff Gregg, Bureau Chief of Health Facility Compliance, opened the meeting at 9:05 a.m. by welcoming the members. In attendance for the Background Screening Unit were CaraLee Starnes, Unit Manager and Glenda Ricks, Health Services and Facilities Consultant. Ms. Starnes asked the workgroup members to introduce themselves.

Workgroup Members in Attendance: Susan Fairchild, Department of Children and Families Abuse Hotline and Screening Coordinator; Gail LaRosa, Department of Elder Affairs; Christine Messana, AHCA Legal Counsel; Beth Blechman, Office of Statewide Prosecutor; Dr. Ruth Stiehl, Department of Health - Board of Nursing. Members unable to attend: Senator Ginny Brown-Waite, District 10; Representative Ken Littlefield, District 61; and Paul Martin, Attorney General's Office.

Other Interested Persons in Attendance: Peggy Rigsby, Florida Health Care Association; Jan Mills, AHCA Home Health Unit; LeeAnn Griffin, Florida Health Care Association; Barbara Alford, Florida Health Care Association; Karen Koch, Florida Council for Community Mental Health; Alberta Granger, AHCA Assisted Living Unit; Gene Tischer, Associated Home Health Industries.

New Business: Ms. Starnes began the meeting by providing a review of the final report, *Effectiveness of Background Screening*, completed in December 2000 by the original interagency workgroup. Three recommendations were presented in the report: 1). Establish a centralized screening unit; 2). Review and amend legislation to create uniform screening requirements among licensed facilities; and 3). Review and recommend modifications and additions to the list of disqualifying offenses provided in Chapter 435, Florida Statutes. The passing of Senate Bill 688 in the 2001 legislative session called for the reconvening of the workgroup to look at two of the three recommendations – establish uniform background screening requirements and provide recommendations for amendments to ch. 435, F.S. The bill also called for the appointment of three additional members to the workgroup, a representative from the House, the Senate and the Department of Health.

The first topic of discussion was creating uniformity in screening requirements. The handout, *Background Screening Requirements for Health Care Facilities Licensed Pursuant to Chapter 400, Florida Statutes*, was presented. This handout provided an overview of the current screening requirements for long-term care, assisted living and home health facilities. A discussion followed in which Susan Fairchild suggested consolidating the screening requirements into one section of Chapter 400, F.S. instead of under each licensure type. It was agreed that this was a good approach to creating uniformity and legislative language would be developed to review at the next meeting.

The second item on the Agenda pertained to ch. 95-228, Florida Law. In summary, the law combined the creation of a new criminal offense of Luring and Enticing Children and the development of ch. 435, Florida Statutes. An effective date of October 1, 1995 was to originally apply to the new criminal offense, however the date was inadvertently placed at the end of the chapter. Christine Messana gave a brief overview of the impact of the situation and stated that the best resolution was to create superseding legislative language.

Gene Tischer, Associated Home Health Industries, raised several issues. First, he stated that in looking at expanding the disqualifying offenses take into consideration that home health agencies are currently having a hard time maintaining a caseload due to staffing issues. Secondly many individuals seeking assistance will hire private duty aides, which do not fall under the screening requirements. Thirdly, he stated that there is a problem in many counties having enough administrative staff to input the information to the Florida Department of Law Enforcement (FDLE), therefore affecting the accuracy of the FDLE reports. He added that many agencies are doing local checks and finding more offenses locally then on the FDLE report. Susan Fairchild stated that from a historical basis, local law enforcement checks were mandatory from 1985-1995, and then in 1995 it became discretionary. Part of the reason for change was that many areas have several law enforcement jurisdictions so it became difficult to determine what constituted a local check. A discussion then ensued about the requirements for counties to report arrest and judicial information to FDLE. The question was then raised of how feasible it is to require a local check on each person. It was determined that it would be beneficial to have someone from FDLE attend the next meeting to discuss these issues.

The next item for discussion was the third agenda item, modifications to chapter 435, F.S. The workgroup reviewed the handout, *Recommendations/Modifications to Chapter 435, Florida Statutes*, for consensus. The main issue in making changes to this chapter revolves around the differences between departments in what disqualifying offenses are essential in considering the populations served. For example, theft, fraud, abuse and neglect are major concerns in the facilities regulated by the Agency. Whereas abuse and neglect are also of concern to the Department of Children and Families, theft and fraud are not considered an issue in the facilities they regulate nor the population they serve. One solution to this situation would be to maintain a generic list of disqualifying offenses that are agreed to be appropriate for all departments (much as the list is now) and create a separate section for industry-specific disqualifying offenses. For instance, an additional list of disqualifying offenses would be created that pertain only to owners/operators, employees and licensees of health care facilities.

Several offenses currently listed in ch. 435, F.S. were presented for change. First, the correction of the definition of domestic violence from 741.30 to 741.28, F.S. Susan Fairchild also requested that 741.30 stay in the statute to reflect the filing of an injunction. Secondly, the deletion of sec. 798.02, F.S., which refers to the cohabitation of an unmarried man and woman, was discussed and approved for removal.

Another change to ch. 435 F.S. that was discussed was the inclusion of a statute of limitations of 10 years for the offense of Prostitution under ch. 796, F.S. With this addition, any offense charged under ch. 796, F.S. over 10 years old from the date of screening would not be considered disqualifying. Drug possession, under ch. 893, F.S. was also considered for a statute of limitation, however it was decided not to include one at this time because of impairment issues related to drug use.

The importance of adding ch. 817, F.S. and ch. 831, F.S. for health care facilities was also discussed. These two chapters deal with the criminal offenses of fraud, uttering, credit card theft, and identity theft. The specifics for adding these offenses will be discussed at the next meeting.

Other additions to ch. 435, F.S. discussed included expanding the reference to ch. 784, F.S. (Assault/Battery offenses) to also include all offenses at a felony level; the inclusion of sec. 790.115 and 790.15 at the felony level for possessing or discharging a weapon on school property and discharging a firearm in public.

Topics for next meeting: Discussion with FDLE representative, Martha Wright, regarding the criminal history database and the requirements for counties reporting offenses to FDLE; review legislative language for uniform screening requirements for facilities licensed under ch. 400, F.S.; continue discussion on additions/modifications to the disqualifying offenses listed in ch. 435, F.S.; discuss rescreening requirements.

Next meeting: Thursday, August 30, 2001, 9:00 a.m. – 12:00 p.m., Fort Knox Complex, Building 3 – Conference Room D; 2727 Mahan Drive, Tallahassee, FL 32308.

Meeting Adjourned: 11:55 a.m.

Background Screening Interagency Workgroup
August 30, 2001
9:00 a.m. – 12:00 p.m.

WORKGROUP MINUTES

Meeting Called to Order: Mr. Jeff Gregg, Bureau Chief of Health Facility Compliance, opened the meeting at 9:08 a.m. by welcoming the members and guests. All attendees were then asked to state their name and affiliation for the record.

Workgroup Members in Attendance: Susan Fairchild, Department of Children and Families Abuse Hotline and Screening Coordinator; Gail LaRosa, Department of Elder Affairs; Christine Messana, AHCA Legal Counsel; Beth Blechman, Office of Statewide Prosecutor; Mark Thomas for Senator Ginny Brown-Waite, District 10; Representative Ken Littlefield, District 61; Paul Martin, Attorney General's Office; CaraLee Starnes, Manager, AHCA Background Screening Unit; Glenda Ricks, Consultant, AHCA Background Screening Unit. Members not in attendance: Dr. Ruth Stiehl, Department of Health – Board of Nursing.

Other Interested Persons in Attendance: Peggy Rigsby, Florida Health Care Association; Jan Mills, AHCA Home Health Unit; Greg Rice, AHCA Assisted Living Facility Unit; LeeAnn Griffin, Florida Health Care Association; Erin Shepherd, Associated Home Health Industries; Debra Gressel, Florida Association of Homes for the Aging; Marcy Hajdukiewicz, AHCA Medicaid Contract Management; Paul Williams, FALA; Chris LeClair, DCF District 2 Screening Coordinator; Janice Johnson, AHCA Medicaid Contract Management; Janet Mabrey, Florida Association of Child Care; Martha Wright, Bureau Chief, FDLE User Services Bureau.

Review of Minutes: The minutes from last meeting were approved as presented.

New Business: At the last meeting, it was requested that a representative from the Florida Department of Law Enforcement attend the next meeting to discuss criminal offense reporting among Florida's counties and to answer other questions. Ms. Martha Wright, Bureau Chief of FDLE's User Services Bureau was in attendance and gave an overview of the reporting process. She stated that all law enforcement agencies are required by law to provide a fingerprint card of all felony and serious misdemeanor arrests. Historically, there was a delay in getting the information processed by both the county and FDLE. Currently, about 80% of the counties are reporting their criminal arrests through a livescan system in which the information is added to the FDLE repository within a brief period of time.

Ms. Wright then described offenses that would most likely not appear on an FDLE criminal history report but would appear on a county search. For instance, the issuance of a “Notice to Appear” is technically not an arrest and thus a fingerprint card is not produced. Therefore, the information is not reported to FDLE. FDLE is currently reviewing their processes to see if the reporting of these types of incidences should be required. In addition, FDLE is getting a new automated system (AFIS), which searches the criminal fingerprints, and a new criminal history repository. They are in the requirement stage for these systems and are exploring the possibility of scanning courtroom actions.

FDLE is also exploring the automated submission of fingerprints on-line. These cards would contain a name search of the criminal history database and a confirmation of the name. It is estimated that cards submitted this way would have FDLE and FBI results returned by e-mail within 48-72 hours.

A discussion then ensued regarding the use of aliases and how that effects getting an accurate Level 1 identification of an individual. Glenda Ricks provided examples of current screening results that were incomplete due to information held under an alias. Essentially, the information in the FDLE repository is only as good as what is reported by the offender at the time of arrest. Therefore, inaccurate names and social security numbers could be attached to a record. In light of this situation, Beth Blechman suggested that employees that provide direct care services in health care facilities obtain a level 2 screening.

LeeAnn Griffin asked if there was any data to support the requirement of Level 2 over Level 1 because of insufficient data. Martha Wright stated that the FBI did a study a couple of years ago in which a name base search of national data was compared to state data and found the results nondescript.

Susan Fairchild introduced Chris LeClair who is the Screening Coordinator for DCF – District 2. Ms. Fairchild asked Ms. LeClair if there was a significant difference in the number of disqualifications of individuals based on data from other states. Ms. LeClair stated it was a small percentage, approximately 20-25 percent.

Erin Shepherd inquired about the impact on facilities if level 2 screenings are required for direct care employees. Martha Wright responded by explaining the financial increase of \$15.00 per screening to \$39.00 per fingerprint card and the additional review needed for the national screening results.

For next meeting – data of AHCA Level 2 screening results will be presented as indicator for requiring the additional screening requirements.

Issue Review:

The first issue addressed was the uniform screening requirements. CaraLee Starnes presented proposed legislative language as directed from the last meeting. Essentially, the screening

requirements for each facility licensed under Chapter 400, F.S. will be combined into one screening section that will address administrators, owners, chief financial officers and employees of facilities. Overall, the requirements for administrators, owners and chief financial officers were the same for each facility type. There were only technical changes, specifically pertaining to Assisted Living Facilities. As for the employee section, the requirements mainly reflect the current requirements specified in sec. 400.215, F.S. for long-term care employees. Two sections were added at the end of the requirements that address screening of students and volunteers. The language for these sections was derived from sec. 394.4572(1), F.S., which pertains to mental health facilities.

Susan Fairchild questioned the requirement for individuals to attest to the residency requirement (page 2, letter c, of proposed legislative language). She suggested to insert that “residency should be verified by the employer.”

Ms. Fairchild also pointed out that the proposed language regarding proof of compliance with level 2 standards within the previous 5 years (page 1, number 2) could be expanded to include all health care and DCF facilities.

Peggy Rigsby then inquired about the addition of screening for volunteers. The purpose of the addition of this section was to give guidance to facilities that frequently use volunteers, however Ms. Rigsby stated that the language “direct and constant supervision...” negated the purpose of having the volunteers. LeeAnn Griffin added that the provision of “..less than 40 hours per month” would require that facilities would have to now keep track of volunteer hours. The suggestion was made that the Florida Health Care Association talk with their Board and members to obtain feedback for this provision.

The discussion then moved to why the focus of the workgroup only included facilities licensed under Chapter 400, F.S. and not other health care providers, specifically hospitals. Per SB 688, the focus of the group is to create uniformity of existing requirements. CaraLee Starnes clarified that the initial intent of last year’s recommendation for uniformity was to aid the facilities licensed under Chapter 400, F.S. Currently, the facility types licensed in this chapter have a varying degree of requirements. This often causes confusion among facilities, particularly those that have several types of licenses. Secondly, there are several facility types (i.e. Assisted Living Facilities) that have internal policies to screen all employees. However, if an employee that is not required by statute to be screened has a disqualifying offense on the criminal history report, there are no means of due process because the jurisdiction requirements for an exemption do not apply to these individuals.

It was recommended that the workgroup consider including screening requirements for unlicensed, uncertified hospital personnel. It was suggested to include persons representing the hospital industry in the discussion at the next meeting.

The second issue discussed was the proposed legislative language for 95-228, Sec. 64, at 2076 Laws of Florida to amend the effective date. Susan Fairchild asked Rep. Littlefield if he could assist in obtaining a copy of a billed filed in 1996 by Rep. Lynn that pertains to this

issue. Christine Messana stated she would construct some additional language to be included for this subject.

Lastly, modifications to Chapter 435, F.S. were reviewed. Proposed language was drafted to indicate the specific section of additional offenses to be applied only to health care professionals and employees. Janet Mabrey expressed support for separating out offenses that appear to be associated more with health care facilities compared to other entities that use ch. 435, F.S. such as day care centers. Glenda Ricks suggested that the offenses might not be prevalent within a childcare facility but still applies to the morality of the individual. Susan Fairchild indicated that for DCF facilities, adding the additional charges would cause exemption cases to skyrocket, which would, in reality be granted automatically. Jeff Gregg stated his concern in showing consistency among programs and asked if Ms. Fairchild could provide a statement explaining the reasons these offenses should not be included within the overall chapter. It was also discussed that the additional offenses for health care facilities be placed within the home statutes instead of within ch. 435, F.S. The reasoning is that ch. 435 is considered an operational statute and there are several other entities outside of the health care field that utilize the chapter that would also be impacted.

The proposed amendments to ch. 435, F.S. include:

- a statute of limitations of 10 years for prostitution under ch. 796, F.S.;
- the addition of all felonies under ch. 784, F.S.;
- the addition of 790.115, F.S., possessing or discharging weapons/firearms on school property to Level 1 offenses;
- the addition of 790.15, F.S. (discharging a firearm in public) if a felony offense;
- deletion of sec. 798.02, F.S. referring to cohabitation
- addition of ch. 810.14, F.S. (voyeurism) if a felony.

Additional offenses to be included only for health care personnel:

- addition of ch. 810.02, F.S. (burglary)
- addition of certain sections of ch. 817, F.S. (Fraudulent Practices)
- addition of certain sections of ch. 831, F.S. (Forgery and Counterfeiting)

Susan Fairchild discussed the addition of rescreening requirements to ch. 435, F.S. She presented legislative language that was drafted a few years ago. The legislative language will be added to the proposed amendments of ch. 435, F.S. for further discussion.

Topics for next meeting:

Discuss the inclusion of screening requirements for unlicensed, uncertified hospital personnel.

Finalize legislative language for uniform screening requirements

Discuss rescreening requirements.

Finalize legislative language for additions/amendments to Chapter 435, F.S.

Next meeting:

The next meeting will be held September 25, 2001, from 9:00 a.m. to 12:00 p.m. at the Fort Knox Complex, Building 3, Conference Room E.

Meeting Adjourned: 11:55 a.m.

**Background Screening Interagency Workgroup
September 25, 2001
9:00 a.m. – 12:00 p.m.**

WORKGROUP MINUTES

Meeting Called to Order: Mr. Jeff Gregg, Bureau Chief of Health Facility Compliance, opened the meeting at 9:11 a.m. by welcoming the members and guests. All attendees were then asked to state their name and affiliation for the record.

Workgroup Members in Attendance: Susan Fairchild, Department of Children and Families Abuse Hotline and Screening Coordinator; Mary Hodges (for Gail LaRosa), Department of Elder Affairs; Stephanie Feldman, Office of Statewide Prosecutor; Phil Williams (for Representative Ken Littlefield, District 61); Paul Martin, Attorney General's Office; Dr. Ruth Stiehl, Department of Health – Board of Nursing; CaraLee Starnes, Manager, AHCA Background Screening Unit; Glenda Ricks, Consultant, AHCA Background Screening Unit. Members not in attendance: Senator Brown-Waite, Senate – District 10; Christine Messana, AHCA General Counsel.

Other Interested Persons in Attendance: Peggy Rigsby, Florida Health Care Association; Greg Rice, AHCA Assisted Living Facility Unit; Janegale Boyd, Florida Association of Homes for the Aging; Paul Williams, Florida Assisted Living Association; Bennet Napier, Florida Life Care Residents Association; Lynne Winston, Department of Juvenile Justice; Karen Peterson, Florida Hospital Association; Patrick Arrington, AHCA Legislative Affairs; Melanie Shanks, Florida Life Care Residents Association; Shannon Sauls, Westminster Oaks/Presbyterian Retirement Centers; Karen Koch, Florida Council for Community Mental Health.

Review of Minutes: Amended copies of the minutes were presented. There were two changes made since the original minutes were distributed to include the addition of a percentage regarding disqualifying offenses on page two, paragraph 6; and the rephrasing of a sentence on page four, paragraph two to reflect the support of separating certain disqualifying criminal offenses that do not relate to day care centers but are relevant to health care facilities.

Issue Review:

Before beginning the review of proposed legislative language, Ms. Starnes presented 3 graphs that projected the percentages of criminal history results of individuals screened through the Agency. In summary 10-19% of all screened have a criminal history with 1-3% being

disqualified and another 5-7% are potentially disqualified. Susan Fairchild stated that this reflects a positive trend that background screening may be serving as a deterrent for some individuals wanting to work within the health care field.

This data was presented to address the proposal from the last meeting to require Level 2 screening for all health care employees mandated to be screened. Stephanie Feldman addressed the issue of the common use of aliases and how a Level 1 screening (a demographic search) will not identify the individual based on the use of an alias, whereas a Level 2 (a fingerprint search) will.

Karen Petersen asked if there was data that indicates by using Level 1 information was missed and as a result the individual caused harm. Dr. Stiehl contended that this information is unknown because often when offenses occur it is not reported to police and facilities are handling them internally. Therefore the data is not available and we must rely on logic and ultimately must weigh the cost vs. harm. Stephanie Feldman added that costs could be assessed through the legal judgments made against a facility because of an adverse incident caused by an employee vs. the extra cost of Level 2 screening. Dr. Stiehl interjected that unfortunately many facilities enter into secret agreements. Ms. Feldman then addressed the representatives from the associations and suggested they look into this issue and analyze the costs since they are privy to the outcomes of secret agreements. Susan Fairchild inserted that there are some safe guards built into the statutes to include the 5-year residency requirements and that often it is hard to make progress when there is a large cost issue. It was decided that the issue would be addressed in the final report, however the recommendation to require Level 2 screening would be excluded at this time.

The discussion then moved to the sharing of criminal history information among facilities. Glenda Ricks suggested that facilities, when considering cost, make use of the Agency's web site to establish if a screening has already been conducted on an individual.

Dr. Stiehl offered that the Department of Health now conducts Level 2 screening on all RNs and LPNs entering the state by endorsement that are trying to get a Florida license. She questioned whether these individuals would have to be screened again upon employment. The discussion then centered on DOH's ability to provide a screening result for the individual to present to the facility for their records or to post results on their licensure verification web site. Dr. Stiehl then explained that the Board of Nursing does not strictly screen against ch. 435, F.S. They have a much broader scope when considering someone for licensure. She stated she would research this issue and report on its feasibility.

It was decided that a statement would be added to the proposed legislative language that would allow facilities to utilize screening results conducted within the last 5 years from the Department of Health would be acceptable for employment purposes.

Susan Fairchild then asked to address an issue from the previous meeting regarding statistics on exploitation of children. She stated that the data does not exist on a state or a national level {National Child Abuse Neglect Data Statistics – (NCANDS)} because it is not

considered an issue with that population. She then clarified the data handout presented from the Florida Abuse Hotline Information System on “Verified and Some Verified Indication Maltreatments...” related to adult protective investigations. She explained that the numbers presented represent allegations of an incident and that the hotline receives approximately 2 to 2 ½ allegations per report. So a number of 64 allegations is the equivalent of approximately 30 reports. She reiterated that these are verified and some indication of maltreatment not the total number of reports investigated. She added that, for example, the unfounded rate for nursing homes is extremely high because unfortunately it is extremely difficult to verify incidences because this population does not always make a good witness.

Jeff Gregg made a distinction between the number of incidences reported at hospitals and how that impacts the suggestion to extend background screening requirements to unlicensed, uncertified hospital personnel. He added that with a cursory review of the numbers it appears that residential facilities, where the length of stay is extended, appears to have a higher significance of incidences. Therefore the data diverts away from the hospital issue. Susan Fairchild agreed and added that in assessing information, residential is associated with other things such as a patient bill of rights, a coordination of social services and activities, etc. because this is a person’s home. Dr. Stiehl stated that the bulk of incidences within hospitals tend to be more medical error than with abuse and neglect. The Board of Nursing has addressed cases of abuse, but these tend to be reported as a practitioner issue rather than an adult protective issue. It was decided that this issue would be presented in the report but concluded that the problems are more associated with residential-type facilities, therefore screening requirements would not be extended to hospital personnel.

The next issue on the agenda was the proposed language for 95-228, sec. 64, page 2076, Laws of Florida. Christine Messana was working on the language, but was unable to attend the meeting. Therefore, the proposed language will be included in the draft report for review by the workgroup. Susan Fairchild thanked Rep. Littlefield’s staff for trying to find a previous bill that was introduced a few years ago regarding this amendment. Unfortunately, the bill was not located.

The workgroup then began reviewing changes to ch. 435, F.S. CaraLee Starnes opened with an inquiry on the placement of disqualifying criminal offenses specific to health care – burglary, fraud and forgery. Originally, the workgroup had proposed the offenses be placed in every statute that applies – ch. 400, ch. 464, F.S., etc.). However, Ms. Starnes mentioned that the Department of Juvenile Justice had created a special section under the Level 2 requirements in ch. 435, F.S. for their personnel. With precedence set, the workgroup agreed that a section for health care personnel could be placed in ch. 435, F.S. that would be consistent with the Juvenile Justice section. Secondly, the workgroup agreed that the criminal statutes for fraud and forgery were extensive, therefore specific sections would be selected that would be considered disqualifying. Ms. Starnes then clarified that the sections for fraud (ch. 817, F.S.) and forgery (ch. 831, F.S.) does not include the offense of Passing Worthless Bank Checks, which is found in ch. 832, F.S.

The addition of rescreening requirements was then discussed. Workgroup members agreed that a rescreening requirement was necessary, however they did not want to limit it to Level 2. Therefore, the section will read that anyone required to undergo screening under ch. 435 (whether the initial screening was Level 1 or Level 2), would need to obtain a statewide screening after 5 years or a predetermined break in service.

The workgroup then addressed concerns from workshop attendees regarding proposed volunteer and student screening requirements. As presented, students would be exempted from screening if supervised by appropriate personnel. And, volunteers that worked less than 40 hours would also be exempt from screening if they were under constant supervision. Two health association representatives presented data from their constituents regarding the screening of volunteers. The workgroup concluded not to recommend screening for students or volunteers at this time due to increase costs and potential loss of volunteer resources.

Next meeting: A draft report will be written and distributed to each workgroup member for comment. Based on the content and amount of comments or corrections to the draft, a teleconference may be scheduled prior to the deadline for the report.

Meeting Adjourned: 11:55 a.m.



**State of Florida
Jeb Bush, Governor**

**Agency for Health Care Administration
Rhonda M. Medows, MD, Secretary**

**2727 Mahan Drive
Tallahassee, Florida 32308
1-888-419-3456
www.MyFlorida.com**