



Florida Department of
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CRIMINAL HISTORY RECORD CHECKS / BACKGROUND CHECKS FACT SHEET February 14, 2017

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DEFINITIONS

1. What is a criminal history record check?

The term “background check” is often used interchangeably with “criminal history check” or “criminal history record check” which causes some confusion. Some companies use the phrase “background check” to include driver’s record, credit history, or interviews with neighbors and employers. From the Florida Department of Law Enforcement (FDLE) perspective, a background check is a criminal history record check to determine if a person has been arrested and/or convicted of a crime. For the purposes of this paper, it is a search of the following databases:

- the Florida Computerized Criminal History (CCH) Central Repository for Florida arrests (**State Check**),
- the Florida Computerized Criminal History Central Repository for Florida arrests AND the national criminal history database at the FBI for federal arrests and arrests from other states (**State and National Check**) and
- the Florida Crime Information Center for warrants and domestic violence injunctions (**Hot Files Check**).

National criminal history record checks, as well as state checks, are based on the submission of fingerprints.

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2. What are Level 1 and Level 2 Background Checks?

Level 1 and Level 2 Background Checks are terms used in Florida Statutes to convey the method of the criminal history record check and the extent of the data searched. However, the terms may also refer to certain disqualifying offenses if certain statutes are referenced. Level 1 and Level 2 are terms that pertain only to Florida and are not used by the FBI or other states. They are defined in Chapter 435, Florida Statutes (F.S.), but are used elsewhere in statute without definition and appear not to be associated with all of the provisions in Chapter 435, F.S.

- **Level 1** generally refers to a state only name based check AND an employment history check.
- **Level 2** generally refers to a state and national fingerprint based check and consideration of disqualifying offenses, and applies to those employees designated by law as holding positions of responsibility or trust. Section 435.04, F.S., mandates Level 2 security background investigations be conducted on employees, defined as individuals required by law to be fingerprinted pursuant to Chapter 435, F.S.

It should be noted that both the state and national criminal history databases can be searched for arrests, warrants, and other information pertaining to an individual. However, neither database has the capability of searching for specific offenses within an individual record.

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CRIMINAL HISTORY RECORD CHECKS

Used to Obtain an Individual's Criminal History Information

3. Are local criminal history record checks available?

Yes. Local criminal history record checks can be obtained directly from each county and reflects criminal history information solely from their jurisdiction.

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4. Are state only criminal history record checks available?

Yes. FDLE provides public access to Florida criminal history information consistent with Section 943.053, F.S. The fee for a state criminal history record check has been statutorily set at \$24.00 per record check. These checks are performed by a name request or submitting a fingerprint card.

State criminal history record checks can be obtained by mail at:

Florida Department of Law Enforcement
Attn: Criminal History Services
Post Office Box 1489
Tallahassee, FL 32302-1489

Requests should include a return address, the subject's name and any known aliases, date of birth or approximate age, race, sex and social security number (optional). A check or money order for \$24.00, made payable to FDLE, per record check must accompany the request. This process takes approximately five business days excluding postal delivery time.

State criminal history record checks can also be obtained online through our Computerized Criminal History on the Internet (CCHI) service at <https://web.fdle.state.fl.us/search>. The \$24.00 fee will be made payable by a valid credit card (Visa, MasterCard, Discover or American Express). Users will process the criminal history record check online with the results presented during the session. Requests for certified (notarized) criminal history results cannot be processed through CCHI. Such requests must be made via mail.

Contact Criminal History Services at (850) 410-8109 or BackgroundChecks@fdle.state.fl.us for questions regarding state only criminal history record checks.

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5. Can I get warrant information or sexual offender/predator information without performing a criminal history record check?

Yes. Independent of a criminal history record check, the public can access this information free of charge. FDLE's Public Access System at <http://pas.fdle.state.fl.us> provides information on wanted persons and missing persons.

Sexual offender and predator information can be obtained at <http://offender.fdle.state.fl.us>. This site allows the public to perform several types of searches including by offender, neighborhood and email address.

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6. What are the requirements for a state criminal history record check and national criminal history record check?

State Check: May be obtained by submitting a name request or by submitting a fingerprint card.

National Check: The following must be in place, as required by the FBI, to receive a national criminal history record check:

- A statute must exist as a result of a legislative enactment;
- It must require the fingerprinting of applicants who are subject to a national criminal history record check;
- It must expressly (“submit to the FBI”) or by implication (“submit for a national check”) authorize the use of FBI records for the screening of applicants;
- It must identify the specific category(ies) of licensees/employees falling within its authority;
- It must not be against public policy;
- It may not authorize receipt of the criminal history record information by a private entity;
- The recipient of the criminal history record check results must be a governmental entity;
- The entity must sign a User Agreement indicating it will comply with the terms and conditions set forth in rule by the FBI; and
- The fingerprint submission must be first processed through the state repository for a search of its records.

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7. Besides the agencies statutorily required to conduct criminal history record checks, are there others who are allowed to request criminal history checks on individuals?

Yes. Private citizens, companies and governmental entities are authorized under Florida’s public records law to request a state only criminal history record check (See Question 4). Examples of these entities include grocery stores, taxi drivers, summer camp employees, etc. Additionally, provisions of the National Child Protection Act, implemented through FDLE’s Volunteer and Employee Criminal History System (VECHS) program, authorize criminal history record checks for employees and volunteers of certain qualified entities that provide care to children, the elderly or disabled persons. See the VECHS section below for more information about the program.

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8. If a state and national criminal history record check is conducted, is it necessary to conduct a separate check of the sex offender registry for registered sex offenders?

No. If the state and national fingerprint based criminal history record check is completed, the agency will be notified of all persons designated as sexual predators or offenders in Florida and in the national system.

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9. Are school district volunteers required to have criminal history record checks?

No. The decision to conduct criminal history checks on volunteers remains a local decision, but schools are required by Florida law to check volunteers' names against the state sex offender registry which is available via the Internet at no charge. If a school district chooses to perform state and national criminal history on volunteers, those checks **MUST** be conducted through the VECHS program and not through the regular submission method with other personnel fingerprints.

Additionally, Section 943.04351, F.S., requires checks of the sexual offender/predator registry for certain volunteers, appointees or employees.

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10. Are agencies required to conduct a recheck on individuals who previously received a criminal history record check?

FDLE does not have any requirements for rechecks. However, some employees are required by law or policy to have periodic state and/or national criminal history record checks through the regulatory or licensing agency. The recheck may be required at regular intervals as decided by legislative policy.

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11. Is there a presumption against negligent hiring when an employer conducts a background investigation of a prospective employee?

Yes. Pursuant to Section 768.096, F.S., in the case of an intentional tort, an employer is presumed not to have been negligent in hiring an employee if before hiring the employee, the employer conducted a background investigation of the prospective employee and the information did not reveal any information that reasonably demonstrated unsuitability of the prospective employee for the work to be performed or for general employment. The background investigation must include a criminal background investigation.

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CRIMINAL HISTORY RECORD CHECK FEES

Associated Costs to Perform a Criminal History Record Check

12. What is the cost of a criminal history record check?



Criminal History Record Check Fee Schedule

Effective October 1, 2016

***Please note the FBI no longer accepts hard card fingerprint submissions and the fees referenced below are for electronic fingerprint submissions only. Also, the fees listed are not inclusive of any applicable retention fees.*

CUSTOMER TYPE	STATE FEE	FEDERAL FEE	TOTAL
Applicant / Licensees --- Required Checks			
<u>Department of Children & Families, Department of Juvenile Justice, Department of Elder Affairs</u> <u>Vendors and Guardian Ad Litem:</u> (examples include – day care center employees, juvenile treatment centers)	\$8.00	\$12.00	\$20.00
<u>Department of Agriculture & Consumer Services:</u> (examples include – concealed weapon permit applicants, security guards)	\$15.00	\$12.00	\$27.00
<u>Criminal Justice Applicants:</u> (examples include – law enforcement, corrections, correction probation officers)	\$0.00	\$0.00	\$0.00
<u>All other applicant type required checks:</u> (examples include – realtors, insurance agents, school employees, Florida Bar applicants, foster care, doctors, nursing home employees)	\$24.00	\$12.00	\$36.00
Volunteer and Employee Criminal History System (VECHS) --- Allowed Checks			
<u>Employees:</u> (employees of a <i>qualified entity</i> that provides care to children, elderly or disabled persons --- that are not specifically required under the applicant groups above)	\$24.00	\$12.00	\$36.00
<u>Volunteers:</u> (volunteers of a <i>qualified entity</i> that provides care to children, elderly or disabled persons --- that are not specifically required under the applicant groups above)	\$18.00	\$10.75	\$28.75
Public Record Checks --- Allowed Checks			
<u>Requests From General Public, Businesses, and Any Governmental or Non-Governmental Entity:</u>	\$24.00	Federal Checks Not Allowed	Federal Checks Not Allowed

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13. How is the cost established and what are they used for?

The cost of each request for a criminal history record check is mandated by federal laws and Section 943.053, F.S. These fees are used to offset the cost of producing the record information and reflect the total cost of creating, storing, maintaining, updating, retrieving, improving and providing criminal history information in a centralized, automated database and also include personnel, technology and infrastructure expenses.

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14. What are the costs associated with criminal history record checks for school district personnel and contractors?

The total cost of the criminal history record check is \$38.75 (\$24.00* for the state check and \$14.75 for the national check). Applicants may incur additional costs assessed by individual school districts and Cogent (or another livescan service provider). In accordance with Section 1012.467(2)(a), F.S., the fee charged by school districts for contractor identified checks may not exceed 30% of the total amount charged by FDLE and the FBI. Any questions related to these fees should be directed to the applicable school district or the Florida Department of Education.

*This amount for the state check may vary based on legislative policy.

NOTE: If a customer chooses to make electronic submissions via a livescan service provider, the service provider may assess a fee in addition to the criminal history record check fee.

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CRIMINAL HISTORY RECORD INFORMATION

Listing of Arrest, Court and Other Related Criminal Information Provided as Part of a Criminal History Record Check

15. Is sealed or expunged information released as part of a criminal history record check? Is juvenile criminal history information released as well?

Sealed information is disseminated only to those agencies authorized by provisions in Section 943.059, F.S. Agencies not specified in the statutes are not provided sealed criminal history information.

Expunged criminal history information is not disseminated. However, a notification that a record has been expunged is provided to agencies consistent with provisions in Section 943.0585, F.S. Agencies not specified in the statutes are not provided the expunged notification.

Juvenile criminal history information, not sealed or expunged, is disseminated only when the subject was taken into custody for an offense that would be a felony if committed by an adult.

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16. What are Hot File notifications?

Hot File notifications consist of information that may not be part of the Computerized Criminal History (CCH) system. Some examples may include: warrants, domestic violence injunctions/protection orders, deported felons, missing persons, probation or supervision release status, career criminal offender, etc.

NOTE: A name search of this file is completed for each submitted transaction and any identified information is returned in the completed results as appropriate. The “hot file” information received is not based on a fingerprint comparison so it may or may not be the applicant. The agency that entered the information can be contacted to learn more about the record.

In addition, system generated notifications are sent to the appropriate criminal justice agency notifying them of the criminal history record check request. These messages will include information on the entity making the request as well as demographic data regarding the subject of the transaction. Hot File notifications are only provided to customers that submit their background checks to FDLE with fingerprint submissions or with name searches submitted directly to FDLE for processing. CCH on the Internet submissions do not include a search of hot files from the CCH system. However, anyone may search FDLE’s Public Access System for wanted or missing persons at <http://pas.fdle.state.fl.us>.

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17. What issues should be considered when determining if a criminal history record check is out of date?

Section 943.051, F.S., established FDLE, Division of Criminal Justice Information Services, as the central repository of criminal history information for the state of Florida. Over one million arrests a year are added to the repository. Additionally, information such as warrants, domestic violence injunctions/protection orders, probation or supervision release status, sexual predator/offender, career criminal offender, etc. are added on a daily basis. Therefore, criminal history record check results are only accurate as of the date they were performed.

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18. Are there Florida criminal history records included in the state repository, but not at the FBI?

Yes. FDLE has records the FBI does not have access to because they are not collected at the FBI.

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CRIMINAL HISTORY RECORD INFORMATION SHARING

Dissemination of Criminal History Information

19. What information from a state and national criminal history background check can be disclosed to a private employer?

Pursuant to federal law, regulatory and employing agencies may not share any information obtained from a state and national criminal history record check with a private entity. However, these agencies can indicate whether or not the person is eligible for licensing or employment based on their established criteria. Prior to being granted access to the records, authorized agencies must sign a Criminal Justice or Non-Criminal Justice User Agreement with FDLE agreeing to abide by state and federal law.

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20. When can a non-governmental agency receive the results of a state and national background check?

Non-governmental entities are not authorized to receive both state and national criminal history information under statutory licensing and employment provisions. The only time non-governmental entities are eligible to obtain national criminal history information is through the VECHS program, which is described in detail in the VECHS section below.

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21. Can agencies share the results of a state and national check with other agencies that require similar checks?

Although generally state and national criminal history information may not be shared between agencies, exceptions apply only if the purposes of the criminal history record checks are the same and the agencies are both entitled to the same information. Thus, school districts may share criminal history information with other school districts because the checks are conducted for the same purpose and all districts receive the same data (for example, they receive sealed criminal history information). Likewise, a county health department could share with another county health department because criminal history record checks are conducted for the same purpose and they receive the same data.

Sharing of criminal history information is not allowed when it has been obtained for different purposes, even if the data received is the same. For example, criminal history information received by the Department of Financial Services for licensing insurance agents may not be shared with the Department of Agriculture and Consumer Affairs for licensing of security guards.

For those entities participating in the VECHS program, criminal history information sharing between VECHS entities is permitted in accordance with the User Agreement. Entities must contact the VECHS Unit at (850) 410-8324 for entity verification before sharing criminal history information.

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22. Can a copy of the FDLE and FBI criminal record be provided to applicants if they are denied employment, licensing, or the opportunity to volunteer?

Yes. Applicants may be shown their own criminal record. A copy may also be provided, however, applicants must be cautioned the record may not be used for any other purpose. Applicants are not allowed to provide a copy of the record to any other organization.

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CIVIL WORKFLOW CONTROL SYSTEM (CWCS)

An Application Used to Receive and Process Fingerprint Based Submissions for Criminal History Record Checks

23. What is the Civil Workflow Control System (CWCS)?

Many entities in Florida are required to perform criminal history background checks on potential employees, licensees or other related positions. Previously, these record checks have been completed using the traditional inked fingerprint card. While extremely accurate and useful, the process of collecting, transporting and processing these inked cards is both labor intensive and time-consuming. Improvements in technology have opened the door for modernizing this process, allowing an opportunity to improve services to the citizens of Florida. In response, the Florida Department of Law Enforcement (FDLE) developed the Civil Workflow Control System (CWCS). CWCS, pronounced “QUICKS”, is an automated system used to receive, process and respond to electronic requests for applicant criminal history record checks. Processing that once took several weeks with fingerprint cards is now completed within 3 business days when submitted electronically. CWCS allows different types of applicants to be scanned on a single device and allows input from a variety of livescan devices that adhere to FDLE and FBI standards and requirements.

The Criminal History Services Section can be contacted at (850) 410-8161 or ApplicantChecks@fdle.state.fl.us for questions regarding the CWCS system.

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24. What steps must be completed to use the CWCS system for the electronic submission of criminal history record checks?

FDLE has established a five-step process to be completed when bringing any new civil applicant livescan into the agency’s internal computer processing environment.

- **Step 1:** The livescan device must successfully pass the FBI **CERTIFICATION** processes;
- **Step 2:** Potential customers must submit a livescan registration form for each potential device. Each specific livescan device must pass a **QUALIFICATIONS** test to ensure that the equipment is capable of transmitting an approved standard fingerprint format to FDLE via the internet;
- **Step 3:** Appropriate data must be submitted from each qualified livescan device into a test system and must pass **VALIDATION** routines administered by the FDLE;
- **Step 4:** Accepted customers (excluding those classified specifically as livescan service providers) must submit individual **REGISTRATION** forms provided by

FDLE for each account (based on the Originating Agency Identifier, referred to as an ORI number) they will be using. This step ensures the submitter and recipient are in full compliance with all applicable statutes governing the submission and receipt of state and/or federal criminal history information. Additionally, this step confirms the appropriate invoice and/or payment information;

- **Step 5:** After successfully completing the above steps, customers begin **OPERATIONS** by submitting electronic requests for criminal history record checks.

Additionally, if the purchase of a livescan device is not an option, there are numerous service providers within the state of Florida. Each of these service providers is required to register and certify their devices with FDLE before submitting electronic criminal history record check requests on behalf of an agency.

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25. How long does it take to complete a state and national criminal history record check when fingerprints are submitted electronically?

Typically, state and national criminal history record checks are completed within three business days of receiving the electronic submission. When a transaction is complete within the CWCS system, the results are posted to DataMotion SecureMail, a secure FDLE web mail application. The results will include both state and national criminal history information, as well as any warrants and other information related to the individual.

A result notification email is sent to the email address designated by the customer and will contain a link to this SecureMail application. This notification will also contain descriptive information specific to the transaction. The results will only be available within the SecureMail application for 180 days (6 months) before purging.

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APPLICANT FINGERPRINT RETENTION AND NOTIFICATION PROGRAM **(AFRNP)**

Retention of Certain Electronically Submitted Applicant Fingerprints for the Purpose of
Providing Arrest Hit Notifications

26. What is the Applicant Fingerprint Retention and Notification Program (AFRNP)? And, what is meant by arrest hit notifications?

In response to various legislative mandates for the retention of certain electronically submitted applicant fingerprints and monitoring for new arrests, FDLE developed the AFRNP. All incoming Florida arrest fingerprints are searched against fingerprints retained in the AFRNP. When the subject of retained fingerprints is identified with fingerprints of an incoming Florida arrest, FDLE notifies the licensing or employing agency of the arrest (referred to as an arrest hit notification). The arrest hit notification will include the name of the arresting agency as well as other pertinent data to assist the organization.

FDLE retains only those applicant fingerprints authorized by law. All other applicant prints submitted to FDLE ARE NOT retained in our database.

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27. Will the AFRNP provide arrest hit notifications for arrests outside the state of Florida?

The AFRNP can only conduct searches against incoming Florida arrest fingerprints. Arrests made in other states or by the federal government will NOT result in arrest hit notifications, as access to these arrests is restricted by federal law. Information on arrests in other states or the federal government is available only upon a fingerprint submission.

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28. How does the quality of fingerprints submitted into the AFRNP affect arrest hit notifications?

The quality of fingerprints submitted into the AFRNP has a direct effect on the search and the resulting arrest hit notification. While it is not expected to be a frequent occurrence, it should be understood that if the submitted fingerprints for an applicant were of sub-standard quality or if the fingerprints submitted on an arrested individual were of sub-standard quality, the identification of these persons as the same may not occur and an arrest notification may not be made. Additionally, until the arrest fingerprint submission is received by FDLE, we will have no way to identify the arrested person as the individual retained in the AFRNP.

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29. What is the cost associated with the state retention of fingerprints?

With the exception of criminal justice applicants, the current cost for the FDLE retention of civil applicant fingerprints is \$6 annually per retained applicant fingerprint transaction. The state retention of fingerprints eliminates the necessity to have a Florida criminal history record recheck at a cost of \$24, since all incoming arrest fingerprints are continuously compared to the retained applicant database. If a recheck is required, it would only be for a national criminal history record check.

Certain applicant groups participating in the AFRNP are statutorily mandated to pay retention fees up front. Any questions regarding retention fees should be directed to the appropriate participating regulatory or licensing agency.

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30. Do other states retain applicant fingerprints?

Yes. There are other states retaining applicant fingerprints and providing subsequent arrest notifications.

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31. Does the FBI retain applicant fingerprints at the national level?

No. The FBI does not retain applicant fingerprints submitted by the states.

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32. Are certain agencies currently authorized to have applicant fingerprints retained?

Yes. In 2004, Florida school districts were the first agencies to have applicant fingerprints, submitted as a part of criminal history record check requests, retained in the FDLE AFRNP. In the years since that date, many other organizations have developed fingerprint retention requirements and have enrolled in the AFRNP.

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33. Is FDLE authorized to retain volunteers' fingerprints?

Yes. FDLE has authority to retain fingerprints for agencies or qualified entities which have formally requested it. If the agency or qualified entity uses volunteers and requests that volunteers be retained, they will be retained in accordance with Section 943.05(3)(g), F.S. In addition, volunteers may be included in some mandatory criminal record checks listed above and, if the persons in the group are required to be retained, the volunteers may, likewise, be required to be retained.

In the case of school districts, volunteers' fingerprints should not be submitted in the same manner as employees and contractors, since employee/contractor fingerprints are retained and volunteer fingerprints are not unless the district has specifically requested retention. If state and national checks are desired on volunteers, they should be submitted through the VECHS program under the authority of the National Child Protection Act. If retention of these fingerprints is desired, the district should make the request to FDLE.

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34. How can different school districts access the criminal history records of contractors screened in another school district?

As mandated by Section 1012.467, F.S., FDLE developed the Florida Shared School Results (FSSR) application which allows school districts an automated option for sharing criminal history information with other school districts. Criminal history record check responses, resulting from appropriately identified background checks submitted on vendor/contractors, are posted to the FSSR system and maintained for five years from the date of the original criminal history record check.

School districts can then access the results and view the same criminal history record and subsequent arrest notifications received by the original school district. The sharing of criminal history information between districts reduces the need for these persons to be fingerprinted multiple times and pay fees for criminal history record checks in each county in which the individual works.

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VOLUNTEER AND EMPLOYEE CRIMINAL HISTORY SYSTEM (VECHS)

A Program Allowing Qualified Entities Working with Vulnerable Populations to Receive State and National Criminal History Information as Authorized Under the National Child Protection Act

35. What is the Volunteer and Employee Criminal History System (VECHS) program?

The VECHS program allows qualified entities to obtain state and national criminal history record checks on individuals working with children, the elderly or the disabled. The authority for these checks is granted under the National Child Protection Act (NCPA), which is implemented through the VECHS program, under Section 943.0542, F.S.

NOTE: Entities required to conduct state and national criminal history record checks under other statutory provisions, on all or specific employees/volunteers, must continue to comply with those statutes and the procedures that specifically apply to them. Requests for these required criminal history record checks may not be processed through the VECHS Program, pursuant to state and federal law.

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36. What is the difference between the National Child Protection Act (NCPA) and the Volunteers for Children Act (VCA)?

The NCPA and VCA refer to the same basic law. For the purposes of criminal history record checks, the NCPA and VCA permits qualified entities working with children, the elderly and the disabled access to state and national criminal history information.

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37. What is a "qualified entity"? Who can obtain criminal history background checks under the NCPA and Section 943.0542, Florida Statutes?

To qualify for the VECHS Program, an entity must provide some type of "care" or "care placement services" for children, the elderly or the disabled; even if it is only a limited part of the entity's overall business. Once qualified to participate in the program, an entity may request criminal history information on all current and prospective employees and volunteers, not only those who work with vulnerable persons. A qualified entity may also request criminal history information on employees or volunteers who have or who seek to have unsupervised access to the populations described above.

"Qualified entities" are authorized to obtain criminal history record information as described under the NCPA and related federal guidelines. Under the NCPA and Florida statute, a "qualified entity" is a business or organization, whether public, private, for profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services. "Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

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38. How does an organization enroll in the VECHS program?

If an entity meets the criteria of a "qualified entity", they may download and complete a copy of the VECHS Qualified Entity Application and the VECHS User Agreement at <http://www.fdle.state.fl.us/BackgroundChecks> or contact the VECHS Unit at (850) 410-VECHS (850-410-8324), to request a copy of each document.

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39. Can qualified entities share criminal history information with other qualified entities?

Yes. Criminal history information may be obtained from other VECHS entities, if the employee or volunteer agrees to this on the VECHS Waiver Statement and Agreement form, required to be signed when he/she was fingerprinted, and if the transfer of information is recorded by the other qualified entity on its Dissemination Log. The restrictions on this process are described in the User Agreement. Entities must contact the VECHS Unit at (850) 410-8324 for entity verification before sharing criminal history information.