SUBJECT: Positions of Special Trust

PURPOSE/SCOPE: To establish Agency policy and procedures for conducting background screenings of employees who hold positions of special trust.

I. AUTHORITY

Section 110.1127, F.S.
Chapter 435, F.S.

II. DEFINITIONS

Confidential Information - Information that has been declared confidential by Florida or federal law. Such information is not subject to inspection by the public and may be released only to those persons and entities specifically designated in the relevant statutes.

Contractor Employee – An employee of an entity that contracts directly or indirectly through another contracting entity with the State to perform a service for a fee.

Employee – Any person receiving a warrant from the State for services rendered including Career Service, Other Personal Services (OPS), Selected Exempt Service and Senior Management Services employees, as well as independent contractors who are being paid by the Agency for duties normally performed by an Agency employee in an established full-time equivalent position. Students, interns and volunteers are also considered employees for purposes of this policy.

Florida Criminal Information Center (FCIC) Check – An inquiry to identify violation(s) of law resulting from arrests and charges by law enforcement officers in the State of Florida.

Hiring Authority – The person who is responsible for and initiates the Personnel Action Request Form to hire.

Intern – A student of an educational institution with a cooperative agreement with the Agency that allows students or graduates to perform duties or receive training.

Level 2 Background Screenings – A security background investigation performed in accordance with the standards set forth in section 435.04, F.S., and which includes, but is
not limited to, fingerprinting, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement (FDLE), and federal criminal records checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.

National Criminal Information Center (NCIC) Check – An inquiry using fingerprints to check national criminal records of the Federal Bureau of Investigation to identify violation(s) of law resulting from arrests and charges made by law enforcement officials in the United States.

Position of Special Trust – A position or duty, designated by the Director or designee(s), as a special trust position due to one of the following: (1) the position is physically located in a sensitive location, (2) the position’s duties involve access to confidential information, records, or files and the ability to access and alter or destroy the confidential information, (3) the employee is depended upon for continuity of information resources imperative to the operations of the Agency and its mission, or (4) the position provides care to or works with children, the developmentally disabled, or vulnerable adults for 15 hours or more per week. Persons who occupy these positions are subject to a security background check, including fingerprinting, as a condition of employment.

Sensitive Locations- Physical locations, such as data centers, network operations centers or any location where critical, confidential or exempt information resources can be accessed, processed, stored, managed, altered or destroyed.

Volunteer – Any person, who of his or her own free will, provides goods or services, to the Agency with no monetary or material compensation.

III. POLICY

In accordance with section 110.1127(1), F.S., certain positions are designated, due to their nature, to be positions of special trust because they involve special trust or responsibility or are sited in sensitive locations, and, as such, are subject to background screening pursuant to section 435.04, F.S., as a condition of employment. As a result of this special trust, all current employees, contracted employees, and applicants seeking employment in special trust positions are required to submit to a Level 2 background screening, including fingerprinting, as a condition of employment or contract award.
IV. PROCEDURES

A. Authority to Designate Positions of Special Trust.

The Director or designee(s) at any time may designate positions of special trust. Furthermore, if at any time the Director or designee determines that a position no longer meets the definition of special trust, the Director or designee may remove the designation for that position.

B. Process for Identifying Positions of Special Trust.

Division Directors shall:

(1) Review the job duties of all positions in their section and determine if any position falls under this policy’s definition of “special trust position.”

(2) After determining which positions are those of special trust, submit a listing of these positions, the position numbers and brief description of each job’s duties to the Director or designee for review and approval.

(3) If the Director or designee approves and designates the positions as one of special trust, revise the position’s job description to reflect the designation and submit to the Office of Human Resource Management.

C. Background Screening Process.

Background screenings shall be conducted in accordance with section 435.04, F.S. See attachment.


The Office of Human Resource Management shall:

(a) Assign in People First all special trust positions a security check of Level 2 (National Criminal Information Center Check) and maintain a listing of all special trust positions within the Agency.

(b) Unless the position designated is vacant, notify the employee that the position has been designated as one of special trust and instruct the employee to submit to background screening as described herein.

(c) Ensure that all advertised positions of special trust contain a statement that provides: “Successful completion of a criminal background investigation and fingerprinting is a condition of employment.”
(d) Verify that all required information is provided.
(e) Ensure that all materials requesting background screenings include the dates sent to FDLE.
(f) Submit the information necessary for screening to FDLE within five working days after receiving the information pursuant to section 435.05(1)(b) and (c), F.S.
(g) For all screenings, inform the applicant or employee in writing whether screening has revealed any disqualifying information in accordance with section 435.05((1)(b) and (c), F.S.
(h) Maintain confidential files of all requests for background screenings and results.
(i) Process FDLE Invoices for Payment.
(j) Assist hiring authority in the preparation of terminations for employees when it is determined that termination is warranted and appropriate.
(k) Prepare letters to be sent to applicants who were not hired due to the results of a background check.

(2) Hiring Authority Responsibility.

The hiring authority shall:

(a) Review with each applicant at the time of interview, and each employee currently holding a position of special trust, the background screening requirements of the position.
(b) Instruct intended hires and employees to:
   (i) take the Fingerprint Card provided to local law enforcement;
   (ii) have themselves fingerprinted; and
   (iii) return the Fingerprint Card to supervisor/hiring authority within five working days after being provided the Fingerprint Card.

(3) Employee Responsibility.

(a) Provide hiring authority with all information necessary to conduct a background screening within five days after starting employment or for current employees within five days of being requested to provide necessary information.
(b) Employees are required to inform their immediate supervisor and the Human Resource Management Office if they are arrested for any offense within the first business day of the arrest. Employees must also notify their immediate supervisor and the Human Resource Management Office within the first business day of the conviction of a crime, including a plea of nolo contendre and a plea of guilty with adjudication withheld.
(c) It is the responsibility of the affected employee to contest his or her disqualification or to request an exemption from disqualification.
D. **Criminal History or Omitted Information.**

When background screening identifies criminal history information, the supervisor/hiring authority for the unit in which the employee works must:

(1) In consultation with the Office of Human Resource Management and the Office of General Counsel, determine if the charges would prohibit the person from working in the sensitive position due to the special trust and responsibility assigned to the position.

(2) Review the background section of the employment application to determine if the information provided is consistent with the report from FDLE and the FBI. If information was misrepresented or omitted, the employee may be disqualified from employment consideration and, if the employee is already working, shall be subject to disciplinary action, up to and including dismissal. Misrepresentations or omissions should be considered on a case-by-case basis, with input from the Human Resource Management Office, the Office of General Counsel, Office of Inspector General, and supervisor over the unit in which the employee works or is to work. The individual may be given up to thirty days to furnish the following documentation for consideration:
   (a) A written, signed statement from the employee that:
      (i) indicates the circumstances of the offense(s) and nature of the harm caused by the offense;
      (ii) explains why the information was omitted from the employee’s state employment application; and
      (iii) if available, includes copies of police reports, arrest reports, and court records indicating disposition of the offense; and
   (b) A written recommendation by the supervisor/hiring authority that includes the employee’s employment records and criminal history, if any, since the incident and other evidence or other relevant circumstances.

(3) If an employee is retained, he or she must submit a revised employment application correcting any omissions or inaccurate information.

(4) If the Agency determines that the employee falsified the employment application as it relates to criminal history, the employee shall be disqualified from employment or, if employed, shall be dismissed.

(5) Adverse personnel action should not be taken against any employee solely on an arrest record. The final disposition of the case must be verified and
the circumstance of arrest shall be determined.

E. **Exceptions to Initial Screening Requirements-Former Employees Seeking Re-employment or Current Employees Seeking Promotion or Another Position.**

   Background screening is not required for former employees seeking re-employment or current employees seeking promotion or another position with the Agency if:

   (1) The former or current employee was previously screened as required in this policy, and the screening completion date is less than 180 days; and

   (2) The background screening results are available for review.

F. **Exclusion From Employment.**

   When the Agency has reasonable cause to believe that grounds exist for the denial or termination of employment as a result of background screening, the supervisor/hiring authority shall notify the employee in writing, stating the specific record which indicates noncompliance with the background standards and the provisions of section 435.06, F.S.

G. **Exemptions from Disqualification.**

   (1) Exemptions from disqualification for employment shall be determined in accordance with section 435.07, F.S. Exemptions must be approved by the Director or designee.

   (2) Employees, interns, volunteers, or contract employees who have a disqualifying criminal conviction(s) but are not granted an exemption shall be removed from the position of special trust.

   (3) Any challenge to a disqualification or request for exemption from disqualification shall be conducted in accordance with the provisions of Chapter 435, F.S.

H. **Refusal to Cooperate.**

   In accordance with sections 110.1127(4) and 435.06(3), F.S., any employee, contracted employee, or potential employee who refuses to undergo employment screening, to cooperate in such screening or to submit the information necessary to complete the screening, including fingerprints when required, shall be disqualified from employment in such position or, if employed, shall be dismissed.
I. Costs.

When pre-payment for fingerprinting is required by law enforcement or others who have been professionally trained to take fingerprints, MyFloridaMarketPlace should be used where possible.

J. Security and Maintenance of Background Screening Information.

Background screening records and information obtained pursuant to this policy shall be maintained in a locked file or other secure location (regardless of whether the records are in hard copy or electronic form) and shall be kept separate from any official employee personnel files. These records shall be retained for the duration of the employee’s employment with the Agency or for the period provided for by the Florida Department of State (DOS), Records Retention Schedule, whichever is longer. Records shall be destroyed in accordance with DOS Record Retention Schedules.

K. Sharing Background Screening Information.

The sharing of information regarding background screenings is limited to the provisions of section 435.10, F.S.

L. Confidentiality.

Section 435.09, F.S., provides:

“No criminal or juvenile information obtained under this section may be used for any purpose other than determining whether persons meet the minimum standards for employment . . . .”

Criminal or juvenile records or information obtained pursuant to this policy are confidential and exempt from public records disclosure under section 119.071(1), F.S. Accordingly, no employee shall disclose background screening information. Unauthorized disclosure of criminal or juvenile records or information shall subject the employee disclosing the information to the penalties provided for under sections 110.1127, 119.10, or 435.11, F.S., and/or disciplinary action up to and including dismissal.

V. FORMS

VI. ATTACHMENTS

Section 435.04, F.S.
SUBJECT: Positions of Special Trust and Employee Background Screenings.