



Fighting for Children's Rights

“EXEMPTION FROM DISQUALIFICATION”

The process to get approved for a job that requires a State of Florida Background Screening for people with criminal convictions.

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Florida disqualifies people with certain criminal convictions from working with vulnerable persons such as children, the elderly and people with disabilities. That means that, even if the employer wants to hire you, by law they are unable to do so. If you have a disqualifying conviction, you can apply for an “exemption” which will allow the employer to hire you despite the conviction.

This document is intended to help you understand the law and the process for obtaining an exemption. It is not intended as individual legal advice.

1. Q. WHY HAVE I BEEN DISQUALIFIED FROM EMPLOYMENT?

A. State law requires that, if a field of employment requires interaction with certain groups such as minors, the elderly, and people with disabilities, the employees of that field undergo pre-employment screening. If the field of employment you applied for requires Level 1 (a background search using your name) or Level 2 (a background search using your fingerprints) pre-employment screening then the agency that regulates that field of employment will conduct the screening. You will be disqualified from employment if you have ever been found guilty or pled no contest to one of the 51 types of offenses listed by the state.

2. Q. HOW DO I KNOW WHICH OFFENSES WILL DISQUALIFY ME?

A. Florida Statute 435.04 explains the Level 2 screening standards and includes a current list of all the offenses that disqualify someone from employment. <http://www.flsenate.gov/laws/statutes/2012/435.04>. Although the list is in the part of the law discussing Level 2 screenings, it also applies to Level 1 screenings. If you are not sure if your offense falls into a particular category then you can click on the link before each offense. On page 4 of this packet you can find a list of disqualifying offenses as of December 2012.

3. Q. HOW WILL I KNOW IF I HAVE BEEN DISQUALIFIED?

A. If you are disqualified from employment, the agency that conducted the screening will send you and the employer a notice. When the agency sends you notice of disqualification they will also send you information on how you can apply for an exemption. Some agencies will include the materials to request the exemption, others will direct you to their website, and others will provide an address or telephone number at which you can request the materials be sent to you.

4. Q. IF I'VE BEEN DISQUALIFIED FROM EMPLOYMENT BECAUSE OF PRIOR CRIMINAL CHARGES OR CONVICTIONS WHAT CAN I DO TO BECOME EMPLOYED?

A. In some cases if you have been disqualified from employment because of a previous criminal charge or conviction you may apply for an exemption from the state agency that is responsible for that field of employment and they may grant an exemption which would allow for you to be employed in that position. Exemptions are not guaranteed.

5. Q. WHEN CAN I APPLY FOR AN EXEMPTION?

A. You can apply for an exemption only after you have been released from confinement (prison, jail, detention or house arrest), finished probation, or complied with other sanctions. If you were convicted of a felony then it must have been **3 years** since you were released. The three years also applies to minors convicted of a crime that would have been considered a felony if committed by an adult. There is an exception to the 3 year period if you are seeking employment in a position that treats adolescents who are thirteen years old or older and you were disqualified because of a drug related felony.

6. Q. CAN ANYONE GET AN EXEMPTION?

A. No. A person considered under the law to be a sexual predator, sexual offender, or career offender is not eligible for an exemption.

7. Q. WHAT WILL I HAVE TO PROVE IN ORDER TO GET AN EXEMPTION?

A. Each agency has its own requirements that must be met in order to be granted an exemption. In general you will have to show that you have been rehabilitated and are not a danger to the groups of people you would be working with. Proof of rehabilitation should include a description of the crime or crimes that caused your disqualification. You should explain when the incident happened, the effect or harm your crime had on the victims, and what you have done since the crime that shows you are not a danger to anyone and can be trusted. The agency that reviews your request will weigh your crime against the evidence you provide to show that you have been rehabilitated and make a decision on whether or not to grant the exemption.

8. Q. WHAT KIND OF DOCUMENTATION WILL I NEED TO INCLUDE WITH REQUEST FOR EXEMPTION?

A. Each agency will have a detailed list of documentation you will need but you will likely have to provide the documents listed below. Note that all of this evidence must be verifiable so be sure to include telephone numbers and addresses of the people, groups, or agencies that you are referring to. Be honest and forthcoming with all the relevant information. Inconsistencies, even if they are mistakes, might influence the agency's decision. You will likely have to provide:

- Detailed reports of the crime,
- The arrest report from the disqualifying crime and any other offenses you have committed since then,
- The State Attorney's petition (or charging document) for the disqualifying crime and the Court's Final Disposition,
- Probation reports detailing your time on probation, if you served probation,
- Documents showing participation in rehabilitation programs,
- Your complete employment history since the arrest,
- Documentation of education or training you've completed or are currently enrolled in,
- Documentation of volunteer work,
- Documentation of special awards or recognition,
- Documentation of military service,
- Any evidence you have of caregiver experience,
- Letters of personal reference from people who have known you for more than two years (usually not from relatives),
- Letters of reference from employers, and
- Any other evidence you may have of rehabilitation and good moral character.

9. Q. HOW DO I APPLY FOR AN EXEMPTION?

- A. Complete the paperwork that the agency requires, attach all of the necessary documentation, and send it to the address that the agency provides. Be sure to include all of the documentation they request and make sure your application is complete. Having an incomplete application will not only delay your exemption but the agency might see your mistake as a reason to deny your exemption.

10. Q. THE AGENCY GRANTED MY EXEMPTION! NOW WHAT?

- A. If the agency grants your exemption it will notify you. Once you receive the exemption you are free to be employed and you should contact the employer. Be aware that even if one agency grants you an exemption it does not mean that, if you change jobs, another agency is required to grant an exemption. (For example, APD may give you an exemption to work with people with developmental disabilities, but DCF might not give you an exemption to be a childcare worker.) Other agencies will consider a previous exemption but they are not required to grant an exemption.

11. Q. THE AGENCY DENIED MY EXEMPTION. WHAT SHOULD I DO NOW?

- A. If the agency denies your exemption it will notify you and give you instructions on how to appeal or reverse the decision. The agency will tell you the procedure to follow and how many days you have to appeal. The agency may or may not include the paperwork you will need to appeal. In order to appeal a decision you will need to seek an administrative hearing. **Pay close attention to any deadlines that are in the notice you receive.**

12. Q. HOW DO I FILE AN APPEAL?

- A. An administrative hearing is a lot like a hearing of any other kind – you can represent yourself or you can use an attorney. If possible, you should get an attorney to represent you. If you hire an attorney you will be responsible for paying for all your legal fees, even if the exemption is granted. If you cannot afford an attorney, seek legal assistance through your local legal aid program. You can find a list of Florida legal aid organizations at FloridaLawHelp.org. If you were in state care (foster care, group home, etc.) Florida’s Children First might be able to find you a lawyer, contact us at fcf@floridaschildrenfirst.org. Florida’s Children First also has a packet of materials to assist individuals or lawyers preparing to seek an exemption – it’s available on our website at FloridasChildrenFirst.org.

12. Q. WHAT SHOULD I DO IF I AM DISQUALIFIED FROM EMPLOYMENT OR I THINK I MIGHT BE DISQUALIFIED IN THE FUTURE?

- A. Do as much as you can to prove that you are rehabilitated. Take care of all your legal issues – finish your confinement and probation, complete your community service, and pay all of your fines. Stay out of trouble with the law. Gain employment in another field to prove that you are responsible and can be trusted. Get additional training and continue your education. Volunteer in your community to show that you are of good moral character. Find a mentor, a trusted adult who you look up to and perhaps works in a field that you would like to work in – their recommendation could do a lot to influence an agency’s decision. Keep documentation of anything and everything you do that could be evidence of rehabilitation to make it easier when you apply for an exemption.

DISQUALIFYING OFFENSES

Offenses relating to:

- (a) Section [393.135](#), relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- (b) Section [394.4593](#), relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- (c) Section [415.111](#), relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- (d) Section [782.04](#), relating to murder.
- (e) Section [782.07](#), relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- (f) Section [782.071](#), relating to vehicular homicide.
- (g) Section [782.09](#), relating to killing of an unborn quick child by injury to the mother.
- (h) Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- (i) Section [784.011](#), relating to assault, if the victim of the offense was a minor.
- (j) Section [784.03](#), relating to battery, if the victim of the offense was a minor.
- (k) Section [787.01](#), relating to kidnapping.
- (l) Section [787.02](#), relating to false imprisonment.
- (m) Section [787.025](#), relating to luring or enticing a child.
- (n) Section [787.04](#)(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- (o) 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.
- (p) Section [790.115](#)(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- (q) Section [790.115](#)(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- (r) Section [794.011](#), relating to sexual battery.
- (s) Former s. [794.041](#), relating to prohibited acts of persons in familial or custodial authority.
- (t) Section [794.05](#), relating to unlawful sexual activity with certain minors.
- (u) Chapter 796, relating to prostitution.
- (v) Section [798.02](#), relating to lewd and lascivious behavior.
- (w) Chapter 800, relating to lewdness and indecent exposure.
- (x) Section [806.01](#), relating to arson.
- (y) Section [810.02](#), relating to burglary.
- (z) Section [810.14](#), relating to voyeurism, if the offense is a felony.
- (aa) Section [810.145](#), relating to video voyeurism, if the offense is a felony.
- (bb) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- (cc) Section [817.563](#), relating to fraudulent sale of controlled substances, only if the offense was a felony.
- (dd) Section [825.102](#), relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- (ee) Section [825.1025](#), relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- (ff) Section [825.103](#), relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- (gg) Section [826.04](#), relating to incest.
- (hh) Section [827.03](#), relating to child abuse, aggravated child abuse, or neglect of a child.
- (ii) Section [827.04](#), relating to contributing to the delinquency or dependency of a child.
- (jj) Former s. [827.05](#), relating to negligent treatment of children.
- (kk) Section [827.071](#), relating to sexual performance by a child.
- (ll) Section [843.01](#), relating to resisting arrest with violence.
- (mm) Section [843.025](#), relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- (nn) Section [843.12](#), relating to aiding in an escape.
- (oo) Section [843.13](#), relating to aiding in the escape of juvenile inmates in correctional institutions.
- (pp) Chapter 847, relating to obscene literature.
- (qq) Section [874.05](#)(1), relating to encouraging or recruiting another to join a criminal gang.
- (rr) 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.
- (ss) Section [916.1075](#), relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- (tt) Section [944.35](#)(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- (uu) Section [944.40](#), relating to escape.
- (vv) Section [944.46](#), relating to harboring, concealing, or aiding an escaped prisoner.
- (ww) Section [944.47](#), relating to introduction of contraband into a correctional facility.
- (xx) Section [985.701](#), relating to sexual misconduct in juvenile justice programs.
- (yy) Section [985.711](#), relating to contraband introduced into detention facilities.