Florida Fish and Wildlife Conservation Commission

Internal Management Policies and Procedures (IMPP)



	TITLE	IMPP
	Applicant and Employee Background Screening and Criminal History Record Checks	6.46
		EFFECTIVE
		DATE 3/31/2023
	APPLICABILITY	RESCINDS/AMENDS
	All Employees	3/10/2023

REFERENCES:

AUTHORITY: RULE 60L-33.002 and Chapters 71A-1, 11B-27, Florida Administrative Code; Sections 110.1127, 775.16, and 943.04351 and Chapters 409.175, 943 and 435 Florida Statutes; Executive

Director

IMPP OWNER: HUMAN RESOURCES

POLICY

Florida law designates individuals who, as a condition of employment or continued employment with the State, must undergo background screening or criminal history record checks.

Subsection 110.1127(1), Florida Statutes, provides that each agency shall designate positions that, based on the position duties, must undergo employment background screening in accordance with chapter 435, Florida Statutes, using level 1 screening standards as a condition of employment and continued employment. Paragraph 110.1127(2)(a), Florida Statutes, requires each agency to designate those positions that, because of the "special trust or responsibility" or "sensitive locations" associated with the position, must undergo security background investigations in accordance with chapter 435, Florida Statutes, using level 2 screening standards, including fingerprinting, as a condition of employment and continued employment.

Sections <u>943.13</u> and <u>943.135</u>, Florida Statues and Chapter <u>11B-27</u>, Florida Administrative Code, establish background check, fingerprint, and criminal and controlled substance check requirements for full-time, part-time, and auxiliary sworn law enforcement officers.

Section <u>409.175</u>, Florida Statutes, requires personnel working in summer day camps or summer 24-hour camps providing care to children to undergo a level 2 criminal history record check.

Volunteers shall be subject to the criminal history record check requirements as outlined in IMPP
6.9.

Any person required to undergo a background screening or a criminal history record check and who refuses to cooperate in such screening or record check, or who refuses to submit fingerprints, when required, shall be disqualified for employment in such position or, if employed, shall be dismissed.

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6.46.1 DEFINITIONS

- A. **CJIS** The Florida Department of Law Enforcement's Criminal Justice Information System
- B. **Criminal History Record Check** A record check to determine if a person has been arrested for and/or convicted of a crime.
- C. **FDLE –** The Florida Department of Law Enforcement
- D. Level 1 Criminal History Record Check Screening Standards Employment screening standards laid out in section <u>435.03</u>, Florida Statutes.
- E. Level 2 Criminal History Record Check Screening Standards Employment screening standards laid out in section 435.04, Florida Statutes.
- F. **Specific to Summer Day Camps and Summer 24-hour Camps** (definitions are adopted from the definitions within section 409.175, Florida Statutes unless otherwise noted):
 - 1. "Personnel" for the purposes of screening, includes owners, operators, employees and volunteers working in summer day camps, or summer 24-hour camps providing care for children.
 - "Screening" is defined as the act of assessing the background of "personnel" and includes Level 2 screening standards as set out in section 435.04, Florida Statutes, which includes fingerprinting for statewide criminal history checks through the Department of Law Enforcement and national criminal history record checks though the Federal Bureau of Investigation.
 - "Summer day camp" means recreational, educational, and other enrichment programs operated during summer vacations for children who are 5 years of age on or before September 1 and older.
 - 4. "Summer 24-hour camp" means recreational, educational, and other enrichment programs operated on a 24-hour basis during summer vacation for children who are 5 years of age or older on or before September 1, that are not exclusively educational.
 - "Non-Summer day camps" are day camps provided outside of the summer periods that
 are not regulated by the Department of Children and Families (DCF) background process
 under <u>section 409.175</u>, Florida Statutes, but still require a level 2 criminal history record
 check.

6.46.2 Positions Requiring a Criminal History Record Check

- A. Pursuant to subsection <u>110.1127(1)</u>, Florida Statutes, all positions not included within 6.46.2 (B), below, or the exception list, located on the Office of Human Resources Share Point, will be required to undergo a level 1 criminal history record check screening standards.
- B. Pursuant to paragraph 110.1127(2)(a), Florida Statutes, the following positions are required to undergo employment screening in accordance with section 435.04, Florida Statutes, using Level 2 criminal history record check screening standards, as a condition of employment and continued employment:
 - All positions in the Office of the Executive Director, Finance & Budget Office, Chief Financial Officer's Office, General Services, Legal Office, Office of Inspector General, Office of Information Technology, Office of Licensing and Permitting and Office of Human Resources.
 - 2. All positions within the Division of Law Enforcement.
 - All positions at the Section Leader, Director and Deputy Director level, as well as
 those positions determined to have responsibilities comparable to these positions
 as recommended by the Director of Human Resources and approved by the
 Executive Director or designee.
 - 4. All positions that have access to cash paid to FWC, checks made out to FWC or the Fish and Wildlife Foundation of Florida (Foundation) or credit card information provided to FWC or the Foundation for purchase of an FWC product, license or service.
 - 5. All positions assigned a role code in the People First system that allows access to employee information for a Division/Office or the entirety of FWC.
 - 6. All positions that may have access to databases and reports containing social security numbers or law enforcement confidential data.
 - 7. Information technology contract positions with access to information-processing facilities or information technology positions that have system, database, developer, network or other administrative capabilities for systems, applications or servers with risk categorizations of moderate or high risk.
 - 8. All positions delegated authority levels C-E, via the annual delegation of authority, to initiate and/or approve MFMP-Purchase Orders, Expenditure Contracts, Revenue Contracts, Grant Agreements, and/or Inter-Agency MOAs/MOUs or required to file annual Financial Disclosure reports.
 - 9. All positions (sworn and non-sworn) requiring access to CJIS. These positions are processed using the Division of Law Enforcement's FDLE ORI code (FL0370800). Any check returned with a "record", shall have an FDLE Criminal Justice Information (CJI) Access Review Request form submitted to FDLE for review and determination, prior to the employee being granted CJIS access.
 - 10. All facility maintenance and mailroom positions.

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- 11. Any non-sworn position whose duties may require the use of firearms.
- 12. All summer camp program personnel who must be screened as outlined in section 409.175, Florida Statutes (refer to 6.46.3(b)).
- 13. All positions with Position Description Duties that specifically include providing "Outreach" activities to children under the age of 18.
- 14. "Non-Summer day camp" employees.
- 15. All positions filled by a temporary staffing company or contracted with by FWC which meet any of the criteria in 1 through 13, above.
- C. A Division/Office director may request individual positions, not identified in paragraph 6.46.2.B. be added to the list of employees subject to a level 2 criminal history record check. The director shall provide in writing to the Office of Human Resources the position number, title and the criteria established in statute (special trust or responsibility, sensitive location) which the apply to the position. The request must be approved by the Executive Director or designee. Staff in the Office of Human Resources will maintain records of positions added to the required level 2 criminal history record check list.
- D. Neither criminal history records nor criminal history record checks from previous employers will be sufficient to meet the requirements set forth in this IMPP.
- E. All new FTE hires required to undergo criminal history background checks shall be provided a conditional offer letter that includes the requirement for successful completion of background screening. OPS hires required to undergo criminal history background checks, will be provided with a verbal or written conditional offer and shall be advised employment is contingent upon a successful background screening. No applicant or employee may have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment.
- F. FWC Division/Office immediate supervisors are responsible for ensuring a newly hired employee's required criminal history record check is completed prior to or within three days of employment. The Office of Human Resources will run bi-weekly new hire reports and advise the immediate supervisor if the required screening has not been completed.

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6.46.3 SUMMER CAMP POSITIONS REQUIRING A CRIMINAL HISTORY RECORD CHECK

- A. Paragraph <u>409.175(6)(k)</u>, Florida Statutes, requires the DCF to ensure the compliance with the screening requirements of section <u>409.175</u>, Florida Statutes, for personnel of summer day camps and summer 24-hour camps.
- B. All summer day camp and summer 24-hour camp personnel are required to undergo a Level 2 screening. These screenings are processed through the Agency for Health Care Administration's Care Provider Background Screening Clearinghouse. The results are provided by DCF to FWC staff designated as the summer camp lead contact. Upon receipt of DCF approvals of camp employees, the camp Director or designee shall forward CCIS forms for each camp employee to Human Resources. Human Resources will complete the Level 2 screening, prior to the employee starting. All camp employees must complete a State of Florida employment profile (if position advertised) or a State of Florida Application (for positions not advertised), each time they fill a camp position.
- C. The level 2 screening requirement does not apply to the following individuals:
 - 1. A volunteer who assists on an intermittent basis for less than 10 hours per month if a person who meets the screening requirements of section 409.175, Florida Statutes, is always present and has the volunteer in his or her line of sight. (See IMPP 6.9).
 - 2. Certain human resource personnel, teachers, and law enforcement officers who meet the qualifications of section 409.1757, Florida Statutes, and who, under the penalty of perjury, attest to the requirements of that section. These personnel are required to contact the Florida Youth Conservation Center Network (FYCCN) office for a copy of the Affidavit of Eligibility & Compliance with section 409.1757, Florida Statutes, and to complete and submit the Affidavit to be eligible for employment or continuing employment.

6.46.4 ELECTRONIC FINGERPRINTING

All persons subject to Level 2 Criminal History Record Check Screening Standards shall be fingerprinted. All fingerprinting shall be done electronically. Division/Offices shall have fingerprints processed through FWC's approved vendor, Daon Trusted Identity Services (DTIS), or other FWC-approved vendors or law enforcement agencies. Instructions on "how to get fingerprinted", including the unique FWC identification access codes, are posted on the HR Share Point site under the "Background/Criminal History link.

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6.46.5 CRIMINAL HISTORY RECORD CHECK PROCEDURES

- A. Level 1 Procedures. Level I criminal history record checks are completed by verifying references (if provided), reviewing current and previous employment performance evaluations (if available) and discipline history, verifying dates of employment from current and previous employment, and running a search of the Dru Sojin National Sex Offender website. If a position is required to operate an FWC vehicle, the immediate supervisor or designee will verify the applicant or employee's license is valid with the Department of Highway Safety and Motor Vehicles or appropriate agency if license issued from state other than Florida. Additionally, the immediate supervisor or designee shall submit an FWC Division of Law Enforcement Comprehensive Case Information System (CCIS) Background Check form to the Office of Human Resources to perform a check of the Florida Clerk of Courts system. If negative information is obtained through the CCIS results, or through other sources during the background screening process, the Office of Human Resources will discuss the results with the immediate supervisor and the Division/Office Director for a final determination regarding employment.
- B. Level 2 Procedures- Level 2 criminal history record checks are conducted by verifying references (if provided), reviewing current and previous employment performance evaluations (if available) and current and previous employment and discipline history including verifying dates of employment from current and previous employment. If a position is required to operate an FWC vehicle, the immediate supervisor or designee will verify the applicant or employee's license is valid with the Department of Highway Safety and Motor Vehicles or appropriate agency if license issued from state other than Florida. An FWC Division of Law Enforcement Comprehensive Case Information System (CCIS) Background Check form should be completed and forwarded to the HR Director for processing. Fingerprints shall be submitted through an FWC approved vendor (e.g., DTIS) or law enforcement agency, using the appropriate FDLE ORI code. If negative information is obtained through the fingerprint screening process or through other sources during the background screening process, the Office of Human Resources will discuss information with the immediate supervisor and the Division/Office Director for a final determination regarding employment.

Applicants to, and employees of, the Division of Law Enforcement and Office of Inspector General will follow the background screening procedures outlined in General Orders. Any position within DLE (sworn or non-sworn) or position outside of DLE identified as having CJIS access must have a FDLE Criminal Justice Information (CJI) Access Review Request form submitted to FDLE if any "record" is found during the fingerprint check. Upon submission of the Access Review Form, no employee shall be granted CJIS access until authorized by FDLE or FWC, if FDLE delegates the determination back to FWC.

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6.46.6 NOTICE RELATED TO ELECTRONIC FINGERPRINTING FOR NON-CJIS POSITIONS

Effective April 1, 2022, all fingerprints obtained for non-CJIS related positions will be retained through the Florida Department of Law Enforcement. By submitting fingerprints, the employee authorizes the dissemination of any state and national criminal history record that may pertain to him/her to the agency. The fingerprints submitted will be retained by FDLE, and FDLE will notify the agency of any subsequent arrests.

6.46.7 NOTICE RELATED TO ELECTRONIC FINGERPRINTING FOR CJIS NGI RAP-BACK

Effective May 2, 2022, the Federal Bureau of Investigation, through the Florida Department of Law Enforcement, implemented the CJIS Next Generation Identification (NGI) Rap-Back service, which extends arrest notifications beyond State boundaries. The NGI service will only be applicable to personnel that require CJIS access (including but not limited to, all members of DLE, OIG, designated Human Resource, Legal and Office of Information Technology positions, etc.)

Additionally, this section will serve as notice of pertinent information and rights relevant when an employee or potential employee submits a set of fingerprints to the Florida Department of Law Enforcement (FDLE) for the purpose of conducting a search for any Florida and national criminal history records, the results of the search are returned to the agency. By submitting fingerprints, the applicant or employee authorizes the dissemination of any state and national criminal history record that may pertain to him/her to the agency. The fingerprints submitted will be retained by FDLE and the Federal Bureau of Investigation (FBI), and FDLE will notify the agency of any subsequent arrests.

An employee or potential employee's Social Security Account Number (SSAN) is needed to keep records accurate since other individuals may have the same name and birth date. Pursuant to the Federal Privacy Act of 1974 (5 U.S.C. § 552a), FDLE is responsible for informing the applicant or employee whether disclosure is mandatory or voluntary, by what statutory or other authority the SSAN is solicited, and what uses will be made of it. FDLE does not require a SSAN but refusing to provide it could cause a delay in processing a criminal history record check.

Authorized agencies, such as FDLE, are allowed to release a copy of state and national criminal record information to a person who requests a copy of his or her own record if the identification of the record was based on submission of the person's fingerprints. After you have reviewed the criminal history record, if you believe it is incomplete or inaccurate, you may conduct a personal review as provided in section 943.056, Florida Statutes, and Rule 11C-8.001, F.A.C. by calling FDLE at (850) 410-7898. If you believe the national information is in error, you may contact the FBI at (304) 625-2000. You can receive any national criminal history record that may pertain to you directly from the FBI, pursuant to 28 CFR sections 16.30-16.34. You have the right to obtain a determination as to the validity of your challenge before a final decision is made about your status as an employee, volunteer, contractor, or subcontractor within a reasonable time, as determined by the agency.

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The FBI's Privacy Statement follows and contains additional information.

FBI PRIVACY ACT STATEMENT

Authority: The FBI's acquisition, preservation, and exchange of fingerprints and associated information is generally authorized under 28 U.S.C. 534. Depending on the nature of your application, supplemental authorities include Federal statutes, State statutes pursuant to Pub. L. 92-544, Presidential Executive Orders, and federal rules providing your fingerprints and associated information is voluntary; however, failure to do so may affect completion or approval of your application.

Social Security Account Number (SSAN). Your SSAN is needed to keep records accurate because other people may have the same name and birth date. Pursuant to the Federal Privacy Act of 1974 (5 USC 552a), the requesting agency is responsible for informing you whether disclosure is mandatory or voluntary, by what statutory or other authority your SSAN is solicited, and what uses will be made of it. Executive Order 9397 also asks Federal agencies to use this number to help identify individuals in agency records.

Principal Purpose: Certain determinations, such as employment, licensing, and security clearances, may be predicated on fingerprint-based record checks. Your fingerprints and associated information/biometrics may be provided to the employing, investigating, or otherwise responsible agency, and/or the FBI for the purpose of comparing your fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems (including civil, criminal, and latent fingerprint repositories) or other available records of the employing, investigating, or otherwise responsible agency. The FBI may retain your fingerprints and associated information/biometrics in NGI after the completion of this application and, while retained, your fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI.

Routine Uses: During the processing of this application and for as long thereafter as your fingerprints and associated information/biometrics are retained in NGI, your information may be disclosed pursuant to your consent, and may be disclosed without your consent as permitted by the Privacy Act of 1974 and all applicable Routine Uses as may be published at any time in the Federal Register, including the Routine Uses for the NGI system and the FBI's Blanket Routine Uses. Routine uses include, but are not limited to, disclosures to: employing, governmental or authorized non-governmental agencies responsible for employment, contracting licensing, security clearances, and other suitability determinations; local, state, tribal, or federal law enforcement agencies; criminal justice agencies; and agencies responsible for national security or public safety.

Additional Information: The requesting agency and/or the agency conducting the application-investigation will provide you additional information pertinent to the specific circumstances of this application, which may include identification of other authorities, purposes, uses, and consequences of not providing requested information. In addition, any such agency in the Federal Executive Branch has also published notice in the Federal Register describing any systems(s) of records in which that agency may also maintain your records, including the authorities, purposes, and routine uses for the system(s).

6.46.8 APPLICANT NOTIFICATION AND ACKNOWLEDGEMENT FOR CJIS NGI RAP-BACK

An Applicant Notification and Acknowledgement form shall be completed and signed by every new employee requiring CJIS access prior to being fingerprinted. The form shall include the following language:

I hereby authorize the Florida Fish & Wildlife Conservation Commission to process a set of my fingerprints for the purpose of accessing and reviewing Florida and national criminal history records that may pertain to me to determine eligibility for employment or for continuing employment.

I understand the following:

- My fingerprints will be retained at FDLE and the Federal Bureau of Investigation (FBI) for the purpose of providing notice of any subsequent arrests.
- Pursuant to 943.056, A copy of my criminal history record can be obtained from the Florida Department of Law Enforcement or FBI for purposes of verification and accuracy and completeness of my criminal history record.
- I am entitled to challenge the accuracy and completeness of any information contained in any such criminal history record pursuant to section 943.056, Florida Statutes, 11C-8.001, F.A.C. and Title 28, CFR, Section 16.30-34.
- I am entitled, within a reasonable amount of time, to a determination as to the validity of
 my challenge before a final decision is made regarding my status as an employee,
 volunteer, contractor, or subcontractor if it is the sole factor precluding my employment or
 unescorted access to the secure facility.

6.46.9 DISQUALIFICATION FROM EMPLOYMENT

- A. A person shall be disqualified from employment or continued employment if he or she has been arrested for and is awaiting final disposition of; has been found guilty of, regardless of adjudication; has entered a plea of nolo contendere or guilty to; or has been adjudicated delinquent, and the record has not been sealed or expunged, of any of the offenses listed in subsection 435.04(2), Florida Statutes.
- B. In accordance with section 775.16, Florida Statutes, a person is disqualified from applying for employment if he or she has a conviction for sale of or trafficking in, or conspiracy to sell or traffic in, a controlled substance under chapter.893, Florida Statutes, if the offense is a felony, or conviction of an offense under the laws of any state or country, which, if committed in this State, would constitute the felony of selling or trafficking in, or conspiracy to sell or traffic in, a controlled substance under chapter 893, Florida Statutes, unless:
 - The person has completed all sentences of imprisonment or supervisory sanctions imposed by the court, by the Florida Commission on Offender Review, or by law; or
 - 2. The person has complied with the conditions of subparagraphs 1. and 2. which shall be monitored by the Department of Corrections while the person is under any supervisory sanctions. The person under supervision may:

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- a. Seek evaluation and enrollment in, and once enrolled maintain enrollment in until completion, a drug treatment and rehabilitation program which is approved by the Department of Children and Families, unless it is deemed by the program that the person does not have a substance abuse problem. The treatment and rehabilitation program may be specified by:
 - 1) The court, in the case of court-ordered supervisory sanctions:
 - 2) The Florida Commission on Offender Review, in the case of parole, control release, or conditional release; or
 - 3) The Department of Corrections, in the case of imprisonment or any other supervision required by law.
- b. Submit to periodic urine drug testing pursuant to procedures prescribed by the Department of Corrections. If the person is indigent, the costs shall be paid by the Department of Corrections.
- C. A person is disqualified from applying for employment if he or she has been arrested for and are awaiting final disposition of; being found guilty of, regardless of adjudication; or entering a plea of nolo contendere or guilty to any offense that constitutes domestic violence, as defined in section <u>741.28</u>, Florida Statutes, whether such act was committed in this state or in another jurisdiction.
- D. Applicants who have been convicted of a felony or first-degree misdemeanor that is directly related to the position of employment being sought shall be disqualified from and denied employment.
- E. If FWC has reasonable cause to believe that grounds exist for the denial or termination of employment of any applicant or employee as a result of background screening under this policy, it shall notify the applicant or employee in writing, stating the specific reason for the denial or termination and the record identifying the disqualifying offense. It is the responsibility of the affected employee to contest his or her disqualification or to request exemption from disqualification. Pursuant to Florida law, the only basis for contesting the disqualification is proof of mistaken identity. 435.06, Florida Statutes. FWC will deny employment to, or terminate the employment of, any of its personnel found to have committed a disqualifying offense or place the employee in a position for which background screening is not required unless the employee or applicant successfully contests the disqualification or is granted an exemption from disqualification pursuant to section 435.07, Florida Statutes.

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- F. FWC will not hire, select, or otherwise allow an employee to have contact with any vulnerable person that would place the employee in a role that requires background screening until the screening process is completed and demonstrates the absence of any grounds for the denial or termination of employment. If the screening process shows any grounds for the denial or termination of employment, FWC will not hire, select, or otherwise allow the employee to have contact with any vulnerable person that would place the employee in a role that requires background screening unless the employee is granted an exemption from disqualification by FWC as provided under section 435.07, Florida Statutes. If FWC becomes aware that an employee has been arrested for a disqualifying offense, FWC will immediately remove the employee from contact with any vulnerable person that places the employee in a role that requires background screening until the arrest is resolved in a way that the employer determines that the employee is still eligible for employment pursuant to this policy and Florida law.
- G. An individual disqualified from employment pursuant to a background screening may seek an exemption from the decision pursuant to section <u>435.07</u>, Florida Statutes. A denial of such exemption shall constitute a decision which affects the individual's substantial interests, and the individual shall be afforded rights pursuant to <u>chapter 120</u>, Florida Statutes.
- H. Failure to truthfully disclose criminal history information as required on the State of Florida employment profile or application may result in termination or the withdrawal of a conditional offer. A final determination will be made with the Division Director / designee and the Office of Human Resources Director to ensure consistency and accuracy.
- I. Employees shall notify a chain of command supervisor within 48 hours of any arrest of the employee, receipt by the employee of any notice to appear, or the issuance of a citation to the employee for a civil infraction related to an FWC rule, while on or off duty. In accordance with IMPP 6.1.6.D.(44), failure by employee to notify a chain-of-command supervisor within 48 hours after any arrest, or receipt of any notice to appear, or issuance to the employee of a citation for a civil infraction related to an FWC rule, while on or off duty, shall be disciplined, up to and including dismissal.

6.46.10 REASONABLE SUSPICION CHECKS

If FWC has reason to believe an employee failed to disclose a conviction on an application for an FWC position, upon being directed by FWC the employee shall be required to submit to an employee criminal history record check. Such a reasonable suspicion record check shall only be authorized by a Division/Office director or the Chief of Staff, each of whom may authorize the record check based upon the recommendation of a supervisor who is at least one level of supervision higher than the immediate supervisor of the employee in question.

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6.46.11 DISCLOSURE IN JOB VACANCY ADVERTISEMENT

The job advertisement for a position that requires a criminal history record check must include the following statement in the vacancy announcement:

"Employment in this position is contingent upon a satisfactory criminal history record check."

The criminal history record check must be completed prior to or within the first three days of employment.

FORMS

FORM NUMBER	FORM TITLE	
	Affidavit of Eligibility and Compliance with Section 409.1757, Florida Statutes (Summer Camp)	
	FWC Division of Law Enforcement CCIS Background Check Form	
	FDLE CJI Access Review Request Form	
	Applicant Notification and Acknowledgement Form	

Digitally signed by Jessica Jessica Crawford Approved: Crawford Date: 2023.03.31 13:00:16

-04'00' Date: 3/31/2023

Thomas Eason, Acting Executive Director or Designee

History: Est.: 6/4/2008; Revised 9/26/2008; 12/29/2010; 3/17/2015; 02/23/2018; 3/10/2023; 3/31/2023