

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Affairs Committee

BILL: CS/CS/SB 160
 INTRODUCER: Judiciary Committee, Criminal Justice Committee and Senator Ring
 SUBJECT: Sports Coaches/Criminal History Screening
 DATE: March 19, 2009 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------|----------------|-----------|------------------|
| 1. | <u>Erickson</u> | <u>Cannon</u> | <u>CJ</u> | Fav/CS |
| 2. | <u>Wolfgang</u> | <u>Yeatman</u> | <u>CA</u> | Favorable |
| 3. | <u>Treadwell</u> | <u>Maclure</u> | <u>JU</u> | Fav/CS |
| 4. | _____ | _____ | <u>JA</u> | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill requires the sanctioning authority of an independent youth athletic team (the team must be based in this state) to screen a person in this state who applies to be a sports coach of the team, prior to hiring or recruiting the sports coach. The screening consists of a search of the state and national sex offender registries, or a screening using a commercial consumer reporting agency that conducts background screenings in compliance with the federal Fair Credit Reporting Act. The sanctioning authority must disqualify any sports coach appearing in a sexual offender/predator registry.

The sanctioning authority must provide written notification to the sports coach of his or her right to obtain a copy of the screening. A disqualified sports coach may appeal to the sanctioning authority regarding the accuracy and completeness of the screening report. Unless prohibited by state or federal law, a sports coach may be placed on probationary status pending resolution of the appeal. The sanctioning authority is required to sign an affidavit annually, under penalty of perjury, stating that all sports coaches who have applied for a position as a sports coach of an independent youth athletic team under its jurisdiction have been screened in compliance with the screening requirements of the bill. The affidavit must be maintained in the files of the sanctioning authority and provided to anyone upon request.

The bill further provides that, in any civil action brought against a sanctioning authority for which it is alleged that the sanctioning authority was negligent in the hiring of a sports coach because of sexual misconduct committed by the sports coach, a rebuttable presumption is created that the independent youth athletic team was not negligent in hiring the sports coach if the sanctioning authority conducted a screening of the sports coach by participating in the Volunteer and Employee Criminal History System (VECHS) of the Florida Department of Law Enforcement and made a reasonable effort to contact references. In this same type of civil action, if the VECHS and reference checks are not conducted by the sanctioning authority, a rebuttable presumption is created that the sanctioning authority was negligent in the hiring of the sports coach.

The bill also encourages sanctioning authorities to participate in the VECHS program.

The bill creates an unnumbered section of the Florida Statutes. The bill also includes language that does not appear to be intended for codification.

II. Present Situation:

Criminal History Screenings

According to information received from the Florida Department of Law Enforcement (FDLE), there is currently no Florida law that requires sports coaches for independent youth athletic teams to be screened against state or national sex offender registries. However, other state laws may suggest that such background screenings must occur, or may prohibit or limit a convicted sexual predator's contact with minors altogether.

Background Screenings for Employment at Parks, Playgrounds, and Daycare Centers

Current law provides that a state agency or governmental subdivision, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at any park, playground, day care center, or other place where children regularly congregate, must conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE.¹ The screening requirements of the bill are similar to the screening requirements of s. 943.04351, F.S., insofar as both require a search of the state sex offender registry, but different in that the bill also requires a national sex offender registry search.

Prohibited Employment for Registered Sexual Predators

Existing law provides that it is a third-degree felony for a registered sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any specified sexual offense to work, whether for compensation or as a volunteer, at any business, school, daycare center, park, playground, or other place where children regularly congregate.² Notwithstanding the bill, it appears that a person would be

¹ Section 943.04351, F.S.

² Section 775.21(10)(b), F.S.

precluded from acting as a sports coach of an independent youth athletic team (at least to the extent of contact with children) if the person is a registered sexual predator as described in s. 775.21(10)(b), F.S.

Volunteer and Employee Criminal History System (VECHS)

Pertinent to the bill, the FDLE has described the Volunteer and Employee Criminal History System (VECHS) as follows:

Through the VECHS program, FDLE and the Federal Bureau of Investigation (FBI) provide to qualified organizations (not individuals) in Florida state and national criminal history record information on applicants, employees, and volunteers. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or the disabled.

Generally, to be qualified to participate in the VECHS program, an organization (public, private, profit, or non-profit) must provide “care”³ or “care placement services” ... to children, the elderly, or the disabled.

The VECHS program is not available to organizations currently required to obtain criminal history record checks on their employees and/or volunteers under other statutory provisions, such as day care centers. Those organizations must continue to follow the statutory mandates that specifically apply to them. If, however, an organization is required to obtain state and national checks on only specific types of employees or volunteers, the VECHS program may be able to process requests for state and national checks on the organization’s other employees or volunteers.⁴

To become a qualified organization and to obtain criminal history record information through the VECHS program at FDLE, an organization will need to do the following:

- Submit an application to FDLE explaining what functions the organization performs that serve children, elderly, or disabled persons;
- Sign an agreement that the criminal history information would be used only to screen employees and volunteers of that organization for employment purposes;
- Submit \$54.25 for each employee or \$33.25 for each volunteer fingerprint card submission; and
- Submit \$43.25 for each employee or \$33.25 for each volunteer electronic submission.

³ The word “care” is defined in s. 943.0542, F.S. (access to criminal history information provided by FDLE to qualified entities), to include the provision of recreation to children.

⁴ Florida Department of Law Enforcement, *Volunteer And Employee Background Checks*, <http://www.fdle.state.fl.us/content/getdoc/9023f5ac-2c0c-465c-995c-f949db57d0dd/VECHS.aspx> (last visited March 13, 2009).

If an organization becomes qualified and provides the required information for criminal history record requests, FDLE, with the assistance of the FBI, will provide the organization with the following:

- An indication that the person has no criminal history, i.e., no serious arrests in state or national databases, if there are none;
- The criminal history record (RAP sheet) that shows arrests and/or convictions for Florida and other states, if any; and
- Notification of any warrants or domestic violence injunctions that the person may have.⁵

Sexual Predator and Offender Information

The FDLE compiles information regarding sex offenders and makes that information available to the public. The information on the FDLE's public website of sexual offenders and sexual predators comes from the following sources: the Florida Department of Corrections, the Florida Department of Highway Safety and Motor Vehicles, and various law enforcement officials.⁶ The Dru Sjodin National Sex Offender Public Website of the United States Department of Justice allows the public to search participating state websites for public information "regarding the presence or location of offenders who, in most cases, have been convicted of sexually violent offenses against adults and children and certain sexual contact and other crimes against victims who are minors."⁷

Liability for Negligent Hiring

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee if, prior to hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.⁸ Pursuant to statute, the background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE);⁹
- Reasonable efforts to contact references and former employers;
- A job application form that includes questions requesting detailed information regarding previous criminal convictions;
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed; or
- An interview of the prospective employee.¹⁰

⁵ *Id.*

⁶ See Florida Department of Law Enforcement, <http://offender.fdle.state.fl.us> (last visited March 11, 2009).

⁷ See United States Department of Justice, <http://www.nsopr.gov/> (last visited April 18, 2008).

⁸ Section 768.096(1), F.S.

⁹ The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request. Section 768.096(2), F.S.

¹⁰ Section 768.096(1)(a)-(e).

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.¹¹

III. Effect of Proposed Changes:

The bill requires the sanctioning authority of an independent youth athletic team (the team must be based in this state) to screen a person in this state who applies to be a sports coach of the team, prior to hiring or recruiting the person as a sports coach. The screening consists of a personal or private search of the state and national sex offender registries. The sanctioning authority must disqualify any sports coach appearing in either registry.

Definitions

The bill defines an “independent youth athletic team” or “team” as an athletic team that includes a minor as a team member, is sanctioned by an independent organization, and is not sanctioned by or affiliated with a public or private school. The team must be based in this state. This definition appears to encompass national (non-school) youth sports organizations such as Little League Baseball and Pop Warner, though the bill could also encompass non-school youth sports organizations that operate only in this state or only in a particular locality in this state.

Under the bill, a “sports coach” means a person who is authorized by a sanctioning authority to lead an independent youth athletic team and any person assisting the coach who:

- Works or volunteers 20 or more hours within a calendar year for an independent youth athletic team;
- Has unsupervised contact with minors; or
- Serves as a chaperone on any overnight activity related to the team.

If a person, whether hired or recruited as a volunteer, meets any one of these descriptions and is authorized by a sanctioning authority to lead an independent youth athletic team, or assist the coach in leading the team, he or she is a “sports coach” subject to the screening.

The definition of “minor” cross-references the definition contained in s. 1.01, F.S. That section defines “minor” as any person who has not attained the age of 18 years.

Required Screenings

The sanctioning authority of an independent youth athletic team¹² (the team must be based in this state) is required to screen a person in this state who applies to be a sports coach of an independent youth athletic team prior to hiring or recruiting the person as a sports coach. The screening consists of a search of the sexual offenders and predators public website of the Florida Department of Law Enforcement and the Dru Sjodin National Sex Offender Public Website of the United States Department of Justice. Alternatively, a sanctioning authority may use a

¹¹ Section 768.096(3), F.S.

¹² The bill specifies that the “sanctioning authority of an independent youth athletic team” includes the independent organization with authority to sanction an independent youth athletic team, any local office of that organization, and any office or entity that is authorized by that organization to perform any of its functions or represent its interests.

commercial consumer reporting agency that conducts background screenings in compliance with the federal Fair Credit Reporting Act, provided that the screening includes information from both the Florida Department of Law Enforcement sexual offender/predator website and the Dru Sjodin National Sex Offender Public Website.

The sanctioning authority must disqualify any sports coach applicant appearing in either registry. It is the applicant's appearance in the state or national sex offender registry, rather than a conviction for any particular sexual offense, that disqualifies him or her as a sports coach.

Notification of Screening Process, Appeal, and Probationary Period

The bill requires the sanctioning authority to provide written notification to the sports coach applicant of his or her right to obtain a copy of the screening results. A disqualified applicant under the bill may appeal to the sanctioning authority regarding the accuracy and completeness of the screening report. Unless prohibited by state or federal law, the bill authorizes the sanctioning authority to place the sports coach on probationary status pending resolution of the appeal.

This probation provision appears to give a sports coach access to minors on the team prior to a final determination regarding whether the coach is a sexual predator or offender. If it is the intent of the Legislature to preclude a coach's access to minors prior to completion of the sexual offender registry screening, elimination of this probationary period may be necessary. Alternatively, the Legislature could retain the probationary period provision and specify that the sports coach could have no unsupervised access to minors during this probationary timeframe.

Affidavit Requirement

A sanctioning authority must sign an affidavit annually, under penalty of perjury, stating that all sports coaches who have applied for a position as a sports coach of an independent youth athletic team under its jurisdiction have been screened in compliance with the screening requirements of the bill. A sanctioning authority must maintain the affidavit in its records and provide the affidavit to any person requesting it.

Perjury by false written declaration is a third-degree felony.¹³ However, this perjury is a Level 1 offense and a first-time offender convicted of only this offense may score a non-prison sanction as the lowest permissible sentence the court may impose or a five-year sentence as the highest permissible sentence.¹⁴ The fact that the sanctioning authority is defined as an organization, office, or entity makes a non-prison sentence more likely than if the statute was directed against an individual. It is unclear whether there are other consequences for failing to execute an affidavit annually, or who would assume enforcement authority over satisfaction of the affidavit requirement.

¹³ Section 92.525, F.S.

¹⁴ See s. 921.0023, F.S.

Civil Liability for Negligent Hiring

In any civil suit brought against a sanctioning authority for harm caused by a sports coach, a rebuttable presumption¹⁵ is created that the sanctioning authority was not negligent in hiring the sports coach if the sanctioning authority:

- Conducted a screening of the sports coach by participating in the Volunteer and Employee Criminal History System; and
- Made a reasonable effort to contact the applicant's references.

The provisions of the bill affording the authority a presumption against negligent hiring for taking certain steps is analogous to the negligent hiring provision contained in s. 768.096(1), F.S. Section 768.096(1), F.S., provides that employers are also required to obtain a criminal background check, obtain an application with detailed questions regarding prior criminal history, and interview the prospective employee, in addition to requesting reference checks.

The negligent hiring statute expressly provides that failing to conduct the criminal background check, interview, and other requirements does not raise the presumption that an employer is liable under a negligent hiring theory.¹⁶ In contrast, the bill provides that failure to participate in the Volunteer and Employee Criminal History System and make a reasonable effort to contact references creates a rebuttable presumption that the authority was negligent in hiring the sports coach.

It is unclear whether volunteer coaches would fall within the scope of the civil liability provision. The provision references negligence in "hiring" a coach. Although the definition of "sports coach" does not reference pay or other compensation, the use of "hiring" in the civil liability provision may suggest a traditional employer/employee relationship with compensation and/or other benefits. Thus, a sanctioning authority may be liable for acts of a volunteer coach, even if it completes the screening process and the appropriate reference checks. It is unclear in Florida whether entities are liable for intentional acts of volunteers in the context of negligent hiring or negligent retention. If a court were to determine that a sanctioning authority could be liable for intentional acts of volunteers in a negligent hiring or retention context, a volunteer may also fall within the ambit of the civil liability provision in the bill.

Use of the VECHS Program

Finally, this bill encourages sanctioning authorities to participate in the VECHS program authorized under the National Child Protection Act and s. 943.0542, F.S.

¹⁵ Once evidence rebutting a presumption is introduced, "the presumption does not automatically disappear; it remains in effect even after evidence rebutting the presumption has been introduced. The jury must decide if the evidence is sufficient to overcome the presumption, that is, it is not overcome until the trier of fact believes that the presumed fact has been overcome by whatever degree of persuasion is required by the substantive law of the case." 23 FLA. JUR 2D *Evidence and Witnesses* s. 100.

¹⁶ Section 768.096(3), F.S.

Effective Date

The bill provides that the effective date of the act is July 1, 2009.

Other Potential Implications:

Pursuant to s. 943.0435(1)(a)1.b., F.S., a person is required to register as a sexual offender in this state if he or she establishes or maintains a residence in this state and was or would be required to register as a sexual offender, sexual predator, or other similar designation in another state. The basis for this registration requirement is not the offense but the person's status as a resident of this state and as a person required to register in another state. What this means is that this person's offense may or may not be similar to a Florida offense that would require registration or may be similar to a Florida offense that does not require registration. Therefore, it is possible that sports coaches with similar criminal histories could be treated differently depending on the offense committed and where it was committed.

Offenses requiring registration are almost exclusively sexual offenses, but not all qualifying sexual offenses involve a victim who is a minor. Further, there are numerous violent offenses committed upon minors that are not sexual offenses. Also, registration laws do not necessarily require that every person convicted of a sexual offense be registered. For example, while Florida's registry laws contain an extensive list of sexual offenses, those laws do not reach back to require registration of every living person who was convicted of a listed Florida sexual offense. Also, a person may have been charged with a sexual offense but ultimately been convicted of a non-sexual offense like battery. This battery offense would not qualify the person for registration.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The sex offender registry screening requirements of the bill should have a nominal impact on the sanctioning authorities. The state and national registries are public websites that can be accessed by persons with minimal computer skills, and searches can be conducted relatively quickly. Those sanctioning authorities electing to perform searches via a commercial consumer reporting agency may incur moderate expenses for the screening.

Screening through the Volunteer and Employee Criminal History System (VECHS) program does require payment of a fee (see discussion in “Present Situation” section of this analysis). The bill does not require sanctioning authorities to do a VECHS search of a sports coach of an independent youth athletic team, but not doing so would give rise to a rebuttable presumption of negligent hiring (as described in the bill).

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that this bill is expected to have an insignificant prison bed impact.

The Florida Department of Law Enforcement reports no projected fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 18, 2009:**

The committee substitute:

- Clarifies that a volunteer is included within the definition of “sports coach”;
- Clarifies that if a person leads, or assists a coach in leading an independent youth athletic team, the person is subject to the screening if he or she meets any of the listed descriptions rather than all of the listed descriptions;
- Clarifies that before a person is hired *or recruited* as a sports coach, he or she must be screened, conforming to the inclusion of a volunteer within the term “sports coach”;
- Provides that a sanctioning authority satisfies the screening provision if it conducts a search using a commercial consumer reporting agency that conducts

background screenings utilizing the two sexual offender/predator websites denoted in the bill; and

- Requires a sanctioning authority to maintain the affidavit of compliance in its records and provide a copy of the affidavit to anyone upon request.

CS by Criminal Justice on February 18, 2009:

The committee substitute:

- Requires the sanctioning authority of an independent youth athletic team (the team must be based in this state) to screen a person in this state who applies to be a sports coach of such team prior to hiring the person as a sports coach. The screening consists of a search of the sexual offenders and predators public website of the Florida Department of Law Enforcement and the Dru Sjodin National Sex Offender Public Website of the United States Department of Justice.
- Provides that in any civil action brought against a sanctioning authority for which it is alleged that the sanctioning authority was negligent in the hiring of a sports coach because of sexual misconduct committed by the sports coach, a rebuttable presumption is created that the independent youth athletic team was not negligent in hiring the sports coach if the sanctioning authority conducted a screening of the sports coach by participating in the Volunteer and Employee Criminal History System (VECHS) of the Florida Department of Law Enforcement and made a reasonable effort to contact references.
- Provides that in this same type of civil action, if the VECHS and reference checks are not conducted by the sanctioning authority, a rebuttable presumption is created that the sanctioning authority was negligent in the hiring of the sports coach.

B. Amendments:

None.