

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 358

INTRODUCER: Senator Ring

SUBJECT: Volunteers for Organized Youth Sports and Recreational Programs

DATE: March 3, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 358 expands the current background screening requirements for coaches of youth athletic teams to cover all volunteers of youth sports and recreation authorities. The bill provides definitions for “volunteer” and “youth sports or recreation authority.”

The bill creates a rebuttable presumption that an authority that has followed the requirements of the bill was not negligent in authorizing a volunteer to participate in authority activities.

The bill requires recreational programs to adopt bylaws and policies related to concussions and head injuries, including the removal of any youth that suffers a concussion or head injury from participation. The bill also requires programs to obtain the informed consent of parents or guardians related to the nature and risks of concussions and head injuries.

The bill encourages youth sports and recreation authorities to participate in the Volunteer and Employee Criminal History System described in s. 943.0542, F.S.

**II. Present Situation:**

**Definitions**

Current law defines an “athletic coach” as a person who is authorized by an independent sanctioning authority to work for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in this state, and has direct contact with one or more minors on the youth athletic team.

An “independent sanctioning authority” means a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S.

### **Background Screenings for Athletic Coaches**

Independent sanctioning authorities are required to conduct background screenings of athletic coaches. A background screening consists of a name search of the state and federal registries of sexual predators and sexual offenders on websites maintained by the Florida Department of Law Enforcement (FDLE) and the Attorney General of the United States.<sup>1</sup>

### **Background Screenings for Employment at Parks, Playgrounds, and Day Care Centers**

A state agency or governmental subdivision must search for a potential volunteer or employee's identifying information in the sexual predators and sexual offenders registry maintained by the FDLE prior to employing that person at any park, playground, day care center, or other place where children regularly congregate.<sup>2</sup>

### **Prohibited Employment for Registered Sexual Predators**

It is a third degree felony for a registered sexual predator to work or volunteer at any business, school, day care center, park, playground or other place where children regularly congregate.<sup>3</sup> This law appears to prohibit a registered sexual predator from volunteering for a recreational program that involves children.

### **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 public website of sexual offenders and sexual predators is derived from the Florida Department of Corrections, the Florida Department of Highway Safety and Motor Vehicles, and various law enforcement officials.<sup>4</sup> The Dru Sjodin National Sex Offender Public Website of the United States Department of Justice provides a centralized database to search for information about the location of people convicted of sexual crimes.

### **Liability for Negligent Hiring**

In a civil action for the death, injury or damage to a third person caused by an intentional tort of an employee, the employee's employer is presumed not to have been negligent in hiring the employee if the employer conducted a background investigation of the prospective employee prior to hiring and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the prospective employee for the particular work to be performed or the employment in general.<sup>5</sup>

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<sup>1</sup> Section 943.0438, F.S.

<sup>2</sup> Section 943.04351, F.S.

<sup>3</sup> Section 775.21(10)(b), F.S.

<sup>4</sup> Florida Department of Law Enforcement, *Florida Sexual Offenders and Predators*, available at <http://offender.fdle.state.fl.us> (last visited Feb. 13, 2014).

<sup>5</sup> Section 768.096, F.S.

The background investigation must include:

- a criminal background check obtained from the FDLE;
- reasonable efforts to contact references and former employers;
- a job application form that includes questions requesting detailed information regarding previous criminal convictions;
- 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.<sup>6</sup>

However, the election by an employer not to conduct an investigation prior to hiring does not raise a presumption that the employer failed to use reasonable care in hiring an employee.<sup>7</sup>

### **Volunteer and Employee Criminal History System**

The FDLE and the Federal Bureau of Investigation (FBI) provide criminal record information on applicants, employees, and volunteers to qualified, Florida-based organizations through the Volunteer and Employee Criminal History System (VECHS) program. This allows qualified organizations to more effectively screen out 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 must provide "care"<sup>8</sup> or "care placement services" to children, the elderly, or the disabled.<sup>9</sup>

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.

To qualify to access the VECHS program, an organization must:

- submit an application to FDLE explaining what functions the organization performs that serve children, the elderly, or disabled persons;
- sign an agreement that the criminal history information will only be used to screen employees and volunteers of that organization for employment purposes;
- submit a Civil Workflow Customer Registration form; and
- submit \$40.50 for each employee or \$33.00 for each volunteer electronic submission.<sup>10</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> The word "care" is defined in s. 943.0542, F.S., to include the provision of recreation to children.

<sup>9</sup> Florida Department of Law Enforcement, *Volunteer And Employee Background Checks*, available at <http://www.fdle.state.fl.us/content/getdoc/9023f5ac-2c0c-465c-995c-f949db57d0dd/VECHS.aspx> (last visited Feb. 13, 2014).

<sup>10</sup> *Id.*

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 showing 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.<sup>11</sup>

### III. Effect of Proposed Changes:

**Section 1** substitutes “volunteers” for “athletic coaches” and “organized youth sports and recreation” for “independent sanctioning” authorities throughout s. 943.0438, F.S. As a result, the bill enlarges the number of persons and organizations subject to the background screening requirements.

The bill defines “volunteer” as a person who:

- is authorized by a youth sports or recreation authority to work, whether for compensation or as a volunteer, for a youth athletic team or organized youth recreational program using publicly owned facilities based in this state; and
- has direct contact with one or more minors on this youth athletic team.

The bill defines “youth sports or recreation authority” as a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team or organized youth recreational program using publicly owned facilities in this state if the team or program includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S.

The bill requires background screenings of each prospective volunteer and annual screenings of current volunteers. The screenings are required to use either the sexual predator and sexual offender database maintained by the FDLE in accordance with s. 943.043, F.S., or the database maintained by the Attorney General of the United States in accordance with 42 U.S.C. s. 16920. Alternatively, an authority may utilize a commercial consumer reporting agency that complies with the federal Fair Credit Reporting Act and includes a search of the sexual predator and sexual offender websites listed above.

The authority must disqualify any volunteer identified on a registry. The authority must provide written notice to a disqualified volunteer within seven days of disqualification.

In the event of a civil action related to sexual misconduct committed by a volunteer, the bill creates a rebuttable presumption that an authority that complied with the background screening and disqualification requirements was not negligent in authorizing the volunteer to participate in authority-sponsored activities.

The bill also requires that “youth sports or recreation authorities”:

- maintain records of screenings and disqualifications for at least 5 years;

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<sup>11</sup> *Id.*

- adopt guidelines to educate volunteers and others about the nature and risk of concussions and head injuries;
- adopt bylaws and policies requiring the parents or guardians of a youth that is participating in or a candidate for an athletic or recreational program to sign and return an informed consent relating to concussions and head injuries; and
- adopt bylaws or policies that require each youth suspected of having sustained a concussion or head injury to be immediately removed from the activity and prevented from returning without clearance from an authorized doctor.

Youth sports and recreation authorities are encouraged to participate in the Volunteer and Employee Criminal History System, as authorized by the National Child Protection Act of 1993 and s. 943.0542, F.S.

**Section 2** provides an effective date of July 1, 2014.

#### **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 are expected to have a nominal effect on the 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 authorities electing to perform searches via a commercial consumer reporting agency may incur moderate expenses for the screening. The authorities may pass these screening costs on to volunteer applicants and incur no costs from this screening requirement.

Screening through the VECHS program does require payment of a fee. While the bill does not require authorities to do a VECHS search, the authorities are encouraged to use the VECHS system.

C. Government Sector Impact:

FDLE reports no projected fiscal impact from the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends section 943.0438 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.