

II. Present Situation:

Criminal History Screenings

Section 943.0542, F.S., addresses access to criminal history information provided by the Florida Department of Law Enforcement (FDLE) for qualified entities through the Volunteer and Employee Criminal History System (VECHS). The term “qualified entity” refers to a business or organization, whether public, private, operated for profit, operated not for profit, or voluntary, which provides care or care placement services. Under this section, “care” means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities. Each qualified entity must register with FDLE before requesting a screening.

According to FDLE, s. 943.0542, F.S., “implements the National Child Protection Act of 1993, as amended by the Volunteers for Children Act of 1998,¹ which authorizes national criminal history checks to be performed on volunteers and current or prospective employees of qualified entities.” The VECHS program may not be used by organizations that are mandated to obtain criminal history record checks on their employees or volunteers. If a background check is required by state statute or local ordinance, the criminal history information can only be released to a governmental entity. Because the VECHS is a voluntary program, the criminal history information can be released to a qualified entity.

To become a qualified entity, an organization must voluntarily submit an application to FDLE identifying the function the organization performs and agree in writing that the criminal history information obtained from FDLE will be used only to screen potential employees and volunteers. The qualified entity must send a completed waiver form for each employee and volunteer. The fingerprint card submission cost for an employee is \$53.25 and \$42.25 for an electronic submission. A fingerprint card or an electronic submission for a volunteer costs \$33.25. The FDLE provides the state criminal history records and national criminal history data directly to the qualified entity. The criminal history information received by the qualified entity will indicate whether or not the person has a criminal history in state or national databases and will provide notification of any warrants or domestic violence injunctions.

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.² The Dru Sjodin National Sex Offender Public Registry 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.”³

¹ 42 U.S.C. sec. 5119a, et seq.

² See offender.fdle.state.fl.us, Florida Department of Law Enforcement (last visited April 18, 2008).

³ See <http://www.nsopr.gov/>, United States Department of Justice (last visited April 18, 2008).

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.⁴ Pursuant to statute, the background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE);⁵
- 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.⁶

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.⁷

III. Effect of Proposed Changes:

Definitions

The bill defines an "independent youth athletic team" as an athletic team that includes a minor as a team member, and is sanctioned by an independent organization and not affiliated with a public or private school. 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;
- Works 20 or more hours within a calendar year for an independent youth athletic team;
- Has unsupervised contact with minors; and
- Serves as a chaperone on any overnight activity related to the team.

Required Screenings

Under the bill, the sanctioning authority of an independent youth athletic team is required to screen any person who acts as a sports coach to an independent youth athletic team through the website of sexual offenders and sexual predators at FDLE and the Dru Sjodin National Sex Offender Public Registry of the United States Department of Justice.

⁴ Section 768.096(1), F.S.

⁵ 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.

⁶ Section 768.096(1)(a)-(e).

⁷ Section 768.096(3), F.S.

A sanctioning authority shall disqualify any sports coach who appears on either registry mentioned above. The sanctioning authority is to notify a sports coach of his or her right to obtain a copy of the screening, and to challenge the accuracy and completeness of the report.

Affidavit Requirement

Each sanctioning authority must annually sign an affidavit stating that all of its sports coaches have been screened or are awaiting the results of screening. The purpose of the affidavit is unclear. It is unknown to whom the affidavit must be provided, as well as the consequences for failing to execute an affidavit annually.

Probationary Status

The bill provides that a sports coach may be placed on a probationary status pending the screening and determination by the sanctioning authority. This provision appears to give a sports coach access to minors on the team prior to a 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.

Civil Liability

In any civil suit brought against a sanctioning authority for harm negligently caused by a 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 reviewing the website of sexual offenders and predators at the FDLE and the Dru Sjodin National Sex Offender Public Registry of the United States Department of Justice; and
- Made a reasonable effort to contact references and former employers of the sports coach regarding the coach's suitability to work with minors.

In any civil suit brought against a sanctioning authority for harm negligently caused by a sports coach, a rebuttable presumption is created that the independent youth athletic team was negligent in hiring the sports coach if the sanctioning authority did not review the websites and did not make a reasonable effort to contact references and former employers as previously described.

This provision is analogous to the negligent hiring provision contained in s. 768.096(1), F.S. However, under the negligent hiring provision, employers are also required to obtain a criminal background check, obtain an application with detailed questions regarding prior criminal history, an interview of the prospective employee, in addition to requesting reference checks. Although a review of the denoted registries will reveal whether the coach has been designated a sexual predator or offender, the coach could have additional convictions which will not be identified

through the registry review. These convictions could be identified through a background check, an application with questions regarding prior criminal history, as well as a personal interview.⁸

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.

Effective Date

The bill takes effect July 1, 2008.

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.

⁸ Traveling amendment 519778 alters the presumption provision by providing for a rebuttable presumption that the sanctioning authority was not negligent in hiring the sports coach if the sanctioning authority conducted a screening of the coach through the Volunteer Employee Criminal History System, as unauthorized by the National Child Protection Act of 1993 and s. 943.0542, F.S. In order to potentially escape civil liability, sanctioning authorities may be more likely to conduct a criminal records check rather than just screening the coach through the sexual offender registries.

B. Private Sector Impact:

Although sanctioning authorities for independent youth athletic teams will have to screen their sports coaches using two different websites and contact prior references and employers, it is likely that any additional cost associated with this background screening is minimal. For the sanctioning authority that performs the required background screening, there is a rebuttable presumption against negligent hiring for an independent youth athletic team that hires a coach that has met the screening requirements. This would potentially reduce civil liability. Those sanctioning authorities that do not screen a sports coach as required under this bill are subject to a rebuttable presumption that the coach was negligently hired, which may increase liability.

C. Government Sector Impact:

None.

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.)

None.

B. Amendments:**Barcode 377182 by Criminal Justice on April 16, 2008:**

Amends one of the criteria relevant to a rebuttable presumption that the independent youth athletic team was not negligent in hiring the sports coach by prescribing that: the sanctioning authority made a reasonable effort to contact references and former employers of the sports coach concerning the suitability of the sports coach to work with minors and no adverse information regarding such suitability is discovered as a result of the screening and contacts.

Barcode 162184 by Community Affairs on March 19, 2008:

Clarifies that the definition of “independent youth athletic team” refers to an athletic team based in this state.

Barcode 519778 by Community Affairs March 19, 2008:

Revises the language creating a rebuttable presumption with regard to the hiring of a sports coach so that the presumption is based on whether or not the coach is screened using the VECHS program at FDLE.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
