

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 885 Criminal History Record Checks

SPONSOR(S): Schools & Learning Council; Gibbons

TIED BILLS: **IDEN./SIM. BILLS:** SB 1182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Schools & Learning Council	15 Y, 0 N, As CS	Hassell	Cobb
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Council Substitute for HB 885 requires independent sanctioning authorities of youth athletic teams to conduct background screenings using state and federal sexual offender and sexual predator registries for any current or prospective athletic coach to a youth athletic team. Sanctioning authorities are private entities that organize, operate, or coordinate youth athletic teams in the state.

Each sanctioning authority must:

- Conduct screenings using the athletic coach's name or other identifying information.
- Search the on-line state registry provided by the Florida Department of Law Enforcement and the on-line federal registry provided by the Attorney General of the United States.
- Disqualify any person identified on either registry from acting as an athletic coach.
- Provide the person with a written notice of disqualification within seven business days following the screening.
- Maintain documentation of the results for each person screened and each notice of disqualification.

If the sanctioning authority complies with the bill's background screening and disqualification requirements prior to authorizing an athletic coach, it is entitled to a rebuttable presumption that it was not negligent in the authorization of that coach in specified civil actions.

The bill does not appear to have a fiscal impact on state or local governments. The registries are available to the public via the Internet and there are no fees associated with accessing or searching the registries. (See **FISCAL COMMENTS** section)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security - The bill may increase safety for members of an independent youth athletic team with its requirements for the screening of current and prospective athletic coaches on either state or federal sexual offender and predator registries.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

State Sexual Offender and Sexual Predator Registry

Under s. 943.04, F.S., the Florida Department of Law Enforcement (FDLE) may notify the public through the Internet of any information regarding sexual predators and sexual offender.¹ The FDLE is required to provide, through a toll-free telephone number, public access to registration information regarding sexual predators and sexual offenders and may provide other information reported to the department which is not exempt from public disclosure. The FDLE is required to provide to any person, upon request and at a reasonable cost determined by the department, a copy of the photograph of any sexual offender or sexual predator which the department maintains in its files and a printed summary of the information that is available to the public.

Section 943.0435, F.S., identifies the sexual offenders that are required to register with the FDLE and outlines any of the penalties for failure to comply with the requirements. A "sexual offender" means a person who meets the following criteria:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
 - a. Section 787.01, F.S., relating to kidnapping and kidnapping of a child under age 13.
 - b. Section 787.02, F.S., relating to false imprisonment and false imprisonment of child under age 13.
 - c. Section 787.025(2)(c), F.S., relating to luring or enticing a child.²
 - d. Section 794.011, F.S., relating to sexual battery.³
 - e. Section 794.05, F.S., relating to unlawful sexual activity with certain minors.⁴
 - f. Section 796.03, F.S., relating to procuring a person under age of 18 for prostitution.
 - g. Section 796.035, F.S., relating to selling or buying of minors into sex trafficking or prostitution.
 - h. Section 800.04, F.S., relating to lewd or lascivious offenses against a minor under 16 years of age.
 - i. Section 825.1025, F.S., relating to lewd or lascivious offenses committed against an elderly or disabled person.

¹Any information disclosed shall not be confidential and exempt from public disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

²This section applies to person adult with a previous conviction under Chapter 794 or s. 800.04, F.S., or similar law of another jurisdiction who intentionally lures or entices, or attempts to lure or entice, a child under the age of 12.

³Offenses relating to a false accusation of sexual battery under subsection (10) of this section are excluded.

⁴This section applies to persons 24 years of age or older who engage in sexual activity with a person 16 or 17 years of age.

- j. Section 827.071, F.S., relating to sexual performance by a child.
 - k. Section 847.0133, F.S., relating to the dissemination of obscene material to a minor.
 - l. Section 847.0135, F.S. relating to computer pornography.⁵
 - m. Section 847.0137, F.S., relating to the electronic transmission of pornography.
 - n. Section 847.0138, F.S., relating to the electronic transmission of obscene material to minors.
 - o. Section 847.0145, F.S., relating to the selling or buying of minors.
 - p. Section 985.701, F.S., relating to sexual misconduct,⁶ or
 - q. any similar offense committed in this state which has been redesignated from a former statute number to one of those listed above; and
 - r. Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense
2. Establishes or maintains a residence in this state and has not been designated as a sexual predator by a court of this state, but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state and was, as a result of such designation, subjected to registration or community or public notification, or both, in that state;
 3. Establishes or maintains a residence in this state and is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses outlined in 1.a-r of this analysis; or
 4. Who on or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:
 - a. (I) Section 794.011, excluding s. 794.011(10);
 - b. (II) Section 800.04(4)(b) where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;
 - c. (III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals; or
 - d. (IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals.

FDLE compiles information regarding sexual offenders and sexual predators from the following sources: the Florida Department of Corrections, Florida Department of Highway Safety and Motor Vehicles, and various law enforcement officials.⁷ It makes the information available via the following public website: <http://offender.fdle.state.fl.us/offender/homepage.do>

Federal Sexual Offender and Sexual Predator Registry

The Dru Sjodin National Sex Offender Public Registry is a cooperative effort between state agencies that host sexual offender registries and the federal government to create a national sex offender database. By using this website, interested members of the public have access to and may search

⁵ Offenses involving traveling to meet a minor to commit a prohibited act are excluded.

⁶ "Sexual misconduct" means fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object.

⁷ See www.offender.fdle.state.fl.us, Florida Department of Law Enforcement (last visited April 4, 2008).

participating state Web site 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. The public can use this website to educate themselves about the possible presence of such offenders in their local communities.⁸

The website allows the users to search for sex offenders using either a national or state specific search. Users may search by name, ZIP code, county, municipality, or state. Positive identification of a person believed to be a sexual predator or sexual offender cannot be established unless a fingerprint comparison is made. The national registry is maintained by the U.S. Department of Justice.⁹

The Sex Offender Registration and Notification Act (SORNA) which is Title 1 of the Adam Walsh Child Protection and Safety Act of 2006¹⁰ provides a comprehensive set of minimum standards for sex offender registration and notification in the United States. SORNA aims to close potential gaps and loopholes that existed under prior law and aims to strengthen the nationwide network of sex offender registration and notification programs.

SORNA establishes the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the "SMART Office"), a component of the Office of Justice Programs within the U.S. Department of Justice. The SMART Office is authorized by law to administer the standards for sex offender registration and notifications that are set forth in SORNA. It is further authorized to cooperate and provide assistance to states, local and tribal governments, and other public and private entities in relation to sex offender registration and notification for the protection of the public from sexual abuse or exploitation. All jurisdictions are required to substantially implement SORNA by July 27, 2009.¹¹

Effects of Proposed Changes

Athletic Coaches for Independent Sanctioning Authorities

The bill requires independent sanctioning authorities (sanctioning authority) of youth athletic teams to conduct background screenings using state and federal sexual offender and sexual predator registries for any current or prospective athletic coach to a youth athletic team.

A sanctioning authority is a private, non-governmental entity that organizes, operates, or coordinates a youth athletic team in this state. A youth athletic team is a team that includes at least one minor, defined as any person who has not attained the age of 18 years, and that is not affiliated with a private school.¹² An athletic coach is a person who is authorized by a sanctioning authority to work, whether

⁸ <http://www.nsopr.gov/> (last visited April 4, 2008).

⁹ Id. Information from the various state Web sites is not hosted by the Department, and the Department has neither responsibility for nor control over the information available for public inspection or search from individual state Web sites that are accessible through this Web site. The Department does not guarantee the accuracy, completeness, or timeliness of the information contained in state Web sites regarding specific offenders or with respect to the omission of information about other offenders who may be residing, working, or attending school in the vicinity of any location that is the subject of any search using this Web site. In this regard, the Department accepts no responsibility or liability for damages of any kind resulting from reliance on this information or lack thereof.

¹⁰ Public Law 248-109

¹¹ United State Department of Justice, Office of Justice Programs: *Frequently Asked Questions: The Sex Offender Registration and Notification Act (SORNA) Proposed Guidelines*. www.ojp.usdoj.gov (Last visited April 4, 2008). Guidelines are available at <http://www.ojp.usdoj.gov/smart/guidelines.htm>

¹² S. 1002.01(2), F.S., A "private school" is a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(13) or that gives preemployment or supplementary training in

for compensation or as a volunteer, for a youth athletic team for at least 20 hours within a calendar year and who has direct contact with at least one minor on the team.

Each sanctioning authority must:

- Conduct background screenings for each current and prospective athletic coach.
- Conduct the screening using the athletic coach's name or other identifying information.
- Search the state sexual predator and sexual offender registry provided by the Florida Department of Law Enforcement and available to the public on the Internet.¹³
- Search the federal sexual predator and sexual offender registry provided by the Attorney General of the United States and available to the public on the internet.¹⁴
- Disqualify any person from acting as an athletic coach if he or she is identified on either the state or federal registries.
- Provide a disqualified person with a written notice of disqualification, including the results, within seven business days following the screening.
- Maintain documentation of the results for each person screened.
- Maintain documentation of the notice provided to each disqualified person.
- Annually repeat a background screening for each athletic coach

Beginning July 1, 2008, a sanctioning authority can only authorize a person to act as an athletic coach after the background screening is conducted and the screening results do not require disqualification of the person. Sanctioning authorities are encouraged, but not required, to participate in the Volunteer and Employee Criminal History System (VECHS), as authorized by the National Child Protection Act of 1993 and s. 943.0542.¹⁵ If a sanctioning authority chooses to participate in VECHS, it must still comply with the background screenings and disqualification requirements detailed in the bill.

A sanctioning authority fulfills its statutory duty for authorizing athletic coaches if it complies with the background screening and disqualification requirements prior to authorizing an athletic coach. If the sanctioning authority complies with these requirements, the bill provides the sanctioning authority with a rebuttable presumption that it was not negligent in the authorization of an athletic coach in a civil action against the sanctioning authority for the death of, or injury or damage to, a third party caused by an intentional tort of an athletic coach, relating to sexual misconduct. Conversely, if a sanctioning authority fails to conduct the required background screenings or fails to disqualify an athletic coach identified on a registry, it has not met its statutory duty for authorizing athletic coaches for youth athletic teams.

technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41.

¹³<http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=H1QpTsF1gykZKBZgDyLPyJbT6rtvwRdSyls2GgVmq7b5RMJplc9w!-897273147>

¹⁴ <http://www.nsopr.gov/>

¹⁵ According to the Florida Department of Law Enforcement, each VECHS request is \$33.25. Eighteen dollars goes to the FDLE Operating Trust Fund and \$15.25 is forwarded to the Federal Bureau of Investigation. Information provided by FDLE on February 19, 2008.

C. SECTION DIRECTORY:

Section 1. Creating an unnumbered section of law relating to athletic coaches for independent sanctioning authorities; defining “athletic coach” and “independent sanctioning authorities;” requiring the sanctioning authority to screen current and prospective athletic coaches through designated state and federal sex offender and predator Internet websites; requiring the sanctioning authority to maintain results; requiring sanctioning authority to disqualify any athletic coach appearing on either registry; requiring notice of disqualification and proof of such documentation; providing that a sanctioning authority is presumed to be not negligent in a civil action for an intentional tort related to sexual misconduct by an athletic coach if the authority complied with the screening and disqualification requirements; encouraging sanctioning authorities to participate in Volunteer and Employee Criminal History System.

Section 2. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See “Fiscal Comments” section below.

D. FISCAL COMMENTS:

The state and federal sexual offender and sexual predator registries are available to the public via the Internet. There are no fees associated with accessing or searching the registries.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require a city or county to expend funds or take any action requiring the expenditure of funds. The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 8, 2008, the Schools and Learning Council adopted a Proposed Council Substitute to HB 885 and reported the bill favorably as a Council Substitute (CS). The differences between the CS and the bill are:

- The CS revises the definition of athletic coaches to include a person who is authorized by an independent sanctioning authority to work, whether for compensation or as a volunteer, for a youth athletic team for at least 20 hours within a calendar year and who has direct contact with at least one minor on the team.
- The CS defines an independent sanctioning authority as a private, non-governmental entity that organizes, operates, or coordinates a youth athletic team in this state.
- The CS requires each independent sanctioning authority to meet the following additional requirements: conduct screenings for each current and prospective athletic coach using the coach's name or other identifying information; maintain documentation of the results for each person screened; maintain documentation of the notice provided to each disqualified person; and annually repeat a screening for each coach.
- The CS removes the provision that requires an independent sanctioning authority to sign an affidavit that states all coaches have been screened.

- The CS removes the provision that allows a coach to be placed on probationary status pending determination of compliance with the screening requirements.
- The CS removes the rebuttable presumption that an independent youth athletic team was negligent in hiring a coach if the sanctioning authority did not complete the required screening of the coach.
- The CS revises the rebuttable presumption providing that if the sanctioning authority complies with the bill's background screening and disqualification requirements prior to authorizing an coach, it is entitled to a rebuttable presumption that it was not negligent in the authorization of that coach in specified civil actions. It also removes the requirement that the sanctioning authority make a reasonable effort to contact references and former employers of the coach as one of the screening requirements.