

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 139 Volunteers for Organized Youth Sports and Recreational Programs

SPONSOR(S): Criminal Justice Subcommittee; Jones, S. and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 358

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Thomas	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 943.0438, F.S., defines an “independent sanctioning authority” as a private 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. Currently, independent sanctioning authorities must conduct a limited background screening on each current or prospective athletic coach for a youth athletic team that:

- Works twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Has direct contact with one or more minors on the team.

The independent sanctioning authority must check to see if the coach is listed in the sexual offender and sexual predator registries available on public websites maintained by the Florida Department of Law Enforcement and the United States Department of Justice.

The bill expands the current background screening requirements of s. 943.0438, F.S., to include assistant coaches and referees. In addition, the bill requires the background screening to include a Level 1 background check through the Florida Department of Law Enforcement (FDLE). A Level 1 background check requires the person’s name to be run against Florida’s criminal history records by FDLE and requires a \$24 fee. A Level 1 check includes a list of disqualifying offenses which would make the applicant ineligible to become a coach or referee – the same offenses that would disqualify a person from working in a child care facility. The bill authorizes the authority to allow certain disqualified persons to coach if the person:

- Has completed their sanctions at least 3 years prior for a felony conviction;
- Has completed their sanctions for a misdemeanor conviction; and
- Is not a career criminal offender, registered sex offender, or sex predator.

The bill prohibits the authority from delegating the screening responsibility to an individual team, and requires that the documentation of the results of each person screened and the written notice provided to any disqualified person be maintained for at least five years.

The bill will increase state revenues through the collection of background check fees and may have a workload impact on FDLE, but should not impact local governments. However, the increased revenues collected should offset any workload issues.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Employee Background Screening

Florida law provides standard procedures for the screening of prospective employees where the Legislature has determined it necessary to conduct criminal history background checks to protect vulnerable persons.¹ These standards include two different levels of screening: "Level 1" employment screening and "Level 2" employment screening. The Florida Department of Law Enforcement (FDLE) provides these criminal history checks to the employer or relevant state agency.

Level 1 screenings² are name-based demographic screenings that include statewide criminal record checks through FDLE. Level 2 screenings³ consist of a fingerprint-based search of FDLE and the Federal Bureau of Investigations databases for state and national criminal arrest records. Level 1 screenings and Level 2 screenings have the same disqualifying offenses.⁴ A Level 1 search may be conducted through FDLE via the internet with payment made by the use of a credit card.

Background Screening of Youth Athletic Team Coaches

Section 943.0438, F.S., defines an "independent sanctioning authority" as a private 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. Currently, independent sanctioning authorities are not required to conduct a Level 1 or Level 2 screening. Instead, these entities must conduct a limited background screening on each current or prospective athletic coach for a "youth athletic team"⁵ that:

- Works twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Has direct contact with one or more minors on the team.⁶

The independent sanctioning authority must check to see if the coach is listed in the sexual offender and sexual predator registries available on public websites maintained by FDLE⁷ and the United States Department of Justice (DOJ)^{8,9}

The sanctioning authority must disqualify any applicant from acting as an athletic coach if the applicant appears in either registry.¹⁰ The sanctioning authority must provide, within seven days of the screening, written notification to a disqualified person advising him or her of the results.¹¹ The sanctioning authority must maintain documentation of the results of each person screened and the written notice provided to any disqualified person. The statute is silent as to how long that documentation must be kept.¹²

Current law further provides that, in any civil action brought for damages caused by the intentional tort of a coach that relates to sexual misconduct committed by the coach, there is a rebuttable presumption

¹ Chapter 435, F.S.

² Level 1 screenings are outlined in s. 435.03, F.S.

³ Level 2 screenings are outlined in s. 435.04, F.S.

⁴ Sections 435.03(2) and 435.04(2), F.S.

⁵ The term "youth athletic team" is not defined in statute.

⁶ Section 943.0438(1)(a) and (2)(a), F.S.

⁷ <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited January 28, 2014).

⁸ <http://www.nsopr.gov/?AspxAutoDetectCookieSupport=1> (last visited January 28, 2014).

⁹ Section 943.0438(2)(a)1., F.S. Alternatively, the independent sanctioning authority may use a commercial consumer reporting agency that is in compliance with the federal Fair Credit Reporting Act to perform the required screening provided the agency searches the same sexual offender and sexual predator registries. Section 943.0438(2)(a)2., F.S.

¹⁰ Section 943.0438(2)(b), F.S.

¹¹ Section 943.0438(2)(c), F.S.

¹² Section 943.0438(2)(d), F.S.

that the sanctioning authority was not negligent in using the coach if the sanctioning authority complied with the required background screening and disqualification requirements.¹³

Florida law does not currently require a sanctioning authority to background screen volunteers (other than coaches for independent youth athletic teams), nor is there a law that requires a sanctioning authority to screen volunteers for private organized youth recreational programs that are not athletic programs. In contrast, Florida law does require volunteers at certain locations to have a background screening,¹⁴ and in certain instances, prohibits or limits a sexual offender's contact with minors altogether.¹⁵

Proposed Changes

The bill expands the current background screening requirements of s. 943.0438, F.S., to include assistant coaches and referees that:

- Work twenty or more hours within a calendar year, whether as a volunteer or for compensation; and
- Have direct contact with one or more minors on the team.

The bill provides that the required background screening of coaches, assistant coaches, and referees must include a Level 1 background check through FDLE, as well as a search of the sexual offender and sexual predator registries available on public websites maintained by FDLE and DOJ. The applicable disqualifying offenses for a Level 1 screening are the same as those for employees of child care facilities.¹⁶ The bill authorizes the independent sanctioning authority to allow certain disqualified persons to act coach, assistant coach, or referee if the person qualifies for an exemption from disqualification as provided in s. 435.07, F.S. To qualify for the exemption from disqualification, the applicant must:

- Have completed all sanctions at least 3 years prior for a felony conviction;
- Have completed all sanctions for a misdemeanor conviction; and
- Not be a career criminal offender, registered sex offender, or sex predator.

The bill prohibits the authority from delegating the screening responsibility to an individual team. The bill requires that the documentation of the results of each person screened and the written notice provided to any disqualified person be maintained for at least five years.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0438, F.S., relating to athletic coaches for independent sanctioning authorities.

Section 2. Provides an effective date of July 1, 2014.

¹³ Section 943.0438(3), F.S.

¹⁴ Section 943.04351, F.S., requires 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, to conduct a search of that person through the registration information regarding sexual predators and sexual offenders maintained by DOJ.

¹⁵ Section 775.21(10)(b), F.S., makes it 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 wherein the victim was a minor and the offender is not the parent or guardian of the victim, to work or volunteer at any business, school, daycare center, park, playground, or other place where children regularly congregate.

¹⁶ Section 402.305(2), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will increase revenues to the state. Each Level 1 background check requires the payment of a \$24 fee, which is deposited into the FDLE Operating Trust Fund. It is unknown how many background checks will be done under the provisions of the bill. For purposes of discussion, if 10,000 background checks are done in a fiscal year, then the revenue collected will be \$240,000.

2. Expenditures:

This bill may have some impact on FDLE's workload. Level 1 background checks can be done through the internet with the use of a credit card. If the checks required by the bill are done through the internet, then the workload impact on FDLE should be minimal. If the checks are done through the mail, the impact will be more significant. However, the increased revenues collected should offset any workload issues.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The independent sanctioning authorities of youth athletic teams affected by the bill will incur the cost associated with the required background checks of coaches, assistant coaches, and referees. Such expense may be passed on to the coaches or the youth, perhaps through registration fees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 5, 2014, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment revised the bill to:

- Narrow the scope of the bill to only include independent sanctioning authorities of youth athletic teams;
- Expand the current required screening to include assistant coaches and referees; and
- Provide that the screening must include a Level 1 background check.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.