

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1141 Background Screenings of Athletic Coaches

SPONSOR(S): Truenow and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 956

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N	Mathews	Hall
2) Regulatory Reform Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law requires specified employees to undergo a Level 1 background check as a condition of employment and continued employment. A Level 1 background screening is conducted by the Florida Department of Law Enforcement (FDLE) and includes a name-based statewide search of criminal history records and a search of the applicant's name in a national sex offender registry. A person may be disqualified under a Level 1 background screening if he or she has been arrested for, been found guilty of, or entered a plea of no contest or guilty to, a disqualifying criminal offense or an offense that constitutes domestic violence.

An independent sanctioning authority is a private, nongovernmental entity that organizes, operates, or coordinates a specified youth athletic team in Florida. Florida requires an independent sanctioning authority to complete a Level 1 background screening of any current or prospective athletic coach. Such screening must be performed annually and must also include a search of the applicant's name against state and federal registries of sexual predators and sexual offenders made available to the public by FDLE and the United States Attorney General. An independent sanctioning authority may substitute a coach's background screening conducted by a commercial consumer reporting agency in compliance with federal standards if the screening includes a Level 1 background screening and a search of the required state and federal sexual predator and sexual offender registries.

An applicant who is disqualified under the Level 1 background screening or who is identified on a state or federal sexual predator or sexual offender registry may not work or volunteer as an athletic coach in Florida. The independent sanctioning authority must provide written notice of the disqualification to the coach and must maintain the report and record for a minimum of five years.

The United States Olympic and Paralympic Committee (USOPC) is an independent sanctioning authority which sponsors youth athletics events nationally and whose policies require a full background screening to be conducted on any affiliated athletic coach. As such, under Florida law, a USOPC coach must pay for and submit to two background screenings: a Level 1 screening conducted by FDLE and a full background screening as required by the USOPC. The USOPC requires extensive residential history records and county, state, and federal criminal history record checks in all 50 states and U.S. territories.

HB 1141 streamlines the background screening process for an athletic coach affiliated with the USOPC by authorizing a background screening conducted in compliance with national industry background check standards as required by the USOPC or U.S. Center for SafeSport to satisfy the background screening requirements under s. 943.0438, F.S. The bill may reduce the administrative and financial burden on USOPC and affiliated coaches by removing the requirement to conduct multiple background screenings.

The bill may have an indeterminate negative fiscal impact on FDLE because of the potential decrease in the amount of state background checks.

The bill provides an effective date of July 1, 2021.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1141a.CRM

DATE: 3/16/2021

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Background Screenings

Employee Background Screenings

Florida provides standard procedures for screening a prospective employee where the Legislature has determined it is necessary to conduct a criminal history background check to protect vulnerable persons.¹ These standards include two different levels of screening: "Level 1" employment screening and "Level 2" employment screening.

A Level 1 screening is a name-based demographic screening that includes a statewide criminal record check through the Florida Department of Law Enforcement (FDLE).² A Level 1 background screening only includes a name-based search of Florida records, including an employment history, state and local criminal history checks, and a check of the Dru Sjodin National Sex Offender Public Website.³ A Level 1 screening may be paid for and conducted through FDLE's website, which provides immediate results.⁴

A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation (FBI) databases for state and national criminal arrest records.⁵ An applicant must be disqualified from acting as an athletic coach if he or she has been arrested for, found guilty of, entered a plea of nolo contendere or guilty for, or been adjudicated delinquent and the record has not been sealed or expunged for, the following criminal offenses:

- Sexual misconduct with certain vulnerable individuals;
- Abuse, neglect, or exploitation of certain vulnerable individuals;
- Murder;
- Manslaughter;
- Aggravated manslaughter of certain vulnerable individuals;
- Vehicular homicide;
- Felony assault, battery, and culpable negligence;
- Assault or battery upon a vulnerable individual;
- Kidnapping;
- False imprisonment;
- Sexual battery;
- Arson;
- Burglary;
- Unlawful sexual activity with a minor;
- Child abuse;
- Negligent treatment of a child or vulnerable individual; or
- Any other offense listed under s. 435.04(2), F.S.⁶

A Level 1 screening and Level 2 screening have the same disqualifying offenses, including, but not limited to, domestic violence, sexual misconduct, murder, and other violent or sexually-based offenses.⁷

¹ Ch. 435, F.S.

² S. 435.03, F.S.

³ S. 435.03(1), F.S.

⁴ Florida Department of Law Enforcement, *State of Florida Criminal History Records Check* <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited Mar. 16, 2021).

⁵ S. 435.04, F.S.

⁶ S. 435.03(2), F.S.

⁷ Ss. 435.03(2) and 435.04(2), F.S.

Youth Athletic Team Coaches

Under s. 943.0438(1)(b), F.S., an “independent sanctioning authority” means a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in Florida, if the team includes one or more minors and is not affiliated with a private school.⁸ An independent sanctioning authority must conduct a Level 1 background screening of each current and prospective athletic coach. The required background screening must also include a search of the applicant or coach’s name or other identifying information against state and federal registries of sexual predators and sexual offenders.⁹ An individual may not serve as a youth athletic coach¹⁰ unless a Level 1 screening has been conducted and the screening does not result in his or her disqualification.

In 2014, the Legislature expanded background screening requirements for athletic coaches, assistant coaches, and referees of independent sanctioning authorities and allowed a background screening conducted by a commercial consumer reporting agency in compliance with federal standards to satisfy the state level requirement so long as such screening includes a Level 1 background screening and a search against the state and federal registries of sexual predators and sexual offenders to meet the requirements under s. 943.0438, F.S.¹¹

An independent sanctioning authority must disqualify an applicant from acting as an athletic coach in Florida if he or she is disqualified by the Level 1 background screening or if his or her name appears in either registry.¹² Within seven days of the screening, the independent sanctioning authority must provide written notification to a disqualified person advising him or her of the results.¹³ In specified circumstances, an independent sanctioning authority may grant an exception to an applicant in accordance with s. 435.07(1)(a), F.S.¹⁴ Examples of possible exceptions include, but are not limited to, an applicant whose criminal record includes a:

- Felony that occurred three or more years ago and he or she has lawfully completed or been released from confinement or supervision for the disqualifying felony;
- Misdemeanor and he or she has completed or been lawfully released from confinement or supervision for the disqualifying misdemeanor offense; or
- Felony when committed, but is now classified as a misdemeanor, and he or she has completed or been lawfully released from confinement or supervision for all requirements imposed.¹⁵

The sanctioning authority must maintain documentation of the results of each person screened and the written notice provided to any disqualified person for a minimum of five years.¹⁶

U.S. Olympic and Paralympic Committee Policy

The United States Olympic and Paralympic Committee¹⁷ (USOPC) is an independent sanctioning authority which sponsors youth athletic events around the country, including many events and activities in Florida. In 2019, USOPC revised its background screening policy to increase and foster a safer environment at USOPC events and to protect youth athletes.¹⁸ The USOPC policy requires a full background screening to be conducted on any:

- Committee employee;

⁸ S. 1002.01, F.S.

⁹ S. 943.0438(2)(a)1, F.S.

¹⁰ “Athletic coach” means a person who is authorized by an independent sanctioning authority to work as a coach, assistant coach, or referee for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic based team in this state; and has direct contact with one or more minors on the youth athletic team. S. 943.0438(1)(a), F.S.

¹¹ Ch. 2014-9, Laws of Fla.

¹² S. 943.0438(2)(b), F.S.

¹³ S. 943.0438(2)(c), F.S.

¹⁴ S. 943.0438(2)(b), F.S.

¹⁵ S. 435.07(1), F.S.

¹⁶ S. 943.0438(3)(d), F.S.

¹⁷ Codified as “corporation” under 36 U.S.C. S. 220501(b)(7).

¹⁸ U.S. Olympic and Paralympic Committee, *Responsible Sport Organization Background Check Policy*, Dec. 13, 2019 <https://www.teamusa.org/team-usa-athlete-services/-/media/9377E4958C1A467091A4CBA6935E3905.ashx> (last visited Mar. 16, 2021).

- Committee coach or affiliated coach;
- Independent contractor;
- Committee staff;
- Volunteer;
- Board member;
- Committee or task force member;
- Individual placed with the USOPC as part of an academic program;
- Other individuals authorized or credentialed by USOPC to work with athletes or other sport participants while at an event;
- Responsible Sport Organization employee or agent thereof;¹⁹ and
- Athlete, alternate, or training partner 18 years of age and older.²⁰

Further, the policy requires any person affiliated with the media who has unsupervised one-on-one interaction with an athlete, a third-party vendor with regular contact with or authority over an athlete, and a community organization partner to comply with the USOPC's screening requirements. The policy also requires a full background screening for any individual that Olympic and Paralympic Training Centers formally authorize, approve, or appoint to serve in a position of authority over or have regular contact with athletes.²¹

The USOPC policy requires a full background screening to require, at a minimum, the following components:

- Social Security Number validation;
- Name and address history records;
- Two independent, multi-jurisdictional criminal database searches covering all 50 states plus Washington D.C., Guam, and Puerto Rico;
- Federal District Courts search for each name used in the district where the applicant currently lives or has lived during the past seven years;
- County criminal records for each name used in the county where the applicant currently lives or has lived during the past seven years;
- National sex offender registry database search of all available states, plus Washington D.C., Guam, and Puerto Rico;
- Multiple national watch lists such as the Homeland Security Watchlist;
- United States Center for SafeSport²² disciplinary records;
- Comprehensive international records search for a U.S. citizen who has lived outside of the U.S. for six consecutive months in any one county during the past seven years;
- Motor vehicle records of at least a three-year history in the state of licensure, if driving is required for the position.²³

In addition to a full background screening every other year, a qualifying coach, employee, or other individual must comply with a supplemental background check during every off year. The supplemental background check must, at a minimum, include:

- Multi-jurisdictional criminal database search component covering all 50 states plus Washington D.C., Guam, and Puerto Rico;
- Sex offender registry database searches of all available states, plus Washington D.C., Guam, and Puerto Rico; and
- SafeSport disciplinary records.²⁴

¹⁹ A responsible sport organization includes the USOPC National Governing Bodies Council (NGBC), Paralympic Sport Organizations (PSOs), and High Performance Management Organizations (HPMOs).

²⁰ U.S. Olympic and Paralympic Committee, *supra* note 15.

²¹ *Id.*

²² Codified as "center" under 36 U.S.C. s. 220501(b)(5). The United States Center for SafeSport is an independent 501(c)(3) non-profit organization focused on ending all forms of abuse in sport. See U.S. Center for SafeSport, *Our Work*, <https://uscenterforsafesport.org/about/our-work/> (last visited Mar. 16, 2021). The U.S. Center for SafeSport is recognized by the USOPC as the education authority on safe sport standards. The U.S. SafeSport Code can be found online at <https://uscenterforsafesport.org/wp-content/uploads/2020/03/2020-SafeSport-Code-04.01.20.pdf>.

²³ U.S. Olympic and Paralympic Committee, *supra* note 15.

²⁴ *Id.*

In 2017, the U.S. Congress authorized the U.S. Center for SafeSport (SafeSport) to be the exclusive authority to respond to reports of sexual misconduct within the U.S. Olympic and Paralympic Movement.²⁵ SafeSport serves as the independent national safe sport organization and is responsible for developing national policies and procedures to prevent the emotional, physical, and sexual abuse of amateur athletes.²⁶ The SafeSport Code provides reporting requirements, sanctioning, and resolution procedures for USOPC coaches and affiliates.²⁷ An applicant or participant who has a criminal charge or disposition is prohibited from serving as a USOPC coach or affiliate under the SafeSport Code.²⁸

Currently, when the USOPC or an USOPC affiliate or partner organization holds an event in Florida, any person with authority or regular contact with an athlete must submit to two background checks: a full background check as required by the USOPC and a Level 1 background screening and check of sexual offender and sexual predator databases as required by Florida law. As such, a USOPC coach must pay for and complete two separate background screenings before he or she may coach or volunteer in Florida.

Effect of Proposed Changes

HB 1141 provides an additional exception to the background screening process required for an athletic coach for an independent sanctioning authority. The bill authorizes a background screening conducted in compliance with national industry background check standards as required by the USOPC or SafeSport to satisfy the requirements of s. 943.0438, F.S. The bill removes the current requirement for a USOPC coach to submit to multiple background screenings to be authorized to coach at an event or facility in Florida.

The bill provides an effective date of July 1, 2021.

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, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a negative fiscal impact on FDLE because of the potential decrease of state-only criminal history record checks.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

²⁵ U.S. Center for SafeSport, *The Safe Sport Act*, <https://uscenterforsafesport.org/about/safesport-act/> (last visited Mar. 16, 20221). Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, Pub. L. No. 115-126, S. 534, 115th Cong. (Feb. 14, 2018) <https://www.congress.gov/bills/115/congress/senate/bills/534> (last visited Mar. 16, 2021).

²⁶ *Id.*

²⁷ U.S. Center for SafeSport, *SafeSport Code for the U.S. Olympic and Paralympic Movement* (Apr. 1, 2020), <https://uscenterforsafesport.org/wp-content/uploads/2020/03/2020-SafeSport-Code-04.01.20.pdf> (last visited Mar. 16, 2021).

²⁸ *Id.*

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES