

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.)

Prepared By: The Professional Staff of the Committee on Education

BILL: SB 956

INTRODUCER: Senator Baxley

SUBJECT: Background Screenings of Athletic Coaches

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Westmark	Bouck	ED	Favorable
2.			CF	
3.			RC	

I. Summary:

SB 956 modifies compliance with background screening requirements for an athletic coach and independent sanctioning authority. The bill specifies that screening requirements are satisfied if the athletic coach and independent sanctioning authority are in compliance with national industry background check standards as required by:

- The United States Olympic and Paralympic Committee; or
- The United States Center for SafeSport.

The bill may reduce the administrative and financial burden on coaches affiliated with specified authorities by removing the requirement to conduct multiple background screenings. The bill may also have an indeterminate negative fiscal impact on the Florida Department of Law Enforcement through a potential decrease in the amount of state background checks.

The bill takes effect July 1, 2021.

II. Present Situation:

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

¹ Sections 435.01-435.12, F.S.

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 involves 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 databases for state and national criminal arrest records.⁵ 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.⁶

Florida Department of Law Enforcement

The FDLE provides services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida's citizens and visitors.⁷

By law, when a criminal history check or a duty to disclose the absence of a criminal history check is mandated by state law, or when a privilege or benefit is conferred by state law in return for exercising an option of conducting a criminal history check, the referenced criminal history check must include a Florida criminal history provided by the FDLE. Such Florida criminal history information may be provided by a private vendor only if that information is directly obtained from the FDLE for each request.⁸

Athletic Coaches for Independent Sanctioning Authorities

Independent sanctioning authorities⁹ are required by law¹⁰ to conduct a Level 1 background screening of each current and prospective athletic coach.¹¹ The independent sanctioning authority may not delegate this responsibility to an individual team and may not authorize any person to act as an athletic coach unless a Level 1 background screening is conducted and does not result in disqualification. Level 1 background screenings must be conducted annually for each athletic

² Section 435.03, F.S. A Level 1 criminal history record check is "a state-only name-based check." Florida Department of Law Enforcement, *Definitions*, <https://www.fdle.state.fl.us/Background-Checks/VECHS-FAQs/Definitions.aspx> (last visited March 25, 2021).

³ Section 435.03(1), F.S.

⁴ FDLE, *State of Florida Criminal History Records Check*, <http://www.fdle.state.fl.us/Criminal-History-Records/Florida-Checks.aspx> (last visited March 24, 2021).

⁵ Section 435.04, F.S.

⁶ Sections 435.03(2) and 435.04(2), F.S.

⁷ FDLE, *General Information About FDLE*, <https://www.fdle.state.fl.us/About-Us/General-Information> (last visited March 24, 2021).

⁸ Section 943.053(12), F.S.

⁹ "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. Section 943.0438(1)(b), F.S.

¹⁰ Section 943.0438(2)(a), F.S.

¹¹ "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 team based in this state, and has direct contact with one or more minors on the youth athletic team. Section 943.0438(1)(a), F.S.

coach. A background screening must include a search of the athletic coach's name or other identifying information against state and federal registries of sexual predators and sexual offenders, which are available to the public on Internet sites provided by FDLE and the Attorney General of the United States.¹²

A background screening conducted by a commercial consumer reporting agency in compliance with the federal Fair Credit Reporting Act, which includes a Level 1 background screening and a search of designated identifying information against listed sexual predator and sexual offender Internet sites is also deemed to satisfy the specified requirements.¹³

By law, independent sanctioning authorities are also required to:¹⁴

- Disqualify any person from acting as an athletic coach or if he or she is identified on a registry described.¹⁵
- Provide, within seven business days following the background screening, written notice to a person disqualified under this section advising the person of the results and of his or her disqualification.
- Maintain for at least five years documentation of:
 - The results for each person screened; and
 - The written notice of disqualification provided to each person.

An independent sanctioning authority that complies with background screening and disqualification requirements may be presumed to not have been negligent if an athletic coach the authority authorized is accused of intentional harm related to sexual misconduct .¹⁶

Disqualification as an Athletic Coach

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:¹⁷

- 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;

¹² See for example FDLE, *Sexual Offenders and Predators Search*, <https://offender.fdle.state.fl.us/offender/sops/home.jsf> (last visited March 25, 2021).

¹³ Section 943.0438(2)(a)2., F.S.

¹⁴ Sections 943.0438(2)(b)-(d), F.S.

¹⁵ The authority may allow a disqualified person to act as an athletic coach if it determines that the person meets the requirements for an exemption from disqualification under s. 435.07, F.S. An exemption from disqualification may be granted for felonies, once three years have elapsed since lawfully released from the condition imposed by the court; misdemeanors, once completed or released from condition imposed by the court; offenses that were felonies when committed but that are now misdemeanors; or findings of delinquency. Section 435.07(1)(a), F.S.

¹⁶ Section 943.0438(3), F.S.

¹⁷ Section 435.04(2), F.S.

- 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.

Volunteer and Employee Criminal History System

The Legislature encourages independent sanctioning authorities for youth athletic teams 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.¹⁸

The United States Olympic and Paralympic Committee

The United States Olympic and Paralympic Committee¹⁹ (USOPC) is an independent sanctioning authority which sponsors youth athletic events around the country, including many events and activities in Florida. Under Florida law, a USOPC coach must pay for and submit to a Level 1 screening conducted by FDLE,²⁰ and such a coach must also submit to a full background screening as required by the USOPC.²¹ The USOPC policy requires a full background screening to be conducted on any of the following persons, among others:²²

- Committee employee;
- Committee coach or affiliated coach;
- Volunteer;
- 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;²³ and
- Athlete, alternate, or training partner 18 years of age and older.

Further, the policy requires any person affiliated with the media who has unsupervised one-on-one interaction with an athlete, a third-party venter with regular contact with or authority over an athlete, and a community organization partner to comply with the USOPC's screening

¹⁸ Section 943.0438(4), F.S. Participating in the Volunteer and Employee Criminal History System involves a business or organization, that provides or licenses or certifies others to provide care or care placement services, submitting to the Department of Law Enforcement a request for screening an employee or volunteer or person applying to be an employee or volunteer by submitting fingerprints, accompanied by payment of a specified fee. Sections 943.0542(2)(b)-(c), F.S.

¹⁹ Codified as "corporation" under 36 U.S.C. S. 220501(b)(7).

²⁰ See ss. 943.0438(2)(a)1. and 435.03, F.S.

²¹ U.S. Olympic and Paralympic Committee, *Responsible Sport Organization Background Check Policy* (Dec. 13, 2019), available at <https://www.teamusa.org/team-usa-athlete-services/-/media/9377E4958C1A467091A4CBA6935E3905.ashx>, at 1-2.

²² *Id.*

²³ A responsible sport organization includes the USOPC National Governing Bodies Council (NGBC), Paralympic Sport Organizations (PSOs), and High Performance Management Organizations (HPMOs).

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.²⁴

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:²⁵

- 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.

The United States Center for SafeSport

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.²⁶ 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.²⁷ The SafeSport Code provides reporting requirements, sanctioning, and resolution procedures for USOPC coaches and affiliates.²⁸ 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.²⁹

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.

III. Effect of Proposed Changes:

SB 956 modifies background screening requirements for athletic coaches and independent sanctioning authorities, by specifying that an athletic coach and an independent sanctioning authority are deemed to satisfy specified background screening requirements if the athletic coach and the independent sanctioning authority are in compliance with national industry background

²⁴ U.S. Olympic and Paralympic Committee, *Responsible Sport Organization Background Check Policy* (Dec. 13, 2019), available at <https://www.teamusa.org/team-usa-athlete-services/-/media/9377E4958C1A467091A4CBA6935E3905.ashx>, at 4.

²⁵ *Id.* at 3.

²⁶ U.S. Center for SafeSport, *The Safe Sport Act*, <https://uscenterforsafesport.org/about/safesport-act/> (last visited March 24, 2021). 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/bill/115th-congress/senate-bill/534> (last visited March 24, 2021).

²⁷ *Id.*

²⁸ U.S. Center for SafeSport, *SafeSport Code for the U.S. Olympic and Paralympic Movement* (Apr. 1, 2020), available at <https://uscenterforsafesport.org/wp-content/uploads/2020/03/2020-SafeSport-Code-04.01.20.pdf>.

²⁹ *Id.*

check standards as required by the United States Olympic and Paralympic Committee³⁰ or by the United States Center for SafeSport.³¹

According to the Florida Department of Law Enforcement (FDLE), granting athletic coaches and independent sanctioning authorities the option to use third party sources for criminal history record check information may not provide as accurate information as criminal history record checks performed by the FDLE.³²

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁰ Defined as “corporation” under 36 U.S.C. s. 220501(b)(7).

³¹ Defined as “Center” under 36 U.S.C. s. 220501(b)(5).

³² FDLE, *Senate Bill 956 Agency Bill Analysis* (Feb. 16, 2021). If athletic coaches and independent sanctioning authorities perform state-level criminal history record checks only, it is permissible under s. 943.053(12), F.S., for the company to obtain criminal history information using a third party commercial company to conduct the check using FDLE electronic services to either submit criminal history record check batch uploads or to perform a criminal history record check instant search. *Id.*

B. Private Sector Impact:

According to the Florida Department of Law Enforcement (FDLE), the bill may result in a reduced amount of state-only criminal history record checks. The cost for a Florida criminal history record check is \$24, which goes into FDLE's Operating Trust Fund.³³

C. Government Sector Impact:

According to the Florida Department of Law Enforcement (FDLE), the bill may result in a loss of revenue and reduced amount of state-only criminal history record checks. The cost for a Florida criminal history record check is \$24, which goes into FDLE's Operating Trust Fund and is subject to a general revenue service charge of eight percent pursuant to Chapter 215, F.S.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This 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.

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

³³ FDLE, *Senate Bill 956 Agency Bill Analysis* (Feb. 16, 2021).

³⁴ *Id.*