

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 Pre-K -12

BILL: SB 530

INTRODUCER: Senator DiCeglie

SUBJECT: Florida High School Athletic Association Student Eligibility Requirements

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Palazes	Bouck	ED	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 530 requires the Florida High School Athletic Association to adopt bylaws that prohibits a student who has been sentenced as an adult for a homicide, sexual battery, or lewd or lascivious offense from participating in high school athletic competition in its member schools.

The bill is effective July 1, 2024

II. Present Situation:

Florida High School Athletic Association

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization for interscholastic athletics for grades 6 through 12 in Florida public schools.¹ Any high school, middle school, or combination school,² including charter schools, virtual schools, private schools, and home education cooperatives,³ may become a member of the FHSAA, but membership in the FHSAA is not mandatory.⁴

The FHSAA is required to adopt bylaws regulating student eligibility, recruiting, student safety and member schools' interscholastic competition in accordance with applicable law.⁵ If the

¹ Section 1006.20(1), F.S.

² A "combination school" is any school that provides instruction to students in high school and the middle school grades; elementary, middle or high school grades combined; or elementary and middle grades combined (e.g. K-12; K-8; 6-12; or 7-12). Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc., 2022-23 Edition*, at Bylaw 3.2.2.3.

³ A "home education cooperative" is a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. FHSAA, *supra*, note 2, at Bylaw 3.2.2.4.

⁴ Section 1006.20(1), F.S.

⁵ Section 1006.20(2), F.S.

FHSAA fails to meet its obligations and responsibilities, the Commissioner of Education (commissioner) is directed to designate a nonprofit organization to manage interscholastic athletics with the approval of the State Board of Education (SBE).⁶

Student Eligibility

Participation in interscholastic athletic programs by a student is a privilege, not a right. Students who participate are required to meet the requirements established in state law, FHSAA regulations, and by their respective schools.⁷ To determine student eligibility the FHSAA is required to adopt bylaws establishing the process and standards by which FHSAA determinations of eligibility are made. The bylaws are required to provide that:⁸

- Ineligibility must be established by a preponderance of the evidence.
- Student athletes, parents, and schools must have notice of the initiation of any investigation or other inquiry into eligibility and may present, to the investigator and to the individual making the eligibility determination, any information or evidence that is credible, persuasive, and of a kind reasonably prudent persons rely upon in the conduct of serious affairs.
- An investigator may not determine matters of eligibility but must submit information and evidence to the executive director or a person designated by the executive director or by the board of directors for an unbiased and objective determination of eligibility.
- A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.

The FHSAA adopted the following bylaws related to student eligibility requirements:⁹

- A student must attend school¹⁰ and is immediately eligible to participate in the interscholastic athletic programs sponsored by the school he/she attends each school year.
- A student who transfers from one school to another will be eligible at the new school, but may not participate in a sport at his or her new school if the student participated in that same sport at another school during that school year, unless certain conditions are met.
- A middle/junior high student must have 2.0 grade point average (GPA), or the equivalent of a 2.0 GPA based on a 4.0 scale, at the conclusion of each semester.
- A student is limited to eight consecutive semesters of eligibility beginning with the semester he or she begins ninth grade for the first time.
- A student who reaches the age of 19 prior to July 1st is permanently ineligible.
- A student must have a physical evaluation each year and be certified as being physically fit to participate in interscholastic athletic programs prior to participating in interscholastic athletic competition or engaging in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic team.
- A student must have the consent of his or her parent or legal guardian to participate in interscholastic athletic programs at a member school prior to participating in interscholastic

⁶ Section 1006.20(1), F.S.

⁷ Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association 2023-24 Edition*, at Article 9, https://fhsaa.com/documents/2023/7/13/2324_handbook.pdf?id=4394, (last visited Feb. 1, 2024).

⁸ Section 1006.20(2), F.S.

⁹ Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association 2023-24 Edition*, at Article 9, https://fhsaa.com/documents/2023/7/13/2324_handbook.pdf?id=4394, (last visited Feb. 1, 2024).

¹⁰ Section 1006.60(1), F.S., provides that students that are part of a home education cooperative are eligible to participate in FHSAA sports.

athletic competition or engaging in any practice, tryout, workout, or other physical activity associated with the student's candidacy for an interscholastic team.

- A student may not participate in an athletic activity of the FHSAA unless he or she is an amateur. An amateur is one who engages in athletic competition solely for the physical, mental, social, and pleasure benefits derived from the activity.

District school boards are required to establish, through its code of student conduct, student eligibility standards and related student disciplinary actions regarding student participation in interscholastic and intrascholastic extracurricular activities. The code of student conduct must provide that:¹¹

- A student not currently suspended from interscholastic or intrascholastic extracurricular activities, or suspended or expelled from school, pursuant to a district school board's suspension or expulsion powers provided in law, is eligible to participate in interscholastic and intrascholastic extracurricular activities.
- A student may not participate in a sport if the student participated in that same sport at another school during that school year.
- A student's eligibility to participate in any interscholastic or intrascholastic extracurricular activity may not be affected by any alleged recruiting violation until final disposition of the allegation.

To be eligible to participate in interscholastic extracurricular student activities, a student must maintain satisfactory conduct. If a student is convicted of, or is found to have committed, a felony or a delinquent act that would have been a felony if committed by an adult, regardless of whether adjudication is withheld, the student's participation in interscholastic extracurricular activities is contingent upon established and published district school board policy.¹²

Prosecution of a Minor as an Adult

The juvenile delinquency system focuses on treating and rehabilitating children who violate criminal laws. Children in the delinquency system may complete a civil citation or diversion program,¹³ probationary sentence, or be committed to one of the Department of Juvenile Justice's (DJJ) commitment programs.¹⁴ The juvenile process is less harsh than the adult court process, for example:

- A judge decides the facts in a juvenile adjudicatory hearing rather than a jury.¹⁵
- Juveniles are not subject to monetary bail.¹⁶
- Probation may only last until age 19, and commitment until age 21.¹⁷

A child may be transferred to adult court through one of three ways:

- Direct file, in which the state attorney files an information to transfer the child.¹⁸

¹¹ Section 1006.195 (1)(a), F.S.

¹² Section 1006.15(3)(a)4., F.S.

¹³ Sections 985.12, 985.125, 985.15, 985.155, and 985.16, F.S.

¹⁴ Section 985.433, F.S.

¹⁵ Section 985.35, F.S.

¹⁶ Section 985.245, F.S.

¹⁷ Section 985.0301, F.S.

¹⁸ Section 985.557, F.S.; An information is a formal criminal charge brought and filed by the prosecutor that initiates the criminal proceedings in court. Cornell Law School, Legal Information Institute, *Information*, <https://www.law.cornell.edu/wex/information> (last visited Jan. 26, 2024).

- Judicial waiver, in which the court transfers the child upon the state's motion after holding a waiver hearing.¹⁹
- Indictment, in which the grand jury charges the child by indictment for a capital offense or offense punishable by life in prison.²⁰

Direct File

With respect to any child who was 14 or 15 years of age at the time the alleged offense was committed, the state attorney may direct file a child to adult court when, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered or imposed and when the offense charged is for the commission of, attempt to commit, or conspiracy to commit:²¹

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated assault or aggravated battery;
- Aggravated stalking;
- Murder;
- Manslaughter;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary or other specified burglaries;
- Any lewd or lascivious offense upon a person less than 16 years of age;
- Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
- Grand theft over \$100,000 or specified property;
- Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
- Home invasion robbery;
- Carjacking; and
- Specified grand theft of a motor vehicle if the child has a specified previous adjudication for a specified grand theft of a motor vehicle offense.

With respect to any child who was 16 or 17 at the time the alleged offense was committed, the state attorney may direct file a child to adult court when, in the state attorney's judgment and discretion, the public interest requires that adult sanctions be considered or imposed.²² The state attorney may not direct file a child to adult court when a child is charged with a misdemeanor, unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified as a felony under state law.²³

¹⁹ Section 985.556, F.S.

²⁰ Section 985.56, F.S.

²¹ Section 985.557(1)(a), F.S.

²² Section 985.557(1)(b), F.S.

²³ *Id.*

Judicial Waiver

A child must be transferred to adult court if the child is alleged to have committed a violation of law and, prior to the adjudicatory hearing, the child, joined by a parent, guardian, or guardian ad litem, demands in writing to be tried as an adult.²⁴ Additionally, a state attorney may exercise his or her discretion and file a motion requesting the court to transfer the child for criminal prosecution if the child was 14 years of age or older at the time the alleged delinquent act or violation of law was committed.²⁵

The state attorney must request the court to transfer a child to adult court or must provide written reasons to the court for not making such a request if:²⁶

- The child was 14 years of age or older, and if the child has been previously adjudicated delinquent for an act classified as a felony, which adjudication was for the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed robbery, carjacking, home-invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a subsequent violent crime; or
- The child was 14 years of age or older at the time of commission of a fourth or subsequent felony and the child was previously adjudicated delinquent, had adjudication withheld, or was found to have committed or have attempted to or conspired to commit, three felony offenses and one or more of such felony offenses involved the use or possession of a firearm or violence against a person.

The only transfer method receiving judicial review is judicial waiver. A court must conduct a hearing on a motion for waiver to determine if the child should be tried as if he or she were an adult and must consider:²⁷

- The seriousness of the offense.
- Whether the community is best served by transferring the child to adult court.
- Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether the offense was against persons or property.
- The probable cause as found in the report, affidavit, or complaint.
- Whether the child's associates are adults or children who are to be tried as adults.
- The sophistication and maturity of the child.
- The child's criminal and other history.
- The protection of the community and likelihood of rehabilitation if the child remains in juvenile court.

In 2019, the Legislature repealed all statutes related to mandatory direct file against juveniles.²⁸

²⁴ Section 985.556(1), F.S.

²⁵ Section 985.556(2), F.S.

²⁶ Section 985.556(3), F.S.

²⁷ Section 985.556(4), F.S.

²⁸ Chapter 2019-167, Laws of Fla.

Sentencing of a Minor as an Adult

A child transferred to adult court is treated like an adult in most ways. The adult court procedural rules apply, including trial by jury. With the exception of the death penalty and a life sentence without the possibility of parole,²⁹ a child faces the same exposure to penalty as an adult. A court may, however, sentence a child prosecuted as an adult to juvenile sanctions.³⁰ In determining whether to impose juvenile sanctions instead of adult sanctions, the court must consider the following:³¹

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated or willful manner;
- Whether the offense was committed against persons or property;
- The sophistication and maturity of the offender;
- The record and previous history of the offender;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender;
- Whether the Department of Juvenile Justice has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

In addition to sentencing a child as a juvenile or as an adult, a judge may also sentence a person as a youthful offender. The judge may sentence any person as a youthful offender:³²

- Who is at least 18 years of age or who has been transferred for prosecution in an adult court;
- Who is found guilty or has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is a felony if such crime was committed before the defendant turned 21 years of age; and
- Who has not previously been classified as a youthful offender; however, a person found guilty of a capital or life felony may not be sentenced as a youthful offender.

If a child has been found guilty, and the judge sentences the child as an adult, the judge may adjudicate the child guilty or withhold adjudication. An adjudication of guilt is a formal conviction, and a child will be sentenced as an adult accordingly. An adjudication withheld is not a formal conviction, but a judge may still order sanctions, such as probation.³³

III. Effect of Proposed Changes:

The bill amends s. 1006.20, F.S., to require the Florida High School Athletic Association to adopt bylaws that prohibits a student who has been sentenced as an adult for a homicide,³⁴ sexual

²⁹ *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

³⁰ Section 985.565, F.S.

³¹ Section 985.565, F.S.

³² Section 958.04(1), F.S.

³³ Section 948.01, F.S.

³⁴ Laws governing homicide are covered under Chapter 782.

battery,³⁵ or lewd or lascivious³⁶ offense from participating in high school athletic competition in its member schools. Such prohibition applies to a student regardless of the disposition of his or her case, including adjudication of guilt, withholding of adjudication, or sentencing as a youthful offender.

The bill is effective July 1, 2024.

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.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

³⁵ Section 794.011, F.S., defines sexual battery as oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

³⁶ Section 794.051, F.S., defines a lewd or lascivious as A person 24 years of age or older who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person 16 or 17 years of age, or forces or entices a person 16 or 17 years of age to so touch the perpetrator.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1006.20 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.