

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 545 Florida High School Athletic Association Student Eligibility Requirements

SPONSOR(S): Jacques

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education Quality Subcommittee	13 Y, 5 N	Wolff	Sanchez
2) Criminal Justice Subcommittee	12 Y, 4 N	Yeager	Hall
3) Education & Employment Committee			

SUMMARY ANALYSIS

Continuing Florida's commitment to safe and fair middle and high school athletics, CS/HB 545 amends s. 1006.20, F.S., to require the FHSAA to adopt bylaws prohibiting a student who has been sentenced as an adult for any offense under ch. 782, F.S., relating to homicide; s. 794.011, F.S., relating to sexual battery; or s. 800.04, F.S., relating to lewd or lascivious offenses from participating in high school athletic competition at its member schools. Under the bill, the prohibition must apply 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 may have an indeterminate but significant negative fiscal impact. See Fiscal Comments, *infra*.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.⁴ However, membership in the FHSAA is not mandatory and the FHSAA must allow private schools the option of maintaining full membership or membership by sport.⁵ The FHSAA may not deny or discourage a private school from simultaneously maintaining membership in another athletic association.⁶ The FHSAA is prohibited from denying or discouraging interscholastic competition between its member schools and non-FHSAA member schools in Florida and may not take discriminatory or retributory action against a member school that engages in interscholastic competition with non-FHSAA member schools.⁷

The FHSAA is required to adopt bylaws regulating student eligibility, recruiting, and member schools' interscholastic competition in accordance with applicable law.⁸ If the 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).⁹

Student Extracurricular Activities and Athletics

Florida law outlines numerous standards and requirements relating to student extracurricular activities and athletics.¹⁰ Current law provides that "eligible to participate," for purposes of extracurricular activities and athletics, includes a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests.¹¹ Additionally, a student must satisfy the following requirements to be deemed eligible to participate:¹²

- Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required for a standard high school diploma.
- Execute and fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing association, and the student's parents, 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). Bylaw 3.2.2.3, FHSAA.

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. Bylaw 3.2.2.4, FHSAA.

⁴ Section 1006.20(1), F.S.

⁵ Section 1006.20(1), F.S.; Bylaws 3.2.1.4-5, FHSAA.

⁶ Section 1006.20(1), F.S.

⁷ *Id.*

⁸ Section 1006.20(2), F.S.

⁹ Section 1006.20(1), F.S.

¹⁰ *See* ch. 1006, pt. 1, s. D, F.S.

¹¹ Section 1006.15(3)(a), F.S.

¹² *Id.*

student's cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required for a standard high school diploma.¹³

- Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required for a standard high school diploma during their junior or senior year.
- Maintain satisfactory conduct, including adherence to appropriate dress and other codes of student conduct.

Continued participation in extracurricular activities by a student convicted of a felony or a delinquent act that would be a felony if committed by an adult, regardless of whether adjudication is withheld, shall be governed by published school district policies.¹⁴

Any student who is exempt from attending a full school day based on rules adopted by the district school board must maintain the grade point average required of full school day students and pass each class for which he or she is enrolled.¹⁵

Any entity that governs interscholastic extracurricular activities of public schools is prohibited from discriminating against any eligible student based on their education choice of public, private, or home education.¹⁶ No public school may join an organization that regulates interscholastic activities and discriminates against otherwise eligible students in public, private, or home education.¹⁷

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,¹⁸ probationary sentence, or be committed to one of the Department of Juvenile Justice's (DJJ) commitment programs.¹⁹ 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;²⁰
- Juveniles are not subject to monetary bail;²¹ and
- Probation may only last until age 19, and commitment until age 21.²²

Subject to limited exceptions, a juvenile record is automatically expunged at either age 21 or 26, obliterating the record and allowing the subject of the record to lawfully deny it in most circumstances.²³ Expunction of an adult criminal record, on the other hand, has much more stringent requirements.²⁴

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;²⁵
- Judicial waiver, in which the court transfers the child upon the state's motion after holding a waiver hearing;²⁶ or

¹³ Any such academic performance contract must, at a minimum, require that the student attend summer school between grades 9 and 10 or grades 10 and 11, as appropriate. Section 1006.15(3)(a)2., F.S.

¹⁴ Section 1006.15(3)(a)4., F.S.

¹⁵ Section 1006.15(3)(b), F.S. Examples of such programs include double session schools or programs, experimental schools, or schools operating under emergency conditions.

¹⁶ Section 1006.15(5), F.S.

¹⁷ Section 1006.15(6), F.S.

¹⁸ Sections 985.12, 985.125, 985.15, 985.155, and 985.16, F.S.

¹⁹ Section 985.433, F.S.

²⁰ Section 985.35, F.S.

²¹ Section 985.245, F.S.

²² Section 985.0301, F.S.

²³ Section 943.0515, F.S.

²⁴ Section 943.0585, F.S.

²⁵ 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).

²⁶ Section 985.556, F.S.

- Indictment, in which the grand jury charges the child by indictment for a capital offense or offense punishable by life in prison.²⁷

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:

- 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.²⁸

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.²⁹ 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.³⁰

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.³¹ 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.³²

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:

- 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,

²⁷ Section 985.56, F.S.

²⁸ Section 985.557(1)(a), F.S.

²⁹ Section 985.557(1)(b), F.S.

³⁰ *Id.*

³¹ Section 985.556(1), F.S.

³² Section 985.556(2), F.S.

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.³³

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:

- 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.³⁴

Judicial waiver and direct file transfer methods include the following discretionary criteria for transfer:

Transfer Method	Discretionary
Judicial Waiver	Child was 14 or older when he or she committed a crime.
Direct File	Child was 14 or 15 when he or she committed an enumerated offense. ³⁵
	Child was 16 or 17 when he or she committed: <ul style="list-style-type: none"> • A felony offense; or • A misdemeanor, if the child has two prior adjudications or withheld adjudications, one of which is a felony.

In 2019, the Legislature repealed all statutes related to mandatory direct file against juveniles.³⁶

Sentencing of a Minor as an Adult

³³ Section 985.556(3), F.S.

³⁴ Section 985.556(4), F.S.

³⁵ Enumerated offenses are the commission of, attempt to commit, or conspiracy to commit arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawfully throwing, placing, or discharging a destructive device or bomb; armed burglary; burglary of a dwelling with aggravating circumstances; burglary with a battery; aggravated battery; lewd or lascivious offense on a person younger than 16; carrying, displaying, using, or threatening to use a weapon or firearm during the commission of a felony; grand theft with aggravating circumstances; possessing or discharging a weapon on school property; home invasion robbery; carjacking; or grand theft of a motor vehicle under certain circumstances. Section 985.557(1)(a), F.S.

³⁶ Chapter 2019-167, L.O.F.

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,³⁷ 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.³⁸ In determining whether to impose juvenile sanctions instead of adult sanctions, the court must consider the following:

- 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.³⁹

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:

- 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.⁴⁰

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.⁴¹

Effect of Proposed Changes

CS/HB 545 amends s. 1006.20, F.S., to require the FHSAA to adopt bylaws prohibiting a student who has been sentenced as an adult for any offense under ch. 782, F.S., relating to homicide; s. 794.011, F.S., relating to sexual battery; or s. 800.04, F.S., relating to lewd or lascivious offenses from participating in high school athletic competition at its member schools. Under the bill, the prohibition must apply 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 provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 1006.20, F.S.; relating to Athletics in public K-12 schools.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³⁷ *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

³⁸ Section 985.565, F.S.

³⁹ Section 985.565, F.S.

⁴⁰ Section 958.04(1), F.S.

⁴¹ Section 948.01, F.S.

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have an indeterminate but significant negative fiscal impact. In order to verify athlete eligibility a background screening may need to be conducted. If a background screening is necessary, it is anticipated that either the FHSAA member institutions or the families of the student athletes would bear the cost of these background screenings. A general state and federal background check costs \$37.25.⁴² The FHSAA reports serving over 800,000 student athletes annually.⁴³

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

On January 30, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

⁴² Florida Department of Law Enforcement, *Criminal History Record Check Fee Schedule*, available at https://www.fdle.state.fl.us/Criminal-History-Records/Documents/Criminal-History-Fee-Chart_January2019.aspx.

⁴³ Florida High School Athletic Association, *About*, <https://fhsaa.com/sports/2020/1/16/About.aspx> (last visited Jan. 3, 2024).

- Added cross-references to Florida statutes to specify that the prohibition applies to a student who has been sentenced as an adult for any offense prohibited under ch. 782, F.S., relating to homicide; s. 794.011, F.S., relating to sexual battery; or s. 800.04, F.S. relating to lewd or lascivious offenses.

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