

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 Children, Families, and Elder Affairs

BILL: SB 358

INTRODUCER: Senator Ring

SUBJECT: Volunteers for Organized Youth Sports and Recreational Programs

DATE: February 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 358 expands the current requirement for background screening of athletic coaches of youth athletic teams to include volunteers for organized sports and recreation activities. The volunteer recreational programs included are those using publicly owned facilities in Florida.

The bill defines a “youth sports or recreation authority” to mean a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team or organized youth recreational program using publicly owned facilities if the team or program includes one or more minors and is not affiliated with a private school. It requires each authority to conduct a background screening of each current and prospective volunteer for the team or program and prohibits the authority from delegating that responsibility. The screening is to be conducted annually.

The required screenings are to be conducted using state and federal registries of sexual predators and sexual offenders available to the public on internet sites provided by the Florida Department of Law Enforcement and the Attorney General of the United States. Alternatively, the authority may use a background screening conducted by a commercial consumer reporting agency in compliance with the federal Fair Credit Reporting Act if that screening includes checks of the sexual predator and sexual offender websites. The authority must disqualify any volunteer identified on either registry and must provide written notice to anyone disqualified.

The bill extends to recreational programs and volunteers current requirements of coaches on youth athletic teams, including obtaining informed consent explaining the nature and risk of concussion and head injury and requiring that youth suspected of having received a concussion or head injury be removed from play and not allowed to return without medical approval.

The bill provides that in a civil action brought for the death, injury, or damage to a third person brought about by the intentional tort of the volunteer relating to sexual misconduct by the

volunteer, there is a rebuttable presumption that the authority was not negligent in authorizing the person to act as a volunteer if the authority complied with the background screening and disqualification requirements of the bill prior to such authorization.

Finally, the bill encourages the youth sports and recreation authorities to participate in the Volunteer and Employee Criminal History System described in s. 943.0542, F.S.

The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2014.

II. Present Situation:

Definitions

Current law defines an “athletic coach” as a person who is authorized by an independent sanctioning authority to work 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.

An “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 as defined in s. 1002.01, F.S.

There appears to be no statutory definition of “recreational program,” “organized recreational program,” or “youth sports and recreation authority.”

Background Screenings for Athletic Coaches

Current law requires that an independent sanctioning authority must conduct a background screening of athletic coaches. This background screening consists of a name search of the state and federal registries of sexual predators and sexual offenders available to the public on websites maintained by the Florida Department of Law Enforcement (FDLE) and the Attorney General of the United States.¹

Background Screenings for Employment at Parks, Playgrounds, and Day Care Centers

Current law provides that 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, must conduct a search of that person’s name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by the FDLE.²

¹ Section 943.0438, F.S.

² Section 943.04351, F.S.

Prohibited Employment for Registered Sexual Predators

Existing law provides that it is 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 to work, whether for compensation or as a volunteer, at any business, school, day care center, park, playground, or other place where children regularly congregate.³ This prohibition would seem to extend to any person acting as a volunteer for a recreational program if the person has contact with children.

Sexual Predator and Offender Information

The FDLE compiles information regarding sex offenders and makes that information available to the public. The information on the FDLE public website of sexual offenders and sexual predators come from the following sources: the Florida Department of Corrections, the Florida Department of Highway Safety and Motor Vehicles, and various law enforcement officials.⁴ The Dru Sjodin National Sex Offender Public Website of the United States Department of Justice (DOJ) allows the public to search the websites of participating states and other jurisdictions for public information regarding the presence or location of offenders who, in most cases, have been convicted of sexually violent offenses against adults and children or sexual contact and other sexual crimes against minors.⁵

Liability for Negligent Hiring

In civil action premised upon the death of a third person caused by the intentional conduct tort of an employee, the employee's employer is presumed not to have been negligent in hiring the employee if, before hiring the employee, the employer conducted a background investigation of the prospective employee and the investigation did not reveal any information that reasonably demonstrated the unsuitability of the prospective employee for the particular work to be performed or employment in general.⁶ The background investigation must include:

- A criminal background check obtained from FDLE;⁷
- Reasonable efforts to contact references and former employers;
- A job application form that includes questions requesting detailed information regarding previous criminal convictions;
- A written authorization allowing a check of the applicant's driver's license record if relevant to the work to be performed; or
- An interview of the prospective employee.⁸

³ Section 775.21(10)(b), F.S.

⁴ Florida Department of Law Enforcement, *Florida Sexual Offenders and Predators*, available at <http://offender.fdle.state.fl.us> (last visited Jan. 22, 2014).

⁵ United States Department of Justice, *Dru Sjodin National Sex Offender Public Website*, available at <http://www.nsopr.gov> (last visited Jan. 22, 2014).

⁶ Section 768.096, F.S.

⁷ The employer must request and obtain from FDLE a check of the information as reported in the Florida Crime Information Center system as of the date of the request, s. 768.096(2), F.S.

⁸ Section 768.096(1)(a)-(e).

If the employer elects not to conduct an investigation prior to hiring, there is no presumption that the employer failed to use reasonable care in hiring an employee.

Volunteer and Employee Criminal History System (VECHS)

The FDLE has described the Volunteer and Employee Criminal History System (VECHS) as follows:

- Through the VECHS program, FDLE and the Federal Bureau of Investigation (FBI) provide to qualified organizations (not individuals) in Florida state and national criminal history record information on applicants, employees, and volunteers. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or the disabled.
- Generally, to be qualified to participate in the VECHS program, an organization (public, private, profit, or non-profit) must provide “care”⁹ or “care placement services” to children, the elderly, or the disabled.
- The VECHS program is not available to organizations currently required to obtain criminal history record checks on their employees and/or volunteers under other statutory provisions, such as day care centers. Those organizations must continue to follow the statutory mandates that specifically apply to them. If, however, an organization is required to obtain state and national checks on only specific types of employees or volunteers, the VECHS program may be able to process requests for state and national checks on the organization’s other employees or volunteers.

To become a qualified organization and to obtain criminal history record information through the VECHS program at FDLE, an organization will need to do the following:

- Submit an application to FDLE explaining what functions the organization performs that serve children, elderly, or disabled persons;
- Sign an agreement that the criminal history information would be used only to screen employees and volunteers of that organization for employment purposes;
- Submit \$54.25 for each employee or \$33.25 for each volunteer fingerprint card submission; and
- Submit \$43.25 for each employee or \$33.25 for each volunteer electronic submission.

If an organization becomes qualified and provides the required information for criminal history record requests, FDLE, with the assistance of the FBI, will provide the organization with the following:

- An indication that the person has no criminal history, i.e., no serious arrests in state or national databases, if there are none;

⁹ The word “care” is defined in s. 943.0542, F.S. (access to criminal history information provided by the FDLE to qualified entities), to include the provision of recreation to children.

- The criminal history record (RAP sheet) that shows arrests and/or convictions for Florida and other states, if any; and
- Notification of any warrants or domestic violence injunctions that the person may have.¹⁰

III. Effect of Proposed Changes:

Section 1 substitutes “volunteers” for “athletic coaches” and “organized youth sports and recreation” for “independent sanctioning” authorities throughout s. 943.0438, F.S. The effect of this change is to require background screening for a larger number of persons. The targeted enlargement appears to be for private organizations sponsoring organized recreational activities on public property, since background screening is already required for such activities when sponsored by state agencies or governmental subdivisions.

The bill requires that the organized youth sports and recreation authority disqualify any volunteer identified on either the sexual predator or sexual offender databases maintained by the Florida Department of Law Enforcement or the Attorney General of the United States, and must provide written notice to anyone disqualified within 7 business days of disqualification.

The bill also requires that “youth sports or recreation authorities” perform certain actions, including conducting background screening (this responsibility may not be delegated); disqualifying sex offenders and sexual predators from serving as volunteers; providing notice of disqualification to persons disqualified; maintaining records of screenings and disqualifications for at least 5 years; adopting guidelines to educate volunteers and others about the nature and risk of concussion and head injury; adopting bylaws and policies that require the parent or guardian of a youth participating in an athletic competition or other recreational program or who is a candidate for an athletic team or recreational program to sign and return an informed consent relating to concussion and head injury; and adopting bylaws or policies that require each youth suspected of having sustaining a concussion or head injury to be immediately removed from the activity.

A rebuttable presumption is created that the death of, injury or damage to, a third person caused by the intentional tort of a volunteer that relates to alleged sexual misconduct by the volunteer, the youth sports or recreation authority was not negligent in authorizing the person to act as a volunteer if the authority complied with the background screening and disqualifications of this bill prior to such authorization.

Youth sports and recreation authorities are encouraged 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.

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

¹⁰ Florida Department of Law Enforcement, *Volunteer And Employee Background Checks*, available at <http://www.fdle.state.fl.us/content/getdoc/9023f5ac-2c0c-465c-995c-f949db57d0dd/VECHS.aspx> (last visited Jan. 23, 2014).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The sex offender registry screening requirements of the bill are expected to have a nominal effect on the sanctioning authorities. The state and national registries are public websites that can be accessed by persons with minimal computer skills, and searches can be conducted relatively quickly. Those sanctioning authorities electing to perform searches via a commercial consumer reporting agency may incur moderate expenses for the screening. The sanctioning authorities may pass these screening costs on to volunteer applicants and incur no costs from this screening requirement.

Screening through the VECHS program does require payment of a fee. While the bill does not require sanctioning authorities to do a VECHS search, the authorities are encouraged to use the VECHS system.

C. Government Sector Impact:

FDLE reports no projected fiscal impact from the bill.

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.
