

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 59 Athletic Coaches  
**SPONSOR(S):** Policy Council; Gibbons and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 150

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	13 Y, 0 N	Padgett	Cunningham
2)	Policy Council	15 Y, 0 N, As CS	Varn	Ciccone
3)	Criminal & Civil Justice Policy Council	14 Y, 0 N	Billmeier	Havlicak
4)				
5)				

### SUMMARY ANALYSIS

CS/HB 59 requires an independent sanctioning authority to screen each current and prospective athletic coach of an independent youth athletic team against state and federal sexual offender databases. The background screening consists of a search of the sexual offenders and sexual predators public website of the Florida Department of Law Enforcement and the website of the United States Department of Justice. In the alternative, a background screening conducted by a commercial consumer reporting agency in compliance with the federal Fair Credit Reporting Act which includes searches of the sexual predators and sexual offenders databases will comply with the bill's requirements.

The sanctioning authority must disqualify any athletic coach applicant appearing in either registry. It is the applicant's appearance in the state or national sex offender registry, rather than a conviction for any particular sexual offense, that disqualifies him or her as an athletic coach.

The bill requires the sanctioning authority to provide, within 7 business days following the background screening, written notice to the person disqualified advising of the results of the background check and of disqualification. The independent sanctioning authority must maintain documentation of the results of each person screened, and the written notice of disqualification provided to each person disqualified.

In any civil suit brought against an independent sanctioning authority for harm caused by the intentional tort of an athletic coach that relates to alleged sexual misconduct, a rebuttable presumption is created that the independent sanctioning authority was not negligent in authorizing the athletic coach if the sanctioning authority complied with the bill prior to authorizing a person to act as such.

Finally, this bill encourages sanctioning authorities to participate in the Volunteer and Employee Criminal History System (VECHS) program authorized under the National Child Protection Act and s. 943.0542, F.S.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

###### Criminal History Screenings

According to information received from the Florida Department of Law Enforcement (FDLE), there is currently no Florida law that requires athletic coaches for independent youth athletic teams to be screened against state or national sex offender registries. However, other state laws may suggest that such background screenings must occur, or may prohibit or limit a convicted sexual predator's contact with minors altogether.

###### Background Screenings for Employment at Parks, Playgrounds, and Daycare 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.<sup>1</sup> The screening requirements of the bill are similar to the screening requirements of s. 943.04351, F.S., insofar as both require a search of the state sex offender registry, but different in that the bill also requires a national sex offender registry search.

###### 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, daycare center, park, playground, or other place where children regularly congregate.<sup>2</sup> Notwithstanding the bill, it appears that a person would be precluded from acting as a athletic coach of an independent youth athletic team (at least to the extent of contact with children) if the person is a registered sexual predator as described in s. 775.21(10)(b), F.S.

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<sup>1</sup> Section 943.04351, F.S.

<sup>2</sup> Section 775.21(10)(b), F.S.

## Volunteer and Employee Criminal History System (VECHS)

Pertinent to the bill, 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”<sup>3</sup> 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.<sup>4</sup>

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;
- 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.<sup>5</sup>

## 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’s public website of sexual offenders and sexual predators comes from the following sources: the Florida Department of Corrections, the Florida Department of Highway Safety and Motor Vehicles, and various law enforcement officials.<sup>6</sup> The Dru Sjodin National Sex Offender Public Website of the United States Department of Justice allows the public to search participating state websites for public information “regarding the presence or location of offenders who,

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<sup>3</sup> The word “care” is defined in s. 943.0542, F.S. (access to criminal history information provided by FDLE to qualified entities), to include the provision of recreation to children.

<sup>4</sup> Florida Department of Law Enforcement, *Volunteer And Employee Background Checks*:

<http://www.fdle.state.fl.us/content/getdoc/9023f5ac-2c0c-465c-995c-f949db57d0dd/VECHS.aspx> (last visited April 8, 2010).

<sup>5</sup> *Id.*

<sup>6</sup> See Florida Department of Law Enforcement, <http://offender.fdle.state.fl.us> (last visited April 5, 2010).

in most cases, have been convicted of sexually violent offenses against adults and children and certain sexual contact and other crimes against victims who are minors.”<sup>7</sup>

### Liability for Negligent Hiring

In civil actions premised upon the death or injury of a third person as a result of intentional conduct of an employee, the employer is presumed not to have been negligent in hiring the employee if, prior to hiring, the employer conducted a background check on the employee which revealed no information that would cause an employer to conclude that the employee was unfit for work.<sup>8</sup> Pursuant to statute, the background investigation must include:

- A criminal background check obtained from the Department of Law Enforcement (FDLE);<sup>9</sup>
- 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.<sup>10</sup>

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.<sup>11</sup>

## **PROPOSED CHANGES**

The bill requires an independent sanctioning authority to screen each current and prospective athletic coach of an independent youth athletic team against state and federal sexual offender databases. The background screening consists of a search of the sexual offenders and sexual predators public website of the Florida Department of Law Enforcement and the website of the United States Department of Justice. In the alternative, a background screening conducted by a commercial consumer reporting agency in compliance with the federal Fair Credit Reporting Act which includes searches of the sexual predators and sexual offenders databases will comply with the bill’s requirements.

The sanctioning authority must disqualify any athletic coach applicant appearing in either registry. It is the applicant’s appearance in the state or national sex offender registry, rather than a conviction for any particular sexual offense, that disqualifies him or her as an athletic coach. Background screenings must be conducted on all athletic coaches working on or after July 1, 2010, and must be conducted annually.

### Definitions

CS/HB 59 defines an “independent sanctioning authority” as 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. The team must be based in this state.

Under the bill, an “athletic coach” means 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 then youth athletic team.

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<sup>7</sup> See United States Department of Justice, <http://www.nsopr.gov/> (last visited April 5, 2010).

<sup>8</sup> Section 768.096(1), F.S.

<sup>9</sup> 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. Section 768.096(2), F.S.

<sup>10</sup> Section 768.096(1)(a)-(e).

<sup>11</sup> Section 768.096(3), F.S.

### Notification of Screening Process

The bill requires the sanctioning authority to provide, within 7 business days following the background screening, written notice to the person disqualified advising of the results of the background check and of disqualification. The independent sanctioning authority must maintain documentation of the results of each person screened, and the written notice of disqualification provided to each person disqualified.

### Civil Liability

In any civil suit brought against an independent sanctioning authority for harm caused by the intentional tort of an athletic coach that relates to alleged sexual misconduct, a rebuttable presumption<sup>12</sup> is created that the independent sanctioning authority was not negligent in authorizing the athletic coach if the sanctioning authority complied with the requirements of the bill.

### Use of the VECHS Program

CS/HB 59 encourages sanctioning authorities to participate in the VECHS program authorized under the National Child Protection Act and s. 943.0542, F.S.

## B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section relating to athletic coaches for independent sanctioning authorities.

Section 2: Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The sex offender registry screening requirements of the bill should have a nominal impact 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.

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<sup>12</sup> Once evidence rebutting a presumption is introduced, "the presumption does not automatically disappear; it remains in effect even after evidence rebutting the presumption has been introduced. The jury must decide if the evidence is sufficient to overcome the presumption, that is, it is not overcome until the trier of fact believes that the presumed fact has been overcome by whatever degree of persuasion is required by the substantive law of the case." 23 FLA. JUR 2D *Evidence and Witnesses* s. 100.

D. FISCAL COMMENTS:

The state and federal sexual offender and sexual predator registries are available to the public via the Internet. There are no fees associated with accessing or searching the registries.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On January 21, 2010, the Policy Council adopted an amendment specifying that a background screening conducted by a commercial consumer reporting agency in compliance with the federal Fair Credit Reporting Act in conjunction with a search of the sexual offenders and predators websites of the FDLE and the United States Department of Justice, complies with the requirements of the bill.

The bill was reported favorably with a Council Substitute. The analysis reflects the Council Substitute.