



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Unfinished Business

H.1.

10/10/2023

Subject:

Staff Direction: Regarding Background Investigation Screenings for Parks and Recreation Department Recreation Partners and their associated Volunteers and Recreation Instructors

Fiscal Impact:

FY2022-2023 costs through end of August is approximately \$8,000.

Dept/Office:

Parks and Recreation

Requested Action:

It is requested that the Board of County Commissioners provide direction to staff regarding Background Investigation Screening for Recreation Partners and their associated Volunteers and Recreation Instructors.

Summary Explanation and Background:

Recreation Partners and their associated Volunteer and Recreation Instructors have been required to undergo and pass a High-Level Background Screening in order to work with Brevard County's children, youth, elderly and persons with disabilities. A High-Level Background Screening includes fingerprints being submitted to the Florida Department of Law Enforcement, the National FBI for a criminal background check and a background investigation from the Brevard Electronic Court Application. The Department also requires notification if a Recreation Partner, volunteer, or Recreation Instructor is arrested during the duration of the Background Screen.

The Board of County Commissioners, in regular session on November 15, 2016, directed the Parks and Recreation Department to obtain a High-Level background screening on all prospective volunteers, instructors, agents, contractors and other affiliated positions under the umbrella of the Recreation Partner. The Department was responsible for the payment of the background screenings.

Subsequently, the Board of County Commissioners, in regular session on July 20, 2021, approved that Recreation Partners and their associated Volunteers and Recreation Instructors pay for one-half of the cost of a High-Level Background Investigation Screening.

In regular session on September 13, 2022, the Board of County Commissioners approved that, for a period of one year, Recreation Partners and their associated Volunteers and Recreation Instructors would pay \$22.13 of the cost of either a one-year or five-year High-Level Background Investigation Screening.

On August 4, 2023, the County Purchasing Department solicited bids to perform High Level Background Screening. No bids were received.

The County currently uses the VECHS system to obtain criminal background checks. As a result of an audit of FDLE by the FBI, the County has been advised it can no longer use its VECHS number to obtain criminal history information beyond the scope of the VECHS system. This limitation prevents the County from being able to obtain the state and federal history of Recreation Partners employees, coaches, and volunteers.

Florida Statute 943.0438 Athletic coaches for independent sanctioning authorities requires an independent sanctioning authority to conduct a Level 1 background screening pursuant to F.S. 435.03. This is a lower screening level than the County currently requires.

Staff is requested Board Direction on regarding Background Investigation Screening for Recreation Partners.

Option 1. Recreation Partners be responsible for conducting and paying for background screening of their coaches and volunteers as a requirement of their agreement with the County.

Option 2. Any other consideration directed by the Board of County Commissioners.

The Recreation Partners official representative shall sign an affidavit attesting that the background screenings have been conducted and that only persons who have successfully passed the background screening will be coaching and/or volunteering.

Staff is exploring the possibility of Recreation Instructors being background screened through Brevard County Human Resources as they provide a direct service to the County.

Clerk to the Board Instructions:

Please provide a copy of the Clerk's memorandum to Maryellen.donner@brevardfl.gov or telephone 321-633-2046 for memorandum pick up.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

October 11, 2023

MEMORANDUM

TO: Mary Ellen Donner, Parks and Recreation Director

RE: Item H.1., Staff Direction for Background Investigation Screenings for Parks and Recreation Department Recreation Partners and their Associated Volunteers and Recreation Instructors

The Board of County Commissioners, in regular session on October 10, 2023, directed staff to inform the Recreation Partners that moving forward they will be responsible for conducting and paying for a level two, high-level background screening, including fingerprinting, of their Recreation Partners and their associated Volunteers and Recreation Instructors as a requirement of their agreement with the County, and to include an additional requirement in the agreements in which they must notify the County within 24 hours of any arrest or change in criminal status, as updated by the background screening system, regarding any of their coaches, volunteers, or instructors.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

/ds

cc: Each Commissioner
County Attorney
Finance
Budget

The 2023 Florida Statutes

[Title XLVII](#)

[Chapter 943](#)

[View Entire Chapter](#)

CRIMINAL PROCEDURE AND CORRECTIONS DEPARTMENT OF LAW ENFORCEMENT

943.0438 Athletic coaches for independent sanctioning authorities.—

(1) As used in this section, the term:

¹(a) “Athletic coach” means a person who:

1. 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

2. Has direct contact with one or more minors on the youth athletic team.

(b) “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](#).

(2) An independent sanctioning authority shall:

¹(a)1. Conduct a level 1 background screening pursuant to s. [435.03](#) of each current and prospective athletic coach. The 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 under paragraph (b). Level 1 background screenings shall be conducted annually for each athletic coach. For purposes of this section, a background screening shall 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:

a. The Department of Law Enforcement under s. [943.043](#); and

b. The Attorney General of the United States under 42 U.S.C. s. 16920.

2. For purposes of this section, a background screening conducted by a commercial consumer reporting agency in compliance with the federal Fair Credit Reporting Act using the identifying information referenced in subparagraph 1. that includes a level 1 background screening and a search of that information against the sexual predator and sexual offender Internet sites listed in sub-subparagraphs 1.a. and b. shall be deemed to satisfy the requirements of this paragraph.

¹(b) Disqualify any person from acting as an athletic coach as provided in s. [435.03](#) or if he or she is identified on a registry described in paragraph (a). The authority may allow a person disqualified under this paragraph to act as an athletic coach if it determines that the person meets the requirements for an exemption from disqualification under s. [435.07](#).

(c) Provide, within 7 business days following the background screening under paragraph (a), written notice to a person disqualified under this section advising the person of the results and of his or her disqualification.

(d) Maintain for at least 5 years documentation of:

1. The results for each person screened under paragraph (a); and

2. The written notice of disqualification provided to each person under paragraph (c).

(e) Adopt guidelines to educate athletic coaches, officials, administrators, and youth athletes and their parents or guardians of the nature and risk of concussion and head injury.

(f) Adopt bylaws or policies that require the parent or guardian of a youth who is participating in athletic competition or who is a candidate for an athletic team to sign and return an informed consent that explains the

nature and risk of concussion and head injury, including the risk of continuing to play after concussion or head injury, each year before participating in athletic competition or engaging in any practice, tryout, workout, or other physical activity associated with the youth's candidacy for an athletic team.

(g) Adopt bylaws or policies that require each youth athlete who is suspected of sustaining a concussion or head injury in a practice or competition to be immediately removed from the activity. A youth athlete who has been removed from an activity may not return to practice or competition until the youth submits to the athletic coach a written medical clearance to return stating that the youth athlete no longer exhibits signs, symptoms, or behaviors consistent with a concussion or other head injury. Medical clearance must be authorized by the appropriate health care practitioner trained in the diagnosis, evaluation, and management of concussions as defined by the Sports Medicine Advisory Committee of the Florida High School Athletic Association.

(3) In a civil action for the death of, or injury or damage to, a third person caused by the intentional tort of an athletic coach that relates to alleged sexual misconduct by the athletic coach, there is a rebuttable presumption that the independent sanctioning authority was not negligent in authorizing the athletic coach if the authority complied with the background screening and disqualification requirements of subsection (2) prior to such authorization.

¹(4) 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.

History.—s. 1, ch. 2010-94; s. 1, ch. 2012-167; s. 13, ch. 2013-116; s. 1, ch. 2014-9; s. 5, ch. 2023-220.

¹Note.—Section 5, ch. 2023-220, amended paragraphs (1)(a) and (2)(a) and (b) and subsection (4), effective July 1, 2024, to read:

(a) "Athletic coach" means a person who:

1. Is authorized by an independent sanctioning authority to work as a coach, assistant coach, manager, or referee, whether for compensation or as a volunteer, for a youth athletic team based in this state; and
2. Has direct contact with one or more minors on the youth athletic team.

* * * * *

(a) Conduct a level 2 background screening under s. 435.04 of each current and prospective athletic coach. The 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 2 background screening is conducted and does not result in disqualification under paragraph (b).

(b)1. Before January 1, 2026, or a later date as determined by the Agency for Health Care Administration for the participation of qualified entities in the Care Provider Background Screening Clearinghouse under s. 435.12, disqualify any person from acting as an athletic coach as provided in s. 435.04. The authority may allow a person disqualified under this subparagraph to act as an athletic coach if it determines that the person meets the requirements for an exemption from disqualification under s. 435.07.

2. On or after January 1, 2026, or a later date as determined by the Agency for Health Care Administration, not allow any person to act as an athletic coach if he or she does not pass the background screening qualifications in s. 435.04. The authority may allow a person disqualified under this subparagraph to act as an athletic coach if the person has successfully completed the exemption from the disqualification process under s. 435.07.

* * * * *

(4) Independent sanctioning authorities for youth athletic teams must participate in the Volunteer and Employee Criminal History System, as authorized by the National Child Protection Act of 1993 and s. 943.0542.

The Florida Senate

2021 Florida Statutes (Including 2021B Session)

<u>Title XXXI</u> LABOR	<u>Chapter 435</u> EMPLOYMENT SCREENING <u>Entire Chapter</u>	SECTION 03 Level 1 screening standards.
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435.03 Level 1 screening standards. —

(1) All employees required by law to be screened pursuant to this section must undergo background screening as a condition of employment and continued employment which includes, but need not be limited to, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and a check of the Dru Sjodin National Sex Offender Public Website, and may include local criminal records checks through local law enforcement agencies.

(2) Any person required by law to be screened pursuant to this section must not have an arrest awaiting final disposition, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under s. 435.04(2) or similar law of another jurisdiction.

(3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction.

History.—s. 47, ch. 95-228; s. 15, ch. 96-268; s. 21, ch. 96-322; s. 3, ch. 98-417; s. 87, ch. 2000-153; s. 45, ch. 2000-349; s. 62, ch. 2001-62; s. 50, ch. 2003-1; s. 4, ch. 2004-267; s. 3, ch. 2005-119; s. 89, ch. 2006-197; s. 61, ch. 2006-227; s. 109, ch. 2007-5; s. 16, ch. 2008-244; s. 37, ch. 2010-114; s. 34, ch. 2011-4.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

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John to 31A

Motion Sheet:

JT/JS

Motion for item H.1 Background Checks:

I move to direct staff to inform our Recreation Partners that moving forward they will be responsible for conducting and paying for a level two, high-level background screening, including fingerprinting, of their Recreation Partners and their associated Volunteers and Recreation Instructors as a requirement of their agreement with the County, and to include an additional requirement in the agreements in which they must notify the County within 24 hours of any arrest or change in criminal status, as updated by the background screening system, regarding any of their coaches or volunteers or instructors.

Motion or item I.2 Marketing Event Grant Program:

I move to approve the following four requested actions:

1. The Tourist Development Council FY 2023-2024 and FY 2024-2025 Marketing Event Grant Program Guidelines and Application.
2. Funding of the FY 2023-2024 and FY 2024-2025 Marketing Event Grant Program applications which shall come before the Board for final funding approval as the grant application cycle commences.
3. That the Board make the legislative finding that Tourist Development Tax funds are authorized for each grant pursuant to Section 125.0104(5)(a)3., Florida Statutes, and Section 102-119(3)a, (5)a, and (6)a. of the Brevard County Code of Ordinances, because each grant supports an activity or event which has as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists from outside Brevard County.
4. That the Tourism Development Office Director be authorized to negotiate and sign all necessary grant agreements and related documents upon County Attorney Office, Risk Management and Purchasing Services approval.

X Motion for I.3. USLEF Igniting the Flame:

I move to approve the US Law Enforcement Foundation capital grant funding of \$5 million with the following conditions:

- 2024: \$1 million in reimbursements when project breaks ground
- 2025-2028: \$1 million in reimbursements awarded each year if the room nights generated meets or exceeds the projected 153,000 room nights estimate as outlined in the NBEDZ Economic and Fiscal Analysis on page 11.

X Motion for I.3. Sacrifice Park:

I move to continue the City of Palm Bay Sacrifice Park Capital Facilities Grant application for six months, or until sufficient documentation as outlined by the Brevard County Capital Facilities

Grant Program Guidelines Section 5.0 to include a third-party economic and fiscal analysis specific to the project and confirmation of eligibility is provided by the City of Palm Bay, whichever comes first, and direct staff to bring the item back to the Board at that time. During this period, the requested \$250,000 shall not be allocated to another project.

Motion for Board Report

I. 4.

I move to give Board support to Chairman Randy Fine to seek funding from the State of Florida, with Brevard County as the requesting agency, for the purchase, design, and construction of a boat ramp at 4100 Main Street, Micco, FL, and direct staff to add this to the 2024 Brevard County Legislative Priorities List.

JS/JT