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## Sports world takes step to protect athletes, but work still necessary

In the wake of child sex abuse scandals in the sports of gymnastics and swimming, and with the #MeToo movement spreading from Hollywood to the business world and beyond, there is more emphasis than ever on how communities handle allegations of sexual misconduct.

The message has been and continues to be that anyone can be an Olympic medal-winning athlete, trainer, coach or role model in their sport and be a sex offender. The level of accomplishment or degree of notoriety does not excuse or mitigate the intolerable behavior, whether it happened yesterday or 40 years ago.

Bipartisanship in Congress is rare these days, but one concept that Congress agrees on is that this nation needs to do more to protect young athletes from abuse.

The Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, or the SafeSport Act, debuted as an U.S. Olympic Committee initiative in 2012 after input from athletes, child safety experts and national governing body officials. The SafeSport Act was first brought to both floor of Congress in 2017 and after receiving bipartisan support was signed into law by President Trump on Feb. 14, 2018.

The purpose of the bill was to expand existing mandated reporting laws to all youth sport organizations that participate in international or interstate sporting events to promote a safe environment in

sports that is free from abuse, including emotional, physical and sexual abuse, of any amateur athlete, not only minors.

The SafeSport Act creates a new standard of care that affects youth-serving organizations across the country. A number of changes are noteworthy, but may not materially change the way the national governing boards operate or the manner in which members operate within their respective sports.

However, several significant changes are necessary to understand as failure to comply may bring criminal penalties and a permanent ban from all governed sports.

### Noteworthy changes

The SafeSport Act designates the U.S. Center for SafeSport to serve as the official organization with exclusive jurisdiction over investigating and adjudicating actual and suspected sexual misconduct by coaches, athletes and other covered individuals against amateur athletes in sports throughout the United States.

The center also helps protect these athletes from defined hazing, bullying, harassment, emotional misconduct and physical misconduct. With the focus at this time on sexual abuse and the most egregious cases of physical and emotional abuse, the center is using its discretion to delegate the investigation and adjudication of the other categories to the national governing boards.



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The new law requires training and background checks for all coaches working with minors. However, many national governing boards require broader protocol for other members and staff.

USA Basketball, for example, requires the training for “designees that will have routine access to minor participants, including but not limited to, national team managers, locker room monitors and travel chaperones” as well as anyone who has “direct contact with or supervision over minor participants.”

The SafeSport Act closed a loophole that allowed trainers, coaches and others banned by national governing boards to

continue working with athletes in nonaffiliated organizations. SafeSport bans are reciprocal with other sports, so an offender is ineligible to join any other national governing boards in any capacity.

In other words, if someone is banned from, say, gymnastics for a SafeSport violation, that person is also banned by the swimming national governing boards, so predators cannot just swap sports.

### Most notable impacts

The SafeSport Act broadened an existing statute that criminalizes the failure of an adult to report known sexual misconduct of a minor. National governing boards and its members are required to report suspected sex abuse to local or federal law enforcement or to a child-welfare agency designated by the Justice Department within 24 hours of awareness — failure to comply is subject to criminal penalties, including jail. Also new to the SafeSport Act is an extension of the statute of limitations for victims to bring a civil lawsuit against a perpetrator. Victims may recover punitive damages.

The SafeSport Code, enacted on April 15 by the center, explicitly defines terms like consent, bullying, harassment and hazing, then lays out what behavior constitutes a violation and the procedures through which misconduct is handled.

The code does not replace state or federal laws and has no bearing on whether an

individual files charges or claims with law enforcement or the courts. That said, a member can be found to be in violation of the code without being convicted of a crime.

The code also enacts mandatory reporting to the center of all “conduct of which they become aware that could constitute (a) sexual misconduct, (b) misconduct that is reasonably related to the underlying allegation of sexual misconduct and (c) retaliation related to an allegation of sexual misconduct” and failure to report constitutes aiding and abetting with sanctions up to and including a permanent ban from the national governing boards.

The code prohibits one-on-one meetings, training sessions and travel to a competition between applicable adults and minor athletes unless another adult is present, except under emergency circumstances. Such meetings and training must occur where interactions can be easily observed and at an interruptible distance from another adult.

Travel must be with another adult or multiple minors, unless the adult obtains the written permission of the minor’s parent or legal guardian in advance. In further compliance with the code, national governing boards are restricting text messaging and other forms of private communications between trainers and minor students and requiring any and all such messaging to include the parent or legal guardian or other adult.

There is no statute of limitations for code violations. So while the government’s criminal statute of limitations may have expired for a victim abused decades ago, that individual can report the abuse to the center the next day, and the center will investigate and, if appropriate, take action against the accused.

Penalties for code violations range from a warning — which is not made public — all the way to a ban. Bans, suspensions and interim suspensions are all publicly available at [uscenterforsafesport.org/resp-onse-and-resolution/disciplinary-database/](http://uscenterforsafesport.org/resp-onse-and-resolution/disciplinary-database/) and they are searchable by sport.

The statistics from the center as of the date of this article indicate that since its creation in March 2017 it has received 3,256 reports, 285 individuals made permanently ineligible, 552 violations found with sanctions issued.

### Calling for SafeSport overhaul

The SafeSport Act establishes new law and procedures that, such as any other new process, may need restructuring. No one challenges the importance of protecting youth and all athletes in sports with a correct system using the rule of law and due process.

Notwithstanding these imperatives, one of the most publicly criticized aspects of the center’s currently implemented procedures is the manner in which internal investigations proceed and determinations are published prior to an administrative hearing.

The center’s investigation includes victim claims, anonymous reports, hearsay statements, recordings (which may have been illegally obtained), affidavits and other forms of evidence which may be inadmissible in a court of law.

This evidence is not disclosed to the accused prior to the center reaching and publishing its determination. For example, an 80-year-old trainer, who is accused today of SafeSport violations from 1967 to 1970, will receive notice of a “permanent ban for sexual misconduct with a minor” by the public posting of his name on the SafeSport

Disciplinary Database without any prior notice; without a prior hearing to state his position, present evidence or cross-examine witnesses; and without the opportunity to face his accuser(s).

This process applies no matter how many teams he has coached to gold medals, how many books he has written, how many athletes worship him as the father-of-the-sport or how much positive influence he has had on professionals and amateurs of all ages.

He has five days to request an arbitration hearing. The arbitration hearing decision is final without a right of appeal. Some are labeling this a witch hunt without due process.

The center will defend these proceedings as just for a number of reasons. The identification of the victim and witness, as well as the considered evidence, must remain confidential for the safety of the victim and to encourage reporting and witness cooperation.

Reporting the accused’s name and disposition is necessary to avoid continued participation by the accused and aiding and abetting by others. The decisions are not arbitrary or capricious as the center will spend significant time investigating claims, assessing credibility and weighing evidence and reserving the most egregious sanctions to only those claims with substantially compelling proof to meet the preponderance of the evidence standard.

Additionally, the U.S. Supreme Court has said that private sport associations such as the national governing boards are not government agencies and therefore constitutional due process rights do not apply. *Behagen v. Amateur Basketball Association of U.S.*, 884 F.2d 524 (10th Cir. 1989).

The center and each sport national governing board has congressional directives and

must preserve the integrity of the Olympics.

While they cannot ignore the outcry for reform demonstrated in forms varying from social media commentary to a recent suicide by an equestrian coach, finding means of transparency and information sharing with those affected will make great strides toward public support, acceptance, and compliance.

### Conclusion

The USOC requires each national governing board to comply with the SafeSport Act policies and procedures. While the law is not limited in application to minors, the law is written broadly and therefore impacts youth sports organizations in every state.

At a minimum, any organization involved in youth sports will held to an increased standard of care regarding reporting, training, policies and procedures and periodic safety system reviews. The exact requirements in every situation cannot be defined at this early stage and national governing board implementation will require continued assessment and revision to meet the needs and expectations of the USOC, the national governing board members, the best-interest-of the sport and the protection of athletes — especially minors.

There are many more aspects of the SafeSport Act, the code, individual sport national governing board enacted policies and procedures, most of which are continuously evolving, as well as the administrative process and the sanctions for violations, than can be discussed in this article.

It is imperative that any organization which includes minor participants, at any level, to consult with legal counsel to determine the specific impacts of the new law on their organization.