

## Preventing Child Sexual Abuse in Youth Sport – New Federal Legislation Takes Extraordinary Step

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**-Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017**

**-Impact of new ‘Safe Sport Act’ will impact all of youth sport – *directly or indirectly***

**-Preventative legislation, rather than *reactive***

### Analysis of New Law – Overview

This article attempts to describe the highlights and ramifications (direct and indirect) of *Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017* (hereinafter: ‘Safe Sport Act’) for those entities involved in youth sport. Clearly, the Act contemplates many direct ramifications – especially for NGBs. An important *indirect* ramification is the creation of a ‘standard of care’ for all youth sport organizations, including athletic and sport programs offered by local leagues, churches, schools, camps and non-profits. All aspects of the Act are meant to prevent sexual abuse in youth sport, primarily through prevention training, prevention policies, and mandatory reporting.

### Analysis of New Law – Background

In March 2017, the United States Senate introduced [Senate Bill 534 \(S.534\)](#) aimed at preventing child sexual abuse in youth sport contexts. In May of 2017, the United States House of Representatives introduced [House Bill 1973 \(H.R.1973\)](#); virtually identical to its sister bill in the Senate, but more expansive. Both were passed unanimously, sending a clear message that elected officials were ready to respond to the unfolding tragedy in gymnastics.

Representatives from the Senate and the House worked together in Fall of 2017 to create a bill that would satisfy lawmakers in both chambers. The amended version of S.534 was passed in the Senate on November 14, 2017; S.534 was passed in the House on January 29, 2018.

A signature by the President is expected within the month on [S.534](#).

### Analysis of New Law – Construction

Many struggle to understand the legislative process, relying on analysis from the media, organizational leaders or licensing bodies. Reading legislation – like the Safe Sport Act – can be confusing, because legislation does not ‘read like a book’ (introduction, body and conclusion). Instead, it is akin to reading modifications and edits to other, preexisting books. For example, the first section of the Act addresses the legislative intent to expand the list of federally-

mandated child abuse reporters to include adults involved in youth sport. To accomplish this, the Act modifies an existing piece of legislation: Section 226 of the Victims of Child Abuse Act of 1990 ([34 USC 20341: Child Abuse Reporting](#)). Another section relates to legislative intent to authorize the US Center for Safe Sport to address the risk of sexual abuse in youth sport. To accomplish this, Safe Sport Act modifies the Ted Stevens Olympic and Amateur Sports Act ([36 USC 2205: United States Olympic Committee](#)).

In short, understanding the Safe Sport Act requires an understanding of existing law, and this is particularly true regarding the changes in reporting requirements.

## Who is Impacted and How

In 2017, federal lawmakers set out to address the issue of child sexual abuse in youth sports generally, not limited to gymnastics. Attempting to address the risk of child sexual abuse at the federal level has both an upside and a downside, in terms of who is impacted by the new law.

The primary upside is the breadth of coverage; federal legislation impacts a specific activity in every state. Though each state should actively pursue legislation that protects its citizens from sexual abuse (i.e., [Texas Youth Camp Act](#)), the states generally failed to pass legislation creating safeguards in youth sport. Federal lawmakers have now created nationally what states should have created locally.

The upside is breadth of coverage; the downside is depth of coverage. Clearly, federal lawmakers can enact legislation that governs youth sport organizations or individuals that ‘participate in interstate or international amateur athletic competition’, like a National Governing Body (i.e., USA Gymnastics), but how does the Act impact the Ladybugs – a team of 5-year-olds who do not compete in interstate or international competition? The power of federal lawmakers is broad, particularly given use of the commerce clause, but not unlimited. For jurisdiction to exist, the individuals and organizations subject to the legislation must be engaged in interstate commerce or activities.

Organizations and individuals involved in youth sport that do not compete in ‘interstate or international competition’ are still impacted by the requirements of the Safe Sport Act. At a minimum, the Safe Sport Act creates a ‘standard of care’ for the Ladybugs and all other youth sport organization participants (camps, public and private schools, country clubs, sport facilities).<sup>1</sup>

In general, the essential ‘categories’ of those impacted by the Safe Sport Act are as follows:

- a National Governing Body;
- a Paralympic Sports Organization;
- an Amateur Sports Organization *sanctioned by an NGB* (§220525); and
- an Amateur Sports Organization *not sanctioned by an NGB* (§220530).

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<sup>1</sup> Expect state legislatures to ‘close the loop’ by enacting similar legislation to prevent sexual abuse in youth sport at the state level.

The first three categories are clearly covered by the Act and under the direct jurisdiction of the US Center for Safe Sport. The ‘catch-all’ is the last category: an Amateur Sports Organization not sanctioned by an NGB. This category is defined in §220530(b) as follows:

*An amateur sports organization that ... participates in interstate or international amateur athletic competition, and whose membership includes any adult who is in regular contact with an amateur athlete who is a minor.*

**Caution:** Do not read this definition, above, and quickly assume the Act does not impact or apply to an organization or individual. The Safe Sport Act is creating an unmistakable ‘standard of care’ for all amateur sport organizations and those participating in youth sport. (See ‘Standard of Care’ below.)

USA Gymnastics and the Ladybugs are the extremes; a wide spectrum of amateur youth sport organizations exists in between. An organization’s first challenge is to determine ‘who am I’ under the new Safe Sport Act. Secondly, an organization must determine what the Act requires of the organization and its participants. Finally, each organization must determine how and where to access prevention training and policies, which meet the new standard of care.

What follows is a brief discussion of the *changes* mandated by the Safe Sport Act.<sup>2</sup>

## Legislative Change – Mandatory Reporting in Youth Sport

The Safe Sport Act expands the list of individuals required to report child sexual abuse by modifying Section 226 of the *Victims of Sexual Abuse Act of 1990* (34 U.S.C. 20341). The list of mandatory reporters now includes:

(9) ‘covered individual’.

*The term ‘covered individual’ means an adult who is authorized by a national governing body, a member of a national governing body, or an amateur youth sport organization that participates in interstate or international amateur athletic competition, to interact with a minor or amateur athlete at an amateur sports organization facility or at an event sanctioned by a national governing body, a member of a national governing body, or such an amateur sports organization;*

Note the breadth of the federal legislation AND the interstate competition qualification for amateur youth sport organizations not sanctioned by a National Governing Body.

The Safe Sport Act also extends the mandatory reporting requirement to each ‘covered individual’, interpreted broadly as an *adult authorized to interact with minor or amateur athletes*.<sup>3</sup> Safe Sport Act §220530(a)(2)(A) requires all adults working with a National

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<sup>2</sup> The Safe Sport Act expands access to civil courts and civil redress for sexual abuse victims through a broader interpretation of the civil discovery rule and availability of monetary damages. The scope of this article is limited to the required changes affecting youth sport organizations.

<sup>3</sup> See Purpose & Summary of the House Bill; H. Rep. No. 115-136 (2017-18). [Link to Highlighted Text](#).

Governing Body (NGB) or Paralympic Sports Organization to immediately report *suspicious of abuse* to the US Center for Safe Sport (‘Center’) **and** the appropriate law enforcement agencies, as determined by state and federal law.

For Amateur Sports Organization *not sanctioned by an NGB (§220530)*, participating adults are included in the list of ‘covered individuals’ required to report *suspicious of abuse* to the appropriate law enforcement agencies, as determined by state and federal law – but do not appear to be required to report suspicions of abuse to the Center.

In essence, the anticipated legislation creates a *mandatory reporting obligation* in youth sport, regardless of whether the program is USA Gymnastics or the Ladybugs. Each organization must determine whether a report to the US Center for Safe Sport is also required.

Further, each state has a reporting statute related to child abuse and neglect; some states require *every adult* to report suspicions of abuse and neglect, other states list categories of individuals or circumstances triggering a mandatory report. The *Protecting Young Victims from Sexual Abuse Act of 2017* has created a federal mandatory reporting obligation for all ‘covered individuals’ (see above). It is imperative that each youth sport organization, and the individuals within that organization, understand the new federal obligations, as well as the respective state-specific obligations.

## New Requirement for All – Prevention Training

As referenced above, an organization’s first challenge is to determine ‘who I am’ under the Act. Secondly, an organization must determine what the Act requires of the organization and its participants. For National Governing Bodies and Paralympic Sports Organizations, additional oversight and requirements are spelled out in the Act. Some requirements, however, are applicable to all youth sport organizations: ‘prevention training’ and ‘prevention policies’.

While changes in mandatory reporting requirements are vital, a requirement for ‘prevention training’ may be the most significant feature of the Safe Sport Act.

### Prevention Training – Required for All

For an Amateur Sports Organizations *not sanctioned by an NGB* (Ladybugs), the requirement for prevention training is found in §220530:

#### §220530. Other amateur sports organizations

“(a) In General – An applicable amateur sports organization shall –

- (3) offer and provide consistent training to all adult members who are in regular contact with amateur athletes who are minors, and subject to parental consent, to members who are minors, regarding prevention and reporting of child abuse ... .

*[elipses and emphases added]*

For Paralympic Sports Organizations and National Governing Bodies – and, presumably, those people/organizations sanctioned by an NGB – the requirement for prevention training is more difficult to find; contained in the Act’s provision related to audits (§220542):

**§220542. Additional duties.**

“(a) In General – The Center [US Center for Safe Sport] shall –

- (1) **develop training**, oversight practices, policies, and procedures for implementation by a national governing body or paralympic sports organization **to prevent abuse**, including emotional, physical, and sexual abuse, of any amateur athlete; and
- (2) include in the policies and procedures ...

(A) *[mandatory reporting]*

(B) *[mechanism for reporting]*

(C) *[prevention policies]*

(D) *[procedures to prohibit retaliation]*

(E) **oversight procedures, including regular and random audits conducted by subject matter experts, ... to ensure** that policies and procedures developed under that section are followed correctly and **that consistent training is offered** and given to all adult members who are in regular contact with amateur athletes who are minors, ... **regarding prevention of child abuse;**  
*[elipses and emphases added]*

**Prevention Training – not ‘Indicators Training’**

The requirement for consistent training related to *prevention* of sexual abuse may be the most significant element of the Safe Sport Act. Teaching millions of parents, coaches and league officials how to prevent sexual abuse is truly ambitious and groundbreaking. The key to prevention is an understanding of the ‘grooming process’ of the sexual offender – the process utilized by an offender to gain access to a child within the offender’s age and gender of preference, groom that child for sexual interaction, then keep the child silent.

Sexual abusers have no visual profile, but can be recognized by their behavior. This is a risk that must be addressed *behaviorally*. Prevention training highlighting the abuser’s grooming process gives each trainee ‘eyes to see’ the grooming process and common grooming behaviors *before* a child is victimized. Effective prevention training must be *proactive* rather than reactive, and therefore *preventative*.<sup>4</sup>

This is a fundamental distinction between ‘prevention training’ and ‘abuse indicators’ or ‘abuse recognition’ training: one is proactive, the others are reactive. Abuse indicators and recognition trainings provide signs, traits, behaviors, and indicators that may reveal a child *has been abused* – followed by instructions concerning how and to whom to report the abuse. Prevention training, by contrast, provides information related to behaviors and circumstances

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<sup>4</sup> For access to sport-specific sexual abuse prevention training, contact [Abuse Prevention Systems](#) or [MinistrySafe](#).

(i.e., unsupervised one-on-one interaction) that may place a child *at risk* of abuse. Effective prevention training allows adults to see and recognize problematic behaviors *before the child is abused*.

If 20 million American adults are trained to understand the offender’s grooming process through training requirements incorporated within the Safe Sport Act, 20 million sets of eyes will be better equipped to recognize predatory behaviors *before a child is victimized*. As a result, children will be safer in youth sport programs.

## New Requirement for All – Prevention Policies

In addition to prevention training, each youth sport organization – regardless of category – is required to establish policies and procedures to prevent abuse of young athletes.

### Prevention Policies – Required for All

For Amateur Sports Organizations *not sanctioned by an NGB* (Ladybugs), the requirement for prevention policies is found in §220530:

#### §220530. Other amateur sports organizations

- “(a) In General – An applicable amateur sports organization shall –
- (2) establish reasonable procedures to limit one-on-one interactions between an amateur athlete who is a minor and an adult ... without being in an observable and interruptible distance from another adult, ...  
*[elipses and emphases added]*

For Paralympic Sports Organizations and National Governing Bodies – and, presumably, those people/organizations sanctioned by an NGB – the requirement for prevention policies, again, is more difficult to find, and contained in the Act’s provision related to audits (§220542):

#### §220542. Additional duties.

- “(a) In General – The Center [US Center for Safe Sport] shall –
- (1) develop training, oversight practices, policies, and procedures for implementation by a national governing body or paralympic sports organization to prevent abuse, including emotional, physical, and sexual abuse, of any amateur athlete; and
  - (2) include in the policies and procedures ...
    - (A) *[mandatory reporting]*
    - (B) *[mechanism for reporting]*
    - (C) *[prevention policies]*
    - (D) *[procedures to prohibit retaliation]*
    - (E) oversight procedures, including regular and random audits conducted by subject matter experts, ... to ensure that policies and procedures developed under that section are followed correctly and that consistent training is offered and given to all adult members who are in regular contact with amateur athletes who are minors, ... regarding prevention of child abuse;  
*[elipses and emphases added]*

## **Prevention Policies – Limited to ‘One-on-One’ Interaction?**

Though all categories of youth sport organizations are required to establish reasonable procedures to protect young athletes, the legislation on this point is weak. Clearly, the intent is for youth sport organizations to establish policies and procedures that prevent abuse. The Safe Sport Act, however, provides little direct guidance. Again, an understanding of the grooming process is the key to establishing such procedures.

***Child protection safety principle:*** In general, the type of fence built is driven by what is *being kept out*. When youth sport leaders understand the grooming process, they are equipped to understand the patterns and behaviors an abuser employs to victimize children. As a fundamental premise, molesters are desirous of *trusted time alone* with a child being groomed for sexual interaction. Creating opportunity for unobserved and uninterrupted one-on-one interaction is certainly a key component of the abuser’s grooming process. Prior to one-on-one interaction with a child, however, the abuser ‘grooms the gatekeepers’ (parents, other coaches) as well as the minor athlete. Effective prevention policies must address far more than one-on-one interaction *alone*. Effective training concerning the abuser’s grooming process provides a foundation for policies and procedures that prevent abuse.

What follows is a brief overview of the abuser’s grooming process:

- Gaining Access: *to children within the abuser’s age range and gender of preference, through a program serving children of that age and gender;*
- Selecting a Child: *often a child easily isolated from the group (elite skill, single-parent home);*
- Introducing Nudity and Sexual Touch: *abuser engaging in ‘barrier testing and erosion’;*
- Keeping the Victim Silent: *subtle or direct threats, shame, embarrassment, access to team.*

Though predictable, the grooming process may play out in different forms depending on the sport, age and gender of victim, facility, and other factors.

The Safe Sport Act calls for Prevention Policies, but stops short of providing specific direction beyond limiting one-on-one interaction between adult and minor athlete.<sup>5</sup>

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<sup>5</sup> Sample Codes of Conduct rooted in the grooming process (prevention policies) are available through [Abuse Prevention Systems](#) and [MinistrySafe](#).

## Regular and Random Audits to Ensure Compliance

The Safe Sport Act §220542(a)(2)(E) seems to call for a periodic audit of each National Governing Body and Paralympic Sports Organization to ensure that prevention policies are developed and followed correctly, and that prevention training is offered and completed.<sup>6</sup>

### §220542. Additional duties.

“(a) In General – The Center [US Center for Safe Sport] shall –

- (1) develop training, oversight practices, policies, and procedures for implementation by a national governing body or paralympic sports organization to prevent abuse, including emotional, physical, and sexual abuse, of any amateur athlete; and
- (2) include in the policies and procedures ...

(E) oversight procedures, including regular and random audits conducted by subject matter experts, ... to ensure that policies and procedures developed under that section are followed correctly and that consistent training is offered and given to all adult members who are in regular contact with amateur athletes who are minors, ... regarding prevention of child abuse;

*[elipses and emphases added]*

There appears to be no corresponding ‘regular and random audit’ requirement for an Amateur Sports Organization *not sanctioned by an NGB* (§220530).

## New Standard of Care in Youth Sport – Indirect Application

Safe Sport Act has direct application to many youth sport organizations, like USA Gymnastics. But how does the Act impact youth sport organizations that do not participate in interstate or international athletic competitions? Or athletic programs in public and private schools? What about private and parochial athletic associations that do not compete out of state? Or sport camps and country club leagues?

At a minimum, all youth sport organizations not *directly* impacted by the Safe Sport Act are impacted *indirectly* through Safe Sport Act’s creation of a new ‘standard of care’: a *reasonable standard* for all organizations providing youth sport programming or activities.

Now, all youth sport organizations are *on notice* that child sexual abuse is a real risk in youth sport, and reasonable steps should be taken to protect young athletes – including reporting, effective training, tailored policies, oversight practices and periodic safety system reviews. As to this risk, Safe Sport Act will provide a yardstick measuring the efforts of all youth sport programs.

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<sup>6</sup> It is unclear from Safe Sport Act whether Amateur Youth Sports Organizations *sanctioned by a NGB* are subject to ‘regular and random audits’ to ensure compliance.



## Summary

Involvement in youth sport provides enormous benefit to young athletes. The *Protecting Young Victims from Sexual Abuse Act of 2017* will attempt to preserve those benefits by addressing the risk of child sexual abuse inherent in youth sport.

## Appendix – Latest Version of S.534 (*with highlights*)

Click [[here](#)] to access a highlighted version of S.534 as passed by the US Senate on November 14, 2017 and the US House on January 29, 2018.

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**Love & Norris, Attorneys at Law.** Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, Love and Norris provide consulting services to secular and ministry organizations that provide services to children. Consulting services often include safety effort evaluations, assessments and audits. Representative clients include the United States Olympic Committee, US Center for SafeSport, Awana International, Bright Horizons Daycare, Gladney Center for Adoption, and many schools, camps, non-profits and ministries.

**Abuse Prevention Systems and MinistrySafe.** In addition to an active law practice, Love and Norris are co-founders and Directors of **Abuse Prevention Systems** and **MinistrySafe**, entities dedicated to sexual abuse awareness and prevention. **Abuse Prevention Systems** and **MinistrySafe** provide Sexual Abuse Awareness Training (live and online) and assist child-serving organizations in the design and implementation of safety systems that reduce the risk of child sexual abuse. Love and Norris are frequent speakers before youth sport organizations and associations, educational entities, adoption and foster care organizations, youth camps and other non-profits. They have addressed national and regional audiences for organizations such as USA Volleyball, US Rowing, US Youth Soccer (USYS), NorCal State Soccer Association, Tennessee State Soccer Association, Major League Lacrosse, the Risk Management Society (RIMS), Principles of Large Schools (POLS), National Council for Adoption (NCFA), American Camp Association (ACA), and the Christian Camp and Conference Association (CCCA).

**Abuse Prevention Systems** and **MinistrySafe** are endorsed by Philadelphia Insurance Companies, the American Camp Association and the Christian Camp and Conference Association. MinistrySafe and Abuse Prevention Systems' Sexual Abuse Awareness Training is approved by the Texas Department of State Health Services and the Departments of Insurance for Texas, New York, Pennsylvania, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas, Oklahoma and other states. MinistrySafe's Sexual Abuse Awareness Training is an approved CEU for the Association of Christian Schools International (ACSI).