WHEN THE ATHLETE IS A CHILD:

An Assessment of USA Swimming's Safe Sport Program

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GUNDERSEN
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"The road to the Olympics, leads to no city, no country…The road to the Olympics leads — in the end — to the best within us."

--Jesse Owens[1]

INTRODUCTION

There are 340,568 athlete members of USA Swimming. Of this amount, 317,103 athletes—more than 93%--are children. Approximately 57% of them are girls and slightly more than 42% are boys.[2]

Many of the children in USA Swimming are very young with nearly 11% or 34,690 being eight years old or younger. As any parent can attest, children this young need considerable guidance in getting to the school bus, in eating right, and even remembering to take off their flip flops before entering a pool.[3]

More than 20% of the children in USA Swimming, totaling 67,769 athletes, are ages 15-17. Some of these children drive cars and date and talk of college. They are, however, still in need of guidance and are no less vulnerable.[4]

An undetermined number[5] of the children in USA Swimming—past and present—have been abused in one or more ways. This abuse may have happened in their own homes[6] or it may have happened on the deck, in locker rooms or while traveling with their swimming coaches or teams. In some cases, abuse has happened in the plain sight of other athletes, coaches and parents.[7]

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[1] This quote was found online at: http://www.goodreads.com/author/quotes/784622.Jesse_Owens (last visited January 20, 2014).
[2] To be more precise, 57.51% are girls and 42.42% are boys.
[3] At a swimming practice we attended, we witnessed a mother run up to her son to remind him to remove his flip flops just as the boy was about to jump into the pool.
[4] Indeed, nearly *half* of the children we know have been abused within the sport fit into this age range.

[5] Without a baseline study, discussed later in this report, it is difficult, perhaps impossible to accurately assess the extent of abuse within the sport or whether abuse is increasing, declining or continuing at a particular rate.
[6] According to the United States Department of Health and Human Services, biological parents or the non-biological partner of a parent commit 60% of all cases of sexual abuse, 91% of all cases of physical abuse, and 93% of all cases of psychological abuse. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE & NEGLECT (NIS-4) (2010).
[7] According to one study, 54.9% of child molesters offended when another child was present and 23.9% offended when another was adult present Rocky C. Underwood, Peter C. Patch, Gordon G. Cappelletty, and Roger W. Wolfe, *Do Sexual Offenders Molest When Other Persons Are Present? A Preliminary Investigation,* 11(3) SEXUAL ABUSE: A JOURNAL OF RESEARCH AND TREATMENT 263 (1999); For an example of a child molested with others present, *see* MARTIN MORAN, THE TRICKY PART (2005). This abuse may be subtle and not easily detected. In the context of swimming, abuse can happen by resting a hand on a child's buttocks or "accidentally" brushing an athlete's breasts

When children have disclosed, or abuse has otherwise been discovered, there have been a number of cases in which parents, athletes, clubs and communities rally around an accused coach and ostracize the victim irrespective of the strength of the evidence. Understanding why this happens—and stopping it is of critical importance to the organization since it deters children from disclosing abuse and may have a chilling effect that keeps others from reporting.

Prior to 2010, USA Swimming had a number of child protection policies and guidelines that proved ineffectual in protecting many children from abuse. The flaws in the system were highlighted in national media coverage that resulted in significant policy changes, the dedication of employees to respond to allegations of abuse, and tightened policies.

The reforms implemented after 2010 have been substantive and have resulted in children being protected who, in the past, may have fallen through the cracks. Even so, there are remaining weaknesses in the system and, unless they are addressed, there will be no barrier between some children and those who would harm them.

In the course of this review, our team reviewed thousands of pages of documents pertaining to cases of abuse. Within these pages, the voice of survivors stands at the forefront. It would be impossible for anyone with feeling to read these files and not be overcome by the senselessness of abuse, the enormity of the pain inflicted, and the courage of those who have endured.

In the dozens of interviews conducted as part of this assessment, we spoke with five survivors abused by a coach and a mother whose daughter was sexually and psychologically abused by a coach. These six interviews highlight both the progress made, and the work left undone in keeping the youngest swimmers safe.[8]

Three survivors spoke positively about USA Swimming's handling of their outcries of abuse—though each of them had some suggestions for improvements.[9] These survivors believed their cases were handled sensitively with one survivor telling us USA Swimming personnel listened to her cry for hours at a time, helped her obtain counseling and provided her a "mentor"[10] to assist

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or genitals. These studies and facts undermine the contention that adopting a "no privacy" policy will keep children safe. Although limiting privacy is one method to keeping children safe it will not, by itself, be sufficient. *See generally,* John Leonard, *No Privacy,* 11 ASCA NEWSLETTER (2013) (advocating for a no privacy rule).

[8]We are not suggesting in this paragraph and the next that 50% of survivors are supportive of how their cases were handled and 50% have a dis-favorable view. Most of the files do not contain statements from survivors commenting on this issue and, without a survey of all survivors, it would be impossible to determine this. Having said this, there are 30 cases in which there is evidence a survivor or parent of a survivor expressed gratitude to USA Swimming for their efforts. There are also 13 cases we reviewed in which a survivor was critical of USA Swimming. In one of these cases, the survivor was critical *because* USA Swimming was taking action against a coach.

[9] One survivor had suggestions for improving the Safe Sport training and another survivor lamented that the coach who abused her has been successful in convincing others that he was banned over a "technical" violation of the code. She believed USA Swimming should publish the National Board of Review decision or otherwise make it clearer to the public the nature of this coach's conduct.

[10] In this context, a mentor is a survivor who has been through the NBOR process and is willing to share experiences with another and otherwise offer the victim support.

in testifying against her former coach. These are not isolated examples[11] and reflect the progress USA Swimming is making and should be celebrated.

Two other survivors, and the mother of a third, had very different feelings. The mother told us of the cruelties inflicted on her daughter by her coach and didn't understand why her daughter's statement was insufficient to ban the coach—why her daughter also had to testify before USA Swimming's National Board of Review. Another survivor told us she didn't understand why the coach who sexually abused her before USA Swimming began operation could not be banned. A third survivor expressed the sentiment that USA Swimming was slow in banning the coach who abused her and others simply because it didn't have the will to ban a coach of high stature.

There are reasons why some cases of abuse have not resulted in a ban. In some cases, USA Swimming wants to move forward but concludes it has insufficient evidence. In very old cases, there are questions of jurisdiction and there may be legal barriers as to how far the organization can extend its reach. In this report, we address some of the challenges facing the organization in moving even clear cases of abuse forward and offer recommendations that may enable USA Swimming to do more to aid those who have been wronged and protect those who remain at risk.

Those within USA Swimming who are working hard to address child abuse sometimes feel frustrated at their inability to convey these challenges to the public as well as the legitimate progress made in recent years. To the critics, though, at least the critics we spoke to, it is less about enacting a particular reform than it is in changing a culture they have experienced over the past three decades.

Some survivors, and other witnesses, spoke of a culture in which it was an "open secret" that some coaches were sexually abusing children. When these survivors disclosed, they were often treated harshly by the swimming community. In one instance, for example, a prominent coach told a survivor to *just get over it.*[12]

In the course of our review, we encountered only one witness who came close to such archaic views but we encountered others who worried that our recommendations would push the organization *too far* in the direction of child protection and one witness called our recommendation that everyone in the organization be a mandated reporter "absurd." There is every reason to believe these attitudes are dying out[13] at every level and we encountered many people fully dedicated to the proposition USA Swimming and its members can never go *too far*

[11] *See* note 8, *supra* (noting 30 cases in which survivors or parents of survivors expressed gratitude for the handling of their cases and 13 cases in which a survivor expressed criticism).

[12] There are other examples reflecting this culture. In some of the older files we reviewed, there were instances in which a club made a distinction between sexual assault on a child and *consensual* sexual assault on a child. One witness told us there was a day when some within the swimming community openly wondered if the victims of abuse were victims at all.

[13] One coach, for example, told us that he supported our recommendation regarding mandated reporting and said that those who disagreed are unworthy of coaching children.

in protecting the 320,000 children in its charge. We hope this report will speed the dawning of that day.

In the course of this review, we were repeatedly told that USA Swimming was not looking for a pat on the back—that they genuinely wanted to know where they were falling short and what else they could do to make the sport safer.[14]

In this spirit, this report is less a pat on the back than it is a push forward. To some extent, the protection of children will always necessitate a push forward. Those who harm children are not machines—they are in many instances intelligent men and women capable of adapting to any reform and finding a new way to access and harm a child. Because they are vigilant, so must we.

AN OVERVIEW OF THE USA SWIMMING STRUCTURE

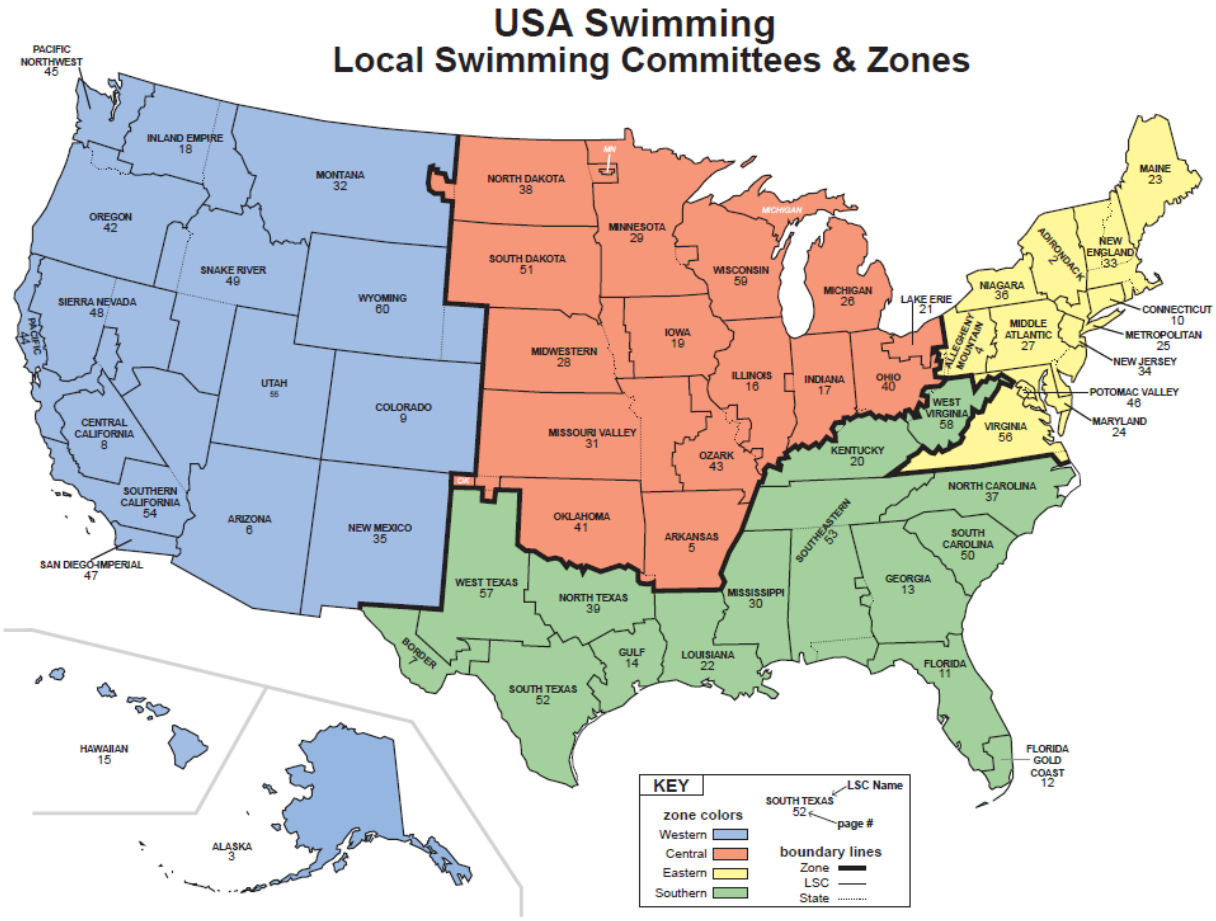
USA Swimming was originally known as the Competitive Swimming Committee of the Amateur Athletic Union and was located in Indianapolis, Indiana. In 1978, as a result of the passage of the Amateur Sports Act, also known as the Ted Stevens Act, USA Swimming became the National Governing Body (NGB) for competitive swimming in the United States.

As the National Governing Body for the sport, "USA Swimming is responsible for the conduct and administration of swimming in the United States."[15] To this end, USA Swimming "formulates the policies and procedures, conducts the national championships, disseminates safety and sports medicine information and selects athletes to represent the United States in international competition."[16]

A member of the United States Olympic Committee (USOC), USA Swimming is divided into four "zones" (central, eastern, southern and western) with each zone electing two representatives to serve on the national board of directors. At the local level, there are 59 Local Swimming Committees (LSCs) for administering USA Swimming activities within these designated regions. A "House of Delegates" consisting of athletes, coaches, members of the board of directors and clubs manages the business affairs of these LSCs.

A visual overview of these zones and the 59 LSCs is provided below:

[14] Indeed, the contract with USA Swimming required Gundersen Health to "focus on providing recommendations to USA Swimming regarding improvements that could be made to its Safe Sport program."
[15] USA Swimming Fact Sheet provided to the author.
[16] Id.



The USA Swimming House of Delegates meets annually to determine the rules and regulations governing the sport for the following year. This includes modifications to the rulebook or "code of conduct" as it may pertain to issues of child abuse or other misconduct directed at an athlete. In between House of Delegates meetings, USA Swimming is operated by a board of directors and also has a number of standing committees.

For purposes of this report, the most important standing committee is "Safe Sport," a committee designed to develop policies, procedures and training aimed at keeping children safe from abuse, at least within the sport. The committee consists of fifteen (15) members including two child abuse subject matter experts.[17]

[17] The subject matter experts are Sandy Wuterle, a psychology professor and associate dean at the University of Colorado and also John Ingram, a detective from the Colorado Springs Police Department. Professor Wuterle's peer reviewed research and writing on child abuse prevention is cited at several points in this report.

THE SCOPE OF REVIEW AND PROCESSES FOLLOWED

In late August, 2013, USA Swimming contracted with the Gundersen National Child Protection Training Center (GNCPTC), a program of Gundersen Health System, to conduct an independent assessment of USA Swimming's Safe Sport program.[18]

Pursuant to this contract, GNCPTC was obligated to perform the following functions:

- Review the Safe Sport website, handbook, and other printed program materials;
- Review USA Swimming's Code of Conduct;
- Review Safe Sport educational materials including online training, webinars, articles and presentations; and
- Interview USA Swimming leadership, both volunteer and staff

From this review, GNCPTC was asked to evaluate the USA Swimming Safe Sport program's efforts in the following target areas:

- Policies and guidelines
- Screening and selection
- Education and training
- Monitoring and supervision
- Recognizing, reporting and responding
- Grassroots engagement and feedback

GNCPTC was also asked to "evaluate the USA Swimming Safe Sport Program against the best practices of other youth sports and youth serving organizations." Assessing "best practices" was done primarily by comparing USA Swimming's policies, past and present, against those proposed for youth serving organizations (YSOs) by the Centers for Disease Control in 2007.[19] We also reviewed child protection policies of swimming NGBs in Great Britain and Ireland and, when appropriate, other youth serving organizations in the United States.

Finally, GNCPTC was asked to "produce a written report that discusses the issues, explains the methodologies used, identifies sources as appropriate, and addresses the preceding three items with a focus on providing recommendations to USA Swimming regarding improvements that could be made to its Safe Sport Program" and to also include with the report an Executive Summary.

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[18] The scope of the review was announced publicly by USA Swimming and detailed on its website. See *Leading Gundersen National Child Protection Expert to Review USA Swimming's Safe Sport Program,* available online at: http://www.usaswimming.org/ViewNewsArticle.aspx?TabId=1403&itemid=5483&mid=4631 (last visited January 8, 2014).

[19] J. Saul & NC Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION (2007).

In exchange, USA Swimming was obligated to make available "such personnel, data, documents, reports, materials and other Safe Sport Program information required" by GNCPTC to complete the work. USA Swimming is obligated to pay Gundersen Health System approximately $25,000 for this work.[20]

Process of review

The review of Safe Sport was conducted by several employees of Gundersen Health System. Victor Vieth[21] was primarily responsible for conducting the assessment and was assisted by Amy Russell,[22] Stephanie Smith,[23] and Alison Feigh.[24] Additional personnel assisted as needed.[25]

As part of this assessment, GNCPTC personnel reviewed the following documents:

- Safe Sport website, handbook, and other printed program materials;
- USA Swimming's Code of Conduct (past and present);

[20] The contract does allow for a higher fee if GNCPTC exceeded a set number of hours. Because these hours were exceeded, it's possible the final payment will be slightly higher. Expenses were also covered. The revenue generated under this contract support GNCPTC's child protection programs.

[21] Executive Director Emeritus, Gundersen National Child Protection Training Center. Mr. Vieth is a former prosecutor who gained national attention for his work at addressing child abuse in rural communities. He went on to direct the National Center for Prosecution of Child Abuse, a program of the National District Attorneys Association. In 2003, Mr. Vieth was instrumental in creating the National Child Protection Training Center. Since its inception, the Center has trained more than 100,000 child protection professionals, developed undergraduate and graduate programs on child abuse, and oversees 21 state and international forensic interview training programs. NCPTC merged into Gundersen Health System in 2013. As part of Gundersen Health System, the Center is helping develop screening and other tools to assist in identifying cases of child maltreatment earlier in life.

[22] Executive Director, Gundersen National Child Protection Training Center. Ms. Russell has worked at a national and international level on issues of child abuse. This work includes serving as an independent contractor for UNICEF on child abuse and trafficking issues in Kosovo. She is a nationally certified counselor who has worked with victims of violence and trauma in numerous capacities. She has conducted research on vicarious trauma in cases of child abuse. She has served as an expert witness in cases of child abuse, has published numerous, peer reviewed articles and has taught at numerous state and national conferences. She has also worked as a forensic interviewer and has interviewed over 1,000 children. Ms. Russell is also an attorney who previously served as the executive director of two children's advocacy centers.

[23] Director, Southern Regional Center, Gundersen National Child Protection Training Center based in Bentonville, Arkansas. Ms. Smith is a former child abuse prosecutor who handled cases of child sexual abuse, physical abuse, neglect and computer facilitated crimes against children. She was a founding member of the Hamilton County (Indiana) Metro Internet Crimes Against Children Task Force. Ms. Smith has trained prosecutors, law enforcement officers and other professionals on numerous child abuse topics.

[24] Director, Jacob Wetterling Resource Center, a program of Gundersen Health System. Ms. Feigh is a subject matter expert on child and teen safety. She has also taught personal safety courses and has authored two children's books on the subject. In directing the Jacob Wetterling Resource Center, she provides child abuse prevention training to several thousand parents and professionals annually.

[25] Robert J. Peters, a law student at Liberty University School of Law assisted with legal research on this project including the analysis of emotional abuse and mandated reporting statutes. He is the president of the Criminal Law Society at his law school.

- Safe Sport educational materials including online training, webinars, articles and presentations;
- The files of all banned and suspended coaches, officials, and athletes in the history of USA Swimming;
- The files of all closed[26] USA Swimming investigations involving allegations of sexual or other misconduct against a child;
- The audio tapes of 20 National Board of Review hearings in which a coach, official or athlete received a suspension or ban from the sport;
- Various documents provided by parties interviewed as part of this assessment; and
- Media and other reports of sexual abuse or other misconduct committed by a USA Swimming member coach, official or athlete.

As part of this assessment, GNCPTC interviewed 57 individuals connected with the sport of swimming or who could otherwise assist in evaluating one or more aspects of our review. To the extent we could, we promised not to identify these individuals by name or attribute a particular statement to them in the report. This was done in the hope of building trust and generating candor. Although not every witness was forthcoming, the vast majority answered questions directly and, as far as we can tell, forthrightly. In some cases, the witnesses were brutally honest and extremely helpful in this assessment. At no time did USA Swimming deny us access to a witness within their control. Some witnesses were persons we sought out and other witnesses reached out to us and asked to share their experiences. We made a concerted effort to also speak with parties who have been critical of the organization's handling of child abuse.

Although many witnesses fit into multiple categories, the witnesses we interviewed include twelve employees of USA Swimming including those who oversee the Safe Sport program. We interviewed two attorneys who, among other duties, have represented USA Swimming before the National Board of Review. We interviewed two employees of the United States Olympic Committee (USOC) involved in Safe Sport initiatives or who had expertise in interpreting the Amateur Sports Act and provisions pertinent to expelling or taking action against an abusive coach.

We interviewed seven current swim coaches, four at swimming practices we attended in three different states. Three other coaches called us to share their experiences of reporting abuse or keeping children safe.

We interviewed eight members of the USA Swimming board of directors including three current or past presidents of the organization. We interviewed three members of the Safe Sport committee including one of the subject matter experts and the chairperson. We interviewed three past or current chairpersons of the National Board of Review. We interviewed two

[26] We did not review cases that were under investigation.

representatives of the American Swim Coaches Association. Athletes interviewed included Olympic gold medalists and members of the national team.

We interviewed several attorneys outside the structure of USA Swimming including one who has sued the organization pertaining to cases of abuse. We spoke with two congressional staffers and several subject matter experts to aid our understanding of legal issues pertaining to the Amateur Sports Act, psychological abuse, and possible research projects outlined in this report. We interviewed one witness from Praesidium, the organization USA Swimming has contracted with to develop its training programs and one witness from Child Welfare League of America, the organization that assisted USA Swimming in developing a structure for the reforms it has implemented since 2010. We interviewed two professionals from Great Britain knowledgeable about efforts to keep children safe in British swimming.

In more than one instance, we followed up with a witness to ask additional questions. As we developed ideas to addressing problems we were identifying, we asked various parties both within USA Swimming as well as those who were critical, for their feedback. We also solicited ideas from myriad parties and some of their ideas are included in our recommendations.

To get a better understanding of Swimming, we attended four swim practices in three different states and saw examples of both larger and smaller clubs and the challenges they face. Prior to the publication of this report, we had the paper reviewed by various subject matter experts.[27]

It is from this base of knowledge that we offer the following assessment and recommendations.

POLICIES AND GUIDELINES

In reviewing USA Swimming child protection policies, it is helpful to put them in a timeline and to divide them into two categories of pre and post 2010 policies. The reason that 2010 is the dividing line is that this was the year USA Swimming was the focus of national media coverage that drew attention to abuse within swimming and was also critical of the organization's handling of cases. Most of the witnesses we spoke to, both inside and outside of USA Swimming, spoke of the profound impact media attention as well as litigation had on the sport. Accordingly, using 2010 as the dividing line in the subsequent timeline is appropriate.

USA Swimming pre-2010 policies and guidelines

USA Swimming began operation in 1980 and its first rulebook was promulgated in 1981. This rulebook did not explicitly prohibit sexual or other misconduct against a child but did provide that a member could be disciplined or expelled for acting "in a manner which brings disrepute

[27] These subject matter experts included pediatricians specializing in child abuse cases, child psychologists, current and former child abuse prosecutors, prevention specialists, child abuse researchers, a former child abuse detective, and a sex offender treatment provider. Representatives from two national organizations, the Women's Sports Foundation and Male Survivor also reviewed early drafts of this report and provided feedback. USA Swimming was provided the opportunity to review the document for factual errors. The final decision on the contents of the report was made by Gundersen National Child Protection Training Center.

upon [USA Swimming] or upon the sport of swimming." This rule is still in existence,[28] and has been used to expel coaches who sexually abused children from 1980-1998.

In 1998 (effective May 1999), USA Swimming adopted a code of conduct that provided for discipline based on certain criminal convictions as well as sexual contact or advances directed toward an athlete by a person who, in the context of swimming, was in a position of authority over that athlete.[29]

In 2002, the prohibition against sexual advances was modified to include the language "or other inappropriate sexually oriented behavior or action."[30] Effective September of 2008, this rule was amended to include language prohibiting sexual harassment and sexual misconduct by any "other adult" participating "in any capacity."[31] The "other adult" language was clarified in 2009.[32]

Analysis of the pre-2010 policies and guidelines

USA Swimming's pre-2010 policies fell below the CDC guidelines, published in 2007, for the prevention of sexual abuse in youth serving organizations[33] including an absence of pre-employment screening, training, and clear reporting obligations. Outside the structure of the USOC, there were other national Youth Serving Organizations that had gone further in education and other reforms prior to 2010.[34] The Boy Scouts of America, for example, had child protection

[28] It is a violation of the code of conduct to commit any "material and intentional act, conduct or omission not provided for above, which is detrimental to the image or reputation of USA Swimming, a LSC or the sport of swimming." Rule 304.3.18, USA SWIMMING RULEBOOK 2013.

[29] Specifically, rule 304.3 of the code of conduct prohibited the following: ".4 Conviction of, imposition of a deferred sentence for, or any plea of guilty or no contest at any time, past or present, or the existence of any pending charges, for (i) any felony, (ii) any offense involving use, possession, distribution or intent to distribute illegal drugs or substances, or (iii) any crime involving sexual misconduct; .5 Any sexual contact or advance directed towards an athlete by a coach, official, trainer or other person who, in the context of swimming, is in a position of authority over that athlete… .10 Physical abuse of an athlete by any person who, in the context of swimming, is in a position of authority over that athlete."

[30] Specifically, Article 304.3.5 read: "Any sexual contact or advance or other inappropriate sexually oriented behavior or action directed towards an athlete by a coach, official, trainer, or other person who, in the context of swimming, is in a position of authority over that athlete."

[31] The amended Article 304.3.5 prohibited "Any inappropriate sexually oriented behavior or action directed towards a member by any other adult participating in any capacity whatsoever in the affairs or activities of USA Swimming or its LSCs (whether such adult is a member or not). Any nonconsensual physical sexual conduct, or pattern of unwelcome advances or other sexual harassment in connection with or incidental to a USA Swimming-related activity by any person participating in the affairs or activities of USA Swimming or its LSCs whether such person is a member or not) directed toward any member or other person participating in the affairs or activities of USA Swimming or its LSCs."

[32] The amended Article 304.3.5 prohibited "Any sexual conduct, advance or other inappropriate sexually oriented behavior or action directed towards an athlete by (i) a coach member or other non-athlete member, or (ii) any other adult participating in any capacity whatsoever in the affairs or activities of USA Swimming (whether such adult is a member or not)…"

[33] J. Saul & NC Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION (2007).

[34] A number of national Youth Serving Organizations participated in the development of the CDC guidelines and thus it is a fair inference that these and other organizations had developed and implemented these policies prior to 2007.

training programs as early as 1989.[35] USA Swimming's policies and guidelines compare favorably to that of other United States Olympic Committee NGBs during that time period, but many of these NGBs were historically slow in recognizing and responding to abuse.[36]

The pre-2010 policies did help some children and were used to expel some coaches and others who had harmed youth. Irrespective of these successes, the pre-2010 policies had multiple flaws which, if they had been addressed sooner, may have prevented numerous cases of abuse.[37]

The impact of 2010 media coverage

In April of 2010, ABC News' 20/20 aired coverage of sexual abuse by coaches within the sport and highlighted weaknesses in USA Swimming's child protection policies including an absence of pre-employment screening that enabled child abusers to escape detection.[38] The same month, ESPN aired an *Outside the Lines* segment in which it found that "abusive coaches, some of whom molested young swimmers for more than 30 years, avoided detection because of a number of factors: USA Swimming and other organizations had inadequate oversight, many local coaches, parents, and swimming officials failed to report inappropriate contact they witnessed, and some parents, driven to see their children succeed, ignored or did not recognize what should have been red flags."[39]

We interviewed a number of persons who described the profound impact of the media coverage on the sport. One witness said the media coverage changed the will of the organization—enabling it to enact reforms that would not have been possible before 2010.[40] Another witness said the pre-2010 policies were simply business practices but the post 2010 reforms were borne out of a sense of urgency to address a need that was now apparent to everyone.

On April 21, 2010, USA Swimming issued a press release announcing a "7 point plan" to create a "Safe and Positive Sport Environment." The plan consisted of the following goals:

1. Develop and disseminate comprehensive guidelines addressing acceptable coach behavior.

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[35] For purposes of comparison, a timeline of child protection reforms in the Boy Scouts of America can be found at: http://www.scouting.org/sitecore/content/BSAYouthProtection/BSA_Communications/Timeline.aspx (last visited January 19, 2014)

[36] For example, it wasn't until 2011 that the United States Olympic Committee sought to impose any obligation on other Olympic NGBs in the area of sexual abuse—a year after USA Swimming implemented its Safe Sport program.

[37] It's possible, of course, that a child may have been sexually abused even with these reforms. As noted elsewhere in the report, offenders can be vigilant in accessing a child. The reforms, though, would have made it more difficult to access a child and more likely to get caught.

[38] *See* ABC News, *The Coaches' Secret* at: http://abcnews.go.com/Blotter/Swimming/ (last visited January 18, 2014).

[39] T.J. Quinn and Greg Amante, *Sex Abuse Pervasive in USA Swimming,* April 27, 2010, available online at: http://sports.espn.go.com/espn/otl/news/story?id=5071820 (last visited January 18, 2014).

[40] There is some research documenting that litigation and media coverage about child abuse within an organization can force institutional changes. *See generally,* TIMOTHY D. LYTTON, HOLDING BISHOPS ACCOUNTABLE (HARVARD UNIVERSITY PRESS 2008) (analyzing the impact of litigation on media coverage and, in turn, the impact of media coverage on child protection reforms within the church).

2. Enhance the system for reporting sexual abuse to USA Swimming and law enforcement.
3. Review USA Swimming's Code of Conduct, as well as those of other top youth organizations.
4. Review USA Swimming's current background screening program and determine if enhancements can be made.
5. Produce stronger communications to member clubs, which are responsible for hiring and employing coaches, regarding pre-employment screening, and the responsibility associated with hiring club employees.
6. Evaluate the process for sharing coaching history records with member clubs and other youth serving organizations.
7. Educate athletes, parents, coaches and club leaders on this important issue.

On May 1, 2010, USA Swimming issued a press release announcing it would publish the list of coaches or other members who had been banned for life, would have "dedicated staff focusing on the area of Athlete Protection," and that it was creating a special committee "charged with continually monitoring industry and societal best practices regarding child protection" and otherwise overseeing the organization's athlete protection initiatives. One member of this committee told us he was skeptical of genuine change but began to see there was substance to the ensuing reforms.

On June 21, 2010, USA Swimming announced a collaboration with the Child Welfare League of America to "(a)ssist USA swimming in the development of policies and guidelines for coach-athlete interaction," evaluate the organization's code of conduct and recommend resources and strategies for educating USA Swimming members. With respect to the education component, USA Swimming subsequently accepted a proposal from a corporation called Praesidium to develop its training programs.

Post-2010 policies and guidelines

In 2010 (effective 2011), USA Swimming amended its code of conduct to make it a violation to be convicted or have a pending charge involving "any criminal offense against a minor."[41] In the same year, the organization added an "Athlete Protection Policy"[42] and "Sexual Misconduct

[41] Specifically, Rule 3.4 (now Article 304.3.6) was amended to prohibit "Conviction of, imposition of a deferred sentence for, or any plea of guilty or no contest at any time, past or present, or the existence of any charges, for (i) any felony, (ii) any offense involving use, possession, distribution or intent to distribute illegal drugs or substances, (iii) any crime involving sexual misconduct, or (iv) any criminal offense against a minor."

[42] The Athlete Protection Policy states the following are "mandatory components of the USA Swimming Code of conduct:

> 305.1 Inappropriate touching between an athlete and an adult non-athlete member or Participating Non-Member (as defined in 401.1) is prohibited, including, but not limited to, excessive touching, hugging, kissing, sexually oriented behavior, sexually stimulating or otherwise inappropriate games, and having an athlete sit on a non-family member adult's lap.

Reporting Requirement"[43] to its rulebook. These changes prohibited coaches from performing rubdowns or massages, banned the use of audio or visual recording devices in changing areas, expanded the list of those who had to complete a background check, and developed some policies for travel. The changes required reports of sexual misconduct, prohibited retaliation against good faith reports while simultaneously prohibiting "bad faith reports." In 2011, this latter provision made it clear it was only a violation of the rules to "knowingly" make a false allegation.[44]

In 2012 (effective 2013), USA Swimming expanded or at least clarified that sexual misconduct included "other oral, written, visual, or physical conduct"[45] and added a prohibition against bullying. [46] The definition of physical abuse was also expanded to prohibit bullying by a coach.[47]

> 305.2 Any rubdown or massage performed on an athlete by any adult member or Participating Non-member, excluding the spouse, parent, guardian, sibling, or personal assistant of such athlete, is prohibited unless such adult is a licensed massage therapist or other certified professional. Any rubdown or massage performed at a swim venue by a licensed professional must be conducted in open/public locations and must never be done with only the athlete and licensed massage therapist in the room. Even if a coach is a licensed massage therapist, the coach shall not perform a rubdown or massage of an athlete under any circumstances.
>
> 305.3 Use of audio or visual recording devices, including cell phone camera, is not allowed in changing areas, rest rooms or locker rooms.
>
> 305.4 Employees and volunteers of USA Swimming, LSCs and member clubs who interact directly and frequently with athletes as a regular part of their duties and individuals with any ownership interest in a member club must be non-athlete members of USA Swimming and satisfactorily complete criminal background checks as required by USA Swimming. This does not apply to volunteers such as timers, marshals, computer operators, etc. who only have limited contact with athletes during a meet.

[43] The sexual misconduct reporting requirements provide:

> 306.1 It is every member's responsibility to promptly report any incident regarding sexual misconduct by a member as described in Article 304.3.7 to USA Swimming's Athlete Protection Officer. Reporting must occur when an individual has firsthand knowledge of misconduct or where specific and credible information has been received from a victim or knowledgeable third party. Various state laws may also require reporting to law enforcement or to a designated child protection agency.
>
> 306.2 No member shall retaliate against any individual who has made a good faith report under 306.1
>
> 306.3 False reporting of sexual misconduct made in bad faith is prohibited.
>
> 306.4 Neither civil nor criminal statutes of limitation apply to cases of sexual abuse.

[44] Specifically, rule 306.3 provides: "Filing a knowingly false allegation of sexual misconduct is prohibited and may violate state criminal law and civil defamation laws. Any person making a knowingly false allegation of sexual misconduct shall be subject to disciplinary action by USA Swimming."

[45] Rule 304.3.5, which is now rule 304.8.

[46] Rule 304.3.7 provides that "Bullying is prohibited. For these purposes, the term 'bullying' shall mean, regardless of when or where it may occur, the severe or repeated use by one or more USA Swimming members ("Members") of an oral, written, electronic or other technological expression, image, sound, data or intelligence of any nature (regardless of the method of transmission), or a physical act or gesture, or any combination thereof, directed at any

The organization now also required clubs to establish "action plans" to address bullying[48] as well as establish electronic communication/social media policies.[49]

In 2013, the United States Olympic Committee required all of its NGBs to put in place "minimum standards" for athlete protection by December 31 of that year. Although USA Swimming met all of these standards, it was not in compliance with the USOC prohibition against "romantic or sexual relationships" between coaches and athletes in which there was an "imbalance of power."[50]

In 2013, USA Swimming's House of Delegates expanded the definition of prohibited sexual contact to include contact "at any time past or present" directed toward an athlete or any child. This amendment strengthened USA Swimming's ability to proceed against member coaches who may have sexually abused a child prior to becoming a member of the organization. USA Swimming also prohibited "romantic or sexual relationships" between coaches and athletes involving any "imbalance of power."[51] This brought the organization into compliance with the USOC requirements for such a prohibition.

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other Member that to a reasonably objective person has the effect of: (i) causing physical or emotional harm to the other Member or damage to the other Member's property; (ii) placing the other Member in reasonable fear of harm to himself/herself or of damage to his/her property; (iii) creating a hostile environment for the other Member at any USA Swimming activity; (iv) infringing on the rights of the other Member at any USA Swimming activity; or (v) materially and substantially disrupting the training process or the orderly operation of any USA Swimming activity (which for the purposes of this section shall include, without limitation, practices, workouts and other events of a member club or LSC)."

[47] Specifically, rule 304.3.13 prohibits: "Physical abuse of an athlete by any person who, in the context of swimming, is in a position of authority over that athlete. 'Physical abuse' is defined as a non-accidental injury and/or an injury primarily caused by the gross negligence on the part of the person in a position of authority over the athlete" and added that "Bullying of an athlete by a coach member or other non-athlete member who is in a position of authority over that athlete" is also prohibited.

[48] Rule 305.6 requires clubs to "establish their own action plans for implementing USA Swimming's anti-bullying policy. USA Swimming shall provide a model plan as an example which shall serve as the default for any club that fails to establish its own plan. Club anti-bullying plans must be reviewed and agreed to annually by all athletes, parents, coaches and other non-athlete members of the club."

[49] Rule 305.7 provides: "Clubs shall establish their own electronic communication/social media policy. USA Swimming shall provide a model policy as an example, which shall serve as the default for any club that fails to establish its own policy. Club electronic communication policies should be reviewed and agreed to annually by all athletes, parents, coaches and other non-athlete members of the club."

[50] The USOC's required minimum standards is available online at: http://www.usfsa.org/content/Minimum%20Standards%20Policy%20from%20USOC.pdf (last visited January 26, 2014).

[51] Specifically, the rule provides: "A romantic or sexual relationship, even if it is a consensual relationship between adults, which began during the swimming relationship, between athletes and those individuals (i) having direct supervisory or evaluative control, or (ii) who are in a position of power and trust over the athlete. Except in circumstances where no imbalance of power exists, coaches have this direct supervisory or evaluative control and are in a position of power and trust over those athletes they coach. The prohibition on romantic or sexual relationships does not include those relationships where it can be demonstrated that there is no imbalance of power. For example, this prohibition does not apply to a relationship between two spouses or life partners which existed prior to the swimming relationship. For factors that may be relevant to determining whether an imbalance of power exists, consult the USOC's Safe Sport Policies at www.teamusa.org/Footer/Legal/Governance-Documents."

USA Swimming began a mandatory education campaign for coaches starting in 2011. USA Swimming developed voluntary training programs for parents in 2012, and for adolescents and teens in 2013.

Analysis of post 2010 policies and guidelines: strengths and weaknesses

There are a number of strengths to the reforms implemented since 2010. USA Swimming's policies now largely reflect the CDC guidelines and, in some instances, exceed them.[52] Many of the policies address specific risk factors that led to abuse. Sex offenders within the organization violated children during massages, while traveling, and using electronic communications to explore sexual subjects and otherwise move toward the abuse of a child. To the extent the post-2010 policies reduce these risks they may also reduce the incidence of abuse.

There is also anecdotal evidence the reforms may be having an impact. Since 2010, USA Swimming has received more reports of abuse than it had in the previous 20 years. A number of coaches and other witnesses told us they have seen a cultural shift within the sport. There are now reports in which a caller admits he or she is not sure what they witnessed is a violation of the code—but they want to err on the side of caution.

The 2013 prohibition against romantic or sexual contact between coaches and athletes may help in ushering in another important cultural shift within swimming. Although it is impossible to quantify the extent of the problem, a number of witnesses told us that, throughout the history of the sport, there have been coaches and others who did not believe it was wrong for a coach to have sex with an athlete provided he or she was of legal age. One witness provided us a list of 24 coaches who had married young athletes and told us that, even today, she knows very good people within the swimming community, people who would never abuse a child, who nonetheless struggle to see the harm in a coach-athlete relationship as long as the athlete is an adult and consents.

In other aspects of society—teacher/student, doctor/patient, psychologist/client, clergy/parishioner—there is a clear recognition of an imbalance of power and the inappropriateness, even illegality of a romantic relationship.[53] In the past, abusive coaches have used a similar imbalance of power to access children and young athletes. In more than one instance, an abusive coach has defended him or herself before the National Board of Review claiming that sexual advances toward an athlete, even a child athlete, did not warrant harsh discipline provided the athlete consented. To the extent this thinking continues to exist within the sport, it needs to be openly challenged and this rule hopefully aids the sport in doing so. However, the fact USA Swimming had rejected such a prohibition as late as 2012, and did so

[52] The CDC guidelines, for example, only addressed sexual abuse within a youth serving organization while USA Swimming's policies also address physical abuse, emotional abuse/bullying.
[53] In Minnesota, for example, it is a crime punishable by up to 15 years in prison for a pastor to have sex with someone he or she is providing "religious or spiritual advice, aid, or comfort…" MINN. STAT. SECTION 609.344, SUBD. 1(k)(1)(ii).

only after the USOC required its NGBs to move in this direction, suggests there is still work to be done.[54]

There are also some weaknesses in the existing policies. Taken as a whole, the policies reflect varying levels of child protection depending on the type of abuse and the identity of the offender.

The most protection is afforded to athletes who may have been sexually abused by a coach or other non-athlete member. The athlete protection policies afford a number of protections from this type of abuse.[55] Moreover, sexual misconduct is required to be reported and those who do report receive some measure of whistle blower protection.[56]

Athletes who may have been physically or emotionally abused receive less protection. Although these offenses are prohibited[57] and clubs are required to have a bullying policy,[58] these violations of the code are not required to be reported and there is not any explicit whistle blower protection.

Athletes who are being sexually, physically or emotionally abused in their own homes or in other settings receive very little protection under the rules—although anyone charged or convicted of a crime against these or other children would be ineligible for membership.[59]

There may be any number of factors that cause this disparity. The media glare of 2010 highlighted sexual abuse within USA Swimming and thus the organization focused primarily on this aspect of the problem. The issue of physical or psychological abuse may be more challenging and there is a fear among those we spoke to that unless it is clearly defined, prohibiting physical abuse and, in particular, psychological abuse may prevent historically permissible coaching practices.

Although these differing layers of child protection may be understandable when put in the context of the time in which they were developed, they present a number of risks to athletes, coaches, and to the organization as whole. In not recognizing a moral if not legal obligation to report all suspected cases of abuse, the current rules not only fail to protect athletes abused outside the sport, they also impair the ability of USA Swimming to protect children from sex offenders within the organization.

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[54] *USA Swimming House of Delegates Closes Sex Abuse Loopholes: Bans Coach/Athlete Relationships,* SWIMMING WORLD, September 14, 2013, available online at: http://www.swimmingworldmagazine.com/lane9/news/usa/35874.asp (last visited January 26, 2014).
[55] USA SWIMMING RULEBOOK, Rule 305.
[56] See Rules 305 and 306, USA SWIMMING RULEBOOK 2013.
[57] USA SWIMMING RULEBOOK 2013, Rule 304.3.7 & 304.3.13 A & B.
[58] USA SWIMMING RULEBOOK 2013, Rule 305.6.
[59] USA SWIMMING RULEBOOK 2013, Rule 304.3.6.

Recommendations

1. **Provide equal layers of protection for all abused children within the sport**

USA Swimming's current child protection policies would be easier to understand and to apply if the organization would simply state that when it comes to the attention of a coach, official or other member that a child is being abused it doesn't matter who the offender is or the type of abuse being inflicted—that the member must report the abuse to the authorities and to USA Swimming's Safe Sport officials. As part of this reform, USA Swimming should follow the lead of other national youth serving organizations and other swimming bodies that require all adults to report child abuse.

There are ten reasons USA Swimming should make this simple adjustment.

First, the protection of a USA Swimming child athlete should not be dependent on what state they live in. Under its current code, a case in which an athlete is sexually abused by a non-athlete member warrants a report to USA Swimming and to the authorities. If the child is being physically or psychologically abused within the sport, that is a violation of the code of conduct but a report is not required. If the child athlete discloses abuse within the home, a report is not required unless state law or the rules of an individual club mandate it. In other words, the protection afforded a child athlete is dependent on the type of abuse inflicted and the law of the state in which he or she resides.

Second, many coaches and other members are already mandated by law to report any form of abuse. According to our analysis,[60] coaches in as many as 30 states are already mandated to report instances of child abuse to the authorities.[61] In the remaining 20 states coaches may be obligated to report abuse in at least some instances. USA Swimming itself recognizes this fact and, on its website, provides a link to reporting laws throughout the country.[62] In changing its current policy to reflect these facts, USA Swimming can make sure its training and other work will help the vast majority of coaches comply with the law—and in keeping children as safe as possible.

Third, the clear trend in mandated reporting laws suggests that all coaches will eventually be mandated reporters. In recent years, there has been a clear trend to expand those obligated to report abuse and to increase the penalties for failing to do so. Some states now require *all* adults

[60] For a review of the mandated reporters in all 50 states, see Exhibit A, attached to this report.
[61] Although these state statutes make coaches mandated reporters, in some states it may be limited to coaches affiliated with a school.
[62] Specifically, USA Swimming provides the following link: https://www.childwelfare.gov/responding/how.cfm (last visited January 19, 2014)

to report abuse and the state of Florida deems it a felony for *any* adult to fail to report knowledge that a child is being abused.[63]

In the wake of the Penn State sexual abuse scandal, at least ten states strengthened their mandated reporting laws and that trend is likely to continue.[64] To the extent USA Swimming and other NGBs connected with the Olympics exist under the Amateur Sports Act, it is not inconceivable that federal law may one day require these NGBs to make its members report child abuse irrespective of state or other laws.

USA Swimming should recognize this trend and not wait for federal or state laws to expand the obligations of its members to report child abuse. It should simply do so because it is the right thing to do for its athletes.

Fourth, other youth serving organizations and national swimming organizations require all cases of abuse to be reported. The Amateur Swimming Association, the national governing body of swimming in Great Britain, concludes that "the rights of the child must be paramount in all situations" and therefore obligates its members not only to report instances of abuse within the sport but also respond to "allegations made about a parent, carer or someone not within the sport."[65] The governing body over swimming in Ireland similarly recognizes a responsibility to report abuse irrespective of the type of maltreatment or the identity of the offender.[66]

The Boy Scouts of America now requires all of its members to report all forms of abuse irrespective of state law. Specifically, BSA requires that:

> All persons involved in Scouting shall report to local authorities any good-faith suspicion or belief that any child is or has been physically or sexually abused, physically or emotionally neglected, exposed to any form of violence or threat, exposed to any form of sexual exploitation, including the possession, manufacture, or distribution of child pornography, online solicitation, enticement, or showing of obscene material. You may not abdicate this reporting responsibility to any other person.[67]

The trend in other swimming bodies, and in myriad other youth serving organizations, to obligate all its members to report abuse and to protect all children without distinction of

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[63] A summary of the revised Florida law is available online at: http://www.fcasv.org/publications/newsletters/fcasv-insight-summer-2012/florida%E2%80%99s-new-mandatory-reporting-law (last visited January 19, 2014).
[64] *See e.g.,* Joann Loviglio, *Sandusky Child Sex Abuse Scandal Raises Questions About State Laws,* Associated Press, June 9, 2012, available online at: http://www.csmonitor.com/USA/Latest-News-Wires/2012/0609/Sandusky-child-sex-abuse-scandal-raises-questions-about-state-laws (last visited January 19, 2014).
[65] WAVEPOWER 2012-2015 17 (2012)
[66] SWIM IRELAND SAFEGUARDING CHILDREN POLICIES AND PROCEDURES 2010 available online at: http://www.swimireland.ie/wp-content/uploads/downloads/2013/02/SI-Safeguarding-Children-Policies-and-Proceedures-2010.pdf (January 19, 2014).
[67] The BSA policy can be accessed online at: http://www.scouting.org/Training/youthprotection.aspx (last visited January 19, 2014).

the type or abuse or the identity of the offender is rooted in simple decency and common sense and is a trend worthy or replication by USA Swimming.

Fifth, obligating members to report child abuse without limitation reduces the liability of coaches, clubs and USA Swimming. Assume for a moment the media attention of 2010 had not focused on cases of failing to protect children from sexual abuse within the sport but failing to protect children from sexual abuse within their home—perhaps because a coach feared that a report would cause a parent to pull their star athlete from a club. In that event, the media attention and any ensuing litigation would have forced the organization to adopt very different rules and tackle a very different problem. USA Swimming should not wait for such a scenario to unfold—it should obligate its members to report abuse irrespective of the circumstances.

Sixth, failure to report child abuse in an athlete's home or in other circumstances is, in all likelihood, already a violation of the code of conduct. It is a violation of the existing code of conduct to be charged or convicted of any felony or "criminal offense against a minor."[68] In those states obligating coaches to report all suspected cases of child abuse or in the state of Florida where such a failure is a felony, it would be a clear violation of the current code not to report. In states in which coaches are not mandated reporters, failure to report a reasonable suspicion of child abuse, particularly if that failure contributes to the egregious harm or death of a child, would almost certainly bring disrepute on the sport—and be a violation of that portion of the existing code of conduct.[69]

Seventh, failure to protect children being abused in their own home or in other circumstances may increase the chance they are abused within swimming. There is a growing body of research documenting that when a child is abused in one way, they are often abused in multiple ways and may be more susceptible to abuse from more than one person. Specifically, researchers have found that 66% of abused children are abused in more than one manner, 30% experience five or more types of abuse, and 10% experience 11 or more different types of abuse.[70]

There are two reasons why this body of research is relevant to USA Swimming and other youth serving organizations. First, it highlights the importance of recognizing all forms of abuse. In detecting signs of physical abuse, for example, an organization may also be identifying a child who is sexually abused.

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[68] USA SWIMMING RULEBOOK 2013, Rule 304.3.6

[69] Rule 304.3.18 prohibits "Any other material and intentional act, conduct or omission not provided for above, which is detrimental to the image or reputation of USA Swimming, a LSC or the sport of swimming."

[70] Heather A. Turner, David Finkelhor, and Richard Omrod, *Poly-Victimization in a National Sample of Children and Youth,* 38(3) AMERICAN JOURNAL OF PREVENTIVE MEDICINE 323 (2010); David Finkelhor, Richard K. Omrod, Hather A. Turner, 31 JOURNAL OF CHILD ABUSE & NEGLECT 7 (2007).

Second, the research suggests that children abused in their own home may also be more susceptible to abuse in a youth serving organization or other context because the "emotional and behavioral problems that emerge from early victimization may create a generalized susceptibility to additional victimization across multiple contexts of the child's life."[71]

If this is true, it means that even if an organization's primary interest is in protecting children from sexual abuse within its confines, it cannot fully accomplish this aim unless it is also concerned about abuse in other contexts, including the child's home.

Eighth, child abuse in any form by any party impairs an athlete's abilities. There is a large body of research documenting the potential consequences of child abuse. Simply stated, abuse increases the chance of suffering from myriad medical and mental health conditions—conditions that may impair a child's ability to perform at a high level in swimming or in other contexts.[72]

Ninth, making it clear that all members are obligated to report abuse will aid in protecting coaches and others from harassment. One coach told us that he has, on several occasions reported child abuse and incurred the wrath of parents, board members and others who felt he had overstepped his bounds and run the risk of costing the team an important athlete. Given the dynamics within the sport, discussed elsewhere, of parents and others focusing primarily on the success of the team, as opposed to the needs of a maltreated child, the current rules fail to protect coaches who do the right thing. Obligating them to report—and providing whistle blower protection when they do is the right course of action.

Tenth, USA Swimming has a moral imperative to hold its members to the highest code of conduct. USA Swimming is unlike most youth serving organizations in that is operates under federal law and works to prepare athletes to represent the United States of America in the Olympics. This extraordinary honor brings with it extraordinary responsibility. At the very least, this includes reporting instances of abuse no matter the type of abuse, the location of the abuse, or the offender involved.

2. Develop a workable definition and response to cases of psychological abuse

When asked to define emotional or psychological abuse, the coaches and athletes we spoke to said they couldn't define it but they knew it when they saw it. This may be why, in 2012, USA Swimming's House of Delegates rejected a proposal from the Safe Sport committee to add a rule

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[71] Heather A. Turner, David Finkelhor, and Richard Omrod, *Poly-Victimization in a National Sample of Children and Youth,* 38(3) AMERICAN JOURNAL OF PREVENTIVE MEDICINE 323, 328 (2010).

[72] *See e.g.,* Vincent J. Felitti & Robert F. Anda, *The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders and Sexual Behavior: Implications for Healthcare,* in RUTH A. LANIUS, ERIC VERMETTEN, AND CLARE PAIN, THE IMPACT OF EARLY LIFE TRAUMA ON HEALTH AND DISEASE: THE HIDDEN EPIDEMIC (CAMBRIDGE UNIVERSITY PRESS 2010).

prohibiting the emotional or verbal abuse of an athlete[73] and instead incorporated some of the language into its prohibition against bullying.[74]

The problem with incorporating emotional abuse into the definition of bullying is that most civil and criminal statutes make a distinction between bullying and psychological abuse with the former committed among peers and the latter by someone in a position of authority such as a parent or a coach. In all 50 states, it is unlawful for parents to emotionally abuse a child and in at least 29 states it is unlawful for persons outside the home to emotionally abuse a child.[75] Acts of emotional abuse may also constitute violations of various criminal statutes such as malicious punishment of a child.

Although emotional abuse can be challenging to define,[76] there is no question as to its impact. Research has "implicated emotional abuse as a strong, possibly stronger, predictor than physical abuse of internalizing disorders, externalizing disorders, social impairment, low self-esteem, suicidal behavior, psychiatric diagnosis, psychiatric hospitalizations, and long term psychological functioning."[77]

Psychological abuse is often imbedded into other forms of abuse and "(t)here is an increasing consensus among researchers that psychological maltreatment is a core component, possibly *the* core component in child abuse and neglect."[78] In reviewing the USA Swimming case files, and in our interviews with survivors, there were many instances in which a coach who sexually abused a child also emotionally abused the victim. In one case, for example, a coach berated a child for not performing well at a meet and wouldn't allow her to get out of the water, deeming her unworthy to stand on the deck with her teammates. If instances such as these were reined in more quickly, it would also serve to rein in coaches who may violate children in other ways.

Given the large body of research documenting the impact of emotional abuse, and its clear prohibition under civil and criminal statutes, USA swimming should launch a conversation with its membership with the ultimate goal of creating understanding of the harm of emotional abuse and a workable definition for its rules. To this end, we suggest the following process:

1. Develop workshops on emotional abuse in the context of swimming and present these workshops in multiple forums within the sport.

[73] The proposed rule prohibited the "Emotional abuse of an athlete, defined as a pattern or series of repeated and targeted non-contact behavior that insult, threaten, degrade, humiliate, isolate and/or control the athlete, by a coach member or other non-athlete member who is in a position of authority over that athlete."
[74] USA SWIMMING RULEBOOK 2013, Rule 304.3.7.
[75] Exhibit B, included as an appendices to this report.
[76] JOHN E.B. MYERS, MYERS ON EVIDENCE OF INTERPERSONAL VIOLENCE 430 (2011).
[77] Stephanie Hamarman, et al, *Emotional Abuse in Children: Variations in Legal Definitions and Rates Across the United States,* 7(4) CHILD MALTREATMENT 303, 304 (2002).
[78] NELSON J. BINGGELI, ET AL, PSCYHOLOGICAL MALTREATMENT OF CHILDREN xi (2001).

2. Conduct a national survey of parents and coaches in which various hypotheticals of emotional abuse are presented and asking for an assessment of which scenarios cross the line.
3. Conduct a baseline study of abuse within the sport (discussed more fully later in the report) that will assist in determining the extent of psychological abuse within swimming and its potential impact on athletes.
4. Draft and implement a stronger rule or set of rules prohibiting emotional abuse.

In a three year study conducted in the United Kingdom, researchers found that emotional abuse was the most prevalent form of maltreatment in youth sports and that a third of children abused in this way reported that coaches were directly or indirectly involved.[79] It may be that psychological maltreatment is not as prevalent in USA Swimming, but we won't know that until we ask.

SCREENING AND SELECTION

Prior to 2010, USA Swimming required background checks on all coaches and officials but did not require clubs to conduct pre-employment screening. As a result, a coach who left one club under suspicion of abuse could more easily access employment at another. [80] This is because the background check would only detect certain criminal convictions.

To address this situation, at the 2010 USAS Convention the USA Swimming House of Delegates approved a rule (502.6.8), requiring clubs to comply with USA Swimming's Pre-employment screening program.[81] The rule went into effect August 11, 2011.

CDC/HHS screening and selection recommendations

The United States Department of Health and Human Services and Centers for Disease Control (CDC) recommends five pre-employment screening processes. First, they recommend informing an applicant about the organization's youth protection policies. This includes sharing the organization's code of conduct, requiring applicants to sign an acknowledgement of the child protection policies, and asking the applicant if they "have a problem with any of the policies and procedures" pertaining to child protection.[82]

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[79] NSPCC Research, *The Experiences of Children Participating in Organised Sport in the UK,* May 2011, available online at: http://www.nspcc.org.uk/Inform/research/findings/experiences_children_sport_wda85008.html (last visited January 19, 2014).
[80] *See generally,* T.J. Quinn and Greg Amante, *Sex Abuse Pervasive in USA Swimming,* April 27, 2010, available online at: http://sports.espn.go.com/espn/otl/news/story?id=5071820 (last visited January 18, 2014); *See* ABC News, *The Coaches' Secret* at: http://abcnews.go.com/Blotter/Swimming/ (last visited January 18, 2014).
[81] Specifically, this rule provides "All clubs are required to comply with USA Swimming Pre-Employment Screening Procedures for New Employees for all new employees who are required to be members under 305.4 or 502.6.4." USA SWIMMING RULEBOOK 2013, Rule 502.6.8.
[82] Janet Saul & Natalie C Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION 7 (2007).

Second, the CDC recommendations include a written application containing questions "pertinent to child sexual abuse screening."[83] This may include asking questions about various scenarios such as boundary issues to gauge the applicant's potential willingness to "disregard the organization's policies and procedures" or "handle a situation poorly."[84]

Third, the CDC recommends a "personal interview" to follow up on questions in the written application and to "ask additional questions to screen for child sexual abuse risk factors."[85] The National Center for Missing and Exploited Children has a similar recommendation for youth sports programs.[86]

Fourth, the CDC recommends obtaining verbal, not just written references for applicants and matching references with employment history. The CDC also recommends a number of questions to be used in speaking to a reference that directly pertain to child protection including "how does this person interact with youth" and "is there any reason this person should not work with youth?"[87]

Finally, CDC/HHS recommends a criminal background check although it notes these checks "will not identify most sexual offenders because most have not been caught."[88]

USA Swimming screening and selection

The USA Swimming pre-employment screening requires clubs to have "employment reference checks or verifications" and, where there are multiple employers, to check the three most recent employers. Clubs are also required to verify the highest held educational degree and to obtain a state motor vehicle report.[89] USA Swimming also recommends vendors who can assist with this screening.[90]

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[83] Id at 5.
[84] Id.at 5-6.
[85] Id.
[86] SAFE TO COMPETE: AN INTRODUCTION TO SOUND PRACTICES FOR KEEPING CHILDREN SAFER IN YOUTH-SERVING ORGANIZATIONS 7 (NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN 2013) (Recommending that, during "an in-person interview or while conducting reference checks, certain types of questions may reveal areas of concern or raise 'red flags.'").
[87] Id at 7.
[88] Janet Saul & Natalie C Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION 7 (2007).
[89] USA Swimming Pre-Employment Screening Program Summary, available online at: http://www.usaswimming.org/_Rainbow/Documents/b296f7d4-f02f-4a0b-90bd-a07169afb3ea/PES%20Program%20Summary%20-%20Final%208-30-11.pdf (last visited January 6, 2014)
[90] USA Swimming recommends: Acxiom (Cleveland, OH); BackgroundChecks.com (Dallas, TX), and Frasco Profiles (Burbank, CA). USA Swimming also states clubs "are not required to use these vendors as there are several options available for implementing the Pre-Employment Screening Program." Id.

In addition to these required screens, USA Swimming also recommends a "Social Network Search" and a "Google Media Search."[91] The purpose of these searches is to locate concerning statements or postings of applicants that would indicate they are a risk to work with children.

Analysis of the pre-employment screening

The required and recommended pre-employment policies USA Swimming has put in place are sound and should be continued. However, there are several weaknesses or limitations.

First, the policies would not provide potentially relevant information on employees hired prior to the enactment of the screening program. That is because these employees were grandfathered in without such a screening.

Second, the policies provide little protection in the case of a coach owned club. A swimming club owned by a coach cannot realistically or objectively conduct an employment screen on itself. This, of course, is not to suggest a coach owned club is necessarily riskier than any other club. Indeed, if a coach-owned club does not have an offender on staff it is far safer than another club that has conducted pre-employment screening but an offender has "passed" all attempts to determine potential risks. It is, though, a weakness in the pre-employment screening parents should be aware of.

Third, the pre-employment screening falls short of the CDC/HHS recommendations for an application, signed acknowledgment of child protection policies, and personal interview in which youth protection is discussed.

Fourth, although USA Swimming requires clubs to verify they have conducted a pre-employment screening and there is potential repercussion if a club misrepresents having done a pre-employment screening, [92] there is presently no mechanism to determine if clubs are actually doing so.

Recommendations for improving screening and selection

1. **Recommend to clubs additional pre-employment screening tools of a written application, personal interview and written acknowledgment of the code of conduct pertaining to child protection**

[91] Available online at: http://www.usaswimming.org/_Rainbow/Documents/eb0c9fec-2044-4011-bfb4-c587ca62bb02/PES%20Screening%20Guidelines%209-17-11.pdf (last visited January 23, 2014).
[92] Misrepresenting the pre-employment screening was completed may violate Article 304.3.14 of the 2013 USA Swimming Code of Conduct which prohibits any "act of fraud, deception or dishonesty in connection with any USA Swimming-related activity."

USA Swimming states it "does not hire, supervise, or manage a club's employment relationship with its coaches, staff, or volunteers, as that is an independent responsibility of the club."[93] For this reason, USA Swimming may be reluctant to dictate to clubs various questions or practices to be used in hiring coaches or other staff who will interact with children. However, USA Swimming can certainly encourage member clubs to follow the CDC/HHS recommendations of a written application and personal interview in which child protection issues are discussed as well as a written acknowledgment of the USA Swimming code of conduct as it pertains to child protection.

Adherence to the CDC recommendations will not necessarily catch someone intent on hurting a child. Many sex offenders and other child abusers are skilled at manipulation and know the "right" answers to give in a job interview. However, the mere fact these questions are asked will convey to an offender the seriousness with which these issues are taken at a particular club. According to the CDC, in "letting applicants know your organization is serious about protecting youth, you may deter some people at risk of abusing youth from applying for staff or volunteer positions."[94] Simply stated, child abusers operate best in organizations that seldom discuss child protection. Discussing this issue as a critical component of the job, beginning at the initial interview, may deter some offenders.

2. Develop materials to assist clubs in this process

Many USA Swimming clubs are small operations where a handful of parents or others may sit around a kitchen table and discuss who may be the next coach. Oftentimes, someone may suggest a relative, friend or "friend of a friend" for the job. In this scenario, it is easy for a club to fall short of a rigorous pre-employment screening program.

To the extent USA Swimming can develop materials in assisting these clubs, the greater the chance these clubs will professionalize their hiring. In its Safe Sport Handbook, USA Swimming provides "model policies" for team travel, electronic communication, anti-bullying, and locker room monitoring.[95] It would be appropriate to add a "model policy" for in-person interviewing of applicants who will be working with children. At the very least, USA Swimming should encourage clubs to look at the in-person screening employment recommendations of the CDC manual.

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[93] USA Swimming Pre-Employment Screening Program Summary, available online at: http://www.usaswimming.org/_Rainbow/Documents/b296f7d4-f02f-4a0b-90bd-a07169afb3ea/PES%20Program%20Summary%20-%20Final%208-30-11.pdf (last visited January 6, 2014)

[94] J. Saul & NC Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION 4 (2007).

[95] SAFE SPORT HANDBOOK 27-40, available online at: http://www.usaswimming.org/_Rainbow/Documents/eca565d6-d11a-4c85-b5bd-307de73b6558/Safe%20Sport%20Handbook-FINAL.pdf (last viewed January 7, 2014).

3. **The Safe Sport training program for parents should include information on asking questions about pre-employment screening**

The Safe Sport training program for parents, discussed elsewhere in this report, should include information that will help parents in asking questions about the pre-employment screening practices of a given club. This can be as simple as including a drop down box parents taking the course can download and use when looking at potential clubs for their children.

If parents become more vigilant in asking questions about a club's pre-employment screening policies, it is predictable clubs will be more vigilant in conducting this screening. This is because competition for swimmers is intense in some areas[96] and clubs will respond to the demands of their consumers. However, this will only happen if parents are aware of these issues and ask pertinent questions.

USA Swimming Background Checks

In 2006, USA Swimming implemented a program requiring criminal background checks for coaches.[97] At the 2010 convention, the House of Delegates expanded the background check program to include all non-athlete members.[98] The background checks are conducted by Sterling Global Background Checks,[99] a background check company headquartered in New York City.

Coaches and officials are required to undergo a more comprehensive background check (level 2) and other non-athlete members are required to undergo a less comprehensive (level 1) background check. Both background checks involve national database searches for convictions, including sex offender searches in all 50 states, social security and identification traces,[100] and a search of watch lists from various national and international databases. The only difference between level 1 and 2 background checks is that level 2 includes a search in the county of

[96] This issue is important enough that USA Swimming has a number of rules pertaining to advertising and the recruiting of athletes. Specifically, it is a violation of the code of conduct to engage in action, "other than through general advertising, by a coach, owner, officer, volunteer, representative, or employee of a swim club, or a USA Swimming or LSC employee, either through direct contact with an athlete or the encouragement of others, to recruit or otherwise encourage an athlete who is already a member of a USA Swimming member swim club to leave that club, unless the acting party received prior written approval to recruit or encourage the athlete to change affiliation from the designated club representative of the athlete's existing USA Swimming-member swim club or contact is initiated by the athlete, the athlete's parent or authorized representative. " The rule goes on to define "general advertising." USA SWIMMING 2013 RULEBOOK 304.3.16.

[97] *See* Background Checking Program, available online at: http://www.usaswimming.org/DesktopDefault.aspx?TabId=1678&Alias=Rainbow&Lang=en (last visited January 6, 2014)

[98] Id.

[99] For additional information visit: http://www.sterlinginfosystems.com/ (last visited January 23, 2014).

[100] This is designed to ensure the person being screened is who he or she claims to be.

residence for the past 10 years and level 1 includes only a search in the county of residence for the past 7 years.[101]

According to USA Swimming's Safe Sport Handbook, there are a number of felony and misdemeanor convictions, or the pending of charges that would be an "automatic disqualifier" from membership.[102] There are a number of additional offenses that would be a "potential disqualifier" pending further review from USA Swimming.[103] An individual who is disqualified, can dispute the accuracy of the background check before the USA Swimming Background Check Appeals Panel.

The limitations of background checks

Even rigorous background checks catch very few offenders.[104] This is because most sex offenders, or other child abusers, are never caught. Indeed, one study suggests a sex offender could accumulate hundreds of victims with no more than a 3% chance of getting caught by the authorities.[105]

In a pilot study of rigorous, finger print based background checks of more than 100,000 applicants for youth serving work, only 2% failed the background check with an additional 4% being deemed a "yellow light"—meaning something appeared on the check that warranted caution.[106]

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[101] Pursuant to the Fair Credit Reporting Act, many background checks cannot go back more than seven years. *See generally,* Fair Credit Reporting Act, 15 USC SECTION 1681 et seq. (2013).

[102] Automatic disqualifiers are felony convictions involving violence against a person, a violent crime involving a weapon, and animal abuse. It is also a disqualifier to have a conviction or pending charge involving a sexual crime or sexual misconduct (including lewd conduct and violation of offender registration requirements), drug possession or paraphernalia in the past three years, other drug related crimes (including distribution, trafficking, manufacturing) within the previous 7 years) and child endangerment, neglect or abuse. SAFE SPORT HANDBOOK 15, available online at: http://www.usaswimming.org/_Rainbow/Documents/eca565d6-d11a-4c85-b5bd-307de73b6558/Safe%20Sport%20Handbook-FINAL.pdf (last viewed January 7, 2014).

[103] An applicant for USA membership "will be subject to review for disqualification" if they are convicted of "other felonies not included in the Automatic Disqualifiers" list. They are also subject to possible disqualification if they have misdemeanor convictions or pending charges for drug related crimes not covered in the automatic disqualifiers list, violence against a person (including crimes involving firearms), destruction of property (including arson, vandalism, criminal mischief), and abuse or neglect of an animal. SAFE SPORT HANDBOOK 15, available online at: http://www.usaswimming.org/_Rainbow/Documents/eca565d6-d11a-4c85-b5bd-307de73b6558/Safe%20Sport%20Handbook-FINAL.pdf (last viewed January 7, 2014).

[104] Jerry Sandusky, who was convicted of sexually abusing multiple boys, would have passed a background check for most of his life. *See generally,* Malcolm Gladwell, *In Plain View: How Child Molesters Get Away with It,* THE NEW YORKER, September 24, 2012 (detailing Sandusky's "sophisticated grooming operation" and his use of child care professionals to access vulnerable children).

[105] Gene Abel, et al, *Self-Reported Sex Crimes of Nonincarcerated Paraphiliacs,* 3 JOURNAL OF INTERPERSONAL VIOLENCE 3 (1987).

[106] Kristen Anderson, National Center for Missing & Exploited Children, *Criminal Background Checks: They're not all the Same,* presented at the National Youth Symposium, Grapevine, Texas, October 14, 2013. *See also,* REPORT OF THE NATIONAL TASK FORCE ON THE CRIMINAL BACKGROUNDING OF AMERICA (2005).

This is not, of course, to suggest that background checks are of no value. A rigorous background check may detect some offenders who have already been convicted and are seeking to gain access to children through a youth serving organization. A rigorous background check may deter convicted offenders from even applying to an organization if they believe they will be screened out.[107] Moreover, a rigorous background check sends a message to everyone that child maltreatment is real and precautions need to be taken.

Analysis of USA Swimming background checks

The USA Swimming background checks, conducted by Sterling Global Background Checks,[108] are extensive, and conducted regularly. In addition to the initial background check, non-athlete members undergo a recurring monthly background check. As a result, non-athlete members are checked more than 450,000 times a year. The breakdown of new and recurring background checks conducted on USA Swimming non-athlete members for the years 2011-2013 is as follows:

	2011	2012	2013
New Background Checks	33,778	15,150	33,533
Recurring Orders	264,101	447,959	464,974[109]

In reviewing the files of banned and suspended coaches and officials, at least four non-athlete members gained access to children despite previous convictions. In two of these cases, the coaches avoided detection because they were coaches at a time when background checks were not conducted. In another instance, the convictions were minor DUI convictions which would presumably now be detected under the motor vehicle reports conducted by the local swimming clubs.[110] The final case involved a cocaine conviction so old it would not be detected even under the current background checks system.

[107] Some convicted sex offenders will continue to apply for membership simply as a "role of the dice" hoping that they will somehow beat the system. *See* Kristen Anderson, National Center for Missing & Exploited Children, *Criminal Background Checks: They're not all the Same,* presented at the National Youth Symposium, Grapevine, Texas, October 14, 2013.

[108] For more information about this vendor, visit their website at: http://www.sterlinginfosystems.com/global.htm (last visited January 7, 2014)

[109] The source of these numbers was provided in an e-mail (January 7, 2014) from Sterling Background Checks to Susan Woessner, USA Swimming Safe Sport Director.

[110] A minor DUI would not disqualify someone from working with children but may justify questions about traveling with children or other relevant conduct.

In terms of screening out applicants or current non-athlete members it may be helpful to look at data from the past two years. In 2012, only 18 of the background checks were scored "red" meaning they had a conviction which was an automatic disqualifier. An additional 40 applicants received a "yellow" score which meant they had a conviction not related to child abuse or another automatic disqualifier and they could request a hearing to make an argument they should be allowed into USA Swimming. In 2013, USA Swimming background checks produced 43 yellow and 29 red scores.

These numbers reflect the value in conducting background checks while simultaneously reflecting how very few sex offenders or other potential child abusers are caught through this process.

Recommendations for improving background checks

1. **USA Swimming should maintain its current background check program but explore the feasibility, perhaps in collaboration with other youth-serving organizations, of one day moving to a fingerprint based check**

It would be possible to expand the USA Swimming background check policy by conducting a fingerprint based check. A fingerprint based check is more likely to catch an alias or otherwise identify someone attempting to avoid detection.[111] However, fingerprint based checks are not as timely, may not be available to all non-profits,[112] are more expensive and still may not detect every conviction if, for example, a fingerprint was not taken at the time of the arrest.[113]

The National Center for Missing & Exploited Children (NCMEC) did operate a pilot nationwide fingerprint program that was able to generate results in no more than two days and which cost only $13.25 per check.[114] Unfortunately, this pilot program expired on March 31, 2011.[115]

USA Swimming may wish to explore with NCMEC, congressional leaders and other youth serving organizations the value of reinstating the NCMEC fingerprint program and the feasibility of participating in an even broader background check. At the present time, though, the USA Swimming background check program appears to be a comprehensive approach that exceeds that of many organizations.[116]

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[111] *See generally,* Kristen Anderson, National Center for Missing & Exploited Children, *Criminal Background Checks: They're not all the Same,* presented at the National Youth Symposium, Grapevine, Texas, October 14, 2013. *See also,* REPORT OF THE NATIONAL TASK FORCE ON THE CRIMINAL BACKGROUNDING OF AMERICA (2005).
[112] This is because governmental agencies may not allow private companies to access their fingerprint data.
[113] *See generally,* Kristen Anderson, National Center for Missing & Exploited Children, *Criminal Background Checks: They're not all the Same,* presented at the National Youth Symposium, Grapevine, Texas, October 14, 2013.
[114] Id.
[115] Id.
[116] Compare, for example, USA Swimming's background check policies with those recommended by the National Alliance for Youth Sports. These standards can be accessed at: http://www.nays.org/cmscontent/File/Screening_UPDATE_2012.pdf (last visited January 7, 2014)

EDUCATION AND TRAINING

The Centers for Disease Control/U.S. Department of Health and Human Services guidelines for youth serving organizations recommends training for three categories of people within a youth serving organization. First, the CDC recommends training for employees and volunteers.[117] Second, CDC recommends training for "parents and guardians" of youth in the organization.[118] Third, CDC recommends training for the youth in the organization.[119] Within each of these categories, CDC has recommendations for the content of each of the training categories.[120]

To meet each of these standards, USA Swimming retained the services of Praesidium, a corporation that assists youth serving organizations in developing training and polices to address sexual abuse.[121] Praesidium is more than two decades old and lists a number of clients on its website including camps, child care, faith-based communities, higher education, parks and recreation, resorts, social services, youth development, and youth sports.[122]

Praesidium conducts a "root cause analysis" of cases of sexual abuse within an organization and, based on its review of over 4,000 cases, concludes sexual abuse occurs when an organization fails in one of eight areas, including training.[123] Consistent with this approach, Praesidium met with USA Swimming personnel and reviewed summaries of previous cases prior to developing the training programs and materials.

The Safe Sport "Athlete Protection Training Course" was released in September of 2011 and required to be taken annually by all coaches and other non-athlete members of USA Swimming. To date, over 35,000 members have taken this course. As part of the course, coaches must take and pass a multiple choice examination.

The Safe Sport training for parents was released in July of 2012. This training is free and online but is voluntary. The Safe Sport athlete training was released in the Spring of 2013 and is also free and available online to USA Swimming athletes. The athlete course is also voluntary and is

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[117] Janet Saul & Natalie C Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION 24 (2007).
[118] Id. at 27
[119] Id. at 28.
[120] For example, the training for employees includes a listing of "child sexual abuse information" that includes defining the term, providing information about the prevalence of abuse, risk and protective factors for abuse, and addressing common myths about offenders. Janet Saul & Natalie C Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION 24 (2007).
[121] For more information, visit Praesidium's website at: http://website.praesidiuminc.com/ (last visited January 16, 2014).
[122] For a detailed listing of Praesidium clients, see: http://website.praesidiuminc.com/about-praesidium/child-abuse-prevention/ (last visited January 16, 2014).
[123] The other areas are policies, screening and selection, monitoring and supervision, feedback systems, consumer participation, responding, and administrative practices. *See* http://website.praesidiuminc.com/about-praesidium/ (last visited January 16, 2014). Although the "root cause analysis" may be rooted in research, it has not been peer reviewed or published.

targeted for ages 12-18. As of January 13, 2014, a total of 4579 parents and 1793 athletes have taken these respective courses.

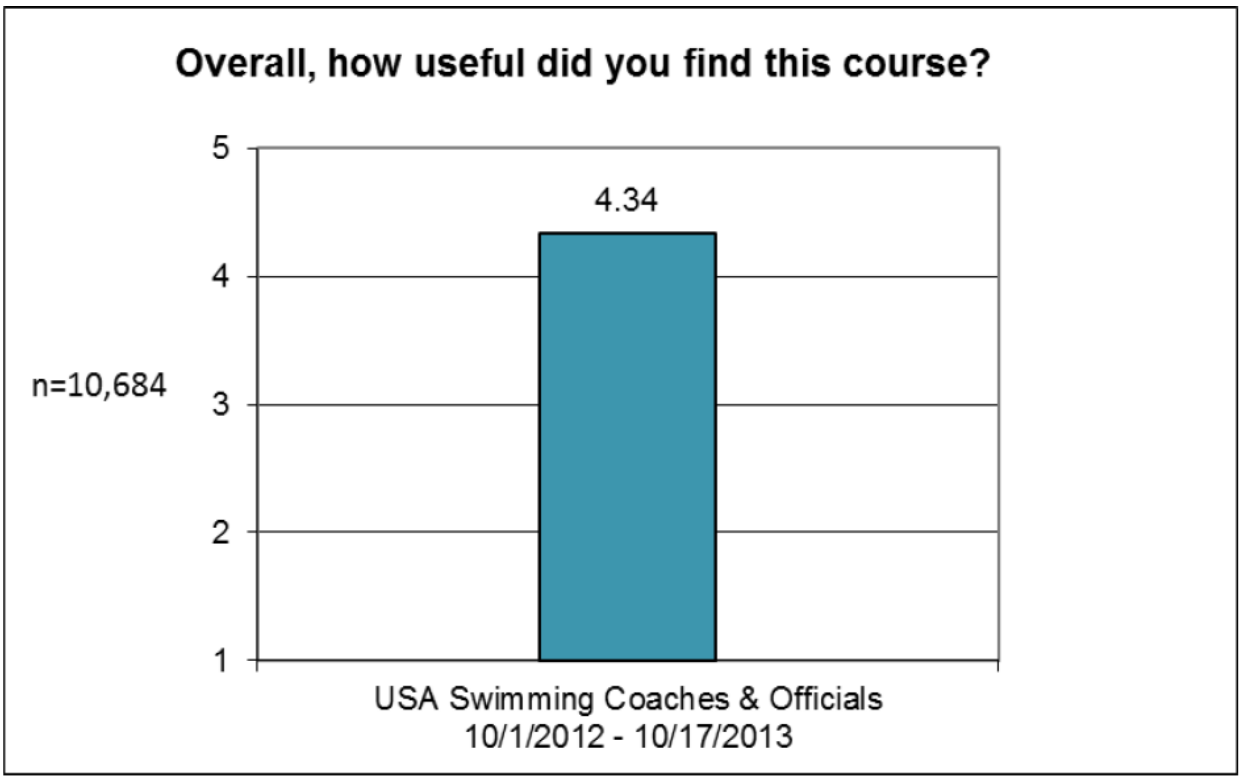
Strengths of USA Swimming's Training Programs

Consistent with the CDC guidelines, USA Swimming is providing training to parents, athletes and coaches. The training also covers the subject matter suggested by the CDC and, in some areas, exceeds it.[124] For example, the CDC guidelines only focus on child sexual abuse but the USA Swimming training programs also address physical abuse and psychological abuse. The training includes reading, videos, and materials that can be downloaded for additional information. The requirement of passing a test provides some assurance that the training for coaches is conveying various concepts. The fact that the training for coaches is required to be taken multiple times is also consistent with the CDC standard for ensuring that training "is ongoing and not just a one-time event."[125]

Although not everyone we spoke to likes the training program (one coach told us the training was not deterring coaches from abusing children but teaching them how to do it), the vast majority of interviewees familiar with the program spoke highly of the training content. One survivor found each of the training programs helpful in creating an awareness and combating the "tactics that coaches have used to abuse swimmers."

The overwhelming majority of coaches or other non-athlete members who have taken the training rate the program very highly. The graph below indicates how highly regarded the program was considered by the more than 10,000 coaches and officials completing the program between October of 2012 and October of 2013.

[124] J. Saul & NC Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION 22-28 (2007).
[125] Id. at 23.



The individual survey comments from coaches and officials are also very positive. Representative comments include:

- "The videos were powerful."
- "I have been a teacher and a coach in various capacities throughout my life. This is by far the most comprehensive and professional course on this matter that I have ever participated in."
- "Awesome! It's a shame this wasn't around 20 years ago when I first started coaching. I was on a team where a coach was harming kids…wish I had known what to look for. Now I do!"
- "I enjoy this info every year."

Although most comments from the online survey were positive, one coach called the training a "waste of time" and some who took the survey said they wish the modules could be different so they could learn something new as opposed to repeating the same training.

Although the training programs have been well received, it is more challenging to determine if they have been effective in deterring offenders and in helping non-offenders to recognize and report boundary violations or instances of abuse. Praesidium does not have research on this broader question but says that clients have reported an increase in reports after the training was implemented. This has certainly been the case with USA Swimming—with the organization receiving more reports of abuse in the three years since Safe Sport was launched than in the previous 20 years of the organization.

Although a correlation between an increase in reports and the launch of Safe Sport does not mean one caused the other,[126] there are a number of peer-reviewed studies detailing the reasons most people fail to report including ignorance, lack of certainty and fear of retaliation.[127] There are also studies suggesting that training can overcome these and other obstacles.[128] In fact, the National Incidence Study, the largest child maltreatment study the federal government conducts every decade has found a correlation between training and the reporting of abuse.[129] Accordingly, it is a reasonable inference to conclude the Safe Sport training is having a positive impact in generating reports.

Weaknesses in the Safe Sport training

There are also weaknesses and areas for improvements in the Safe Sport training. The numbers of athletes and parents participating in the program is very low. There is no training mechanism for younger athletes currently in place. The existing training is inaccessible to children or adults with visual or hearing disabilities and is only offered in one language. The physical abuse portion of the training notes that some markings may be indicative of abuse but does not provide guidance on differentiating suspicious versus non-suspicious injuries a coach may see. Although many USA Swimming coaches are mandated reporters, the training focuses primarily on reporting abuse committed within the organization as opposed to simply reporting abuse. There are also a number of studies on resiliency which could prove very helpful to coaches and clubs and could be easily incorporated into the training. To more fully understand and address these and other shortcomings, we offer the following recommendations.

Recommendations

1. **Require children who are athlete members 12-18 to take the Safe Sport training**

[126] An increase in reports could also have been influenced by media coverage or other factors.
[127] Studies detailing the failure to report and the reasons for these failures include: David Finkelhor, *Is Child Abuse Overreported?,* PUB. WELFARE, Winter 1990 at 25; Steven Delaronde, et al, *Opinions Among Mandated Reporters Toward Child Maltreatment Reporting Policies,* 24 CHILD ABUSE AND NEGLECT 901, 905 (2000); Maureen C. Kenny, *Child Abuse Reporting: Teachers' Perceived Deterrents,* 25 CHILD ABUSE & NEGLECT 81, 88 (2001); Margaret H. Meriwether, *Child Abuse Reporting Laws: Time for a Change,* 20 FAM. L. Q. 141, 142 (1986); Martha Bailey, *The Failure of Physicians to Report Child Abuse,* 40 U. TORONTO FACULTY L. REV. 49, 55, 57 (1982); Gail Zellman, *Reducing Underresponding: Improving System Response to Mandated Reporters*, JOURNAL OF INTERPERSONAL VIOLENCE 115, 116-117 (March 1991).
[128] Krisann M. Alvarez, Maureen C. Kenny, Brad Donahue, & Kimberly M. Carpin, *Why are Professionals Failing to Initiate Mandated Reports of Child Maltreatment, and are there any Empirically Based Training Programs to Assist Professionals in the Reporting Process?,* 9 AGGRESSION AND VIOLENT BEHAVIOR 563, 574-575 (2004).

[129] UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, THE FOURTH NATIONAL INCIDENCE STUDY ON CHILD ABUSE AND NEGLECT 9-4 (2010) (Noting that "More of those who had received information or training had reported suspected child maltreatment.")

In reviewing academic studies on the effectiveness of abuse prevention education for children, researchers have found "ample empirical evidence" in support of these programs.[130] Another researcher concludes "the weight of currently available evidence shows that it is worth providing children with high-quality prevention education."[131] Simply put, children are more likely to use self-protection techniques if they have been instructed on how to do this.[132]

Although the research is clear that personal safety education will increase the chance a child may take actions to protect him or herself, this education cannot work if children do not receive the training. As of this writing, only 0.5% of the children in USA Swimming have taken the Safe Sport program. Sex offenders and other abusers prey on the naivete of youth and the low participation of child athletes in the program makes it that much easier for any offender to take advantage of the youth in his or her care.

Although parents and athletes have numerous obligations and the addition of one more responsibility may seem unnecessary, the reality is that coaches and others in USA Swimming have abused children on multiple occasions and *counted* on the child's lack of knowledge in keeping a boy or girl quiet. A significant next step for the organization is to simply require child athletes to take the training.[133]

USA Swimming is in the early stages of providing in-person, interactive training of adolescents and teens in its program. As of this writing, 150 athletes have received this training. This is an important step because there is "ample research" that training models involving "active participation" are more effective than passive forms of training (such as online videos).[134]

In the years ahead, if USA Swimming develops a Safe Sport training coordinator at the club level (a concept discussed elsewhere in this report), it may be possible to dramatically expand this more interactive, effective form of training. To the extent clubs develop greater collaborations with local child protection organizations there may also be any number of local experts who could help provide this training at little or no cost.

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[130] Sandy K. Wurtele and Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent Focused Approaches,* in KEITH L. KAUFMAN, THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK 107, 110 (2010).
[131] Id., citing David Finkelhor, *Prevention of Sexual Abuse Through Educational Programs Directed Toward Children,* 120 PEDIATRICS 640, 644 (2007).
[132] David Finkelhor and J. Dziuba-Leatherman, *Victimization Prevention Programs: A National Survey of Children's Exposure and Reactions,* 19 CHILD ABUSE & NEGLECT 129 (1995).
[133] Training is important, in part, because children abused by a coach may not view themselves as victims. *See generally,* Kenneth V. Lanning, *The Compliant Victim,* 14(2) APSAC ADVISOR (2002).
[134] Sandy K. Wurtele and Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent Focused Approaches,* in KEITH L. KAUFMAN, THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK 107, 110 (2010).

2. **Develop personal safety materials for younger children—and require parents to review them with younger athletes**

According to USA Swimming data of 94 cases of abuse investigated since 2010, more than 13% of the children were ten years of age or younger. In general, young children "report minimal knowledge of sexual abuse and self-protection skills."[135] Research indicates that many young children believe that abuse is their fault, that they should not report secret touching and, if they wanted to report, didn't know how to.[136]

Although there is a clear need to provide personal safety education for younger children, the current athlete protection training is aimed only at adolescents and teenagers. To address this, it would be wise to develop written materials for younger children and to require parents or other caretakers to go through this material with these children and document having done so. Researchers have found that "when provided with teaching materials, parents can effectively teach their children to recognize, resist and report" child sexual abuse.[137] Other youth serving organizations have moved in this direction[138] and we encourage USA Swimming to follow suit.

3. **Require parents to take Safe Sport training**

As of this writing, no more than 1.4% of parents have taken the Safe Sport training.[139] This is problematic for multiple reasons. Research shows that parents know very little about child sexual abuse, that they subscribe to a number of myths about abuse, that few parents discuss sexual abuse prevention with their children and those who do often give inaccurate information suggesting, for example, that perpetrators are often social misfits or strangers.[140]

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[135] Sandy K. Wurtele and Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent Focused Approaches,* in KEITH L. KAUFMAN, THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK 107, 109 (2010).
[135] Id., citing David Finkelhor, *Prevention of Sexual Abuse Through Educational Programs Directed Toward Children,* 120 PEDIATRICS 640, 644 (2007).

[136] Sandy K. Wurtele and Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent Focused Approaches,* in KEITH L. KAUFMAN, THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK 107, 109 (2010).
[137] Sandy K. Wurtele and Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent Focused Approaches,* in KEITH L. KAUFMAN, THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK 107, 113 (2010).
[138]For example, the Boys Scouts of America requires training for all children as well as parental involvement and has created a "parent's guide" to facilitate this education. *See* http://www.scouting.org/Training/YouthProtection/QA.aspx (last visited January 17, 2014).
[139] A total of 4,579 parents or guardians have taken the course. If we assume each of the 317,103 children in USA Swimming have only one parent, this would mean that only 1.4% of them have taken the training. Since, of course, many of these children have both parents, the percentage may be less though some parents have multiple children in swimming.
[140] Sandy K. Wurtele and Maureen C. Kenny, *Primary Prevention of Child Sexual Abuse: Child and Parent Focused Approaches,* in KEITH L. KAUFMAN, THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK 107, 112 (2010).

From our review of files as well as the interviews, there are numerous instances in USA Swimming in which parents have supported abusive coaches even when the evidence was clear. In many cases, parents have written letters of support claiming they would know if the coach was a sex offender and they felt perfectly comfortable allowing their children to be in the company of the accused coach. In one instance, a parent called USA Swimming and complained because their child could no longer take private swimming lessons with a banned coach.

The mothers and fathers expressing these sentiments are not necessarily bad parents—they simply have a poor understanding of the dynamics involved in cases of child abuse and are often unaware of the specific facts in a given case. Although most adults are opposed to child abuse in the abstract, the actual circumstances of abuse are never abstract and they typically involve a coach or other figure the parent has known and trusted for a long time. Under these circumstances, it is often difficult to accept evidence of abuse. Unless this dynamic is changed, the children of these parents will be at an elevated risk of abuse within the organization.

There is, though, another reason to require parental training. When parents unwittingly rally around an abusive coach and ostracize a child or family making an outcry, there is a potential chilling effect on other victims. In a number of cases, victims have expressed fear of the swimming community supporting an abusive but popular coach if they disclosed maltreatment. Accordingly, until this dynamic is changed in swimming, some children will simply not come forward.[141]

4. **Develop a version of Safe Sport accessible to children or parents with a disability**

There are 1,613 children participating in USA Swimming who have a physical, cognitive, visual or hearing impairment. Although these numbers are relatively low, a number of studies find that children with a disability are at greater risk of abuse. [142] A publication from the United States Department of Health and Human Services recognizes this risk and proposes a number of prevention initiatives including training to help children with disabilities protect themselves.[143] According to the Children's Bureau:

> In the past, the mistaken belief that children with disabilities are not vulnerable to abuse or neglect and do not need information about it has kept some parents and professionals from communicating openly with children on the subject. Most researchers now agree that teaching children with disabilities about the risks of

[141] A sex offender treatment provider reviewing this report pointed out that, in her experience, sex offenders are emboldened to strike again when they see a community support them and ostracize a victim. This is because it increases their confidence they can get away with their crimes.
[142] *See e.g.,* P.M. Sullivan & J.F. Knutson, *Maltreatment and disabilities: a population-based epidemiological study.* 24 CHILD ABUSE AND NEGLECT, 1257 (2000); K. Stalker & K. McArthur, *Child Abuse, Child Protection and Disabled Children: A Review of Recent Research,* 21 CHILD ABUSE REVIEW 24 (2012).
[143] Children's Bureau, United States Department of Health and Human Services, *The Risk and Prevention of Maltreatment of Children with Disabilities* 10 (March 2012), available online at: https://www.childwelfare.gov/pubs/prevenres/focus/focus.pdf (last visited January 17, 2014).

abuse and neglect as well as ways to communicate with others can help reduce maltreatment among this population of children.[144]

Because the Safe Sport training involves reading, hearing, seeing and cognitive abilities, all or portions of the athlete or parent trainings may be inaccessible to children or parents with a disability. Although USA Swimming could simply modify the existing programs, there are also other training programs that specifically address children with special needs that could be considered.[145]

5. **Strengthen the physical abuse section of the Safe Sport training**

Since a swimsuit exposes a great deal of a child's body, coaches may be able to see signs of physical abuse to a greater extent than teachers or other mandated reporters. Because approximately 66% of children abused in one way are abused in another,[146] doing a better job of detecting physical abuse may also enable those in the sport to better detect instances of sexual abuse.

The Safe Sport training for coaches advises that they may see "physical evidence" of abuse including "bruises, cuts, burns, fractures, lacerations or abrasions." While this statement is accurate, the current training does not delineate what type of injuries are suspicious. Not every bruise, cut or other marking is problematic. In our interviews, we spoke with coaches who had observed unusual markings on a child and reported the injuries to the authorities. Others expressed a desire to have a better understanding.[147]

Although coaches are not doctors and are not qualified to diagnose abuse, they can learn common areas that are injured during abusive episodes as well as instruments commonly used on a child's body. As a simple illustration, accidental injuries are more likely to occur to the shins, on the skin over the bony projections of the hips and spine, on the lower arms, on their foreheads, and under the chin. Inflicted injuries "occur more frequently on the upper arms, the trunk of the body, the upper anterior legs, the sides of the face, ears, neck, genitalia and buttocks."[148]

In would be easy to add a "drop-down box" to the existing Safe Sport training that provides coaches with a "cheat sheet" of suspicious injuries so that they can have greater confidence in

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[144] Id. at 9.
[145] Id. at 11.
[146] Heather A. Turner, PhD, David Finkelhor, PhD, & Richard Omrood, PhD, *Poly-victimization in a National Sample of Children and Youth,* 38 AMERICAN JOURNAL OF PREVENTIVE MEDICINE 323 (2010).
[147] One coach, for example, told us of a case in which a child had scratches she said came from her cat but looked to him more like human scratches. He told us additional training may have given him more confidence in determining whether or not to make a report.
[148] NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE, INVESTIGATION AND PROSECUTION OF CHILD ABUSE THIRD EDITION 147 (2004). ANGELO P. GIARDINO, MD & RANDALL ALEXANDER, MD, CHILD MALTREATMENT THIRD EDITION 67-69 (2005) (summarizing research on common areas for intentionally inflicted injuries as well as commonly used instruments in abuse).

reaching out to a child protection professional when they encounter something concerning. If USA Swimming expands its Safe Sport training by developing additional topics that could be viewed by coaches in alternating years, physical abuse and other relevant topics could be covered in greater detail.

6. **Incorporate Adverse Childhood Experience (ACE) Research Into Safe Sport Training**

There is a large, prestigious body of research conducted by Kaiser Permanente's Department of Preventive Medicine in collaboration with the United States Centers for Disease Control. This research, entitled *Adverse Childhood Experiences* (ACE) has been widely heralded as groundbreaking[149] and, if incorporated into the Safe Sport training, could assist USA Swimming in multiple ways. Before detailing how the research could be helpful to USA Swimming in protecting children, let's briefly review the research itself.

Adverse Childhood Experience (ACE) Research

ACE research began when medical professionals in a major weight loss control program found that the patients who were the most successful in losing weight would drop out of the program and rapidly regain the weight. As it turns out, these patients had endured various forms of childhood trauma, or "adverse childhood experiences" such as physical, sexual or emotional abuse. These patients ate excessively as an unconscious or conscious coping mechanism. To these patients, overeating was a solution to "problems dating back to the earliest years, but hidden by time, by shame, by secrecy…"[150]

Having found a correlation between obesity and child abuse, the researchers contemplated the possibility that other medical and mental health conditions could be related to abuse. To this end, they queried over 17,000 adult patients to determine if they had endured one or more adverse childhood experiences.

The prevalence and types of abuse: The ACE findings

The adult patients queried were a solidly middle class population—paralleling the dynamic in many USA Swimming clubs. The patients were asked if they had endured one or more of ten different types of adverse childhood experiences. As it turns out, two-thirds of the patients had endured at least one adverse childhood experience and 87% of the patients enduring one form of

[149] Vincent J. Felitti and Robert F. Anda, *The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders and Sexual Behavior: Implications for Healthcare,* in RUTH A. LANIUS ERIC VERMETTEN, & CLARE PAIN, THE IMPACT OF EARLY LIFE TRAUMA ON HEALTH AND DISEASE: THE HIDDEN EPIDEMIC 78 (2010) (noting that ACE research challenges the "very structure of medical, public health and social services practices in America and other countries.")
[150] Id. at 77.

abuse had endured at least one other type of abuse.[151] This is consistent with the poly-victimization research discussed elsewhere in this report.

The ten categories of adverse childhood experiences and the percentage of patients having endured each experience is as follows:

- Emotional abuse (humiliation, threats) (11%)
- Physical abuse (beating, not spanking) (28%)
- Contact sexual abuse (28% women, 16% men)
- Mother treated violently (13%)
- Household member alcoholic or drug user (27%)
- Household member imprisoned (6%)
- Household member chronically depressed, suicidal, mentally ill, psychiatric hospitalization (17%)
- Not raised by both biological parents (23%)
- Neglect—physical (10%)
- Neglect—emotional (15%) [152]

The Impact of Adverse Childhood Experiences: Calculating ACE Scores

A patient who fit into one category, such as physical abuse, received an ACE score of 1. This is true no matter how many times the patient was physically abused. In other words, a patient who was beaten one time and a patient who was beaten 50 times both received an ACE score of 1. If, though, the patient fit into a second category such as sexual abuse, they now received an ACE score of two. If they fit into a third category, such as emotional abuse, the ACE score became three and so on. Accordingly, a patient could have an ACE score ranging from 0 (no adverse childhood experiences) to 10 (meaning the patient had adverse experiences fitting into all ten categories).[153]

If a patient simply had an ACE score of 1 they were nonetheless more likely to suffer from numerous medical and mental health conditions including:

- Cancer
- Heart disease
- STDs
- Liver disease

[151] Id. at 78.
[152] Id. at 78-79.
[153] Id. at 78-84.

- Smoking
- Alcohol abuse
- Obesity
- Drug dependence
- IV Drug Use
- Early intercourse, pregnancy
- Depression
- Anxiety disorders
- Hallucinations
- Sleep disturbances
- Memory disturbances
- Anger problems
- Domestic violence risk
- Job problems
- Relationship problems[154]

The risk of these and other conditions increased the higher the ACE score with patients having an ACE Score of 6 or more having "a lifespan almost two decades shorter than seen in those with an ACE score of 0 but otherwise similar characteristics."[155]

The relevance of ACE Research to USA Swimming's efforts to keep children safe

There are at least four potential advantages to USA Swimming in incorporating ACE research into its training program.

First, in the absence of an outcry from a child, a confession from a perpetrator, or actually witnessing abuse, the clearest manifestations of abuse may come through ACE characteristics. In reviewing the files of coaches reported for abuse, there are myriad instances in which the victims of these coaches display ACE characteristics during the period of abuse or subsequent to the abuse. This includes cutting behaviors, eating disorders, aggression, chemical abuse, depression and attempts at suicide.

In a journal entry, written during the period she was being abused, a survivor wrote: "I've been drinking again and trying to get pills to get me high. I'm a wreck I know but I can't help it any longer. I am falling through the cracks and I'm just not resisting it anymore."

Another survivor writes: "Anorexia and bulimia provided me with something easy and calming, something to numb the guilt and shame that clouded my world. It stopped the anxiety. I was dead set on killing myself through the eating disorder. But people find out and then you go into treatment and they ruin your perfect plan…"

One survivor told us that her behaviors during the time of abuse were conscious outcries for help but that no one realized them as such. Educating coaches, officials, parents and even athletes

[154] Id.
[155] Id. at 84.

about ACE research may increase the chance that, in the future, these characteristics will be seen as indicators of trauma.

Second, understanding ACE research can assist coaches working with traumatized children. One coach told us he was abused as a child and that his coaches understood the impact this was having on him and greatly assisted him in controlling his anger. Without this kindness, he said he probably would not have grown up to be a coach himself. It is likely that there are many similar coaches working with children who have endured trauma but who may be struggling with knowing how best to help an athlete. Understanding ACE research may assist in this endeavor.

Third, understanding ACE research can assist coaches understand the impact of trauma on their own lives. The Safe Sport training program reminds coaches about stressors in their lives that could cause them to lose their temper and engage in misconduct including physical or psychological abuse of an athlete. Although stress can certainly result in misconduct, childhood traumas are more likely to fuel difficulties with anger and contribute to a coach lashing out at a child. Helping coaches and others understand ACE research may reduce the risk of some forms of maltreatment. In one instance, a coach on the banned list told his victim that he himself had been abused as a child and this resulted in his depression and alcoholism. Although this sex offender may have been lying—sex offenders often do[156]—it is also possible he endured trauma and if there were earlier interventions his risk of harming children may have been lessened.

It is, though, much broader than simply reducing the risk of abuse. Childhood traumas may impair the ability of coaches, officials or other non-athlete members to perform at the highest possible level. ACE characteristics may not go away easily and can impair a coach's abilities in multiple ways. According to the ACE researchers, in "the context of everyday medical practice, we came to recognize that the earliest years of infancy and childhood are not lost but, like a child's footprints in wet cement, are often lifelong."[157]

It doesn't, of course, have to be this way. However, coping with and averting ACE characteristics is much more difficult if coaches or others are unaware of these factors and the impact they may be having on their lives, the lives of their families, and the athletes they are working with.

Fourth, children with high ACE scores may be easier targets for sex offenders. Child abuse researchers have noted that the "emotional and behavioral problems that emerge from early victimization may create a generalized susceptibility to additional victimization across multiple

[156] ANNA SALTER, PH.D, PREDATORS: PEDOPHILES, RAPISTS AND OTHER SEX OFFENDERS 31-45 (2003) (detailing the extraordinary skill of offenders in deception).
[157] Vincent J. Felitti and Robert F. Anda, *The Relationship of Adverse Childhood Experiences to Adult Medical Disease, Psychiatric Disorders and Sexual Behavior: Implications for Healthcare,* in RUTH A. LANIUS ERIC VERMETTEN, & CLARE PAIN, THE IMPACT OF EARLY LIFE TRAUMA ON HEALTH AND DISEASE: THE HIDDEN EPIDEMIC 77 (2010)

contexts of the child's life."[158] In other words, a child displaying characteristics of abuse can more easily be taken advantage of. In at least seven of the cases involving a banned or suspended coach, there is evidence the coach was targeting a child from a difficult home environment. If the many good coaches, parents and officials in USA Swimming better understood ACE research and helped children reduce the effects of any traumas they have endured, there would be a smaller pool of children for offenders to target.

Options for incorporating ACE research into Safe Sport training

There are four options to incorporate ACE research into Safe Sport training. First, the existing course content on the effects of child abuse could be modified and put in the context of ACE research. This can be as simple as adding a "drop down box" giving an overview of ACE research which can be downloaded and retained for future use. Second, there could be a second workshop pertaining to ACE research that could be developed and offered as an advanced course for coaches or others who have already taken the basic Safe Sport training. Third, USA Swimming could utilize already existing ACE training that can be accessed for free or at minimal cost.[159] Finally, as Safe Sport LSCs look for speakers at area gatherings of parents, coaches and club owners, speakers who can discuss ACE research may be particularly helpful.

7. Develop training and written materials pertaining to juvenile sexual behaviors and offenses

In recent years, USA Swimming has received a number of reports concerning juvenile sexual behaviors. Understanding and responding to these issues is a complicated issue and almost certainly beyond the expertise of any coach or club.

In some cases, juvenile sexual behaviors are normal and simply need to be addressed by parents. More than 50% of children will engage in some type of sexual behavior before the age of 13 and the vast majority of them are neither sex offenders nor victims.[160] In other cases, sexual activity may be indicative that a child has been abused or neglected. According to the American Academy of Pediatrics, "sexual behaviors that are persistently intrusive, coercive, developmentally abnormal, or abusive are associated with numerous situational familial factors, including sexual abuse, physical abuse, and neglect."[161]

When a club or coach encounters such a situation it must decide whether to call the authorities to determine if a child is abused, call the authorities because a child has been assaulted, and when

[158] Heather A. Turner, David Finkelhor, and Richard Omrod, *Poly-Victimization in a National Sample of Children and Youth,* 38 AM. J. PREV. MEDICINE 323, 328 (2010).
[159] *See e.g,* ACE Training materials offered to institutions through the Academy of Violence & Abuse at www.avahealth.org (last visited January 18, 2014).
[160] Nancy D. Kellogg, The Committee on Child Abuse & Neglect, American Academy of Pediatrics, *Clinical Report—The Evaluation of Sexual Behaviors in Children,* available online at: http://pediatrics.aappublications.org/content/124/3/992.full (last visited January 19, 2014).
[161] Id.

conduct is perfectly normal and can be addressed by parents and the club. To sort through these and other issues, it is critical that USA Swimming develop materials that are rooted in research on sexual behaviors and can assist clubs in knowing who to call and what to ask.

USA Swimming tells us it is working with Praesidium to develop additional training focusing on juvenile sexual behaviors and offenses and is developing guidelines on "peer to peer sexual" contact among this population. These guidelines are being reviewed by local child protection workers in Colorado Springs. Given the complexity of interpreting sexual behaviors, these materials should also be reviewed by at least one juvenile sex offender treatment provider, one pediatrician current on the literature relating to sexual behaviors, and one detective or prosecutor seasoned in investigating and otherwise responding to juvenile sex offenses. In this way, the medical, mental health and legal issues inherent in these cases will have been explored and the resulting training more likely to reflect best practices for youth serving organizations.

8. **Incorporate resilience research into Safe Sport training**

Researchers are increasingly interested in why some abused and neglected children do so much better than others. The answer, at least in part, seems to be that one or more persons or social structures helped build resiliency in the child enabling him or her to excel in spite of abuse.[162] Resiliency can be as simple as having supportive relationships—including those found among peers in swimming. Resilience can also come from a role model who demonstrates support for an abused child and demonstrates a different way to live—the sort of role model found among many swimming coaches.

In the course of this review, a coach told us he was a survivor of abuse and became successful because swimming coaches in his childhood helped him cope with anger and other emotions stemming from trauma. In all likelihood, this experience is not isolated. It is probable that coaches have helped countless abused children who never disclosed abuse but who were watching their coaches from a distance.

The current Safe Sport training for coaches includes a section emphasizing the joy of working with children. We suggest that this section be replaced with a discussion on resiliency research that includes practical tips on how coaches can continue to build resilience in children who have endured trauma.

[162] *See e.g.,* Michael Rutter, *Resilience, Competence, and Coping,* 31 CHILD ABUSE & NEGLECT 205 (2007); Stephen Collishaw, et al, *Resilience to Adult Pscyhopatholgy Following Childhood Maltreatment: Evidence from a Community Sample,* 31 CHILD ABUSE & NEGLECT 211 (2007); Sara. R Jafee, et al, *Individual, Family, and Neighborhood Factors Distinguish Resilient from Non-resilient Maltreated Children: A Cumulative Stressors Model,* 31 CHILD ABUSE & NEGLECT 231 (2007); Kimberly DuMont, et al, *Predictors of Resilience in Abused and Neglected Children Grown Up: The Role of Individual and Neighborhood Characteristic,* 31 CHILD ABUSE & NEGLECT 255 (2007); Victoria L. Barnyard, et al, *Women's Voices of Recovery: A Multi-method Study of the Complexity of Recovery from Child Sexual Abuse,* 31 CHILD ABUSE & NEGLECT 275 (2007).

9. **Constantly re-evaluate training as research expands**

The body of literature on all aspects of child maltreatment is constantly expanding. Accordingly, there needs to be a concerted effort to monitor the literature, attend national child abuse conferences, and to regularly have training and other aspects of the program reviewed by those well versed in the literature. This is done, in part, with the subject matter expertise on the Safe Sport committee, through a Safe Sport conference USA Swimming has hosted, and the attendance at various national conferences by the Safe Sport employees. It would also be wise to require ongoing training for the investigators, attorneys and others within USA Swimming who respond to any aspect of child maltreatment.

MONITORING AND SUPERVISION

As noted in USA Swimming's Safe Sport Handbook, the purpose of monitoring and supervision is to observe "interactions and react appropriately at the local level and the national level" and to "provide clear expectations of behavior for both adult-youth and youth-youth interactions."[163] The policies and training previously discussed in this report aid in establishing these boundaries and communicating them to the local level.

In addition to general prohibitions against sexual misconduct, the code of conduct also prohibits "inappropriate touching" of an athlete including "excessive touching, hugging, kissing, sexually oriented behavior, sexually stimulating or otherwise inappropriate games, and having an athlete sit on a non-family member's lap."[164] The rules also prohibit a coach from conducting a rubdown or massage even if the coach is a licensed massage therapist."[165] The rules also prohibit the use of "audio or visual recording devices" in "changing areas, rest rooms or lockers"[166] and also require certain employees and volunteers to undergo criminal background checks.[167] USA

[163] USA Swimming SAFE SPORT HANDBOOK 6.
[164] USA SWIMMING 2013 RULEBOOK 305.1.
[165] Specifically, the code of conduct states that any "rubdown or massage performed on an athlete by any adult member or Participating Non-Member, excluding the spouse, parent, guardian, sibling, or personal assistant of such athlete, is prohibited unless such adult is a licensed massage therapist or other certified professional. Any rubdown or massage performed at a swim venue by a licensed professional must be conducted in open/public locations and must never be done with only the athlete and licensed massage therapist in the room. Even if a coach is a licensed massage therapist, the coach shall not perform a rubdown or massage of an athlete under any circumstances." USA SWIMMING RULEBOOK, Rule 305.2.
[166] USA SWIMMING 2013 RULEBOOK 305.3
[167] Specifically, the rule provides that "(e)mployees and volunteers of USA Swimming, LSCs and member clubs who interact directly and frequently with athletes as a regular part of their duties and individuals with any ownership interest in a member club must be non-athlete members of USA Swimming and satisfactorily complete criminal background checks as required by USA Swimming. This does not apply to volunteers such as timers, marshals, computer operators, etc. who only have limited contact with athletes during a meet." USA SWIMMING 2013 RULEBOOK, 305.4.

Swimming also prohibits coaches from sharing a hotel room with an athlete,[168] requires team managers and chaperones to have passed a background check,[169] and mandates that clubs and LSCs have a travel policy.[170] However, the rules do allow for only one athlete and a coach to travel alone to a competition provided the athlete has "his/her parent's (or legal guardian's) written permission in advance to travel alone with the coach."[171]

These policies are consistent with the Centers for Disease Control published guidelines on monitoring behavior[172] and respond directly to past incidents of sexual abuse within USA Swimming. Coaches and other non-athlete members have used excessive touching, sexual jokes and games, and other conduct to sexually harass or groom a child for abuse. Coaches have provided rubdowns and massages as a means of touching a child's breasts or otherwise assaulting the athlete. Coaches have used opportunities while traveling to or at a meet to sexually assault or otherwise abuse a child. Coaches have used audio or other recording devices in an effort to see children naked and for their own sexual gratification. Accordingly, all of the USA Swimming monitoring and supervision rules are appropriate and should be maintained.

There is evidence the rules may be working. USA Swimming now receives annually a number of reports of boundary violations that do not necessarily rise to the level of conduct warranting a suspension or ban but enable the organization to remind a coach or club about the rules and to issue a warning letter. USA Swimming deems these to be "informal resolution" cases in which there may be phone calls and other exchanges of information between USA Swimming and a club and a coach followed by the issuance of a warning. Since these calls were rare prior to 2010, it is some indication the rules and training are resulting in front line professionals working with USA Swimming to rein in boundary violations or other conduct that could lead to abuse.

Recommendations

1. **Continually reinforce the rationale behind and importance of the monitoring and supervision rules**

In the course of our assessment, one witness contended the organization had gone *too far* in its development of rules. Other witnesses said that they supported the various rules but said they

[168] Specifically, the rules provide that "Regardless of gender, a coach shall not share a hotel room or other sleeping arrangement with an athlete unless the coach is the parent, guardian, sibling, or other spouse of that particular athlete." USA SWIMMING 2013 RULEBOOK 305.5.1

[169] The rule specifically states that "Team managers and chaperones must be members of USA Swimming and have successfully passed a USA Swimming-required criminal background check." USA SWIMMING 2013 RULEBOOK 305.5.2.

[170] The rule provides that "Clubs and LSCs shall develop their own travel policies. USA Swimming will provide a model club travel policy as an example. Club travel policies must be signed and agreed to by all athletes, parents, coaches and other adults traveling with the club." USA SWIMMING 2013 RULEBOOK 305.5.4.

[171] USA SWIMMING 2013 RULEBOOK 305.5.3.

[172] *See* U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES CENTERS FOR DISEASE CONTROL AND PRVENTION, PREVENTING CHILD SEXUAL ABUSE WITHIN YOUTH-SERVING ORGANIZATIONS: GETTING STARTED ON POLICIES AND PROCEDURES 13-14 (2007).

knew others who believe the organization may have gone too far. Some witnesses suggested the resistance resulted from the rapidity with which changes were unfolded and the short-time frame in which the various changes could be explained. Although this explanation may make sense, and we see little evidence that this attitude is widespread,[173] the fact that there is any opposition or call to retreat from the rules is a reminder that USA Swimming must continually be vigilant in educating its members about the reason for the rules. There are at least two reasons to maintain this vigilance.

First, the recent history of the organization involves cases in which, in the absence of these rules, sex offenders were able to gain access to children. Second, it is logical to assume that if some in the swimming community believe USA Swimming has gone too far in its rule-making that these individuals are at greater risk to let a rule violation slip from time to time. Accordingly, everyone in the organization needs to be reminded of why these rules exist—and to speak up when others claim the rules are unimportant.

2. **Continue to develop options for "two deep leadership" on all team travel**

The rule allowing a child to travel alone to a competition with a coach merits additional discussion within USA Swimming. The rule may be helpful to smaller clubs lacking the resources to transport an athlete to a particular competition if he or she is the only athlete participating from that club. If these clubs were required to say to an athlete the child cannot attend because a coach can't provide transportation, the fear is that this would give an unfair advantage to larger clubs and would disadvantage children swimming with smaller clubs. There will also be circumstances in which bigger clubs may have one or a small pool of athletes qualify for an elite competition and transportation difficulties arise if a coach cannot drive the athlete.

The challenge, then, is to take into account these concerns while balancing them against the risk involved in transporting an athlete alone. There have been instances in which a coach traveling alone with a child used this opportunity to abuse the child. In one case a coach, subsequently banned, sexually assaulted the child on the way to the meet and then brought the child to the competition. The athlete recalled that day with these words:

> *That afternoon, I swam the 1,500 sobbing uncontrollably throughout the event. I finished the 60 laps with goggles completely full of water—my salty tears. In spite of swimming having been the center of my universe for six years, shortly after this incident, I quit the team and stopped swimming altogether.*

Requiring a parent to grant permission before a coach is able to transport a child to a competition affords little protection. Most USA Swimming parents have not taken the Safe Sport program and thus may be ill prepared to recognize potentially dangerous

[173] As noted earlier, the vast majority of coaches responding to a survey about Safe Sport rated the program highly. This was also the dominant view among coaches and others we interviewed.

situations or persons.[174] Even if a parent had taken the Safe Sport training, even the most vigilant parents can be fooled by sex offenders who are skilled at manipulating both athletes and parents. The files of banned and suspended coaches document this fact repeatedly.

USA Swimming's "recommended policies" for team travel urges clubs to adopt "two-deep leadership" in which at least two adults are present during team travel. Although children can still be abused even when "two-deep leadership" is practiced,[175] it reduces the risk. USA Swimming is exploring with smaller clubs the possibility of team travel with larger clubs, of getting more parents from smaller clubs involved with team travel, and other mechanisms. These discussions need to continue with the eventual goal of eliminating this risk. If a child and coach must travel alone together, there may be other options to reduce the risk that can be explored.[176]

3. **Develop checks and balances or quality control measures for the informal resolution process**

USA Swimming's informal resolution process is consistent with the CDC manual[177] as well as the child protection field which, in many states, has an informal mechanism for addressing behaviors that are concerning but may not be unlawful or otherwise warrant intervention.[178] An informal resolution process also allows the organization to devote more resources to allegations that, if proven, would involve a clear and egregious violation of the code.

There are, though, several risks that can be reduced. First, there may be times when the case load is particularly burdensome and there is a temptation to label an incoming case as warranting an informal process when, in reality, it may involve a greater risk. Second, if only one person is involved in reviewing a case, he or she may miss factors suggesting the case may be more worrisome than originally thought. This is also true if only a limited number of people are reviewing the case—particularly if they are from the same

[174] The fact that some parents have called USA Swimming seeking an exception the rule that coaches share a hotel room with a child highlights the risks some parents are willing to take with their children.
[175] According to one study, 54.9% of child molesters offended when another child was present and 23.9% offended when another was adult present Rocky C. Underwood, Peter C. Patch, Gordon G. Cappelletty, and Roger W. Wolfe, *Do Sexual Offenders Molest When Other Persons Are Present? A Preliminary Investigation,* 11(3) SEXUAL ABUSE: A JOURNAL OF RESEARCH AND TREATMENT 263 (1999).

[176] One reviewer of this report suggested educating parents to randomly call the child on his or her cell phone during the travel to make sure they are safe.
[177] With respect to monitoring behavior, the CDC calls for responding "immediately" to boundary or other violations, of re-directing "inappropriate behaviors to promote positive behaviors" and confronting and reporting these behaviors. J. Saul & NC Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION (2007).
[178] *See* Ronald C. Hughes, Judith S. Rycus, Stacey M. Saunders-Adams, Laura K. Hughes, and Kelli N. Hughes, *Issues in Differential Response,* 23 RESEARCH ON SOCIAL WORK PRACTICE 493 (2013).

office.[179] Research on the child protection system suggests that every person has biases which may influence how he or she evaluates a set of facts—particularly when the facts may be ambiguous and subject to multiple interpretations.[180] Third, when a coach is particularly powerful or popular, there may be a temptation to address the case through an informal resolution process as opposed to a more formal investigation and assessment.

To address these and other potential risk factors, we suggest the following:

a. **Develop written criteria for screening a case into the informal resolution process**

USA Swimming is able to articulate factors that warrant a case being directed to an informal resolution process. We suggest these factors be reduced to writing and that the Safe Sport committee review and approve them—as well as any other relevant factors. It would also be wise to have an internal memo in these files documenting the application of these factors and why a given case fit within them. Reducing this analysis to writing, even if it is only a few paragraphs, may help ensure consistency.

b. **A randomly selected number of cases resolved through informal resolution should be reviewed by an external expert on child maltreatment**

The reason most states require myriad peer reviews of cases is to serve as an independent check on the appropriateness of the handling of a case. The independent review may also help an organization see areas for improvement in the handling of these cases. Although it may not be practical to have all these cases reviewed by another person, it would certainly be feasible to have a randomly selected group of cases reviewed. However, the process must make sure the selection is random to avoid any possibility that only the clearest cases are reviewed. It is certainly possible to go beyond this process, but a random review is a good starting point. USA Swimming has a safe sport committee involving subject matter experts outside the organization. Using one or more of these subject matter experts for review may be an appropriate vehicle to begin this process. In turn, this review may make these subject matter experts better equipped to advise USA Swimming on future developments for Safe Sport.

[179] USA Swimming has weekly meetings between the two employees in the Safe Sport program and thus there are two people involved in reviewing an informal resolution case.
[180] Mark D. Everson & Jose Miguel Sandoval, *Forensic Child Sexual Abuse Evaluations: Assessing Subjectivity and Bias in Professional Judgments,* 35 CHILD ABUSE & NEGLECT 287 (2011).

RECOGNIZING, REPORTING AND RESPONDING

Recognizing and reporting

The issue of recognizing actual or potential cases of abuse is addressed elsewhere in the report through recommendations for improved training and expansion of children protected under the code of conduct.

Sources of reports

The issue of reporting, though, warrants special focus in this section. In an internal review of 94 cases investigated from 2010-2013, USA Swimming categorized the following sources for reports of child abuse or related misconduct:

- 20.95% of the cases were reported from the broader swimming community or other member of the public
- 20% of the cases were reported by a coach.
- 17.14% of the cases involved a parent report
- 14.28% resulted from a law enforcement action or media report
- 11.42% of the cases were reported by a victim
- 8.5% of the cases were reported by a swimming club board member
- 5.7% of the cases involved an anonymous report.
- 1.9% of the reports resulted from a background check or pre-employment screening
- Less than 1% of the cases were reported by a friend or parent of a friend of the victim

In some instances, there are multiple sources of reports in a single case. The diversity of the sources of reports suggests the ongoing need to educate and involve as many people as possible in Safe Sport initiatives. Simply stated, a report of abuse could come from anyone.

Potential pressures not to report

There are media accounts in which those who reported abuse in USA Swimming contend they were harassed, intimidated or ostracized from a swimming club as a result.[181] In the review of the files, we found at least two instances in which a reporter of abuse contends they lost their job as a result of reporting. There are other instances in which a reporter urges that his or her name be kept confidential—expressing fear of retaliation given the success or high esteem in which an accused coach or other non-athlete member is held. In an interview with a survivor, she stated that, despite the ban and a guilty plea from the coach who abused her, she is still not treated kindly by a number of parties who remain loyal to the coach.

[181] *See e.g,* Tom Goldman, *USA Swimming Faces Lingering Doubts Over Sexual Abuse,* NATIONAL PUBLIC RADIO, August 27, 2013, available online at: http://www.npr.org/blogs/thetwo-way/2013/08/27/216188040/usa-swimming-faces-lingering-doubts-over-sexual-abuse (January 20, 2014).

In a number of files, there are letters from athletes, coaches, parents and others connected to a swim club expressing strong support for a coach and urging USA Swimming not to issue a suspension or ban. This is true even in instances in which the coach has pled guilty to one or more offenses. In some cases, letters attack the accused or reporters of abuse. There are even letters from doctors, psychologists and police officers expressing support for a coach in which there is strong evidence of misconduct.

This is not to suggest this is illustrative of all cases. Nor is this to suggest that everyone who has supported a banned coach is malevolent or intentionally attempting to dissuade a victim or reporter. In many cases, the coach's supporters may be ignorant of the actual facts in the case and understand so little about the dynamics of abuse they cannot see past the "good" the coach has done for their child.

Irrespective of the actual reasons, this pattern is present frequently enough that it brings to the forefront the legitimate need to have strong whistleblower protection for those who disclose or report maltreatment. This may be particularly true in swimming where the passion for the sport extends to athletes and parents determined to succeed, to obtain scholarships and perhaps reach Olympic glory. To the extent a parent or athlete believes a particular coach is the key to this success, it may be very difficult to accept any evidence of abuse. Indeed, one survivor told us her coach instilled in her the belief that the only hope of success was through him—making her particularly vulnerable and impairing her ability to disclose.

Recommendations to protect coaches or others who report abuse

1. **Extend whistleblower protection to coaches or others who make a good faith report of physical abuse or psychological abuse/bullying**

The USA Swimming rulebook prohibits retaliation against a member who makes a "good faith report" involving sexual misconduct.[182] However, the rules do not explicitly protect a coach, official or other party when reporting an act of physical abuse or psychological abuse/bullying even though these acts are also prohibited under the code of conduct.[183] It makes little sense to prohibit physical or psychological abuse/bullying but not provide reporters of this type of abuse the same sort of protection afforded reporters of sexual misconduct.

[182] Specifically, the rule states "No member shall retaliate against any individual who has made a good faith report under 306.1." USA SWIMMING RULEBOOK 2013 306.2. The rule being referenced (306.1) provides "It is every member's responsibility to promptly report any incident regarding sexual misconduct by a member as described in Article 304.3.8 to USA Swimming's Athlete protection officer."
[183] USA SWIMMING RULEBOOK 2013 304.3.7.

2. **Extend whistleblower protection to coaches or others who make a good faith report to the authorities or to USA Swimming of <u>any</u> act of child abuse committed by <u>any</u> person inside or outside of USA Swimming**

The current rules also fail to protect coaches or others who report to the authorities a case of suspected child abuse against an athlete that may have been committed by a parent or other person who may not be a member or directly connected to swimming. This is problematic because most coaches want to protect their athletes from abuse and a large number of them are required by law to report to the authorities when they have a reason to believe a child is being abused. Nonetheless, compliance with their moral and legal duties to their athletes may subject some coaches or other members to harassment or retaliation.

One coach told us of instances in which he had reported a suspected case of child abuse only to have the accused parent pull the athlete from the club and then incur the wrath of other parents or employees for having cost the team an important member. Given the dynamics discussed earlier, it is easy to envision a scenario where a coach reports a case of child abuse involving a parent who is an important member of the local swim club board of directors or is a strong financial supporter of the club—and then face retaliation as a result.

Acting to protect a child, particularly in cases in which reports are required by law, should never result in retaliation. We believe already existing whistle blower protection rules should be expanded to protect coaches or others who report abuse no matter what the case may involve or who the offender may be.

3. **Create a "rebuttable presumption" clause that further protects coaches or other reporters from retaliation**

Given the importance of reporting child abuse, and the possibility of retaliation against reporters, some state laws create a "rebuttable presumption" that any action taken against a reporter within a limited period of time is *presumed* to be taken because of the report.[184] In these instances, the employer can still take action against an employee but now the burden shifts to the employer to prove the discipline was unrelated to the report.[185]

USA Swimming could use the same sort of approach and modify its prohibition against retaliation to state that any adverse action against a reporter within 90 days of making a report is presumed to be retaliation and shift the burden of proof to the club to demonstrate otherwise. Obviously, if there is a legitimate reason for adverse action, such as theft, the coach or other reporter of child abuse is unlikely to challenge the club's decision and, if the reporter does

[184] *See e.g.* Minn. State section 626.556, subd. 4 a(c) provides: "There shall be a rebuttable presumption that any adverse action within 90 days of a report is retaliatory" and adverse action includes discharge or termination, demotion or reduction in remuneration for services or restriction or access to the facility, school, agency or institution the reporter was affiliated with."

[185] In a similar vein, a person reporting abuse can still claim retaliation outside the 90 day period but he or she wouldn't have the rebuttable presumption anymore.

challenge the action, the club can easily demonstrate a proper reason for terminating or otherwise disciplining an employee.

This simple modification of the rules would provide some "teeth" to USA Swimming's retaliation prohibition and may strengthen the resolve of some coaches or other reporters who fear retaliation if they report instances of abuse.

Responding: from investigation to the National Board of Review

Pursuant to the federal Amateur Sports Act, USA Swimming cannot expel or deny membership without cause and affording the party an opportunity for a hearing.[186] As a result, USA Swimming has developed a process that can lead to disciplinary action, including a suspension or ban from membership.

Upon receiving a report of misconduct, USA Swimming's website states they will "gather information" and refer the case to law enforcement as appropriate.[187] If the complaint involves conduct that may not rise to the level of a code of conduct violation, USA Swimming may simply send a "warning letter" to the coach reminding him or her of pertinent rules. If, though, the complaint may involve a code of conduct violation, it will be referred to outside counsel and, if need be, there may be a formal investigation by an outside investigator. USA Swimming contracts with two former FBI agents to handle its investigations.

If USA Swimming concludes the investigation has produced sufficient evidence to prove a violation of the code of conduct, it may petition to the National Board of Review chair to request a hearing. If the NBOR chair concludes there is a sufficient basis for a hearing, he or she will issue a notice of hearing. The NBOR hearing is to be held no sooner than 45 days and no later than 60 days once the notice of hearing is issued. In certain circumstances, including the arrest of an active coach for sexual misconduct, USA Swimming can request an emergency hearing.

The National Board of Review panel consists of a chair who is an attorney as well as two panel members—one who is an athlete and the other a non-athlete member such as a coach. In reviewing the files of banned and suspended coaches, as well as listening to the audio recordings of a number of NBOR hearings, the process is generally formal. Each side is accorded the opportunity for an opening statement. USA Swimming, through its counsel, presents evidence which in some cases consists primarily of documents including an investigator's report. The accused coach or non-athlete member is afforded the opportunity to cross examine any witnesses and may be represented by counsel if he or she chooses. The accused then presents any witnesses who are also subjected to cross examination. All three panel members are also afforded the opportunity to question any witness or any of the attorneys.

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[186] UNITED STATES CODE SEC. 220501 et seq.

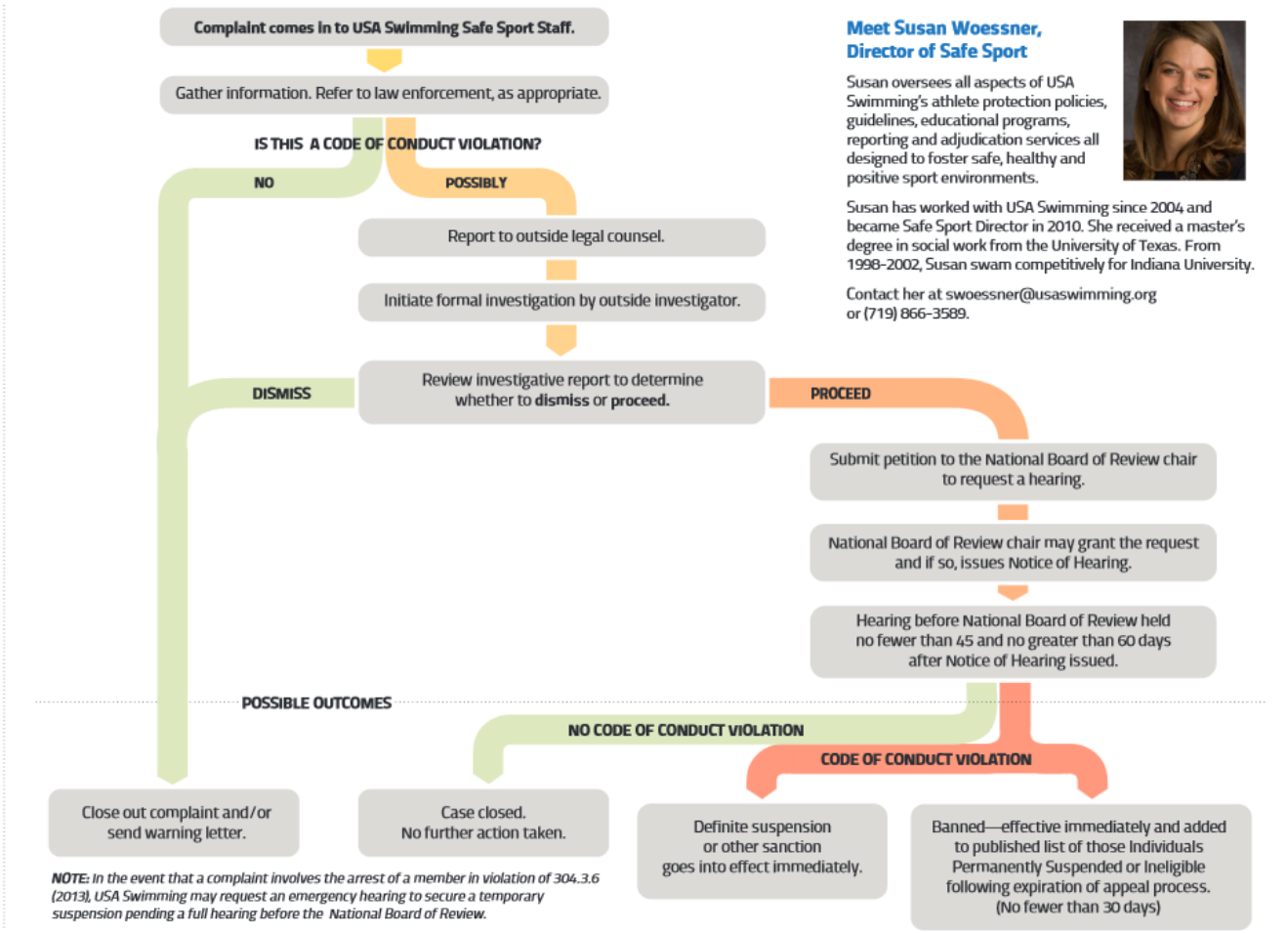
[187] *See* http://www.usaswimming.org/_Rainbow/Documents/60b6ac30-323b-42de-9c4b-a4e051b91aee/USAS%20Safe%20Sprt%20Complaint%20Process%20FINAL.pdf (last visited January 20, 2014).

A number of cases involve an arrest or a criminal conviction and USA Swimming primarily relies on the criminal record which, in and of itself, is the basis for the requested ban.[188] In other cases, there is no conviction or arrest and USA Swimming often calls an alleged victim or other witnesses to testify under oath.[189] The hearings are done telephonically.

In cases of alleged physical abuse or bullying/psychological abuse, there is an additional layer. Pursuant to USA Swimming's rules, a panel of three coaches appointed by the USA Swimming president "shall make the investigation and report."[190] Since 2010, there have been only six coach panels convened. One case resulted in a ban, one in a suspension, one is still pending and the other three resulted in a finding of no violation.

The USA Swimming website contains a flow chart outlining this process in cases of sexual abuse. The flow chart does not include the extra layer for cases of physical or psychological abuse.[191]

[188] USA SWIMMING RULEBOOK 304.3.6.
[189] Since the hearings are not legal proceedings, the oath does not subject them to perjury although lying to the NBOR could be a basis for disciplinary action. Specifically, it is a violation of the code of conduct to engage in any "act of fraud, deception or dishonesty in connection with any USA Swimming-related activity." USA SWIMMING RULEBOOK 304.3.14.
[190] USA SWIMMING RULEBOOK 405.2.3
[191] The online version of this chart is available at: http://www.usaswimming.org/_Rainbow/Documents/60b6ac30-323b-42de-9c4b-a4e051b91aee/USAS%20Safe%20Sprt%20Complaint%20Process%20FINAL.pdf (last visited January 8, 2014).



USA Swimming response to abuse: an overview of the numbers

The tables below provide additional details about USA Swimming's handling of sexual misconduct or other forms of child maltreatment. The first table shows the number of cases opened by year since 2010. The second column in the graph shows how many of these cases are still pending in 2013. The third column gives the number of cases resolved by informal resolution—meaning USA Swimming determined the conduct did not violate the code of conduct but warranted education of the club about the importance of maintaining boundaries or otherwise adhering to best practices. The fourth column shows the number of cases closed after investigation. In these instances, USA Swimming conducted an investigation and concluded either that there was no code of conduct or violation or that there was insufficient evidence.[192]

[192] The distinction between a finding of "no violation" and a finding of "insufficient evidence" is significant. In the former, USA Swimming concludes the alleged misconduct did not take place. In the latter, USA Swimming is acknowledging some evidence but is finding the evidence insufficient to prove a code of conduct violation by a preponderance of the evidence. Although this was not done throughout its history, USA Swimming is now making this distinction when notifying parties of the results of its investigation. This is an important distinction and it is

Cases Opened By Year

	Cases Opened	Pending Cases	Closed through Informal Resolution Process	Closed After Investigation	Closed After NBOR	Closed After NBOR & Appeal	Suspended By NBOR	Banned By NBOR
2010	25	0	6	10	6	3	1	8
2011	36	0	12	9	14	1	4	11
2012	40	0	14	6	17	3	4	16
2013	78	16	45	1	15	1	3	12
Total	179	16	77	26	52	8	12	47

In cases brought before the NBOR, USA Swimming has almost always succeeded in obtaining a ban or suspension. Since 2010, 59 of the 60 NBOR hearings have resulted in a ban or suspension.

The table below shows the number of cases *closed* since 2010 and whether they were closed by informal resolution, after investigation, or after the NBOR process. The table also documents the average length of time it takes to close a case. Obviously, a case closed informally or after investigation is less (5.8 months) than cases that go through the NBOR hearing and appeal process (10.5 months).

Cases Closed by Year

	Cases Closed	Closed through Informal Resolution Process	Closed After Investigation	Closed After NBOR	Closed After NBOR & Appeal	Average Time Open to Close - All	Average Time Open to Close - Investigation & NBOR Cases
2010	3	2	1	0	0	1.3	3.1
2011	32	14	10	8	0	4.1	5.3
2012	34	8	9	15	2	8.7	10.8
2013	94	53	6	29	6	5.8	10.5
Total	163	77	26	52	8		

The next table is very similar except that instead of looking at how many cases were *closed* in a particular year, it looks at how many cases were *opened* in a given year. The significance of this table is that it provides evidence USA Swimming is improving its response to incoming cases with the average time of resolution now taking 2.5 months and, even when there is a full investigation and NBOR hearing, USA Swimming is able to close a case, on average, within 4.7 months. This is significant progress from previous years.

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important for USA Swimming to continue to make this distinction. There have been cases in which a banned or suspended coach has been reported on more than one occasion but investigations have produced insufficient evidence to prove a case. When such evidence does arise, an accused coach can claim the prior reports are irrelevant because he or she was "cleared" of wrongdoing. It is helpful, in these instances, for USA Swimming to explain the coach was not necessarily cleared, there was simply insufficient evidence until now.

	Cases Opened	Pending Cases	Closed through Informal Resolution Process	Closed After Investigation	Closed After NBOR	Closed After NBOR & Appeal	Suspended By NBOR	Banned By NBOR	Average Time Open to Close - All	Average Time Open to Close - Investigation & NBOR Cases
2010	25	0	6	10	6	3	1	8	10.0 months	12.5 months
2011	36	0	12	9	14	1	4	11	8.3 months	11.1 months
2012	40	0	14	6	17	3	4	16	6.9 months	8.5 months
2013	78	16	45	1	15	1	3	12	2.5 months	4.7 months
Total	179	16	77	26	52	8	12	47		

The final table shows the *outcome* of cases opened in each of the years 2010-2013. The first column shows the number of cases in which USA Swimming did not find a violation. This number may include cases in which there was simply insufficient evidence. The second column shows the number of cases involved through the informal resolution process. Columns 4-6 show the number of cases resulting in suspensions, bans, or other penalties.

Outcomes - Cases Opened By Year

	No Violation Found	Informal Resolution	Non-Compliant Victim	Suspension	Ban	Other	TOTAL
2010	7	5	2	1	8	2	25
2011	9	5	4	4	11	3	36
2012	4	11	3	4	16	2	40
2013	10	32	3	3	12	2	62
Total	30	53	12	12	47	9	

Non-compliant victim cases

The third column in the table above, labeled "non-compliant victim" reflects cases in which there is a credible suspicion or credible evidence of abuse but the victim is unwilling to testify before the NBOR or is otherwise uncooperative with the investigation. The distinction between "credible suspicion" and "credible evidence" is important to understand because each requires different approaches if this issue is to be addressed.

A case of "credible suspicion" is illustrated through the following hypothetical. Assume a parent pulls her child from swimming and, when asked, tells someone that the coach abused her daughter but provides no details as to what may have happened. When contacted, the parent refuses to allow her daughter to be interviewed by law enforcement, child protection or USA Swimming investigators. Although law enforcement and child protection may have some means available to compel the child's cooperation with an investigation,[193] the governmental investigators choose not to exercise this option. USA Swimming does not have a legal process

[193] For example, the government could convene a grand jury investigation and subpoena witnesses and, in some states, child protection can interview a child without the parent's consent.

whereby it can compel the child or mother to cooperate with an investigation and is left with only a reasonable suspicion that a child may have been abused.

A case of "credible evidence" is illustrated with the following hypothetical. Assume a swimmer gives a detailed account of being sexually abused by a coach to law enforcement, child protection and USA Swimming. However, the victim adamantly refuses to testify in any civil or criminal proceeding, including an NBOR. To make matters worse, the law enforcement and child protection responders conduct a poor investigation including failure to interview the suspect, to take crime scene photographs or execute search warrants or other legal processes that may have generated additional evidence. This leaves USA Swimming with credible evidence of abuse—a detailed account from the victim, but with no additional evidence.

Strengths in USA Swimming Investigations

In recent years, USA Swimming investigations have been conducted by former law enforcement officers. From our review of the files, the investigations are typically very good.[194] This is evidenced, in part, by USA Swimming's high success rate before the NBOR where it must prove its case by a preponderance of the evidence. In cases in which there is an underlying CPS or law enforcement investigation, the USA Swimming investigations compare favorably with the USA Swimming investigators speaking with as many, if not more witnesses than the police and following up on additional leads. This is particularly noteworthy since USA Swimming investigators do not have the power to execute search warrants or compel the disclosure of evidence. USA Swimming has also done an effective job of informing law enforcement of its investigations and making sure its work does not interfere with criminal justice or other processes.[195] The files also demonstrate a repeated willingness to share their findings with law enforcement agencies. Although there is not clear documentation in every file, it does appear USA Swimming routinely notifies the authorities when it has a potential case of abuse and, in several instances, made a report to the authorities even over the objection of a victim.

Weaknesses or potential weaknesses

In two cases involving a banned coach, USA Swimming was unable to locate an alleged victim for a year or more. Although USA Swimming can articulate efforts made to locate a victim, these efforts are not documented in the files. Not only does this open the organization up to criticism but it makes it harder as time passes for subsequent employees or investigators to look for other options in locating a victim or to conduct peer review of what, if anything, could have been done better. When witnesses are located, USA Swimming investigative interviews are primarily done

[194] Some of the concerns expressed in this report, such as our discussion of the coaches' panel, reflects a concern not about the investigation but rather the analysis of the evidence collected.

[195] USA Swimming, at least since 2010, keeps data on whether it reported a case to law enforcement, whether the case was previously reported by another party, or whether the matter is non-criminal and therefore not warranting a report. The case files contain a number of letters or e-mails to law enforcement agencies pertaining to a report.

over the phone[196] which limits the ability of the investigator to capture demeanor and other dynamics that may be relevant in assessing a witness' credibility. In some cases an accused coach is being interviewed with his or her attorney and thus it becomes impossible to see how, if at all, the attorney may be limiting or directing the witness' answers through notes, gestures or other conduct. Although reports of physical or psychological abuse are rare in USA Swimming, when these cases do occur it may be helpful to speak with a victim or other witnesses in person to see how blows were administered, how falls occurred, or other actions that may be better demonstrated than described.

There are, of course, cases in which in-person interviews are not practical and may delay the collection of necessary evidence. When a reported case is several years, even decades old, witnesses may be scattered nationally and internationally and it is not feasible or wise to travel to meet each witness. However, when cases are more recent, and all the witnesses and potential evidence are located in one community, it may be appropriate to speak with witnesses in person.

Although crime scene photographs are not always available to USA Swimming—because the alleged offense did not happen in a public or other setting the investigator can gain access to,[197] this is not always the case. As discussed below, there are instances in which photographs of the location of the alleged abuse would have been helpful in assessing a case or in presenting evidence before the NBOR.

There are a number of cases in which physical evidence, or copies of physical evidence were obtained by the USA Swimming investigators—such as cell phone records, texts, and Facebook entries. In some instances, though, there is reference to a piece of physical evidence[198] and there is no indication, at least in the files, of an attempt to obtain the evidence.

USA Swimming investigative interviews result in reports but are not recorded.[199]There are legitimate reasons why an investigator may choose not to record interviews—including the possibility this will inhibit a reluctant witness to speak or be less candid.[200] In the case of USA Swimming, one or more parties may request transcripts or copies of the recordings and delay the ability to get a case to the NBOR timely. There is also the possibility that, through litigation or other processes, someone with no connection to a case or even the media may gain access to a

[196] In one case, a witness was overseas and was interviewed via Skype.
[197] USA Swimming is not a law enforcement body and thus cannot execute search warrants or otherwise access evidence in the way a criminal justice professional can.
[198] In one instance, a child alleges abuse with the use of painter's tape that likely could have been obtained and may have helped in assessing the allegations.
[199] There is one case in which an official at a club recorded an interview with a victim.
[200] *See e.g.,* Ken Lanning, *Acquaintance Child Molesters: A Behavioral Analysis,* in SHARON COOPER, RICHARD ESTES, ANGELO GIARDINO, NANCY KELLOGG, & VICTOR VIETH, MEDICAL, LEGAL, & SOCIAL SCIENCE ASPECTS OF CHILD SEXUAL EXPLOITATION 529-574 (2005) (noting "it is still my opinion that the disadvantages of taping generally outweigh the advantages.")

recording of a victim and display it publicly—something that could be emotionally crippling to some survivors.[201]

On the other hand, there is research that failing to record may result in the loss of evidence.[202] This is because investigators who fail to record interviews may forget details that are important now or in the future.[203] When details are forgotten or otherwise not documented, there is less of an opportunity to obtain corroborating evidence.[204] Recorded interviews also make it more difficult for a witness to claim later on that the investigator misunderstood or otherwise got their statement wrong. This is not to suggest USA Swimming should routinely record its interviews but rather to urge a conversation about these pros and cons. It may also be wise to discuss whether there is value in recording key witnesses—such as an accused or accuser.

Recommendations for improving investigations, the assessment of physical and psychological abuse, and the handling of non-compliant victim cases

1. **If a report concerns recent abuse such that most witnesses are in one location, consider the possibility of the investigator traveling to the community and conducting in person interviews**

As discussed above, in-person interviews provide a better opportunity to gauge demeanor of a witness. An in-person interviewer may also develop greater rapport with survivors who are reluctant to share an account of abuse. Simply stated, an in person interview humanizes the process in a way that is more difficult over the phone.

This, of course, will involve travel and there may be any number of logistical problems. Unlike a law enforcement or child protection investigator, a USA Swimming investigator arriving in a community would not necessarily have an office or other facility where interviews can be done confidentially. If one or more witnesses are worried about possible retaliation, they may be frightened that someone would see them in the company of an investigator.

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[201] For example, in a Wisconsin case involving child torture, the media was able to access the child's videotaped police interview and portions were played publicly. http://www.wxow.com/story/17150531/judge-says-child-abuse-victims-testimony-describes-violence (last visited January 18, 2014). More recently, the 911 calls in the Sandy Hook elementary school shootings were released to the media over the objections of the prosecutor and the families of the victims. *See* http://www.usatoday.com/story/news/nation/2013/12/04/sandy-hook-school-shooting-911-recordings-to-be-released-today/3868249/ (last visited January 18, 2014)

[202] Amye R. Warren & Cara E. Woodall, *The Reliability of Hearsay Testimony: How Well do Interviewers Recall Their Interviews with Children?,* 5 PSYCH. PUB. POL'Y & LAW 355 (1999)

[203] Id. at 365.

[204] *See generally,* Victor I. Vieth, *When the Child Has Spoken: Corroborating the Forensic Interview,* 2(5) CENTERPIECE (2010). *See also,* Amy Russell, *Documentation and Assessment of Children's Forensic Interviews,* 16(2) WIDENER LAW REVIEW (2010); Frank E. Vandervort, *Videotaping Investigative Interviews of Children in Cases of Child Sexual Abuse: One Community's Approach,* 96(4) JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 1353, 1415 (2006) (concluding that videotaping the disclosures of child victims had a "deleterious impact" on the accused offenders and proved helpful to prosecutors in obtaining convictions).

When it can be done, though, there are significant advantages in conducting in person interviews. If a case is older and witnesses are scattered nationally and internationally, telephone and Skype interviews are likely the best option to insure the speed of the investigation. Once a report is made, the timeliness of an investigation is critical with delays frequently resulting in loss of evidence and witnesses.[205]

2. **If the crime scene is available and accessible to the investigator, have it photographed**

There are multiple reasons that photographs of the location of abuse can help prove a case.[206] As one simple illustration, there was a case before the National Board of Review in which the NBOR panel members were questioning witnesses to describe the scene at the pool in which abuse allegedly occurred. The purpose of the questioning was to assist in determining the location of various witnesses to see how easily a witness could have seen the alleged misconduct. This would have been much more easily accomplished if there had been one or more photographs of the crime scene.

3. **Develop a pool of medical, mental health, and sex offender treatment experts that can be consulted in cases of physical abuse, psychological abuse, and juvenile sex offenses**

Given the complexity of cases of child abuse, investigations are conducted as part of a multi-disciplinary team consisting of law enforcement officers, child protection workers, medical experts, mental health experts, forensic interviewers, and other professionals as needed.[207] Although USA Swimming does have a Safe Sport committee that includes a detective, a psychologist, and a medical professional that can be consulted, there is a need to expand this list to include a board certified pediatric specialist in child abuse, a psychologist specializing or well versed in cases of psychological abuse, and a sex offender treatment provider specializing or well versed in juvenile sexual behaviors or offenses.[208]

Unlike cases of sexual abuse committed by an adult, which typically revolve around whether or not the offense took place, other forms of abuse are more likely to require expertise to assist in evaluating the evidence and in asking the right questions. Although markings on a child's body may be indicative of abuse or corroborate an account of maltreatment, not every bruise, cut, burn or injury is consistent with maltreatment. In many cases of alleged physical abuse, a medical

[205] *See generally,* Detective Mike Johnson, *The Investigative Windows of Opportunity: The Vital Link to Corroboration in Child Sexual Abuse Cases,* 9(9) CENTERPIECE (2009), available online at: http://www.gundersenhealth.org/upload/docs/NCPTC/CenterPiece/Vol%201%20Issue%209.pdf (last visited January 10, 2014).
[206] *See generally,* Victor Vieth, *Picture This: Photographing a Child Sexual Abuse Crime Scene,* 1(5) CENTERPIECE (2009).
[207] *See generally,* NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE, INVESTIGATION AND PROSECUTION OF CHILD ABUSE xiv (2004) (discussing the importance of handling cases of child abuse as a multi-disciplinary team).
[208] These professionals do not need to be added to the Safe Sport committee, they need to be available for an occasional phone call, e-mail or other consultation when the need arises.

expert is necessary to assist the investigator in determining whether or not an alleged victim or offender's account is consistent with the injury. A medical expert can also alert the investigator as to questions to ask a victim or suspect that will assist in sorting out an allegation. Cases of psychological abuse can be even more complex and may require an extensive knowledge of child development and the growing body of literature on this form of maltreatment.

A pool of experts may also help USA Swimming assist club owners, coaches and others who see something concerning and wonder what, if anything, should be done. This is particularly the case for coaches and clubs dealing with juvenile sex offenses. As a simple illustration, one coach called USA Swimming about sexual activity that occurred in a locker room involving two very young boys. The coach was unsure if this behavior was normal, if it warranted a report to the authorities, if one or more of the boys should be required to be assessed before returning to the club as well as other questions that are simply not within the expertise of a coach whose primary job is teaching swimmers. Because the mind of juveniles is very different from those of adults, behaviors are much more difficult to categorize and respond to. In difficult cases such as these, it would be helpful for the organization to have a larger pool of experts it can consult with as needed.

4. **Disband or limit the coaches' panel to evaluating whether or not a coaches' conduct is acceptable within the sport of swimming**

Although cases of sexual misconduct may go directly to an NBOR after an investigation, cases of physical abuse or psychological abuse go to a "coaches' panel" after an investigation. This is because swimming is a competitive sport and athletes may endure any number of drills or other conduct that are not abusive—they are part of the sport. To this extent, a coaches' panel may be a very important factor in determining whether or not an act is physical or psychological abuse—but it is not the only factor and certainly not the determining factor.

Under the current structure, even if the coaches find the conduct is not typical or wise, they may then determine the broader issues of whether or not the conduct was in fact harmful to a child physically or emotionally.[209] These latter issues are beyond the expertise of a coach and should, instead, be evaluated by experts. A simple illustration of this problem may assist.

In one case involving a banned coach, the offender required a victim to kiss another athlete for a period of time and, if she refused, all of the team was punished. A coaches' panel would easily recognize this as a practice that is not legitimate coaching and such a determination is well within their expertise. However, if the panel is asked to determine whether or not this conduct meets myriad legal definitions of physical or psychological abuse, much less the potential harm to the victim or the team as a whole from this conduct, the latter considerations would be outside the expertise of the panel and should instead be made by medical, mental health or legal experts in the field of child protection.

[209] This is, in fact, what happened in one of the coaches' panel case files we reviewed.

In a court of law, a coach would never be qualified as an expert on physical or psychological abuse—they would simply be qualified as an expert on what is or is not accepted in the field of coaching their particular sport.[210] Since USA Swimming follows a semi-judicial process in evaluating cases of abuse, it should not adopt an approach for evaluating physical and psychological abuse cases that would be unlikely to pass muster in a court of law. Moreover, this process is also unfair to the coaches—forcing them into an arena for which they may be ill suited.

5. **USA Swimming should develop materials that may assist an abused athlete and his or her family in cooperating with an investigation or NBOR hearing**

For purposes of this report, we have divided the non-compliant victim files into two categories. The first category involves cases in which there is a reasonable suspicion of abuse but, without the cooperation of the victim and/or the victim's family, USA Swimming lacks the evidence to prove the case by a preponderance of the evidence before the National Board of Review.

In these instances, a victim or a victim's family may express fear they will not be believed, that they will be asked humiliating questions in a court of law or before the NBOR, and that embarrassing details of an abusive relationship—such as sexually explicit texts or photographs will be viewed by others and may one day find their way onto the internet or in another public forum. If an offending coach is popular or powerful, the victim may fear ostracism from the club or community.

To address these concerns, USA Swimming should develop materials to assist victims and their families to understand other factors that may influence them to move forward despite the risks. These materials should not be developed so much as to persuade a victim but to give him or her as well as parents information that may alleviate their concerns and allow them to make a more informed decision. At no point should the victim or the victim's family be guaranteed that nothing can go wrong—because it may. With these limitations in mind, at least three points need to be made.

First, the effects of testifying in court or, in the case of USA Swimming, before the National Board of Review, may not be as bad as many victims or their parents fear and may, in fact, be beneficial to the victim's short and long term recovery. Although there is not presently any research on the impact of testifying before the NBOR, there are a number of studies on the effects of children testifying in criminal or civil cases of child abuse.

A study of 218 child sexual abuse victims testifying in criminal court found there were negative short term effects of testifying but, once the case was resolved, "the behavioral adjustment of

[210] *See* FEDERAL RULES OF EVIDENCE 702.

most, but not all, children who testified was similar to that of children who did not take the stand. The general course for these children, as for the control children, was gradual improvement."[211]

An American Academy of Pediatrics study found it "cannot be stated conclusively that testifying is either harmful or beneficial" but noted that the "emotional health of children improved with time regardless of a positive or negative court experience."[212] Other studies have found that testifying in juvenile court has a *beneficial* effect on the victim, creating a "protective effect" on the child, though this "effect is obviously modified by the specifics in each case."[213] In a study of 90 sexual abuse victims ages 9-19 who had testified in juvenile court, criminal court or both, 34% of the children said testifying was harmful but 48% found testifying was *helpful* and 60% of the children found that testifying assisted them in developing greater trust in professionals.[214] Indeed, 72% said their experience with the child protection system was more positive than negative.[215]

There are multiple reasons why some children who testify fare better than others including the harshness of cross examination, the number of times the victim is asked to testify, the existence of corroborating evidence[216] and, perhaps most importantly, parental support.[217]

These and other studies[218] would allow USA Swimming to develop materials that will better help victims and their families understand the following:

- Many children benefit from testifying
- Even children who do not benefit from testifying tend to recover[219]
- A number of factors, such as parental support, increase the chance a child will be handle the stresses of testifying

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[211] Gail S. Goodman, Elizabeth P. Taub, David P.H. Jones, Patricia England, Linda K. Port, Leslie Rudy, and Lydia Prado, *Testifying in Criminal Court,* 57 MONOGRAPHS OF THE SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT, 1, 114-15 (1992).
[212] American Academy of Pediatrics, Committee on Psychological Aspects of Child and Family Health, *The Child in Court: A Subject Review*, 104 PEDIATRICS 1145, 1146 (1999).
[213] Desmond K. Runyan, Mark D. Everson, Gail A. Edelsohn, Wanda M. Hunter, & Martha L. Coulter, *Impact of Legal Intervention on Sexually Abused Children,* 113 JOURNAL OF PEDIATRICS 647, 652 (1988).
[214] Jim Henry, *System Intervention Trauma to Child Sexual Abuse Victims Following Disclosure,* 12 JOURNAL OF INTERPERSONAL VIOLENCE 499 (1997).
[215] Id.
[216] This, apparently, is because the lack of corroborating evidence puts greater emphasis on the child's testimony.
[217] Gail S. Goodman, et al, *Testifying in Criminal Court,* 57 MONOGRAPHS OF THE SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT 1, 117, 118-119 (1992); Julie A. Lipovsky, *The Impact of Court on Children: Research Findings and Practical Recommendations,* 9 THE JOURNAL OF INTERPERSONAL VIOLENCE 238-246 (1994).
[218] An excellent summary of the research on the effects of testifying can be found in JOHN E.B. MYERS, MYERS ON EVIDENCE OF INTERPERSONAL VIOLENCE, FIFTH EDITION 181-188 (2011)
[219] According to law professor John Myers, the "overriding theme of the psychological research...is that children are resilient. They bounce back." JOHN E.B. MYERS, MYERS ON EVIDENCE OF INTERPERSONAL VIOLENCE, FIFTH EDITION 188 (2011).

In applying this research to USA Swimming's hearings before the National Board of Review, there are a number of factors USA Swimming can point out to victims and their families that may ease their anxieties. The NBOR hearings are over the telephone and thus the victim does not have to face his or her offender. Indeed, in a number of cases, the offender declines to appear. There is typically a time limit on the hearing itself, including the length of cross-examination and this serves to limit the ability of attorneys or others to harass, intimidate or ask embarrassing questions of a victim. From our review of audio recordings of NBOR hearings, it is clear USA Swimming attorneys have prepared victims for the hearing and are diligent in objecting to inappropriate questions or conduct by an accused's attorney. The panel members have also been sensitive to victims who are testifying, even apologizing for the difficult nature of testifying about details of an abusive episode. Because the NBOR hearings are closed, there is also a reduced danger of others being present on the phone who may intimidate a victim.[220] In some instances, USA Swimming has used a mentoring system whereby a victim who has previously testified and otherwise participated through the NBOR or other processes is available to answer questions or provide support to a victim who has not yet got through the process. Moreover, USA Swimming nearly always prevails before the NBOR—a fact that may be particularly important to survivors who worry whether testifying will make any difference.[221]

6. **Research the effects of testifying before the NBOR and utilize this research in responding to cases in which a victim or family is uncooperative**

Although, from the analysis above, it is logical to conclude the NBOR hearings may be positive, or at least not traumatizing to victims and their families, there is no definitive research confirming this conclusion. It could be argued that the research that applies to testifying in civil and criminal court is different because the victims in those studies were still children and, in many NBOR cases, the victim is now an adult. Moreover, the culture of swimming, a culture that may result in others rallying around a coach and ostracizing a victim may make the effects of testifying in an NBOR different than testifying in another proceeding. Indeed, one victim told us that, despite her coach's ban, the aftermath of her disclosure still results in a lack of support, even cruel treatment from those who support the coach.

Researching these and other issues may help USA Swimming in two ways. First, if the research is positive it may prove helpful in encouraging survivors to participate in the process. This, in turn, will aid USA Swimming in removing coaches or others who harm children within the sport. Second, if the research identifies factors in the process that are particularly stressful, it may allow USA Swimming to develop strategies to reduce the burden on the victim in future cases.

[220] Obviously, the offender and his or her attorney may be on the phone but other parties or witnesses who may be intimidating to a victim will not be on the phone at the same time as a victim since only one witness is allowed to be on the phone at a time.

[221] In at least one non-compliant victim file, the survivor's parents expressed concern that their child would not be believed over the word of a coach.

This proposal may not be necessarily expensive—there could be any number of researchers willing to study this issue on their own accord if USA Swimming is open to the idea. Obviously, the research would have to be by a university or other independent body and would need to clear appropriate IRBs and other processes. If, though, this could be done, it may be extremely helpful to USA Swimming and perhaps to other youth serving organizations that require an administrative process and hearing before removing or banning an offender from membership.

7. **Establish "reliable hearsay" standards that may allow the organization to ban coaches USA Swimming believes has abused a child or otherwise violated the code of conduct**

Among USA Swimming's non-compliant victim files are cases in which a survivor has given a clear statement of abuse but is unwilling or unable to testify before the NBOR and for which there may be little corroborating evidence. In some instances, there may be underlying law enforcement investigations which did not substantiate abuse and these findings would certainly be cited by a coach's attorney as proof a victim's statement is not reliable.

In these cases, USA Swimming has informed survivors that they do not have a statute of limitations and are willing to proceed whenever the victim may be able to testify. In one case, USA Swimming was willing to go before the NBOR if the victim's therapist were willing to testify. However, USA Swimming does not have subpoena or other powers to compel testimony and, as a result, a witness alone determines whether or not they will participate in a proceeding.

These dynamics may result in an offending coach having ongoing access to children. Even if the coach is no longer a member of USA Swimming, he or she could still access children in another organization. Accordingly, it is critical to explore the development of rules or procedures under which USA Swimming can proceed in cases in which a victim has given a credible statement of abuse but will not testify.

Most states have a hearsay exception allowing reliable statements of child abuse victims to be admitted into evidence and states following the federal rules of evidence have a "catch all" exception allowing the hearsay statement of any witness to be admitted if it meets certain indicia of reliability.[222] No less an authority than the United States Supreme Court has recognized that child abuse statements meeting certain criteria can be admitted under the catch all exception to the hearsay rule.[223] Although the Supreme Court has limited the use of this exception in criminal

[222] JOHN E.B. MYERS, MYERS ON EVIDENCE OF INTERPERSONAL VIOLENCE, FIFTH EDITION 797-829 (2011)

[223] *Idaho v. Wright,* 497 U.S. 805 (1990).

cases, at least cases in which the victim does not testify,[224] child hearsay statutes and catch all exceptions to the hearsay rule remain powerful tools in civil child protection proceedings.[225]

In determining reliability of a statement under the catch all exception to the hearsay rule, the United States Supreme Court instructs judges to examine the "totality of the circumstances " that "surround the making of the statement and that render the declarant particularly worthy of belief."[226] In applying this rule, courts look at multiple factors including whether the prior statement was under oath and subjected to cross-examination,[227]the testimonial competence of the witness, the spontaneity of the statement, whether the statement was overhead by more than one person, whether the statement was elicited by questioning,[228] whether the statement was audio and video recorded,[229] whether the victim's statements are consistent, the state of mind and emotion when the statement was made,[230] developmentally unusual sexual knowledge (relevant in the case of a young victim), idiosyncratic detail,[231] the age and maturity of the declarant, whether the statement is against interest,[232] motive to fabricate,[233] and personal knowledge of an event.[234]

There is an extremely large body of case law delineating these and other factors that a judge can consider in determining if a statement is inherently reliable such that it can be admitted even in the absence of the victim's testimony.[235] We believe this body of case law can be used to fashion a "reliable hearsay" standard that will make it easier for USA Swimming to move forward in

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[224] *See Crawford v. Washington,* 541 U.S. 36 (2004).
[225] *See generally,* JOHN E.B. MYERS, MYERS ON EVIDENCE OF INTERPERSONAL VIOLENCE, FIFTH EDITION 797-829 (2011)

[226] *Idaho v. Wright,* 497 U.S. 805, 819 (1990).
[227] Cases in which a victim has already testified under oath may be rare but could happen if there was a grand jury proceeding, a deposition in a civil lawsuit, or another civil or criminal proceeding.
[228]In USA Swimming cases before the NBOR, there have been instances of victim's diaries, social media entries, and letters or other correspondence with an offender which were not created in response to questioning.
[229] An audio or video recorded statement allows the trier of fact to observe the demeanor of a victim, his or her exact words and also assess how the statement may have been influenced, if at all by a questioner. As noted earlier, USA Swimming does not currently audio or record statements from witnesses but, in cases of reluctant or "non-compliant" victims, a recording may allow an NBOR panel to conclude the statement was reliable. While some victims may be reluctant to provide an audio or video recorded statement, they may be willing to do so if this will allow them to avoid testifying at a hearing.
[230] This can be as simple as a victim expressing embarrassment, shame, fear or other relevant emotions at the time of disclosure.
[231] In one case, for example, a victim of a banned coach was able to describe idiosyncratic details pertaining to the coach's ability to get an erection—details that were corroborated by the coach.
[232] Given the support many coaches have, support even in cases of strong evidence, this fact alone may make the statements of most victims in USA Swimming cases "against their interest." If a victim expresses fear of the reaction of parents, or public humiliation, his or her statements of abuse may also be considered against the child's interests.
[233] Since it is not pleasant to share details of sexual or other abuse to other parties, it is unlikely very many victims have a "motive to fabricate." Indeed, a number of studies confirm that intentional false allegations are rare. *See e.g.* R. Kim Oates, et al, *Erroneous Concerns About Child Sexual Abuse,* 24 CHILD ABUSE & NEGLECT 149, 152 (2000).
[234] To review these and other factors, see JOHN E.B. MYERS, MYERS ON EVIDENCE OF INTERPERSONAL VIOLENCE, FIFTH EDITION 797-829 (2011).
[235] Id.

cases in which a victim is unwilling or unable to testify but has given a credible, detailed account of abuse.

We see nothing in the existing rules governing the National Board of Review which would prohibit the admission of hearsay meeting these standards.[236] Indeed, there are a number of cases before the NBOR in which hearsay statements have been admitted.[237] The United States Olympic Committee's list of due process requirements does afford an accused the right to "confront and cross-examine adverse witnesses."[238] If, though, the victim's statement was taken by a USA Swimming investigator or overhead by one or more parties who testified at the hearing, the accused would have the opportunity to cross examine the person taking the statement and to challenge whether or not the statement is reliable.

The Amateur Sports Act does afford the opportunity to appeal a case to the American Arbitration Association.[239] In the event a case is presented before the American Arbitration Association,[240]the rules for these hearings also do not per se exclude reliable hearsay. Indeed, the rules state that conformity to "legal rules of evidence shall not be necessary" and the arbitrator "shall determine the admissibility, relevance, and materiality of the evidence offered…"[241] Nonetheless, it may be wise to amend the Rules pertaining to the NBOR and also work with the American Arbitration Association to make explicit the standards for admitting reliable hearsay in cases of child abuse. This may be necessary, in part, to educate the panel as to the reliability of a given statement.

There is one, additional legal doctrine that may be relevant in admitting a victim's account of abuse and refuting the claim of an accused that his or her right to confront the witness was denied. Under the doctrine of forfeiture by wrongdoing, courts have found that if an witness is unavailable because of the misconduct of the accused—such as threatening the witness not to testify, the accused forfeits the right to confront and cross examine the witness.[242]

Admission of the victim's statement, of course, does not guarantee USA Swimming can meet its burden of proof of preponderance of the evidence and certainly an attorney for an accused coach will cite the victim's absence from the hearing as undermining his or her credibility. Nonetheless, developing a clear standard for admitting credible hearsay, and educating NBOR panels about these relevant standards, will give USA Swimming a better chance to move forward in in at least some non-compliant victim cases.

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[236] USA SWIMMING 2013 RULEBOOK, SECTION 407.6.
[237] This conclusion is based, in part, on a review of the audio recordings of a number of NBOR hearings.
[238] USOC DUE PROCESS CHECKLIST, available online at: http://www.teamusa.org/For-Athletes/Athlete-Ombudsman/Athlete-Rights (last visited January 20, 2014).
[239] 36 UNITED STATES CODE SECTION 22501 ET SEQ.
[240] Additional information about the American Arbitration Association can be found at: www.adr.org (last visited January 22, 2014).
[241] AMERICAN ARBITRATION ASSOCIATION, COMMERCIAL RULES AND MEDIATION PROCEDURES R-34 (a)(b) (2013).
[242] *See generally,* Tom Harbinson, *Using the Crawford v. Washington "Forfeiture by Wrongdoing" Confrontation Clause Exception in Child Abuse Cases,* APSAC ADVISOR 8 (SUMMER 2004).

8. Develop standards for evaluating underlying law enforcement and child protection investigations

In a number of the cases in which a coach, official or other USA Swimming member is reported as an abuser, there are underlying law enforcement and child protection investigations. Although USA Swimming is not always able to obtain copies of police and child protection investigations, there are a number of instances in which they receive a copy of one or more documents related to investigations by the authorities.

In cases in which a non-athlete member is arrested, charged or convicted of various crimes against a minor, it is a relatively easy case for USA Swimming to prove—since a mere arrest or charge is a violation of the code of conduct.[243] When, though, law enforcement or child protection investigators conclude there is insufficient evidence to warrant a charge or even conclude abuse did not occur, USA Swimming is left with a more difficult case. In these circumstances, USA Swimming must prove the misconduct by a preponderance of the evidence—and meet an anticipated defense from the accused that if law enforcement and child protection workers deem an allegation untrue, how can USA Swimming claim otherwise?

In order to answer this question, it is critical to develop standards for evaluating the relevancy of these documents and any underlying conclusions. In some instances, criminal justice or other authorities may not proceed with a case because a statute of limitations has expired or the conduct, though a violation of USA Swimming's code of conduct, would not constitute a crime in a given jurisdiction. Moreover, criminal cases involve a much higher burden of proof (beyond a reasonable doubt) and have much stricter regulations on the admissibility of evidence.[244] In cases such as this, the underlying determination by the authorities should have little impact on the decision making by USA Swimming.

If, though, criminal justice and child protection authorities concede the conduct would be an offense and still conclude there is insufficient evidence, USA Swimming must evaluate these findings at a deeper level. There are, indeed, cases in which the opinions of impartial law enforcement and child protection investigators should be accorded significant weight. In other instances, though, the underlying investigations and the opinions of the investigators should be accorded little or no weight.

Although there have been significant advancements in the investigation of child abuse cases in the past 25 years,[245] not every investigation is thorough or even competent.[246] This happens, in part, because very few undergraduate or graduate programs prepare law enforcement officers,

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[243] USA SWIMMING RULEBOOK 2013 304.3.6.
[244] *See* Crawford v. Washington, 541 U.S. 36 (2004).
[245] *See generally,* Michael Johnson & Victor Vieth, *When the Call Comes: APSAC's Historic Recognition of Law Enforcement Officers and Prosecutors as Professionals,* APSAC ADVISOR 25 (WINTER/SPRING 2012).
[246] *See* Victor I. Vieth, *Unto the Third Generation: A Call to End Child Abuse in the United States within 120 Years (revised and expanded),* 28 HAMLINE JOURNAL OF PUBLIC LAW & POLICY 1, 11-15 (2006).

child protection workers, medical or mental health professionals to respond to a case of child maltreatment.[247] As a result, errors are sometimes made and even cases of child abuse in which there is strong evidence are not investigated fully or even at all.

Indeed, according to the Fourth National Incidence Study of Child Abuse and Neglect (NIS-4), a large percentage of maltreated children *identified* by the NIS researchers did *not r*eceive child protection investigation.[248] Specifically, only 50% of the nation's *identified* abused children received child protection investigation and only 30% of the children suffering "serious harm" received child protection investigation.[249] The NIS-4 researchers labeled "serious harm" cases as those child abuse or neglect cases in which "an act or omission result in demonstrable harm."[250]

Likely unaware of these facts, there are instances in which USA Swimming has accorded too much weight to a law enforcement or other investigation. In one case, for example, the law enforcement investigator failed to interrogate the suspect, to take crime scene photographs, to follow up on possible leads for corroborating evidence and suggested the victim's statement lacked detail even though the statement clearly does. When an investigation is so poorly done, any law enforcement conclusions should be discounted and, if need be, an expert witness can be called before the NBOR to explain why the criminal justice or child protection investigation is of little assistance to the panel.

In assessing the weight to be given to law enforcement or child protection investigations, USA Swimming may wish to ask five questions. First, was the investigation conducted as part of a

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[247] *See generally,* Victor I. Vieth, *Unto the Third Generation: A Call to End Child Abuse in the United States within 120 Years (revised and expanded),* 28 HAMLINE JOURNAL OF PUBLIC LAW & POLICY 1 (2006); Ann S. Botash, *From Curriculum to Practice: Implementation of the Child Abuse Curriculum,* 8(4) CHILD MALTREATMENT 239 (November 2003). Carole Jenny et al., *Analysis of missed cases of abusive head trauma,* 281 JAMA 621-626 (1999); Kelly M. Champion, Kimberly Shipman, Barbara L. Bonner, Lisa Hensley, and Allison C. Howe, *Child Maltreatment Training in Doctoral Programs in Clinical, Counseling, and School Psychology: Where Do We Go From Here?,* 8 CHILD MALTREATMENT 211, 215 (August 2003); Krisann M. Alvarez, Maureen C. Kenny, Brad Donahue, & Kimberly M. Carpin, *Why are Professionals Failing to Initiate Mandated Reports of Child Maltreatment, and are there any Empirically Based Training Programs to Assist Professionals in the Reporting Process?*AGGRESSION AND VIOLENT BEHAVIOR 563, 574-575 (2004); Michelle S. Knox, Heather Pelletier, & Victor Vieth, *Effects of Medical Student Training in Child Advocacy and Child Abuse Prevention and Intervention,* PSYCHOLOGICAL TRAUMA: THEORY, RESEARCH, PRACTICE & POLICY (2013): Joyce Adams, Suzanne P. Starling, Lori D. Frasier, Vincent J. Palusci, Robert Allan Shapiro, Martin A. Finkel, & Ann S. Botash, *Diagnostic Accuracy in Child Sexual Abuse Medical Evaluation: Role of Experience, Training, and Expert Case Review,*36 CHILD ABUSE & NEGLECT 383, 392 (2012); Emalee G. Flaherty, Robert Sege, Lori Lyn Price, Katherine Kaufer Christoffel, David P. Norton, and Karen G. O'Conner, *Pediatrician Characteristics Associated with Child Abuse Identification and Reporting: Results from a National Survey of Pediatricians,* 11(4) CHILD MALTREATMENT 361, 366 (2006); *Executive Summary,* REPORT OF THE ATTORNEY GENERAL'S TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 5 (2012), available online at: http://www.justice.gov/defendingchildhood/ (last viewed January 12, 2014) (recommending reform of undergraduate and graduate training pertaining to family violence).

[248] The NIS-4 uses "sentinels" to collect data on children they encounter who may have been abused. For this study, the researchers had over 10,000 sentinels from 122 counties. FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4), U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES 2-7, 2-8, 2-9 (2010).

[249] *Id.*

[250] FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT (NIS-4), U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES EXECUTIVE SUMMARY 3 (2010)

multi-disciplinary team which drew upon the expertise of multiple professionals?[251] Second, if one is available, did the team work with an accredited Children's Advocacy Center?[252] Third, did the investigative team take crime scene photographs, search for corroborating evidence, and execute appropriate search warrants? Fourth, was the investigative team well trained? Fifth, did the investigative team interview the victim and interrogate the suspect?[253] If the answer to most of these questions is no, the "investigation" may mean very little.

GRASSROOTS ENGAGEMENT AND FEEDBACK

The Centers for Disease Control guidelines for youth serving organizations states these organizations should "take on as many individual strategies to prevent child sexual abuse as they are able" but organizations "must have a strong infrastructure in place to serve as a foundation for efforts to prevent child sexual abuse."[254] In order for this infrastructure to be effective, it must begin at the local level which, in the case of USA Swimming, means the individual clubs and the parents, athletes and coaches participating in them.

According to USA Swimming's Safe Sport Handbook, grassroots engagement is a critical function of the program. Specifically, the handbook states the organization is attempting to "(c)reate connection to the local level; establish clear communication channels going both ways; solicit feedback and communicate how the feedback was incorporated into change efforts; work together not against each other."[255]

USA Swimming is moving toward developing this infrastructure with two full time employees dedicated to Safe Sport as well as investigators, attorneys, and a Safe Sport committee that can help as appropriate. USA Swimming has also developed a Safe Sport coordinator in each of the 59 LSCs whose job it is to assist clubs in meeting Safe Sport obligations and also to share with USA Swimming good ideas or practices being developed by individual clubs. USA Swimming's model travel policy came in large measure from ideas developed at the club level.

USA Swimming is also honoring those coaches, clubs, athletes and others who have made "significant contributions" to the prevention of sexual abuse, physical abuse, or emotional abuse. The "Safe Sport Distinguished Service Award" is a positive step in rewarding those within the sport who are making a difference one child at a time.

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[251] NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE, INVESTIGATION AND PROSECUTION OF CHILD ABUSE xxix 2004) (discussing the benefits of working as part of a multi-disciplinary team).
[252]Nancy Chandler, *Children's Advocacy Centers: Making a Difference One Child at a Time,* 28 HAMLINE JOURNAL OF PUBLIC LAW & POLICY 315 (2006).
[253] NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE, INVESTIGATION AND PROSECUTION OF CHILD ABUSE 126-142 2004) (discussing the interrogation of child abuse suspects).
[254]J. Saul & NC Audage, *Preventing Child Sexual Abuse within Youth-Serving Organizations: Getting Started on Policies and Procedures,* CENTERS FOR DISEASE CONTROL AND PREVENTION 33(2007).

[255] SAFE SPORT HANDBOOK p. 6.

Recommendations for strengthening grassroots engagement

1. **Set a goal of a Safe Sport coordinator in every club—and strive to meet this goal within five years**

The next, and probably most important evolution in grassroots engagement, is to develop a Safe Sport coordinator at the club level. This person can take a lead in reminding parents and athletes about the importance of Safe Sport training and otherwise make sure Safe Sport policies are being adhered to. The coordinator can also help in reaching out to community organizations that can assist in developing local policies. This person could be a volunteer, a board member or any other appropriate party. This person can also be a valuable line of communication in letting LSC and USA Swimming Safe Sport officials know about successes and challenges in the program.

This could not happen overnight and USA Swimming will have to develop some training and materials to assist these coordinators but developing this role will be an important infrastructure development. Ultimately, child protection cannot be done unless those closest to the children are fully engaged. Hence, the need for building an infrastructure that begins at the club level. We believe that developing this infrastructure within five years is a realistic goal for the organization.

2. **Facilitate connections between local clubs and community child protection organizations that may assist in evaluating risks unique to a particular club**

Irrespective of the amount of education, and the development of rules, the fact remains that coaches, parents, officials and club owners are not necessarily experts on child abuse and may fail to appreciate a danger unique to a particular club, pool or locker room. In our site visits to a handful of swimming practices,[256] we found some risk factors that may be unique to that club. In one case, for example, the club used a large publicly owned pool with numerous swimming lanes—one of which was reserved for members of the general public. This created an opportunity for any member of the public, even a convicted sex offender, to gain access to the pool and the locker room at the time children were present. Identifying and resolving risks such as this may be beyond the expertise of a local club.

Accordingly, it would also be wise, when feasible, for a local club to develop a relationship with a local child protection professional for assistance that, in nearly every circumstance, would be free. For example, many communities have Children's Advocacy

[256] We visited four practices in three different states—Wisconsin (two different sites), Texas, and Colorado.

Centers[257] that are willing to assist in prevention education and may be willing to attend a swim practice and assess any unique risks or to brainstorm about possible remedies.

Although the Safe Sport employees at USA Swimming can assist in answering questions, developing connections with community child protection professionals will help on many levels. It will also assist the clubs should they ever encounter a situation of abuse and may be unsure of where to turn or of local resources available. In these circumstances, the club will already have developed local child protection connections that can assist them in these circumstances.

3. **Make a concerted effort to engage survivors in every major Safe Sport initiative**

As mentioned earlier in the report, USA Swimming has utilized survivors as mentors in helping others through an NBOR or other process. This is a promising practice and we encourage the expansion of initiatives that involve survivors in whatever capacity they feel comfortable contributing. USA Swimming also has survivors involved with its Safe Sport Committee. This practice should also be continued and expanded. The experiences of survivors are invaluable in helping the organization develop effective policies and training and should be taken into account at every opportunity. In every Safe Sport initiative, then, there should be a concerted initiative to gain the input of survivors. For similar reasons, it would also be worthwhile to involve the parents of survivors to the extent they wish to be.

OTHER RECOMMENDATIONS: RESEARCH, VICTIM ASSISTANCE, A TASK FORCE TO REVIEW ACCESS TO FILES, AND AN INDEPENDENT ENTITY TO RESPOND TO CHILD ABUSE CASES

The importance of research

In developing or refining its child protection policies, USA Swimming has drawn upon the expertise of outside organizations[258] and vendors[259] and has adopted rules specifically tailored to the type of cases it has seen within its ranks.[260] Although this approach is logical and has clearly improved the organization, it also highlights a potential weakness. Simply stated, the response is based on cases that have come to light. Perhaps the greatest danger USA Swimming faces is not

[257] The website for the National Children's Alliance is: http://www.nationalchildrensalliance.org/ (last visited January 20, 2014).
[258] USA Swimming consulted with the Child Welfare League of America, has participated in the National Youth Symposium (sponsored by the Boy Scouts of America) in which various youth serving organizations have met to learn about and discuss advances on the field of child protection and, of course, as part of this assessment has sought the guidance of Gundersen's National Child Protection Training Center.
[259] Praesidium, for example, was used in developing USA Swimming's child protection training programs.
[260] The prohibition against coaches giving massages, for example, was directly related to cases in which this conduct was used to sexually abuse a child.

what it knows about child abuse within the organization—but what it doesn't know. No one knows the actual extent of child abuse within the sport, whether or not certain types of abuse are underreported, whether or not certain categories of potential victims (such as boys) are not being discovered, and how, if at all, sex offenders and other abusers may have altered their approaches to accessing children in light of USA Swimming's myriad policy and rule changes. No one really knows this—but it may be possible to find out.

Recommendations for research

1. **Conduct a baseline study to assist in determining the extent of child abuse within swimming, the manner in which offenses may be carried out, and the effectiveness, or lack of effectiveness of various responses**

Although there have been some studies about the prevalence of abuse within a sport, there are "many under-researched areas of sport abuse" that might better shape future policies for prevention and response.[261] For instance, a baseline survey of 2118 athletes in organized competitive sport in Australia found that 13% of the females and 6% of the males had been sexually abused within the sport.[262]

In order to fully understand the possibilities of a baseline survey in swimming, it may be helpful to consider a survey of students done every three years in Minnesota. The Minnesota Department of Health conducts a student survey about myriad activities , experiences, and behaviors—including bullying and physical and sexual abuse. Given the large numbers of students who participate in the study, it provides strong baseline information as to the prevalence of various risk factors. Because the study is repeated every three years, it provides helpful data as to whether or not various risk or protective factors are increasing or decreasing. For example, we can say 5% of 6th graders, 7% of 9th graders and 7% of 12th graders in Minnesota have been sexually abused either inside or outside the home (such as in a youth serving organization). [263]

It is also possible to compare these numbers with previous years to see if sexual abuse among various ages is increasing, declining or remaining static. Below is a table showing these results for age categories from 1998-2010:

[261] Celia Brackenridge, *Violence and Abuse Prevention within Sport,* in KEITH L. KAUFMAN (ED), THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK 401, 409 (2010).
[262] Trisha Leahy, et al, *Prevalence of Sexual Abuse in Organized Sport in Australia,* 8 JOURNAL OF SEXUAL AGGRESSION 16 (2002).
[263] Minnesota Student Survey Selected Single Year Results 1998-2010, available online at: http://www.health.state.mn.us/divs/chs/mss/ (last visited January 13, 2014).

	1998	2001	2004	2007	2010
Percent who report that someone inside or outside the family has ever touched them sexually					
6th Grade	5	6	6	5	5
9th Grade	9	8	8	7	7
12th Grade	8	8	7	7	7

The number below, also taken from the student survey, show the percentages of children physically abused so hard they had marks or were afraid:

	1998	2001	2004	2007	2010
Percent who report that an adult in their household has ever hit them so hard or so often that they had marks or were afraid of that person					
6th Grade	11	12	13	11	12
9th Grade	12	11	12	11	10
12th Grade	9	9	8	8	8

The student survey also measures sexual assaults between juveniles, finding that 10% of 9th graders and 15% of 12th graders had been "hit, hurt, threatened or forced to have sex" at the hands of someone they had gone out with.[264]

Although it would be challenging and could not be done overnight nor without the strong support of clubs, parents and athletes, the potential for a baseline study in swimming is enormous. If properly designed and implemented, the sport could have concrete data as to the prevalence of abuse, the type of abuses practiced, how offenders may be operating and any number of data that could help the sport in responding. The study could also document various resiliency factors that assist children in coping with trauma.

The study could not only look at issues pertaining to abuse but could explore any number of other things that would be helpful to coaches in working with athletes. Indeed, expanding the study beyond issues of abuse might be critical in getting the agreement of many athletes and parents to support taking the study. Obviously, the research would have to be done by an independent, reputable university or research team and would need IRB and other clearances.

If a study of this nature had been conducted 25 years ago, the sport may very well have detected levels and types of abuse much earlier than it did. Although the past cannot be changed, it can instill valuable lessons. Unless and until a quality baseline study is conducted, the sport can never say with confidence what the level of abuse may be within the organization nor fully know how to address it.

[264] Id.

2. **Evaluate the level of victimization of boys**

Although boys constitute more than 22% of the victims in USA Swimming cases investigated since 2010, the numbers may be even higher. A number of studies suggest that the sexual victimization of boys is underreported with boys disclosing less frequently than girls and often much later in life with one study finding that 44% of boys who did disclose took over 20 years to do so.[265] Researchers have also concluded the "victimization and the way it is experienced are different for boys than for girls" and there is "a pressing need for studies which involve both populations (boys and girls) or that focus specifically on cases of sexual abuse in sport involving male victims."[266] In designing or cooperating with baseline or other research, the potentially unique dynamics involving any male victims should be fully explored.

3. **Allow researchers access to USA Swimming's current data and files**

USA Swimming has compiled an impressive amount of data regarding the demographics of victims, offenders, and risk factors. This data, as well as the files themselves could be a wealth of information for researchers seeking to deepen our knowledge as to the dynamics involved in cases of abuse within sport, the cognitive distortions of sex offenders, and the location in which abuse takes place. Consider, for example, the following demographics.

Victim demographics

According to USA Swimming data of 94 cases investigated since 2010, 77% of these cases involved a female victim and 23% involved a male victim.[267] With respect to the ages of the victims when the abuse began:

- 13.25% are ten and under
- 30.12% are 11-14
- 49.39% are 15-18
- 3.6% are 19-23
- 2.4% are 24-29
- 1.2% are 30 and above

Offender demographics

According to data on the same 94 cases, 92.55% involved a male offender and 7.44% of the cases involved a female offender. With respect to the ages of the offenders when offenses began:

- 10.8% are 10-17
- 17.3% are 18-25

[265] For an excellent literature review of these and studies pertaining to the sexual abuse of boys in sport, *see* Sylvie Parent & Joelle Bannon, *Sexual Abuse in Sport: What About Boys?,* 34 CHILD ABUSE & NEGLECT 354 (2012).
[266] Id. at 357.
[267] These respective numbers are rounded up and down accordingly.

- 20.6 % are 26-31
- 19.5% are 32-39
- 13.04% are 40-45
- 10.89% are 46-52
- 7.6% are 53-58
- 3.2% are 59 and above

Although not all of these 94 cases resulted in a finding of a violation, the fact they were deemed significant enough to warrant an investigation means the data can be very helpful on multiple fronts.

Risk factors

A review of the same 94 cases identifies various risk factors involved in the alleged abuse. In 39.36% of the cases, electronic communication (cell phones, texting, social media) was used in the abuse or misconduct. In 24.46% of the cases, travel involving the accused and the victim was involved. In 13.8 % of the cases the misconduct occurred in a locker room. Alcohol was involved in 7% of the cases and a massage was involved in 4% of these cases.

Since these demographics are only based on reported cases, it is possible they are misleading. Would, for example, the unreported cases involve different demographics? Nonetheless, there is a large amount of data that may assist in growing our knowledge of how offenders operate inside a youth serving organization. Creating a process whereby university or other researchers could review and analyze the data would assist USA Swimming and perhaps other organizations in developing policies designed to protect as many children as possible. Even if past cases prove too difficult or expensive for researchers to code, these researchers could assist USA Swimming in its coding of future cases.

4. Establish and maintain a victim assistance fund

There are a number of youth serving organizations that have established funds for counseling or other needs of children who have been abused within the organization.[268] There are three reasons USA Swimming should also move in this direction.

First, and foremost, it is the right thing to do. In USA Swimming's investigative files there are numerous accounts of children, many of whom are now grown, who have suffered significantly. Attempts at suicide, eating disorders, chemical addictions, and a variety of other medical and mental health conditions flood the pages.

[268] Kelly Clark, *Institutional Child Sexual Abuse—Not Just a Catholic Thing,* 36 WILLIAM MITCHELL LAW REVIEW 220, 239 (2009). The Boy Scouts of America has a fund for survivors listed on their website which reads, in part: "Knowing that the effects of childhood sexual abuse can have an enduring impact into adulthood, we want to reach out with support and care to those who are struggling with past abuse." Information about this fund is available online at: http://www.scouting.org/sitecore/content/BSAYouthProtection/BSA_Communications/ScoutHelp.aspx (last visited January 19, 2014).

There is, though, something more. There is, in many accounts, a deep-seated feeling of something lost, and a longing for a different outcome. One survivor writes: "I can only hope no other child will have to spend nights sobbing and hugging oneself while slowly rocking back and forth, knees curled to chest, with racing thoughts wondering if their life could have been different, if it could have been normal."

Another survivor writes: "I was in every way just a kid. As a teenager you never think of yourself as young. I mean, in just a few years you'll be a real live adult! But man…those few years are vital. Vital to every kind of development there is. I hate that I lost those years. I hate that I got the invite to my 10 year high school reunion and the only thing it reminds me of is this."

Although USA Swimming cannot undo nights of sorrow or lost childhoods, it can lend a hand to the suffering. USA Swimming's vision statement is to "inspire and enable our members to achieve excellence in the sport of swimming and in life." It is perfectly consistent with this vision to create a fund to help cover the medical or mental health expenses of swimmers abused within the sport and otherwise aiding their ability to excel in life.

Second, a victim assistance fund may aid in removing abusive coaches. As noted earlier, the non-compliant victim cases are those in which a survivor and his or her family is unable or unwilling to testify before the NBOR or otherwise fully assist USA Swimming in banning an abusive coach. Counseling or other services may assist a survivor in coping with abuse, and strengthen his or her resolve to take action against an offending coach or other non-athlete members. Indeed, counseling can also help a survivor cope with the stressors of speaking before an offender and in dealing with the emotions that may follow an NBOR hearing.

Third, the right thing to do is also the smart thing to do. In advising youth serving organizations in responding to cases of child abuse, a number of experts, including trial attorneys who have sued these institutions, contend that "(d)oing the smart thing and doing the right thing is *the same thing"* and that "institutions that completely take care of the victim first" lessen the possibility of litigation later on.[269]

Although USA Swimming will need to determine how to establish and maintain such a fund it is *both the right and smart thing to do.*

5. **A taskforce regarding greater access to files and NBOR decisions, as well as sharing information about banned, suspended or flagged members with other youth serving organizations**

Given the history of abuse within swimming, there are a number of survivors and others who are skeptical of the organization and believe it is not forthright in protecting children. One way for

[269] Kelly Clark, *Institutional Child Sexual Abuse—Not Just a Catholic Thing,* 36 WILLIAM MITCHELL LAW REVIEW 220, 233 (2009).

the organization to address this is to look for opportunities to create more openness about its processes and decision making and to allow victims and, in some circumstances, the media to access files or other information about an individual or high profile case.

To this end, there may be several things USA Swimming can do.

First, the organization's current rules provide that National Board of Review hearings are confidential but do allow "information to be disclosed to complaining parties or victims."[270] It may be possible under this rule to give victims or complaining parties who believe the organization did not respond fully to their case the opportunity to access more information in order to see how their case was handled. At the very least, victims should have the right to review the audio tapes of NBOR hearings and to automatically get a copy of the final NBOR decisions (currently, victims get the order only if they request it).

Second, USA Swimming's current rules allow for the organization to publish a "redacted summary" of final decisions of the National Board of Review.[271] The organization should consider exercising this power more often, if not routinely. Unless a particular victim wants a decision to remain confidential because it contains details of his or her abuse, there may be a number of benefits to publishing the decisions.

Since these decisions often contain detailed summaries of the evidence presented at the hearings as well as defenses offered, publishing the decisions may help the public better understand how the organization goes about banning a coach or other member. Since these proceedings are semi-judicial processes, publishing the decision may also serve to create legal precedent and increase the chance of consistency in NBOR cases. Publishing the decision would also enable the public to better understand the conduct of a banned coach. Some coaches are more dangerous than others and publishing the NBOR decision may help the public discern this. Publishing the decision may also change the views of parents and others who have unwisely supported coaches who have abused children.

Third, USA Swimming should consider developing a process where a credentialed member of the media could petition the NBOR, or another entity, to review documents of importance to the public. This may happen in the case of a high profile athlete or coach in which there are competing and contradictory media accounts. There will likely need to be limitations to this rule and certainly confidential data pertaining to a victim such as diaries or explicit photographs should be protected from disclosure. Even with these limitations, a more open process may create greater confidence in the organization's response to cases of child abuse. In some instances, other organizations have been court ordered to give the media access to various child abuse files. USA Swimming should consider this possibility and work with the media now to

[270] USA SWIMMING RULEBOOK Rule 410.3.
[271] USA SWIMMING RULEBOOK Rule 410.4

explore an orderly process that protects the interests of victims while instilling greater public confidence in its processes.[272]

Fourth, USA Swimming should explore with other youth serving organizations the sharing of information about banned or suspended members as well as those whose membership applications may have been flagged. Indeed, when USA Swimming announced its 7 point plan in 2010 the organization said it would evaluate the process for sharing information with "other youth serving organizations."

Although USA Swimming's banned list is public, the organization's efforts to flag others who may seek to enter its ranks could be helpful to other youth serving organizations. For example, if someone seeks membership with USA Swimming but fails a background check, the organization may flag his or her membership application. The prospective member may then abandon his or her application to USA Swimming and seek instead to join another YSO. Although USA Swimming will share this information with another YSO upon request, the challenge is to develop a system where major YSOs could routinely share information of this kind. In this way, USA Swimming would be able to also access information from other YSOs about members who have left their organization.

The sharing of information between youth serving organizations may have any number of legal and other hurdles to clear. It is, though, something worth exploring.

6. **A taskforce to assess the limits of USA Swimming jurisdiction over offenders**

Prior to the summer of 2010, USA Swimming only initiated NBOR actions against *current* members of the organization contending its only penalty was to expel an offender from the organization. Coaches who were not members were "flagged" in the organization's database and were subject to an NBOR hearing if they applied for membership.

Beginning in the summer of 2010, after the USA Swimming board of directors decided to publish the banned list, the organization also began to take action against *former* members whose conduct occurred while they were members. In other words, if a coach sexually abused a child while a member and then subsequently quit the organization, he or she could still be banned provided the organization could meet its burden of proof before the NBOR.

Beginning in 2014, USA Swimming rules also allow for proceeding against a current member for sexual misconduct "at any time past or present."[273] Under this expansion, USA Swimming could proceed against a coach who sexually abused a child before becoming a member. This

[272] Kim Christensen and Jason Felch, *Court Orders Boy Scouts to Release Sexual Abuse Files,* June 14, 2012, LOS ANGELES TIMES, available online at: http://articles.latimes.com/2012/jun/14/nation/la-na-scouts-20120615 (last visited January 22, 2014).
[273] USA SWIMMING RULEBOOK Rule 304.3.8.

would allow the organization to remove potentially dangerous non-athlete members. However, if the coach had already resigned or was otherwise no longer a member, the organization simply flags the membership and only proceeds if the coach re-applies for membership.

The decision of when someone can fall within USA Swimming's jurisdiction sufficient to be on the ban list is both a legal and public policy issue. The legal question is how far can the organization go under the Amateur Sports Act and how far would state and administrative laws allow the organization to go. In several cases before the NBOR, coaches have claimed USA Swimming did not have jurisdiction over them and, in at least one case, a coach filed a civil action attempting to prevent USA Swimming from taking action.

In speaking with several experts in this area of the law, it is unclear how far legally USA Swimming could extend its jurisdiction over coaches who sexually abused a child. One survivor told us that the coach who abused her did so before USA Swimming was formed but that he continued to be a member for many years thereafter. When she disclosed the abuse, the coach either quit or was fired and was thus no longer a member. Because the coach was no longer a member, and the abuse happened before he was a member, USA Swimming did not proceed with banning the coach but instead flagged his record. Under these circumstances, it would seem likely that USA Swimming could proceed against a member who quit simply because previous abuse was discovered and that the organization's rules could be modified to make that clear.

Indeed, it is even possible that USA Swimming could proceed against *any* member who sexually abused a child before or after membership. Since its very beginning, USA Swimming has prohibited conduct detrimental to the image or reputation of the organization or the sport.[274] A coach or other member who molested a child and then joined USA Swimming did so with the full knowledge that if his or her actions were ever discovered, it would bring disrepute to the organization and to the sport of swimming.

Similarly, a member of USA Swimming who leaves the organization and then abuses a child knows full well his or her conduct will be detrimental to the organization if only because the name USA Swimming may appear on the offender's resume. If this individual is still coaching or engaged in the lives of children, USA Swimming may want to make it clear to other youth serving organizations that the organization dissociates itself from the former member in every way possible.

There is, though, also a public policy issue. Simply stated, the organization must decide not only how far it can extend its jurisdiction, but how far it wants to extend its jurisdiction. The further the organization extends its jurisdiction, it will receive more cases, will need more resources, and may limit its ability to timely pursue cases involving active coaches.[275] If extending its

[274] The current version of this rule is codified as 304.3.18 of USA Swimming's rulebook.
[275] In some states, in criminal court, a backlog of child abuse cases has caused significant delays with some cases taking years to resolve. *See* Victor Vieth, *The View from the Trenches: Recommendations for Improving South Carolina's Response to Child Sexual Abuse Based on Insight from Frontline Child Protection Professionals,* May

jurisdiction were taxing resources, the organization could develop any number of guidelines to assist in prioritizing cases where the jurisdictional reach is weak. This could include the likelihood the coach is continuing to access children, the possibility that a public ban might aid other victims in coming forward, and whether or not the offender is in prison and already on other public registries. However these questions are decided, they must be clearly communicated to USA Swimming members, to the public and, most importantly, to survivors of abuse.

7. **An independent entity to oversee the Investigation, Adjudication and imposition of Sanctions in cases of abuse**

The United States Olympic Committee has formed a 10 person task force to explore the feasibility of an independent agency to handle the investigation, adjudication and sanctions in cases of abuse within sport.[276] In the course of this assessment, we spoke with individuals who are skeptical of USA Swimming and the organization's ability to respond to cases of child abuse. USA Swimming itself has recognized the "argument that the fox is guarding the henhouse"[277] and has expressed support for an independent agency to respond to cases of child maltreatment and build greater public confidence.

The possibility an independent entity may instill greater trust in the handling of child maltreatment cases is a positive aspect of such an agency. At the same time, an independent agency, by itself, is not enough to keep children safe. In order to be truly effective, any such agency must be filled with experts in the field of child protection who can respond to cases thoroughly, impartially and with excellence. It is a misnomer to think anyone can head such an agency or to believe that experts in sport or Olympic affairs can be trained to handle instances of child or other maltreatment. Instead, the creators of an independent entity must consciously stock it with experts in abuse—and then train these officials to understand the myriad Olympic sports and governing NGBs. If this model is followed, the independent entity can succeed. If not, children will be needlessly imperiled and the agency is unlikely to be anything more than cosmetic.

CONCLUSION

In the course of our review, a congressional staffer asked if children in swimming were safer today than they were in the past. The answer to this question is dependent on multiple factors if only because a sex offender or other abuser has numerous means in which to access a child.

28, 2013, available online at: http://www.gundersenhealth.org/upload/docs/NCPTC/other/Silent-Tears-Final-Report.pdf (last visited January 22, 2014) (noting the delays in resolving criminal cases of child abuse in South Carolina).

[276] Kelly Whiteside, *USOC Group Looks at Enforcement in Misconduct Cases,* USA TODAY, July 29, 2013, available online at: http://www.usatoday.com/story/sports/olympics/2013/07/29/usoc-safe-sport-enforcement-group/2598191/ (last visited January 14, 2014). Two representatives from USA Swimming serve on this task force.

[277] *See e.g.* Chuck Wielgus, *The Chuck Wielgus Blog,* August 23, 2013 (arguing for the establishment of an independent entity to handle cases of maltreatment).

It is certainly true that a convicted sex offender would have more difficulty gaining admittance to a club than he would have a decade ago. However, if the offender's conviction is very old, was never recorded in the appropriate database, was pled down to something that, on paper, doesn't look like a crime against a child or if he[278] is skilled enough to develop a believable alias, there might still be an opportunity. Of course, very few sex offenders have ever been charged or convicted of a crime and thus any background check will not keep most offenders out.

Pre-employment screening is better today than it was even a short time ago but it is still dependent on the willingness of clubs to be thorough. If a club is not thorough and assumes the person before them could not be an offender, perhaps because they have known him or her all their life, the offender may slide by. Even if there is a thorough pre-employment screening, the offender may pass with flying colors—but he or she will be alerted to the seriousness of child protection in the organization and this may deter him to some extent.

Once inside a club, the ease with which an offender can operate depends on the coaches, athletes and parents that surround him or her. Since sex offenders thrive on ignorance, he will want a club in which very few parents or athletes have taken Safe Sport training. Since less than 2% of parents and athletes have taken this training, he won't have much difficulty in this respect. His fellow coaches, though, may present a problem. Since they are obligated to take the training it's possible they are aware of tactics he has used in the past to groom or otherwise access a child. If so, he will have to elevate his game to a much higher level.

Of course, the offender might get lucky. Although the vast majority of coaches and officials have expressed strong support for Safe Sport training, there are some who claim the course is a "waste of time" and should only have to be taken once. This attitude will be very comforting to a sex offender because it means if a fellow coach thinks so poorly about Safe Sport, he might be the sort of person who will let his guard down. And the offender only needs him to let his guard down once.

The rules against massages and stricter travel policies present some barriers to an offender but he might find a way around them. In one instance, a coach posed as a child's father, faked a doctor's note, and got her out of school. In another case, a coach stole the key to a child's room. It is, therefore, still possible—but it's now a little harder. The offender's best bet may be to access the child through social media—and hope that parents and others are not serious about the club's social media policies.

If he does molest a child and gets charged with a crime, the current rules allow the offender to be banned even if he is acquitted. If he doesn't get charged, but USA Swimming concludes it has jurisdiction and can prove its case by a preponderance of the evidence, the organization's recent history suggests he will still get banned. The public nature of the ban will make it harder for him

[278] Although the offender in this scenario is male, it is important to be mindful that offenders can also be females. Indeed, more than 7% of the cases of abuse within swimming have involved a female.

to join other organizations. Still, if he can simply avoid prison, all is not lost. History shows that many athletes, parents and coaches will support him irrespective of the evidence and they may invite him into their homes, even allow him to be around their children.

Of course, if he is not a sex offender but instead enjoys humiliating a particular child, he has more opportunities to strike. The rules against this sort of thing are not as strict.

If the offender is a not a member of USA Swimming, never even attends a swimming practice, he may have the best chance to get away with his crimes. All he has to do is beat, rape, neglect, or humiliate the children in his own home. If he sends these children to a swimming club in which no one is a mandated reporter, it's possible that the authorities will never investigate him—because a report is less likely to be made.

This gloomy picture is not meant to discount the progress that has been made since 2010. The fact of the matter is that great strides have been taken in the past 36 months and the organization is more attuned to risks at every level. Many of the files we reviewed and survivors we spoke to attest to this progress.

Instead, the illustration of viewing the organization's policies through the mind of an offender is offered to highlight the work that is yet to be done and to shine a light on the shadows where children are unprotected.[279]

There are some within the swimming community who want the organization to retreat, who believe the organization has done too much. We encountered this view during the course of the assessment and although we have no reason to believe this view is widely held, the fact that it exists at all presents a risk. This view beckons to a day when coaches were coaches, athletes were athletes, and stories of sexual abuse were rumors.

We also encountered the view that there is in some clubs a fatigue resulting from so many changes so quickly. Those who are tired worry about one more set of rules that may drive them further away from what they were called to do—coaching swimmers to excel. This view is understandable and rules should not be promulgated simply for cosmetic purposes.

At the same time, the swimming community needs to understand that sex offenders are also no doubt fatigued, growing wearisome of the organization's recent efforts to inconvenience them. Nonetheless, they are willing to find other entry points to violate a child—and USA Swimming must respond accordingly.

The most prevalent, hopeful view we encountered came from those who want to "get the job done" and do whatever it takes to keep the 320,000 children in the organization safe. Those who

[279] Indeed, some experts urge the use of sex offender's mindsets in planning prevention programs. *See* Keith L. Kaufman & Lindsey B. Patterson, *Using Sex Offenders' Modus Operandi to Plan More Effective Prevention Programs,* in KEITH L. KAUFMAN, THE PREVENTION OF SEXUAL VIOLENCE: A PRACTITIONER'S SOURCEBOOK 331 (2010).

hold this view see these athletes as children first, and swimmers second. These are the voices that have propelled the organization forward—and they must never be drowned out.

Athletes interviewed as part of this assessment spoke of the majesty of the sport of swimming and how, even years later, the smell, sounds, colors and sights of the sport are indelibly linked to the best of memories and friends. This is how it should be.

The survivors we spoke to, the survivors whose histories unfold in the files of banned coaches, may have similar memories of the sport—but they are clouded through the pain of childhoods interrupted or even lost. One survivor told us that her first kiss was to the man who abused her—and that you never get that sort of thing out of your head.

Although the past cannot be changed, the future is free to shape. The recommendations offered in this report will not end the risk of abuse within the sport or within the homes of the children standing on the decks, speeding through the pools, or traveling to meets.

It will, though, give more of them a fighting chance.

Exhibit A

Summary: states in which coaches may be mandated reporters	
Mandated Reporters	**It Depends**
Alaska	Alabama
California	Arizona
Colorado	Arkansas
Connecticut	Georgia
Delaware	Illinois
D.C.	Kansas
Florida	Maine
Hawaii	Maryland
Idaho	Massachusetts
Indiana	Michigan
Iowa	Minnesota
Kentucky	Montana
Louisiana	New York
Mississippi	North Dakota
Missouri	Ohio
Nebraska	South Carolina
Nevada	South Dakota
New Hampshire	Vermont
New Jersey	Washington
New Mexico	Wisconsin

North Carolina
Oklahoma
Oregon
Pennsylvania
Rhode Island
Tennessee
Texas
Utah
Virginia
West Virginia
Wyoming

Coaches Are Mandated Reporters					
State	**Statute**	**Is Everyone a Mandated Reporter?**	**Coach Listed in Statute?**	**Implied by School Status**	**Changes in the Law**
Alaska	Alaska Stat. § 47.17.020 (2012).	No	Yes; (2) "school teachers and school administrative staff members, including athletic coaches, of public and private schools"	(3) "administrative officers of institutions"; "child care providers"	Yes, (2) did not include coaches until this year.
California	Cal.Penal Code § 11165.7 (2012).	No	Yes; (a)(44) "Any athletic coach, including, but not limited to, an assistant coach or a graduate assistant involved in coaching, at public or private postsecondary institutions"; (a)(7) "An administrator or employee of a public or private youth center, youth recreation program, or youth organization." (Note: (a)(7) is a recent addition, see changes in the law.)	(a)(1) "A teacher"; (a)(2) "An instructional aide"; (a)(3) "A teacher's aide or teacher's assistant employed by a public or private school"; (a)(4) "A classified employee of a public school"	Yes; more expansive mandatory reporter definition: (6) "An administrator of a public or private day camp"; (7) "An administrator or employee of a public or private youth center, youth recreation program, or youth organization"; (8) "an administrator or employee of a public or private organization whose duties require direct contact and supervision of children";

Colorado	Colo. Rev. Stat. § 19-3-304 (2012).	No	Yes, (2)(ii) "Director, coach, assistant coach, or athletic program personnel" (full definition in chart below); (2)(q) "Physical therapist"	(2)(l) "Public or private school official or employee"	Yes, (2)(ii) was added since 2012.
Connecticut	Conn. Gen. Stat. Ann. § 17a-101 (2012).	No	Not in this statute; but Subsection (b) includes "school employee, as defined in section 53a-65." That statute includes coaches. See the chart below for the full definition.	(b): "any person paid to care for a child in any public or private facility"	(b) "Any physician or surgeon licensed under the provisions of chapter 370" was repealed by C.G.S.A. § 20-8 et seq.
Delaware	Del. Code Ann. tit 16 § 903 (2012).	Yes; any person "who knows or in good faith suspects child abuse or neglect shall make a report"; "'Person' shall include, but shall not be limited to…"	No	Any school employee	None
D.C.	D.C. Code § 4-1321.02 (2012).	No	Yes; (b) "school official, teacher, athletic coach…"	Yes	None
Florida	Fla. Stat. Ann. § 39.201 (2012).	Yes	No	(1)(d)(4-5) requires educational/institutional reporters to provide their names to hotline staff.	Some grammatical clarifications.

Hawaii	Haw. Rev. Stat. § 350-1.1 (2012).	No	Almost; (a)(7) "Employees of any public or private agency providing recreational or sports activities"	(a)(1) "health-related professionals"; (a)(2) "Employees or officers of any public or private school"; (a)(3) "Employees or officers of any public or private agency or institution"	None
Idaho	Idaho Code § 16-1605 (2012).	Yes; (1) "or other person having reason to believe…"	No	(1) "school teacher, day care personnel, social worker"	None
Indiana	Ind. Code Ann. § 31-33-5-1 (2012).	Yes; "an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report…"	No	NA	None
Iowa	Iowa Code Ann. § 232.69 (2012).	No	Yes; (1)(b)(4): "(4) A licensed school employee, certified para-educator, holder of a coaching authorization issued under section 272.31, or an instructor employed by a community college."	See coach listing.	Minor unrelated changes.

Kentucky	Ky. Rev. Stat. Ann. § 620.030 (2012).	Yes; (1) "Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused"	No	Yes	None
Louisiana	La. Child. Code Ann. Art. 603(15) (2012).	No	Yes, see definitions chart.	Yes, see definitions chart	Subsection (17) was formerly Subsection (15). (17)(k) (see definitions chart) was added since 2012.
Mississippi	Miss. Code Ann. § 43-21-353 (2012).	Yes, (1) "any other person having reasonable cause to suspect that a child is a neglected child or an abused child"	No	(1) "child caregiver"; "public or private school employee."	None
Missouri	Mo. Rev. Stat. § 210.115 (2012).	No	No, but see (1) "or other person with responsibility for the care of children"	(1) "teacher, principal or other school official"	In 2013 Missouri amended this section to include "No internal investigation shall be initiated until such a report has been made."

Nebraska	Neb.Rev. Stat. Ann. § 28-711 (2012).	Yes; (1) "or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes…"	No	(1) "any school employee, any social worker"	None
Nevada	Nev. Rev. Stat. Ann. § 432B.220 (2012).	No	No, but see (4)(a) "athletic trainer"; (4)(l) "Any adult person who is employed by an entity that provides organized activities for children"; definitions chart.	(e) "A social worker and an administrator, teacher, librarian or counselor of a school."	2013 legislation added paramedic to the list of mandatory reporters.
New Hampshire	N.H. Rev. Stat. Ann. § 169-C:29 (2012).	Yes; "or any other person having reason to suspect that a child has been abused or neglected shall report…"	No	"teacher, school official, school nurse, school counselor, social worker, day care worker, any other child or foster care worker"	None
New Jersey	N. J. Rev. Stat. Ann. § 9:6-8.10 (2012).	Yes; "Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately…"	No	No	None

New Mexico	N. M. Stat. Ann. § 32A-4-3 (2012).	Yes; "Every person… who knows or has a reasonable suspicion that a child is an abused or a neglected child shall report the matter immediately…"	No	(A) "a schoolteacher; a school official; a social worker acting in an official capacity"	None
North Carolina	N.C. Gen. Stat. Ann. § 7B-301 (2012).	Yes; "Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent…"	No	No	In 2013 NC added provisions making failure to report a Class 1 misdemeanor.
Oklahoma	Okla. Stat. Ann. tit 10A § 1-2-101 (2012).	Yes; (B)(1) "Every person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter promptly…"	No	No	A 2013 amendment makes prolonged knowledge (6 months) of abuse and failure to report abuse a felony offense.

Oregon	Or. Rev. Stat. § 419B.010 (2012).	No; "(1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report..."	Yes; (5)(cc) "A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child"; (bb) Employee of a public or private organization providing child-related services… [see definitions chart]"	(5)(c) "School employee, including an employee of a higher education institution";	Minor unrelated changes.
Pennsylvania	23 Pa. Const. Stat. Ann. § 6311 (2012).	No	No, but see (a) "A person who, in the course of employment, occupation or practice of a profession, comes into contact with children shall report…"	(b) "school administrator, school teacher, school nurse, social services worker, day-care center worker or any other child-care or foster-care worker"	None
Rhode Island	R.I. Gen. Laws § 40-11-3 (2012).	Yes; (a) "Any person who has reasonable cause to know or suspect that any child has been abused or neglected…"	No	No	A 2013 amendment mandates a management information database for the department.

Tennessee	Tenn. Code Ann. § 37-1-403 (2012).	Yes; § 37-1-605: "any other person who knows or has reasonable cause to suspect that a child has been sexually abused"	No, but see (a)(1) "Any person who has knowledge of or is called upon to render aid to any child who is suffering from… any wound, injury, disability, or physical or mental condition shall report such harm immediately if the harm is of such a nature as to reasonably indicate…"	See definitions chart	Minor unrelated changes.
Texas	Tex. Fam. Code Ann. § 261.101 (2012).	Yes; (a) "A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report…"	No	(b) "teachers"	A 2013 amendment extends a duty to professional to disclose that an adult suffered abuse in order to protect safety of child or the elderly/disabled.
Utah	Utah Code Ann. § 62A-4a-403 (2012).	Yes; (1)(a) "when any person… has reason to believe that a child has been subjected to abuse or neglect…"	No	No	None

Virginia	VA. Code Ann. § 63.2-1509 (2012).	No	Yes; (A)(16) "Any athletic coach, director or other person 18 years of age or older employed by or volunteering with a private sports organization or team"; (A)(17) "Administrators or employees 18 years of age or older of public or private day camps, youth centers and youth recreation programs."	(A)(5) "Any teacher or other person employed in a public or private school, kindergarten or nursery school"; (A)(6) "Any person providing full-time or part-time child care for pay on a regularly planned basis"; (A)(18) "Any person employed by a public or private institution of higher education..."	Minor unrelated changes.
West Virginia	W. Va. Code Ann. § 49-6A-2 (2012).	Almost; (b) " Any person over the age of eighteen who receives a disclosure from a credible witness or observes any sexual abuse…"	Yes; (a) "youth camp administrator or counselor, employee, coach or volunteer of an entity that provides organized activities for children"	(a) "school teacher or other school personnel"	None
Wyoming	Wyo. Stat. Ann. § 14-3-205 (2012).	Yes; (a) "Any person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected…"	No	No	None

Coaches may be mandated reporters under some circumstances					
State	**Statute**	**Is Everyone a Mandated Reporter?**	**Coach Listed in Statute?**	**Implied by School?**	**Changes in the Law**
Alabama	Ala. Code § 26-14-3 (2012).	No	No	(a) "school teachers and officials", "any other person called upon to render aid or medical assistance to any child"	None
Arizona	Ariz. Rev. Stat. Ann. §13-3620 (2012).	No	No	(A)(4): "School personnel"; (A)(5): "Any other person who has responsibility for care or treatment of the minor"	Changes in reportable offense definitions: Section 13-1401 et seq., 13-3551 et seq.
Arkansas	Ark. Code Ann. § 12-18-402 (2012).	No	Yes; Ark. Code Ann. § 6-61-133(a)(2)(C) (2012): "Coach for a school athletics program." Mandates training for certain licensed school personnel, but does not make coaches mandatory reporters.	§ 12-18-402(b)(22) "A public or private school counselor"; (23) "A school official, including without limitation institutions of higher education"; (26) "A teacher"	Several additions to mandated reporters: (16) mental health professional "or paraprofessional"' (22-23) (See implied by school), (38) "An employee of a reproductive healthcare facility"; (39) "A volunteer at a reproductive healthcare facility."
Georgia	Ga. Code Ann., § 19-7-5 (2012).	No	No	(c)(1)(H-J): School teachers, administrators, and visiting teachers	None

Illinois	325 Ill. Comp. Stat. Ann. § 5/4 (2012).	No	No	"school personnel (including administrators and both certified and non-certified school employees)"; "personnel of institutions of higher education"; member of school board or governing body of private school	Minor unrelated changes.
Kansas	Kan. Stat. Ann. § 38-2223 (2012).	No	No, but see (a)(1)(C) (implied by school) and (E) "any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers"	(a)(1)(C): "teachers, school administrators or other employees of an educational institution which the child is attending and persons licensed by the secretary of health and environment to provide child care services or the employees of persons so licensed"	Some departmental name changes.
Maine	Me. Rev. Stat. Ann. tit. 22, § 4011-A (2012).	No	No	Possibly, see definitions chart.	Formerly individuals reporting in a staff capacity were mandated only to report to their institution; now all mandatory reporters must report to the department.

Maryland	Md. Code Ann., Fam. Law § 5-704 (2012).	No	No	(a) "each health practitioner, police officer, educator, or human service worker, acting in a professional capacity in this State"; (2) "if acting as a staff member of a… school, or similar institution."	In 2013, Maryland passed a law against interfering with reporting of child abuse.
Massachusetts	Mass. Gen. Laws. ch. 119 § 21 (2012).	No	Yes, but the context is (iv)"a person employed by a church or religious body to supervise, educate, coach, train or counsel"	(ii) "a public or private school teacher, educational administrator, guidance or family counselor, child care worker, person paid to care for or work with a child in any public or private facility, or home or program funded by the commonwealth"	None to mandatory reporting categories.
Michigan	Mich. Comp. Laws Ann. § 722.623 (2012).	No	No	(1)(a) "school administrator, school counselor or teacher"	None
Minnesota	Minn. Stat. Ann. § 626.556 (2012).	No	No	(3)(a)(1): "a professional or professional's delegate who is engaged in the practice of… social services, child care, education."	None

Montana	Mont. Code Ann. § 41-3-201 (2012).	No	No	(d) "school teachers, other school officials, and employees who work during regular school hours"; (e) "an operator or employee of a child-care facility"; (j) "an employee of an entity that contracts with the department to provide direct services to children."	None
New York	N.Y. Soc. Serv. Law § 413 (2012).	No	No, but see (1)(a) "director of a children's overnight camp, summer day camp or traveling summer day camp."	(1)(a) " school official, which includes but is not limited to school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate"	In 2013, the NY legislature removed the "employee or volunteer in a residential care facility" from the mandatory reporter list.
North Dakota	N.D. Cent. Code § 50-25.1-03 (2012).	No	No	(1) " schoolteacher or administrator, school counselor"; "social worker, child care worker."	None

Ohio	Ohio Rev. Code Ann. § 2151.421 (2012).	No	No, but see (A)(1)(b) "administrator or employee of a child day-care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency..."	(A)(1)(b) " school teacher; school employee; school authority"	None
South Carolina	S.C. Code Ann. § 63-7-310 (2012).	No	No	(A) "school teacher, counselor, principal, assistant principal, school attendance officer"; "childcare worker in a childcare center or foster care facility"	None
South Dakota	S.D. Codified Laws § 26-8A-3 (2012).	No	No	"teacher, school counselor, school official", see definitions chart	None
Vermont	Vt. Stat. Ann. tit. 33, § 4913 (2012).	No	No, but see (c) "camp owner, camp administrator, camp counselor" and school implications.	See definitions chart.	None

Washington	Wash. Rev. Code Ann. § 26.44.030 (2012).	No	Almost; (1)(f) "administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education"; (1)(b) "When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority."	(1)(a) "professional school personnel"	Several unrelated changes.
Wisconsin		No	No, but see (2)(a)(22) "A physical therapist"; (2)(a)(22m) "A physical therapist assistant."	(2)(14) "A school teacher"; 15. A school administrator; 16. A school counselor; 16m. A school employee not otherwise specified in this paragraph; 18. A child care worker in a child care center, group home, or residential care center for children and youth; 19. A child care provider.	None related.

Definitions Chart		
State	**Statute**	**Definition**
Louisiana	La. Child. Code Ann. Art. 603(17) (2012).	(d) "Teaching or child care provider" is any person who provides or assists in the teaching, training, and supervision of a child, including any public or private teacher, teacher's aide, instructional aide, school principal, school staff member, bus driver, coach, professor, technical or vocational instructor, technical or vocational school staff member, college or university administrator, college or university staff member, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, or any individual who provides such services to a child in a voluntary or professional capacity.
		(k) School coaches, including but not limited to public technical or vocational school, community college, college, or university coaches and coaches of intramural or interscholastic athletics.
Colorado	Colo. Rev. Stat. § 19-3-304 (2012).	(ii) Director, coach, assistant coach, or athletic program personnel employed by a private sports organization or program. For purposes of this paragraph (ii), "employed" means that an individual is compensated beyond reimbursement for his or her expenses related to the private sports organization or program.
Connecticut	Conn. Gen. Stat. Ann. § 53a-65 (2012).	(13) "School employee" means: (A) A teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary, middle or high school or working in a public or private elementary, middle or high school; or (B) any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in (i) a public elementary, middle or high school, pursuant to a contract with the local or regional board of education, or (ii) a private elementary, middle or high school, pursuant to a contract with the supervisory agent of such private school.

Maine	Me. Rev. Stat. Ann. tit. 22, § 4011-A (2012).	(10) A registered or licensed practical nurse; (11) A teacher; (12) A guidance counselor; (13) A school official; (14) A youth camp administrator or counselor; (15) A social worker; (21) Child care personnel; (32) A school bus driver or school bus attendant; (B) Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, regardless of whether the person receives compensation.
Nevada	Nev. Rev. Stat. Ann. § 432B.220 (2012).	(4)(f) Any person who maintains or is employed by a facility or establishment that provides care for children, children's camp or other public or private facility, institution or agency furnishing care to a child.
Oregon	Or. Rev. Stat. Ann. § 419B.005 (2012).	(bb) Employee of a public or private organization providing child-related services or activities: (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.
South Dakota	S.D. Codified Laws § 26-8A-3 (2012).	"teacher, school counselor, school official"
	S.D. Codified Laws § 26-8A-7 (2012).	Any person who has contact with a child through the performance of services in any public or private school, whether accredited or unaccredited, as a teacher, school nurse, school counselor, school official or administrator, or any person providing services pursuant to § 13-27-3 shall notify the school principal...
Tennessee	Tenn. Code Ann. § 37-1-403 (2012).	(i)(1) Any school official, personnel, employee or member of the board of education who is aware of a report or investigation of employee misconduct on the part of any employee of the school system that in any way involves known or alleged child abuse, including, but not limited to, child physical or sexual abuse or neglect, shall immediately upon knowledge of such information notify the department of children's services or anyone listed in

		subdivision (a)(2) of the abuse or alleged abuse.
Vermont	Vt. Stat. Ann. tit. 33, § 4913 (2012).	"school superintendent, headmaster of an approved or recognized independent school as defined in 16 V.S.A. § 11, school teacher, student teacher, school librarian, school principal, school guidance counselor, and any other individual who is employed by a school district or an approved or recognized independent school, or who is contracted and paid by a school district or an approved or recognized independent school to provide student services"

Exhibit B

Emotional Abuse prohibitions by state		
Unlawful Outside Immediate Family	**May be Restricted to Immediate Family**	**Restricted to Immediate Family**
Alaska	D.C.	Arizona
Alabama	Hawaii	Indiana
Arkansas	Iowa	New Mexico
California	Kansas	Pennsylvania
Colorado	Maine	West Virginia
Connecticut	Maryland	
Delaware	Massachusetts	
Florida	Minnesota	
Georgia	Nevada	
Idaho	New Jersey	
Illinois	New York	
Kentucky	Oklahoma	
Louisiana	Rhode Island	
Michigan	South Carolina	
Mississippi	South Dakota	
Missouri	Tennessee	
Montana	Virginia	
Nebraska		
New Hampshire		
North Carolina		

North Dakota
Ohio
Oregon
Texas
Utah
Vermont
Washington
Wisconsin
Wyoming

Unlawful for Someone Outside Immediate Family to Emotionally Abuse Child		
State	**Statute**	**Unlawful for Non-Family to Emotionally Abuse?**
Alaska	ALASKA STAT. § 47.17.290 (2012)	Yes; (3) "mental injury… by a person"; see Definitions Chart
Alabama	ALA. CODE § 26-14-1 (2012)	Yes; abuse is defined in (1) as "Harm or threatened harm to a child's health or welfare can occur through nonaccidental physical or mental injury." Reporting requirements in § 26–14–3 do not restrict abuse to a parental context.
Arkansas	ARK. CODE ANN. § 9-27-303 (2013)	Yes; (3)(A) defines abuse as acts or omissions by parent/guardian "or any person who is entrusted with the juvenile's care," "including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare." Example: (i) "Extreme or repeated cruelty to a juvenile"; "creating a realistic and serious threat of death." 9-30-103 includes "mental injury" in its definition of child abuse, Subsection (3).
California	CAL. PENAL CODE § 273A (2012)	Yes; (a) "Any person who… willfully causes… mental suffering."
Colorado	COLO. REV. STAT. § 19-1-103 (2012)	Yes; (1)(a)(IV) "Any case in which a child is subjected to emotional abuse."
Connecticut	CONN. GEN. STAT. § 46B-120 (2012)	Yes; (7)(C) "A child or youth may be found 'abused' who … is in a condition that is the result of… emotional maltreatment." (Note: *Frank v. Dept of Children and Families*, 134 Con..App. 288 (2012), found a portion of this statute void for vagueness.)
Delaware	DEL. CODE ANN. TIT. 10, § 901 (2012)	Yes; (1)(b)(2) "Has care, custody or control of a child and causes or inflicts… Emotional abuse." See Definitions Chart for "care, custody or control" definition. See also TIT. 11, § 1102(1)(a) "Knowingly acts in a manner likely to be injurious to the

		physical, mental or moral welfare of the child."
Florida	FLA. STAT. ANN. § 39.01 (2012)	Yes; (2) "any willful act or threatened act that results in any … mental… injury… or is likely to cause the child's … mental… health to be significantly impaired."
Georgia	GA. CODE ANN. § 16-5-70 (2012)	Yes; (b) "Any person commits the offense of cruelty to children in the first degree when such person maliciously causes a child under the age of 18 cruel or excessive physical or mental pain."
Idaho	IDAHO CODE ANN. § 18-1501 (2012)	Yes; (2) "Any person who… inflicts thereon unjustifiable physical pain or mental suffering."
Illinois	325 ILL. COMP. STAT. ANN. 5/3 (2012)	Yes; "Abused child" definition (b): "any person responsible for the child's welfare… creates a substantial risk of physical injury… which would be likely to cause… impairment of… emotional health." "Any person responsible for the child's welfare" has a broad definition that goes beyond immediate family; see definitions chart.
Kentucky	KY. REV. STAT. ANN. § 600.020 (2012)	Yes; (1)(a)(1-2) "person in a position of authority or special trust, as defined in KRS 532.045… Inflicts or allows to be inflicted… emotional injury… Creates or allows to be created a risk of... emotional injury." KRS 532.045 defines "position of authority" to extend well beyond the immediate family; see the definitions chart.
Louisiana	LA. CHILD. CODE ANN. ART. 502 (2012)	Yes; (1)(a) "The infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child by a parent or any other person."

Michigan	MICH. COMP. LAWS SERV. § 722.622 (2012)	Yes; (f) "nonaccidental …mental injury… by a parent, a legal guardian, or any other person responsible for the child's health or welfare or by a teacher, a teacher's aide, or a member of the clergy."
Mississippi	MISS. CODE ANN. § 43-21-105 (2012)	Probably; (m) "any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused… emotional abuse, mental injury…"
Missouri	MO. REV. STAT. § 210.110 (2012)	Yes; (1) "emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody, and control"; (16) defines "those responsible for the care, custody, and control." See definitions chart. Note: Jamison v. State, 218 S.W.Ed 399 (2007) found the Child Abuse Act (this statute) violated due process, particularly the way its Central Registry component was applied.
Montana	MONT. CODE ANN. § 41-3-102 (2012)	Yes; (7)(b)(i)(A) "actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare," which extends well beyond the immediate family. See definitions chart.
Nebraska	NEB. REV. STAT. ANN. § 28-707 (2012)	Probably; (1)(a) "A person commits child abuse if he… permits a minor child to be placed in a situation that endangers… mental health." § 28-710(d) mentions child abuse occurring "out-of-home" in "child care facilities or institutions."
New Hampshire	N.H. REV. STAT. ANN. § 169-C:3 (2012)	Probably; XVI. “Institutional child abuse or neglect” means situations of known or suspected child abuse or neglect wherein the person responsible for the child's welfare is a foster parent or is an employee of a public or private residential home, institution or agency"; II.(a) "'Abused child' means any child who has been... psychologically injured... exhibits symptoms of emotional problems... from consistent mistreatment."

North Carolina	N.C. GEN. STAT. § 7B-101 (2012)	Yes; (1)(e) "parent, guardian, custodian, or caretaker… Creates or allows to be created serious emotional damage." (3) defines caretaker broadly. See definitions chart.
North Dakota	N.D. CENT. CODE § 14-09-22 (2012)	Yes; (1)(a) "Inflicts or allow to be inflicted… mental injury"; (2) "A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services"; see also § 50-25.1-02(1) "or an employee of, or any person providing care for the child in, a public or private school or child care setting."
Ohio	OHIO REV. CODE ANN. § 2151.011 (2012)	Probably; see (35) in definitions chart; see § 2151.031(e) "Is subjected to out-of-home care child abuse."
Oregon	OR. REV. STAT. § 419B.005 (2012)	Probably; (1)(a)(B) "Any mental injury to a child… substantial impairment of the child's mental or psychological ability to function." The statute does not limit its contexts to parents, as it does not mention them.
Texas	TEX. FAM. CODE ANN. § 261.001 (2012)	Yes; (1)(A) "mental or emotional injury"; person responsible for child's care defined in (5)(D-E) as "school personnel or a volunteer at the child's school; or personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides."
Utah	UTAH CODE ANN. § 78A-6-105 (2012)	Probably; (19) “Harm” means: (a) physical, emotional, or developmental injury or damage"; the statute does not address whether emotional damage is restricted to immediate family.

Vermont	VT. STAT. ANN. TIT. 33, § 4912 (2012)	Yes; (2) "psychological growth and development... Harmed... by the acts or omissions of… parent or other person responsible for the child's welfare"; (7) “Emotional maltreatment” means a pattern of malicious behavior which results in impaired psychological growth and development; (5) defines "person responsible" expansively, see definitions chart.
Washington	WASH. REV. CODE ANN. § 26.44.020 (2012)	Yes (technically); (1) "injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety." The language itself is broad; the question turns on the definition of injury.
Wisconsin	WIS. STAT. ANN. § 948.04 (2012)	Yes; (1) "Whoever is exercising temporary or permanent control of a child and causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child is guilty of a Class F felony." But see § 48.02(gm), which limits emotional damage to "the child's parent, guardian or legal custodian."
Wyoming	WYO. STAT. ANN. § 14-3-202 (2012)	Yes; (i) “A person responsible for a child's welfare” includes the child's parent, noncustodial parent, guardian, custodian, stepparent, foster parent or other person, institution or agency having the physical custody or control of the child"; (ii) "'Abuse' means inflicting... imminent danger to... mental health or welfare of child"; (ii)(A) "'Mental injury' means an injury to the psychological capacity or emotional stability of a child."

Emotional Abuse Prohibitions May be Restricted to Immediate Family		
State	**Statute**	**Coverage**
D.C.	D.C. CODE ANN. § 4-1341.01 (2012)	Maybe; (2) " by a person responsible for the child's health or welfare"
Hawaii	HAW. REV. STAT. ANN. § 709-904 (2012)	Maybe; see definitions chart.
Iowa	IOWA CODE § 232.2 (2012)	Maybe; (1) "Mental injury caused by the acts of the child's parent, guardian, or custodian," but see (2) "as the result of the acts or omissions of a person responsible for the care of the child…" See definitions chart.
Kansas	KAN. STAT. ANN. § 38-2202 (2012)	Maybe; (d)(2) "'Child in need of care' means a person less than 18 years of age… who: is without the care or control necessary for the child's physical, mental or emotional health"; see definitions chart for "physical, mental or emotional abuse" definition.
Maine	ME. REV. STAT. ANN. TIT. 22, § 4002 (2012)	Maybe; 9. “Person responsible for the child” means a person with responsibility for a child's health or welfare, whether in the child's home or another home or a facility which, as part of its function, provides for care of the child." However, note that the majority of this statute deals with parental duties, so it's possible that emotional harm is only punished when perpetrated by those with a clearly analagous position.
Maryland	MD. CODE ANN., CTS. & JUD. PROC. § 3-801 (2012)	Maybe; (2)(i) "...mental injury of a child under circumstances that indicate that the child's health or welfare is harmed or is at substantial risk of being harmed by... A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; but see FAM. LAW § 5-701(b)(2) "sexual abuse of a child, whether physical injuries are sustained or not."

Massachusetts	MASS. ANN. LAWS CH. 119, § 51A (2012)	Probably; (a) "emotional injury." The statute does not specify who may be liable for causing an emotional injury, but establishes the duty for mandated reporters.
Minnesota	MINN. STAT. § 260C.007 (2012)	Maybe; see definitions chart.
Nevada	NEV. REV. STAT. ANN. § 200.508 (2012)	Maybe; (1)(a) "A person who willfully causes… unjustifiable… mental suffering… if substantial… mental harm results to the child," but see . § 432B.020, defining "abuse" and qualifying "caused or allowed by a person responsible for the welfare of the child."
New Jersey	N.J. STAT. ANN. § 9:6-1 (2012)	Maybe; (d) "habitual use by the parent or by a person having the custody and control of a child… of profane, indecent or obscene language"; (e-f) "debauch or endanger the morals of such child"; (d) "unnecessary pain and suffering, whether mental or physical…. mental ... strains."
New York	N.Y. PENAL LAW § 260.10 (2012)	Maybe; (1) "A person is guilty of endangering the welfare of a child when: He… acts in a manner likely to be injurious to the… mental … welfare of a child"; but see N.Y. SOC. SERV. LAW § 371 (2012)4-b(i-ii) "parent or other person legally responsible for his care" inflicts, allows to be inflicted, creates, or allows to be created substantial risk "likely to cause.. protracted impairment of... emotional health." See also N.Y. FAM. CT. ACT § 1012 (2012) (e)(i-ii).
Oklahoma	OKLA. STAT. ANN. TIT. 10A, § 1-1-105 (2012)	Maybe; see definitions chart. Statute includes mental injury. Questions turns on "person responsible for child's helath, safety, or welfare.
Rhode Island	R.I. GEN. LAWS § 40-11-2 (2012)	Maybe; (1) "parent or other person responsible for his or her welfare"; "mental injury"; but see (8) " injury must be clearly attributable to the unwillingness or inability of the parent or other person responsible for the child's welfare to exercise a minimum degree of care toward the

		child."
South Carolina	S.C. CODE ANN. § 63-7-20 (2012)	Maybe; (4) "parent, guardian, or other person responsible for the child's welfare"; (14) "injury to the intellectual, emotional, or psychological capacity or functioning of a child."
South Dakota	S.D. CODIFIED LAWS § 26-8A-2 (2012)	"Maybe; (7) ""Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity""; note subsection (7), unlike other subsections, does not include a parent/guardian reference; the emphasis is on the victim, so strictly speaking, the context is not restricted to parents."
Tennessee	TENN. CODE ANN. § 37-1-102 (2012)	Maybe; the answer turns on the definition of "caretaker: (b)(1) "or other actions or inactions of a parent, relative, guardian, or caretaker. This section does not define caretaker, and a large portion of the statute deals with parental duties in particular.
Virginia	VA. CODE ANN. §16.1-228 (2012)	Maybe; "Whose parents or other person responsible for his care creates or inflicts… mental injury by other than accidental means."

Emotional Abuse Prohibitions Restricted to Immediate Family		
State	**Statute**	**Coverage**
Arizona	ARIZ. REV. STAT. § 8-201 (2012)	8-201 is a definitions statute, but operative language elsewhere in the section is referring solely to parents. Also the only reference to emotional abuse is given in parental terms: (2) "the infliction of or allowing another person to cause serious emotional damage."
Indiana	IND. CODE ANN. § 31-34-1-2 (2012)	(1) "the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian"
New Mexico	N.M. STAT. ANN. § 32A-4-2 (2012)	B. “abused child” means a child: (2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;
Pennsylvania	23 PA. CONS. STAT. ANN. § 6303 (2012)	Probably not; (b.1)(3) "Causing or substantially contributing to serious mental injury." Note definition of child-care services is more restrictive, see definitions chart. Question turns on "serious mental injury," also a more restrictive definition. Nothing in the statute mentions emotional abuse per se; it would have to be inferred from "Serious mental injury," etc.
West Virginia	W. VA. CODE ANN. § 49-1-3 (2012)	Probably not; (1)(A) "A parent, guardian or custodian… inflicts… mental or emotional injury"; (4) "guardian or custodian who is responsible for the child's welfare"; the statute is largely dealing with parental duties.

Definitions Chart		
State	**Statute**	**Definitions**
Alaska	ALASKA STAT. § 47.17.290 (2012).	(3) "mental injury ... of a child under the age of 18 by a person under circumstances that indicate that the child's health or welfare is harmed or threatened thereby; in this paragraph, “mental injury” means an injury to the emotional well-being, or intellectual or psychological capacity of a child, as evidenced by an observable and substantial impairment in the child's ability to function."
Delaware	DEL. CODE ANN. TIT. 10, § 901 (2012)	"(3) “Care, custody and control” or “those responsible for care custody and control” shall mean a person or persons in a position of trust, authority, supervision or control over a child. It may include: a. A parent, guardian, or custodian; b. Other members of the child's family or household, meaning persons living together permanently or temporarily without regard to whether they are related to each other and without regard to the length of time or continuity of such residence, and it may include persons who previously lived in the household such as paramours of a member of the child's household; c. Any person who, regardless of whether a member of the child's household, is defined as family or relatives in this section or as an adult individual defined in § 1009(b)(3)a. of this title; d. Persons temporarily responsible for the child's well-being or care such as a healthcare provider, aide, teacher, instructor, coach, sitter, day care or child care provider, or any other person having regular direct contact with children through affiliation with a school, church, or religious

		institution, health care facility, athletic or charitable organization or any other organization whether such a person is compensated or acting as a volunteer; or e. Any person who has assumed control of or responsibility for the child."
Hawaii	HAW. REV. STAT. ANN. § 709-904 (2012)	(2) A person commits the offense of endangering the welfare of a minor in the second degree if, being a parent, guardian, or other person whether or not charged with the care or custody of a minor, the person knowingly endangers the minor's physical or mental welfare by violating or interfering with any legal duty of care or protection owed such minor.

Illinois	325 ILL. COMP. STAT. ANN. 5/3 (2012)	“Person responsible for the child's welfare” means the child's parent; guardian; foster parent; relative caregiver; any person responsible for the child's welfare in a public or private residential agency or institution; any person responsible for the child's welfare within a public or private profit or not for profit child care facility; or any other person responsible for the child's welfare at the time of the alleged abuse or neglect, or any person who came to know the child through an official capacity or position of trust, including but not limited to health care professionals, educational personnel, recreational supervisors, members of the clergy, and volunteers or support personnel in any setting where children may be subject to abuse or neglect.
Iowa	IOWA CODE § 232.68 (2012)	(2) Any mental injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior as the result of the acts or omissions of a person responsible for the care of the child, if the impairment is diagnosed and confirmed by a licensed physician or qualified mental health professional as defined in section 622.10.
	IOWA CODE § 726. 6 (2012)	"1. A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following: a. Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety.

Kansas	KAN. STAT. ANN. § 38-2202 (2012)	(y) “Physical, mental or emotional abuse” means the infliction of physical, mental or emotional harm or the causing of a deterioration of a child and may include, but shall not be limited to, maltreatment or exploiting a child to the extent that the child's health or emotional well-being is endangered.
Kentucky	KY. REV. STAT. ANN. § 532.045 (2012)	"(a) “Position of authority” means but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manager, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential treatment facility, a holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer; (b) “Position of special trust” means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor;
Minnesota	MINN. STAT. § 260C.007 (2012)	Section 260C does not say who the offending party must be. However, when it defines child abuse it references "physical or sexual abuse as defined in section 626.556." Section 626.556 includes (e): “Person responsible for the child's care” means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employees or agents, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid,

		counseling, teaching, and coaching."
Missouri	MO. REV. STAT. § 210.110 (2012)	(16) “Those responsible for the care, custody, and control of the child”, those included but not limited to the parents or guardian of a child, other members of the child's household, or those exercising supervision over a child for any part of a twenty-four-hour day. Those responsible for the care, custody and control shall also include any adult who, based on relationship to the parents of the child, members of the child's household or the family, has access to the child.
Montana	MONT. CODE ANN. § 41-3-102 (2012)	"(2) “A person responsible for a child's welfare” means: (a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides; (b) a person providing care in a day-care facility; (c) an employee of a public or private residential institution, facility, home, or agency; or (d) any other person responsible for the child's welfare in a residential setting.

North Carolina	N.C. GEN. STAT. § 7B-101 (2012)	(3) Caretaker.--Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

Ohio	OHIO REV. CODE ANN. § 2151.011 (2012)	"(35) “Person responsible for a child's care in out-of-home care” means any of the following: (a) Any foster caregiver, in-home aide, or provider; (b) Any administrator, employee, or agent of any of the following: a public or private detention facility; shelter facility; certified children's crisis care facility; organization; certified organization; child day-care center; type A family day-care home; certified type B family day-care home; group home; institution; state institution; residential facility; residential care facility; residential camp; day camp; school district; community school; chartered nonpublic school; educational service center; hospital; or medical clinic; (c) Any person who supervises or coaches children as part of an extracurricular activity sponsored by a school district, public school, or chartered nonpublic school; (d) Any other person who performs a similar function with respect to, or has a similar relationship to, children.
Oklahoma	OKLA. STAT. ANN. TIT. 10A, § 1-1-105 (2012)	"51. “Person responsible for a child's health, safety, or welfare” includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; or an owner, operator, or employee of a child care facility as defined by Section 402 of Title 10 of the Oklahoma Statutes;

Pennsylvania	23 PA. CONS. STAT. ANN. § 6303 (2012)	“Child-care services.” Child day-care centers, group and family day-care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, early intervention and drug and alcohol services for children; and other child-care services which are provided by or subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term does not include such services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools. ""“Serious mental injury.” A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that: (1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or (2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks. "

Vermont	VT. STAT. ANN. TIT. 33, § 4912 (2012)	(5) "A person responsible for a child's welfare" includes the child's parent; guardian; foster parent; any other adult residing in the child's home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.