CIRSA LEGISLATIVE ALERT

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New Requirements for Youth Sports Programs Offered by Statutory Municipalities Take Effect August 6, 2024

If you're a statutory city or town that offers organized youth sports programs or athletic activities, you will want to take immediate steps to become familiar with the requirements of Senate Bill 24-113.[1]

The Bill, which takes effect August 6, 2024, sets in place new requirements for "local government" sponsored youth athletic activities. By its definition of "local government," the Bill does not apply to home rule municipalities.[2] Rather, it applies only to statutory cities and towns offering youth athletic activities, and requires they establish a prohibited conduct policy for paid and volunteer coaches and conduct background checks on paid coaches.

Prohibited Conduct Policy[3]

Under Senate Bill 24-113, statutory municipalities must make available a prohibited conduct policy relating to their youth athletic activities. The policy must include:

1. a list of prohibited conduct by parents, spectators, coaches, and athletes;
2. a mandatory reporting policy for adults who have knowledge of an act of prohibited conduct; and
3. a code of conduct for parents, spectators, coaches, and athletes to follow.

Your organization may draft and adopt its own code of conduct or adopt the *Safer Youth Sports: Model Code of Conduct* made available by the Colorado Department of Child Services (CDEC).[4] The Bill specifically mandates that local governments must require each of their coaches, paid or volunteer, to follow the prohibited conduct policy.[5]

The Bill defines "coach" as "a person employed or volunteering as a coach, manager, or supervisor of a youth activity but does not include occasional assistance with or support of the youth athletic activity by a person, including the action of other volunteers or employees of the local government in a passing, general, or nominal manner."

While the Bill does not elaborate on what it means to provide "occasional assistance" or "support" in a "passing, general, or nominal manner," it's likely, for example, that a public employee that plays pick-up basketball with minors or occasionally provides assistance to minors when using exercise equipment would not be considered a coach. On the other hand, for example, a public employee who is assigned or volunteers to regularly assist with the on-site running of a Town-sponsored youth basketball league and games would be a "coach" within the meaning of the Bill even though he or she is not the manager of a specific team. Interestingly, the Bill does not specifically address referees, but a referee assigned to a youth league or games might also be considered a "coach" within the meaning of the Bill.

Criminal Background Checks[6]

Senate Bill 24-113 also requires criminal history record checks for paid, but not volunteer, coaches prior to their hiring. The Bill does not require a second or subsequent criminal history record check for a coach who has undergone a criminal history record check prior to the effective date of the Bill. The pre-employment criminal history check must:

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1. be performed by a private entity regulated as a consumer reporting agency under federal law, specifically 15 U.S.C. § 1681, et seq.;
2. include a social security number trace and a search of the Colorado judicial public records access system;
3. disclose, at a minimum, sexual offenses and felony convictions; and
4. ascertain whether the prospective coach has been convicted of, pled nolo contendere to, or has received a deferred sentence or prosecution for felony child abuse, as specified in § 18-6-401, C.R.S., a felony offense involving unlawful sexual behavior, as defined in § 16-22-102(9), C.R.S., or a comparable offense committed in any other state.

The Bill further disqualifies from employment as a coach any person who has been convicted of, pled nolo contendere to, or has received a deferred sentence or prosecution for any of the offenses your organization is required to ascertain through the criminal history check. Thus, your organization may not hire as a coach a person who has failed the SB 24-113 background check.

While the background check and hiring prohibitions of the Bill do not expressly apply to volunteer coaches, it is prudent to require criminal history checks and screening for all coaches, paid or volunteer. Indeed, in light of 2021 legislation that created a new tort liability exposure for public entities for claims of sexual misconduct that occurred during participation in youth-related activities or programs, it is best practice to have appropriate background checks and screening for those employees and volunteers who staff such programs, and SB 24-113 can be viewed as codifying minimum requirements for background checks and screening for coaches. (You can read this CIRSA article for more on the 2021 legislation and suggested risk management practices.)

Any information and records received by your organization in response to a criminal history record check are not public records subject to the disclosure requirements of the Colorado Open Records Act (CORA). Your organization may charge an applicant coach a fee for the criminal history check. Of course, charging a fee could dissuade prospective coaches from seeking employment with your organization, so it is a business decision for your organization whether to do so. The Bill further states your organization may rely on the results of the criminal history record check when making hiring and employment decisions and is immune from civil liability unless your organization knows the information is false or acts with reckless disregard concerning the truth of the information disclosed in response to the check.[7]

The Bill defines "youth athletic activity" as "an organized athletic activity in which the majority of participants are less than eighteen years of age and engaging in an organized athletic game, competition, or training program." Therefore, if your organization provides only (unorganized) pick-up games and other unsupervised athletic activities on a walk-in basis, the Bill may not require your organization to adopt a prohibited conduct policy. Similarly, the Bill neither requires nor prevents an organization from applying the prohibited conduct policy to organized athletic activities in which youths may participate but do not make up the majority of participants.

Finally, the Bill's definition of "youth athletic activity" expressly excludes "travel or trips not organized or supervised by the local government." However, the intent of the exclusion is not readily apparent, as a team's travel for an out-of-town game or tournament is sure to be considered "supervised" if accompanied by your organization's volunteer or paid coaches. Thus, your organization should apply its prohibited conduct policy to coaches, supervisors, or chaperones assigned by your organization to travel with a team for games and tournaments.

If you are a statutory city or town, you should consult closely with your entity's attorney, human resources professionals and others as needed to ensure you have policies and systems in place to meet the upcoming requirements of Senate Bill 24-113.

If you have questions or would like additional CIRSA assistance regarding the topics addressed in this article, contact CIRSA's Deputy Executive Director/General Counsel Sam Light at saml@cirsa.org, or Assistant General Counsel Nick Cotton-Baez at nickc@cirsa.org.

New Requirements for Youth Sports Programs (cont.)

Note: This article is intended for general information purposes only and is not intended or to be construed as legal advice on any specific issue. Readers should consult with their entity's own counsel for legal advice on specific issues.

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1. Some requirements of SB 24-113 apply to "youth sports organizations," but not to local governments. The local government requirements are contained in Section 2 of the Bill, for codification in Article 7.1 of Title 29 of the Colorado Revised Statutes ("C.R.S."). If your organization offers youth sports activities through a for-profit or not-for-profit organization meeting the definition of "youth sports organization," Section 1 of the Bill might apply in whole or in part to the offered youth athletic activities, in which case you should consult your entity's attorney to determine applicable requirements.

2. The Bill references § 29-1-102, C.R.S. for its definition of "local government," which includes statutory towns and cities and their instrumentalities, but expressly excludes home rule cities and towns. See § 29-1-102(13), C.R.S.

3. For codification in § 29-7.1-102, C.R.S.

4. The *Safer Youth Sports: Model Code of Conduct* (Model Code) is intended by the CDEC as a template for organizations offering youth athletic activities and may not be suitable for adoption without modifications to the particulars of your organization. If your organization wants to adopt the Model Code, you should consider the potential impacts on your organization's existing policies and procedures and consult your organization's attorney before adopting changes to the model provisions. Additionally, the model reporting provisions of the Model Code reflect state-established reporting laws and methods and do not require (internal) reporting within your organization. Therefore, if your organization has, or desires to adopt, its own mandatory procedures for reporting misconduct within your organization, you should consider how to apply the existing procedures to, or craft new procedures to address, conduct prohibited of coaches under the Bill.

5. While not specifically required, the Bill's mandate could be read to imply a coach must face consequences for engaging in prohibited conduct in violation of the policy, perhaps after an investigation into, and a finding of, prohibited conduct by the local government. Interestingly, investigation requirements and minimum consequences that were included in earlier versions of the Bill were removed prior to the Bill's final passage; but, while the Bill does not contain investigation provisions, employers of paid or volunteer coaches who receive or have actual knowledge of alleged inappropriate conduct should promptly investigate the matter and determine whether any corrective measures should be taken.

6. For codification in §§ 29-7.1-103 and -104, C.R.S.

7. Though not clear from Senate Bill 24-113 itself, it seems the provisions of Senate Bill 24-113 would control over any conflicting provisions of § 24-5-101, C.R.S., which addresses the effect of criminal convictions on employment rights. For example, while § 24-5-101(3)(a), C.R.S. generally prohibits statements in a job advertisement or application form that a person with a criminal record may not apply for a position, it creates an exception to the prohibition in cases where another statute prohibits the employment of a person with a criminal record from applying for a particular position. As another example, § 24-5-101, C.R.S. states an employer shall consider certain factors when determining whether a conviction disqualifies an applicant from employment, but the Bill, specifically the new § 29-7.1-103(2), C.R.S., categorically makes certain offenses disqualifying for the position of coach of a youth athletic activity, thus making consideration of the factors unnecessary. Members should consult closely with their entity's own attorney prior to disqualifying an applicant.

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