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# Preventing Sexual Violence On Campus: Conducting Background Checks On Student-Athletes

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Sexual violence against women remains a major area of concern on college campuses. A number of studies have shown between 10% and 26% of college women experienced some form of nonconsensual sexual contact during their college career. (<https://www.jstor.org/stable/26314820>) Further, the effects of sexual violence can be dangerous and devastating. College women who have experienced sexual assault were more likely than their non-victimized peers to engage in drinking and driving, binge drinking, marijuana usage, and suicidal ideation (<https://psycnet.apa.org/doiLanding?doi=10.1037%2F0022-006X.67.2.252>). Victims are more likely than non-victims to report difficulty sleeping, activity limitations, chronic pain, and frequent headaches ([https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf)). The high numbers of female victims (<https://www.aau.edu/newsroom/press-releases/aau-releases-2019-survey-sexual-assault-and-misconduct>), as well as these debilitating and often lifelong effects, are prompting a much-needed conversation on how to reduce sexual violence on college campuses.

Additionally, institutions of higher education may be held liable for sexually violent offenses under Title IX, as demonstrated in the evolution of case law (see: *Cannon v. University of Chicago*, 1979; *Franklin v. Gwinnett County Public Schools*, 1992, *Gebser v. Lago Vista Independent School District*, 1998, and *Davis v. Monroe County Board of Education*, 1999) and federal guidance

(though less consistent from administration to administration). More importantly, college campuses and university missions promote healthy and safe campuses; reducing sexual violence certainly seems congruent with this charge. Mitigating this risk is crucial for college campuses across the country,

and one popular approach includes investigating whether and/or how student-athletes play a role in sexually violent crimes on campus.

Intercollegiate athletics is often associated with examples of sexual misconduct, assault, and violence against women due to its high visibility, as seen with former Florida State football star Jameis Winston and former Stanford swimmer Brock Turner, for example. Further, there has been discussion on mitigating on-campus sexual violence by focusing on student-athletes, which can be supported by research suggesting this population is more prone to sexually violent attitudes and behaviors than the general student body (see: link (<https://journals.sagepub.com/doi/10.1177/1077801296002002002>) link (<https://journals.sagepub.com/doi/10.1177/10778019922181167>) link (<https://www.tandfonline.com/doi/abs/10.1080/01614576.1993.11074089>) link (<https://journals.sagepub.com/doi/10.1177/088626093008001007>) link (<https://journals.sagepub.com/doi/10.1177/1524838014537907>) link (<https://www.tandfonline.com/doi/abs/10.1080/07448481.2010.483715>) link (<https://link.springer.com/article/10.1007/s11199-007-9225-1>) link (<https://journals.sagepub.com/doi/10.1177/1077801216651339>)). However, a separate body of research has also emerged, finding no such connection exists (see: link (<https://journals.sagepub.com/doi/10.2466/pms.1997.85.3f.1379>) link (<https://journals.sagepub.com/doi/10.1177/019372395019002002>) link (<https://psycnet.apa.org/record/2007-06097-002>) link ([https://www.researchgate.net/profile/Dave\\_Smith20/publication/38145389\\_Sexual\\_Violence\\_Against\\_Women\\_in\\_College\\_Athletes](https://www.researchgate.net/profile/Dave_Smith20/publication/38145389_Sexual_Violence_Against_Women_in_College_Athletes)) Alternative explanations, such as socialization (<https://www.tandfonline.com/doi/abs/10.1080/00336297.1999.10491684>), hypermasculinity (<https://www.sciencedirect.com/science/article/abs/pii/S1441352308000041>), and competitiveness (<https://journals.sagepub.com/doi/10.2466/pms.1997.85.3f.1379>), may also need to be considered rather than athletic participation alone when examining the assumed link between athletic participation and sexual assault. Alcohol (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4484266/>) and drug use (<https://psycnet.apa.org/record/1987-28424-001>) and group mentality

(<https://journals.sagepub.com/doi/10.1177/019372395019002002>) are other factors that should be considered. These characteristics are not exclusive to athletes and thus focusing reform efforts squarely on a university's student-athlete population may be reductive.

One strategy often utilized by universities to maintain a safe campus and reduce the number of instances of sexual violence is vetting prospective students through some form of background check, whether formal through a third-party company or informal through self-disclosure. Yet this approach does not come without its issues as a lack of policies to address information yielded from background checks, inconsistency of access to public juvenile records across states, and disparate impact towards students of color call into question the use of background checks. A number of universities and athletic departments are currently taking this route, despite these issues.

Through the vetting process, universities attempt to mitigate future instances of sexual violence on campus by denying admission to student-athletes who have committed criminal offenses or serious misconduct in the past. But is this the best approach? While understanding past indiscretions of recruited athletes are important and vital to campus safety, does the role of "student-athlete" merit the primary focus over others (e.g., fraternities, general student population, etc.) in terms of sexually violent crimes? We are not arguing that student-athletes are without fault. In other words, instead of the focus being on student-athletes as an at-risk population, should the focus to mitigate sexual violence be widespread for all students, not just student-athletes?

We investigated current practices of conducting background checks on student-athletes of NCAA Division I institutions through FOIA requests, an online search of news articles, athletic department websites, conference websites, and state

laws. In our research, we found that 41 out of 237 institutions maintained some form of background checks for student-athletes.

A previous study ([<https://athleticdirector.uconn.edu/articles/preventive-sexual-violence-on-campus/>](http://riskaware.com/wp-</a></p></div><div data-bbox=)

content/uploads/2015/04/College-Athletics-and-Background-Check-Policies.pdf) conducted in 2016 found 12 out of 567 institutions of higher education conducted some form of background checks on student-athletes. Most universities were mandated by conference policy (e.g., Big-12 Conference, Southeastern Conference, Pac-12 Conference) or state law (e.g., Idaho) to conduct some form of background check specifically on student-athletes. The SEC holds a serious misconduct policy for transfer student-athletes and incoming freshmen. The Big-12 and Pac-12 maintains a policy restricting the acceptance of transfer student-athletes with past misconduct issues. Two institutions (e.g., Indiana University and Fresno State University) maintain a stand-alone policy for their athletic department, and a number of institutions within the aforementioned conferences implemented a background check policy prior to conference mandate and/or have extended the policy beyond the minimum requirement.

Interestingly, policies varied in specificity, procedural guidance, or substance. For example, one policy stated that universities should execute “due diligence in reviewing a prospective athlete’s background”. This lack of specificity creates a significant gray area for college administrators to act inconsistently.

Furthermore, we do not know what this means in context, and we should not expect athletic administrators to know either. Policy statements like this can also bring additional liability issues to the athletic department. For more information on the liability issues surrounding background checks, see this study (<https://scholarship.law.marquette.edu/sportslaw/vol30/iss1/5/>) that explores the potential legal risks of singling out student-athletes as a population and subjecting them to compulsory background checks.

The findings in our study suggest the use of background checks for student-athletes has become a more widely accepted practice. Although research and media reports point to student-athletes as the primary culprits of sexual violence on campus, any approach to campus safety should include all students

as well as student-athletes. Background checks may seem like a suitable approach, but also could provide a false sense of security for administrators, students, and the campus community.

This approach, if taken, should be combined with other elements (<https://www.justice.gov/archives/ovw/page/file/909811/download>) and strategies (<https://www.cdc.gov/violenceprevention/pdf/campussvprevention.pdf>) such as prevention education, bystander training, counseling, and policing. For example, the University of Kentucky (<https://uknow.uky.edu/research/uk-researchers-observe-reduction-sexual-violence-among-high-school-students-after>) offers a bystander intervention training that educates students on strategies for intervening in potentially dangerous situations. The program, adopted by some Kentucky high schools, indicated a 50% decrease in the frequency of student-related sexual assaults after five years.

Other preventative programs have been implemented such as Fair Play (<https://www.fairplaysvprevention.com/>), a 10-hour program that covers a wide array of topics such as bystander intervention, healthy sex education, and a discussion to define sexual assault, consent and rape culture in sports. According to the CDC, effective sexual assault prevention requires programs and policies that address individual, relationship, community, and societal factors. The CDC offers a variety of evidence-based programs and an online tool kit (<https://www.cdc.gov/violenceprevention/pdf/sv-prevention-technical-package.pdf>) that can be adopted and implemented by universities. The NCAA also maintains a sexual violence prevention tool kit (<http://www.ncaa.org/sport-science-institute/sexual-violence-prevention-tool-kit>).

If no overriding strategy exists, then several approaches may help university administrators. At the national and regional levels, the NCAA and athletic conferences should continue to develop and evaluate consistent standards of education for its student-athletes. At the university level, athletic departments

can develop robust Athlete Codes of Conduct and promote the development of safety advocate groups within the student-athlete population.

The study findings also invite questions about whether some sort of national approach to combatting sexual violence on college campuses ought to be developed through the NCAA. The NCAA Board of Governors chose to take action in 2016 by creating the NCAA Commission to Combat Sexual Violence (CCSV). The commission's charge was to "proactively examine issues and propose solutions related to what athletics departments, conferences and the national Association could do to address campus sexual violence to achieve positive culture change."

NCAA membership adopted a sexual violence policy proposed by the CCSV in 2017 requiring NCAA coaches, student-athletes, and athletic administrators to complete sexual violence education every year, with university administration verifying the completion of the training. While this policy was an initial step to address campus sexual violence, more could be done. Unfortunately, the CCSV was disbanded in 2019 before it could develop and implement more significant policies. Thus, with no national coordinating effort, policy decisions related to combatting sexual assault appear to occur at individual universities or at the conference-level. As the prevention of sexual violence is such an important topic, having no national coordinating strategy seems imprudent.

If the university chooses to retain the background check policy during the admissions process for prospective or transfer student-athletes, this approach must be part of a comprehensive prevention strategy. Administrators must develop sound policies and procedures, including a uniform approach for addressing individual student circumstances, thus ensuring the process does

not allow for arbitrary or capricious selection. For example, there are a number of athletic programs that conduct background checks via internet searches and interviews with known associates, which potentially can lead to selection bias.

Inconsistent decisions resulting in differing treatment of similarly situated individuals could invite legal liability. The Center for Community Alternatives (<http://www.communityalternatives.org/wp-content/uploads/2020/02/use-of-criminal-history-records-reconsidered.pdf>) outlines procedures if a university retains the background check approach. An important aspect of this process is training those involved with the recruitment and admissions process to effectively interpret, understand, and act upon data as well as manage such a responsibility, including coaches and athletic administrators.

Since a growing number of athletic departments are utilizing background checks, institutions would be prudent to develop a more holistic approach which includes the creation and enforcement of uniform policies and procedures for student and athlete recruitment and acceptance, the promotion and education of issues surrounding sexual violence, and the implementation of prevention education and bystander intervention programming for students and student-athletes once they become a part of the institution. Additionally, institutions should continuously evaluate the policies' effectiveness, educate and train admissions staff how to interpret and address background check results and university policy, and regularly update programming to evolve as universities' expectations progress.