

College Athletics and Background Checks: Literature Review and Survey Results

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Abstract

In response to the growing interest in using background checks to screen student athletes, we developed a survey that was administered to over 2,000 Division 1, 2 & 3 athletic directors, including those with oversight in the area of compliance on their utilization of background check practices. The survey generated widespread interest with an estimated 28% (572 completed surveys) response rate. The results indicate that the use of criminal background checks on incoming student athletes is indeed increasing. There is also evidence of a fast growing emphasis on the use of social media checks as one component of a broader risk mitigation effort, even though such checks are fraught with legal uncertainties. Our findings also lend support to the conclusions of the recently released Senate report on sexual assaults on campus that many universities and college do not follow best practices in either the prevention or the adjudication of alleged crimes committed by student athletes. We recognize that without a comprehensive background check mandate, at either a conference level or at the larger NCAA divisional level, implementation of a background check policy at an individual school could actually be detrimental to athletic success.

Keywords: background checks, campus crime, campus sexual assaults, college athletes, McCaskill Report, Title IX

Introduction

There is, according a recent article in the *New York Times*, a “roiling national debate over how best to stop sexual assaults on campuses” (Bogdanich, 2014). The specific case investigated by the newspaper involved accusations against three football players at Hobart and William Smith Colleges. That the accused were football players, and that they were exonerated by an internal investigation, seems to confirm commonplace suspicions that a) student athletes are more likely to commit crimes than their peers, and b) that universities are more interested in protecting those athletes than other students on campus.

The release on July 9, 2014 of Senator Claire McCaskill’s report of the results of a bipartisan Senate survey of sexual assault on U.S. campuses also highlights the failure of many colleges to follow best practices to secure the safety of their students (Stratford, 2014). In particular, the report noted, with dismay, that 22% of the sample of colleges surveyed gives the responsibility of adjudicating accusations against athletes of sexual assault to the athletic departments, a process “borderline outrageous,” according to McCaskill. While Ada Meloy, general counsel and spokesperson for the American Council of Education, describes McCaskill’s condemnations as “unfair and incomplete,” the implication that college athletes are afforded “special” treatment when accused of crimes resonates with other recent news reports.

Almost simultaneously with the release of the McCaskill survey results, Brandon Austin was in the headlines as a possible recruit in basketball to Hutchinson Community College, despite accusations of sexual assault at two previous colleges which he attended (New, 2014). There remain questions about how much the University of Oregon knew of

the reasons for Austin's suspension for alleged sexual assault at Providence College before his recruitment to Oregon. In another earlier high profile, high impact case, George Huguely was sentenced to 23 years in prison for the murder of fellow University of Virginia lacrosse player, Yeadley Love, in May, 2010 (Flaherty, 2012). It appears that Huguely had earlier assaulted other UVA students whom he believed were involved with Love and another former girlfriend (Flaherty, 2012). Yeadley Love's mother filed (and then dropped) a \$30 million lawsuit against the University of Virginia and its administrators, including the head and assistant lacrosse coaches and the athletic director, alleging they knew about this violent behavior and chose not to intervene (Anonymous, 2012).

Campus Crime and Student Athletes

Whatever the headlines and resulting perceptions that student athletes commit more crime, especially violent crime, than their peers, there are no reliable and consistent statistics on the actual number of crimes committed by student athletes on college campuses (Benedict, 2010).

Several studies have extrapolated individual study findings to the entire student athlete population and suggested that on average, there is at least one crime committed by a student athlete every day on U.S. college campuses (Armstrong & Perry, 2010). Southall (2001) cites a 1997 ESPN online survey which found that 83% of the respondents thought college athletes were committing more crimes than 25 years earlier. On the other hand, Armstrong and Perry's (2010) study looked at 4 years of data covering the University of Washington's football program and found that a small number of athletes (2.7%) were arrested on criminal charges. Another study by Benedict (2010),

considering 8 months of data, found college and professional basketball and football athletes had been charged with 125 serious crimes involving violence, weapons and substance abuse. This study did not include the additional 40 other non-serious charges and also did not include athletes in other sports such as baseball, hockey and boxing (Benedict, 2010). A joint investigative study by *Sports Illustrated* and *CBS News* in 2011 found that after checking the criminal backgrounds of 2,837 student athletes associated with the top 25 football programs in the U.S., 7% (204 players) or 1 in 14, had been charged or cited for a crime of which 40% (277 records overall) included violent crimes such as assault and battery, aggravated assault, burglary, domestic assault and sexual assault (Benedict & Keteyian, 2011).

Fried (1997) cites a 1994 study of sexual abuse cases at 30 universities which showed that athletes committed 19 percent of the violations while being only 3.3 percent of the male students. Fried (1997) also cites a 1990 survey which found 2.1 percent of male athletes admitting to committing date rape, with 0.6 percent of non-athletes stating the same. Spies (2006) states that male athletes are more likely to commit sexual assaults and according to one study, athletes commit one in three college sexual assaults. Spies (2006) further states that an FBI report found that the rate of sexual assaults is thirty-eight percent higher among college basketball and football players. Each of these studies, in isolation, seems to suggest that there are significant levels of criminal behavior within the ranks of student athletes and these studies are backed by other researchers who suggest that student athletes are disproportionately involved in criminal behavior (Crosset, Benedict & McDonald, 1995; Bloom & Smith, 1996; Hildebrand, Johnson & Bogle, 2001

However, there are equally compelling counter-arguments offered by others who suggest that student athletes commit crime at levels significantly below non-student athletes (Jackson, 1991; Koss & Gaines, 1993, Caron et. al., 1997; Smith & Stewart, 2003) while still others contend that it is individual characteristics of the athletes themselves and not just a broad association with sports participation that creates the correlation between criminal behavior and athletes (Moore & Werch, 2005; Merten, 2008).

It is difficult to ignore the fact that when student athletes commit crimes, there is a much higher level of press coverage given to these crimes than similar crimes committed by non-student athletes. This coverage may influence the perception that student athletes are much more likely to commit crimes than non-student athletes. Jackson (1991) found there was no difference in the rate at which student athletes and non-student athletes committed rape, but there was a difference in the amount of media attention the athlete's case received versus the non-athlete. Koss and Gaines (1993) found that athletic participation was weakly correlated with sexually aggressive behavior and Caron et.al, (1997) found that the argument linking athletic participation and sexually aggressive behavior was too broad to be of use. Instead, the authors focused on personal characteristics such as an individual's "win orientation" and found that those with higher levels of "win orientation", regardless of their athletic participation rates, were more positively correlated with sexually aggressive behavior. Smith & Stewart (2003) investigated differences in sexually aggressive attitudes and behavior among contact sport athletes, non-contact sport athletes, and non-athletes, and found that despite

assertions by the media and some researchers, athletes (whether contact or non-contact sport) do not have a greater propensity to commit sexual assault than non-athletes.

Those who believe otherwise contend that athletes tend to commit more crime in large part because they tend to feel they are above the law, and without a need for accountability, they no longer fear punishment for their actions (Wallgren, 2009). Crosset et. al., (1995) researched the police records of 20 institutions and 10 judicial affairs offices over a 3 year period and found that student athletes were overrepresented in reports of sexual assault in both channels, but the differences between male student athletes and male non-athletes were only statistically significant in the numbers of incidents reported to judicial affairs. Bloom and Smith (1996) tested the cultural spillover theory which contends that, when there is widespread approval for the use of violence to attain a goal, the greater the likelihood of illegitimate violence spilling over into other social settings. The study compared a group of hockey players and non-players and found that violence in hockey games does spill over into other social settings. This suggests that behavior that is acceptable in athletic settings can result in inappropriate and violent behavior in non-athletic settings. Hildebrand et al. (2001) looked at the differences in alcohol use and engagement in alcohol-related behaviors, including riding in a motor vehicle and engagement in sexual intercourse while under the influence of alcohol, of students classified by their level of athletic participation (college athletes, college students who were high school athletes and non-athletes). The results indicate that non-athletes abused alcohol less and engaged in alcohol-related risk behavior far less frequently than did their peers who were athletes in either high school or college. One interesting finding from this study was that as the level of athletic participation increased

(i.e. high school athletes who went on to play a sport in college), the level of alcohol related risk behaviors increased. Researchers are uncertain whether a feeling of invincibility derived from athletic success or a sense of entitlement among college athletes is to blame for this relationship, but everyone acknowledges that more studies are needed to address both the causes of and the remedies for reducing alcohol-related risk behaviors (Hildebrand et al., 2001).

In addition to the harm caused to the victims of these crimes, there is also a very real cost, in terms of both the reputational and financial impact on the institutions as well (Hughes & Shank, 2006) and the potential litigation concerns for members of the athletic and administration staff (Williams vs. University of Georgia Board of Regents, 2006). Fried (1997) argues that “a university has a duty of reasonable care to protect students from the criminal acts of ...student-athletes if the criminal act was reasonably foreseeable and occurred within facilities or activities under a university's control” (p. 80). A university could be held liable under a negligence-based theory and thus, could be subject to damage awards as a result of student-athlete conduct (Fried, 1997). Fried also discusses negligent recruiting and states that, “... a negligent recruiting claim could entail a charge that the university brought student-athletes onto campus who have or had criminal histories, or through reasonable inspection, the university could have determined that the recruits posed a potential danger to others” (p. 83). Finally, Fried points out that liability could arise and claims could be made for retaining a dangerous student-athlete or if a university knows an athlete is dangerous and does nothing, then liability could attach (1997).

Background Checks

The McCaskill report expresses concern that institutions of higher education (IHEs) do not follow “best practices” in either recruitment or training. Meloy, in her rejoinder, argues that colleges and universities “are working to address this serious and complex societal issue” (Stratford, 2014). Many victims of sexual assaults on college campuses would contend however, that schools are not doing enough to ensure the safety of students who attend their institutions. So, sexual assault victims and their advocates are alleging violations of Title IX as a way to force schools to deal more seriously with the issue of sexual violence (Goldman, 2013). Title IX, the federal civil rights law that was enacted in 1972, broadly prohibits discrimination on the basis of sex in federally funded education programs and activities, but historically has been invoked to ensure fairness and equality in how men’s and women’s athletic programs are funded. As of May 1, 2014, there were a total of 55 universities across the country that were being investigated by the Office of Civil Rights in the Department of Education for alleged violations of Title IX (U.S. Department of Education, 2014).

Certainly, in recent years, some states have attempted to address campus violence by requiring background checks on all new employees and on certain categories of students seeking admission to their public university systems. For example, in 2006, North Carolina enacted a background check policy on all admitted students to all state universities requiring criminal background checks for students who self-disclosed a prior criminal or disciplinary incident (Hughes et. al, 2014). The Boards of Regents in Arizona and Wisconsin have enacted their own background check standards for all new or transferred employees in higher education, including some categories of student

employees (Hughes et. al, 2014). Additionally, various governing bodies that oversee certain categories of students such as those in education, law and nursing, have, for years, required background checks as a condition of licensure. More recently, one of the first bills introduced in the 2014 legislative session in West Virginia seeks to require all students seeking on-campus housing in any state school to undergo a required criminal background check (Hicks, 2014).

Recent studies have attempted to assess the effectiveness of these limited background checks at reducing criminal activity on campus, but have provided mixed results (Hughes et. al., 2014; Hughes et. al., 2014). These findings were not a surprise given the variety of policies, both within and between states, and the variability in their application between institutions. Additionally, student background checks have relied on the notoriously unreliable “self-reporting” in the admissions process.

Student Background Checks

While the topic of background checks is often in the news relating to employers’ use of these tools to mitigate risk, comparatively less attention has been given to the topic of student background checks in literature on higher education and risk. However, this appears to be changing each time a violent incident, such as the killing of Purdue engineering student Andrew Boldt by fellow Purdue engineering student Cody Cousins in January, 2014, makes national news. The obvious question that emerges from this and multiple other school-related shootings is whether something more could have been done to prevent them. Current admission application procedures in place at most schools require applicants to self-disclose any criminal or disciplinary issues in the past. However, the likelihood that a majority of applicants will accurately self-disclose to

either criminal or discipline-related issues in the past is low, in part because the law allows them to avoid self-disclosure and because applicants may feel that this disclosure will jeopardize their admission potential. As a result, most experts believe that student background checks that involve more than mere self-disclosure are “an idea whose time has come” (Marklein, 2007).

There are strong arguments for the use of student background checks. Firstly, their use may prevent harm to other individuals. Additionally, valuable admission spots may not be withheld from candidates who would not be eligible externships or licensure related to a particular program. And, of course, the utilization of background checks limits the liability of the institution which may result from either a breach of duty to provide a safe environment or negligent admission (NACUA Notes, 2006). There are equally compelling arguments for why institutions should not utilize student background checks during the admissions process and these include: increased liability the institution may take on when the screening process is done negligently and results in harm to a third party, the disproportionate impact these checks have on minority populations, and the creation of a false sense of security coming from the belief that all background checks are comprehensive and accurate in nature (NACUA Notes, 2006).

Others have argued that there is no demonstrable difference in campus crime rates between those institutions who do background checks and those who do not (Olszweska, 2007; Hughes et al., 2014) and this argument is supported by the survey feedback of 40% of participating institutions who indicate that they do not feel less safe despite not deploying criminal background checks in their admission processes (The Center for Community Alternatives, 2009). So the argument has historically been on the side of *not*

doing checks because the liability may actually be greater for institutions especially those not driven to do so by legislative decree. However, this argument becomes obsolete in the face of almost daily headlines of student-on-student campus shootings and high profile criminal activities of student athletes.

Potrafke (2006) highlighted the issue of student athlete violence and the steps being taken to curb this violence – in particular actions taken by the NCAA. The author strongly advocated that the time has come for the NCAA, which has been so aggressive in regulating student athletes in other areas of intercollegiate athletics, to step up and implement a bylaw to require all NCAA member institutions to begin background checking their student athletes. Finally, Dickerson (2008), in a seminal and exhaustive analysis of legal and policy considerations associated with using background checks in the university admission process, suggested that “with the safety of students and campuses at risk, researching an applicant’s criminal history is prudent from both a safety and liability perspective.” Dickerson suggested that schools should consider the use of background checks in admissions as one part of a broader and “comprehensive environmental policy” aimed at ensuring that institutions provide a reasonably safe living and learning environment for their students. Her argument centered on the fact that since there were actually no laws which prevented schools from utilizing background checks in the admission process, the merits of providing safe living and learning environments should actually encourage policy considerations in favor of conducting background checks. Southall (2001) also argues that strong policies should be in place to deal with criminal activity of student-athletes and states that these policies should: “involve individuals from outside the organization when looking for solutions” (including legal

counsel) , “move beyond general mission statements,” be published and distributed “to everyone possible,” include “measurable actions,” “be lived by the organization,” and, finally, “insure that the policies actually become the way things are done” (pp. 280-281). Spies (2006) points out that a university could be liable if a sexual assault occurs between a female student and a recruited male student-athlete on campus and yet, only thirty of the eighty-two Division I-A universities have policies on how to handle such situations.

Background Checks and Athletes

While schools have strictly limited the application of background checks in the college admissions process, their use in college athletics is increasing. These checks have come about largely in response to previous criminal acts committed by student athletes that have cast further negative light on college athletics. In 2004, in response to the murder of Baylor basketball player, Patrick Dennehy, by fellow Baylor basketball player Carlton Dotson, Baylor instituted criminal background checks on all transfer student athlete recruits (Dotz, 2005). In 2005, the University of Oklahoma instituted criminal background checks on all incoming student athletes (Timanus, 2005) after several football-related incidents brought the university unwanted scrutiny. More recently, Texas Christian University implemented checks on all student athletes while the University of Kansas implemented criminal checks on all transfer student athletes (Garretson, 2011; University of Kansas, 2014). Additionally, the Idaho Board of Education adopted policies that require that athletes disclose criminal convictions and anyone previously convicted of a felony cannot be recruited (Fried, 1997). A student-athlete convicted of a felony is not allowed to then compete in Idaho athletics (Fried, 1997).

In response to the growing interest in using background checks to screen student athletes, we launched a survey that was administered to over 2,000 Division 1, 2 & 3 athletic directors including those with oversight in the area of compliance on their utilization of background check practices. The survey generated widespread interest with an estimated 28% (572 completed surveys) response rate and the results indicate that the use of criminal background checks on incoming student athletes is indeed increasing. There is also evidence of a fast growing emphasis on the use of social media checks as one component of a broader risk mitigation effort.

Methodology

We crafted an initial survey that was sent out to a total of forty (40) members of our target audience including Athletic Directors and Compliance Directors of Division I, 2 and 3 institutions nationally for feedback on the list of questions. The initial survey generated a 15% response rate with six (6) respondents and provided some good feedback on the structure of the questions themselves but did not result in any additional questions being added to the survey. We incorporated that feedback and re-launched the survey to a total survey audience of 2,010 respondents. The survey included 18 questions. We distinguish in the survey between criminal background checks and social media checks. To ensure clarity around the definition of criminal background check, we specifically asked the respondents to check the actual types of checks they utilized that constituted their criminal background check process. For the rest of this analysis, when we refer to background checks, we are referencing criminal background checks.

Response Rate and Profile of Respondents

We received an initial response of 356 (17.7% response rate) followed 14 days later by an additional 204 (10.1% response rate) responses for a two-week combined total of 567 (6 incomplete responses) completed responses representing a 28.2% response rate.

Upper division schools were over-represented, perhaps due to greater likelihood of interest in the results of this analysis due to the high profile role their athletic departments have within their institutions. Overall, the survey generated 226 respondents (42.48%) representing Division 1, 172 respondents (32.33%) representing Division 2 and 134 respondents (25.19%) representing Division 3. Respondents also represented a diverse institutional base based on both size and geography (Table 1).

Table 1	
<i>Institutional Characteristics</i>	
	<u>Frequency (Percentage)</u>
Institutional Size	
0-999 Full-time students (FTS)	36 (6.8)
1,000-4,999 FTS	215 (40.6)
5,000-9,999 FTS	95 (17.9)
10,000-14,999 FTS	74 (14.0)
15,000-19,999 FTS	30 (5.7)
Over 20,000 FTS	80 (15.1)
Institutional Location	
Northeast	100 (19.0)
Mid-Atlantic	56 (10.6)
Southeast	88 (16.7)
Midwest	116 (22.0)
Upper Midwest	26 (4.9)
South	44 (8.3)
Southwest	27 (5.1)
Mountain West	12 (2.3)
West	34 (6.5)
Northwest	24 (4.6)
Respondent Titles	
Athletic Director	240 (41.8)
Director of Compliance	223 (38.9)
Athletic Staff	37 (6.5)

Academic Faculty or Staff	3 (0.5)
Other	71 (12.37)
Classification	
Division 1	226 (42.5)
Division 2	172 (32.3)
Division 3	134 (25.2)

Findings

The focus of this study was on college athletic directors’ utilization of background checks to screen their student athletes. Table 2 provides descriptive statistics surrounding the use of criminal background checks which suggest that current utilization is low (3.31%) but will increase (8.01%) in the near term (identified as within 1-3 year time frame).

Table 2		
<i>Use of Criminal Background Checks</i>		
	<u>Frequency</u>	<u>Percent</u>
All Student Athletes	12	2.09
Transfers Only	7	1.22
We don’t current conduct but plan to	46	8.01
We don’t conduct and don’t have plans to do so	509	88.68

These numbers are in line with the feedback from these officials regarding the number of schools that perform background checks on students as a condition of admission. Table 3 highlights that approximately 4.71% (26) of the schools participating in this analysis do background checks on students as a condition of admission. It is possible that this number is actually higher as almost 17% (93) indicated that they do not actually know if

their institutions conduct background checks on students for admission purposes. While this was not the focus of this analysis, the high number of “Don’t Know” responses suggests that there is a lack of knowledge around this important institutional policy that likely needs to be addressed through better training.

	<u>Frequency</u>	<u>Percent</u>
Yes	26	4.71
No	433	78.44
Don’t Know	93	16.85
Sub-total	552	100

By comparison, Table 4 highlights that many respondents’ institutions perform criminal background checks on faculty and staff; far more than do so on prospective students. Close to 92% (510, 91.89%) of respondents indicated that their institution does currently check their faculty and staff as a condition of admission. This finding is not surprising since there has been a significant increase in the past decade of using background checks for pre-employment purposes across all types of businesses. What might be the more surprising result is that 15 respondents (2.70%) indicated that their institutions do not perform background checks on faculty or staff. Unfortunately, we continue to see that a certain percentage of organizations of all types will risk exposure either under some misguided belief that if they do not know about it, they are not liable for it or to save money in the short run.

Table 4		
<i>Background Checks for Faculty and Staff</i>		
	<u>Frequency</u>	<u>Percent</u>
Yes	510	91.89
No	15	2.79
Don't Know	30	5.41

There are clearly significant reasons for the increasing interest among athletic department staff and university administrators in utilizing various types of checks because we see a sizable number (125, 22.44%) of student athlete investigations having been launched in the past year on respondents' campuses. As Table 5 highlights, these investigations cover a wide range of problems and suggest that the problems facing athletic department staff are numerous and will sometimes range into serious criminal issues that require a great deal of expertise to handle that athletic department staff are often not qualified to handle.

Table 5	
<i>Internal Investigations of Student Athletes in Past Year</i>	
<u>Type</u>	<u>Frequency</u>
Drugs	54
Gambling	6
Sexual Offenses	28
Academic Infractions	31

Bullying	9
Other	33
Note: Some respondents checked multiple boxes for their incidents; a total 125 respondents answered “yes” to whether they had launched any student athlete investigations in the past 12 months.	

These student athlete investigations also saddled the universities with significant costs including the use of limited management and legal resources, and both game and season-long suspensions of student athletes. While Table 6 highlights the findings from the respondents, what is clear is that each instance also carries with it some reputational cost to the university that may last for years after the initial situation has been addressed (Hughes & Shank, 2006).

Table 6	
<i>Costs of Internal Investigations</i>	
<u>Impacts</u>	<u>Frequency</u>
Use of Management Resources	47
Use of Legal Resources	36
NCAA Infractions	33
Game Suspensions	62
Season Suspensions	21
Other	7
Total	206
Note: Some respondents checked multiple boxes for their incidents; a total 125 respondents answered “yes” to whether they had launched any student athlete investigations in the past 12 months.	

One final note on the issue of student athlete investigations, using one-sample proportion statistical tests, we found that with 95% confidence that for those colleges that use or plan to use either background or social media checks between 24.14% and 40.02% had student athlete investigations in the last 12 months. This suggests the possibility that the existence of the student athlete investigations was a contributing factor to schools either adopting or considering adopting the use of background and social media checks (See Table 7). This is supported by a two-sample proportion test comparing schools that do or plan to conduct background or social media checks to those schools that do not ($Z=-3.06$, $p\text{-value}=0.002$). We can estimate with 95% confidence that schools that have been involved in student athlete investigations have between 5.16% and 26.63% higher chance of already being involved with conducting background or social media checks or planning to do so in the future compared to schools that haven't been involved in student athlete investigations.

Table 7				
<i>Relationship of Investigations to Adoption of Background Checks</i>				
<u>Variable</u>	<u>X</u>	<u>N</u>	<u>Sample p</u>	<u>95% CI</u>
SA Investigations	45	142	0.316901	0.242434, 0.400195

Table 8 highlights information about the conduct of social media checks on their incoming student athletes as a condition of admission. In one of the more surprising findings, approximately 20% of respondents (112) indicated that they currently do or have plans to conduct social media checks on incoming student athletes including

transfers. While checking social media accounts for this demographic is not surprising, what is surprising is that so many respondents acknowledged doing so when the legality around how to do these checks remains a complex issue that could place institutions under some level of liability if the practice is not done in some uniform manner and executed by individuals with the proper training to evaluate the information they are reviewing.

Table 8		
<i>Use of Social Media</i>		
<i>Checks</i>		
	<u>Frequency</u>	<u>Percent</u>
All Student Athletes	43	7.85
Transfers Only	3	0.55
We don't currently conduct but plan to do so	66	12.04
We don't conduct and have no plans to do so	436	79.56

Finally, we asked how many respondents had football teams because there are some who associate high profile, competitive sports with higher levels of aggression among participants. Overall, 332 respondents (62.64%) indicated that they had a football team and a 198 (37.36%) indicated that they did not.

We estimated with 95% confidence, that for those colleges that use or plan to use either background or social media checks on athletes, between 62.95% and 78.92% also field a football team. While this might seem to suggest that football environments contribute to more disruptive behavior and are therefore likely in need of more sophisticated tools to help administrators better manage this inherent risk, this could not be shown with our data as a two-sample proportions test comparing football to non-football schools showed no evidence of a difference in the proportion using either background or social media checks on athletes ($Z = 1.55$, $p\text{-value} = 0.121$). A corresponding confidence interval to this test suggested that up to 30% more of schools having football teams might do such investigations but a larger sample size would be needed to investigate this further.

Managerial Implications

The results of this analysis suggest that athletic administrators in institutions of higher education are increasingly interested in exploring the use of background checks and social media checks as a way to mitigate the risk to the institution from recruiting student athletes who may engage in appropriate or criminal behavior that could generate negative publicity. While there remain low overall numbers of institutions that currently utilize these types of checks, the significant number of institutions who express a desire to implement these types of checks in the future is certainly noteworthy. While there are often costs that cannot be calculated because they involve the physical, mental or emotional well-being of the victims of many of these actions, there is also a significant cost to the university when something does go wrong in terms of lowered reputation,

possibly lower donor and legislative support, and often, a sizable drop in both the quality and numbers of students who seek admittance. Comparing these possible outcomes with the relatively low cost of running background checks and/or social media checks (assuming an average cost per check of \$50) seems to offer strong justification for considering their implementation.

Institutions may benefit from implementing background check procedures that go beyond the execution of the actual check because prospective student athletes, and others involved with their recruitment, are put on notice about expectations regarding their behavior at the very beginning of the process. As mentioned above, Fried (1997) points out that student-athletes convicted of felonies cannot compete or be recruited per the policy of the Board of Education in Idaho. This restriction may help to set boundaries that work to constrain inappropriate behavior over the longer term by establishing a culture of “doing the right thing.” Over time, such a culture may be more impactful in helping to mitigate personnel risk than any type of background or social media check available. Southall (2001) agrees that implemented policies should become “the way things are done.” Institutions that adopt the use of background checks as one approach to mitigating or managing their risk may also find that there is a real financial benefit to implementing because insurance companies often incentivize organizations to make these types of risk-reducing investments.

The use of background checks may also possibly lead to changes in both the recruiting process and the demographic being recruited by the institution. Obviously, if coaches judge an athlete as less likely to pass a background check, they may invest less time in his or her recruitment. Moreover, if a coach continues to bring in athletes who

have less than desirable backgrounds, the chance that those coaches will invite increased scrutiny of their own activities is likely. This possible outcome may influence the degree of risk a coach is willing to take in advocating for their recruits. But an unattractive outcome may also result if coaches feel that the existence of a background check policy for student athletes makes the institution less competitive with its peers. In this way, background checks for potential recruits might lead successful coaches to seek other employment opportunities because they are unable to attract the type of talent that will help them achieve their goals of winning games and championships (for which they often are primarily evaluated).

Lacking a comprehensive background check mandate, at either a conference level or at the larger NCAA divisional level, implementation of a background check policy at an individual school could result in a shift in the competitive balance of schools within conferences or divisions where some schools do background checks and others do not. This could also impact a wider range of institutional factors such as donor support, the incoming quality of students, legislative support, etc. if schools, with background check policies, are not winning as much as their alumni and donor base thinks they should.

Finally, the implementation of background checks and/or social media checks is not a panacea to ensure that bad things do not happen. This is not reality. Bad things do happen and they sometimes happen to really good and well-intentioned individuals. But while checks can't actually prevent a bad thing from happening, they may reduce liability when something bad does happen because a university can demonstrate that they used the best tools available to mitigate their risk.

Finally, the survey does seem to reinforce some of the main concerns of the McCaskill report. Almost 17% of respondents do not know if their own institutions run background checks on all student admissions, an ignorance of critical institutional policy that implies lack of adequate communication and training. The report also expresses extreme concern about the adjudication process for accusations of sexual assault, a concern that seems confirmed by the finding in our survey that 28% of internal investigations of athletes in the last year involved accusations of sexual assault.

Conclusion

It is clear that this survey, irrespective of its findings, addresses a topic that athletic administrators deem to be important. This is evidenced by the response rate but also more importantly the desire expressed by many of the respondents to receive a copy of the report when it is complete. While it appears that not many schools currently utilize background checks on their student athletes, there are many who are strongly considering implementing these checks in the near future. Given the pressures to win that are present in college athletics, it is both surprising and encouraging that schools would commit to enacting a process that will likely deny entry to at least some student athletes of exceptional talent. The willingness to pay this cost in order to mitigate additional security risks to the campus community is refreshing. It can be argued that adopting any risk mitigation measures that limits the pool of potential student athletes that can be recruited may cause the competitive balance to shift to schools with less restrictive admission processes. However, if more schools or even entire conferences were to adopt a more proactive policy of limiting or eliminating student athletes with criminal or

extensive disciplinary pasts, it is plausible that a sense of responsibility rather than entitlement might begin to take hold within college athletics.

References

- Armstrong, K., & Perry, N. (2010). *Scoreboard baby: A story of college football, crime and complicity*. Lincoln, University of Nebraska Press.
- Anonymous (2013). Love Family Drops Lawsuit Against UVA, Athletics Employees, *NBC 29 News Channel*, Retrieved from <http://www.nbc29.com/story/22912429/love-family-drops-law-suit-against-uva-athletics-employees>
- Benedict, J. (2010). An alarming number of college athletes charged with serious crime. *Sports Illustrated*, September 8, Retrieved from http://sportsillustrated.cnn.com/2010/writers/jeff_benedict/09/08/athletes.crime/
- Benedict, J., & Keteyian. A. (2011). College football and crime. *Sports Illustrated*, Retrieved from http://sportsillustrated.cnn.com/2011/writers/the_bonus/02/27/cfb.crime/index.html?xid=siextra_030211
- Bloom, G. A., & Smith, M. D. (1996). Hockey violence: A test of the cultural spillover theory. *Sociology of Sport Journal*, 13, 65-77.
- Bogdanich, Walter (2014, July 13). Reporting Rape and Wishing She Hadn't. *New York Times*, pp. 1, 14-15.
- Caron, S. L., Halteman, W. A. & Stacy, C. (1997). Athletes and rape: Is there a connection? *Perception and Motor Skills*, 85, 1379-1393.
- Center for Community Alternatives. (2009). The use of criminal background checks in college admissions – Reconsidered. New York, NY.

- Crosset, T. W., Benedict, J. R., & McDonald, M. A. (1995). Male student athletes reported for sexual assault: A survey of campus police departments and judicial affairs offices. *Journal of Sport and Social Issues, 19*, 126-140.
- Datz, T. (2005). Background Checks on Campus. *CSO Security & Risk*, Retrieved from <http://www.csoonline.com/article/220449/background-checks-on-campus>
- Dickerson, D. (2008). Background checks in the university admissions process: An overview of legal and policy considerations. *Journal of College and University Law, 34*, 419–505.
- Flaherty, M. P. (2012). George Huguely V sentenced to 23 years for Yeardeley Love murder. *The Washington Post*, Retrieved from http://www.washingtonpost.com/local/crime/george-huguely-sentencing/2012/08/30/517821a4-f2b8-11e1-adc6-87dfa8eff430_story.html
- Fried, G. B. (1997). Illegal moves off-the-field: University liability for illegal acts of student-athletes. *Seton Hall Journal of Sport Law, 7*, 69-101.
- Garretson, J. (2011). Barta: Background checks on athletes worth discussing. *The Daily Iowan*, March 3. Retrieved from <http://www.dailyiowan.com/2011/03/03/Metro/21772.html>
- Goldman, R. (2013). Students Turn to Feds for Action on Alleged Rapes. *ABC News*, Retrieved from <http://abcnews.go.com/US/students-turn-feds-action-alleged-rapes/story?id=19763938>
- Haas, B. (2013). Much of Vanderbilt rape case remains secret. *USA Today*, Retrieved from <http://www.usatoday.com/story/sports/ncaaf/2013/10/16/vanderbilt-rape-case-remains-secret/2998517/>

- Hildebrand, K. M., Johnson, D. J., & Bogle, K. (2001). Comparison of patterns of alcohol use between high school and college athletes and non-athletes. *College Student Journal, 35*(3), 358-365.
- Hughes, S. F., Elliott, T. & Myers, M. (In-press). Measuring the Impact of Student Background Checks on Reducing Crime in Higher Education. *Public Administration Research, 3* (2).
- Hughes, S. F., Elliott, T. & Myers, M. (2014). Measuring the Impact of Background Checks on Reducing Crime in Higher Education. Unpublished manuscript.
- Hughes, S. F., & Shank, M. (2006). Assessing the Impact of NCAA Scandals: An Exploratory Analysis. *International Journal of Sport Marketing & Management, 3*, 78-97.
- Jackson, T. J. (1991). A university athletic department's rape and assault experiences. *Journal of College Student Development, 32*, 77-78.
- Koss, M. P., & Gaines, J. A. (1993). The prediction of sexual aggression by alcohol use, athletic participation and fraternity affiliation. *Journal of Interpersonal Violence, 8*, 94-108.
- Lemieux, P., McKelvie, S. J., Stout, D. (2002). Self-reported hostile aggression in contact athletes, no contact athletes and non-athletes. *Athletic Insight, 4*(3), 42-56
- Marbela, J. (2012). Yearley Love's mother files \$30 million lawsuit. *The Baltimore Sun*, Retrieved from http://articles.baltimoresun.com/2012-04-26/news/bs-md-love-lawsuit-20120426_1_huguely-edward-hogshire-charlottesville-circuit-court
- Marklein, M. B. (2007). An idea whose time has come? Schools increasingly subjecting applicants to background checks. *USA Today*, April 18.

- Merten, M. J. (2008). Acceptability of dating violence among late adolescents: The role of sports participation, competitive attitudes, and selected dynamics of relationship violence. *Adolescence, 43*(169), 31-56.
- Moore, M. J., & Werch, C. E. (2005). Sport and physical activity participation and substance use among adolescents. *Journal of Adolescent Health, 36*, 489-493.
- National Association of College & University Attorneys (NACUA) (2006). Student Criminal Background Checks. *NACUA Notes, Vol. 4 (1)*, March 10.
- New, Jake (2014). How Many Chances? *Inside Higher Ed*. Retrieved from <http://www.insidehighered.com>.
- Olszewska, M. J. (2007). *Undergraduate admission application as a campus crime mitigation measure: Disclosure of applicants' disciplinary background information and its relationship to campus crime*. Unpublished Dissertation for the Degree of Doctor of Education, East Carolina University.
- Potrafke, L. (2006). Checking up on student-athletes: A NCAA regulation requiring criminal background checks. *Marquette Sports Law Review, 17* (1), 427-450. Available at <http://scholarshiplaw.marquette.edu/sportslaw/vol.17/iss1/13>
- Southall, R. M. (2001). Good start, the bad, and much better: Three NCAA intercollegiate athletic department policy responses to criminal behavior by college athletes. *Journal of Legal Aspects of Sport, Fall* (11), 269-281.
- Spies, J. E. (2006). Winning at all costs: An analysis of a university's potential liability for sexual assaults committed by its student athletes. *Marquette Sports Law Review, Spring* (16), 429-460.

Stratford, Michael (2014). McCaskill says her survey shows colleges “falling short” on dealing with sex assaults. *Inside Higher Ed*. Retrieved from

<http://www.insidehighered.com>.

Timanus, E. (2005). Oklahoma investigates athletes’ backgrounds. *USA Today*,

Retrieved from http://usatoday30.usatoday.com/sports/college/other/2005-03-03-oklahoma-probes_x.htm#

United States Department of Education Office of Civil Rights. (2014). Questions and Answer on Title IX and Sexual Violence. Retrieved from

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

United States Department of Education Office of Civil Rights. (2014). U.S. Department of Education Releases List of Higher Education Institutions with Open Title IX Sexual Violence Investigations. May, 1. Retrieved from

<http://www.ed.gov/news/press-releases/us-department-education-releases-list-higher-education-institutions-open-title-i>

University of Kansas Athletic Department (2014). Background Checks for New Staff Members and Transfer Student-Athletes. Retrieved from

http://www.kuathletics.com/sports/2013/6/26/GEN_0626133441.aspx?id=130

Wallgren, J. (2009). *An examination of criminal arrests and convictions of football student-athletes at Atlantic Coast Conference institutions as reported by the media*. A thesis submitted to the faculty at the University of North Carolina at Chapel Hill in partial fulfillment for the degree of Master of Arts in the Department of Exercise and Sport Science.

Williams vs. University of Georgia Board of Regents, 2006