



## USA HOCKEY NATIONAL BACKGROUND SCREENING POLICY REVIEW PROCEDURE

This USA Hockey National Background Screening Policy Review Procedure is to be used by USA Hockey to review applicants seeking participation in USA Hockey programs in positions that require a background check be conducted prior to the applicant being eligible for such positions. Background screens are conducted pursuant to the requirements of the United States Olympic & Paralympic Committee, the USA Hockey Bylaws and the USA Hockey Safe Sport Program. USA Hockey may deny or restrict eligibility for any USA Hockey sanctioned events or programs based upon adverse background check results that are inconsistent with the stated purpose of USA Hockey's Bylaws, policies, and/or the USA Hockey Safe Sport Program.

### PRELIMINARY MATTERS

**Confidentiality.** All information and discussion related to a screening application must be kept confidential within the process of review of background screens as outlined below until a final determination is made by USA Hockey as to whether an applicant is deemed eligible or ineligible to participate.

**Email Communications.** Pursuant to USA Hockey's agreement with the national background screen vendor, National Center for Safety Initiatives ("NCSI"), and NCSI's standard protocol, communications between NCSI and applicant and/or USA Hockey and applicant will be via email at the address provided to NCSI by applicant during the screening application process.

**Screen Result from other National Governing Bodies.** USA Hockey cannot accept background screens conducted through other National Governing Bodies because each National Governing Body ("NGB") applies different screening criteria and procedures to their background screens.

**Flagged Screens.** If an applicant's screen is "flagged," it means the applicant is ineligible, pending review and a determination of eligibility, to serve in any role requiring a background screen because the applicant has a disposition or resolution of a criminal proceeding (including dismissed charges), other than an adjudication of not guilty, or has a pending charge for any of the following crimes:

- a. Any felony, defined as all crimes punishable by greater than one year in jail or prison, regardless of how it's characterized by jurisdiction;
- b. Any misdemeanor involving:
  1. All sexual crimes, criminal offenses of a sexual nature to include but not limited to; rape, child molestation, sexual battery, lewd conduct, possession and distribution of child pornography, possession and distribution of obscene material, prostitution, indecent exposure, and public indecency;

2. Any drug related offenses;
  3. Harm to a minor or vulnerable person, including, but not limited to, offenses such as child abandonment, child endangerment, child neglect or abuse, contributing to the delinquency of a minor, and a DUI with a minor;
  4. Violence against a person, force, or threat of force (including crimes involving a deadly weapon and domestic violence);
  5. Stalking, harassment, blackmail, violation of a protection order, and/or threats;
  6. Destruction of property, including arson, vandalism, and criminal mischief;
  7. Animal abuse, cruelty, or neglect; and
  8. Any DUI/DWI in the last two years, or two or more DUIs/DWIs in the last five years, based on the disposition date of the offense(s); and/or
- c. If the applicant is currently listed, or has ever been listed, on a sex offender registry or a similar database.

An applicant's screen may also be flagged for any self-disclosed response that is deemed by USA Hockey to provide a sufficient basis for disqualification from serving in a role that requires a background screen.

**Background Screen Determinations.** NCSI will clear screens without flags, applicant disclosures or additional state required documents. Screens that include applicant disclosures or identified offenses in a state required screen are sent to USA Hockey for review pursuant to the procedures below. If a screening result contains a "flag," possible determinations are that the applicant:

- (i) is "clear" and eligible to participate in any USA Hockey position requiring a background screen,
- (ii) is "clear with conditions," which means that an applicant is eligible for participation but must adhere to certain restrictions imposed as a condition of the applicant's participation (e.g., no driving unrelated minors or not eligible for a certain position, etc.), or
- (iii) is "declined," which means the applicant has a disqualifying condition in the applicant's background screen record (see "Flagged Screens" above) and is not eligible to participate in any USA Hockey position requiring a background screen.

**Background Screen Review Committee.** The Background Screen Review Committee ("BSRC") shall be comprised of qualified individual volunteers appointed by the President of USA Hockey. Members of the BSRC will be assigned in teams of three members per panel to (i) conduct an initial review of any flagged background screen to determine whether an applicant should be eligible and (ii) conduct hearings upon request of an applicant who has been denied eligibility on the initial review. A member of the BSRC shall not serve on a hearing panel for an applicant in which the BSRC member was part of the panel that conducted the initial review. Hearings will

be held via telephone or video conferencing.

**Screening Appeals Committee.** The Screening Appeals Committee (“SAC”) shall be composed of five persons appointed by the President of USA Hockey to decide appeals of applicants that have been denied eligibility following a hearing before the BSRC.

### **BACKGROUND SCREENING REVIEW PROCEDURE.**

**1. Screening Vendor Review.** After the applicant submits to a background screen through NCSI or NCSI conducts its annual recheck, and as the circumstances warrant, NCSI either (a) notifies USA Hockey of a clear screen, in which case the applicant’s USA Hockey record will be automatically marked to reflect eligibility, or (b) sends the applicant a Pre-Adverse Action Notice indicating that either (i) NCSI needs more information to complete the screening process or (ii) the screen results show a criminal record consistent with the flagged screens criteria listed above and the applicant may contest the accuracy of the screening results directly with NCSI within five business days. If the applicant is unsuccessful or does not contest the accuracy within the five-day period, NCSI will change the applicant’s status to flagged to be reviewed by USA Hockey.

**2. Flagged Status.** If an application returns a result of flagged through either the NCSI report, a self-disclosure response, or a state-specific supplemental search (except for certain misdemeanor DUIs/DWIs which are addressed as described in Section 2.i. below), and the flagged offenses have not been previously adjudicated as clear or cleared with conditions by the BSRC, USA Hockey will promptly refer the application to a BSRC panel, with a copy to the applicable Affiliate, Referee-in-Chief, junior league or ACHA representative(s), as appropriate. Upon receipt of a flagged screen, the BSRC panel will conduct an initial review of the screen’s results, consider any feedback from the applicable affiliate, organization or league in which the applicant intends to participate and will make an initial determination of eligibility. The BSRC panel will use its best efforts to make its determination within five business days of receipt of the background screen results.

a. *If the applicant is deemed eligible by the BSRC on initial review, USA Hockey will set the applicant’s status to clear, which will be automatically reflected in USA Hockey’s database and rostering system. Applicants will not be directly notified of clear screens.*

b. *If the BSRC clears but imposes any restrictions or conditions on the applicant’s participation, USA Hockey will notify the applicable USA Hockey, Affiliate, or league representatives of the restriction(s), and the applicable affiliate, local and league authorities are required to enforce the conditions or requirements. The applicant will not be able to participate in any role requiring a background screen in any USA Hockey sanctioned events or programs until the applicant acknowledges and accepts any imposed restrictions and/or conditions via return email. Any violations of any restrictions or conditions imposed by the BSRC will be addressed pursuant to the disciplinary process of USA Hockey Bylaw 10.*

c. *If the applicant is deemed ineligible by the BSRC on initial review, USA Hockey will cause an Adverse Action Letter to be sent to the applicant via email, advising that the applicant has been declined for a flagged offense and will instruct the applicant on the procedure to request a hearing to contest the determination pursuant to Section 3 below.*

d. Self-Disclosures. As part of the application process for USA Hockey background screens, applicants are required to answer certain questions and disclose violations of the screening criteria. Any disclosed offense that meets USA Hockey's criteria for flagged screens that does not otherwise show on the NCSI report, and hasn't been previously adjudicated and cleared, will be set to flagged and processed pursuant to this Section 2. All adverse determinations of disclosed conduct can be contested pursuant to Section 3 below.

e. State-Specific Background Screen Requirements. Some states require supplemental documentation or background searches in addition to the USOPC-mandated background screen conducted by NCSI. All state required documentation will be reviewed per USA Hockey's screening criteria and any records in violation of this criteria will be flagged and processed as described in this Section 2. All adverse determinations made pursuant to this paragraph can be contested pursuant to Section 3 below.

f. Sexual Misconduct and Child Abuse. In accordance with Federal law, the SafeSport Code, and the USA Hockey Safe Sport Program Handbook, any allegation of sexual misconduct and/or child abuse (as defined in the Safe Sport Program Handbook) discovered by USA Hockey at any point in the background screen process will be reported to the U.S. Center for SafeSport (the "Center") and will be processed according to the Center's policies and procedures. Pursuant to Section V.E.2 of the SafeSport Code, USA Hockey will conduct an initial review under this procedure and may provisionally clear, clear with conditions, or deny eligibility based on the screening results. If the applicant is denied eligibility or cleared with conditions on initial review, the applicant shall have a right to a hearing and appeal under this process as set forth herein, provided that, any decision by USA Hockey that permits applicant's participation may be superseded by the Center making the applicant ineligible to participate.

g. Flagged Annual Rechecks. As a part of the application process, all background screen applicants consent to the annual recheck of their background status by NCSI. In the event that the recheck results in a flagged status, the screen will be processed pursuant to this Section 2. If an applicant is deemed ineligible by the BSRC on initial review, that applicant will receive an Adverse Action Letter and become immediately ineligible to participate in any role requiring a valid background screen unless cleared pursuant to this procedure.

h. Secondary Review of USA Hockey Determinations by the USOPC. When an eligibility decision by USA Hockey under this policy would allow an individual not otherwise covered by the USOPC's Background Check Policy to reside, train, or compete

at an Olympic Training Center, or participate in an international event despite being flagged for one of the crimes referenced in Section VII.C of the USOPC's Background Check Procedures, a secondary review by the USOPC may be required. In such an event, the flagged background screen and resulting USA Hockey decision will be forwarded to the USOPC for review and be subject to the USOPC's policies and procedures to determine if and to what degree the individual will be: (a) affiliated with the USOPC, (b) granted access to an Olympic Training Center, or (c) permitted to participate in an international event.

i. DUI/DWI Determinations. If a background screen is flagged for a single misdemeanor DUI/DWI in the last two years, the applicant will be automatically sent a Letter of Eligibility with Conditions. The applicant may contest the conditions pursuant to Section 3 or accept the conditions by email response. If the applicant does not either accept or successfully contest the conditions, then the applicant remains ineligible to participate.

**3. Hearing Requests to the BSRC.** The applicant will have 14 days from transmission of the Adverse Action Notice or Notice of Eligibility with Conditions to file a Statement of Appeal to the BSRC to contest the Adverse Action Notice or conditions imposed, c/o [usahscreeningappeals@usahockey.org](mailto:usahscreeningappeals@usahockey.org). USA Hockey will only accept electronic submissions.

a. The applicant may include with the Statement of Appeal any additional exhibits the applicant deems necessary including, but not limited to:

- letters of reference;
- memorandums in support of eligibility; and
- court records, including police reports, sentencing documents, proof of completion of court order, etc.

b. The Statement of Appeal shall be no longer than ten typewritten double-spaced pages with a font size no smaller than 12 point. Exhibits shall not be included in the ten-page limitation; however, exhibits shall only be included if they are non-duplicative (e.g., no more than three personal reference letters) and necessary to explain why the applicant's appeal should be granted.

c. A designated BSRC panel will consider appeals from any applicants who receive an Adverse Action Notice or a Notice of Eligibility with Conditions.<sup>1</sup>

d. The BSRC panel will review the applicant's submissions and either (i) clear the applicant upon review of the submissions, (ii) provide the applicant with an opportunity to accept conditions in lieu of a hearing, or (iii) schedule a hearing to take place no later than 30 days of receipt of the Statement of Appeal by USA Hockey,

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<sup>1</sup> USA Hockey employee background screens shall be reviewed and employment decisions made by USA Hockey's Executive Director.

although the applicant may waive a hearing and ask that the panel make its determination solely on the applicant's submissions. At the request of the applicant, but in the discretion of the panel, the panel shall use reasonable efforts to expedite the proceedings. At any hearing, the applicant shall be allowed up to ten minutes to make a presentation to the panel, followed by any questions from the panel. At the time of the hearing, the applicant should be prepared to discuss the following topics, among others:

- The factual basis for the flagged offenses;
- The role in USA Hockey the applicant intends to fill;
- The applicant's history in USA Hockey or other sport;
- How the offense has impacted the applicant and others;
- Whether the applicant has sought treatment or counseling; and
- How the applicant intends to use what the applicant has learned from the offense.

The Rules of Evidence in judicial proceedings shall not apply in the panel's administrative hearing. The burden of proof shall be on the applicant challenging the initial determination to prove by a preponderance of the evidence that the applicant should be eligible for participation within USA Hockey in a role that requires a background screen, or that any conditions imposed should be modified or removed, despite the existence of the reported offenses. The panel will review the initial determination de novo and may affirm, reverse, or modify the determination as it deems appropriate in accordance with the factors below. The applicant may consult with legal counsel during the hearing, but legal counsel may not participate in the hearing itself. USA Hockey will create a record of the proceedings which will be made available to the applicant upon request. All proceedings are confidential.

e. The panel will determine eligibility, and/or any conditions, by a two-thirds majority vote.

**4. BSRC Panel Review and Determination.** In rendering its finding, the BSRC panel shall consider the following:

- a. The legitimate interest of USA Hockey in providing a safe environment for all USA Hockey participants and other persons who attend USA Hockey sanctioned events;
- b. The seriousness of the criminal offense of the applicant, including the age of any victim(s) at the time of the offense;
- c. The time which has elapsed since the occurrence of the criminal offense or act;
- d. The age of the applicant at the time of the criminal offense or act;

- e. The bearing, if any, the criminal offense or act has on the applicant's ability to perform the necessary functions of their role in USA Hockey;
- f. Any information produced by the applicant, or on behalf of the applicant, with respect to the applicant's rehabilitation and good conduct;
- g. Any voluntary restrictions on access proposed by the applicant;
- h. Any recommendation or information provided by the applicant's organization; and,
- i. Any other information, which in the determination of the designated panel, would bear on whether the applicant should be eligible to have regular contact with or authority over minor athletes in USA Hockey, or otherwise eligible for the position being sought.

## **5. Appeals to SAC.**

a. If the BSRC panel determines the applicant is still ineligible or eligible with conditions, the applicant may submit an appeal to the SAC to review the full record and make a final determination of eligibility. A Statement of Appeal must be received by the SAC by email to [usahscreeningappeals@usahockey.org](mailto:usahscreeningappeals@usahockey.org) within 14 days from email transmission of the BSRC determination that the applicant is ineligible or is eligible with conditions. If a Statement of Appeal is not received by the SAC within the 14-day period, the BSRC determination shall be final.

b. The applicant may submit a new Statement of Appeal for consideration by the SAC. The Statement of Appeal shall be no longer than ten typed double-spaced pages with a font size no smaller than twelve point and shall only address the issue of whether the BSRC determination was made in an arbitrary or capricious manner or was not supported by the facts.

c. The record on appeal to the SAC will be compiled by USA Hockey and will consist of all documentation and correspondence considered by the BSRC, including, but not limited to: the recording of the applicant's BSRC hearing, the applicant's NCSI background screen report, self-disclosure, or state-specific documentation or report (as applicable), the applicant's USA Hockey member records, any submissions presented to the BSRC by the applicant, the applicant's new Statement of Appeal to the SAC (if applicable), and any correspondence from the applicant to the BSRC, SAC, or USA Hockey. The applicant may request a copy of the record from USA Hockey prior to submitting a Statement of Appeal to the SAC by sending an email to [usahscreeningappeals@usahockey.org](mailto:usahscreeningappeals@usahockey.org). If the applicant does not request a copy of the record prior to submitting a Statement of Appeal, USA Hockey will send a copy of the record to the applicant upon receipt of the Statement of Appeal and will ask the applicant to confirm the record is accurate prior to sending the record to the SAC for review.

d. Each appeal shall be reviewed by no less than three members of the SAC and decided by majority vote of the SAC members hearing the appeal.

e. The appeal to the SAC shall be decided based upon the record of appeal. There will not be a hearing. Only the evidence and theories presented to the BSRC shall be considered on appeal. The applicant shall bear the burden of proof that the BSRC determination was made in an arbitrary or capricious manner or was not supported by the facts. The SAC may affirm, reverse, remand or modify the BSRC's determination as it deems appropriate, consistent with standard of review above. The SAC shall decide any appeal and deliver a written decision within 30 days of receipt of applicant's Statement of Appeal.

f. The decision of the SAC shall be final, and there shall be no further appeal.

**6. Reporting of Decision.** USA Hockey staff will communicate the BSRC or SAC decision to the applicant and the USA Hockey Affiliate or league representatives, NCSI, or the USOPC, as applicable. If an applicant is deemed eligible, then the applicant's record in the USA Hockey membership database shall signify a valid screen until the screen expires. Unless otherwise indicated in a BSRC determination or SAC decision, all adjudications and determinations resulting in eligibility shall be upheld and binding in future screening determinations. All documents, correspondence, or recordings, developed during prior background screen reviews or proceedings will be considered by the BSRC and the SAC should an applicant's background screen require subsequent review pursuant to this procedure.