

BALTIMORE COUNTY, MARYLAND

ADMINISTRATIVE OFFICE

TO: Barry F. Williams, Director
Department of Recreation and Parks

FROM: Fred Homan  County Administrative Officer
Michael E. Field  County Attorney

DATE: September 10, 2015

RE: Office of Law Policy on Defending Recreation Councils
Compliance with Bill 20-14 Recreation Councils – Background Checks
Revised

PURPOSE

On September 20, 2011, we issued a Memorandum entitled “Office of Law Policy on Defending Recreation Councils,” the purpose of which was to clarify the circumstances under which the Office of Law and the county’s Self Insurance Fund would provide civil defense and indemnity to volunteers, broadly defined, of the various Recreation and Nature Councils who may be named in law suits related to actions and/or omissions involving “the scope of performance of the [council] volunteer’s duty” with a council. Questions have arisen about the application of this policy with respect to Bill 20-14 Recreation Councils – Background Checks. On July 29, 2015, we issued a Memorandum addressing these questions. In this Memorandum, we issue a minor clarification.

DISCUSSION

Bill 20-14, as codified in the Baltimore County Code, 2003 provides as follows:

§ 30-3-101. PURPOSE.

The purpose of this title is to:

- (1) Ensure the safety of minor participants in sanctioned Recreation Council programs and events; and
- (2) Promote peace of mind to all persons that participate in sanctioned Recreation Council programs and events, including parents and guardians of minor children, that certain volunteers have been screened with a background check.

§ 30-3-102. POLICY.

(a) *Policy established.*

- (1) In consultation with the Office of Law, the Board of Recreation and Parks, and representatives of the certified Recreation Councils, the Director shall

establish a policy and process that requires a background records check of any registered volunteer who interacts with children in any program or event sanctioned by a certified Recreation Council.

(2) The background check shall be required as a condition of participation in the program or event.

(3) The policy established by the Director shall commence no later than July 1, 2015.

(b) *Minimum policy requirements.* At a minimum, the policy required under this title may identify the specific offenses for which a charge or conviction would disqualify a volunteer from participating in programs or events sanctioned by the Recreation Councils, and shall indicate whether the disqualification is permanent or for a specific period of time.

The County has hired a contractor to perform the required background checks. This means that the expense of the checks is not imposed on the councils. Accordingly, the burden on the councils is very limited. Their task is only to make sure that, as clearly provided by the County Council, *every* person “who interacts with children in any program or event sanctioned by a certified Recreation Council” has passed the background check. We have presumed that hitherto only “registered” persons may be considered council volunteers both for recreation council purposes and, of course, for the liability coverage.

While we stress here that the volunteer must pass the criminal background *before* he or she “interacts with children in any program or event sanctioned by a certified Recreation Council,” recall that in our “Policy on the Defense and Reimbursement for Civil Actions,” we define “volunteer” broadly to “mean[] a director, officer, program or activity chairperson, or other person who provides services or performs duties on behalf of a Recreation Council or Nature Council certified by the Baltimore County Board of Recreation and Parks.” Accordingly, all recreation council volunteers, even those who might not have routine, direct contact with children, are required to pass the background check.

We have determined that there should be *no* circumstance under which a person may hold himself or herself out as a volunteer at a program if the person has not passed the criminal background check required by Bill 20-14. Coaches and other officials of the recreation councils must ensure that *any* person who could conceivably act as an agent or official of a recreation council at an event, including an emergency fill-in coach, has passed the criminal background check.

Importantly, we consider this as being within “the scope of performance of the [council] volunteer’s duty.” If any person who is responsible for staffing an event fails to ensure that each volunteer working at the event has passed the criminal background check - whether accidentally or intentionally – that person will NOT be covered by the county’s policy should the volunteer “participate” in a council activity and subsequently be accused of an action connected to the council event. It should go without saying that there is no circumstance under which the county would defend or indemnify any person who has not passed the criminal background check.

Note, finally, that if an individual properly passes the criminal background check performed by the county's contractor before the individual "interacts with children in any program or event sanctioned by a certified Recreation Council" and should the background check have failed to disclose a criminal conviction that would otherwise have led to the exclusion of the individual from interacting with children and should there be a suit against the council volunteers who were required to (and did) ensure that the individual passed the background check, assuming the suit meets all the other requirements for coverage under the county's policy, the county will defend and indemnify the council volunteers in the law suit.