

## Legal Advice

### **S.T.O.P. Sexual predators in your church**

Failure to properly manage and control childcare in our churches will inevitably lead to the horror of child abuse. The foreseeable potential consequences include: severe emotional and psychological trauma to the young victims; shattered spiritual lives of the victims and their families; shockwaves of mistrust and disillusionment throughout the congregation; fears and concerns of families associated with the victims at the realization that a child abuser typically has had multiple victims; the worst of adverse publicity that is renewed multiple times as the incident works its way through Child Protective Services, the criminal justice system, and the civil justice system; and, of course, the multimillion dollar lawsuit that may take years to be filed (the statute of limitations is tolled for minors) and even longer to come to a conclusion.

In the past two decades our country has seen an explosion in lawsuits against churches. In 1984 the first lawsuit was brought against a church for negligence concerning a minister who molested a child. With several thousand allegations of sexual abuse occurring annually within Protestant and Catholic churches, lawsuits are regularly being filed with the potential to bring multi-million dollar judgments or settlements. Statistics show that approximately 1 percent of all churches have been sued and that 27 percent of women and 16 percent of men have experienced some form of child sexual victimization.

The formula for successfully dealing with the issue of child abuse in your church is S.T.O.P.:

- Screen - avoid claims of negligent hiring and selection.
- Train - increase awareness and avoid claims of negligent supervision.
- Operate - in compliance with legal and moral standards.
- Plan - to respond.

### **SCREEN**

By implementing these relatively simple yet effective steps, church leaders can significantly reduce the likelihood of an incident of abuse or molestation occurring by

- Having every applicant for child care and youth work complete an effective screening application form;

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- Following through with reference contacts and maintaining notes of each contact in the applicant's file;
- Conducting personal interviews by a qualified staff member; and
- Conducting a criminal records check.

## **TRAIN**

The next legal hurdle for your program is the potential claim that your church was unreasonable because it failed to supervise or train a worker and that this failure resulted in injury to a child. This claim arises most often when a non-supervisory employee or volunteer is alleged to have engaged in sexual misconduct with a child.

Your training program should minimally include the following areas:

### **Recognizing a perpetrator of child abuse**

It is important that we not paint the picture of child abuse with too broad a brush. Its causes are many, varied and complex. Stereotypes do not serve well in this arena. Child abuse can be carried out by anyone with the inclination if given the opportunity.

Child abuse occurs in all types of settings by people of all races, creeds and socioeconomic and educational backgrounds. Persons known to the child perpetrate four out of five assaults on children. Children of all ages can be victimized. Adults are not the only perpetrators; children also victimize other children.

### **Identifying victims of child abuse**

Often victims of child abuse live in a world of silence. They may not understand that what they are experiencing is wrong, they may feel a sense of loyalty to the offender (especially if the molester/abuser is a family member), they may feel guilty about getting the offender in trouble, or they may feel afraid of the repercussions if they "tell." However, victims cry out for help, even if their actions are unintentional. Our responsibility is to recognize the verbal or behavioral signs of abuse so that we might rescue a child from a destructive situation.

### **Appropriately interacting with children**

Jesus clearly demonstrated that some certain forms of touching are appropriate and should be encouraged. In many cases they can enhance a child's feeling of

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safety and self-worth. Mark 10:16 tells us that Jesus took little children and babies in his arms, put his hands on them and blessed them. However, other forms of inappropriate touching can cause a child confusion, shame and hurt. Therefore it is crucial that all those who work with children receive training in proper interaction.

Adequately training and equipping your childcare workers is important business. Every church must take the time to develop an ongoing training program that covers these areas. Make certain to research your options and choose a program that is user-friendly and effective.

## **OPERATE**

The only thing worse than not having an operational program is implementing one and not following its rules. Failure to employ and monitor such safeguards can result in liability for negligent supervision and operation of your S.T.O.P. program. It is crucial that you understand the laws of your state, as well as the acts and omissions that courts look for in assigning blame, should the unthinkable occur.

If your church does not adequately supervise the activities taking place within its four walls, it is opening itself up to liability. Another area of potential liability is a situation in which groups go off-site, such as overnight camping excursions and mission trips. Not only should you avoid any "iffy" situations, but a supervisor needs to be aware of what is taking place with the children as much as possible.

Any childcare facility has two fundamental responsibilities. One is moral responsibility. The other responsibility is legal. Because of this legal responsibility, courts will look to see if the church has been negligent, not only in its screening of volunteers and employees, but also in its care of minors.

## **Negligence**

Churches need to have at least a cursory understanding of what their legal duties are in order to protect against the occurrence of negligence. Negligence may be thought of as acting carelessly and without proper attention. The law defines negligence as conduct that creates an "unreasonable risk of foreseeable harm" to others. Remember that churches cannot guarantee complete safety to every child in their care. Kids hurt themselves every day, regardless of how stringent the supervision. What churches must do, however, is guard against an injury that may occur as a result of their own carelessness or failure to provide proper attention.

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## **There are two ways the church can be negligent.**

1. Church's own negligence - As stated previously, a church may be liable for its own acts of negligence. Selection of an employee that it has reason to believe is a sexual offender is an example of its own negligence. Improper supervision of activities is another example.
2. Vicarious liability - The theory of vicarious liability is based upon the understanding that employers are responsible for the actions of their employees/volunteers. These actions must take place while the "agent" (the volunteer or employee) is performing duties on behalf of the church.

## **Delegation of duties**

To maintain order and promote security, it is best to have one primary director responsible for maintaining the oversight of the operational portion of the S.T.O.P. program. If too many individuals are involved in supervising the S.T.O.P. program, things can slip through the cracks.

The director of a childcare facility needs to ensure they conduct regular meetings with the pastor and elders of the church. The report should contain a reminder of the safeguards implemented within the church to guard against abuse, what actions have been taken against any potential molesters, and any other information deemed necessary. If possible the director should be a paid staff member because this creates an extra incentive for the person to be alert and organized. Be sure to include this duty in the person's employment description and have them sign an agreement stating that they understand its nature and responsibility.

One of the most effective ways for the director to maintain clear oversight of activities is to create a policy of "Strategic Supervision." In order for the director to know what is occurring, they must tour the facility during hours of operation. These tours should be random, without warning, and never limited to any one part of the facilities. They should encompass all areas where children are present, including closets, basements, bathrooms and more.

While we cannot cover every potential issue, carefully screening potential childcare workers, providing them with clear instruction and training, and operating within organizational, federal and state guidelines will greatly enhance a church's ability to protect itself against child abusers. However, should the unthinkable occur, the church must be equipped with a plan to address the situation.

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## **PLAN**

By implementing a plan to respond to allegations of abuse, you can cover all of the appropriate steps. If you don't prepare in advance, it is probable that you'll act on emotion and make unwise choices, rather than following the most advantageous path to protect the victim, the rights of the accused and the church.

The first step in the plan is to coordinate a response team made up of a group of persons within your church and outside professionals who are schooled, skilled and ready to respond to the report of child abuse.

It is critical to never ignore an allegation of child abuse, no matter how unlikely it may seem. The first and possibly most important thing your church leaders can do is to remember to take each and every reported allegation seriously. Many of the problems faced by churches in the past, such as continued abuse of children and large monetary awards levied against the institutions could have been easily avoided had the church leaders faced the problem when first reported. Instead of shuffling the offender to another position and refusing to confront the issue, had they instigated a thorough investigation and dealt with the issues, countless children might have been saved the terrible pain of abuse.

It may be difficult to believe that someone you admire and trust could ever hurt a child, especially if this person is in a position of leadership within your congregation. And while an allegation may in fact turn out to be false, it is incumbent upon you to thoroughly investigate and report any accusations levied against any church worker, volunteer or official. Having an attitude that refuses to properly investigate the accusations because "everyone knows he would never do something like that" will endanger future children and expose your church to financial liability.

Following are notification procedures churches should follow when allegations of child abuse have been levied against an employee or volunteer.

### **Notify Parents**

If the report received was about a worker of the church and not about the parent or guardian of the child victim, the Response Team Leader should immediately place a telephone call to the parents or guardian of the child victim. At that time an in-person meeting between the Response Team Leader and Director of Children's Ministries (consider whether other Response Team members, including the attorney for the church, should be present) and the parents of the child victim should be scheduled.

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## **Notify Accused**

It is necessary to notify the alleged wrongdoer of the receipt of the report of child abuse. Inform the alleged wrongdoer that the church is not on a witch-hunt, rather, the church is acting responsibly to a serious allegation and is on a quest to find the truth. The church should seek to gain basic "who, what, when, where and how" information from the alleged wrongdoer.

## **Notify insurance carrier**

It may seem odd to notify your insurance carrier of an allegation of abuse upon the initial receipt of a report of child abuse and before there has been a final determination. However, this may be necessary because your insurance may require immediate notification for coverage. Also, you'll need to determine whether or not the church's insurance covers sexual impropriety. Many insurance policies do not cover sexual issues because of the high risk of liability.

## **Notify authorities**

Each state has its own mandatory reporting requirements. It is important to become familiar with the laws of your state and be willing to make such reports. Failure to do so can result in criminal and civil liability. Not only can the church be damaged by such failure, but a lawsuit may also be filed against an individual who fails to follow the standards set forth by the state legislature. Very few states protect clergy from reporting suspected child abuse, so the "clergy-penitent" privilege will rarely apply. If in doubt, contact your attorney.

The sexual abuse of children is an extremely serious matter. Abuse can destroy lives, families and churches. In one extreme instance, an abuser committed suicide upon the discovery of his molestations. Churches cannot afford to be naive. The price is much too high.

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