

Child Sexual Abuse ‘Fire Drill’

Put Preparation to the Test

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In classrooms across the country, school administrators lead faculty and students through mock disasters (fires, shootings, bomb threats, tornados, etc.) to ensure the existence of sound safety plans, communicate expectations to all involved, and determine any necessary changes or improvements.

A failure to drill potential disasters can lead to catastrophic results, generally with little or no warning. In the midst of a crisis it's too late to prepare; the catastrophic event simply reveals whether the ministry took reasonable steps to *prepare* for a foreseeable event.

A child sexual abuse allegation can cause significant difficulty, and ministries serving children should ‘drill’ to better address these issues. Ministries should determine:

- Is a sound child sexual abuse safety system in place?*
- Do all staff members and volunteers understand their role?*
- Are changes or improvements needed?*

Failure to prepare for this risk can lead to catastrophic results.

- Are your staff members and volunteers prepared?*
- How would your safety protocols ‘respond’?*

The Child Sexual Abuse *Fire Drill*

For purposes of this exercise, assume an allegation related to a ministry staff member, volunteer or participant is received by your ministry. Assume the allegation involves multiple victims and the accused is a trusted staff member or volunteer. With these ‘facts’ in mind, walk your ministry through all existing responsive steps, including:

- Insurance coverage issues and required notices and responses;*
- Statutory reporting requirements and responses; and*
- Ministry Safety System elements and required responses.*

Insurance Matters

As to existing insurance coverage, the drill is designed to answer these questions:

- Does the ministry have correct coverages for a multi-victim claim?*
- Does the ministry have sufficient coverage (limits) for a multi-victim claim?*
- Do endorsements, riders, limitations or qualifications related to coverage exist?*

Most ministries purchase insurance coverage through an insurance agent. During the insurance purchase or renewal process, the primary coverage issue negotiated relates to Property & Casualty (P&C). The P&C portion of the premium will typically account for most the total insurance premium. Without an explicit Sexual Misconduct endorsement, sexual abuse claims typically fall within General Liability policy coverage—most general liability coverage will now include a separate sexual misconduct section. Few policyholders are familiar with the terms of the General Liability policy, the limits related to any sexual abuse claim, or terms requiring notice to the carrier when the ministry ‘receives facts that could give rise to a claim’.

Recently, the law firm (Love & Norris) was retained by a ministry facing sexual abuse allegations related to a trusted staff member, with four female victims, aged seven to nine. When asked, ministry leadership indicated that the ministry had insurance providing \$1million/\$3million in coverage. When asked whether their insurance carrier was notified when the initial ‘facts’ came to light, leaders replied ‘no’.

At this point, it was too late to ‘drill’.

Two significant shortcomings were revealed.

Insurance Coverage

First, the ministry could not recall the name of their insurance agent. As a result, the ministry could not quickly and easily understand what coverage was in place: Commercial General Liability Policy (CGL), Errors & Omissions Policy (E&O), Directors & Officers Policy (D&O) and/or Umbrella Policy. The delay was critical given that the crisis unfolded on a Saturday.

Next, the underlying policy did NOT provide \$1 million/\$3 million in coverage. Upon closer inspection, the policy included a specific ‘Sexual Misconduct’ provision which limited coverage to \$100K/\$300K for sexual abuse claims. There was no E&O, D&O or Umbrella Policy.

Third, leaders indicated they were informed about the allegations early on, but failed to notify criminal authorities *or their insurance carrier* because the reports were ‘hearsay’.

In the midst of crisis, the ministry learned its insurance coverage was grossly inadequate, and it was too late to supplement or improve coverage amounts. In this case, the carrier ultimately paid the \$300,000 aggregate, satisfying its obligation under the CGL policy, and the ministry was forced to absorb defense costs and indemnity *out-of-pocket*.

Before the crisis hit, the ministry should have secured sufficient coverage limits, and considered acquiring additional supplemental and umbrella policies. When queried concerning the efforts of the ministry’s insurance agent, the ministry’s leader/CEO responded that the agent relationship was inherited from a predecessor; and leadership did not know the identity of the agent or have contact information.

Notice to Insurance Carrier

Additionally, ministry leaders (and therefore all staff members) were unfamiliar with specific state reporting requirements related to an allegation of abuse or neglect (discussed below in Reporting Requirements), as well as the ‘notice’ requirement contained in all insurance policies.

The ‘notice’ provision in an insurance policy generally reads like this:

In the event the insured receives information about facts that could give rise to a claim, the insured is required under this policy to notify the insurance carrier immediately, but not later than 24 hours.

The ministry received an allegation several months earlier, but considered the information ‘hearsay’—an oral report from a parent about inappropriate touch described by their seven-year-old daughter. This communication *should* have triggered a communication by the ministry’s representative to their insurance carrier. Failure to notify an insurance carrier in this circumstance can result in a ‘reservation of rights’ or a denial of coverage by the carrier. Either scenario places the ministry in an adversarial position with its insurance carrier. In the situation above, the carrier weighed its options and simply tendered its limits because the aggregate (\$300,000.00) was insignificant compared to the cost of filing a Federal Court lawsuit seeking a Declaratory Judgment against the ministry (seeking a court finding that the ministry breached its duty to notify the carrier, which relieves the carrier of its obligations to provide indemnity or defense).

The Child Sexual Abuse Fire Drill can be helpful in assessing insurance availability and sufficiency. By assuming a multi-victim allegation involving a trusted staff member or volunteer, the ministry may evaluate all insurance instruments for potential coverage (CGL, D&O, E&O, Umbrella, etc.), confirm limits provided, and clearly understand any limitations. The ministry should include its insurance agent in this evaluation.

The ministry’s leadership should clearly understand *when to notify the carrier*, and *what information to include*. A timely and proper notification to a carrier is far more likely to occur when staff members have been trained to understand the risk of child sexual abuse and the common behaviors of sexual abusers. Some ministries receive information or an allegation, but do not appreciate until much later that the information received clearly provided ‘facts that could give rise to a claim’. As a result, it is important that the ministry’s staff members and volunteers have a practical understanding of the ***grooming process*** of the child sexual abuser, and that leaders understand the specific requirements of each policy concerning notification of the carrier.

A Note on Insurance Agents

A ministry's insurance agent fills an important role in the ministry's risk management effort. The agent should have a strong understanding of the ministry's mission, services offered to minors, coverage needs, unique risks, and methods to reduce these risks. Too often, an agent can assist a ministry in the purchase of Property & Casualty coverage, but remains ill-equipped to address the risk of sexual abuse and related coverage needs for a particular ministry. Ministries should evaluate their agent, assuring that he or she is familiar with the unique risks that face the ministry, necessary safety protocols, and state legislation and licensure requirements related to child sexual abuse issues. In addition, an agent should be able to assist the ministry with staying abreast of state reporting requirements and notification to the ministry's insurance carrier, when appropriate.

State Law Reporting Requirements

Every state in the United States has legislated reporting requirements related to child abuse and neglect. These requirements vary state by state, but all states have defined 'mandatory reporters'; adults who are required by law to report suspected abuse or neglect. In some states, *all adults are mandatory reporters*. In others, specific professionals or individuals in child-serving positions are mandated to report abuse or neglect. Ministry leaders should research state reporting requirements, and *train personnel to understand and comply with relevant state reporting requirements*.

Because all states have legislation protecting 'good faith reports' of abuse or neglect, it is always best for ministries to err on the side of protecting the children they serve *by reporting suspected abuse or neglect*, whether mandated to do so or not.

Child Sexual Abuse Safety System

Many ministries are operating without an adequate system to reduce the risk of child sexual abuse. Unfortunately, many ministries serving children cannot effectively evaluate this risk, because sexual abuse is a risk its leaders do not understand.

It's impossible to prepare for a risk that you don't understand.

Before a 'Fire Drill' has value, an effective SAFETY SYSTEM should be in place. To assess SYSTEM effectiveness, these questions should be answered:

What Safety System is in place, and what are its specific components?

What constitutes a 'reasonable' Safety System for your ministry program? (What is 'enough'?)

Does the Safety System include training components for staff members and volunteers?

Does it include an effective screening process?

Do staff members and employees know 'what to do' when an allegation is received?

Five elements of an effective Safety System are described below.

Elements of an Effective Sexual Abuse Safety System

An effective Safety System is designed to reduce the risk of child sexual abuse, and should contain the following elements:

1. Sexual Abuse Awareness Training

Awareness Training is the foundational element of an effective Safety System.

Sexual Abuse Awareness Training equips leaders, staff members and volunteers with a better understanding of the risk of sexual abuse by providing *information*, including:

- a portrayal of facts and common misconceptions concerning abuse and abusers
- common abuser characteristics
- the 'grooming process' (selecting and preparing a victim for abuse)
- common grooming behaviors
- peer-to-peer abuse
- short and long-term impact of abuse
- reporting abuse to supervisors and authorities.

Awareness Training provides critically important information to staff members and volunteers. With an understanding of an abuser's 'grooming behaviors', staff members are better equipped to recognize these behaviors within the context of a particular program model. For example, 'grooming behavior' in a children's ministry environment may appear different from 'grooming behavior' at camp or in a youth sports program. Awareness Training equips staff members and volunteers with 'eyes to see' and 'ears to hear' abuser characteristics and grooming behaviors.

Effective policies and procedures are shaped around an understanding of the abuser's *grooming process* and *grooming behaviors*. Through Awareness Training, staff members and volunteers can be trained to better understand the *purpose* of policies, therefore serving more effectively within policy boundaries, and recognizing problematic behaviors before an abuser has made sexual contact with a child. Because leadership, staff members and volunteers have been trained to understand grooming behaviors, all are better equipped to receive and report allegations and suspicions of abuse, both internally and to appropriate authorities.

Changes in the Law. Given recent changes in state laws related to child sexual abuse, it is widely expected that some form of Sexual Abuse Awareness Training will be required by law in future for organizations providing services to children. The Texas Youth Camp Act, for example, requires state-approved Sexual Abuse Awareness Training for all youth camps and day camps in Texas (click [here](#) for more). Similarly, Texas Senate Bill 1414 requires state-approved Sexual Abuse Awareness Training for all colleges and universities in Texas providing programs for minors or hosting such programs on campus. Other states are considering comparable legislation.

2. Skillful Screening

It's impossible to screen for a risk that you don't understand.

Many ministries utilize a screening process, but do not understand high-risk behaviors or indicators of an abuser. Such screening systems have limited effectiveness in identifying the abuser *before* a child is victimized.

Skillful Screening is a critical component of an effective safety system. An effective screening process gathers information about an applicant to determine whether the applicant is a *high-risk candidate* BEFORE he or she has access to children.

A skillful screening system utilizes forms and processes meant to illicit high-risk responses from applicants or references.

'Forms are just paper' unless screeners understand 'high-risk indicators'.

A screening system is most effective when screening and managerial staff members have received effective training, including these subject matters:

- Recognizing and identifying high-risk behaviors;
- Utilizing questions meant to elicit a high-risk response;
- Using the *reference process* effectively;
- Utilizing the application and interview process to evaluate applicant *risk*;
- Understanding the uses and weaknesses of a criminal background check;
- Providing *opt out opportunities*;
- Recognizing evasive answers and 'non-answers'; and
- Utilizing follow-up questions when receiving an evasive answer or 'non-answer'.

An effective screening system requires the use of tailored screening forms, designed to elicit high-risk responses, overseen by staff members trained to recognize high-risk responses and undertake the necessary follow-up.

3. Appropriate Criminal Background Checks

Most ministries are undertaking criminal background checks; commonly, this is the primary 'screening' component utilized. Many ministries lack a good understanding of the realities of the criminal justice system and *limitations* of criminal background checks. Consider this statistic:

Less than 10% of sexual abusers will encounter the criminal justice system.

Recent statistics from the US DOJ indicate that < 3% of abusers will be prosecuted.

Given this reality, assuming a criminal background check system is working *perfectly* (which is unlikely), more than 90% of individuals who have sexually abused children have no past criminal record, and these individuals *know it*. Making a reasonable effort to access past criminal history has become a standard of care for ministries, but a criminal background check should not serve as a stand-alone safety protocol.

Recognizing Plea-Down or Stair-Step Offenses

Occasionally, screening staff members will get a ‘hit’ on an applicant’s criminal background check and fail to recognize the ‘high-risk’ nature of the reported offense, because screeners have not been trained to recognize ‘plea-down’ or ‘stair-step’ offenses. In criminal prosecutions related to sexual crimes, it is common for a first-time offender to be offered the opportunity to ‘plea to a lesser offense’. Though the abuser may have been arrested and charged with ‘aggravated sexual assault of a child’, his legal counsel may negotiate a plea arrangement allowing the abuser to plea guilty to a lesser (*sometimes non-sexual*) charge, such as simple assault. Though the behavior and arrest related to sexual abuse of a child, the conviction and subsequent record has no reference to sexual behavior or wrongdoing. Offenses that bear investigation include: assault, indecency, voyeurism, exhibitionism, contributing to the delinquency of a minor (alcohol, tobacco or pornography), or any other charge encompassing nudity or minors.

Effective screening training must provide critical instruction concerning the effective use of criminal background checks, plea-down and stair-step offenses.

Disqualifying Offenses. In 2010, Texas became the first state in the United States to publish a list of criminal offenses that ‘disqualify’ an applicant from working at a youth camp or day camp. As well, the Texas Youth Camp Act includes a list of offenses which *may not* preclude an applicant (paid or unpaid) from working with children at camp, but require the hiring ministry to undertake additional due diligence. Click [here](#) for information concerning the Texas Youth Camp Act, as amended (2010), with analysis and commentary (relevant section—page 10 of 45).

Refresh Background Checks. Many ministries undertake a criminal background check when an individual *applies* for a position, but never refresh the criminal background check subsequently. Many ministries have employees or volunteers serving *literally decades* without any subsequent refresh of an initial criminal background check. Instead, ministries should renew criminal background checks for all staff members and volunteers every two to three years.

4. Tailored Policies & Procedures

Many ministries have ‘policies’, written or unwritten. When an allegation of sexual abuse results in a lawsuit, both defense counsel and plaintiff’s counsel will immediately request the ministry’s policies. Sadly, many ministries learn in the midst of litigation that ***policies are what you do, not what you say you do.***

Policies Should be Tailored. A common error revealed in crisis relates to poor policies. In the creation of policies, many ministries don’t know ‘where to start’. As a result, policies are cobbled together from multiple sources. Because ‘you can’t reduce a risk you don’t understand’, cobbled policies based on limited understanding rarely adequately address the risk of child sexual abuse. A church shouldn’t attempt to utilize policies prepared for the Boy Scouts; a little league team shouldn’t try to use policies prepared for the YMCA, and so on.

To design and implement *tailored policies and procedures*, ministry leaders should first gain a better understanding of child sexual abuse and sexual abusers, as well as specific risks manifest in their particular service or type of programming. Armed with this knowledge, leaders should locate a good 'core policy' directly related to the ministry's program or type of service. Policies should dovetail with and be grounded upon a strong understanding of the *grooming process, abuser characteristics* and *common grooming behaviors*.

Policies are just PAPER without training.

Excellent policies *on paper* do not insure effective implementation of policies! Without effective training, staff members and volunteers will rarely embrace 'change', even in the form of well-crafted policies.

5. Monitoring and Oversight

Child sexual abuse is an enormous issue creating significant risk for ministries. After an effective Safety System is tailored and implemented, systems of monitoring and oversight ensure continued diligence, such that *'you DO what you SAY you do'*.

To this end, ministries should periodically review safety system elements, evaluate new programs for child protection issues, address any need for policy changes or updates and ensure the inclusion of safety system concerns in performance reviews and accountability. Periodic review helps ensure that child protection is not jeopardized by the departure of one or two key staff members or volunteers.

Conclusion

The purpose of the Child Sexual Abuse Fire Drill is to ensure that a ministry has appropriate insurance coverage and a sound safety plan – prior to a crisis. The drill provides an opportunity for a ministry to communicate expectations to all involved, and determine necessary changes or improvements. In the midst of a crisis it is too late to prepare; the catastrophic event simply reveals whether a ministry took reasonable steps to *prepare* for a *foreseeable risk* – an allegation of child sexual abuse.

Love & Norris, Attorneys at Law

Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse. In addition, they represent child-serving organizations such as churches, ministries, private schools, camps and childcare providers in crisis management and the design and implementation of child safety systems.

Representative clients include the United States Olympic Committee, Awana International, Church of the Nazarene, the North and Central Texas Conferences of the United Methodist Church, the Georgia Baptist Convention, the Baptist General Convention of Oklahoma, the U.S. Center for SafeSport, and many church and para-church schools, camps and ministries. See www.LoveNorris.com.

MinistrySafe

In addition to an active law practice, Kimberlee Norris serves as co-founder and Director of Abuse Prevention Systems (APS), MinistrySafe and MinistrySafe Institute, entities dedicated to sexual abuse awareness and prevention. In an average month, eight to nine thousand ministry personnel are trained through the MinistrySafe online system. See www.MinistrySafe.com

Gregory Love and Kimberlee Norris are frequent speakers, addressing national and regional audiences for entities such as the National Association of Church Business Administrators (NACBA), National Council for Adoption (NCFA), Christian Camp and Conference Association (CCCA), American Camp Association (ACA), and Philadelphia Insurance Companies. Love and Norris are frequent speakers before churches, ministries, Christian schools and Christian camps. They have addressed national and regional audiences for organizations such as the National Association of Church Business Administrators (NACBA), National Council for Adoption (NCFA), American Camp Association (ACA), and the Christian Camp and Conference Association (CCCA).

MinistrySafe is endorsed by Philadelphia Insurance Companies, the Christian Camp and Conference Association and the American Camp Association. MinistrySafe and Abuse Prevention Systems' Sexual Abuse Awareness Training is approved by the Texas Department of State Health Services and the Departments of Insurance for Texas, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas, Oklahoma and other states. MinistrySafe's Sexual Abuse Awareness Training is an approved CEU for the Association of Christian Schools International (ACSI).

MinistrySafe Institute

After decades of litigating sexual abuse cases and providing legal counsel to ministries, Love and Norris founded MinistrySafe Institute to equip ministry leaders with an understanding of sexual abuse issues. Developed in partnership with Dallas Theological Seminary, MinistrySafe Institute provides seminary-level material aimed at vocational ministry professionals who desire educational resources at a deeper, more comprehensive level. MinistrySafe Institute Certification demonstrates completion of training encompassing a myriad of topics related to child sexual abuse risk and prevention.

For additional information, see MinistrySafeInstitute.com.