

Protecting Children in the Church

Hi! My name is Brian DeCook. Welcome to this session which we've titled Protecting Children in the Church. In this session, we will examine the topic of protecting children. We'll consider some of the legal duties and issues facing pastors in churches where children are concerned. The contents of this lecture should not be construed as legal advice or relied upon as legal advice in any given factual situation. The material covered in this lecture is a summary overview of the topics. If you find yourself in a situation where the material covered in this lecture is at issue, you can consult a local attorney who is competent in this area of the law.

We begin this session by looking at the issue of a pastor's duty to report child abuse to the state and the potential ramifications for failing to do so. Then we'll address general liability issues related to children and youth ministries such as nurseries and youth group activities.

Every state has a child abuse reporting law that requires persons designated as mandatory reporters to report known or reasonably suspected incidents of child abuse. Pastors are mandatory reporters in many states. Some states exempt ministers from reporting child abuse if they learned of the abuse in the course of the conversation protected by the clergy penitent privilege. In some states, pastors may face criminal or civil liability for failing to report child abuse.

It is not uncommon for a pastor to receive a report that child abuse has occurred. Many pastors want to resolve these matters internally by counseling with the victim or the perpetrator. This type of response can have serious legal consequences. If a pastor lives in a state where pastors are mandatory reporters under state law, the pastor could face criminal prosecution for failure to comply with that law. Some states permit victims of child abuse to sue pastors who fail to report child abuse if they were a mandatory reporter under state law. Some courts have permitted child abuse victims to sue pastors who fail to report child abuse. At times, the statute of limitation on civil claims against pastors will extend until a reasonable time after the child reaches the age of majority.

In order for a pastor to know how to respond to child abuse, the pastor must know what child abuse is, whether pastors are mandatory reporters in their state, and how reports are made to the authorities. All of this information is contained in each state's statute covering the subject matter. Each

state has a statute that contains a definition of child abuse. Each statute will identify who the mandatory reporters are and what exceptions exist for those who might otherwise be a mandatory reporter. Each of these statutes creates legal immunity to reporters of child abuse. Some states require that a reporter must have reasonable cause to believe that child abuse has occurred before the duty to report is triggered.

The purpose of granting immunity is to encourage people to report child abuse. So it's very important that you look up the state child abuse reporting law for your state and read it. Examine how it defines child abuse so that you know when the duty to report is triggered. Examine whether pastors are mandatory reporters or whether an exception is made for pastors. Examine whether there is criminal or civil liability for the failure to report child abuse.

Most states publish their statutes online and you can also obtain this information by contacting a local attorney who's competent in this area of the law. It can also be helpful to speak with a representative from your state's child protection agency to discuss how reported claims are handled, what you can expect to happen if you ever need to make a claim.

Consider the following questions in consultation with an attorney after receiving an allegation of child abuse. Are you a mandatory reporter or just a permissive reporter under state law? If the allegations that you are aware of are true, do they constitute child abuse as defined by the state statute? Do you have reasonable cause to believe that abuse has occurred? Did you receive the information in the course of spiritual counseling? If so, does the clergy penitent privilege apply?

How severe was the abuse? Did the alleged abuse involve pedophilic behavior? Do you have any risk of civil liability if you choose not to report the abuse? Should you candidly but anonymously discuss the available evidence with the state agency to determine where the report should be filed? Should you try to persuade the informant to report the abuse? Can child abuse be reported to law enforcement officials in your state? If it can, you may have a law enforcement official in your church that you can report the abuse to and they can help walk you through that process.

Let's turn our attention to protecting children in the context of church ministry. In the current social and cultural environment, protecting children from sexual abuse and sexual predators is a primary concern. Measures can be taken to reduce the risk of child sex abuse on church premises. Churches are

susceptible to child molestation for many reasons. Churches tend to be trusting institutions. There's often a need for volunteer workers in children's ministry areas. There's a lack of screening for volunteers in many churches, and churches provide ample opportunities for unsupervised, close personal contact between children and adults.

Most lawsuits filed against churches for acts of child molestation allege that the church was legally responsible on the basis of negligent hiring, negligent supervision, or negligent retention. Negligent hiring simply means that the church failed to act responsibly or with due care in the selection of workers both volunteers and compensated employees. The risk of negligent hiring can be reduced by implementing appropriate hiring and screening practices for church workers including background checks for individuals who will have direct contact with children.

Even if a church has adequate hiring practices, it can still be liable for acts of molestation on the basis of negligent supervision. Negligent supervision means that a church did not exercise sufficient care in supervising a worker. The risks of negligent supervision can be reduced by implementing policies to eliminate situations where there is only one worker present with children at any time. Workers should not be permitted to take children to the bathroom. Parents should be responsible for this activity for young children. With older children such as junior and senior high youth groups, negligent supervision includes more than just protecting against sexual molestation. If youth are engaging in physical activities, appropriate permission and release form should be obtained from parents.

Adopting hiring and screening policies for church employees and volunteers is a risk management step that cannot be understated in its importance. Because employment laws vary from state to state, I encourage you to work with a local attorney to adopt hiring and screening policies that will be effective in your state. It is important that all volunteer applicants be treated the same.

Just because Aunt Betty has attended the church her whole life and you've known her your whole life doesn't mean you can exempt her from completing the screening process. Once you treat people selectively, you expose yourself to potential claims of unlawful discrimination. The same is true for compensated employees. Every applicant for a compensated position must be treated the same in terms of the screening process.

Policies should be drafted for all workers involved in children's ministry. Your church insurance carrier often has recommended policies and best practices procedures that they will provide to you for your consideration. Take advantage of these available resources as you create your church policies in this area.

Once you have the policies in place, those policies will do you no good if they're not implemented. Make sure that copies of the policies are provided to all youth and children's ministry workers and that implementation occurs. If the policy sits in your office in a notebook and is never implemented, the policy will not reduce your risk of liability.

I hope that the information presented in this session has been helpful to you as you pursue God's calling in your life. The ministry of the children and youth is a powerful ministry and I pray for the Lord's protection around you that He may be your wisdom as you walk into this realm of your ministry. May the Lord bless you and use you to accomplish great things through the glory of Jesus Christ.