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# Hiring the right people



## Keeping molesters away from children



By Ronald D. Stephens  
NSSC Executive Director

One of the most important decisions that parents and communities make involves deciding who will teach, train, coach, counsel and lead our children when they are away from home. Keeping child molesters and pedophiles out of classrooms, schools and youth-serving organizations is a major task. Responsible parenting and thoughtful leadership on the part of schools and other youth-serving agencies should provide enough reason to establish appropriate safeguards for keeping child molesters away from our children.

Increasing litigation against school systems and child-care providers has created a financial reason to conduct appropriate background checks to protect the safety of children. Many school systems and youth-service organizations have already faced multimillion dollar lawsuits for their failure to appropriately screen, properly supervise and/or remove employees who may cause a risk to children.

Every school system and youth-serving organization should have clear policy guidelines and procedures to weed out individuals with a criminal background of misbehavior involving children. Any record screening program must consider the rights of privacy and due process as well as the right to a hearing when disqualification is involved. But the screening program must also balance these rights with the rights of the individuals who will be assisted by the youth-serving professional.

This process should begin at the hiring phase to identify potential problem applicants. In addition, procedures should be set in place to appropriately monitor and respond to other problems that may emerge.

NSSC staff have collaborated with the Missing & Exploited Children Comprehensive Action Program (M/CAP) to design record screening procedures and practices for youth-serving professionals. The purpose of this effort was to identify essential record screening components; to outline overall procedures for gathering, monitoring and maintaining data; and to identify due process and appeal guidelines for potential employees.

M/CAP is funded by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention. The program is designed to help local communities develop effective multi-agency teams for handling child victim cases, with a particular emphasis on cases involving missing and exploited children. M/CAP helps local agencies establish and maintain these teams by providing ongoing training and technical assistance to build specialized skills.

No two communities participating in the program are the same. Each site represents a variety of populations, resources and problems. Some communities already have a strong multidisciplinary program for child abuse victims. Rather than re-inventing or re-creating a new team or project, M/CAP assists the existing team to incorporate the issues of missing and exploited children into their program for child victims.

This practical approach recognizes the

scarcity of resources and time facing agency personnel and seeks to avoid unnecessary duplication. It also recognizes that abducted and runaway children may not be the largest group of child victims in a community. Many children who are victimized, however, experience more than one type of victimization.

Missing and exploited children are often already known to community agencies as victims. Runaway and abducted children may experience physical and sexual assault during their period away from home. Runaways often leave home to escape abuse. Children may become involved in sexual exploitation as a direct or indirect result of earlier victimization. The majority of family abduction cases involve families with histories of domestic violence.

Establishment of an M/CAP project site is a collaborative process beginning with detailed self-assessment. Community agencies are not required to allocate new or additional resources to the project, and the M/CAP project does not provide grant funds directly to participating jurisdictions for service delivery. The focus, instead, is on assisting these agencies to use their existing resources more effectively.

Primary participants in the program include: law enforcement, child protective services, courts, prosecutors, schools, mental health, medical community and nonprofit organizations.

M/CAP has developed a number of special technical assistance projects designed to help local communities and agencies enhance their response to missing and exploited children.

This issue of *School Safety* identifies key legal issues and procedural strategies to assist schools and youth-serving agencies in formulating appropriate screening and selection strategies for both employees and volunteers.

Comprehensive guidelines and model forms, developed by a group of authorities from throughout the United States who helped formulate these recommendations, are offered within the context of making our schools safer for all children.

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Pepperdine University's National School Safety Center is a partnership of the U.S. Department of Justice and U.S. Department of Education. NSSC's goal is to promote safe schools free of drug traffic and abuse, gangs, weapons, vandalism and bullying; to encourage good discipline, attendance and community support; and to help ensure a quality education for all children.

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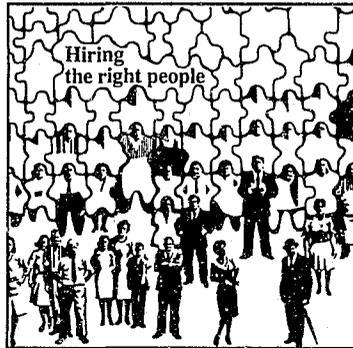
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*Without thorough record screening and criminal history checks, how does an employer know if the candidate is from a university training program or from a background that includes prison, parole or probation?*

## Hiring the right people

Nowhere is there a clearer need for employment screening policies and procedures than in operations that serve children and youth. In recent years, reports of unscrupulous teachers and other youth-service providers have surfaced, attesting to the problem of child sexual abuse in schools and child-care facilities.

How do people get hired into positions that give them uncontrolled access to their prey? The answer lies either in the lack of effective screening policies and practices or in the failure of employers to comply with existing screening procedures.

### **Penn. State or state pen?**

Can a school district or other child-service provider know what kind of record or background a potential employee has based solely on an application? Without thorough record screening and criminal history checks, how does a personnel officer know if the candidate is from a university training program or from a background that includes prison, parole or probation?

Background checks are costly. For school systems and other agencies to adequately perform criminal background checks and record screening requires commitment, effort and resources. But it

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also requires tremendous resources to launch an investigation and, if necessary, discipline or dismiss an errant employee. And, if the employer is found negligent in hiring or retaining a child molester, the cost of a liability suit is much higher yet. The concept is similar to the television commercial that asserts, "You can pay me now, or you can pay me later."

### **Escaping detection**

Employees who abuse children entrusted to their care may escape discipline or even detection for a variety of reasons. Many of these reasons are related to the high costs of litigation and adverse publicity as well as the highly sensitive nature of the offense. It is often easier for everyone involved for the perpetrator to quietly move on without prosecution. Unfortunately, he or she is likely to commit the offense again in another location.

Among the reasons that perpetrators of child abuse are able to avoid discipline or future detection are:

- Most victims do not report the crimes, perhaps due to embarrassment or fear and intimidation. Others may not come forward until years later.
- Many school systems and child-service organizations lack policies for dealing with sex abuse allegations or are ill-prepared to investigate such charges. Consequently, the allegations are minimized or covered up.
- Key witnesses or their parents may

lose patience and drop the charges. Witnesses may be questioned and asked to testify at three separate kinds of hearings: the local school district's disciplinary action or due-process hearings, state action to revoke a teaching certificate, and/or criminal prosecution. Many may not want this kind of exposure.

- Investigations and disciplinary proceedings may continue for a long time, consuming limited resources.
- School officials may be reluctant to take on an employee's attorney and labor union without a strong case. Districts must weigh the costs of litigation, including the potential costs of a subsequent defamation lawsuit filed by a wrongly accused employee.

### **Case in point**

An article published by the *Grand Rapids Press* illustrated a classic case in which a convicted sex offender continued victimizing young children throughout his career, in some instances without detection until it was too late.

On March 18, 1993, substitute teacher James Udell was arrested on five felony counts of second-degree criminal sexual conduct for allegedly touching girls on the groin, buttocks and chest at Twin Lakes Elementary School in Muskegon County, Michigan. According to the *Grand Rapids Press*, these charges were not isolated incidents. A trail of sex abuse allegations had haunted Udell's

30-year teaching career.<sup>1</sup>

In 1962, James Udell was accused of improperly touching girls in his fifth-grade class at a Shawnee Park Elementary School. He admitted touching the girls and was sentenced to two years on probation for taking indecent liberties with a child.

He was fired and a letter about the charges was placed in the district's personnel records. The conviction was not included in his records at the state department of education.

In September 1964, Udell found a teaching job at an elementary school in the Reeths-Puffer School District near Muskegon. Three years later, with a very good recommendation from his principal, he was hired to teach at Kentwood School District's Meadowlawn School. At that time, Kentwood officials did not check with the Grand Rapids district for references.

During the 1980-81 school year, complaints arose about Udell improperly touching young girls at the school. After further investigation, the principal set up a five-point plan to dispel parental concern and rumor. Udell was told that he should "not allow children to sit on his lap; not touch children by hugging or caressing; not show partiality towards girls; not be alone with any child and maintain reasonable classroom control."

After years of rumors, Udell asked for a transfer and was moved to Bowen School in 1984. Nine months later, Udell resigned and pleaded guilty to fourth-degree criminal sexual conduct for inappropriately touching a third-grade girl. He was sentenced to probation, community service and a \$500 fine. He was also ordered to surrender his teaching certificate, although state officials said that they received only a copy. State education officials also stated that they mailed a notice about the revocation to all districts in May 1986.

Between 1987 and 1990, Udell sold insurance, filing bankruptcy three times during that period. He began substitute teaching in 1990, allegedly using the original copy of his teaching credential

to obtain substitute employment status from West Michigan school districts.

In January 1993, Udell was accused of improperly touching a young girl who attended Kentwood Community Church, where he was a Sunday school teacher. There apparently was not enough evidence to file charges in that case. Then, on March 18, 1993, Udell was arrested at Twin Lakes Elementary School. Cases such as Udell's are a school district's worst nightmare.

### Costly mistakes

Hiring the wrong individual can be destructive to the lives of their victims. It can also be expensive. Schools must consider the legal liability for failing to protect students. For example, in 1981, administrators in Lake Washington School District, Washington, failed to mount a serious investigation of a high school basketball coach who reportedly molested a male student.<sup>2</sup>

The school district dropped the investigation after questioning the coach, who denied abusing the boy. Three years later, a new complaint prompted a thorough investigation which revealed that more than 27 boys had been victimized by the coach during his 18-year career. In 1990, school administrators in Lake Washington School District agreed to pay \$2.2 million in damages to five victims and their families.

Cases such as these are not isolated. In Los Angeles, a school district agreed to pay a \$6.5 million settlement in a similar case. School systems across the country have contended with the nightmare of child abuse allegations and with the multimillion dollar expense of employing the wrong people. Many districts now protect themselves from victims' lawsuits by firing anyone accused of sexual misconduct, which also is unfair and can lead to litigation.

How do school systems and child-service agencies avoid witch hunts and yet protect those entrusted to their care? Finding a proper balance between a reasonable level of investigation and unreasonable intrusiveness is essential.

### Developing effective personnel policies

The most important step in formulating strategies to prevent the hiring of unfit employees is to develop written policies that will guide all personnel procedures. This ensures consistency and fairness. Effective policies consider the impact and outcomes of each step of the process and address any concerns before problems develop.

Presented at the end of this article are policy statements and screening and selection guidelines to effectively screen prospective employees who work with children. These guidelines were jointly developed by the Missing and Exploited Children Comprehensive Action Plan Advisory Panel and the National School Safety Center to assist child-service organizations in hiring the right people. Included on pages 24 through 29 of this issue of *School Safety* are sample forms that support the screening process, including employee affidavits, releases and verifications.

According to the Nonprofit Risk Management Center, written policies and procedures offer step-by-step guidelines to make sure the policies are enforced. They also:

- establish a standard for behavior and a common body of knowledge, increasing the likelihood that everyone will understand their responsibilities and do what they are supposed to do;
- help ensure operational consistency;
- support unpleasant, but necessary requirements; and
- strengthen the employer's defense if a lawsuit occurs.<sup>3</sup>

Communicating the policies demonstrates commitment to the goals. An effective policy might include the following statement, "As an agency serving children and youth, it is the policy of this agency to use reasonable efforts to screen prospective employees and volunteers in order to avoid circumstances where children or youth would be endangered." Both current and prospective employees are made aware of the organization's goal to weed out anyone who poses a po-

tential risk to children.

### Aggressive screening

Effective screening of applicants begins with a well-written job description and an application form that aggressively asks for the information required to appropriately assess the candidate's suitability for employment.

Depending upon the nature of the position and the employee's proximity to children, the use of a separate employee affidavit or disclosure form that asks specific questions regarding the applicant's previous conduct may be appropriate. (A sample form is provided on page 25.) Personal information that is not relevant should not be sought. Information that is obtained must be kept confidential and shared only with those who have a legitimate need to know.

Most job applications ask if the candidate has ever been convicted of a felony. In screening those who work closely with children, this may not be enough. For a variety of reasons, child molesters often move on to new jobs and locations without discipline, detection or conviction. This is why it is necessary to ask more searching questions, including whether the applicant has been involved with any behavior that may have affected his/her employment or that is even remotely associated with child molestation or abuse.

An application or affidavit that aggressively pursues this kind of information can serve to deter an unfit individual from applying for the job in the first place. If told in advance of the thoroughness of the selection process, applicants who have something to hide may eliminate themselves from the applicant pool.

In addition, requiring that the applicant affirm the truth of the information supplied on the application/disclosure affidavit can serve as a self-screening measure. As stated on the forms, any falsification, misrepresentation or incompleteness in the disclosure can by itself be grounds for disqualification or termination. If a subsequent investigation to verify information reveals that the applicant provided false information, he or

she can automatically be removed without recourse from the applicant pool.

The job description will help determine both the employer's level of risk of negligent hiring and the extensiveness of the background investigation required. The more responsibility for and interaction with children that the position requires, the greater will be the need for more thorough applicant screening procedures. For example, a custodian who works the night shift presents less risk than a teacher/advisor who will accompany children on overnight excursions.

Using multiple screening techniques or resources improves the chances of hiring the right person. The use of several of the following screening methods may expose dishonest people by revealing inconsistent responses:

- personal interviews;
- character references;
- employment references;
- criminal background checks;
- driving license/record checks;
- military background checks;
- verification of education, training, certification and licenses; and
- credit and financial history.

When interviewing the applicant, discuss your purpose in screening out individuals who may pose a potential risk to children. Explain the actions that will be taken to verify the information provided on the application and in the interview. Ask the candidate why he or she left his or her last job. If any information written on the application or discussed in the interview is unclear or seems suspicious, ask for further explanation. Ask the same question in different ways and seek information from multiple sources.

Any information worth asking is worth verifying. Begin the background verification by calling and/or writing to former employers, providing them with a copy of the applicant authorization form. Verify specific dates of employment, position held and the applicant's eligibility for re-employment.

Ask specific questions regarding your concern for hiring appropriate people to

serve children. (A sample employer disclosure affidavit is provided on page 29.) Although obtaining this kind of information in writing has its advantages, the possibility that someone with knowledge about the applicant, who might be willing to speak "off the record," should not be overlooked.

It is also important to be prepared with written policies to address the failure on the part of previous employers to complete the employment verification request and the employer disclosure affidavit.

Certain kinds of information serve as a red flag to signal that an applicant may not be all that he or she appears to be. For example, several sudden and unexplainable moves may indicate that this person has had a history of problems on the job or has been asked to voluntarily leave to avoid termination. Gaps in employment may indicate that other employers have found this person to be unsuitable due to information uncovered in their investigations.

The inability of a previous employer to answer questions directly may signal that something is amiss. An awkward pause may call for additional questioning. If a former employer expresses reservations but is not willing to offer the facts, press the applicant for an explanation.

Universities and colleges will verify a job applicant's degree, credentials or attendance; many will confirm this information over the phone. Driving records (MVRs) can quickly and inexpensively verify legal name and date of birth as well as safety violations, suspensions and revocations. A reckless driving record could indicate other potential job problems. Wages that have been garnished or serious medical risks may pose other concerns. The bottom line is to make a comprehensive "check and balance" review of several resources, while not exclusively relying on any single indicator.

After conducting a preliminary background investigation, lay out all the facts collected to see if they match the information provided by the applicant. If something seems suspicious, continue looking for additional information or ask

the applicant for clarification.

### **Criminal background checks**

Most criminal records are public. Anyone can request a file on a person's arrest or conviction by going directly to the courthouse and asking. Unfortunately, the seeker must have specific information, such as venue, the year of the arrest, case number, etc., in order to know where to look. The *history* of an individual's criminal charges and convictions, however, is usually not available to the public through court records.

The courts and the FBI do maintain this information, but it is generally available only to law enforcement and then only for criminal justice purposes. Many states maintain a central state repository of criminal history information, but it usually contains state rather than national information. In varying degrees, data from these registries are available to noncriminal justice agencies. In some states, the repository also serves as a processing agency for requests for the release of criminal history information from the FBI.

A check of the National Crime Information Center (NCIC), Triple-I, and state and local criminal registries should be included in a background investigation. Not to be confused with standard checks through the FBI's Identification Division, both NCIC and Triple-I are telecommunications systems maintained by the FBI.

NCIC is a network of federal, state and local police agency files, containing databases on missing persons, wanted persons, stolen vehicles, etc. Triple-I contains all computerized criminal record files on individuals. These files are maintained by approximately 20 participating states. Both NCIC and Triple-I are limited to access of automated files. Many FBI files are maintained manually and not available through either of these systems.

A bill to create a national criminal background check system was passed and signed into law in December. The Child Protection Act of 1993 will estab-

lish a national database of convicted abusers and allow designated youth organizations to check if a prospective employee or volunteer has a conviction for abuse and certain other crimes. These convictions include murder, assault, kidnapping, domestic violence, sexual assault, prostitution, arson and drug-related felonies.

### **Creating a spirit of cooperation**

Employers are often reluctant to provide information regarding former employees, particularly when there is information that could prevent them being hired. Fear of lawsuits causes some employers to err on the side of silence.

Unfortunately, these practices allow pedophiles and other ill-suited employees to continue to do harm to children without detection. An interesting question is posed: Can former employers be implicated in a lawsuit for not disclosing vital information that could have prevented a child from being victimized?

Some states mandate that the state department of education be notified if a background search produces any conviction information on a teacher applicant or credential candidate. Information sharing and networking of this nature can help to keep child molesters and pedophiles out of classrooms, schools and youth-serving organizations. School systems could arrange informal agreements with other systems and agencies to notify each other regarding convicted child molesters, thus eliminating the need for expensive, exhaustive searches for background information on these individuals.

### **Obstacles to overcome**

Several factors currently impede the use of comprehensive record screening and background checks in schools and youth-service agencies. They are often offered as excuses for not conducting even minimal checks of prospective employees. Among these factors are:

- the cost of investigation;
- the slow response rate and turnaround time of current systems;

- the questionable accuracy of information collected;
- the fear of driving away worthy applicants due to the bureaucratic nature of the process; and
- the fear of creating a new standard of care which may lead to further lawsuits.

These are legitimate concerns. The use of the model policies and guidelines that follow, together with the national database created by the newly passed Child Protection Act of 1993 and an enhanced spirit of cooperation among agencies nationwide, can help to overcome these challenges and assist efforts to protect our nation's children.

Presented on page 8 are model policies and guidelines for use by schools and youth agencies. The language used in these models describes the commitment, goals and implications of conducting comprehensive record screening and background checks to protect children and youth. (Supporting forms are provided on pages 24 through 29.)

School systems and other youth-service providers that are interested in adopting these models should check local and state laws for compliance and reference these laws in the policy statements where indicated.

In addition, operating procedures should be implemented regarding who can access the information, how long it will be kept and how it will be dispensed. Procedures should also address who will pay the fees associated with a background investigation and how an applicant will be advised of disqualifying information and provided with an opportunity to review, obtain correction of and respond to the information obtained.

### **Endnotes**

1. Kolker, Ken. "How trail of sex abuse allegations haunted his long teaching career." *Grand Rapids Press*, March 28, 1993.
2. Ervin, Kevin. "Schools learn through lessons on abuse." *The Seattle Times*, September 11, 1992.
3. Tremper, Charles and Gwynne Kostin. *No surprises, controlling risks in volunteer programs*. Nonprofit Risk Management Center, 1993.

## **POLICY STATEMENT:**

Children and youth have been the victims of physical, psychological and/or sexual abuse by professionals or volunteers employed to assist, educate, serve, monitor or care for them. Those who victimize children or youth frequently do so on repeated occasions and seek employment or volunteer for activities that will place them in contact with potential victims. As an agency serving children and youth, it is the policy of this agency to use reasonable efforts to screen employees and volunteers in order to avoid circumstances where children or youth would be endangered.

## **SCREENING GUIDELINES:**

### *In General:*

All prospective employees and volunteers who would have contact with children or youth will be screened to determine from reasonably available background information whether they pose a material risk of harm to such children or youth because of past conduct or other factors that indicate a potential for physical, psychological and/or sexual abuse to children or youth. Applicants, as a requirement for consideration, must cooperate fully with an investigation and provide fingerprints, information or consents as may be necessary to conduct the investigation.

### *Conduct of Background Search:*

Background searches are to be undertaken by individuals designated by the agency's chief administrative officer. Based on preliminary results of the background investigation, persons/volunteers may be offered temporary/probationary status. Before a person is offered employment or allowed to volunteer, the findings from the background search will be reviewed. Fees associated with a background investigation will be paid according to established agency guidelines and procedures unless otherwise stipulated.

If information from a background search is obtained that reflects or may reflect on a person's fitness for service as an employee or volunteer and the person is otherwise qualified for such service, the prospective employee or volunteer will be advised of the information and provided an opportunity to review, obtain correction of and respond to the information obtained. The source of information will not, however, be provided where given to the agency with the understanding that the source would be confidential.

Information obtained by the agency should not be further disclosed beyond the multi-agency team for purposes of

the agency only. Such information may be disseminated to other authorized youth-serving agencies who are legally entitled to receive such information by the local jurisdiction unless restricted by law.

### *Minimum Screening Requirements:*

Background checks of employees and volunteers shall be made as required by applicable statute or regulation. These statutes and regulations include:  
[Reference applicable statutes or regulations.]

### *Background Searches:*

Background searches may include investigations as may appear appropriate in the circumstances. Examples include:

- Applicant references;
- Federal, state or local law enforcement officials;
- State or local license or certificate registration agencies;
- Motor vehicle or driver's license records;
- Interviews or inquiries of former employers, colleagues, community members, or others having knowledge of applicant;
- Health records;
- Newspapers;
- Criminal court records; and
- Civil court records.

## **SELECTION GUIDELINES:**

### *In General:*

No background information obtained from employee and volunteer screening is an automatic bar to employment or volunteer work unless otherwise provided by statute or regulation. Instead, information obtained will be considered in view of all relevant circumstances and a determination made whether the employment of or volunteering by the person would be manifestly inconsistent with the safe and efficient operation of the agency recognizing the need to protect children and youth from physical, psychological and/or sexual abuse.

### *Required Disqualification:*

No employee or volunteer will be employed or utilized who is disqualified from so serving by any applicable statute or regulation. These statutes and regulations include:  
[Reference applicable statutes or regulations.]

### *Additional Considerations:*

A candidate may be disqualified from a position based on background information obtained from employee and volunteer screening although not barred by applicable statute or regulation. Other conduct, matters or things may warrant disqualification in order to reasonably protect children and youth from physical, psychological and/or sexual abuse.

Applicant's failure to provide information requested will result in automatic disqualification of the applicant.

Where information is considered relevant to a position, the circumstances of the conduct, matter or thing will be evaluated to determine fitness. The circumstances considered may include, but are not necessarily limited to:

- The time, nature, and number of matters disclosed;
- The facts surrounding each such matter;
- The relationship of the matter to the employment or service to be provided by the applicant;
- The length of time between the matters disclosed and the application;
- The applicant's employment or volunteer history before and after the matter;
- The applicant's efforts and success at rehabilitation as well as the likelihood or unlikelihood that such matter may occur again; and
- The likelihood or unlikelihood that the matter would prevent the applicant from performing the position in an acceptable, appropriate manner consistent with the safety and welfare of children and youth served by the agency.

### *No Entitlement:*

The failure of a background investigation to disclose information justifying disqualification of an applicant does not entitle the applicant to employment. Positions are filled on the basis of all qualifications and relevant employment considerations.

## **SUBSEQUENT INFORMATION:**

Should any information be obtained reflecting on the fitness of an employee or volunteer to serve after selection or commencing service, such information will be considered by the agency. This information will be evaluated in a manner similar to its consideration in the selection process. Where appropriate, the services of the employee or volunteer may be suspended or terminated, or other appropriate action may be taken. Providing false, misleading or incomplete information by an employee or volunteer warrants termination.

## **EFFECT OF GUIDELINES:**

The agency does not assume by these guidelines any obligation or duty to screen applicants or undertake background searches beyond that which would be required by law without these guidelines. No person shall rely on the use of background searches or any particular level of searches by virtue of these guidelines.

*Although courts are hesitant to require criminal background checks for all employees, this practice in youth-serving fields provides a safety net for employers.*

# The tort of negligent hiring

School employees are in a unique position. They spend many hours each day with our nation's youth, modeling appropriate behavior and showing young people how to live and get along with others in a democratic society.

Parents need to know that they can trust those who work in their children's school. They want the school to do its best to protect children from intruders who do not belong on the campus or dangerous students who need to be controlled. Most of all, parents want assurance that school employees themselves are not preying on children.

No one wants a drive-by shooting or a stabbing harming their child at school, but a predator within the employ of the school district is doubly deadly. It strikes at the very heart of the educational process. Parents distrust the institution of education when a teacher or administrator sexually molests or physically assaults a student. And, when the school is perceived as backing the predator instead of the student, cynicism toward public education results.

## Placing the public at risk

Certain individuals should never be hired to work directly with members of the

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public because they have demonstrated dangerous propensities on former occasions. They may or may not have a criminal record, but any reasonable person would conclude that if such individuals were hired, a real likelihood exists that a third party would get hurt.

This issue impacts all of society, not just public education. Several states recognize a cause of action based on the view that negligence in hiring or retaining an employee may place the public at risk.<sup>1</sup> Under certain circumstances, an employer can be held liable for injury caused by a negligently hired or retained employee.

The doctrine of negligent hiring/retention states that an employer can be liable if he knew or should have known of an employee's dangerous propensities and this negligence was the proximate cause of the injury. The idea focuses on the duty of an employer to know whether an employee is unfit for a particular job.

All negligence causes of action require proof of four basic elements: the employer had a duty to the person that was injured; the employer either did something or failed to do something and in the process breached a duty to the injured person; the breach of this duty was the proximate cause of the injury; and, the injury itself must be proven. Most of the negligent hiring/retention cases do not focus on causation or injury but on the first two elements of duty and breach.

The tort of negligent hiring/retention begins with the view that the employer has a duty to hire and retain high quality employees so as not to endanger members of the public. The key question here is: With whom will the employee be working?

Does an employer have a duty to refrain from hiring an employee who has been convicted and served time for rape if that person is to load rocks in a quarry? Probably not. The job itself anticipates little contact with the public.

What if the employee will be selling the rocks to customers in a store? The nature of this job is very different from the former one. Depending upon the work environment, one could argue whether this would or would not put the public at risk. On the other hand, would an employer want to hire this person to make home deliveries of rocks, especially if most of the deliveries were made during the day? To do this would clearly endanger the public and, according to the tort of negligent hiring/retention, refraining from hiring the employee for that job is a duty an employer owes his customers.

## Conducting reasonable investigations

If an employer has a duty to hire and retain employees so as not to endanger the public, what constitutes a breach of that duty? The breach is usually stated as the failure to fully and adequately investigate

the employee's background. Once again, it is important to ask: With whom will the employee be working? With adults or children? Will contact be during the day or night? What type of contact with the public is anticipated and required as part of the job description? It is important to answer these questions, since a full and adequate investigation will vary, depending upon the nature of the job. The court will ask if the company's investigation was reasonable under the circumstances.

What would constitute a full and adequate investigation of someone who is going to load and drive rocks from the quarry? Most employers would consider a driving record and prior work history. Some people believe that a criminal record check should be required even for this job. If an employer conducted a background investigation, there could be no negligence, unless he or she ignored relevant findings and hired the person anyway. An employer's failure to investigate would constitute negligence as a matter of law. Courts have rejected this per se rule for various reasons, but the main one is the question of need for a blanket policy. Think again about the rock quarry job. What is gained by requiring a criminal background check on someone who is going to be loading and transporting rocks?

There are two situations in which courts frequently hold that an employer's failure to check a prospective employee's criminal history was not reasonable. The first is where an employer hires or retains a person for a job that requires frequent contact with members of the public. The second is where an employer hires or retains someone for a job involving close contact with particular persons as a result of a special relationship between such persons and the employer.

The first situation is easy to understand. Driving a truck full of rocks probably does not require frequent contact with members of the public, but working in a store where the rocks are sold does. Thus, a reasonable investigation would differ for each of those jobs.

The second situation is illustrated by

one case where an employee initially hired for outside maintenance of a townhouse was transferred to perform inside work, giving him access to passkeys.<sup>2</sup> His initial duties included only incidental contact with tenants. His transfer to a job with inside access required a different type of investigation.

A special relationship exists between an owner and tenants. It is unreasonable to allow access to the passkeys to just anyone, in this case, someone whose criminal record had not been checked. Thus, an employer should focus on the duties of a particular job and ask what a full and adequate investigation would be for the employee who takes that job. A person who was hired previously for one job may need to be investigated more fully for a different job.

It cannot be emphasized too much that the purpose for which the employee is hired is very important. In *Connes v. Molalla Transport System, Inc.*,<sup>3</sup> a hotel clerk who was assaulted by a truck driver brought action against the truck driver's employer. The court held that the employer was not negligent because it had no legal duty to investigate the non-vehicular criminal record of its driver prior to hiring. The company was hiring someone to drive a truck.

What was a reasonable investigation for this job? The company's hiring procedure required a personal interview, an extensive job application form, a current driver's license and a medical examination. The company also contacted prior employers and investigated the applicant's driving record within the state. If the employer had not taken these steps and the employee had run over a pedestrian, the plaintiff could argue that the employer had been negligent. But is it reasonable to assume that a full and adequate investigation of a truck driver should include a check of the employee's criminal history? The answer in this situation was "No."

#### **Relationship of trust**

Negligent hiring and retention is a real concern for businesses that provide ser-

vices to youth. Teachers and youth-serving professionals generally have jobs that require frequent contact with the public, namely, children. These professionals are also in a special relationship of trust and authority.

Although courts are hesitant to require criminal background checks for all employees, this practice in youth-serving fields provides a safety net for employers. There may be jobs with youth-serving agencies that do not require frequent contact or a special relationship with the public, but a wise policy would be to conduct criminal background checks of all employees. These background checks would go far in meeting the requirement of a reasonable investigation.

Each position must be evaluated separately and assessed based on the public interaction required for each *particular* job. This evaluation can be done based on the employer's job description. There are also situations in which negligence in hiring someone will be based on violations of the requirements for the job enumerated in state law.

For example, in *Brantly v. Dade County School Board*,<sup>4</sup> the court held that maximum regard for safety and adequate protection of the health of its students imposed a duty on the school board to properly hire, train and retain school bus drivers. Evidence of prior notice of a driver's past derelictions of duty alleged sufficient facts to claim negligence under state law.

In this case, the school knew that the bus driver allowed the students on the bus to be rowdy. They were regularly out of control, and the bus driver did nothing to restrain them. One student stuck his hand out the window of the bus and struck the plaintiff. The same thing had happened down the road, not too many minutes earlier, without any response from the bus driver. Although the school district might not be liable for negligent hiring or training, it had retained someone who was not qualified for that particular job.

Along with consideration of a particular job and the qualifications needed to

do that job, a potential employee can be deemed unfit because of a *particular* quality or history. The courts refer to a disqualifier as a "propensity" or "proclivity." In other words, an applicant may be able to do the job, but a reasonable person would know after looking at his or her qualifications, previous acts and work history that the applicant would create a danger of harm to third parties if hired. The applicant might have a criminal record relevant to the particular job or simply be lacking in a skill necessary to do the job.

In *Fallon v. Indian Trail School*,<sup>5</sup> a former student brought action against a school district to recover for spinal injuries suffered as a result of a trampoline accident. The student argued that the school district negligently hired the teachers who conducted the physical education program during which the injury occurred. The court held that the student had not pointed to any particular qualities or lack of skills which would make the teachers unfit for their job.

Employers should take a detailed look at the job and the qualifications of the applicant. Employers must also be careful not to go too far in rejecting an applicant for a job for which they are fit simply because they may be unfit for a different job.

In *Butler v. Hurlbut*,<sup>6</sup> the court referred to the employer's "Hobson's choice" — an apparently free choice that offers no real alternative. A policy of not hiring anyone with a criminal record may be in violation of statutory enactments such as Title VII of the Civil Rights Act or similar state statutes. An employer, however, may be liable for negligently hiring a person without investigating their criminal record and rejecting such application if it reveals an applicant's dangerous proclivities. In *Butler*, the court concluded that it would decide these kinds of lawsuits on a case-by-case basis.

That is a wise course for employers, too. If the policy is not to conduct a criminal background check on each employee, then the employer should at least

analyze the nature of the particular job based on the frequency of contact with the public and/or the special relationship between the employer and the public. A greater degree of public contact and the existence of a special relationship increases the likelihood that the court will find the employer negligent in the absence of a criminal background check.

There are occasions in which no amount of checking on a person's background will reveal any disqualifying propensities. The case of *Medlin v. Bass*<sup>7</sup> is a perfect illustration of an employer's worst nightmare. A student who was allegedly sexually assaulted by the school principal sued the school district for negligently hiring the principal. Although the suit was dismissed because there was not enough available evidence in the principal's background for the district to predict the alleged act, the facts demonstrate why it can be difficult to screen out those with dangerous propensities.

Years before the alleged incident, another student in another school district in North Carolina had accused Bass, who was principal of the school at that time, of sexually assaulting him. During an interview with his superintendent, Bass neither confirmed or denied it. Instead, he resigned for "health reasons," and school personnel never investigated the incident further.

Bass then moved and got a new job in a new school district. He had no criminal record, and references from the old district — personal friends of Bass — gave him glowing marks. The previous superintendent, even when asked, said nothing about the prior alleged assault. There was nothing to cause the new district to think that Bass was a pedophile. All of the previous records had been checked, but the cover-up policy led to an additional tragedy. The school district was not liable, but a great wrong had been done.

#### **Sovereign immunity**

The tort of negligent hiring/retention conflicts with the sovereign immunity that many states provide government em-

ployees. Founded on the ancient principle that "the King can do no wrong," the doctrine of sovereign immunity prohibits holding the government liable for the torts committed by its officers or agents unless such immunity is expressly waived. States are divided on the nature and extent of sovereign immunity. They vary as to whether or not the acts of hiring, retaining and supervising a school employee or other youth-serving professionals are waived. In some jurisdictions, it is virtually impossible to win a negligence suit against a school district.

States such as Florida provide sovereign immunity but waive it, recognizing that school boards have a common law duty to protect others from the results of negligent hiring, supervision or retention.<sup>8</sup> While New Mexico recognizes the tort of negligent hiring, immunity is granted to school boards pursuant to the state's Tort Claims Act.<sup>9</sup>

Schools and youth-serving agencies have a moral obligation if not a legal duty to hire those individuals who will not endanger the ones they have been commissioned to serve. Nothing compares with the betrayal of trust that occurs when a school employee harms a child placed in the school's care. When schools take the requisite steps to hire, train, supervise and retain only those who are fit to do the job, one of the most important steps toward creating a safe school environment has been taken.

#### **Endnotes**

1. Those states recognizing the tort of negligent hiring include: Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, and Washington.
2. *Williams v. Feather Sound, Inc.*, 386 So.2d 1238, 1240 (Fla.App.1980).
3. 831 P.2d 1316 (Colo. 1992).
4. 493 So.2d 471 (Fla. Dist. Ct. App. 1986).
5. 148 Ill.App.3d 931, 500 N.E.2d 101 (1986).
6. 826 S.W.2d 90 (Mo. Ct. App. 1992).
7. 327 N.C. 587, 398 S.E.2d 460 (1990).
8. *School Bd. of Orange County v. Coffey*, 524 So.2d 1052 (Fla. Dist. Ct. App. 1988).
9. *Rubio v. Carlsbad Municipal Sch. Dist.*, 106 N.M. 446, 744 P.2d 919 (N.M. Ct. App. 1987).

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BY KENNETH V. LANNING

*The ability to understand and recognize the behavior of child molesters before their arrest is a prime weapon for law enforcement investigators as well as for those screening prospective child-service providers.*

## Child molesters: a behavioral analysis

*Although the following article focuses on the investigation of preferential child molesters from a law enforcement perspective, information about the behavior patterns of pedophiles can be useful in conducting background checks and in screening prospective child-service employees and volunteers.*

The term child molester is fairly common and is used by professionals and nonprofessionals alike. Although *Webster's New World Dictionary* defines molest as "annoy, interfere with, or meddle with so as to trouble or harm," when combined with the word child, it has generally come to convey sexual abuse of some type.

In spite of its common usage, it is surprising how many different images and variations of meaning the term child molester has for different individuals. For many, it brings to mind the image of the dirty old man in a wrinkled raincoat hanging around a school playground with a bag of candy, waiting to lure little children. For some, the child molester is a stranger to his victim and not a father engaging in sex with his daughter. For others, the child molester is one who ex-

poses himself to or fondles children without sexual intercourse.

For the purposes of this article, child molester will be defined as a significantly older individual who engages in any type of sexual activity with individuals legally defined as children. Although the use of the term child molester is commonplace, recent publicity and awareness concerning sexual abuse of children has resulted in the frequent use of the term pedophile.

Pedophilia, as defined by the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association, is "recurrent, intense, sexual urges and sexually arousing fantasies, of at least six month's duration, involving sexual activity with a prepubescent child. The age of the child is generally 13 or younger. The age of the person is arbitrarily set at age 16 years or older and at least five years older than the child." For the purposes of this article, a pedophile is defined as a significantly older individual who prefers to have sex with individuals legally considered children. The pedophile is one whose sexual fantasies and erotic imagery focus on children.

### From saints to monsters

It is important to realize that to refer to someone as a pedophile is to say only that the individual has a sexual preference for children. It says little or nothing about the other aspects of his character

and personality.

To assume that someone is not a pedophile simply because he is nice, goes to church, works hard, or is kind to animals is absurd. Pedophiles span the full spectrum from saints to monsters. In spite of this fact, over and over again pedophiles are not recognized, investigated, charged, convicted, or sent to prison simply because they are "nice guys."

It is also important to recognize that, while pedophiles prefer to have sex with children, they can and do have sex with adults. Adult sexual relationships are more difficult for some pedophiles than for others. Some pedophiles have sex with adults as part of the effort to gain or continue their access to preferred children. For example, one might have occasional sex with a single mother to insure continued access to her children.

Are all pedophiles child molesters? No. A person suffering from any pedophilia can legally engage in it simply by fantasizing and masturbating. A child molester is an individual who sexually molests children. A pedophile is one who has a sexual preference for children and may fantasize about having sex with them. But if he does not act out, then he is not a child molester.

Some pedophiles might act out their fantasies in legal ways by simply talking to or watching children and later masturbating or by engaging in sexual activities with adults who look, dress or act like

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children. Others may act out child fantasy games with adult prostitutes. A difficult problem to detect and address is that of individuals who act out their sexual fantasies by social interacting with children or by interjecting themselves into the child sexual abuse or exploitation "problem" as overzealous child advocates. It is almost impossible to estimate how many pedophiles exist who have never molested a child.

Are all child molesters pedophiles? No. A pedophile is an individual who prefers to have sex with a child. A person who prefers to have sex with an adult partner may, for any number of reasons, decide to engage in sex with a child. Such reasons might include simple availability, curiosity, or a desire to hurt a loved one of the molested child. The sexual fantasies of such individuals do not necessarily focus on children, and these people are not pedophiles.

### Two classifications

Child molesters can be divided into two main categories, situational and preferential. Situational child molesters do not have a true preference for children, but engage in sex with children for varied and sometimes complex reasons. For this kind of child molester, sex with children may range from a "once-in-a-lifetime" act to a long-term pattern of behavior. The situational child molester usually has fewer different child victims. Other vulnerable individuals, such as the elderly, sick or the disabled, may also be at risk of sexual victimization by him or her.

The preferential child molesters have a definite sexual preference for children. Their sexual fantasies and erotic imagery focus on children. They have sex with children not because of some situational stress or insecurity, but because they are sexually attracted to and prefer children. They can possess a wide variety of character traits but engage in highly predictable sexual behavior. These highly predictable sexual behavior patterns are called sexual rituals and are frequently engaged in even when they are counter-

productive to getting away with the criminal activity.

Although they may be fewer in number than the situational child molesters, preferential child molesters have the potential to molest countless victims. For many of them, their problem is not only the nature of the sex drive (attraction to children) but also the need for quantity (frequent and repeated sex with children). They usually have age and gender preferences for their victims. They also seem to prefer boy victims rather than girl victims. Members of higher socioeconomic groups tend to be overrepresented among preferential child molesters. (From this point, the term preferential child molester will be used interchangeably with pedophile.)

### Characteristics of child molesters

The four major characteristics of the preferential child molester are:

- a long-term and persistent pattern of behavior;
- a preference for children as sexual objects;
- well-developed techniques in obtaining victims; and
- sexual fantasies focusing on children.

These characteristics, together with the listed indicators, will assist in identifying the preferential child molester. At the outset, it must be stated and emphasized that the indicators alone mean little. Their significance and weight come as they are accumulated and form a pattern of behavior.

### *Persistent pattern of behavior*

- *Sexual abuse in their background.* Although most victims of child sexual abuse do not become offenders, research indicates that many offenders are former victims.
- *Limited social contact as teen-agers.* The pedophile's sexual preference for children usually begins in early adolescence. Therefore, during his teen-age years, he may have exhibited little sexual interest in people his own age. But, as with several of these indicators, this fact

alone means little.

- *Premature separation from military.* If an individual was dishonorably discharged for molesting children, there is not much doubt about the significance. It was far more common, though, for this type of individual to be prematurely separated from the military with no specific reason given or available. The military, like most organizations, was frequently interested in getting rid of such individuals and not necessarily in prosecuting them. Fortunately, this attitude seems to be changing.

- *Frequent and unexpected moves.* When identified, pedophiles are frequently "asked" to leave town by someone in authority, by the parent of one of the victims, or by an employer. This is a common way to deal with the problem. The result is that pedophiles frequently show a pattern of living in one place with a good job for several years, then suddenly, and for no apparent reason, moving and changing jobs.

Chances are that the investigator will find no official record of what happened. The pedophile will usually have an explanation for the move, but it probably will not reflect the true circumstances. This moving pattern can sometimes be determined from examination of driver's license records.

- *Prior arrests.* In some cases, pedophiles have previously been arrested for child molestation or sexual abuse. Certainly, such an arrest record is a major indicator, particularly if the arrest goes back many years or is repeated.

Investigators must also be alert to the fact that pedophiles may have arrest records for actions that do not appear to involve sexual abuse. These might include impersonating a police officer, writing bad checks, violating child labor laws, or other violations that may indicate a need to check further. Any arrest of an adult in the company of a child not his own should be evaluated closely.

- *Multiple victims.* If an investigation reveals that an individual molested many different victims, that is a very strong indicator that the offender is a pedophile.

More important, if other factors indicate that the offender is a pedophile, then a concerted effort should be made to identify the multiple victims. For instance, if a teacher who is a suspected pedophile molests one child in his class, the chances are high that he has molested or attempted to molest other children in the class, as well as many other children he has taught over the years.

- *Planned, repeated, or high-risk attempts.* Bold and repeated attempts to obtain children, carried out in a cunning and skillful manner, are a strong indication that the offender is a pedophile.

#### *Children as preferred sexual objects*

- *Over 25, single, never married.* By itself, this indicator means nothing. It has significance only when combined with several other indicators. Because they have a sexual preference for children, pedophiles usually have some degree of difficulty in performing sexually with adults. Therefore, they typically do not marry.

- *Lives alone or with parents.* This indicator is closely related to the above. Again, by itself, it has little meaning. The fact that a man lives alone does not mean he is a pedophile. The fact that an individual who possesses many of the other traits and also lives alone might be significant.

- *Limited dating relationships if not married.* A man who lives alone, has never been married, and does not date should arouse suspicion if he possesses other characteristics and indicators.

- *If married, "special relationship" with spouse.* When they do marry, pedophiles often marry either a strong, domineering woman or a weak, passive woman-child. In any case, they will marry a woman who does not have high sexual expectations or needs.

A woman married to a pedophile may not realize that her husband is a pedophile, but she does know he has a "problem" — a sexual performance problem. Because she may blame herself for this problem and because of the private nature of people's sex lives, most wives

will usually not reveal this information. However, a wife, ex-wife, or girlfriend should always be considered as a possible source of information concerning the sexual preferences of an offender.

Pedophiles sometimes marry for convenience or cover.

- *Excessive interest in children.* How much interest is excessive? This is a difficult question. The old adage, "If it sounds too good to be true, maybe it is," might apply here. If someone's interest in children seems too good to be true, then maybe it is. This is not proof that someone is a pedophile, but it is a reason to be suspicious. It becomes more significant when this excessive interest is combined with other indicators.

- *Associates and circle of friends are young.* In addition to sexual activity, pedophiles frequently socialize with children and get involved in youth activities. They may hang around schoolyards, arcades, shopping centers — any place that children frequent. Their friends may be male, female, or both sexes, very young or teen-agers, all depending on the age and gender preferences of the pedophile.

- *Limited peer relationships.* Because they cannot share the most important part of their life (their sexual interest in children) with most adults, pedophiles may have a limited number of close adult friends. Only other pedophiles will validate their sexual behavior. If a suspected pedophile has a close adult friend, the possibility that the friend is also a pedophile must be considered.

- *Age and gender preference.* Most pedophiles prefer children of a certain sex in a certain age range. The older the age preference is, the more exclusive the gender preference will be. Pedophiles who are attracted to toddlers are more likely to molest boys and girls indiscriminately. A pedophile attracted to teen-agers is more likely to prefer either boys or girls exclusively.

The preferred age bracket for the child can also vary. One pedophile might prefer boys 8 to 10, while another might prefer boys 6 to 12. A pedophile's age preference might not even correspond

exactly with the legal definitions of a child or minor. For example, a pedophile might prefer sexual partners 13 to 19.

How old a child looks and acts is more important than actual chronological age. A 13-year-old child who looks and acts like a 10-year-old child could be a target for a molester preferring 8- to 10-year-olds. Puberty seems to be an important dividing line for many pedophiles.

This age and gender preference, however, is not an exclusive limitation. Anyone expressing a strong desire to care for or adopt only a child of a very specific sex and age (other than an infant) should be viewed with some suspicion.

- *Refers to children as "clean," "pure," "innocent," "impeccable," etc., or as objects.* Pedophiles sometimes have an idealistic view of children that is expressed in their language and writing. Others sometimes refer to children as if they were objects, projects or possessions. "This kid has low mileage" and "I've been working on this project for six months" are typical comments.

#### *Skilled in obtaining victims*

- *Skilled at identifying vulnerable victims.* Some pedophiles can watch a group of children for a brief period and then select a potential target. Often, the selected child turns out to be from a broken home or the victim of emotional or physical neglect. This skill is developed through practice and experience.

- *Identifies better with children than with adults.* Pedophiles usually have the ability to identify with children better than with adults — a trait that makes most pedophiles master seducers of children. Pedophiles especially know how to listen to children. Many are described as "pied pipers" who attract children.

- *Access to children.* This is one of the most important indicators of a pedophile. The pedophile will surely have a method of gaining access to children. Other than simply hanging around places children congregate, pedophiles sometimes marry or befriend women to gain access to their children.

Pedophiles are frequently the "nice

guys" in the neighborhood, who like to entertain the children after school or take them on day or weekend trips. Also, a pedophile may seek employment where he will be in contact with children (teacher, camp counselor, baby-sitter, school bus driver) or where he can eventually specialize in dealing with children (physician, dentist, minister, photographer, social worker, police officer).

The pedophile may also become a scout leader, Big Brother, foster parent, Little League coach and so on. The pedophile may operate a business that hires adolescents. In one case, a pedophile married, had a daughter and molested her. He was the "nice guy" in the neighborhood who had the neighborhood girls over to his house for parties and molested them. He was a coach for a girl's softball team and molested the players. He was a dentist who specialized in child patients and molested them.

- *Activities with children, often excluding other adults.* The pedophile is always trying to get children into situations where there are no other adults present. On the scout hike, he might suggest the fathers go into town for a beer. He will "sacrifice" and stay behind with the boys.
- *Seduces with attention, affection and gifts.* This is the most common technique used by pedophiles. They literally seduce the children by befriending them, talking to them, listening to them, paying attention to them, spending time with them and buying gifts for them. If you understand the courtship process, it should not be difficult to understand why some child victims develop positive feelings for the offender.

Many people can understand why an incest victim might not report his or her father, but they cannot understand why a victim not related to the offender does not immediately report molestation. There are many reasons for a victim not immediately reporting molestation — fear, blackmail, embarrassment, confusion — but the results of the seduction process are often ignored or not understood at all.

- *Skilled at manipulating children.* In

order to operate a child sex ring involving simultaneous sexual relations with multiple victims, a pedophile must know how to manipulate children. The pedophile uses seduction techniques, competition, peer pressure, child and group psychology, motivation techniques, threats and blackmail.

The pedophile must continuously recruit children into and move children out of the ring without his activity being disclosed. Part of the manipulation process is lowering the inhibitions of children. A skilled pedophile who can get children into a situation where they must change clothing or stay with him overnight will almost always succeed in seducing them. Not all pedophiles possess these skills.

- *Has hobbies and interests appealing to children.* This is another indicator that must be considered for evaluation only in connection with other indicators. Pedophiles might collect toys or dolls, build model planes or boats, or perform as clowns or magicians to attract children. A pedophile interested in older children might have a "hobby" involving alcohol, drugs or pornography.

- *Shows sexually explicit material to children.* Any adult who shows sexually explicit material to children of any age should be viewed with suspicion. This is generally part of the seduction process in order to lower inhibitions. A pedophile might also encourage or allow children to call a dial-a-porn service or send them sexually explicit material via a computer as part of this process.

#### ***Sexual fantasies focusing on children***

- *Youth-oriented decorations in house or room.* Pedophiles attracted to teen-age boys might have their homes decorated the way a teen-age boy would. This might include toys, games, stereos, rock posters and so on. The homes of some pedophiles have been described as miniature amusement parks or as shrines to children.

- *Photographing of children.* This includes photographing children fully dressed. One pedophile bragged that he went to rock concerts with 30 or 40 rolls

of film in order to photograph young boys. After developing the pictures, he fantasized about having sex with them. Such a pedophile might frequent playgrounds, youth athletic contests, child beauty pageants or child exercise classes with his camera.

- *Collecting child pornography or child erotica.* This is one of the most significant characteristics of pedophiles. Child pornography can be behaviorally (not legally) defined as the sexually explicit reproduction of a child's image. In essence, it is the permanent record of the sexual abuse or exploitation of an actual child.

Child erotica is a broader and more encompassing term than child pornography. It can be defined as any material, relating to children that serves a sexual purpose for a given individual. Some of the more common types of child erotica include toys, games, drawings, fantasy writings, diaries, souvenirs, sexual aids, manuals, letters, books about children, psychological books on pedophilia and ordinary photographs of children. Child erotica might also be referred to as pedophile paraphernalia. Generally, possession and distribution of these items does not constitute a violation of the law.

Collecting either child pornography or child erotica may help pedophiles satisfy, deal with or reinforce their compulsive, persistent sexual fantasies about children. Collecting may also fulfill needs for validation. Many pedophiles collect academic books and articles on the nature of pedophilia in an effort to understand and justify their own behavior.

Although the reasons why pedophiles collect this material are conjecture, how the material is used is more certain. Child pornography and child erotica are used by pedophiles for sexual arousal and gratification. Some pedophiles only collect and fantasize about the material without acting out the fantasies, but in most cases the arousal and fantasy fueled by the pornography is only a prelude to actual sexually activity with children.

Pedophiles also use child pornography and erotica to lower children's inhibi-

tions, as blackmail, as a medium of exchange with other pedophiles, and for profit.

### After identification

When a child molestation case is uncovered and an offender identified, there are certain fairly predictable reactions of the child molester. These usually include denial, minimization, justification, fabrication, claiming mental illness, sympathy ploy, attack, and pleading "guilty, but not guilty."

- **Denial.** Usually the first reaction of a child molester to discovery will be complete denial. The offender may act shocked, surprised or even indignant about an allegation of sexual activity with children. He may claim to know nothing about it or that he does not remember. He might admit to an act but deny the intent was sexual gratification: "Is it a crime to hug a child?" He may imply that his actions were misunderstood and that a mistake has been made. His denial may be aided by relatives, friends and co-workers.

- **Minimization.** If the evidence against him rules out total denial, the offender may attempt to minimize what he has done, both in quantity and quality. He might claim that it happened on one or two isolated occasions or that he only touched or caressed the victim. He might admit certain acts, but deny that they were for sexual gratification. He may be knowledgeable about the law and might admit acts that he knows are lesser offenses or misdemeanors.

It is important to recognize that even seemingly cooperative *victims* may also minimize the quantity and type of acts. If a certain act was performed 30 times, the victim might claim it happened only five times and the offender might claim it happened only once or twice. A victim may admit to having sex but not to receiving money for sex or may admit to receiving oral sex but not to performing it. Victims sometimes deny certain sexual acts in spite of photographs showing otherwise. Adolescent boys, in particular, may deny or minimize their

victimization.

- **Justification.** Many child molesters, especially preferential molesters, spend their lives attempting to convince *themselves* that they are not immoral, not sexual deviants, or not criminals. They prefer to believe that they are high-minded, loving individuals whose behavior is misunderstood or politically incorrect at this time. Plugging into this rationalization system is the key to interviewing such offenders.

A child molester typically attempts to justify his behavior to the police. He might claim that he cares for the child more than the child's parents do or that what he does is beneficial to the child. If he is the father of the victim, he might claim the child is better off learning about sex from him. In other cases, he might claim he has been under tremendous stress or has a drinking problem. He might claim he did not know how old a certain victim was.

His efforts to justify his behavior usually center around blaming the victim. This is the single most common rationalization of all pedophiles. The offender may claim that he was seduced by the victim, that the victim initiated the sexual activity, or that the victim is promiscuous or even a prostitute. In a few cases, it might even be true. But such a justification has no meaning. A crime has still been committed. The major legal difference between sex crimes committed against children and adults is that with child victims, consent does not matter.

- **Fabrication.** Some of the more clever child molesters come up with ingenious stories to explain their behavior. One offender, a doctor, claimed he was doing research on male youth prostitution. A professor claimed he was doing research on pedophilia — collecting and distributing child pornography for scientific research. A teacher said that his students had such desperate need for attention and affection that they practically threw themselves at him and misunderstood his affection and response as sexual advances.

Many incest offenders claim to be providing sex education for their children. One father claimed he was teaching his daughter the difference between a good touch and a bad touch. In another case, a nursery school operator, who had taken and collected thousands of photographs of young, nude or semi-nude children in his care, claimed they were not for sexual purposes — he simply admired the anatomy of children.

Another offender claimed that his sado-masochistic photos of children were part of a child discipline program. One claimed that children had made a sexually explicit videotape without his knowledge and that he had kept it only to show their parents. Another offender claimed he was merely keeping the child warm in his bed on a cold night. Several offenders have recently asserted they are artists victimized by censorship and their collections are works of art protected by the First Amendment.

These stories work particularly well when the child molester is a professional, such as a teacher, doctor, or, especially, a therapist. The investigator and prosecutor must be prepared to confront such stories and attempt to disprove them. Finding child pornography or erotica in the possession of the offender is one effective way to do this.

- **Mental illness.** When other tactics fail, the child molester may feign mental illness. It is interesting to note that few child molesters admit mental illness until after they are identified or arrested or until other tactics fail. If all pedophiles are not necessarily child molesters, then pedophilia alone cannot be the cause of the child molestation.

Of course, if the child molester is truly mentally ill, he needs treatment and not a jail term. If the behavior of a child molester is considered the result of a mental illness, however, then it must out of necessity be treated as a "contagious" disease that is, at best, difficult to cure. The seriousness of the offenses and the effectiveness of any proposed treatment must be carefully evaluated by the court. Treatment and punishment are not mutu-

ally exclusive.

- *Sympathy.* Pedophiles may resort to a "nice guy defense." In this defense, the offender expresses deep regret and attempts to show he is a pillar of the community, a devoted family man, a military veteran, a church leader, nonviolent, without prior arrests, and a victim of many personal problems.

Because many people still believe the myth that child molesters are "strangers" or misfits of society, this tactic can unfortunately be effective. Many traits the offender introduces as evidence of his good character (i.e., dedication to children, volunteer work, etc.) in fact contribute to his ability to access and seduce children.

- *Attack.* The identified child molester may go on the offensive. It is important not to overlook this reaction. It can be used many times during the investigation or prosecution. The pedophile may harass, threaten, or bribe victims and witnesses; attack the reputation and personal life of the investigating officer; attack the motives of the prosecutor; claim the case is selective prosecution; raise issues such as gay rights if the child victim is the same sex as the offender; and enlist the active support of groups and organizations.

The police investigator also must consider the possibility of physical violence. It would be a terrible mistake for any police investigator or prosecutor to think that all child molesters are passive people who are easily intimidated. In addition, there are cases in which child molesters murdered their victims, including their own children, to keep them from disclosing the sexual abuse.

Two different child molesters who had each killed several of their child victims commented that the only way that society could have prevented the murders would have been to legalize sex between adults and children. These individuals claimed that they killed their victims only to avoid identification. In another case, a child molester killed the mother of his victim when she tried to end his relationship with her son.

- *Guilty, but not guilty.* The offender will often try to make a deal in order to avoid a public trial. Although this results in the highly desirable objective of avoiding child victim testimony, an unfortunate aspect is that the offender is often allowed to plead, in essence, "guilty, but not guilty."

This sometimes involves a plea of *nolo contendere* to avoid civil liability. The offender may make public statements that he is pleading guilty because he does not want to put the children through the trauma of having to testify or because he has no more money to defend himself. This problem is compounded by the fact that it is possible, under the provisions of a U.S. Supreme Court decision (*North Carolina v. Alford*, 400 U.S. 25, 1970), for an individual to plead guilty to a charge while at the same time not acknowledge that he or she committed the crime.

In some cases, offenders have claimed that they pleaded guilty because they knew a jury would convict them even though they "could not remember committing the crime." Although it is understandable why a prosecutor might accept such a plea, its use prevents the offender from having to accept public responsibility for his behavior. He is able to plead "guilty, but not guilty" — further confusing the child victim as to who is guilty and who is innocent.

Another variation is the plea of not guilty by reason of insanity. If state insanity criteria allow it, the child molester will claim he knew his acts were wrong, but he lacked the ability to conform his behavior to the law. The judge and jury will be given the difficult task of differentiating between an irresistible impulse and an impulse not resisted.

Confronted with overwhelming evidence, many child molesters prefer to plead guilty to charges with vague names (e.g., contributing to the delinquency of minors, lewd and lascivious conduct, indecent liberties, etc.) so that the public will not know what was really done. The last thing molesters want is all the details to come out in court.

### After conviction

After being convicted and sentenced, some pedophiles may exhibit another reaction. This involves asking to speak to law enforcement investigators, claiming to have important information about more serious offenses against children, such as organized child sex rings, child pornography, child prostitution, abduction of children, satanic cults, or child murders. Although this reaction is not as common as the others discussed here, there are numerous cases in which this has happened. Often, the information has turned out to be exaggerated, distorted, or patently false. Investigators, however, must be skeptical and cautious in their response. Such stories should be carefully evaluated and assessed, and investigators should consider an early use of the polygraph by an examiner experienced in interviewing child molesters.

One other reaction should also be anticipated in certain cases. An offender, especially from a middle-class background and with no (or one) prior arrest, should be considered a high suicide risk at any time after arrest or conviction. The law enforcement investigator should be prepared to be blamed for the offender's death.

A wide variety of criminals may react in similar ways when their activity is discovered or investigated. The reactions described above, however, have been seen in child molesters time and time again, particularly in preferential child molesters.

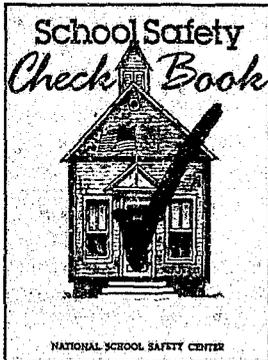
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# NSSC Publications

The National School Safety Center (NSSC) serves as a national clearinghouse for school safety programs and activities related to campus security, school law, community relations, student discipline and attendance, and the prevention of drug abuse, gangs, weapons and bullying in schools.

NSSC's primary objective is to focus national attention on the importance of providing safe and effective schools. The following publications have been produced to promote this effort.

**School Safety News Service** includes three editions of *School Safety*, newsletter of the National School Safety Center, and six issues of *School Safety Update*. These publications feature the insight of prominent professionals on issues related to school safety, including student discipline, security, attendance, dropouts, youth suicide, character education and substance abuse. NSSC's News Service reports on effective school safety programs, updates legal and legislative issues, and reviews new literature on school safety issues. Contributors include accomplished local practitioners and nationally recognized experts and officials. (\$59.00 annual subscription)



**School Safety Check Book** (1990) is NSSC's most comprehensive text on crime and violence prevention in schools. The volume is divided into sections on school climate and discipline, school attendance, personal safety and school security. Geared for the hands-on practitioner, each section includes a review of the problems and prevention strategies. Useful charts, surveys and tables, as well as write-ups on a wide variety of model programs, are included. Each chapter also has a comprehensive bibliography of additional resources. 219 pages. (\$15.00)

**Set Straight on Bullies** (1989) examines the myths and realities about schoolyard bullying. Changing attitudes about the seriousness of the problem are stressed. It studies the characteristics of bullies and bullying victims. And, most importantly, it provides strategies for educators, parents and students to better prevent and respond to schoolyard bullying. Sample student and adult surveys are included. 89 pages. (\$10.00)

**Child Safety Curriculum Standards** (1991) helps prevent child victimization by assisting youth-serving professionals in teaching children how to protect themselves. Sample strategies that can be integrated into existing curricula or used as a starting point for developing a more extensive curriculum are given for both elementary and secondary schools. The age-appropriate standards deal with the topics of substance abuse, teen parenting, suicide, gangs, weapons, bullying, runaways, rape, sexually transmitted diseases, child abuse, parental abductions, stranger abductions and latchkey children. Each of the 13 chapters includes summaries, standards, strategies and additional resources for each grade level. 353 pages. (\$75.00)

**Developing Personal and Social Responsibility** (1992) is designed to serve as a framework on which to build successful school and community programs aimed at training young people to be responsible citizens. 130 pages. (\$9.00)



**Gangs in Schools: Breaking Up Is Hard to Do** (1992) offers an introduction to youth gangs, providing the latest information on the various types of gangs — including ethnic gangs, stoner groups and satanic cults — as well as giving practical advice on preventing or reducing gang encroachment on schools. Already in its seventh printing, the book contains valuable suggestions from law enforcers, school principals, prosecutors and other experts on gangs. The concluding chapter describes more than 20 school- and community-based programs throughout the country that have been successful in combating gangs. 48 pages. (\$5.00)

**School Crime and Violence: Victims' Rights** (1992) is a current and comprehensive text on school safety law. The recently revised book offers a historical overview of victims' rights, describes how it has been dealt with in our laws and courts, and explains its effect on America's schools. The authors cite legal case histories and cover current school liability laws. The book explains tort liability, sovereign immunity, duty-at-large rule, intervening cause doctrine and foreseeable criminal activity, as well as addressing their significance to schools. The concluding chapter includes a "Checklist for Providing Safe Schools." 127 pages. (\$15.00)

**Educated Public Relations: School Safety 101** (1993) offers a quick course in public relations for school district public relations directors, administrators and others working to achieve safe, effective schools. This newly revised book explains the theory of public relations and successful methods for integrating people and ideas. It discusses how public relations programs can promote safe schools and quality education and gives 101 specific ideas and strategies to achieve this goal. 72 pages. (\$8.00)

**School Discipline Notebook** (1992) will help educators establish fair and effective discipline policies. The book reviews student responsibilities and rights, including the right to safe schools. Legal policies that regulate discipline methods used in schools are also explained. 53 pages. (\$5.00)

**The Need To Know: Juvenile Record Sharing** (1989) deals with the confidentiality of student records and why teachers, counselors, school administrators, police, probation officers, prosecutors, the courts and other professionals who work with juvenile offenders need to know and be able to share information contained in juvenile records. When information is shared appropriately, improved strategies for responding to serious juvenile offenders, and for improving public safety, can be developed. The second part of the book reviews the legal statutes of each state, outlining which agencies and individuals are permitted access to various juvenile records and how access may be obtained. A model juvenile records code and sample forms to be used by agencies in facilitating juvenile record sharing also are included. 88 pages. (\$12.00)

*Points of view or opinions are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice, U.S. Department of Education or Pepperdine University. Prices subject to change without prior notification.*

# Resource Papers

The National School Safety Center (NSSC) has produced a series of special reports on a variety of topics related to school safety. Each NSSC Resource Paper provides a concise but comprehensive overview of the problem, covers a number of prevention and intervention strategies, and includes a list of organizations, related publications, and article reprints on the topic.

**Weapons in Schools** outlines a number of ways to detect weapons on campus, including using searches and metal detectors, establishing a security force, and eliminating book bags or lockers where weapons can be hidden.

**School Bullying and Victimization** defines bullying, offers an overview of psychological theories about how bullies develop, and covers intervention programs that have been successful.

**Corporal Punishment in Schools** outlines the arguments for and against corporal punishment. It also discusses the alternatives to corporal punishment that have been developed by schools and psychologists.

**Student and Staff Victimization**, after outlining schools' responsibility to provide a safe educational environment, covers strategies for dealing with victimization.

**Increasing Student Attendance**, after outlining the problem and providing supporting statistics, details strategies to increase attendance by preventing, intervening with and responding to students who become truants or dropouts.

**Safe Schools Overview** offers a review of the contemporary safety issues facing today's schools, such as crime and violence, discipline, bullying, drug/alcohol trafficking and abuse, gangs, high dropout rates, and school safety partnerships.

**Drug Traffic and Abuse in Schools**, after summarizing students' attitudes and beliefs about drugs, covers drug laws and school rules; the legal aspects of student searches and drug testing; and the connection between drug use and truancy, crime and violence.

**Role Models, Sports and Youth** covers a number of programs that link youth and sports, including NSSC's urban school safety campaign that uses professional athletes as spokesmen; several organizations founded by professional athletes to help youth combat drugs; and a number of programs established to get young people involved in school or neighborhood teams.

**School Crisis Prevention and Response** identifies principles and practices that promote safer campuses. It presents reviews of serious schools crises — fatal shootings, a terrorist bombing, armed intruders and cluster suicide. Interviews with the principals in charge also are included.

**Student Searches and the Law** examines recent court cases concerning student searches, including locker searches, strip searches, searches by probation officers, drug testing, and searches using metal detectors or drug-sniffing dogs.

# Display Posters

**"Join a team, not a gang!"** (1989) — Kevin Mitchell, home run leader with the San Francisco Giants.

**"The Fridge says 'bullying is uncool!'"** (1988) — William "The Fridge" Perry, defensive lineman for the Chicago Bears.

**"Facades..."** (1987) — A set of two, 22-by-17-inch full-color posters produced and distributed to complement a series of drug-free schools TV public service announcements sponsored by NSSC.

All resources are prepared under Grant No. 85-MU-CX-0003 from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in these documents are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice, U.S. Department of Education or Pepperdine University. Prices subject to change without prior notification. Charges cover postage and handling. Check must accompany order.

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- \_\_\_\_\_ School Safety News Service (\$59 annually)
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- \_\_\_\_\_ Educated Public Relations (\$8)
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*School administrators can protect the children they serve and the staff members who depend on them. But to do so, they must develop a comprehensive plan for dealing with charges of child sexual abuse — before such charges arise.*

## Brace yourself to handle charges of sexual assault

The school of experience can offer painful lessons, but none are more painful than the ones you learn when a trusted school employee is accused of sexually assaulting a child. As a school executive, what do you do in such a case? When do you do it? How do you draw the line between acting expeditiously and overreacting? How do you protect the children (if the charge is true) and salvage the employee's reputation (if it is not)?

Your best strategy is to think through the situation in advance and develop a comprehensive plan to deal with charges of sexual abuse. It is entirely possible you will have to deal with such charges sometime. That is not cynicism; that is fact.

### Three case studies

A look at three composite cases shows the complexity of the issues:

*Case 1:* An emotionally disturbed youngster tells his mother that his principal sexually assaulted him five years ago. The case is reported but quickly dropped for lack of evidence: The boy can only tell police that five years ago, the principal touched his shoulder, rubbed his arm and touched his waist before the young-

ster ran from the office. But the parents continue to go public with their allegations, and they refer to the principal by name. Fearful the charges will damage his professional reputation and his community standing, the principal consults the school attorney, who advises him that, as a public figure, he has no practical legal recourse. Any legal action would simply draw attention to the claims, the lawyer points out, and the principal is unlikely to win a cash settlement or put a stop to the damaging public statements.

*Case 2:* Two sixth-grade girls tell their parents that a male teacher "touches them" where he should not. The parents call the superintendent, who calls the assistant superintendent for personnel, who says candidly, "This guy is a little strange so the report doesn't surprise me." The assistant superintendent suggests reporting the incident to the state department of family services (as state law requires) and have state officials appoint someone to investigate the charge. After charges are filed, the two students tearfully admit to the police that they made up the whole story: Their teacher never touched them.

*Case 3:* A parent calls the superintendent to report that an elementary school counselor has sexually molested children behind closed doors. The assistant super-

intendent for personnel assures the superintendent that this counselor is a "great guy" and that the charge cannot possibly be true. Still, the assistant superintendent promises to check out the charges personally and pledges to let the counselor know that the central office "stands behind him." As it turns out, the counselor is found guilty of sexual abuse and is forced to leave education.

Each of these cases was handled poorly. The accused principal in Case 1 needed — and deserved — the support of the school community, especially that of the superintendent and the school board. In Case 2, the personnel officer was correct to report the matter to authorities but inappropriately leapt to a presumption of guilt on the basis of a personal impression. And in Case 3, school officials made the serious mistake of investigating the situation themselves, rather than reporting it to the proper authorities.

### A nine-point plan

Hindsight is one thing, but just what *should* you do when a school employee is accused of sexually abusing a student? Should you suspend the individual pending investigation? And should the suspension be with or without pay? If the staff member is found innocent, what do you do to help him now that he has a reputation as a sexual offender?

Once an accusation has been made, it

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is difficult for someone to live down the label even if he is exonerated. Is it enough to rely on the perceptions of your personnel officer? Remember, in two of the three cases, initial impressions of guilt and innocence were wrong.

St. Joseph (Missouri) schools have adopted the following nine-point plan for handling such allegations. The strategies work for the district in St. Joseph; they will undoubtedly work for others too. But laws vary from state to state, so consult your school attorney before adopting these ideas in your schools.

- *Report all cases of suspected abuse immediately.* In Missouri, as in most states, educators are required by law to report any suspected child abuse, and that includes sexual abuse by school staff members. The important word is *report*. School people should not play Dick Tracy and try to determine a person's guilt or innocence; once school personnel have reasonable cause to suspect abuse, they should report the case at once.

Whatever the mechanism is in your state, try not to delay reporting cases of suspected abuse. In my experience, educators are often quick to report cases that involved suspected abuse by parents and slow to report cases that involve a colleague. They forget, though, that an impartial investigation will go further to clear an innocent person's reputation than any investigation by members of the person's own school family.

In St. Joseph, the responsibility for calling the family services hot line is placed where it belongs: with the individual who has reasonable cause to suspect abuse, not with that person's supervisor or someone else in the chain of command. In other words, the district avoids rules that delegate the responsibility for making this important call.

Why? Quite simply, school officials in St. Joseph believe that when you require teachers to tell principals and principals to tell superintendents (or some variation like that), you put your staff in the untenable position of being required by law to call the state child-abuse hot line and by school system procedure to wait

(and assume someone else will make the call).

- *When you become aware of a charge of sexual abuse, visit the employee in person and inform him or her that charges have been made and are being investigated.* Call first to let the employee know you are coming, and make sure you can meet somewhere confidential — an empty classroom or the principal's office. Do not make an employee come to you, and do not drop in unexpectedly.

Take someone with you, preferably someone the employee knows and trusts. A friendly face can provide a lot of moral support, and that is especially important if the employee has been unjustly accused. Also, you might need a witness, especially if the employee breaks down and admits guilt when you explain that charges have been filed. A statement of guilt might later become the basis for suspension, so it is a good idea to have a witness.

If the accused does admit guilt, you will have to follow up immediately with some action that removes the employee from the classroom. Generally, if it comes to an admission of guilt, chances are the employee is ready to sever his or her relationship with students and seek help anyway.

Finally, if the employee does break down when confronted with the news that charges have been filed, ask him if he would like to take two or three days to think things over at home and then come in to your office to talk. If the person is innocent, you will be giving him some much-needed decompression time for the long fight ahead. If he is guilty, you have given him time to protect his own rights by contacting his own attorney.

- *Have a clear-cut suspension policy.* If the prosecuting attorney brings charges and the employee admits guilt, the district policy is to suspend the employee without pay. If the initial investigation results in official charges, but the em-

ployee declares his innocence, the employee is suspended with pay. Admittedly, suspension with pay is an expensive action because the legal battle could last for more than a year. But the employee deserves protection, too.

- *Do not release specifics of the case to the school board too quickly.* I am not recommending a cover-up, of course. Instead, recognize that any charge of sexual abuse could end in two separate legal actions: one taken by the prosecuting attorney and another taken by the school board if it becomes necessary to terminate the person's employment.

If you release all the details to the board too quickly, you make it difficult for board members to be impartial later on. Until the police or the prosecuting attorney decide to go forward with the case, it is generally enough to tell the board the basics: "An employee is being investigated, and the results will be turned over to the prosecuting attorney." Issue updates as the case progresses: "The prosecuting attorney has decided to bring charges against John/Joan Smith, who has been suspended with pay until the case is tried."

- *Be prudent, but keep your teacher union or association informed.* The last thing you need when a case of child molestation occurs is another emotional faction making unreasonable demands. For that reason, you will want to keep your teacher union up-to-date on the situation. Union members need to know the school system will stand behind its staff members and at the same time protect the children. Generally, it is best to give the teachers' representatives the same basic information you have given the board. Without this information, rumors will fly, making your job even more difficult.

- *Be prepared to field questions from the press.* Keep one thing in mind when you meet the press: Both the employee and the child have a right to confidentiality. You need only tell the facts as you know them at the time. Early on, for in-

stance, when asked if a staff member is being investigated for child sexual abuse, use a standard response in every case: "This is a confidential personnel matter, and regardless of whether there is an investigation, I am unable to discuss the matter." (Note that you are not admitting or denying the fact of the investigation.)

If the prosecuting attorney files formal charges and the board takes formal action to suspend the employee, prepare a brief statement describing that action and the employee's current status. Focus solely on the formal action the board has taken: "Mr. Jones has been suspended without pay pending the completion of the court case. The board has scheduled a private hearing for (the date).

- *Talk with the police.* Your local police department can be a great help as you face the tough decision of suspension; in fact, it is probably your best source for the kind of written documentation you will need if you do have to suspend or separate an employee. To make sure you will have access to this paper trail, develop a good working relationship with the detective handling the case and the social worker providing support. In my experience, the best person to initiate these contacts is the superintendent, because he or she is in the best position to understand who needs to know what and who does not.

- *Provide emotional support for the accused employee.* Innocent or guilty, the employee and his/her family will need emotional support. The press will cover the case as the investigation proceeds, so the family will see headlines calling the employee a child molester. Rumors take on a life of their own, especially in small communities, and even if the investigation clears the accused employee, many people will not believe the finding of innocence.

It is not unusual for accused individuals or their family members to break under the strain of accusation and investigation. To help them through the ordeal, encourage them to seek counseling, ei-

ther through the school system's wellness program (if you have one) or the local community health center. The worst thing you can do is shun the accused and his or her family.

- *Attend to the psychological needs of other faculty members and students.* Accusations of sexual abuse leave anxieties and fear in their aftermath, so mobilize your counseling resources to help students and faculty members cope. Use the same strategy you would following a suicide, accidental death, or other trauma — that is, target the employees closest to the accused and the abused child's closest friends.

You will also want to keep these students' parents informed to control rumor and innuendo. In any case, turn to counselors who have experience helping victims of sexual abuse, and make sure the counselors adapt their approach to the age of the children involved. If you do not already have a program designed to make children aware of sexual abuse, you might consider developing one now. Whatever form your response takes, meet the need for information and counseling as quickly as possible.

#### One final note

Once you have wound your way through a case of child sexual abuse, you might find yourself thinking about adopting a no-touching policy for your school or school system. I do not recommend it. No matter how heinous the charge, such a strategy is an overreaction. It is a sad state of affairs when a teacher cannot put an arm around a child who is upset or give a proud kid a pat on the back.

The truth is, you *can* protect the children you serve and the staff members who depend on you. But to do so, you must develop a comprehensive plan for dealing with charges of child sexual abuse — before such a charge arises.

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## Preventive measures

School systems need to develop appropriate policies, procedures and employee training to increase the awareness of and guard against specific behaviors, including:

- touch that is inappropriate for the age/sex of the student;
- singling out specific students for special attention or gifts without the full knowledge of the school administration;
- any attempt to conceal an interaction with a student; or
- any evidence that an employee has established a "peer" rather than a professional relationship with a student.

Most of these interactions could, in some instances, be perfectly innocent. One of the greatest danger signs is secrecy. Whenever a relationship with a student is concealed or shrouded in silence, the danger of sexual abuse is present.

School administrators are encouraged to take several preventive measures to screen individuals who may molest children:

- Thoroughly screen all applicants and volunteers regarding past criminal history or questionable background.
- Establish a code of ethics related to relationships with students for all school staff.
- Establish clear policies and procedures consistent with state laws for reporting suspected child abuse.
- Establish clear policies and procedures regarding traveling with students, unacceptable gift-giving and socializing after school hours.
- Establish teacher and counselor training programs that focus on how to work with abused children after the investigation and court processes are finished.

# Sex offender registration: A review of state laws

In recent years, state legislatures across the country have examined their sexual assault laws to find ways to increase community protection. Many have attempted to strengthen existing laws by requiring released sex offenders to register with law enforcement or state agencies. Currently, 24 states have such a requirement, and legislation just passed by Congress will establish a national index of registered sex offenders.

A sex offender registration law requires that offenders supply their addresses to state or local law enforcement. Typically the offender must register following release from confinement and/or during community supervision. Laws in most states apply to convicted sex offenders. Some states' laws also apply to individuals found by a judge to have committed a sex offense (for instance, under a finding of not guilty by reason of insanity). Minnesota extends the requirement to individuals charged with a sex offense, whether or not convicted.

Information maintained on the registry varies by state, but at a minimum includes the name, address, and a law enforcement identification number. Some states collect very detailed information, which may include blood samples, employment information, residence history, and vehicle registration numbers. In all cases, the offender is responsible for supplying accurate information and is penalized for non-compliance.

Once created, the registry becomes a

tool that law enforcement uses to solve crimes or, ideally, to prevent them. If a sex offense is committed and no suspect is located, the registry can be used to identify potential suspects who live in the area or who have a pattern of similar crimes. States vary in their decisions about which offenders to include in the registry: Some register child molesters; some register the most serious categories of offenders or repeat offenders; and some register all sex offenders, regardless of the seriousness of the crime or the age of the victim.

Registration laws also create legal grounds to hold sex offenders who do not comply with registration and are later found in suspicious circumstances. For example, if a convicted sex offender is observed loitering around a playground, and when stopped by the police is found not to have registered, the offender can be charged and prosecuted for failure to register. Law enforcement representatives often argue that registration laws thus prevent crimes because police can intervene before a potential victim is harmed. Thus, some states will pass a registration law without expecting a high rate of voluntary compliance.

Another intended effect of registration is psychological. Once registered, offenders know that they are being monitored. Many lawmakers argue that such knowledge will discourage sex offenders from reoffending. Also, some lawmakers believe that the registration requirement will deter potential first-time sex offenders.

Several arguments against sex offender registration often surface during legislative deliberations:

- Registration is inconsistent with the goals of a society committed to protecting individual liberties.
- By forcing sex offenders to register, society sends a message to these individuals that they are bad, dangerous people and not to be trusted.
- Registration creates a false sense of security.
- Registration of sex offenders implies that these offenders are the most dangerous. In reality, other types of offenders present similar or greater risks.
- Registration will encourage citizen vigilantism.
- If made public, a list of registered sex offenders will disclose the identity of some incest victims.
- Rather than expend public funds on registration, states should direct resources toward other criminal justice activities.

Sex offender registration laws have been subject to legal challenges in at least four states. In Arizona, Illinois and Washington, the courts have found that registration is not a form of punishment, and therefore not subject to the Eighth Amendment prohibition against cruel and unusual punishment. In California, where registration has been examined as a form of punishment, the courts have found it not to be cruel and unusual. Challenges on the basis of due process and equal protection have also failed. Registration has not been found to unreasonably infringe on the offender's rights to travel or privacy.

*Prepared by Roxanne Lieb, Barbara E.M. Flever and Carole Poole. For a full copy of this report, contact the Washington State Institute for Public Policy, The Evergreen State College, Seminar 3163, Mail-stop TA-00, Olympia, WA 98505.*

[Insert agency name/logo, address]

**AUTHORIZATION  
TO RELEASE INFORMATION**

REGARDING:

Applicant's name: \_\_\_\_\_

Applicant's current address: \_\_\_\_\_

Applicant's social security number: \_\_\_\_\_

Agency Contact Person: \_\_\_\_\_

Authorization expiration date: \_\_\_\_\_

I, the undersigned, authorize and consent to any person, firm, organization, or corporation provided a copy (including photocopy or facsimile copy) of this Authorization to Release Information by the above-stated agency to release and disclose to such agency any and all information or records requested regarding me including, but not necessarily limited to, my employment records, volunteer experience, military records, criminal information records (if any), and background. I have authorized this information to be released, either in writing or via telephone, in connection with my application for employment or to be a volunteer at the agency.

Any person, firm, organization, or corporation providing information or records in accordance with this Authorization is released from any and all claims or liability for compliance. Such information will be held in confidence in accordance with agency guidelines.

This authorization expires on the date stated above.

\_\_\_\_\_  
Signature of Prospective Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness to Signature

\_\_\_\_\_  
Date

[Insert agency name/logo/address]

### APPLICANT DISCLOSURE AFFIDAVIT

(Please Read Carefully)

Our agency screens prospective employees and volunteers to evaluate whether an applicant poses a risk of harm to the children and youth it serves. Information obtained is not an automatic bar to employment or volunteer work, but is considered in view of all relevant circumstances. This disclosure is required to be completed by applicants for positions in order to be considered. Any falsification, misrepresentation or incompleteness in this disclosure alone is grounds for disqualification or termination.

APPLICANT: \_\_\_\_\_

*Please print complete name and social security number.*

The undersigned applicant affirms that I HAVE NOT at ANY TIME (whether as an adult or juvenile):

Yes    No    *(Initial if answer is yes or no and provide brief explanation for a "yes" answer below.)*

- \_\_\_\_    \_\_\_\_    Been convicted of;
- \_\_\_\_    \_\_\_\_    Pleaded guilty to (whether or not resulting in a conviction);
- \_\_\_\_    \_\_\_\_    Pleaded nolo contendere or no contest to;
- \_\_\_\_    \_\_\_\_    Admitted;
- \_\_\_\_    \_\_\_\_    Have had any judgment or order rendered against me (whether by default or otherwise);
- \_\_\_\_    \_\_\_\_    Entered into any settlement of an action or claim of;
- \_\_\_\_    \_\_\_\_    Had any license, certificate or employment suspended, revoked, terminated or adversely affected because of;
- \_\_\_\_    \_\_\_\_    Been diagnosed as having or treated for any mental or emotional condition arising from; or,
- \_\_\_\_    \_\_\_\_    Resigned under threat of termination of employment or volunteer work for;

Any allegation, any conduct, matter or thing (irrespective of the formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

Yes    No    *(Initial if answer is yes or no and provide brief explanation for a "yes" answer below.)*

- \_\_\_\_    \_\_\_\_    Any felony;
- \_\_\_\_    \_\_\_\_    Rape or other sexual assault;
- \_\_\_\_    \_\_\_\_    Drug/alcohol-related offenses;

## APPLICANT DISCLOSURE AFFIDAVIT (con't)

**Yes**    **No**    *(Initial if answer is yes or no and provide a brief explanation for a yes answer below.)*

- |                          |                          |  |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Abuse of a minor or child, whether physical or sexual;   |
| <input type="checkbox"/> | <input type="checkbox"/> | Incest;  |
| <input type="checkbox"/> | <input type="checkbox"/> | Kidnapping, false imprisonment or abduction;   |
| <input type="checkbox"/> | <input type="checkbox"/> | Sexual harassment;   |
| <input type="checkbox"/> | <input type="checkbox"/> | Sexual exploitation of a minor;  |
| <input type="checkbox"/> | <input type="checkbox"/> | Sexual conduct with a minor;   |
| <input type="checkbox"/> | <input type="checkbox"/> | Annoying/molesting a child;  |
| <input type="checkbox"/> | <input type="checkbox"/> | Lewdness and/or indecent exposure;   |
| <input type="checkbox"/> | <input type="checkbox"/> | Lewd and lascivious behavior;  |
| <input type="checkbox"/> | <input type="checkbox"/> | Obscene literature;  |
| <input type="checkbox"/> | <input type="checkbox"/> | Assault, battery or other offense involving a minor;   |
| <input type="checkbox"/> | <input type="checkbox"/> | Endangerment of a child;   |
| <input type="checkbox"/> | <input type="checkbox"/> | Any misdemeanor or other offense classification involving a minor or to which a minor was a witness; |
| <input type="checkbox"/> | <input type="checkbox"/> | Unfitness as a parent or custodian;  |
| <input type="checkbox"/> | <input type="checkbox"/> | Removing children from a state or concealing children in violation of a law or court order;          |
| <input type="checkbox"/> | <input type="checkbox"/> | Restrictions or limitations on contact or visitation with children or minors;                        |
| <input type="checkbox"/> | <input type="checkbox"/> | Similar or related conduct, matters or things; or  |
| <input type="checkbox"/> | <input type="checkbox"/> | Been accused of any of the above.  |

**EXCEPT THE FOLLOWING:**

*(If you answered "yes" to any of the above please explain, if none, write "none".)*

Description	Dates
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The above statements are true and complete to the best of my knowledge.

Date: \_\_\_\_\_ Signature of applicant \_\_\_\_\_

Date: \_\_\_\_\_ Signature of witness \_\_\_\_\_

[Insert agency name/logo/address]

## REQUEST FOR INFORMATION

TO:

RE:

Applicant's Name \_\_\_\_\_ Social Security Number \_\_\_\_\_

Dates of Employment \_\_\_\_\_ Immediate Supervisor \_\_\_\_\_

Our agency [insert name], is requesting information regarding the above-mentioned applicant who is seeking a position. This agency serves children and youth and, accordingly, undertakes background investigations to determine whether the individual poses a risk of harm to those who would be served.

We are interested in receiving any information or records that would reflect on the applicant's fitness to work with children and youth. Please complete the attached Employer Disclosure Affidavit and return it to our agency at your earliest convenience. Although any information you wish to provide is welcomed, we are especially interested in any conduct, matter or things that involve established or a reasonable basis for suspecting physical, psychological or sexual misconduct with respect to children or youth.

You may receive a separate written or telephone request from our agency for an employment reference regarding the applicant. Please respond to each request independently.

With this request is an authorization executed by the applicant. This releases you from any liability for your reply, either in writing or via telephone.

Thank you for your assistance.

Very truly yours,

\_\_\_\_\_

*Failure by your agency or organization to provide information requested may result in automatic disqualification of the applicant.*

[Insert agency name/logo/address]

### EMPLOYER DISCLOSURE AFFIDAVIT

(Please Read Carefully)

Our agency screens prospective employees and volunteers to evaluate whether an applicant poses a risk of harm to the children and youth it serves. Information obtained is not an automatic bar to employment or volunteer work, but is considered in view of all relevant circumstances. This disclosure is required to be completed by former employers in order for the applicant to be considered.

APPLICANT: \_\_\_\_\_

*Please print complete name and social security number.*

As an agent of the former employer of the undersigned applicant, I affirm to the best of my knowledge that the undersigned applicant HAS NOT at ANY TIME:

**Yes**    **No**    *(Initial if answer is yes or no and provide information for a "yes" answer below.)*

- |       |       |   |
|-------|-------|---|
| _____ | _____ | Been convicted of;  |
| _____ | _____ | Pleaded guilty to (whether or not resulting in a conviction);   |
| _____ | _____ | Pleaded nolo contendere or no contest to;   |
| _____ | _____ | Admitted;   |
| _____ | _____ | Had any judgment or order rendered against him or her (whether by default or otherwise);                    |
| _____ | _____ | Entered into any settlement of an action or claim of;   |
| _____ | _____ | Had any license, certificate or employment suspended, revoked, terminated or adversely affected because of; |
| _____ | _____ | Been diagnosed as having or treated for any mental or emotional condition arising from; or,                 |
| _____ | _____ | Resigned under threat of termination of employment or volunteer work for;                                   |

Any allegation, any conduct, matter or thing (irrespective of the formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

**Yes**    **No**    *(Initial if answer is yes or no and provide brief information for a "yes" answer below.)*

- |       |       |  |
|-------|-------|--|
| _____ | _____ | Any felony;  |
| _____ | _____ | Rape or other sexual assault;                          |
| _____ | _____ | Drug/alcohol-related offenses;                         |
| _____ | _____ | Abuse of a minor or child, whether physical or sexual; |
| _____ | _____ | Incest;  |
| _____ | _____ | Kidnapping, false imprisonment or abduction;           |
| _____ | _____ | Sexual harassment;                                     |

**EMPLOYER DISCLOSURE AFFIDAVIT (con't)**

**Yes**    **No**    *(Initial if answer is yes or no and provide information below for a yes answer)*

- Sexual exploitation of a minor;
- Sexual conduct with a minor;
- Annoying/molesting a child;
- Lewdness and/or indecent exposure;
- Lewd and lascivious behavior;
- Obscene literature;
- Assault, battery or other offense involving a minor;
- Endangerment of a child;
- Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
- Unfitness as a parent or custodian;
- Removing children from a state or concealing children in violation of a law or court order;
- Restrictions or limitations on contact or visitation with children or minors;
- Similar or related conduct, matters or things; or
- Been accused of any of the above.

**EXCEPT THE FOLLOWING:**

*(If you answered "yes" to any of the above please provide information below, if none, write "none".)*

Description	Dates
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The above statements are true and complete to the best of my knowledge.

Date: _____	Signature _____
Name _____	Title _____
Company _____	Address: _____
City/State/Zip _____	Phone _____

## Helping children cope with life's ills



How effective are child abuse and victimization prevention programs? Although accepted in 85 percent of this nation's elementary school districts, little research has been done concerning the actual usefulness of these programs to children.

A new study, *Victimization Prevention Training in Action: A National Survey of Children's Experiences Coping with Actual Threats and Assaults*, provides information about victimization prevention programs by assessing the number of children nationwide who have been exposed to such programs; children's and parents' evaluation and response to such programs; and the impact of such programs on both children's knowledge about victimization and children's victimization coping strategies.

Sixty-seven percent of the sample had been exposed to some type of sexual abuse prevention or victimization prevention at school. In general, children who had taken a more comprehensive program had better knowledge about sexual victimization. Although reactions to the various programs were positive for most parents and children, girls and black children as groups reported the most positive reactions and the most utilization of skills taught.

Prevention education attempts to teach children coping responses to threats or victimization. Children taking part in the survey who reported either a threat or a completed victimization were asked about what they had done to protect themselves. Those undergoing the programs labeled "more comprehensive" were both less likely to remain passive

and more likely to use a "preferred self-protection strategy."

Content of the many available prevention programs varies. The more comprehensive, quality programs incorporated at least nine of 12 components: discussions about dealing with bullies, good touch and bad touch, confusing touch, sexual abuse in the family, how to respond to attempted sexual abuse, and telling an adult about abuse incidents; parental inclusion in a class or meeting; information for children to take home; teaching about screaming or yelling in response to an attack; an opportunity for children to practice prevention/escape skills in class; teaching that abuse is never the victim's fault; and a time frame of more than one day or one single occasion for instruction.

Children who had been threatened or victimized were further asked their opinions about their avoidance actions. Those participating in the more comprehensive programs felt, in general, that they had been more successful in dealing with perceived or actual danger.

One salient feature of prevention programs is the admonition to "tell someone." The children who had experienced the comprehensive type of program were more likely to disclose threats as well as victimization in general and/or sexual abuse.

Parental instruction regarding self-protection also had its effects. Children who received comprehensive training from their parents were even more likely to use protection strategies or to disclose victimization than were children receiving comprehensive instruction at school.

Further, the likelihood of comprehensive parental instruction was increased when the school offered a comprehensive program. Analysis of this component of the survey suggested that school-based programs stimulated parental involvement in training children in self-protection.

But does self-protection training prevent child victimization? One disappointing note was the finding that even the more comprehensive school programs did not help children thwart actual victimization. However, when victimization could not be avoided, children with comprehensive school prevention programs did feel more able to cope with the incidents as a result of that training. Comprehensive *parental* instruction, on the other hand, actually helped children fend off victimization.

Limitations to the study included its non-experimental design, a heavy reliance on children's recollections, and applicability to children ages 10 to 16 only. Preschool and younger elementary children were not surveyed.

One further finding merits serious attention. Children with more comprehensive school training also incur more injuries during sexual victimization. It is suggested that the "greater tendency to fight back during those episodes ... may have its costs as well as its benefits."

Policy recommendations from this study include the following:

- Improve the general quality of prevention programs;
- Involve parents in victimization prevention instruction;
- Research further how children thwart victimization; and
- Research about how children can avoid injury while avoiding victimization.

A copy of the report, written by David Finkelhor, Nancy Asdigian and Jennifer Dziuba-Leatherman, is available for \$5.50 from Family Research Laboratory, University of New Hampshire, 126 Horton SSCtr, Durham, NH 03824.

*Prepared by Sue Ann Meador, associate editor of School Safety.*

## The search for an effective database



Beyond the policy issues that usually dominate discussions of enhancing screening procedures for the protection of children lies a practical dilemma. How precisely should such a checking system be devised? What logistics should be installed to facilitate information sharing while maintaining some degree of non-disclosure? Who should be permitted access and under what conditions?

The practicalities of maintaining a database are easy to overlook when preoccupied by the policy debate. Costs may be prohibitive, safeguards unreliable, information may not be current, and community perceptions and concerns may extinguish the goodwill necessary to promote such a plan in the long run. Surprisingly, few logistical studies have been conducted to merge the theory of routine employee background checks with the nuts and bolts of the process.

Such a study has just been launched. On January 1, 1994, California enacted a law that may eventually require the state attorney general and the state department of justice to compile and maintain a master record of summary criminal history information of every person, including photographs and fingerprints.<sup>1</sup> While this portion of the law is not unique — all states maintain some type of database — the California law requires the attorney general to perform a feasibility study regarding automating this database, including storage and communication, on or before January 1, 1995. A report on the study to the legislature is due on or before January 1, 1996.

In passing the law, the legislature concluded that a piecemeal approach to re-

cord keeping, in which each agency or jurisdiction handles its own data, is "expensive and difficult to maintain and untimely if copies are urgently needed by other law enforcement agencies." From this rather narrow finding, the law then paints a picture for background checking that may ultimately include any agency that has a need to inquire into the history of an employee.

The database is intended to be as comprehensive as is practicable. The attorney general is authorized to input information "from any available source, and file," including military records. The law specifically directs the state to maintain a file on "all well-known and habitual criminals." In terms of access, the law sets broad parameters for data sharing. The database would be available to any agency "when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification or licensing duties."

The uses to which the information could be put are also broad. The literal impact of the provision is that any person or entity is permitted access to the database for any purpose which is legal. The law permits access to the database generally "to implement a statute or regulation that expressly refers to specific criminal conduct," and specifically to "[a]ny city or county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling *employment, certification, or licensing duties*, and if the access is specifically authorized by the city council, board of supervisors or govern-

ing board of the city, county or district if the criminal history information is required to implement a statute, ordinance or regulation." Also, the database may be used by "any four-year college or university ... in conjunction with an application for admission by a convicted felon."

The law imposes some controls on users of the database. Disclosure of record information is not permitted "other than for the purpose for which [the information] was acquired." A public utility must destroy any records information in its possession after 30 days. Violations of the law are punishable as a criminal misdemeanor. Significantly, the law gives the person injured a right of action for damages.

California's approach to the screening problem appears balanced. It is hard to see how any agency will be excluded if a feasible database can be maintained. Initially, the cost issue will have to be addressed, for such a database may prove to be expensive to maintain. But the law also gives the state the option of charging a fee for its services, so the possibility exists that the database service may, after an initial period, pay for itself.

However, unauthorized access will certainly be a potential nightmare in a plan with such broad dissemination. Administrative procedures may be so difficult to implement that the breadth of record sharing may need to be narrowed. Ultimately, the biggest challenge to the California plan for criminal history record checks will be the integrity of the data. The risk of error is high when managing such a large database. Some orderly and routine assessment of the individual records will be essential to maintain the public's confidence in the system.

The results of the feasibility study will lay to rest some of the concerns about routine background checks while it is sure to provide support for new worries.

#### Endnotes

1. 1993 Cal ALS 1270; 1993 Cal SB 947; Stats 1993 ch 1270.

*Prepared by Bernard James, special counsel for NSSC.*

## Record screening: good and bad news



"I don't know why all employers don't do it," an observer was heard to utter, noting the recent trend of some child-care providers to closely screen prospective employees to minimize the exposure of children to molesters. The statement represents the sentiments of many observers on the issue of background checks.

As private and public voices continue to turn up the volume in policy debates on record screening, it may be helpful to discuss the issue purely in terms of law to shed additional light on possible reasons for official reluctance to embrace blanket screening laws. A short list of concerns exists that justifies the deliberate, and sometimes reluctant, approach lawmakers bring to the issue. The most formidable objections arise out of constitutional concerns of due process, privacy and equal protection. This update will focus on due process.

Due process represents a two-edged sword for lawmakers. Both employees and children may invoke its protections, and laws must somehow navigate a course between the two potential challenges. In most instances, its protections are triggered only when government acts. Ironically, with regard to record screening and the knowledge it provides an employer, inaction will also sometimes produce a violation. Due process will ordinarily not reach private action, but broad screening laws may extend the reach of the right.

The concept of due process is more well-known as a restraint rather than as an incentive to government action, in effect, preventing the passage of laws that

affect the life, liberty and property of citizens. Typically, the Due Process Clause of the U.S. Constitution does not impose an affirmative duty upon government to protect its citizens. Rather, it serves as a limitation on the state's power to act.<sup>1</sup>

In this view, the government creates a violation only when it acts. This raises particular problems for officials who wish to avoid constitutional issues and the liability that often follows them. Policymakers must be concerned with the question of whether or not to implement a screening law of some type and must consider how a particular policy will impact individuals' constitutional rights as well.

When a law is passed, this action may trigger due process concerns in at least two ways. First, an applicant who is screened may challenge unfair treatment. For example, an applicant who is refused a job or an employee who is fired after a background check may rely on procedural due process grounds. That is precisely what occurred in the recent case of *Ellen Seabury Henry v. J. Troy Earhart*.<sup>2</sup> The case presented a challenge to a Rhode Island law requiring criminal record checks for all present and future employees of private nursery schools and other preschool programs.<sup>3</sup>

In *Henry*, the plaintiffs argued that they would not be given a fair chance to rebut the presumption of guilt created by the findings of the background check. The Supreme Court of Rhode Island rejected the attack, noting that the state law complied with the due process requirements: Persons accused of having criminal records that would disqualify

them would be given the right to request a hearing to rebut the assumption that they were unfit to serve children. Fair hearing procedures that include notice and an opportunity to be heard prior to the dismissal order are essential due process components of a valid screening law.

Second, due process may provide a child with an action against the child-care provider when screening does not occur as required by law or for improper action/inaction after a background is conducted. This attack is on substantive rather than procedural grounds. The victim charges deprivation of life, liberty or property as a result of molestation. This side of the due process equation is the most controversial and often difficult to reconcile, partly because governments have immunity from suit for their actions in many instances and partly because some acts of molestation occur in non-governmental facilities.

Assume a screening law is passed that provides for a hearing. Is the government guaranteeing safety? Does the law create a duty in such a way that an injured party could use the law as the basis for a liability suit?

The leading case involving nongovernmental actors is *DeShaney v. Winnebago County Department of Social Services*.<sup>4</sup> In *DeShaney*, the Supreme Court declined to impose a constitutional duty upon a state to protect the life, liberty or property of a citizen from deprivations by private actors, absent the existence of a special relationship.

The dispute in *DeShaney* arose out of the state's repeated acknowledgment of reports of abuse of a minor by his father. Despite these reports, the proper agency did nothing until the father's beating resulted in the child's permanent brain damage. The child and his mother filed a §1983 action against state officials claiming that they violated due process by failing to protect the child against a risk about which they knew or should have known. (42 U.S.C. §1983 creates a private right of action for citizens whose civil rights are violated "under color of

law." To state a cause of action under §1983 for violation of the due process clause, a person "must show that they have asserted a recognized 'liberty or property' interest within the purview of the Fourteenth Amendment, and that they were intentionally or recklessly deprived of that interest, even temporarily, under color of state law.")

The Supreme Court ruled against the child's claim, noting that a state's failure to protect an individual against private violence does not constitute a violation of the Due Process Clause. In certain limited circumstances, however, the government creates a special relationship by imposing a restraint on an individual's freedom to act on his or her own behalf, through incarceration, institutionalization, or other similar restraint of personal liberty, which is the 'deprivation of liberty' triggering the protections of the Due Process Clause.<sup>5</sup> In the instance of child molestation, the Due Process Clause would not be violated unless the harmful conduct occurred while the child was in the "custody" of the government.

"Custody" has an ominous ring in the ears of policymakers because special circumstances do exist in many child-care settings. The *DeShaney* rule still leaves open the possibility that screening laws might create the special relationship needed to trigger due process safeguards for children in public schools and agencies. One could argue that when states — through compulsory education laws — require children to attend schools, a custodial relationship is created that obligates the state to ensure the children's safety. The law rejects this argument for now.

This issue remains somewhat open, although a recent case deals with it directly. In *D.R. v. Middle Bucks Vocational Technical School*,<sup>6</sup> two female students sued to recover for injuries received after repeated sexual molestation by other students in a graphic arts classroom on campus. The court in *Middle Bucks* held that the compulsory education laws were not enough like incarceration or involuntary commitment to trig-

ger due process safeguards by imposing on school officials an affirmative duty to keep kids safe.

*Middle Bucks* only says that custody is not created by requiring children to attend school programs. But when other factors combine with the law placing a child under the control of a public or private entity, due process may be violated when molestation occurs.

For public schools and agencies, screening laws are — for due process purposes — both good news and bad news. Complying with the law produces reliable information that may require officials to take action to avoid consequences that are reasonably foreseeable. This was the result of a federal case decided in March 1994 involving the sexual assault of a student by a teacher in a public school.

The case, *Doe v. Taylor Independent School District*,<sup>7</sup> resulted in the court finding that a substantive due process right to bodily integrity was violated, when, among other things, school officials' persistent failure to take disciplinary action against a teacher created the inference that the district had ratified the conduct, thereby establishing a custom within the meaning of §1983.

In *Doe*, a high school female filed a §1983 liability action for violation of her constitutional rights when she was repeatedly sexually assaulted by a teacher who was widely known to have sexually harassed students during his six-year employment. The court ruled that school officials may be held liable for supervisory failures that result in the molestation of a schoolgirl if those failures manifest a deliberate indifference to the constitutional rights of that child:

If the Constitution protects a schoolchild against being tied to a chair or against arbitrary paddlings, then surely the Constitution protects a schoolchild from physical sexual abuse — here, sexually fondling a 15-year-old schoolgirl and statutory rape — by a public schoolteacher.

The court ruled that sovereign immu-

nity did not apply because the exception to governmental liability for actions arising out of the negligence of state employees was never intended to relieve state officials from any duty to safeguard the public from employees whom they know to be dangerous.

The subject of record screening is thus compatible with pre-existing notions of due process and helps to predict how such laws may be treated by the courts. These laws should be viewed favorably, if only for their potential to ensure the safety of children.

Screening laws represent the first step in producing information that equips child-care professionals to act. In the case of public agencies, the duty to act creates sobering responsibilities that even sovereign immunity may not insulate from liability. Moreover, the trend toward finding public agencies liable may result in a natural expansion of the law to private agencies. This may occur by expanding the notion of custody beyond incarceration and mental placements to include state-approved child-care facilities.

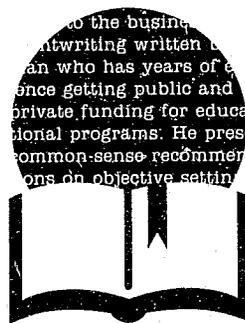
It is hard to imagine a future information highway without signs marking the way to safe classrooms and child-care facilities. The decisions we make are only as good as the information we have.

#### Endnotes

1. For a specific discussion of this point, see *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 195 (1989); *Fialkowski v. Greenwich Home for Children, Inc.*, 921 F.2d 459, 465 (3d Cir. 1990); *D.R. v. Middle Bucks Vocational Technical School*, 972 F.2d 1364 (3d cir. 1991).
2. 553 A.2d 124 (Rhode Island 1989).
3. See Rhode Island law Chapter 16-48
4. 489 U.S. 189 (1989).
5. See *Estelle v. Gamble*, 429 U.S. 97 (1976); *Youngberg v. Romeo*, 457 U.S. 307 (1982); *D.R. v. Middle Bucks Vocation Technical School*, 972 F.2d 1364 (3d Cir. 1991).
6. 972 F.2d 1364 (3d cir. 1991).
7. 1994 U.S. App. LEXIS 3846 (5th Cir. Decided March 3, 1994). See also *Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986).

Prepared by Bernard James, special counsel for NSSC.

# Protecting children: knowing what to do



The Guide To Background Investigations, 5th edition, *National Employment Screening Services*, 1992, 932 pages.

Background checks on applicants for child-serving agencies are a good idea. Once the decision is made to carefully screen applicants, however, many prospective employers may be faced with the same dilemma. Now what?

There is a wealth of information in the public domain, but personnel departments must first know who to ask and where to look. Since most public records have no national repository, locating the appropriate agency at the correct level of government may be a task too time-consuming for even the most conscientious and determined employer.

In *The Guide to Background Investigations*, different information sources are listed by state: driving records; worker's compensation records; vital statistics; teacher certification; medical licensing boards; bar associations; accountancy boards; securities commissions; incorporation records; state criminal records; and city-county cross reference guides.

The addresses and telephone numbers for each state, county and municipal agency are listed, along with the criteria by which information is disseminated from each agency.

The guide also includes a section dealing with the federal court system. It lists the 93 federal judicial districts, the districts' boundaries, and addresses for obtaining information on civil, criminal and bankruptcy cases. A further "how to" for accessing records in the federal archives is helpful.

Two small sections provide addresses for obtaining information from FAA records and Canadian driving license records. A lengthy educational records section includes notes on over 3,000 post-secondary United States institutions.

Record screening is a daunting process. *The Guide to Background Investigations* provides the means to begin.

## A good choice for inservice training

"Identifying, Reporting and Handling Disclosure of the Sexually Abused Child," a 25-minute videotape produced by the Committee for Children, 1992.

It is one thing to be aware that the law mandates that any reasonable suspicions of child sexual abuse be reported. It is quite another to know how to proceed should circumstances ever make reporting necessary. Few educators, school counselors, day care providers or even health care workers receive extensive training in this regard. "*Identifying, Reporting and Handling Disclosure of the Sexually Abused Child*" helps to answer some basic questions: How can I be sure? What do I say? What do I do?

Three vignettes portray different circumstances in which a teacher might begin to suspect child sexual abuse. The acting is of a higher quality than is common for training videos; the children are especially real and believable.

Each scenario offers an opportunity to stop the tape for discussion, allowing for

discussions facilitated by an informed group leader. However, if in-depth training is not possible, the video is still well worth the time. One vignette is depicted two ways, demonstrating positive and negative techniques for a teacher-student interview.

Both physical and behavioral indicators of abuse are specifically listed, but viewers are cautioned that many of these indicators are also signs of stress. Checking off factors on a list is not enough; assessing a child requires thoughtful attention to other changes in his or her regular school pattern as well. If unsure, a teacher is encouraged to call child protective services and ask for advice.

Children often do not report sexual abuse because of feelings of guilt, fear of reprisal or inexperience. They may disclose the information indirectly through dropping hints, asking to discuss something that is happening to "a friend," or first requesting a promise "not to tell." Even a well-intentioned, caring adult might not know how to react appropriately when confronted with such situations. These vignettes model responses to indirect approaches and model the types of behavior that encourage disclosure.

Reporting a suspicion is a difficult decision that must be made based on subjective judgment. Many child-serving professionals fear making a false report and allow those fears to inhibit their actions. The video's tone is reassuring on this point. Reporting suspected abuse does not require proof. Further, obtaining such proof is not a function of school personnel — investigation is a function of a state's child protective services. It is in discerning the "reasonable cause to believe," that large gray area, that this video provides such help.

Reporting child sexual abuse is a legal responsibility that all educators must face. This production supplies an excellent overview and appropriate guidelines for child-serving professionals who need orientation in this sensitive area.

*Prepared by Sue Ann Meador, associate editor of School Safety.*

# NSSC Documentaries

## School Crisis: Under Control



"Imagine a gunman invading your school. Or terrorists planting a bomb. Or a classroom of students held hostage. These situations may seem unreal — even impossible. ... Every school — urban, rural or suburban — is vulnerable. When will a crisis strike your school? And will you be ready?"

These words, spoken by acclaimed actor Edward James Olmos, combine with news footage of actual school crisis events to provide an eye-opening introduction to "School Crisis: Under

Control," a 25-minute, award-winning documentary on school crisis prevention, preparation, management and resolution. This informative videotape is designed to help schools and communities prepare for the unexpected by designing crisis prevention and response plans. These plans will improve the community's ability to overcome such disasters and also will help schools avoid potential liability.

## High-Risk Youth At the Crossroads



"Feeling good about yourself can't be bought on a street corner. It must be built from within. But there are dangers you should know about. Those pressures we call 'risk factors. ...'"

This powerful message to America's troubled children is presented in "High-Risk Youth/At The Crossroads," a 22-minute, award-winning documentary on youth drug abuse prevention hosted by actor LeVar Burton.

By combining real-life profiles and commentary from nationally renowned authorities, the documentary provides a compelling case to look beyond current drug abuse intervention strategies exemplified by the "Just Say No" campaign. Researchers have identified individual, family, peer, community and school-related problems that make kids more prone to use illegal drugs. The focus on positive response suggests that the most promising approach to "high-risk youth" and drug abuse is one of *prevention*, not simply *intervention*. This important theme is reinforced throughout the fast-paced program.

## SET STRAIGHT ON Bullies



Whoever thought bullies were all talk and no action needs to view the film "Set Straight on Bullies," produced to help school administrators educate faculty, parents and students about the severity of the schoolyard bullying problem. The message is clear: Bullying hurts everyone.

The 18-minute, Emmy-winning educational film tells the story of a bullying victim and how the problem adversely affects his life as well as the lives of the bully, other students, parents and educators.

"I'm always scared. I'm scared to come to school. ... I don't want to be afraid anymore," the bullying victim says. In fact, NSSC based the film on research indicating one in seven students is either a bully or a victim of bullying.



*"What's wrong with this picture?"*

Principals play pivotal roles in keeping their schools safe and effective places of learning. But, without the support of parents, teachers, law enforcers and other legal, government and community resources, they cannot fulfill their responsibility.

A recipient of eight national and International awards of excellence, "What's Wrong With This Picture?" is designed to encourage dialogue between school principals and their community resources. It presents the critical issue of school safety in a frank and

straightforward way, dramatizing real-life incidents of school-related crime and violence, drug abuse and suicide.

## NSSC Documentaries Order Form

Name \_\_\_\_\_  
 Title \_\_\_\_\_  
 Affiliation \_\_\_\_\_  
 Address \_\_\_\_\_  
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"High-Risk Youth/At the Crossroads"  
 (\$50 VHS) \_\_\_\_\_ copies

"What's Wrong With This Picture?"  
 (\$40 VHS) \_\_\_\_\_ copies

"Set Straight on Bullies"  
 (\$50 VHS) \_\_\_\_\_ copies

"School Crisis: Under Control"  
 (\$65 VHS) \_\_\_\_\_ copies

Charges cover postage and handling, and are subject to change without prior notification. Check must accompany order.

Mall to: NSSC, 4165 Thousand Oaks Blvd., Ste. 290, Westlake Village, CA 91362

# School Safety News Service

Publishing on your behalf to advocate changes that will positively affect schools nationwide, the **School Safety News Service** is the definitive and most comprehensive source for school crime and violence prevention planning available.

Subscribers receive monthly updates on the most critical issues facing our nation's schools. News updates from around the country provide insight, strategies and information on model programs related to drugs, gangs, weapons, discipline, schoolyard bullying and other concerns vital to the safety of all schoolchildren. Thought-provoking commentary from prominent

experts complement the news reports.

The **School Safety News Service** includes three issues of the 36-page *School Safety* newsjournal, published in the fall, winter and spring, and six issues of the eight-page *School Safety Update*, published in the remaining months of the school year — September, November, December, February, March and April. Annual subscription is \$59. (\$69 outside of the United States)

For more information or to subscribe to the **School Safety News Service**, write: NSSC, 4165 Thousand Oaks Blvd., Suite 290, Westlake Village, CA 91362. **Check must accompany order.**

