

# Ignore background checks at your own risk

By David Middlebrook and Robert W. Rucker

Every church depends upon volunteers, as well as its paid staff, to implement its programs and offer services to the congregants. Today the importance of having a credible background check for all volunteers and employees attempts to create some level of protection for the church and its members. In recent months, several of our church clients have been involved in updating those procedures, and their experiences provide some pointers for others.

Several of the larger insurance companies that specialize in offering liability protection to churches are now insisting that a church generally adopt and follow certain procedures regarding staff and volunteers before they will offer or renew liability policies. Most of these policies, relating to the interaction of the staff and volunteers with youth and children who come to the church, have been labeled as “abuse” policies.

Even as the potential for abuse has been given more attention, it continues to occur. When it does, or is even alleged in a credible manner, the monetary awards can be quite sizable. Insurance companies do not want to pay large claims and are thus insisting that their insured church clients have taken steps to minimize, if not eliminate, the possibility of such claims.

## Meanings of abuse

“Abuse” can be physical or sexual, but under most jurisdictions’ laws, it can also include verbal and emotional abuse, as well as neglect. Obviously, we are not speaking of the mother who scolds her children for eating too many doughnuts in the fellowship hall or café before services. We are talking about using common sense and looking for more suspicious situations.

One common element insurance companies are asking for is not to allow persons to volunteer unless they have been members of the church or had some strong involvement with it for a period of time, at least six months, if not a year or more. Staff should have job descriptions that indicate whether or not the volunteer should have any involvement with children. Their job descriptions should also describe whether or not they should be involved in church finances or money. Any staff that routinely deals with youth or children would be subject to the same investigation as with volunteers.

## Drug or alcohol violations

Some churches believe that drug and alcohol addiction is a common problem and that excluding people who have had that problem is too restrictive. In that case, a church should consider asking that such drug and alcohol crimes not be an automatic exclusion, but that the prospective volunteers’ unique circumstances be investigated. In particular, a church would want evidence that the person in question is no longer suffering from that problem and that a reasonable number of years have gone by without a problem since the initial crime.

A church should not take the prospective volunteer’s word for what happened, but consider seeking old arrest reports or court records — most of which should be a matter of public record — proof of attendance in a rehabilitation program, or any other available document.

Obviously, if abuse is suspected, the church should have a policy as to how it is reported and investigated. This includes removing any accused worker from the location or circumstance where the abuse is alleged to have occurred. Remember, in most if not all jurisdictions nowadays, church personnel are required to report child abuse if they have reason to know or reasonably suspect its occurrence. Church policy usually means reporting to a designated church official and to law enforcement. Also remember that the abuse does not have to have occurred on church property. It must be reported regardless of where it occurred.

The insurance policies are also calling for a yearly national criminal background check for all volunteers and employees. In our transient society, someone who is not originally from the area surrounding your church may have an extensive criminal record where they originated from, yet have no record in a typical local or state-wide check.

## Is a state check enough?

Some churches feel that due to their large number of workers, a nationwide check is prohibitive in time and cost. They are asking the insurance company to say that a nationwide test may be done at church discretion, that a state check is sufficient, and that a yearly check is not required. Some companies are allowing this approach.



However, the extra cost involved in a nationwide search provides liability protection that a church should really strive to obtain. One response is to ask the volunteer to donate the amount of the cost of the search to the church.

In June 2005, an administrative rule to the federal Fair and Accurate Credit Transactions Act was enacted dealing with keeping and destroying consumer credit information. This new "Disposal Rule" holds that any person who maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose must properly dispose of that information.

This law was enacted to combat the growing problem of identity theft. This rule applies to the church when it is acting as an employer, and probably applies when it otherwise uses credit reports for any purpose such as evaluating potential volunteers.

Whether or not a criminal background check qualifies as a credit report may depend upon what other information is obtained with it and how the records were obtained. Unlike consumer credit information, most criminal records are ultimately public record. However, the definition of "credit report" includes inquiries designed to learn about the person's character and general reputation.

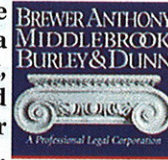
Your church should treat all information it obtains as being in this category and create a procedure to obtain the information, make use of it, and destroy it in a reasonable and timely manner.

In its remarks on implementation of the Disposal Rule, the Federal Trade Commission said that for a small business, shredding or burning paper records and electronically "wiping" computer records should comply with the requirement.

Another way to comply with the law as described by the FTC would be to smash computer storage devices with a hammer. There is no one single method, but only what is "reasonable" depending upon your circumstances and resources.

All reasonable church administrators, therefore, will want to keep a hammer in their desk at all times.

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