

The National Child Protection Act and The Volunteers for Children Act

Should We Obtain Criminal Background Checks on Our Employees and Volunteer Workers?

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Introduction

One issue that can be overlooked in a Christian school is whether the school should obtain criminal background checks on employees and volunteer workers. In fact, most of us simply assume that a child molester would never want to work in a Christian school - "especially not ours!"

Unfortunately, new lawsuits appear on a regular basis involving schools and churches that are being sued over child molestation incidents attributed to employees or volunteers. These lawsuits often accuse the ministry of "negligent selection" or "negligent hiring," in part because a ministry failed to properly screen an employee or volunteer worker. The plaintiffs often contend that one component of the screening process should have been a criminal background check.

Two federal laws that relate to nationwide criminal background checks are the National Child Protection Act and the Volunteers for Children Act. The National Child Protection Act was enacted in 1993, and it was intended to give schools, day care facilities, and other youth-serving organizations access to a nationwide fingerprint criminal database. Nevertheless, because of technical flaws in this legislation, the National Child Protection Act never achieved its intended purpose.

Recently, Congress passed the Volunteers for Children Act. This new legislation was designed to correct certain flaws in the National Child Protection Act, and to provide broader access to a nationwide criminal database. Although the Volunteers for Children Act was passed mainly for the purpose of correcting a flaw dealing with "volunteer organizations," its passage has renewed the discussion over whether Christian schools are required to obtain criminal background checks for their employees and volunteer workers.

In this Legal Report, we will attempt to answer some of the questions relating to the National Child Protection Act and the Volunteers for Children Act. In particular, this Report will consider the impact of this federal legislation on Christian schools, and the manner in which these two federal statutes work with your own state's laws. In addition, this Report will offer practical suggestions on how to obtain nationwide criminal background checks on employees and volunteer workers.

Discussion

The National Child Protection Act

As noted above, one purpose of the National Child Protection Act ("NCPA") was to create a nationwide database system on convicted criminals. As part of this process, states were required to submit child abuse crime information to the national criminal history background system maintained by the FBI. This database could then be used by schools, day care facilities, and other youth-serving organizations to screen potential employees and volunteer workers. The idea was that a nationwide criminal database would help schools and other organizations avoid hiring individuals who had been convicted of child abuse or similar criminal charges.

Although the NCPA attempted to establish a nationwide database on convicted criminals, it placed the burden on individual states to enact legislation that would address which "qualified entities" were required to obtain background checks on their employees and volunteer workers. In this regard, the NCPA stated as follows:
A state may have in effect procedures (established by state statute or regulation) that require qualified entities designated by the state to contact an authorized agency of the state to request a nationwide background check....

Two important factors should be noted concerning this language:

1. Whether a school or day care facility was required to obtain a criminal background check was left to the discretion of the individual states i.e., "a state may have in effect procedures";
2. The states were allowed to define what organizations would be "qualified entities" within the meaning of the NCPA.

Question #1: Is our school required to obtain a background check on employees and volunteer workers?

Of course, this is the big question. Unfortunately, because the NCPA placed the burden on individual states to pass implementing legislation and to define "qualified entities," the answer to this question varies from state to state. In addition, and as noted above, not all states have adopted implementing legislation.

Given the fact that some states have not responded to the provisions of the NCPA, and given the fact that, even in those states where implementing legislation has been passed the language of the statutes varies widely, we suggest that each member school determine whether your state has passed legislation requiring the school to obtain nationwide criminal background checks on your employees and volunteer workers. This can be done (hopefully) by contacting a state legislator, the state attorney general's office, the governor's office, or other youth-serving organizations in your state. When investigating this issue, make sure that the individual who answers your question knows that you have a church school that is operating under the umbrella of a church ministry (if applicable). This is important because schools operating under the umbrella of a church ministry may not be defined as "qualified entities" under the state's implementing legislation.

Question #2: Assuming our school is required to obtain background checks on employees and volunteer workers, can we be liable if we fail to do so?

The scenario goes like this. Independent Baptist School ("IBS") allows a musician with the local symphony to come to the school on a volunteer basis and work with the choir as they prepare to perform Handel's Messiah. Although IBS is a "qualified entity" under the state's implementing legislation - and therefore, required to perform a background check on volunteer workers - no background check is performed on this musician. One day after a performance, the musician molests a 13-year old freshman boy in the music room. Is the school liable under the NCPA for failing to perform a background check on the volunteer musician?

In connection with this issue, the NCPA provides as follows:
[A school] shall not be liable in an action for damages solely for failure to conduct a criminal background check on an [employee or volunteer worker].

Please note, however, that although a school cannot be sued under the NCPA solely on the grounds that it failed to conduct a criminal background check on an employee or volunteer worker, this language does not insulate a school from all liability. For example, in the scenario above, IBS could be sued on other grounds such as "negligent selection" of a volunteer worker. In such a suit, the plaintiff might try to show that IBS failed to perform a background check on the volunteer musician, although this fact alone should not subject the school to liability.

On the other hand, had this incident of molestation occurred even though the school did perform the required background check, IBS would be less likely to be found liable on a claim of negligent selection. While the background check did not reveal the problem, the simple fact of complying with the law would greatly assist the school in any civil action brought by the parents of the child.

The Volunteers for Children Act

The Volunteers for Children Act ("VCA") was passed so that "qualified entities" could have access to the nationwide criminal records database, even if the entity's state had not passed implementing legislation requiring that background checks be performed. (Under the NCPA, certain youth-serving organizations were not allowed access to the FBI database unless the state where the organization was located had passed legislation authorizing such access.) One purpose of the VCA was to give more schools, day care facilities, and youth-serving organizations the opportunity to take advantage of the nationwide criminal history database.

The main groups that will benefit from the passage of the VCA are volunteer organizations such as the Boys and Girls Clubs of America. Many of these groups did not have access to the nationwide database under the NCPA, but the VCA authorizes such access regardless of whether implementing legislation has been enacted by a certain state.

Obtaining nationwide criminal background checks

Here are some practical considerations to keep in mind if your ministry chooses (or is required) to obtain criminal background checks on employees and volunteers:

- If your school or day care facility is a "qualified entity" as defined by state law, then you may be required to obtain nationwide criminal background checks on those individuals who work with children in your ministry;
- The FBI database is a nationwide fingerprint-based system; a fingerprint-based system is an effective way to identify convicted child abusers, even if these individuals have changed their names or social security numbers, or have moved from one state to another;
- The nationwide database will identify only those individuals who have been convicted of an offense; for that reason, it cannot screen individual molesters who have not yet been caught;
- Obtaining a nationwide background check requires 10 sets of fingerprints per applicant, and currently, it can take weeks to process; in addition, FBI background checks are expensive, costing approximately \$25.00 per applicant;
- Obtaining a criminal background check should reduce a school's risk of liability for claims of negligent selection or negligent hiring;
- Even if your school is required to obtain nationwide criminal records checks, you should always implement other screening procedures, such as screening/application forms, interviews, and reference checks; **these additional screening procedures are especially crucial if your school is not required to obtain nationwide background checks on employees and volunteer workers.**

Conclusion

The National Child Protection Act and the Volunteers for Children Act are federal statutes that attempt to provide access to a nationwide criminal records database. This database was established so that schools, day care facilities, and other youth-serving organizations could learn whether a prospective employee or volunteer worker has a history of criminal activity.

These two federal laws are to be implemented in large part by state legislation. For this reason, your ministry should consult local or state authorities to determine how the implementing legislation, if any exists, will impact your church, school, or day care facility.

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