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Reducing the Risk of Kidnapping

by Richard R. Hammar

The kidnapping of a child from church premises is a risk that is seldom considered by parents and church leaders. After all, who would commit so brazen a crime in a church? But this very indifference not only increases the risk of such acts, but also exposes churches to significant liability in the event such an act does occur.

A recent decision by the Alabama Supreme Court addressed the liability of a church-operated child care program for the kidnapping of a baby girl. The court concluded that the child care center could be sued by the baby's parents, even though the baby was found and returned to them. Church leaders (and any staff member who works with children) should review this article (below).

Facts

A young couple enrolled their one-month-old daughter (the "victim") in a church-operated child care center. The center's administrator provided the parents with a document entitled "Operating Policies." This document contained rules and

procedures to be followed by the center as well as by parents or guardians of enrolled children. It provided, among other things, that:

(1) The [center] provides a healthy, safe, and Christian environment that promotes the physical, social, emotional, cognitive, and spiritual development



of young children, and seeks to respond to the needs of families.

(2) All staff members are selected on the basis of experience in working with young children, educational background, emotional stability, as well as care and concern for the well-being of the child. All participate in a continuous program of in-ser-

vice education and studies for professional advancement to remain alert to the ever-changing needs of today's children and families, and to the findings of current research.

(3) Children will be released only to properly identified persons who have been listed in the "child release" section of the Parent-Agreement Form. We must have written authorization for changes in this respect. In unusual circumstances, we will accept verbal (phone) authorization to release a child to an individual not listed in writing. It must be followed up in writing if the child is to be released to that person on an ongoing basis. We will ask for identification of individuals we do not know. It would be helpful if you would arrange for the persons to pick up your child to visit the school with you so the staff may become acquainted with them. We will not release a child to the care of anyone under 14 years old.

In addition to a number of adults, the center employed a 14-year-old girl and her 17-year-old sister to assist in the care of the children. These girls were foster children who had lived

with the center's administrator for a few months. The center also allowed another sister, who was 12 years old, to assist from time to time, although she was not paid for doing so. This sister was not one of the administrator's foster children.

When the victim was three months old, and under the center's care and supervision, she was kidnapped by the three sisters. At the time of the kidnapping, there was no qualified adult teacher—other

than perhaps the administrator herself—directly supervising the sisters. The administrator later testified that the other teachers had “gone for the day” and that she thought one of the sisters had intentionally distracted her while the other two slipped the baby out the front door undetected. The evidence suggested that the 17-year-old sister was preoccupied with the notion of having her own baby, even to the point of misleading the administrator into thinking that she was

pregnant, and she devised the plot to kidnap the victim.

The local police and FBI investigated the incident, found the baby, and reunited her with her parents. The parents experienced severe shock as a result of the kidnapping, and later sued the center. They claimed the center was legally responsible for the kidnapping on the basis of a number of legal theories, including breach of contract.

Questions for Further Study—

1. What safeguards does your church/childcare center have in place that may need to be revised?

2. Do you have a policy and procedure manual for your children's programs? If so, is it up-to-date? If not, write down the names of people whom you would like to see on a committee to create one. Then take steps to bring these people together and get started.

3. If your church has a policy and procedures manual for childcare, are the safeguards enforced? If not, why not? What steps can be taken to improve in this area?

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The Court's Ruling

The parents asserted they entered into a contract with the center when they enrolled their daughter in the program and paid the weekly fee of \$55. In return, the center agreed to be entrusted with the care and custody of their baby. The parents claimed the center breached this contract by the following acts and omissions:

(1) failing to properly supervise its employees and agents,

(2) allowing the baby to get into the hands of “underaged, unqualified, and incompetent persons,”

(3) allowing people to have unauthorized access to the day care,

(4) employing unqualified people at the day care and allowing unqualified people to do the business of the day care,

(5) failing to have a sufficient number of qualified persons on staff at all times to care for the babies and minor children entrusted to their care.

The court agreed.

The evidence indicates that the center expressly contracted with the parents to care for their daughter on a daily basis for a certain sum per week. The docu-

ment entitled “Operating Policies” was provided to the parents and was intended by the center to become a part of the contract. It specifically obligated the center: (1) to release the child only to a properly authorized and identified person; (2) to employ only persons qualified (in accordance with the state’s mini-



mum standards) to care for the child; (3) and to keep the child safe while she was under its care and supervision. The evidence indicates that unqualified and unauthorized persons (the sisters) removed the child from the center’s premises. The evidence also indicates that a qualified teacher or child care provider was not directly supervising the child at the time of her kidnap-

ping. The basic elements of a contract are an offer and an acceptance, consideration, and mutual assent to the essential terms of the agreement. We conclude that the parents presented sufficient evidence of these basic elements to submit to a jury their claim alleging the breach of an express contract.

Relevance to Other Churches

This case represents an extended discussion of the liability of church-operated day care centers for the kidnapping of young children, and deserves serious study by church leaders in every state. Perhaps the most significant aspect of the court’s ruling was its conclusion that the center could be legally responsible for the kidnapping on the basis of a breach of contract. The parents had signed a brief enrollment form containing very little information and no policies or procedures. However, the center also provided the parents with a separate document entitled “Operating Procedures.” This document was not referred to in the enrollment form, was not signed by the parents, and

did not indicate that it was a contractual document. Nevertheless, the court concluded that the “Operating Procedures” document formed a part of the “contract” between the parents and the center.

The “Operating Procedures” document contained the following provisions: (1) “the center provides a healthy, safe, and Christian environment that promotes the physical, social, emotional, cognitive, and spiritual development of young children”; (2) “all staff members are selected on the basis of experience

in working with young children, educational background, emotional stability, as well as care and concern for the well-being of the child”; and (3) “children will be released only to properly identified persons who have been listed in the ‘child release’ section of the Parent-Agreement Form.”

Since these assurances were contained in a document that the court considered to be part of a “contract” between parents and the center, the center was guilty of “breach of contract” if it violated any of them. The

parents claimed the center breached this contract in numerous ways—and the court agreed—as noted above.

Key Point

Does your church operate a child care program? If so, you should recognize that any policies or operating procedures you adopt may be considered to be part of a “contract” with parents. This exposes your church to liability for breach of contract in the event you violate any of these policies or procedures.

Questions for Further Study—

1. What are the risks and benefits to having a written contract with parents of the children under your care?

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Reduce the Risk of Kidnapping

What steps can a church take to reduce the risk of kidnapping and the risk of liability in the event that an incident of kidnapping occurs? Consider the following precautions:

Day Care Centers

Comply with applicable state requirements

If your church operates a day care program, be sure you are in compliance with all applicable state requirements. Church day care centers are required to be licensed in many states. But even if your center is not required to be licensed, some state regulations may apply.

Additional precautions

See the additional precautions for church nurseries that are summarized below.

Nurseries

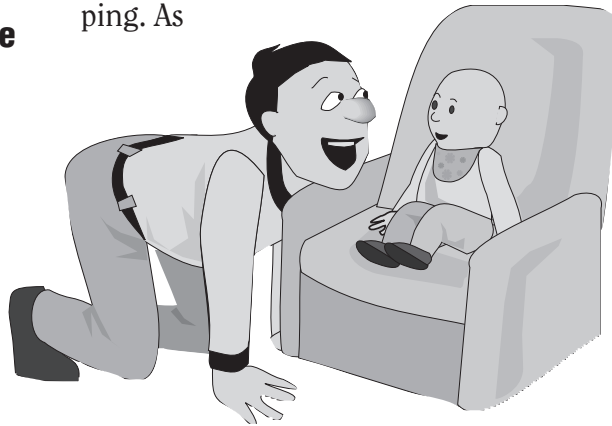
Screening workers

While screening workers may not reduce the risk of kidnapping, it will reduce a

church's risk of liability in the event an incident of kidnapping occurs. Screening ordinarily will include an application form and reference checks.

Check-in procedures

A number of churches have implemented a check-in procedure to reduce the risk of kidnapping. As



children are checked in at the nursery, a small piece of plastic with a randomly selected number is pinned to their clothing. Another piece of plastic with the same number is given to the adult who brought the child. The adult is informed that the child will be returned only to a person presenting the correct number.

Example #1: A mother brings her infant child to the church nursery before a morning worship service. During the service, an adult male comes to the nursery and asks a teenage nursery attendant for the same child. The attendant is reluctant, because she had never seen the man before. He assures her that he is an “uncle” visiting from out-of-town. The attendant is satisfied with this explanation and gives the child to the man. Following the morning service the mother goes to the nursery and is shocked to learn that her child is not there. It is later determined that the “uncle” in fact was a former husband who was seeking custody of the child.

Example #2: A mother brings her infant child to the church nursery before a morning worship service. An attendant pins a plastic number on the child and gives the mother an identical plastic number. The attendant informs the mother that the child will be returned only to a person presenting

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Key Point

It is often helpful to contact other institutions for assistance with staffing ratios. For example, some churches base their adult-to-child ratio in the nursery to what the state requires of licensed day-care facilities. You may also contact the Red Cross, Salvation Army, or similar organizations. The point is this—if you can demonstrate that you based your adult-to-child ratio on the established practices of other similar organizations in your community, this will be a strong defense in the event you are accused of liability for an incident of kidnapping (or any injury to a child) on the basis of “negligent supervision.”

Off-site activities

Be especially careful of off-site activities such as field trips. These outings can be difficult to control. It is essential that an adequate number of adults are present. While on the trip, precautionary measures must be implemented to assure adequate supervision of the group. For example, some churches group children in pairs, always keep the entire group together, and have frequent “roll calls.” Once again, you can call other com-

munity-based organizations for guidance.

Be sure policies are being followed

As this case demonstrates, it is absolutely essential to familiarize nursery workers with relevant policies, and to be sure these policies are followed. At a minimum, this should be part of an orientation process for all



new nursery workers (both paid and volunteer). Periodic training sessions are also desirable to reinforce nursery policies.

Legal review of all policies, contracts, and enrollment forms

It is a good practice to have your nursery policies, contracts,

and enrollment forms reviewed periodically by a local attorney. Such a review will ensure your policies are current and accurate, and in compliance with the law. The church-operated day care center in this case was found liable for the incident of kidnapping in part because it failed to update its official policies.

Two-adult rule

Churches can reduce the risk of an incident of kidnapping by establishing a “two adult” rule in the nursery. Such a rule mandates that no child shall ever be in the presence of fewer than two adults. Not only does such a policy reduce the risk of an incident of kidnapping, but it also protects workers from being unjustly accused of child molestation.

Video

Some churches are incorporating video technology into their nurseries. Such a practice has a number of potential benefits, including the following: (1) it reduces the risk of kidnapping, since the video camera will serve as a powerful deterrent; (2) it reduces the risk of other inappropriate behavior; (3) it provides irrefutable evidence of

innocence if a nursery worker is falsely accused of wrongdoing; (4) it may identify a kidnapper.

Restroom breaks

Church restrooms present a unique risk of kidnapping for both infants and older children. They are frequented by children, they are easily accessible, they often are in remote locations, or are not adequately supervised. Church leaders should take steps to reduce this risk. Here are some ways that this risk can be reduced:

(1) If possible, restrict restroom breaks to restrooms that have limited access to other adults.

(2) Have two adults accompany children in groups to the restroom whenever possible.

(3) Do not allow a lone adult to take one or more children to the restroom.

(4) Consider installation of “half doors” that will permit adults to have partial vision into restrooms used by young children.

(5) Do not allow young children to use the restroom without adult supervision.

(6) Install video cameras in prominent locations to discourage kidnapping and provide evidence identifying the perpetrator in the event an incident does occur.

Architecture

Unauthorized access to nursery areas by outsiders should be discouraged or prevented by the physical layout. Many churches accomplish this with counters staffed by an adult worker or attendant.

Richard R. Hammar, J.D., LL.M., CPA, serves as legal counsel to The General Council of the Assemblies of God. A graduate of Harvard Law School, he is the author of over 30 books on legal and tax issues for churches and pastors. This article is excerpted from Church Law & Tax Report, copyright 1998.

Questions for Further Study—

1. Regarding field trips, what precautions should be established to safeguard children and workers?

2. How can restrooms pose a threat to the children and to the church as a whole?