

2022 District Council
Legal Updates and Reminders

Three things to know:

- **New CA law requiring screening and training**
- **Reminder about vetting staff pastors**
- **Reminder about facility use agreements**

New CA law for Screening and Training. CA State Law BPC §1110.5 (AB-506)

Summary: The law requires volunteers and employees of “youth organizations” to be screened via LiveScan, to undergo mandatory reporter training, and to adopt “two reporter rule” for activities.

First, let’s remember why the state has passed this law—it is due to the widespread failure of youth organizations (including churches) to protect children. In many cases the organization worked harder to protect the offender rather than the victims. We applaud the state for its objective.

However, the law was passed and implemented quickly, and there was little warning to organizations, and little opportunity for the state agency to prepare guidelines or to prepare itself for the influx of applications. So, we attempt to comply, despite many questions and inevitable frustrations.

1) Requires

1. Live Scan for all mandatory reporters (the law doesn’t mention the name “LiveScan,” it mentions the Department of Justice. LiveScan is what the DOJ does.)
2. Training for all mandatory reporters
3. Two mandatory reporters present whenever minors activities
4. Retention of records

2) Applies to

1. Clergy
2. Employees of a “youth organization”
3. Volunteers that have contact with minors 16hr/month 32hr/year

Note: Board members of “youth organizations” are considered mandatory reporters but were not included in the scan and training requirements.

3) What churches should do:

1. CA Churches will need to transition to Live Scan. If they were using a different system, they will have to start over.

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2. Live Scan requires a church to apply for an ORI (organizational identifier) and to name a “custodian of records.” The application is involved and requires some documentation. Be warned: It’s not an easy process, and the state is backed up. But churches should get started ASAP to avoid the greater deluge that they will soon experience. To start, go to <https://oag.ca.gov/fingerprints/agencies>
3. Meanwhile, churches should get started with the training. Fortunately, the training is transferrable, so if an individual volunteers with more than one organization, they only need to do the training once.
 - i) The State provides training, and it’s free. It can range from 2 hours to 5 hours, depending on which training you take.
 - ii) We are negotiating a discount with a Christian organization. It costs more, but it’s shorter, and it’s sponsored by a Christian company.
4. The church will need to establish a records system to verify and record that the necessary individuals have completed the LiveScan and the training. The system should call for regular and routine self-audits, to make sure that all necessary individuals are compliant.
5. There are lots of questions that remain unanswered. And there is going to be some frustration with it. The state rolled this out without any ramp up. In time, they will, hopefully, answer the questions and streamline the process.
6. Meanwhile, I want to urge you to keep the objective in mind—this law is designed to protect children. We need to stay on the right side of this issue. Jesus always stayed on the side of the children, we need to also.

Resources:

The CA Law

New Law:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=18975.&lawCode=BPC

Who is considered a Mandatory Reporter:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11165.7.&lawCode=PEN

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New law mandating Live Scan:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11105.3.&lawCode=PEN

To use Live Scan, you'll need to

1. Get an ORI (Organizational Identifier) number. (The application process is cumbersome.)
<https://oag.ca.gov/fingerprints/agencies>
2. Identify a "Custodian of Records" to review and manage the results (via an online portal.) The Custodian of Records will need to be Live Scanned before the state will approve them.)
3. Give the ORI to volunteers and they can get scanned at any Live Scan location (they'll give the number to the attendant).
4. Provide the volunteer with Form 8016
https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/BCIA_8016.pdf?

Free Mandatory Reporter Training provided by state

<https://mandatedreporterca.com/>

General Information:

State forms and information <https://oag.ca.gov/fingerprints/forms>

An insurance companies have compiled some FAQs

www.churchwest.com/ab506

<https://ccia.com/ab506/>

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Vetting Staff Pastors

Church bylaws usually require that staff pastors have 1) a ministerial credential with the AG, 2) are seeking ministerial credentials with the AG, 3) have a local church commission, or 4) have a credential from another Pentecostal organization. Bylaws also require that such positions be officially ratified by the church board.

We've noticed that many churches are not adhering to their own bylaws, which exposes the church in numerous possible ways:

- i) Doctrine
 - ii) Values
 - iii) Commitment to our fellowship
 - iv) Indefensible legal liability
- 2) Why legal liability?
- a) The Bible requires the church to vet people before recognizing them as leaders. *"Do not lay hands on anyone hastily, lest you share in their sins; keep yourself pure."* 1Ti 5:22
 - b) Society expects that the church is vetting leaders and is standing behind them.
 - c) So, when a church calls someone "Pastor" or gives the public a reason to believe that they are a Pastor, the church is Biblically and Legally responsible for their actions. Society takes that title seriously. When we convey that title to people, we become responsible for their behavior.
- 3) Examples
- a) We learned that one pastor drinks, smokes, and gambles (in public) and wrote us that our standards on these matters were wrong.
 - b) We learned that one pastor was not married to "the pastor's wife" but is married to another woman.
 - c) One church was sued because they called a person "pastor," and that person was negligent and caused an accident that killed someone. The church was responsible for that persons negligence because they called him "Pastor."
 - d) In each of these situations, the pastor seemed qualified, but the church was fooled. That is why Paul tells us to vet leaders before we lay hands on them. And we disobey scripture when we fail to follow this command. The point is that we have become too casual with the term, "Pastor" and we have conferred that title to people that are not vetted.
- 4) What should churches do?

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- a) Follow the bylaws.
- b) Vet all pastors.
 - i) Require that they have credentials. AG or someone else.
 - ii) Otherwise, do your own vetting
 - (1) Background check
 - (2) References
 - (3) Doctrine agreement
 - (4) Code of Conduct Covenant
- c) Official appointment
 - i) Appointment recorded in the minutes
 - ii) Job Description

Resources

Education for Ministry Credentials

The following schools have offered special scholarships to NCN students:

Pathway—on-line and anytime training.

<https://pathway.training/>

SUM Bible College and Seminary— online or on-campus

<https://www.sum.edu/>

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Outside groups using your church.

There are many challenges that arise when the church rents to other organizations:

- Building usage issues
- Insurance issues
- Property tax issues
- Liability issues regarding incidents that occur onsite
- Liability issues that occur offsite

Let me explain this last point: If there is insufficient distinction between the host and the tenant, it may be assumed that the tenant is not independent from the host, and the host might be liable for the tenant's activities offsite, as it would for any church leader.

Recently, one church allowed a local minister to use the building for bible studies. The church had no written agreement, it did not charge him rent, the church called him "pastor," and the church advertised his bible studies. When the minister negligently caused someone harm, the church was sued on the basis that he was a pastor of the church.

If you are allowing outside groups to use your facility

- i) Verify their legal status
 - (1) For profit? (could jeopardize property taxes)
 - (2) Non-profit? (recommended)
 - (3) Civic/community group? (could trigger public accommodation issues.)
- ii) Require a written usage agreement
- iii) Require certificate of insurance, naming the church as additionally insured
- iv) Do not advertise their activities unless it is clearly stated "This event is sponsored by XYZ and is not a church event." (Or something to that effect.)