

Sexual Abuse Risk and Record Retention

Changes in Statutes of Limitations: Another Reason to Preserve Records

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'Keep records for 7 years' is no longer sound advice for child-serving programs.

Legal Trend: states are expanding or lifting civil statutes of limitation.

Records help establish that reasonable prevention protocols were followed.

As long as a claim is possible, child-serving organizations should retain records.

Record Retention and Child Safety

Every child-serving organization is responsible for the protection of children in its care. To discharge that responsibility, the organization should take reasonable steps to create an effective safety system that prevents child sexual abuse. These steps should include effective training, responsible screening practices (including an appropriate criminal background check), tailored policies and procedures, sufficient supervision and ongoing monitoring and oversight of child protection efforts. ***These steps protect children, and this is the primary purpose for taking them.***

After taking these steps, it is important to be able to later demonstrate to third parties that child safety protocols were *in place* and *being followed*. Take the worst-case scenario: an allegation of sexual misconduct involving a child. When that allegation arises, it will be important to demonstrate to third parties that effective child safety protocols were in place *at the time of the alleged incident*; third parties may include licensing bodies, internal reviewers, media, or those involved in the civil litigation process (expert witnesses and jurors).

In civil litigation, evidence of child safety efforts becomes vital, because the *standard of care* to which child-serving organizations are held requires *reasonable* efforts to safeguard children. An organization that fails to meet this standard has failed to take *reasonable steps* to properly train, screen, provide and enforce effective policies, or properly supervise. It is critical that each organization retain the necessary records to establish the existence of reasonable safety system elements for the period of time related to the allegation. In child sexual abuse matters, the allegation may come next month or 20+ years from now.

Many employment and human resource consultants advise organizations to keep records for seven (7) years. Child sexual abuse claims, however, are commonly filed more than

seven years beyond the generation of the record. Because state legislatures are expanding civil statutes of limitations, the record retention period should also expand.

Statutes of Limitations – Child Sexual Abuse

Statutes of limitations are laws passed to set the maximum time after an event within which legal proceedings must be initiated. When the person injured is a minor, the time period is normally tolled, the clock ‘stops ticking’, until the injured minor reaches majority (18 years of age) – then the prescribed time period begins to run.

In most circumstances resulting in an injury, a two-year period of time within which to bring a claim is reasonable – the lawsuit must be filed within two years of the incident or within two years of a minor reaching majority. In the instance of child sexual abuse, however, short statutes of limitations commonly exclude victims from the civil justice system.

To understand this reality, one must understand the basic dynamics of the abuser’s ‘grooming process’, and the emotional and psychological impact of sexual abuse on the victim. Though each child is unique, research consistently indicates that the majority of abuse victims are not prepared or able to talk about the abuse they have suffered shortly after reaching majority. In short, sexual abuse victims simply need more time to bring a claim.

Legislatures have been addressing this injustice by passing legislation extending statutes of limitations, thereby giving abuse survivors more time to have their ‘day in court’.

Connecticut, for example, has a ‘30 Year Statute’; a sexual abuse victim must file a lawsuit within thirty years of reaching majority (prior to his or her 48th birthday). In California, a sexual abuse victim must file a lawsuit within eight years of reaching majority (an ‘8 Year Statute’). In Texas, a sexual abuse victim must file a lawsuit within fifteen years of reaching majority (a ‘15 Year Statute’). In 2010, the state of Florida lifted its statute of limitation altogether.

Archiving Data – Ability to Establish Reasonable Child Safety Protocols

Conventional wisdom supporting the ‘7-Year Record Retention’ policy involved a balance between the cost of storing voluminous files against the need to retain access to files, typically related to employment disputes. The analysis in child-serving contexts is significantly different: the cost of electronic data storage is minimal compared to the cost of a failure to demonstrate the existence of effective safety protocols during a past period of time.

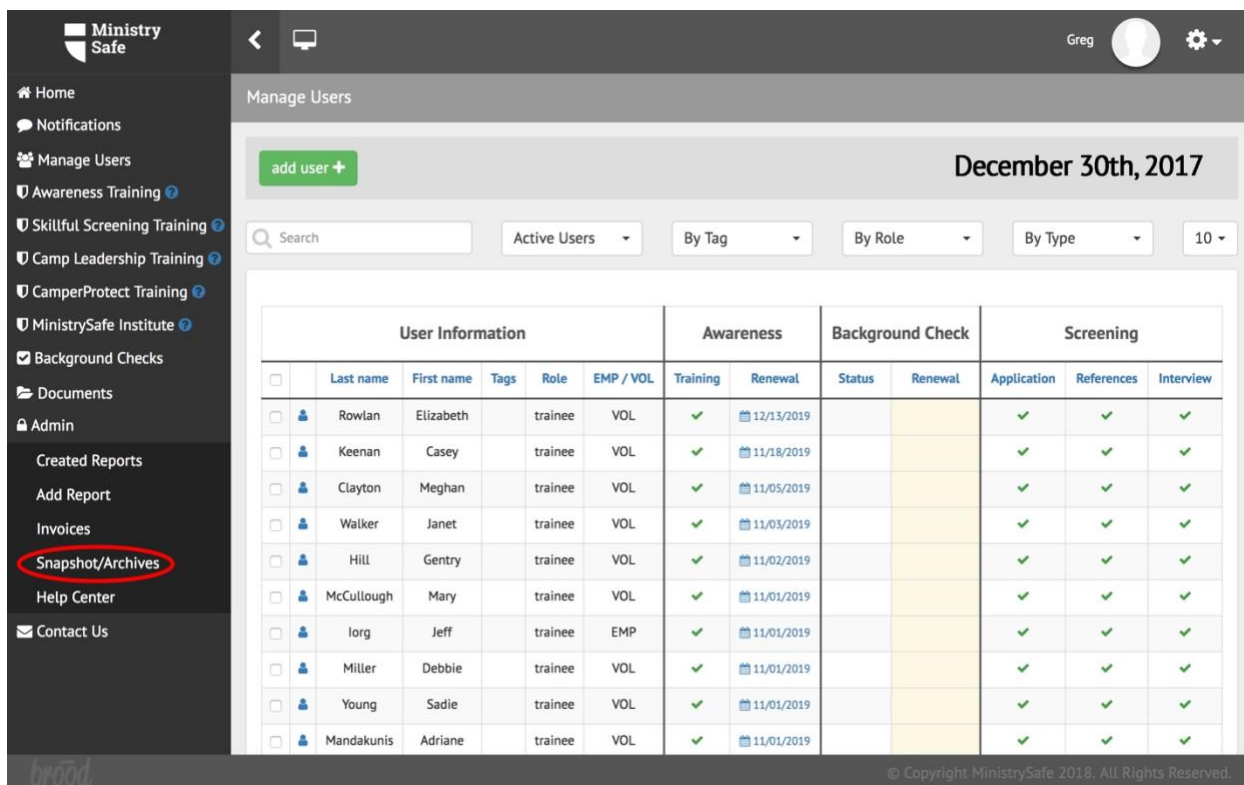
Obviously, keeping ALL records for ALL time is impractical. Nevertheless, every child-serving organization should be prepared to answer these questions: What are you doing to protect children from sexual abuse? What were you doing five years ago? Ten years ago?

Each organization must determine which written records are necessary to demonstrate child safety protocols employed, and those records must be preserved. Because an ‘expiring statute of limitations’ is no longer the yardstick for record retention, organizations should be prepared to keep these records for the foreseeable future.

Periodic ‘Snapshot’ – Ability to Establish Reasonable Child Safety Efforts

In general, the effort to periodically archive or ‘snapshot’ child protection or safety system efforts is critically important. Because it is unclear if or when an allegation may occur, it is valuable to create time-stamped evidence keyed to specific time periods.

For MinistrySafe and Abuse Prevention Systems members, a ‘snapshot’ may be created by utilizing this feature on the Control Panel.*



Initiating a ‘Snapshot/Archive’ will take a snapshot, in essence, of the organization’s Control Panel, and the image is stored with a date stamp. Using the screenshot above as an example: if an allegation arises several years in the future related to an event in or around December 30, 2017, this organization can immediately access its Snapshot Archives to demonstrate what efforts were employed related to training and screening (background check, application, reference check and interview) at or near the time of an alleged incident. This is a visual *summary*; the individual underlying records should be preserved as well. It is also important to keep all criminal background check reports for staff members or volunteers that work or have worked with children (or other vulnerable

populations). Other important records to retain may include applications, reference check responses, interview notes, training certificates and internal review notes.

Summary

Clearly, the primary purpose for implementing an effective child safety system is protection of children. Once an effective system is in place, child-serving organizations should prioritize the preservation of evidence demonstrating current and past safety system efforts. In child protection contexts, record retention takes on significantly larger (and longer) dimensions.

For additional information concerning the MinistrySafe and Abuse Prevention Systems Snapshot feature, click [here](#).

Love & Norris, Attorneys at Law

Gregory Love and Kimberlee Norris have a nationwide sexual abuse litigation practice representing victims of sexual abuse throughout the country. In addition, Love & Norris provide consulting services to secular and ministry organizations providing services to children. Representative clients include the United States Olympic Committee, Awana International, Church of the Nazarene, the North Texas Conference of the United Methodist Church, Gladney Center for Adoption, and many church and para-church schools, camps and ministries.

MinistrySafe and Abuse Prevention Systems

In addition to an active law practice, Love and Norris are co-founders and Directors of **MinistrySafe** and **Abuse Prevention Systems**, entities dedicated to sexual abuse awareness and prevention. **MinistrySafe** and **Abuse Prevention Systems** provide Sexual Abuse Awareness Training (live and online) and assist child-serving organizations in the design and implementation of safety systems that reduce the risk of child sexual abuse. Love and Norris are frequent speakers before ministries, educational entities, adoption and foster care organizations, and youth camps. They have addressed national and regional audiences for organizations such as the National Association of Church Business Administrators (NACBA), National Council for Adoption (NCFA), American Camp Association (ACA), and the Christian Camp and Conference Association (CCCA).

MinistrySafe and Abuse Prevention Systems are endorsed by Philadelphia Insurance Companies and the American Camp Association. MinistrySafe and Abuse Prevention Systems' Sexual Abuse Awareness Training is approved by the Texas Department of State Health Services and the Departments of Insurance for Texas, Washington, Oregon, California, Nebraska, Missouri, Iowa, Kansas, Oklahoma and other states. MinistrySafe's Sexual Abuse Awareness Training is an approved CEU for the Association of Christian Schools International (ACSI).