

Part 1:
JUMPstarting Your Program



Screening

Mentors

Module 2

Time: 2 hours
Limit: 25 participants

Introduction

Session Goals

Participants will explore strategies for screening volunteer applicants so that the mentors they select are both suitable and safe. By the end of the workshop, they should:

- Understand what potential “risks” exist in the mentor-mentee relationship within the context of their particular program
- Have developed a job description for mentors
- Have explored tools they can use for effective screening
- Have identified eligibility criteria for mentors that are appropriate for their particular program, and have developed strategies for screening in relation to those criteria

The Basics

1. The goal of the screening process is to separate safe and committed volunteers from those who are less suitable.
2. Within the context of that large goal, mentor eligibility requirements and screening procedures should be appropriate for each program’s mission, approach, and population served.
3. The screening process must balance the need for providing good “customer service” to potential mentors with the need for effectively screening them.
4. Screening procedures can seem daunting, but they are essential for fulfilling your mission and protecting the children and youth your program serves.

Agenda

- 1. Why Screen?** (15 minutes)
Participants discuss reasons for screening potential mentors.
- 2. Writing a Mentor Job Description** (30 minutes)
Small groups write job descriptions for mentors.
- 3. Screening Tools** (15 minutes)
Participants discuss elements of the screening process.
- 4. Using the Tools: Screening for Suitability** (30 minutes)
Participants identify qualities of an effective mentor and develop strategies for screening in relation to those qualities.
- 5. Using the Tools: Screening for Safety** (25 minutes)
Participants explore strategies for ensuring, to the extent possible, that their program's mentors do not pose a risk to the safety of children and youth.
- 6. Now What?** (5 minutes)
Participants identify next steps they will take when they return to their programs.

Connections to Other Training Sessions

Some of the information and strategies referred to in this session are covered more fully in these JUMP trainings:

- “Targeted Mentor Recruiting”
- “Making and Supporting the Match”

If members of your training group have already attended any of those sessions, you may want to draw on information they have learned there. If they have not yet attended those sessions, you will want to, where appropriate, encourage them to attend in order to reinforce and add to the information that is covered during “Screening Mentors.”

Preparation

Note: Each program's screening policy for mentors needs to be appropriate for that program's goals, population of children or youth served, and other characteristics. For example, a program where mentors are paired with 10-year-olds and meet one-to-one with the children in unsupervised settings around the community obviously contains more inherent risk than programs where mentors are matched with high-school-aged youth and meet with the youth only at their school. Screening requirements related to mentors' suitability may also vary among programs. While all programs need to screen potential mentors to be sure they can and will fulfill their time commitment, there may be differences in the personal qualities and skills that programs desire their mentors to possess.

To the extent possible, this training module has been created to allow for these differences. However, you should be prepared to further adapt the training session to meet the particular needs of your participants. Newer programs, for example, might want to spend more time on Activity #5, "Using the Tools: Screening for Safety." In that case, you may need to move more quickly through one or more of the earlier activities. However, more experienced programs may already have well-developed procedures for screening for safety, allowing you to spend somewhat less time on that activity. The "Activities" section of this module includes several options for adjusting the amount of time spent and the depth of discussion on particular topics.

1. Read the handouts, including the reading selections. They contain much of the information you need for leading this session. Screening is a multi-faceted and sometimes worrisome subject for mentoring programs, and only a few of the issues can be covered during a 2-hour training session. Thus, there are a large number of handouts included in the materials for this training. Some will be used in detail during the session, but many are primarily intended as resources for participants to use after they return to their programs. Be prepared to refer to those handouts, where appropriate, during the training and to use the information they contain.
2. Visit the Web sites listed on Handout #16, "Resources for Screening Mentors," so you are prepared to describe to participants the kinds of information they can find there.

3. Review the two curriculum modules, listed on page 2, that include information and strategies relevant to “Screening Mentors.”
4. Prepare a set of handouts for each training session participant. (Copy the handout materials onto paper with three-hole punches so participants can keep them in a binder.)
5. Prepare transparencies of the three overheads.
6. Copy the goals of the session onto a flipchart. On a separate sheet of flipchart paper, copy the agenda.



Materials

Overheads

- Overhead #1: Definition of “Risk”
- Overhead #2: Achieving Balance
- Overhead #3: Three Steps



Handouts

- Session Goals and Basics
- Agenda
- Handout #1: Mentor Job Description
- Handout #2: Elements of the Screening Process
- Handout #3: Screening Tools: Mentor Orientation Sessions, A Sample Agenda
- Handout #4: Screening Tools: A Sample Application Form
- Handout #5: Screening for Suitability
- Handout #6: Developing a Plan: Screening for Suitability
- Handout #7: Legal Liability and Screening
- Handout #8: Developing a Plan: Screening for Safety
- Handout #9: Conducting Criminal History Record Checks
- Handout #10: Next Steps
- Handout #11: Reading Selection: “Gut Feelings and Intuitions”
- Handout #12: Reading Selection: “Understanding Legal Liability”
- Handout #13: Reading Selection: “Federal Law Protects Nonprofit Volunteers”
- Handout #14: Reading Selection: “Barriers to Preventing Abuse”

- Handout #15: Reading Selection: “Criminal History Record Checks”
- Handout #16: Resources for Screening Mentors

You Will Need To Supply

Flipcharts, easels, markers, and masking tape
An overhead projector

Activities

1. Why Screen?

Participants discuss reasons for screening potential mentors.

- Introduce yourself, and note that this training session will explore strategies for screening potential mentors.

Then ask, “Why do you screen potential mentors? What are you looking for?” (If participants have not been in a previous training session together, have them introduce themselves and give the name of their mentoring program when they respond to these questions.)

Record participants’ responses on the flipchart.

Responses might include: to make sure they don’t have a criminal background, to be sure there is no history of child abuse, to learn whether they have the right temperament and attitudes to be a successful mentor, to be sure they have the time to follow through on their commitment.



- Display Overhead #1, “Definition of ‘Risk.’”

Review the list of items you have just recorded on the flipchart. Ask participants to think about these items (reasons for screening and characteristics they screen for) in terms of potential risks that mentors could present to their programs. On a clean sheet of the flipchart, write the word “Risks.” Ask participants to identify the risks they can help protect their programs from by screening potential mentors. Record their responses on the flipchart.

The “risks” should include situations that threaten the safety of the child or youth with whom the mentor is paired and present liability issues for the program—including, for example, child abuse and physical harm to the child through an accident, such as an automobile accident, when with the mentor.

However, you also want participants to think more broadly about the concept of “risks” that affect their program’s ability to accomplish its mission. These include the risk that the mentor will not follow through on his/her commitment and, thus, disappoint the mentee, or that the mentor will not have traits that are conducive to developing a supportive relationship with his/her mentee and,

thus, the relationship will fail. They also include other forms of mentor “behavior”—such as the mentor violating confidentiality by inappropriately divulging information about the youth and, thus, damaging trust in the program.

Lead a brief discussion about the items on the list, focusing on which are common across all programs and which seem applicable only to programs with particular missions and characteristics. (One obvious example is that place-based programs—where mentors meet with youth only in a school setting or some other designated location—are not at risk for certain kinds of accidents and would be less at risk for child abuse.)

Note that while it is impossible to totally eliminate these risks, a well-planned and implemented screening process can reduce the likelihood of their occurring.

- Using the flipchart you have prepared, describe the goals of this training session. Then briefly review the agenda.

Check to be sure each person has the handouts for this session. Briefly review the table of contents on the cover page of the handouts. Explain that you will be using some of the handouts during this session, and that all of them are intended to be resources that participants can use in their programs. In particular, note that there are a number of reading selections that are included as resources for participants to read on their own after the session.



Refer participants to page 1 of the handouts, “Session Goals and Basics.”

Review the four “basics” listed there. This session will explore those basics more fully.

2. Writing a Mentor Job Description

Small groups write job descriptions for mentors.

- Note that creating a mentor job description can be a helpful early step for programs as they develop or refine their screening requirements and procedures.

Lead a brief discussion about the general purposes of job descriptions—for example, their value for recruitment, for helping people decide whether to apply for a job, and for an organization’s selection of qualified applicants.

Ask if any of the participants’ organizations currently use a job description for mentors—these can play a similar multiple role for attracting suitable mentors, helping some people screen themselves out early on in the process (and thus saving the program time and resources), and clarifying many of the screening criteria the program uses.

- Ask the participants to describe their program’s eligibility requirements for mentors. Record their responses on the flipchart.

Among other items, requirements might include objective items such as minimum age, minimum amount of time residing in the area, access to a car, currently employed, and no history of committing a violent crime; and more subjective items such as a history of being dependable, emotional maturity, being reasonably flexible and tolerant.

At this point, just have participants generate the list—don’t discuss the items, the reasons for them, or which are applicable to all programs or only programs with particular characteristics (for example, place-based programs vs. community-based programs).

- Tell participants you want them to use these eligibility requirements as a basis for writing a job description for mentors for their program.



Refer participants to Handout #1, “Mentor Job Description.”

Organize them into small groups of about 5 people to write the descriptions. Try to organize the groups around programs that have shared characteristics which might influence their decisions about eligibility requirements and other aspects of the job description. (These shared characteristics might include the ages or special needs of the children and youth served; whether programs are community-based or school-based; or programs’ mission or goals.)

Each group should select a leader and a recorder. Have a flipchart and markers available for each recorder to write down the main points of the group’s mentor job description, following the categories on the handout and any other categories the group wants to add.

Allow about 20 minutes for the groups to write their job descriptions. (Give a “5-minute warning” after 15 minutes so the groups know they should begin to wrap-up.)

- Have each small group report out to the whole group on its job description. Allow time after each presentation for feedback. A good job description will find the balance between being a tool for recruitment and for potential mentors’ self-screening. Thus, the feedback discussions should cover at least these points:

1. Are the job descriptions an effective recruitment tool?

For example, are responsibilities and eligibility requirements described in positive language that will appeal to the potential mentors? (Note that the training session on “Targeted Mentor Recruiting” discusses the importance of having all materials reviewed by people who represent the particular groups—ethnic, racial, age, etc.—you are trying to recruit as mentors.)

2. At the same time, are the job descriptions clear and specific about mentors’ responsibilities and eligibility requirements?

What items are listed? For example, minimum length of commitment? Frequency of meetings? Training requirements? (And is required training described in positive language so that potential mentors see it as a benefit?) Are there any other special requirements? How are issues of the mentor’s attitudes and temperament addressed?

Finally, return to the list of eligibility requirements that participants generated at the beginning of this activity. Ask if there are any changes or additions they want to make to the list.

3. Screening Tools

Participants discuss elements of the screening process.

- Ask participants, “Once you have used your job description to help you recruit potential mentors, what do you do? What are the elements of your intake and screening process after someone contacts the program and expresses interest in becoming a mentor?”

List their responses on the flipchart.

Responses could include: a written application; an orientation or mentor awareness session; an interview; reference checks (by phone or by mail); a criminal record check, including a child abuse

registry check; a driving record check; a home assessment.

Lead a brief discussion about the items on the list, focusing on which are applicable to all programs and which might be necessary for only certain types of programs. For example, why would a home assessment be important for a program where mentors and youth meet in unsupervised settings, but perhaps less essential for a school-based mentoring program?



- Refer participants to Handout #2, “Elements of the Screening Process.”

Briefly review the four key purposes of the intake process that are listed at the beginning of the handout. (You can note that the training session on “Making and Supporting the Match” covers in more detail the fourth purpose—acquiring information about each applicant that will ultimately help in deciding on a “good” match.)

Ask if there are additional purposes they want to add.

Be sure participants see that these purposes may not always work together smoothly—and that can present a challenge to programs.



- Display Overhead #2, “Achieving Balance.”

Note that many of the items on the list of “elements of the screening process” that participants have generated (and that are also on the handout) can present a challenge to achieving this balance. (You can also note that the training session on “Targeted Mentor Recruiting” discusses strategies for providing “good customer service” to potential mentors throughout the recruitment and screening process.)

Mentor orientation sessions are one example of where this challenge can occur. (In school-based programs, the initial orientation is sometimes called a “mentor awareness session.” In those cases, school staff later provide an orientation to the school.)



Note that Handout #3, “Screening Tools: Mentor Orientation Sessions,” provides an example of a possible orientation agenda that participants can adapt for their programs. Do not take the time to review the agenda here, but explain that it is intended to inspire potential volunteers to want to become mentors, while also helping them develop realistic expectations of what it means to be a mentor.



Refer participants to Handout #4, “Screening Tools: A Sample Application Form.” Note that the written application for potential mentors is another place where programs need to be “up front” about the screening requirements. Decisions about what to ask on the application involve balancing the need to acquire certain kinds of information—and, implicitly, to give potential mentors certain kinds of information—with the need *not* to overwhelm or discourage people whom you want to apply. (Being clear about screening requirements during the orientation and on the application form is also important because applicants who are “screened out” will be less likely to take the rejection personally. This point is discussed in the training on “Targeted Mentor Recruiting.”)

IF TIME ALLOWS: Use about 10 minutes to have a discussion about the decisions involved in developing a program’s written application for potential mentors.

Allow participants a couple of minutes to quickly read the entire sample application on Handout #4, and the attached consent form, as if they were a potential mentor who was applying to their program.

Lead a discussion about their response to the application from the *applicant’s* point of view. Does the application seem “doable”? Reasonable? Is there anything that “puts them off” about the application? If so, what?

Now have them think about the sample application from their own point of view as program operators and staff. For example:

- Does the application ask what they need to know? What other items could the application include? For example, what kinds of questions does it or should it ask in order to get an understanding of the applicant’s ongoing time commitments? Should it specify references from particular kinds of people, such as an employer or supervisor, or a neighbor? Do they want to include other questions—perhaps concerning education and/or military background?
- Does the application include more than they need to know at this point in the intake process? For example, what are the benefits and drawbacks of including a release form for the criminal history record check? Should some of the information, such as the potential mentor’s interests and matching

preferences, be collected later in the screening process, perhaps just before the applicant's interview?

- If “potential mentors” objected to anything on the application, would it be possible to delete or modify that item so it becomes less objectionable?

By the end of the discussion, be sure the group sees that the application form can be a way to begin to gather information concerning somewhat subjective eligibility criteria about an applicant's “suitability” as well as concerning the more clear-cut, objective requirements—and that each program has to create a form that will work best toward meeting its own recruitment needs and screening requirements.

- If there is time, have participants discuss other elements of the screening process (for example, the face-to-face interview) that present similar challenges. How do programs ensure that potential mentors remain interested while also acquiring the information necessary for effective screening?

4. Using the Tools: Screening for Suitability

Participants identify qualities of an effective mentor and develop strategies for screening in relation to those qualities.

- Explain that now you want participants to think about how to use all these screening tools effectively so that their programs have mentors who are effective and safe. Note that you first want to focus on strategies to ensure that potential mentors are effective or suitable.

Ask the group to describe mentors in their program whom they have considered to be either especially effective or notably ineffective. As the discussion takes place, generate a list on the flipchart of qualities that contribute to making someone an effective mentor.

The qualities might include, among other items: time availability, commitment, patience, dependability, being nonjudgmental, the ability to have fun, good listener.



- Refer participants to Handout #5, “Screening for Suitability.” Review only the first part of the handout, the four items under “Research on mentoring programs has shown.”

Lead a discussion about the implications of this information for programs’ screening procedures. Relate the discussion back to the qualities of effective mentors that participants’ have just identified. Among the points that the discussion should cover are these:

During their screening process, programs should be careful about applicants who seem unlikely to be able to commit the time necessary for developing a relationship with their mentee. Programs should also be alert to applicants who possess qualities—such as a tendency to be judgmental—that might make it difficult for them to be successful mentors. It might be necessary to provide those people with extra training and supervision if they become mentors, to offer them alternative volunteer roles within your organization, or to screen them out entirely.



- Refer participants to Handout #6, “Developing a Plan: Screening for Suitability.”

Explain that, while screening for “suitability” inevitably involves some subjectivity, you want them to work out strategies that can help them do it somewhat more systematically. Review the qualities of “suitability” that appear on the handout (time availability, history of dependability, etc.) and ask if there are any they want to modify, delete, or add.

Then work through the first item (time availability) with the group. You can follow this process:

1. Ask which sources of information among those suggested, or other sources, they would use to get the information.
2. Review the “points to consider” and ask what they would change, delete, or add.
3. Ask them to suggest “red flags” that would make them concerned that the applicant is overly optimistic about his or her time availability. Once alerted, what steps could they take to examine the potential problem more thoroughly? (They don’t want to lose someone who is apparently highly energetic and might be a great mentor; but they don’t want to accept someone who is over-committed and whose mentoring relationship might, as a result, be short-lived.)

- Organize participants into pairs to identify sources of information, points to consider, and red flags for the other qualities on the handout and any additional qualities your participants may have decided to include. Assign each pair *one* quality to work on. (Unless your group is very small, more than one pair will be working on each of the qualities.) Encourage them to use the questions on the second part of Handout #5, “Screening for Suitability,” to help them think about their strategies for screening.

Allow about 10 minutes for the pairs to complete this activity.

- Work through the qualities on Handout #6, having pairs who focused on each quality report on their decisions and describe how they would deal with the “red flags.”

Emphasize that each program needs to develop selection criteria and a screening process that is logical and “doable” within the context of that program—but all programs have a responsibility to try to screen out people who will not carry through with the commitment or who are likely to act in a way that discourages their mentee from wanting to continue with the relationship.

5. Using the Tools: Screening for Safety

Participants explore strategies for ensuring, to the extent possible, that their program’s mentors do not pose a risk to the safety of children and youth.

- Note that the most fundamental purpose of screening—and the one most people think of in connection with screening—concerns the safety of children and youth.

Refer participants to Handout #7, “Legal Liability and Screening.” Allow them a few minutes to read it.

Briefly review the handout with them. You do not want participants to become overwhelmed by the possibility of liability issues, but you do want them to recognize that those issues are real and very important. (Also remind them that the handouts include two reading selections on legal liability as well as a selection that discusses why programs are sometimes reluctant to address the issue of child abuse.)





Refer participants to the list of risks they generated during this session's opening activity and have them note which would seem to represent legal liability. Ask if they have additional risks to add to the list. (Emphasize that you are not a lawyer and cannot answer legal questions. For answers to legal questions, they will need to check with appropriate resources, including lawyers who specialize in nonprofit and liability issues and, for school-based programs, school district corporate counsels.)

- Display Overhead #3, "Three Steps." Note that these three steps are applicable to all risks, not only child sexual abuse. Emphasize that each program has to identify its own criteria in connection to screening for safety. As the potential for risk increases, the screening must become more comprehensive and thorough.

There are at least two large points to keep in mind as they develop and refine their procedures for screening for safety:

1. For positions that require direct, unsupervised contact with children (or any vulnerable population), personal safety concerns are paramount. Thus, what is most important in criminal record checks are crimes against people. Youth-serving organizations generally agree that individuals should be *permanently* disqualified from holding positions that require direct contact with children if their criminal records include any of the following: a past history of sexual abuse of children; conviction for any crime in which children were involved; or a history of any violence or sexually exploitative behavior.
2. When establishing screening criteria, organizations must take into account state and local laws and regulations. Some jurisdictions have instituted screening or licensing requirements for individuals who have substantial contact with children (or other vulnerable individuals). Programs need to determine if licensing or regulatory agencies have identified specific offenses that would disqualify applicants. To inquire about any particular state regulations and requirements, programs should contact their state's criminal history record repository. The repository can also provide them with information about the process of doing a criminal history record check. (A list of state repositories is included at the end of Handout #15, "Criminal History Record Checks," a comprehensive discussion of this topic that was developed by the Nonprofit Risk Management Center.)



- Now refer the group to Handout #8, “Developing a Plan: Screening for Safety.” Review the information in the two introductory paragraphs.

Note that participants can use this handout as a guide for developing a systematic procedure for screening for safety. Each program will need to decide which of the elements listed, and possible additional elements, it should be including in its screening process. For each element it is including, it should identify where it will get the information, what findings would disqualify someone from becoming a mentor in their program, and what mitigating circumstances (if any) there might be.

Work through the first item—“criminal record, including child abuse”—with them. You can ask:

- What sources of information should you use to learn about an applicant’s possible criminal record?

Sources might include the written application, the face-to-face interview, references, the state’s criminal records repository, and the state’s child abuse registry. (In order to do a more complete criminal record check, it is a good idea to ask on the written application for home addresses for the past five years so you will know if an applicant has lived in another state during that period. Thus, you will know to check that state’s records as well as your own state’s.)

- What would you identify as a “disqualifying offense”?

Any conviction for a crime against a person should disqualify a person from becoming a mentor, but there may be other disqualifying offenses as well, such as “possession of a controlled substance with intent to sell.”

- What might be a “mitigating circumstance”?

There are unlikely to be any mitigating circumstances for a crime against a person. For other kinds of convictions, however, programs might want to consider the possibility of identifying such circumstances. For example: an applicant has a criminal record for “possession of a controlled substance with intent to sell.” However, the conviction occurred more than ten years ago, when the applicant was a teenager, and there have been no subsequent offenses. (Emphasize that this is just an example, not necessarily something that programs would adopt as part of their own screening procedure.)

As time allows, work through other items on the handout, and have participants discuss which items they would delete and any items they would add, and why.

AS AN OPTION: If time allows, you can have participants work in groups to develop their “screening for safety” plans. Organize the participants into small groups based on program characteristics that could influence their screening policy and the kinds of screening procedures they would use to try to ensure that their mentors are “safe.” For example, school-based programs are likely to have different screening requirements than community-based programs. Programs for younger children might also have different screening requirements than those for older youth; and programs whose children and youth have special needs might have some unique screening requirements.

Each small group should select a leader and a recorder, and meet for about 15 minutes to develop its screening requirements and procedures.

At the end of that time, each small group should report out to the whole group on its plan. During their presentations, they should also explain *why* they arrived at the decisions they made. For example, the decision about what elements to include might result from a combination of external requirements, characteristics of their program (is it exclusively school-based? community-based?), and characteristics and special needs of the children and youth they serve. They should similarly explain their reasons for why they decided on particular disqualifying offenses and mitigating circumstances.



- Refer participants to Handout #9, “Conducting Criminal History Record Checks.” Much of the list summarizes information you have just been covering, but spend a few minutes on the new items. In particular, emphasize the importance of maintaining the confidentiality of information. (Participants will be discussing the final item—keeping applicants interested while they wait—in a minute.)



Note that the information on this handout is drawn from the longer reading in Handout #15, “Criminal History Record Checks.” You might also want to talk briefly about information avail-

able through the two Web sites, included in Handout #16, “Resources for Screening Mentors,” that focus on child abuse prevention.

- As participants may have already pointed out during this session, doing records checks takes time—at least several weeks and, in some jurisdictions, up to several months. Thus, one of the challenges facing programs is to make sure that potential mentors don’t lose interest during this period and decide that they don’t want to be mentors after all.

Ask participants to brainstorm a list of strategies they use to keep applicants interested during this waiting period. Record their responses on the flipchart.

Responses might include: keeping in touch with applicants by phone to let them know where things are in the screening process; having supervised group activities for the applicants and the children/youth; involving the applicants in occasional other volunteer work with the program.

Allow a few minutes for them to discuss the items on the list and talk more fully about the strategies that have worked well for them.

6. Now What?

Participants identify next steps they will take when they return to their programs.



- Ask participants to turn to Handout #10, “Next Steps,” and write down three things they plan to modify, or to evaluate whether they should modify, about their program’s mentor screening policy or procedures. They should feel free to include anything—from minor changes in their written application to evaluating whether they should make significant changes in their eligibility requirements.

Ask for a few participants to talk about one of the items on their list, why they feel they should modify it, and perhaps, what the steps might be in making the modification.



- Note that there are a number of good resources with information that is relevant to mentor screening. (The handouts for this session should serve as one such resource.) Direct the group to Handout #16, “Resources for Screening Mentors,” and briefly review the items.



Risk:

Any uncertainty about a future event that threatens your organization's ability to accomplish its mission.

(Definition by the Nonprofit Risk Management Center)



Achieving Balance

The intake process should:

- **Motivate people to want to be mentors**

and also

- **Help them understand whether they should screen themselves out.**



Three steps that every program must take to prevent child sexual abuse:

- 1. Assess the level of risk within the usual activities of your program**
- 2. Establish criteria: determine the information you need to acquire about potential mentors**
- 3. Select the tools for screening**

(Recommendations from the National Collaboration for Youth)



Handouts

	<i>Page</i>
Session Goals and Basics	1
Agenda	2
Handout #1: Mentor Job Description	3
Handout #2: Elements of the Screening Process	4
Handout #3: Screening Tools: Mentor Orientation Sessions, A Sample Agenda	5
Handout #4: Screening Tools: A Sample Application Form	8
Handout #5: Screening for Suitability	14
Handout #6: Developing a Plan: Screening for Suitability	17
Handout #7: Legal Liability and Screening	20
Handout #8: Developing a Plan: Screening for Safety	21
Handout #9: Conducting Criminal History Record Checks	23
Handout #10: Next Steps	24
Handout #11: Reading Selection: “Gut Feelings and Intuitions”	25
Handout #12: Reading Selection: “Understanding Legal Liability”	27
Handout #13: Reading Selection: “Federal Law Protects Nonprofit Volunteers”	34
Handout #14: Reading Selection: “Barriers to Preventing Abuse”	37
Handout #15: Reading Selection: “Criminal History Record Checks”	40
Handout #16: Resources for Screening Mentors	59

Screening

Mentors



Session Goals

- To understand what potential “risks” exist in the mentor-mentee relationship within the context of your particular program
- To develop a job description for mentors
- To explore tools you can use for effective screening
- To identify eligibility criteria for mentors that are appropriate for your particular program, and to develop strategies for screening in relation to those criteria

The Basics

1. The goal of the screening process is to separate safe and committed volunteers from those who are less suitable.
2. Within the context of that large goal, mentor eligibility requirements and screening procedures should be appropriate for each program’s mission, approach, and population served.
3. The screening process must balance the need for providing good “customer service” to potential mentors with the need for effectively screening them.
4. Screening procedures can seem daunting, but they are essential for fulfilling your mission and protecting the children and youth your program serves.



Agenda

1. Why Screen?

Notes: _____

2. Writing a Mentor Job Description

Notes: _____

3. Screening Tools

Notes: _____

4. Using the Tools: Screening for Suitability

Notes: _____

5. Using the Tools: Screening for Safety

Notes: _____

6. Now What?

Notes: _____



Mentor Job Description

General description of the program and of the mentor's role:

Mentor Responsibilities:

-
-
-

Eligibility Requirements:

-
-
-

Benefits:

-
-
-



Elements of the Screening Process

The intake process has several important purposes.

These include:

1. Ensuring that potential mentors remain interested in, and excited about, becoming a volunteer in your program.
2. Providing them with information they need for deciding whether they can and should make the commitment to become a mentor.
3. Screening potential mentors for suitability and safety.
4. Acquiring information about each applicant that will ultimately help in deciding on a “good” match if he or she becomes a mentor.

These purposes may not always work together smoothly. The key is to balance “good customer service” with appropriate screening.

Which of these tools does your program use for screening potential mentors?

- | | | |
|-------------------------------|------------------------------|-----------------------------|
| 1. Orientation session | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Written application | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Face-to-face interview | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Written references | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 5. Reference checks by phone | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 6. Reference from employer | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 7. References from friends | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 8. Criminal record check | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 9. Child abuse registry check | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 10. Driving record check | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 11. Home assessment | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 12. Other: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |



Screening Tools: **Mentor Orientation Sessions, A Sample Agenda**

page 1 of 3

Length:

Number of participants:

Location:

1. Welcome

Describe benefits of mentoring. (You can support your points by creating an overhead of one or two key research findings about mentoring—see the next two pages of this handout for examples of these findings.) Emphasize the essential role that volunteers have in achieving these outcomes for children and youth.

2. Introductions

Have each person introduce himself or herself and say something about his or her interests, job, or family.

3. Program description

Include descriptions of:

- Program mission, including characteristics of children and/or youth served.
- Program goals, including number of matches, length of matches, frequency of mentor-mentee meetings, and desired outcomes for youth.
- Staff organization and roles.

4. Why you should be a mentor

Have current mentors (perhaps with their mentees) discuss their matches and the rewards. Have a staff member discuss mentors' roles. Emphasize the benefits and fun of being a mentor. Give examples of mentoring relationships that have made a real difference to the children or youth in your program.

5. Why you shouldn't be a mentor

Have staff (and perhaps current mentors) discuss the time commitment—including both length of commitment and frequency of meetings—the importance of having realistic expectations, and the challenges mentors face in forming supportive relationships with the particular population of children or youth your program serves.

6. Volunteer application, screening, matching, and training

Describe your intake process. Outline your screening requirements and explain the reasons for each, focusing on the children and/or youth your program serves

and the need to ensure that they have a positive and safe mentoring experience. Give a realistic sense of the length of time the screening process takes—one month? three months? Describe any mentor training requirements your program includes, focusing on the benefits for mentors. Also explain your program's process for supervising and supporting matches.

7. Program ground rules

Describe your program's ground rules and the reasons for each. These might include, for example: limits on the types of allowable activities (for example, for community-based programs, no overnight stays for the youth at the mentor's home; for school-based programs, no meeting with the youth outside of school, except in school-approved group field trips); limits on giving gifts to the youth; and ground rules concerning the mentor's involvement with the youth's family. This is also an opportunity to talk about your program's confidentiality rules.

8. Questions and answers

Allow ample time for questions.

9. Snacks and materials

Have packets of materials available for attendees to pick up and take home. Decide what you want to include in each packet—for example: a mentor job description, a recruitment brochure, an application form, information on program policies, an outline of screening requirements, information about training sessions and ongoing support for mentors.

Some Important Research Findings

The studies cited below demonstrate the positive impact that mentoring can have on young people. You can use this information during your orientation sessions.

1. A 1995 study of Big Brothers Big Sisters of America showed that young people with mentors were:
 - 46 percent less likely to begin using illegal drugs than youth in the research control group, who were not matched with a mentor
 - 27 percent less likely to begin using alcohol

- 52 percent less likely to skip school
- 32 percent less likely to hit someone

The quality of the youth's relationships with their parents also improved. For example, the young people with mentors reported lying to their parents 37 percent less often than youth in the research control group.

2. A 1996 study from the Center for Intergenerational Learning at Temple University showed that young people who participated in Across Ages, an intergenerational mentoring project for high-risk middle-school students in Philadelphia, exhibited:
 - Less negative, disruptive classroom behavior
 - Better school attendance
 - Improved relationships with adults and peers
 - Positive changes in their knowledge, attitudes, and behaviors concerning substance use and related life skills
3. A 1993 Partners for Youth study revealed that, of 200 nonviolent juvenile offenders who participated in a mentoring relationship under the sponsorship of Big Sisters of Central Indiana, nearly 80 percent avoided rearrest.
4. The Quantum Opportunities Program, funded by The Ford Foundation from 1989 to 1991, focused on high school students whose families were receiving public assistance. The students who had a mentor were more likely than those who did not to:
 - Graduate from high school
 - Become involved in community service
 - Have fewer arrests
 - Enroll in college
 - Be hopeful about their future



Screening Tools: A Sample Application Form

Please complete this application and mail it to:

Name of program:

Address:

Phone Number:

Part I

Name _____
 First Middle Last

Date of Birth _____ Social Security Number _____

Current Address _____
 Street

 City State Zip Code

Home Phone _____

How long have you been living at this address? _____

If fewer than five years, please list all other addresses for the previous five years:

Present Place of Employment _____

How long have you been working there? _____

Work Address _____

Work Phone _____

Name of Supervisor _____

Screening Tools: A Sample Application Form
page 2 of 6

If you have been with this employer for fewer than five years, please list all other employers (and their addresses) for the previous five years:

Have you ever been convicted of a crime?_____

If so, list date(s) and charges of which you were convicted:

Do you currently have any criminal charges pending against you?_____

If so, please describe them:

Part II

How did you hear about [name of mentoring program]?

Have you ever been a mentor?

If so, where and for how long?

Why do you want to become a mentor?

Part III

To help us match you with a youth in our program, we would like to know a little about your interests.

Which of these activities do you enjoy:

1. Playing sports?

If yes, which sports?

2. Other outdoor activities?

If yes, what activities?

3. Games (board games, card games, video games, chess, etc.)?

If yes, what kinds of games?

4. Arts and/or crafts?

If yes, what are your specific interests and skills?

5. Computers and other technology?

If yes, what are your specific interests and skills?

6. Other interests?

7. Do you have other special skills and experience? (For example, knowledge of sign language, experience working with adolescents, experience helping children learn to read.)

Part IV

To help us match you with a youth in our program, we would like to know a little about any preferences you may have:

1. Are there some types of children or youth whom you would prefer to mentor—or for whom you feel you would be a particularly successful mentor? (For example, someone who is shy, someone who has trouble managing his or her anger, someone who loves to draw, someone who loves sports, someone with a learning disability, someone with a physical disability.)

2. Are there some types of children or youth with whom you might have difficulty or would prefer not to mentor?

3. What kinds of support and assistance can the program offer that will be most helpful to you?

Part V

Please list the names, addresses, and phone numbers of three people you want to use as references. They must be people who have known you for at least one year. Please do not list relatives.

1. Name _____

Address _____

Telephone Number _____

How long have you known this person? _____

Your relationship _____

2. Name _____

Address _____

Telephone Number _____

How long have you known this person? _____

Your relationship _____

3. Name _____

Address _____

Telephone Number _____

How long have you known this person? _____

Your relationship _____

Your signature _____

Date _____

Consent Form

I, _____ (applicant's name), hereby authorize (name of your organization) to obtain information pertaining to any charges and/or convictions I may have had for violation of municipal, county, state, or federal laws. This information will include, but not be limited to, allegations regarding and convictions for crimes committed upon minors and will be gathered from any law enforcement agency of this state or any state or federal government, or from third-party providers of information originally obtained from law enforcement or court records.

I understand that I will be given an opportunity to challenge the accuracy of any information received that appears to implicate me in criminal activities. To facilitate this challenge, I will be told the nature of the information and the agency from which it was obtained. It will be my responsibility to contact that agency. I further understand that until (name of your organization) receives notification from that agency clearing me, my application will be deferred.

I hereby attest to the truthfulness of the representations I have made. Except as I have disclosed on the application, I have not been found guilty of, or entered a plea of *nolo contendere* or guilty to any offense. Further, other than for the offenses I have disclosed, I have not had a finding of delinquency or entered a plea of *nolo contendere* or guilty to a petition of delinquency under the juvenile laws of this state or of any other state.

I further attest that I have not been judicially determined to have committed abuse or neglect of a child; nor do I have a confirmed report of child abuse or neglect or exploitation which has been uncontested or upheld administratively under the laws of this or any other state.

Signature of the Applicant Date

Full Name of the Applicant: _____

Date of Birth: _____ Sex: _____ Race: _____

Social Security Number: _____

Driver's License No: _____

State of Issuance: _____ Date of Expiration: _____



Screening for Suitability

page 1 of 3

I. Research on mentoring programs has shown that:

1. It takes time for a mentor to establish trust with the youth and become a friend.
2. Mentors with the following qualities are far more likely to establish a trusting, relatively long-term relationship that makes a difference in the youth's life:
 - They do not expect to transform the youth's life nor to see rapid improvement in the youth's behavior.
 - They listen nonjudgmentally. They do not lecture.
 - They respect the youth's desire to have fun and encourage him/her to participate in making decisions about what the pair will do and talk about.
3. Youth who were in matches that closed within the first three months had a significantly lower sense of self-worth and belief in their ability to succeed in school than youth who were never matched with a mentor. Thus, it may be better for youth never to be in a mentoring relationship than to be in one that ends quickly.
4. During the screening process, programs should be wary of volunteers who seem unlikely to be able to commit the time necessary for developing a relationship with their mentee. Programs should also be alert to applicants who seem to have personal qualities that might make it difficult for them to be effective mentors. It might be necessary to offer those applicants non-mentoring volunteer roles within your organization or to screen them out entirely.

(Sources: Item #3 is from "The Test of Time: Predictors and Effects of Duration in Youth Mentoring Relationships." A Public/Private Ventures working paper, by Jean B. Grossman and Jean E. Rhodes. The other items are from *Building Relationships With Youth in Program Settings: A Study of Big Brothers/Big Sisters*. 1995. Kristine V. Morrow and Melanie B. Styles. Philadelphia: Public/Private Ventures.)

II. Screening for Suitability: Some Key Questions

Written application:

- What special issues does your program face in developing an application form that addresses the particular characteristics of the children and youth it serves, and the population of mentors you are trying to recruit?

Face-to-face interviews:

- Does your program have a written guide that staff use for interviewing?
- Do you use the interview to follow-up, as necessary, on information from the written application?
- Are the prospective mentors encouraged to ask questions?
- Do you let them know, during the interview, about any areas of concern regarding their eligibility?

Reference checks:

- Do you conduct your reference checks by phone or by mail?
- What do you ask—and how do you ask?
- Do you use the references, at least in part, to double check on information the applicant has given you about himself/herself?
- Do you ask for references from specific sources, such as an employer or supervisor (for information on dependability and stability), a co-worker, a friend, or a neighbor?

Dependability:

- How do you gauge the applicant's ability to carry through on the mentoring commitment? Do you look at his/her history of following through on previous commitments, such as employment, school, relationships, or previous volunteer work?

Expectations for mentoring relationship and understanding of mentor's role:

- Do you ask applicants about their reasons for applying? (If so, are you attentive to whether their response focuses on children/youth and not on themselves?)
- Do you ask how they plan to spend their time with the mentee and about the kinds of activities they are interested in doing with him/her?

Temperament:

- How can you tell if the applicant is reasonably tolerant and flexible? (Children and youth often test adults, and the mentor has to be able to move forward in the relationship despite its challenges. In addition, the mentee’s lifestyle is likely to be quite different from the mentor’s, and accepting these differences will be a key to a successful relationship.)
- Does the applicant seem aware of his/her own personal values and reasonably understanding and accepting of the lifestyles of others?

Gut feelings:

- What role do intuition and “gut feelings” play in your screening process?
- What kinds of situations (for example, comments during an interview, responses by references) don’t feel right”? How do you deal with these situations? (Handout #11 is a reading selection called “Gut Feelings and Intuitions” that addresses this issue.)



Developing a Plan: Screening for Suitability

How does your program screen potential mentors for each of these qualities?

1. Time availability

Sources of information: (for example, written application, face-to-face interview, reference checks, program staff's "gut feeling")

Points to consider:

- Work responsibilities (regular or irregular schedule; unpredictable demands on time; required travel)
- Other volunteer responsibilities
- Family responsibilities
- Other demands on time (taking courses, for example)
- Special issues for college and graduate students (academic-year vacations; summer availability)
- Special issue for military personnel (possibility of being transferred unexpectedly)
- Other:
- Other:

Red flags:

2. History of dependability

Sources of information:

Points to consider:

-
-

Developing a Plan: Screening for Suitability
page 2 of 3

-
-

Red flags:

3. Expectations for relationship/sense of mentor's role

Sources of information:

Points to consider:

-
-
-
-

Red flags:

4. Temperament

Sources of information:

Points to consider:

-
-
-
-

Red flags:

Developing a Plan: Screening for Suitability
page 3 of 3

5. Other (specify)

Sources of information:

Points to consider:

-
-
-
-

Red flags:

6. Other (specify)

Sources of information:

Points to consider:

-
-
-
-

Red flags:



Legal Liability and Screening

A careful screening process is essential for helping programs minimize legal risk.

1. All individuals (including your program’s mentors, the children and youth your program serves, and their families) have “legal interests” that include physical safety, the right of privacy, security of reputation, and performance of promises. These interests are protected under the law.
2. Organizations (including paid staff and volunteers) “invade” these interests if they break a law, breach a contract, or cause intentional or unintentional harm to a person.
3. For nonprofit organizations, most of the legal liability for “invasion of interests” is governed by “tort law.” A tort is a “private or civil wrong or injury (other than a breach of contract) for which the law provides damages.”
4. There are three categories of torts: “negligence,” “intentional acts,” and “strict liability.” Most claims filed against nonprofits come under the category of “negligence.”
5. While “negligence” has many definitions, one of the most common is “the failure to do something a reasonable person would do, or the doing of something that a reasonable person would not do under the circumstances.” The person filing the claim must prove that the organization or individual had a legal duty to act and breached that duty, and, as a result, there were damages or harm.
6. A “legal duty” is the “obligation to exercise care or to maintain a certain standard of conduct for protecting others against unreasonable risks.” Nonprofit organizations have a duty to protect service recipients, staff members, volunteers, and members of the general public from “foreseeable harm.” A “breach of duty” can involve either the failure to act or failure to act properly.
7. If an organization has the ability to act in a way that avoids “foreseeable injury,” it must take such action or risk liability. Screening potential mentors is one of those actions.

[Adapted with permission from *More Than a Matter of Trust: Managing the Risks of Mentoring*, by Leslie T. White, John Patterson, and Melanie L. Herman. 1998. Washington, D.C.: The Nonprofit Risk Management Center.]



Developing a Plan: Screening for Safety

page 1 of 2

To protect children and youth from risk, and to protect your organization from liability, each program must develop a process for screening potential mentors to be sure they are safe. You should develop screening requirements that are appropriate for your particular program. You are also responsible for learning whether there are any state, local, or other regulatory requirements that mandate particular kinds of criminal record checks or other safety checks for volunteers who work with children and youth.

As Charles Tremper and Gwynne Kostin (1993) point out in *No Surprises: Controlling Risks in Volunteer Programs*, “As the sensitivity of the volunteer assignment increases, the need for multiple and more thorough screening procedures rises.” For volunteers in “sensitive assignments”—such as mentors who meet one-to-one with a child or youth in unsupervised settings—Tremper and Kostin recommend using “multiple screens” and “layered screening procedures.” This requires collecting information from a variety of sources—including, perhaps, the application form, a face-to-face interview, a home visit, reference checks, a criminal history record check, a child abuse registry check, and a driving record check.

Elements of Screening for Safety

1. Criminal record, including child abuse

Sources of information:

Disqualifying offenses:

Any mitigating circumstances?

2. Driving record

Sources of information:

Disqualifying offenses:

Any mitigating circumstances?

3. Alcohol and other drug use

Sources of information:

Disqualifying offenses:

Any mitigating circumstances?

4. Other (specify)

Sources of information:

Disqualifying offenses:

Any mitigating circumstances?

5. Other (specify)

Sources of information:

Disqualifying offenses:

Any mitigating circumstances?



Conducting Criminal History Record Checks

1. Be sure your policy regarding criminal history record checks is rigorous enough to screen for the kinds of safety risks that mentors in your program could potentially pose to your program's participants.
2. Develop a list of disqualifying offenses and mitigating circumstances to be taken into account.
3. Contact appropriate agencies to determine if there are any additional state or local requirements for criminal history record checks of adults working with children and youth.
4. Contact your state's criminal history record repository for information concerning how to obtain criminal history record checks in your state, or retain a private firm to conduct criminal history record screening.
5. Arrange the necessary funding to pay for the record checks.
6. Document the record check in the applicant's file. Ensure that the information remains confidential.
7. Formulate an appeals process for applicants who feel that the information received by your program is incorrect.
8. Because record checks take time, develop a strategy for keeping potential mentors interested in your program while the process is going on.

[Adapted with permission from *Criminal History Record Checks*, by John C. Patterson. Nonprofit Risk Management Center, 1998.]



Next Steps

During the next two weeks, I will begin to modify, or evaluate whether I should modify, these aspects of my program's screening policy and procedures for mentors:

1.

2.

3.



Reading Selection: Gut Feelings and Intuitions

page 1 of 2

By Linda Graff

They are impossible to define and yet most of us experience them. Triggers called “gut feelings” arise with some regularity among screeners. Variouslly called “intuition,” or “instinct,” screeners sense that something is “off” or “not quite right” with particular candidates. It might be the feeling of the hair standing up on the back of your neck, or the troubling sense of uncertainty that nags at you when the interviewee leaves your office.

What should you do when you experience misgivings of this nature? The first thing to do is to push yourself to identify precisely what triggered the sense of apprehension. Was it something in the candidate’s manner, choice of words, presentation style, body language, or attitude? If you can pinpoint the source of discomfort, then explore it. Is it a legitimate cause for concern, or is it merely a reflection of discomfort with “difference”? Be careful that discrimination against someone not exactly like yourself is not in play.

The gut feeling can arise from other sources. Perhaps the source is a slight inconsistency among the data collected about a candidate. Perhaps the source is the too-careful choice of noncommittal language from a reference. Maybe a sense of unease surfaces from a slightly less than convincing explanation of gaps in an employment record or frequent moves from community to community.

The recommendation is that gut feelings not be ignored (Lorraine Street, 1996; Robert W. Wendover, 1996; Steve McCurley and Rick Lynch, 1996). There is often some basis in reality for an intuitive sense of apprehension. Like other red flags, a gut feeling should not be grounds for disqualification but, instead, a cause to investigate further.

Get a second opinion. Ask a colleague or a supervisor to join you in a second interview with the candidate, or to re-check a reference. Think about how much you want to share with your assistant in advance. It might be better to say less about your misgivings and see if he or she picks up on what you sensed. She or he might be able to confirm or dispel your concerns.

When misgivings cannot be easily allayed, it may be necessary to ask the individual to undergo further screening. For example, an additional interview, extra reference checks, a performance assessment, or a probation period might provide enough additional information for the decision to become clear. Caution is advised, however.

Reading Selection: Gut Feelings and Intuitions
page 2 of 2

As Lorraine Street (1996: 3.37) says, “The organization must be careful not to discriminate against someone by asking more than it normally would, without a good reason.” Here is the basis for pushing hard to identify the source of unease. You may be called upon to defend it in the face of an allegation of discrimination.

As Lorraine Street elaborates, the situation may not be easily resolved. You may be faced with a difficult choice. You place a candidate you are still uncomfortable with, which may increase risks, and which will certainly increase the importance of all post-screening risk management mechanisms. You decline the application of a candidate on less than clear or defensible grounds, which leaves the organization vulnerable to discrimination claims.

Sometimes the choice comes down to what your gut tells you might be the best course of action in the best interests of clients and the organization’s mission, versus the most prudent legal option of non-discrimination.

Clearly a win-win outcome is unlikely in such a dilemma. The ethically right choice is probably to give priority to the well-being of clients, but either way, the screener will want to ensure that the organization supports the option she or he pursues.

[From *Beyond Police Checks*, by Linda Graff. 1999. Graff & Associates. Available through Energize, Inc. 800-395-9800 or at their Web site: <http://www.energizeinc.com>]



Reading Selection: Understanding Legal Liability

page 1 of 7

By Leslie T. White, John Patterson, and Melanie L. Herman.

Mentoring programs, like other nonprofit activities, face a variety of legal risks. Nonprofits are always vulnerable to liability claims and lawsuits from paid and volunteer staff, service recipients, donors, regulatory agencies, and members of the general public. Risk management programs cannot eliminate legal risks completely; however, mentoring programs can benefit from understanding their legal risks and taking steps to minimize the likelihood of legal challenges.

The first step in managing legal risks is to understand the nature of legal liability. All organizations and individuals have legal interests such as physical safety, freedom of movement, protection of property, right of privacy, security of reputation, performance of promises, and economic freedom. These interests are protected under the law.

The invasion of protected interests is governed by three types of liability: tort, contractual, and statutory or common law liability. Nonprofits and other organizations invade the interests of others if they break a law, breach a contract, or cause harm to another party either intentionally or unintentionally.

Tort Liability

A tort is *a private or civil wrong or injury other than a breach of contract for which the law provides damages*. Tort law governs most of the legal liability for injuries occurring in the operation of nonprofit organizations. Torts are classified into three categories: negligence, intentional acts, and strict liability. Most claims filed against nonprofits allege negligence.

Negligence

Negligence has many different definitions. One of the most commonly used definitions is *the failure to do something a reasonable person would do or the doing of something that a reasonable person would not do under the circumstances*. Liability for harm is not automatic under negligence theory. An injured plaintiff must prove four essential elements to recover from a defendant: a legal duty to act, a breach of the duty, damages or harm, and causation.

Legal Duty. A legal duty is *an enforceable obligation to exercise care or to maintain a certain standard of conduct for protecting others against unreasonable risks*. If your organization does not owe a duty to another organization or individual, then it

*Reading Selection: Understanding Legal Liability
page 2 of 7*

cannot be negligent. Every nonprofit has a minimal duty to protect service recipients, staff members, volunteers, and members of the general public from foreseeable harm. When nonprofits provide services to vulnerable service recipients such as children, the elderly, or persons with disabilities, a higher level of care is required.

Breach of Duty. The second element of negligence is that individuals or organizations must act in a way that breaches their duty to the injured party. A breach can involve either the failure to act or failure to act properly.

Harm or Damages. It's not enough to show that a nonprofit had a duty of care and that it didn't meet that duty. Injured parties must show that they suffered an injury or damages. The possibility that they could have been hurt is not a basis for negligence. The damages can be either economic or noneconomic losses. Economic or pecuniary losses include bodily injury (including death), medical expenses, burial costs, property damage, and loss of income including loss of business or employment opportunities (losses that can be easily assigned a dollar value). Noneconomic losses include losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, and injury to reputation.

Proximate Cause. The breach of duty must be the direct or proximate cause of the injury or damage. For example, an inner-city tutoring program employs a uniformed guard at its training site. One day, the guard doesn't show up for work. On the same day, a mentor is injured in a car accident on his way to the training site. Although it is arguable that the tutoring program has a legal duty to protect the mentor from foreseeable harm, the absence of the guard may constitute a breach of that duty, and the mentor was clearly injured, it is unlikely that a court will find the breach (the guard's absence on the day of the accident) proximately related to the accident. The nonprofit's breach of its duty did not cause the harm suffered by the mentor.

An important key to predicting whether liability will be imposed is to understand the required standard of care. Most courts use the concept of "reasonableness under the circumstances" to define the minimum standard of care. This standard varies by situation considering the activity, environmental conditions, and the participants involved in the incident. For mentoring programs the required standard of care will be based on a number of factors, including the type of activity, the age of

Reading Selection: Understanding Legal Liability
page 3 of 7

the mentee, impairments such as physical or developmental disabilities of the mentee, conditions when an accident occurred, and resources available to the non-profit to protect participants from harm, such as the availability of screening tools. Courts also consider the purpose of the organization, particularly if a mentoring program's mission focuses on prevention or intervention types of relationships.

Most courts and jurisdictions hold that the standard of care is higher for nonprofits working with children and other vulnerable populations than for organizations working with adults. If your mentoring program serves youth or other vulnerable populations, you should recognize that you will be held to a higher standard of care and your safety programs should reflect a commitment to meeting this standard.

Additional factors determining "reasonableness under the circumstances" are the skills and knowledge of the allegedly negligent person. The standard of care requires "that the degree of skill be exercised which the general class of persons engaged in that profession would have." A person with special skills or training is held to the standard of care of a reasonable person possessing those skills. Therefore, if your mentoring program uses social workers as mentors, those employees' actions will be judged based on the perception of what a reasonable social worker would do, not what an ordinary citizen would do under similar circumstances. People with special skills and training are held to a higher standard for actions within the realm of their training and skill than people without such training and skills.

The reasonableness standard is also affected by the foreseeability of the harm. Most courts agree that the standard of care is not to ensure safety, but to act reasonably in view of the probability, not the possibility, of injury. Thus, a nonprofit must protect those to whom it owes a duty from foreseeable harm. Foreseeability can be determined by whether an organization or individual knew or should have known of a potential harm. If a party could or should have foreseen the harm, then it should take reasonable steps to prevent the harm. Again this issue is important in determining the program's personnel screening requirements.

Another facet of reasonableness is the question of control focusing on whether a nonprofit had the ability to take action to avoid an injury. Nonprofit organizations and their personnel cannot control everything, and the courts do not require them to do so. However, if an organization had the ability to act to avoid foreseeable injury, it must take such action or risk liability. It is important, therefore, to focus attention on those activities that you do control such as screening and selection of mentors and participants, the operating policies for the program, and procedures for handling accidents and losses.

Reading Selection: Understanding Legal Liability
page 4 of 7

Intentional Acts

In contrast to negligence, in which liability results from failure to exercise reasonable care, intentional torts result from actions that organizations or individuals take knowing that those actions may invade another party's protected interests. The act does not necessarily need to be committed with malice or intent to cause harm. For example, if a mentor, in the course of helping a mentee find her keys, looks through the mentee's purse without permission, the mentor has invaded the mentee's right to privacy. If the mentor finds a substance she suspects may be illegal drugs, tells a supervisor, and later learns that the substance was not illegal, the mentor has damaged the mentee's reputation. These actions were not taken with the intent to cause harm; nonetheless, if the mentee suffered harm as a result of these actions, the nonprofit could be found liable.

Strict Liability

Strict liability is imposed for harm resulting from certain activities and situations, even though an organization may be free of direct fault. Nonprofits, particularly mentoring programs, usually do not engage in many activities that may lead to strict liability such as keeping wild animals, inherently dangerous activities, or selling or producing inherently dangerous products. However, strict liability can also be imposed for the actions of others. Commonly called vicarious liability, it is applied to organizations for the actions of their employees, partners, subsidiaries and other agents acting on their behalf, even if the organization itself acted completely without direct fault. Vicarious liability extends only to activities within the scope of the relationship and not to unrelated misconduct.

Statutory and Common Law Liability

Every nonprofit must follow federal, state, and local laws and regulations. Failure to comply with these requirements can lead to criminal and civil liability. Statutory liability arises from the constitutions, statutes and ordinances, administrative regulations, and executive orders issued by federal, state, and local governments. These statutory requirements can include the need to secure a permit or license such as construction permits, day-care licenses, and licensed social workers. Regulations such as noise ordinances and zoning laws forbid specific conduct. A violation of a statute can result in both a criminal penalty and a civil liability. The criminal penalty can be a fine and/or prison term. Civil liabilities involve another party claiming damages as a result of the organization's failure to comply with the statute or regulation.

Reading Selection: Understanding Legal Liability
page 5 of 7

Here are some statutory requirements that might apply to your mentoring program:

- Child abuse reporting requirements
- Abuse reporting requirements for vulnerable populations
- Criminal background check requirements for employees or volunteers
- Licensing for drivers (driver restrictions and limitations)
- Child labor laws
- Curfews
- Educational requirements
- Licensing of personnel (social workers, medical personnel, teachers)
- Insurance requirements (automobile financial responsibility, premises, program)
- Environmental requirements (disposal of hazardous materials, noise)
- Health department regulations (for food preparation, camps, etc.)
- IRS and state requirements for charitable organizations

Related to statutory liability is common law liability, a set of principles established through judicial rulings that are generally applicable to all organizations and individuals. Court rulings sometimes set precedents, indicating that the rulings can be used as a basis for reaching comparable decisions in similar cases in the future. Although common law is not established by a legislative or regulatory body, it has a foundation in the courts.

Nonprofits should research the laws, regulations, and recent court cases that apply to their operations. Ignorance is an unacceptable defense if the governmental authorities find that a mentoring program is not complying with the requirements.

Contractual Liability

A contract is a promise that the law will enforce. In order for a contract to be legally binding, there must be mutual assent and consideration in return for a promise to do or not do something. In other words, both parties must agree to the contract and something of value must be given or foregone. Because a contract is

Reading Selection: Understanding Legal Liability
page 6 of 7

a legal promise, the law agrees to give a remedy if either party breaches the agreement. A breach is the failure to perform under the terms of the contract and a nonprofit may be liable for its breach of a contract.

Mentoring programs enter into many contracts, some intentionally and some by accident. Parties that enter into a contract may have several levels of authority. Express authority is specific authorization to enter into the contract. Implied authority allows a party to do what is necessary to accomplish the express authority. Apparent authority carries the appearance that a party has the authority to enter into an agreement. Apparent authority can get an organization into trouble, because an unauthorized person, such as a volunteer, could enter into a contract that the program would have to honor. Every nonprofit should decide and identify clearly who can enter into contracts on its behalf.

Another contractual danger is an implied contract created through the program's marketing materials. A program can inadvertently make promises, such as guaranteeing employment opportunities for the participants, through its promotional material and recruiting efforts.

Common Liability Exposures

It is impossible to list all of the liability exposures facing mentoring programs. Every day the courts create new laws and interpretations of the standard of care. Therefore, we will try to identify some of the areas in which a mentoring program has liability exposures. As a program coordinator, you need to review this information, identify the ones that apply to your program, and brainstorm what else can go wrong within your program.

One of the greatest challenges facing a mentoring program is to provide for the safety of its staff, participants, and others. You should be concerned about your own actions as well as the actions of your employees, volunteers, and collaborative partners. Mentoring programs must strive to protect people from the reasonable and foreseeable risks. One way to evaluate those risks is to review various aspects of the operation. Below are some areas for a mentoring program to review and identify the risks that it faces.

Premises. Mentoring programs should be concerned about the conditions of the premises they use. The premises may be the program's office or the site of program activities. Some organizations use schools, church buildings, public libraries, and

Reading Selection: Understanding Legal Liability
page 7 of 7

other public places to hold activities. Even “off-premises” programs may offer group activities at parks, playgrounds, or concert halls. Begin by brainstorming the ways someone could get hurt on the premises. Here are some ideas:

- Slip and fall due to uneven walk surface
- Inadequate fire exits
- Americans with Disabilities Act noncompliance
- Fire caused by faulty wiring or appliances
- Isolated areas where children could be harmed
- Assaults or robberies because of inadequate lighting and security or unlimited, uncontrolled access by visitors
- Dangerous conditions that draw children
- Lead paint or asbestos poisoning

Property of Others. An organization that has possession of another’s property has a responsibility to protect that property. Often the responsibility is documented in a rental or lease agreement and other times it is the owner’s expectation that the organization will repair or replace any property it damages. The personal property of employees, mentors, volunteers, participants, and borrowed, rented, or leased property can be lost, stolen, broken, or destroyed in a fire, flood, hurricane, or other peril. The property can include people’s personal property, sports equipment, computers, educational materials, videos, and other materials needed to operate the program.

Many mentoring programs hold activities on the premises of organizations such as schools, churches, libraries, parks with basketball courts or playing fields, and other meeting places. The organization may be responsible for any damage to the building and its contents. The damage may be caused by theft; fire from a faulty electrical appliance, careless smoking or housekeeping, or arson; accidents that cause broken windows, spills on computers, and overloaded equipment; and intentional acts such as graffiti and vandalism.

[Used with permission from *More Than a Matter of Trust: Managing the Risks of Mentoring*, by Leslie T. White, John Patterson, and Melanie L. Herman. 1998. Washington, D.C.: The Nonprofit Risk Management Center.]



Reading Selection: ***Federal Law Protects Nonprofit Volunteers***

page 1 of 3

By Don Kramer

Volunteers for charities and other nonprofit entities have an additional line of defense against the threat of personal liability now that Congress has finally passed a federal Volunteer Protection Act.

Acting in the euphoria for citizen service following the Presidents' Volunteer Summit in Philadelphia in April [1997], Congress passed with fanfare a bill that had been languishing in both the House and Senate, in various forms, for a decade.

The new law (42 USCA Sec. 14501 et seq.) generally provides that volunteers will not be personally liable for their acts or omissions if they are acting within the scope of their responsibility for the organization, and the harm is "not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed."

A volunteer is a person who performs services for the organization without compensation, other than reasonable reimbursement or allowance for expenses actually incurred, or "any other thing of value in lieu of compensation, in excess of \$500 per year." If this standard is met, a volunteer would include a person serving on the board of directors or a building committee, or a person teaching classes. It might even include individuals not normally thought of as volunteers, such as officers of the entity or apprentices providing services to the organization. The key in each case is whether the statutory definition of a volunteer is met. Volunteers for governmental entities are also protected.

A "nonprofit organization" is one classified as exempt from tax as a charity under Section 501(c)(3) of the Internal Revenue Code or "any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes." An organization does not qualify if it perpetrates hate crimes.

Although the law provides a benefit to volunteers, it will not in most cases reduce the recovery of a victim. Since the Act does not eliminate liability of the organization itself for the acts or omissions of its volunteer agents, and since most nonprofits maintain insurance to protect themselves and their volunteers, most cases will continue to be settled by insurance payments from the organization's insurer.

Reading Selection: Federal Law Protects Nonprofit Volunteers
page 2 of 3

How Does The New Act Work?

A volunteer is not personally liable for harm that he or she caused if the volunteer: 1) was acting within the scope of his or her responsibilities; 2) was “properly licensed, certified, or authorized by the appropriate authorities” to act in such manner “if appropriate or required”; 3) did not fall below the minimum standard of conduct described above; and 4) was not operating “a motor vehicle, vessel, aircraft, or other vehicle” for which the state requires an operator’s license or insurance.

The protection does not apply to misconduct that constitutes a crime of violence or terrorism (for which the volunteer is criminally convicted) or a hate crime (whether or not convicted). In addition, there is no protection for sexual offenses (for which the volunteer is criminally convicted), for civil rights violations, or for acts that occurred when the volunteer was under the influence of “intoxicating alcohol” or drugs.

A state law will not be deemed inconsistent with the Act if it: 1) requires the nonprofit to adhere to risk management procedures, including mandatory training of volunteers; 2) makes the organization liable for the acts of volunteers to the same extent as it is liable for the acts of employees; 3) makes a limitation of liability inapplicable in an action brought by a state or local official; or 4) requires a “financially secure source of recovery,” such as insurance or a risk pool trust.

Finally, the Act does not preclude a nonprofit organization from bringing a suit against one of its own volunteers for damages to the nonprofit.

You Need To Know

The Volunteer Protection Act certainly does not mean that volunteers will be immune from suits. Plaintiffs’ lawyers representing injured persons will, whenever possible, continue to sue volunteers by alleging gross negligence, flagrant indifference, or acts outside the scope of the volunteer’s responsibility.

Nonprofit entities will continue to be sued as well, however, since they are likely to have “deeper pockets” and will still be liable for acts of their volunteer agents, even if the volunteers are not personally liable. Where the nonprofit has insurance for the claim, which hopefully covers the volunteer as well as the organization, the outcome will probably not be much different under the Act.

Reading Selection: Federal Law Protects Nonprofit Volunteers
page 3 of 3

If the nonprofit is without insurance, however, the volunteer may have a defense to personal liability not available to the organization.

[Reprinted from the December 1997 issue of *Don Kramer's Nonprofit Issues*. For more information about the publication, call 888-NP-Issue or visit the Web site at <http://www.nonprofitissues.com>.]



Reading Selection: **Barriers to Preventing Abuse**

page 1 of 3

By John Patterson, with Charles Tremper and Pam Rypkema

Several factors commonly stand in the way of child abuse protection initiatives. Among the most powerful are denial of the problem, rejection of responsibility for the problem, overemphasis on protecting the organization, an unreceptive organizational culture, lack of policy guidelines, and lack of assigned responsibility.

Denial

None of us likes to think anybody would sexually assault or physically batter children. We want to believe that the longtime volunteer coach was only measuring his catcher for a new pair of pants, but still wonder why the boy was naked. We want to believe that our summer camps are safe, so we disregard the moving shadows in the moonlight. We cannot imagine that a stepfather could be a pimp for his six-year-old daughter. We know intellectually that abuse may happen, but cannot accept in our hearts that it will happen in our programs. All of these are examples of denial.

The best antidote to denial is exposure to stark reality. You can invite a representative from child protective services or from your local law enforcement agency to speak to your board of directors or other policymakers. You can talk with representatives of other organizations who have gone through the emotional trauma of a child abuse case in their organization. And, hopefully, the wake up call will not come from a child abuse incident in your organization.

“Not Our Problem”

This attitude is an extension of the denial reaction. Some organizations consider child abuse to be solely a societal phenomenon beyond their control. They reject the notion that they have a responsibility to go beyond basic programmatic concerns. Some may even question the presence of child abuse as a societal problem, let alone a problem the organization must confront—they feel that the problem is overblown by media hype. Some organizations get very defensive if they are asked about their child abuse problem. Some organizations believe that they do not need to be concerned because children and youth are not their primary service recipients.

To overcome resistance to acknowledging that child abuse is your organization’s problem, you may need to stress the moral obligation to protect children. If you get nowhere, you can point to insurers’ requirements and lawsuits.

Reading Selection: Barriers to Preventing Abuse
page 2 of 3

Protecting the Organization

The top priority for some organizations is protecting itself when child abuse occurs. A flurry of press releases extols the organization's services to children and its record of accomplishment. "So-and-so is a long-time dedicated staff member with an impeccable record, and the charges are the result of an overactive imagination."

The board of an organization that provides medical care for children in other countries exemplifies this attitude. The executive director of this organization was a doctor [and] the author of a very popular self-help medical manual... According to the report, he also had been sexually abusing children for years. During part of that time, several board members knew of his sexual misconduct but maintained their silence for the sake of the organization. The combination of concern about damaging the organization, uncertainty about the wrongfulness of the doctor's conduct, and squeamishness about addressing the matter at a board meeting allowed the abuse to continue.

Organizational Culture

Organizational culture consists of the values, beliefs, and traditions deep-rooted in the organization. The culture of some organizations blocks them from addressing sensitive issues such as child abuse. For example, an organization that accepts the principle of human redemption may wish to reject the rule that a person who molests a child should never have unsupervised access to children again. Organizations that endorse the adage that "sparing the rod spoils the child" may not accept the idea that physical punishment can be abusive.

Some organizations have traditions relating to specific activities such as camping or sports. Veteran staff—paid and volunteer—may resist changes to their program that would break with tradition. They may argue that nothing bad happened before or that changing now would mean admitting they were wrong in the past.

Strong sensitivity to individual rights can also be a roadblock. Concern about individual rights functions usefully by preventing totalitarianism in the name of protecting children, but rights need to be balanced against children's needs. Inquiring into an individual's sexual history would be a terrible invasion of privacy in most programs. If the individual is applying to be a volunteer mentor, however, the invasion may be justified.

Reading Selection: Barriers to Preventing Abuse
page 3 of 3

Child abuse prevention can fit into most organizations without requiring major changes in program activities or in values dear to the organization. Most adults working with children are parents and appreciate the efforts of organizations to protect the children they serve. Emphasizing that benefit can ease the process regardless of organizational culture.

Lack of Policy Guidelines

If an organization has never addressed the issue of child abuse, there may be a policy vacuum. Discomfort with the topic or concern about offending anyone may have prevented adoption of a clear, cohesive, and adequate plan for protecting children. Many smaller organizations have few formal policies. Developing and implementing child abuse prevention strategies may need to start with creation of a policymaking process to conduct the necessary work.

An organization that has not developed its child abuse prevention strategies might begin by creating a task force consisting of employees, volunteers, and parents to review the material in this *Primer* and the resources it lists, examine existing policies, and develop strategies appropriate for the organization.

Responsibility Not Assigned

Sometimes organizations have policies to prevent child abuse, but no one has the responsibility of overseeing their implementation. A policy without oversight may be more damaging to the organization than no policy at all. By having a policy, the organization is giving lip service to its responsibility for prevention. Pronouncements without action may be seen as hypocritical and self-serving.

Primary responsibility for child abuse prevention ordinarily needs to be assigned to a specific individual or department. Depending on the size and structure of the organization, that person might be the director of personnel, the risk manager, a vice president for programs, or the executive director. One person cannot, however, bear the entire burden. Child abuse prevention should be a part of every position description.

[From *Child Abuse Prevention Primer for Your Organization*, by John Patterson with Charles Tremper and Pam Rypkema, © 1995, The Nonprofit Risk Management Center. Available through Energize, Inc., 800-395-9800 or at their Web site <http://www.energizeinc.com>.]



Reading Selection: Criminal History Record Checks

page 1 of 19

By John C. Patterson

This “Community Service Brief” was prepared by the Nonprofit Risk Management Center specifically for AmeriCorps programs whose members work with vulnerable populations. However, the information it contains is widely applicable to mentoring programs.

Contents

Introduction

Preparing to Conduct Criminal History Checks

Conducting Criminal History Record Checks

Conclusion

Appendix: State Criminal History Record Repositories

[Reprinted with permission from The Nonprofit Risk Management Center, 1998]

Reading Selection: Criminal History Record Checks
page 2 of 19

Introduction

Organizations are responsible for taking reasonable measures to protect service recipients from harm. This responsibility extends to all facets of an organization's interactions with its clientele. Perhaps no protective measure has received more attention than screening processes used by organizations to examine closely the backgrounds of individuals who seek positions requiring direct contact with vulnerable service recipients.

While not a panacea, careful screening of the staff and volunteers who work with vulnerable populations is an important risk management precaution. Failure to adequately screen applicants may place service recipients in dangerous situations. Many lawsuits against organizations are based upon allegations of negligence during the personnel selection process. Checking criminal history of applicants is a valuable tool in a comprehensive screening process.

Beginning in 1996, the Corporation for National Service attached the following special condition related to criminal history record checks to its grant awards:

AmeriCorps programs with members or employees who have substantial direct contact with children (as defined by state law) or who perform service in the homes of children or individuals considered vulnerable by the program, shall, to the extent permitted by state and local law, conduct criminal record checks on these members or employees as part of the screening process.

The purpose of this booklet is to offer guidance to AmeriCorps program directors and other staff who are responsible for the implementation of this requirement.

This booklet explores many of the issues that grantees should address as they comply with the Corporation's mandate to implement criminal history record checks. These issues include:

- Factors grantees should resolve prior to conducting criminal history record checks
- Steps in conducting criminal history record checks, including notifying applicants, determining information requirements, accessing records, determining costs, and interpreting results
- Limitations of criminal history record checks

Preparing to Conduct Criminal History Record Checks

Throughout this publication, the term “applicant” is used to refer to individuals subject to a criminal history record check. There are two reasons for this: 1) most criminal history record checks are performed as part of an organization’s screening of applicants; and 2) even if the subjects of criminal history record checks are already AmeriCorps members or staff, they cannot serve in the specified positions until their record checks are completed—therefore, they are applicants for those positions.

A criminal history record check is part of a screening process—not a selection criterion. Before incorporating criminal history record checks into their screening processes, organizations should establish screening criteria—clear guidelines stating which offenses are relevant; what offenses will disqualify an applicant; what, if any, other factors will be considered; and how the rights of the applicant will be preserved.

The mission of each organization will provide the gauge for determining the amount of risk that an organization decides to accept. A grantee using ex-gang members as mentors for “at-risk youth” will likely use a different standard for evaluating criminal history records than an AmeriCorps grantee that assists elderly individuals in their homes with health care needs.

Relevant Offenses

Within the context of the organization’s mission, the offenses that organizations might consider relevant are a function of the specific position in which an AmeriCorps member or staff person will serve. The Corporation’s grant condition specifies that criminal history record checks be conducted for individuals “who have substantial direct contact with children (as defined by state law) or who perform service in the homes of children or individuals considered vulnerable by the program.” The question that organizations must answer is, “What offense histories would disqualify an individual from serving in such positions?”

When establishing screening criteria, organizations must take into account state and local laws and regulations. Some jurisdictions have instituted screening or licensing requirements for individuals who have substantial contact with children or other vulnerable individuals (dependent elderly or individuals with disabilities). Grantees should determine if licensing or regulatory agencies have identified specific offenses that would disqualify applicants for some assignments.

The National Child Protection Act of 1993 envisioned a process in which an organization would not receive a copy of an individual’s “rap sheet,” but would

*Reading Selection: Criminal History Record Checks
page 4 of 19*

instead be given a summary of the record made by a state agency. The agency would tell the organization only if the individual's record included offenses making the applicant unfit for working with children or other vulnerable clientele. Since very few states have elected to follow the guidelines contained in the National Child Protection Act, grantees are more likely to receive a record of all criminal convictions.

For positions that require substantial direct contact with children or other vulnerable populations, personal safety concerns are paramount. Therefore, the focal points of criminal history record checks for these individuals are crimes against persons.

Youth-serving organizations generally agree that individuals should be permanently disqualified from holding positions that require substantial contact with children if their criminal record includes any of the following:

- Past history of sexual abuse of children
- Conviction for any crime in which children were involved
- History of any violence or sexually exploitative behavior

Offenses become relevant based upon the nature of the position. For example, assisting with in-home health care could provide AmeriCorps members or staff access to prescription medications that may tempt individuals with a history of drug abuse or those who recognize the potential street value of the drugs if they were to steal them. A recent record (within the past few years) of substance abuse or drug distribution would be very relevant given the characteristics of the position in which the applicant would serve.

The more specific a criterion is, the more useful it is for screening. Specific offenses pinpoint the areas of concern and do not unnecessarily disqualify applicants. Some organizations include broad categories of offenses in their lists of disqualifying offenses, for example, "drug-related offenses." This category is extremely broad, encompassing everything from a single misdemeanor possession of less than an ounce of marijuana to felony racketeering. Organizations should consider narrowing their categories to target specific relevant offenses committed within a defined time period. For example, "conviction, within the past ten years, for possession with intent to distribute a controlled substance." Please note: the time period and the offense above are hypothetical—used to illustrate the point. They are not intended to be suggested screening criteria.

Reading Selection: Criminal History Record Checks
page 5 of 19

While protecting people is the primary motivation for conducting criminal history record checks, protecting personal property is an important consideration when client services include home visitations. Therefore, for organizations that send AmeriCorps members or staff into the homes of vulnerable individuals, property-related crimes on an individual's "rap sheet" are most relevant due to the opportunities such positions provide for theft. It is not uncommon for organizations that offer in-home services to individuals with disabilities or to the elderly to receive allegations that their staff members or volunteers took valuable items from the homes of the service recipients.

Use of arrest data in screening processes for paid positions has been adjudicated as a discriminatory practice and is therefore barred under Title VII of the U.S. Civil Rights Act of 1964.

Court decisions decree that screening criteria must be based upon convictions—not arrest information. Grantees may, however, consider any arrests for which final disposition is pending. This is especially true for individuals who have charges pending for which they could be disqualified if a guilty verdict were to be rendered. For example, if an applicant were arrested for child sexual abuse and were awaiting trial, the organization may disqualify the individual until the final disposition of the charge.

Other Factors

When establishing criteria for evaluating criminal history records, AmeriCorps programs should consider what, if any, other factors should be taken into account. The five items listed below offer examples of circumstances grantees may consider when evaluating criminal history records. Rather than focusing on one or two of these factors, grantees should examine the totality of the record to determine if it should disqualify an applicant.

The recency of and circumstances surrounding the conduct in question.

Crimes that occurred within the past year or two may be more reliable indicators of an individual's qualification status for AmeriCorps service than crimes that occurred several years ago. This would be particularly true if the only crimes listed in the record happened several years ago with no recent offenses. (Keep in mind, however, that any convictions for child sexual abuse, rape, or other sexually exploitative offenses constitute an unacceptable level of risk extending throughout an individual's life.)

*Reading Selection: Criminal History Record Checks
page 6 of 19*

The age of an individual at the time of the offense. Many applicants are young adults; therefore, if they have a criminal record, their crimes were probably committed when they were juveniles. Organizations may consider this factor when evaluating criminal history records. In some states, juvenile records will not be available as they are protected by confidentiality laws.

Societal conditions that may have contributed to the nature of the conduct. Organizations may consider the social context in which offenses occurred. For example, in some neighborhoods, becoming a gang member may be due to pressure exerted by the gang or to a perceived threat of harm that not joining a gang would create. While societal conditions should not serve to excuse illegal behavior, the context in which the illegal behavior occurred may be considered by grantees.

The probability that an individual will continue the type of behavior in question.

Criminal history records that document a continuing pattern of repeated criminal offenses provide justification to believe that the individual represents a high risk for future criminal conduct. Also, some forms of criminal sexual conduct, such as child molestation, have a high probability of repetition. Individuals with a high risk for continuing criminal behavior should not be assigned to work with vulnerable service recipients.

The individual's commitment to rehabilitation and to changing the behavior in question. When an applicant has a criminal history record that includes potentially disqualifying offenses, the organization may consider the steps the applicant has taken toward rehabilitation. Words of remorse alone are not sufficient evidence of an individual's commitment. Organizations should look for tangible evidence of the applicant's desire to lead a law-abiding life, such as progress in rehabilitation programs or making restitution to victims.

Applicants' Rights

Applicants have the right to be treated fairly and to have their privacy respected. Organizations are responsible for protecting these rights and therefore may need to establish and implement policies that achieve these objectives.

Criminal history databases are not perfect and sometimes a record check will falsely identify a person as having committed a crime. For this reason, applicants should be given a chance to challenge the accuracy of information that an organization receives.

Reading Selection: Criminal History Record Checks
page 7 of 19

The organization may inform the applicant of the nature of the information it received and the identity of the agency that provided the information. If the applicant wishes to challenge the accuracy of the information, he or she should be advised to communicate directly with the record repository. It is best to let the applicant resolve any disputes with the criminal justice agency from which the organization received the information. Until the organization receives a correction from the criminal history record repository, it should assume that the information it received is correct.

Fingerprints are the only positive means of identification. One way to confirm the identity of individuals about whom the organization receives negative information is to require a confirmation of the applicant's identity through a fingerprint check when the original criminal history record check was not based on fingerprints.

Many jurisdictions levy criminal and civil penalties against organizations and individuals who misuse or negligently handle the information obtained through criminal history record checks. Because laws in each jurisdiction may be different, grantees should ascertain from their state's criminal record repository what, if any, legal requirements apply to their custodianship of criminal history information. [A list of state criminal history record repositories is included in the appendix.]

The absence of specific legal requirements in this area may not relieve the organization of its obligation to protect the privacy of the applicant. Due to the sensitive nature of the information that an organization may receive pursuant to a criminal history record check and the fact that it could be incorrect, organizations should take steps to prevent its accidental disclosure. Organizations should consider establishing policies governing who has access to the information, how it is stored, and how it is to be destroyed once it is no longer needed by the organization.

Conducting Criminal History Record Checks

When an organization includes criminal history record checks in its screening procedures, it should inform applicants of that fact on the application form. The application might ask if the individual has been convicted of committing any of the offenses the organization establishes as relevant. Alternatively, some AmeriCorps programs ask whether the individual has been convicted of any criminal offense; if the answer is "yes," the application then asks for details about the offenses.

*Reading Selection: Criminal History Record Checks
page 8 of 19*

To remove any ambiguities, an application form may list each specific offense and include both “yes” and “no” boxes for applicants to check to indicate if they have or have not been convicted of the listed offense. If the “yes” box is checked, additional information should be requested such as the date of the offense, where the crime was committed, the disposition of the matter, and any other factors the applicant thinks the organization should consider.

The application should also explicitly state that applicants who provide false information shall be disqualified for, or terminated from, service.

Grantees may either request criminal history record information through the law enforcement agency designated by their state’s laws, or retain a private firm that specializes in conducting criminal history record checks. Each of these options is discussed below.

Criminal History Record Repositories

When seeking access to criminal history records through a law enforcement agency, grantees should contact their state criminal history records repository to inquire about the process for conducting criminal history record checks. Even when an organization conducts a national record check through the FBI, access to the national criminal history database is governed by the state in which the organization is located.

State Record Checks

When using name-based criminal history record checks, the organization should verify the applicant’s identification with a driver’s license or other official, picture identification.

Most states conduct name-based criminal history record checks and therefore do not require fingerprints. Name-based record checks take considerably less time to complete than fingerprint-based checks. Organizations submit the applicant’s name, date of birth, current address, sex and, in some states, social security numbers. When submitted information matches information in a criminal history record, fingerprints may be required to positively link the applicant to the criminal history record. Most states report that they complete state criminal history record checks within two to three weeks after they receive the request.

Each state establishes its own requirements for processing criminal history record checks. Some states require organizations to use an official form for their requests.

Reading Selection: Criminal History Record Checks
page 9 of 19

Often these forms require the signature of the person on whom the check is being conducted. Other states may require requests to be submitted using the requesting organization's letterhead. Some states have established on-line computer access to enable organizations to submit their requests for criminal history record checks electronically. Most of the procedures used by the states can readily be incorporated into grantees' screening processes for AmeriCorps members and staff.

A suggested guideline for conducting criminal history record checks of AmeriCorps members and staff is to check a minimum of the past five years.

The costs of state criminal history record checks vary from state to state. A few states perform these record checks as a public service at no cost. In states where a fee is required, the fees range from \$5 to \$25 per record check. Grantees may request funds in their project budgets for the purpose of conducting criminal history record checks.

State-level checks will reveal only convictions for crimes that occurred within the state. For this reason, state-level criminal history record checks may not suffice for individuals who have resided in a state for only a short period of time or who have moved from state to state. Organizations should check other states of residence or conduct a national record check to adequately screen these applicants.

National Record Checks

For an organization to conduct national-FBI-criminal history record checks, the state in which the organization is located must have enacted legislation authorizing access to FBI criminal history records for screening individuals for non-criminal justice purposes. FBI record checks for AmeriCorps members and staff cost \$24 per individual plus the cost of a state check.

For a national record check, the FBI requires that:

- The applicant provide a complete set of readable fingerprints and sign a statement indicating whether he or she has ever been convicted of a crime. If he or she has been convicted of a crime, a written statement must describe the crime and give the particulars of the conviction.
- The organization inform the applicant that it may request a record check for the position sought.

*Reading Selection: Criminal History Record Checks
page 10 of 19*

- The organization inform applicants of their rights to obtain a copy of any background report and to challenge the accuracy and completeness of the information before a final determination of eligibility is made.

The organization submits the information to the state criminal record repository that conducts a state record check first, which in turn, forwards the request to the FBI. Any matches found in the FBI record checks are confirmed through fingerprint analysis before a report is sent to the state. The state agency then sends its report to the organization. Very seldom does the FBI communicate with an organization directly.

From the time a national criminal history record check request is submitted, it typically takes about six weeks to receive a report; however, it may take up to six months. The poor quality of fingerprints submitted for identification is a common reason that FBI record checks take as long as they do. The FBI reports that even when the fingerprints are taken by a trained technician, it has to reject a significant percentage because they are unreadable. The FBI requires a complete set (all ten fingers) of clear, readable prints for non-criminal justice record checks.

Local Criminal History Record Checks

Using local criminal justice agency records for screening AmeriCorps members and staff is cumbersome and should be avoided except perhaps in New York and Puerto Rico, where all access to criminal history records for non-criminal justice screening is extremely restricted. The most common local sources of criminal history records are court documents. Grantees needing information from these records should contact the clerk of the court to determine how to gain access.

When using local criminal history records, grantees should remember that the information obtained is limited to cases processed by the agency providing the information. Organizations may need to check several local sources to screen applicants who have moved from county to county within a state. Costs for local record checks range from \$5 to more than \$25 per jurisdiction.

Sex Offender Registries

Under the auspices of state and federal “Megan’s Laws,” nearly every state has established sex offender registries. These databases are lists of individuals who have been convicted of criminal sexual conduct ranging from child molestation to rape. While the scope of offenses included in sex offender registries is limited, such registries offer an advantage that state criminal history record checks do

Reading Selection: Criminal History Record Checks
page 11 of 19

not—they list sex offenders living in the state irrespective of where their convictions occurred. According to the law, individuals who have been convicted of specific sexual crimes are required to register when they move into a new state. Sex offender registries have the potential for offering a powerful screening tool designed to prevent sexual predators from gaining access to additional victims. While it is too soon to evaluate their effectiveness, grantees should not overlook the potential they offer.

Private Screening Firms

The intense interest in the use of criminal history records for screening individuals who work with children has encouraged private security firms to expand their services by offering criminal history screening programs. Grantees may find that retaining the services of a private firm to conduct criminal history record checks expedites the screening process as these firms create and maintain their own databases of criminal history information and are often able to provide extremely rapid responses to record check requests. In addition to the comparatively quick response to inquiries, private firms often offer additional screening services such as confirmation of academic credentials or motor vehicle record checks.

The cost of retaining a private firm to conduct criminal history screening may be somewhat higher than accessing records through a state agency. The companies offering criminal history background checks realize, however, that they must be competitively priced in order to attract customers. Some users of private screening services find that the increased costs are more than justified by the reduction in administrative time and inconvenience. This is especially true when information must be obtained from several jurisdictions.

When selecting a private firm to assist with screening, grantees should review the services available and ask for client lists to check references. The most relevant clients to contact for recommendations concerning a screening service are those most similar to the prospective user of the service.

Some organizations conduct comparison tests when making a selection of private screening firms. To do this, the organization submits a list of names that includes a few individuals with known records. The object of the test is to see which firm offers the most thorough screening by identifying the “plants” and providing the results in a timely manner. Grantees should check very carefully the process the firm uses to ensure that recent offenses are included in the databases used for screening.

Reading Selection: Criminal History Record Checks
page 12 of 19

Interpreting Criminal History Record Check Results

When an organization receives a report that an applicant has no criminal history record, it would like to conclude that the record check means that the individual is an honest, upstanding citizen with impeccable integrity. Unfortunately, no criminal history record check will document these attributes. The lack of a criminal history record cannot be used to predict future lawful behavior.

As mentioned earlier, criminal history databases are not perfect. Just as an applicant may be erroneously identified as having a criminal history record, an applicant with a record can just as easily be identified as not having a record. Unless the record check was based upon fingerprint comparisons, the individual may have used a false name. Therefore, a clean record merely means that no record of past criminal convictions was found for the individual in question.

When an applicant is found to have a criminal history record, the organization should first confirm that the individual has not been identified erroneously. Next, the organization needs to apply the criteria and other factors listed earlier in this booklet. If an individual has been convicted of any disqualifying offenses without sufficient mitigating circumstances, the organization may have no choice but to disqualify the applicant from positions as AmeriCorps members or staff that involve substantial direct contact with children or providing in-home services to children or other service recipients the organization identifies as “vulnerable.”

Conclusion

Although criminal history record checks have limitations, one value they appear to have is to discourage individuals who have disqualifying criminal history records from applying for positions when organizations publicize the fact that they conduct criminal history record checks. They also identify many individuals who have been convicted of offenses and attempt to gain access to potential victims through volunteer or paid positions.

While criminal history record checks can be a valuable risk management tool, they are not a complete answer. Organizations offering services to children and other vulnerable service recipients should take other, aggressive steps to ensure the safety of those they serve.

Reading Selection: Criminal History Record Checks
page 13 of 19

In addition to thorough screening, organizations must provide adequate training and supervision of AmeriCorps members and staff. Training should be offered to develop the skills necessary to perform the duties of the position as well as provide knowledge of the organization's policies and procedures for protecting service recipients and staff from inappropriate or criminal conduct. An effective way to deter victimization of vulnerable service recipients is to have a policy that requires reporting all suspicious conduct to a law enforcement or protective services agency.

Supervision practices should permit close monitoring of AmeriCorps member and staff relationships with children and other vulnerable service recipients. To the degree possible, isolated one-on-one contact between AmeriCorps members, staff, and service recipients should be minimized. When one-to-one contact is necessary, frequent telephone or face-to-face contact between supervisors and service recipients should be arranged.

Criminal predators often use positions in service organizations as legitimate means for establishing contact with their victims. Victimization occurs when the relationship is extended beyond the boundaries established by the organization. This is especially true in instances of child molestation and when elderly service recipients are bilked out of their life savings. To prevent these kinds of criminal conduct, grantees need to establish policies limiting contact between AmeriCorps members, staff, and service recipients outside of officially authorized activities.

Since the focus of this community service brief is criminal history record checks, a comprehensive review of other strategies for protecting vulnerable service recipients is not provided. Grantees are reminded, however, that even the most comprehensive criminal history record checks need to be coupled with other risk management procedures such as the ones mentioned above.

*Reading Selection: Criminal History Record Checks
page 14 of 19*

Appendix: State Criminal History Record Repositories

Alabama

Alabama Bureau of Investigatio
Department of Public Safety
P.O. Box 1511
Montgomery, AL 36192-0501
(205) 242-4372

Alaska

Administrative Service
Alaska Department of Public Safety
P.O. Box 11 1200
Juneau, AK 99811
(907) 465-4336

Arizona

Arizona Criminal Information
Services Section
Arizona Department of Public Safety
P.O. Box 6638
Phoenix, AZ 85005-6638
(602) 223-2272

Arkansas

Arkansas Crime Information Center
One Capital Mall
Little Rock, AR 72201
(501) 682-2222

California

Bureau of Criminal Identification
California Department of Justice
P.O. Box 903417
Sacramento, CA 94203-4170
(916) 739-5144

Colorado

Crime Information Center
Colorado Bureau of Investigation
690 Kipling Street #3000
Denver, CO 80215-5844
(303) 239-4224

Connecticut

Connecticut State Police
Bureau of Identification
Department of Public Safety
294 Colony Street
Meriden, CT 06450
(203) 238-6151

Delaware

State Bureau of Identification
Delaware State Police
P.O. Box 430
Dover, DE 19903
(302) 739-5872

District of Columbia

Identification and Records Division
Metropolitan Police Department
300 Indiana Avenue NW, Room 2100
Washington, DC 20001
(202) 727-4432

Florida

Division of Criminal Justice
Information Systems
Florida Department of Law
Enforcement
P.O. Box 1489
Tallahassee, FL 32302
(904) 488-3961

*Reading Selection: Criminal History Record Checks
page 15 of 19*

Georgia

Crime Information Center
Georgia Bureau of Investigation
P.O. Box 370748
Decatur, GA 20037-0748
(404) 244-2601

Hawaii

Hawaii Criminal Justice Data Center
Department of the Attorney General
Kekuanao's Building, Room 101465
South King Street
Honolulu, HI 96813
(808) 548-2090

Iowa

Bureau of Identification
Division of Criminal Investigation
Iowa Department of Public Safety
Wallace State Office Building
Des Moines, IA 50319
(515) 281-5138

Idaho

Bureau of Criminal Identification
Idaho Department of Law Enforcement
700 South Stradford
Meridian, ID 83642
(208) 884-7134

Illinois

Bureau of Identification
Division of Forensic Sciences and
Identification
Illinois State Police
260 North Chicago Street
Joliet, IL 60431-1060
(815) 740-5160

Indiana

Indiana State Police
Records Division
100 N. Senate Avenue
Indianapolis, IN 46204
(371) 232-8262

Kansas

Kansas Bureau of Investigation
1620 Tyler Street
Topeka, KS 66612
(913) 232-6000

Kentucky

Information Services Branch
Kentucky State Police
1250 Louisville Road
Frankfort, KY 40601
(502) 227-8700

Louisiana

Bureau of Criminal Identification
Office of State Police
P.O. Box 66614
Baton Rouge, LA 70896
(504) 925-6095

Maine

Identification Division
State Bureau of Identification
Maine State Police
36 Hospital Street
Augusta, ME 04330
(207) 624-7009

*Reading Selection: Criminal History Record Checks
page 16 of 19*

Maryland

Data Services Division
Department of Public Safety and
Correctional Services
P.O. Box 5743
Pikesville, MD 21208
(410) 764-4200

Massachusetts

Criminal History Systems
History Board
200 Arlington Street, Suite 2200
Chelsea, MA 02150
(617) 660-4600

Michigan

Central Records Division
Michigan Department of State Police
7150 Harris Drive
Lansing, MI 48913
(517) 322-1951

Minnesota

Criminal Justice Information System
Bureau of Criminal Apprehension
Department of Public Safety
1246 University Avenue
St. Paul, MN 55104
(612) 642-0687

Missouri

Criminal Records Division
Missouri State Highway Patrol
P.O. Box 568
Jefferson City, MO 65102
(314) 751-3313

Mississippi

Records and Identification Division
Criminal Investigation Bureau
Department of Public Safety
P.O. Box 958
Jackson, MS 39205
(601) 987-1564

Montana

Bureau of Identification
Montana Department of Justice
303 North Roberts, Room 374
Helena, MT 59620
(406) 444-3625

Nebraska

Criminal Identification Division
Nebraska State Patrol
P.O. Box 94907
Lincoln, NE 68509-4907
(402) 471-4545

Nevada

Nevada Highway Patrol
Criminal Information Services
555 Wright Way
Carson City, NV 89711-0585
(702) 687-5713

New Hampshire

New Hampshire State Police
James H. Hayes Safety Building
10 Hazen Drive
Concord, NH 03305
(603) 271-2535

*Reading Selection: Criminal History Record Checks
page 17 of 19*

New Jersey

Records and Identification Section
New Jersey State Police
P.O. Box 7068
West Trenton, NJ 08625-0068
(609) 882-2000

New Mexico

Technical and Emergency Support Division
Department of Public Safety
P.O. Box 1628
Santa Fe, NM 87504-1628
(505) 827-9181

New York

Division of Criminal Justice Services
Stuyvesant Plaza
Executive Park Tower
Albany, NY 12203
(518) 457-2351

North Carolina

Division of Criminal Information
North Carolina Bureau of Investigation
407 North Blount Street
Raleigh, NC 27601-1009
(919) 733-3171

North Dakota

Information Services Section
Bureau of Criminal Investigation
P.O. Box 1054
Bismarck, ND 58502
(704) 221-6180

Ohio

Identification Division
Ohio Bureau of Criminal
Identification and Investigation
P.O. Box 365
London, OH 43140
(614) 466-8204

Oklahoma

Identification Division
Oklahoma Bureau of Investigation
P.O. Box 11497
Oklahoma City, OK 73136
(405) 848-6724

Oregon

Oregon State Police
Identification Services Section
3772 Portland Road, NE
Salem, OR 97303
(503) 378-3-70

Pennsylvania

Bureau of Records and Information
Services
Pennsylvania State Police
1800 Elmerton Avenue
Harrisburg, PA 17110
(717) 783-5588

Rhode Island

Bureau of Criminal Identification
Department of the Attorney General
72 Pine Street
Providence, RI 02903
(401) 421-5268

*Reading Selection: Criminal History Record Checks
page 18 of 19*

South Carolina

Criminal Records Division
South Carolina Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221
(803) 737-9070

South Dakota

Division of Criminal Investigation
Office of the Attorney General
500 East Capitol Avenue
Pierre, SD 57501-5070
(605) 773-3331

Tennessee

Tennessee Bureau of Investigation
1148 Foster Avenue
Nashville, TN 37210-4406
(615) 741-0430

Texas

Crime Records Division
Texas Department of Public Safety
P.O. Box 4143
Austin, TX 78765
(512) 465-2077

Utah

Bureau of Criminal Identification
Utah Department of Public Safety
4501 South 2700 West
Salt Lake City, UT 84119
(801) 965-4571

Vermont

Vermont Criminal Information Center
Department of Public Safety
P.O. Box 189
Waterbury, VT 05676
(802) 244-8727

Virginia

Records Management Division
Virginia State Police
P. O. Box 27472
Richmond, VA 23261-7472
(804) 674-2021

Washington

Criminal Records Division
Washington State ID System
QE-02
Olympia, WA 98504-0000
(206) 753-6888

*Reading Selection: Criminal History Record Checks
page 19 of 19*

COPYRIGHT © 1998 BY THE NONPROFIT RISK MANAGEMENT CENTER

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is distributed with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert assistance is require, the services of a competent professional should be sought. From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers.

The Center is grateful to the following individuals for their helpful suggestions on this Community Service Brief: Tom Bryant, Corporation for National Service; Monica Holman, Corporation for National Service; Hank Oltman, Corporation for National Service; Brit Rapp, Corporation for National Service; Bill Stout, NEXUS Solutions; and Frank Trinity, Corporation for National Service.

The Nonprofit Risk Management Center
1001 Connecticut Ave., NW, Suite 900
Washington, DC 20036
Phone: (202) 785-3891 - Fax: (202) 296-0349
Web: www.nonprofitrisk.org



Resources for Screening Mentors

Print materials

Beyond Police Checks. 1999. Linda Graff. Graff & Associates. Available through Energize, Inc. Phone: (800) 395-9800; Web site: www.energizeinc.com.

Screening Volunteers to Prevent Child Sexual Abuse: A Community Guide for Youth Organizations. 1997. National Collaboration for Youth. Available from the National Assembly of Voluntary Health and Social Welfare Organizations. Phone: (202) 347-2080.

The following books are available from The Nonprofit Risk Management Center—Phone: (202) 785-3891; or through Energize, Inc.—Phone: (800) 395-9800, or at their Web site: www.energizeinc.com.

Child Abuse Prevention Primer for Your Organization. 1995. John Patterson, with Charles Tremper and Pam Rypkema. The Nonprofit Risk Management Center, Washington, D.C.

More Than a Matter of Trust: Managing the Risks of Mentoring. 1998. By Leslie T. White, John Patterson, and Melanie L. Herman. The Nonprofit Risk Management Center, Washington, D.C.

No Surprises: Controlling Risks in Volunteer Programs. 1993. Charles Tremper and Gwynne Kostin. The Nonprofit Risk Management Center, Washington, D.C.

Some useful Web sites

www.childsexualabuse.org

National Foundation to Prevent Child Sexual Abuse—provides information on the federal Volunteers for Children Act and on how to request fingerprint-based criminal history checks; also includes a list of contacts in each state for obtaining further information.

www.prevent-abuse-now.com

Pandora's Box—provides links to information on sex offender registries and community notification laws in each state.

www.nonprofitrisk.org

The Nonprofit Risk Management Center—provides materials on issues such as insurance, crisis prevention, and other risk-management topics, and information on obtaining related publications and services.