

Wolves at the Gates:
Visitation and Volunteer Policies,
School Safety and Mandatory
Reporting

Presented by:

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Issues to cover

- ✓ Sex offenders and how to deal with them
 - Students
 - Parents
 - Visitors
 - Vendors
 - Volunteers
- ✓ How craft meaningful policies for schools to avoid issues and mitigate liability.
- ✓ What components do meaningful training include.
- ✓ Coverage issues and litigation concerns.



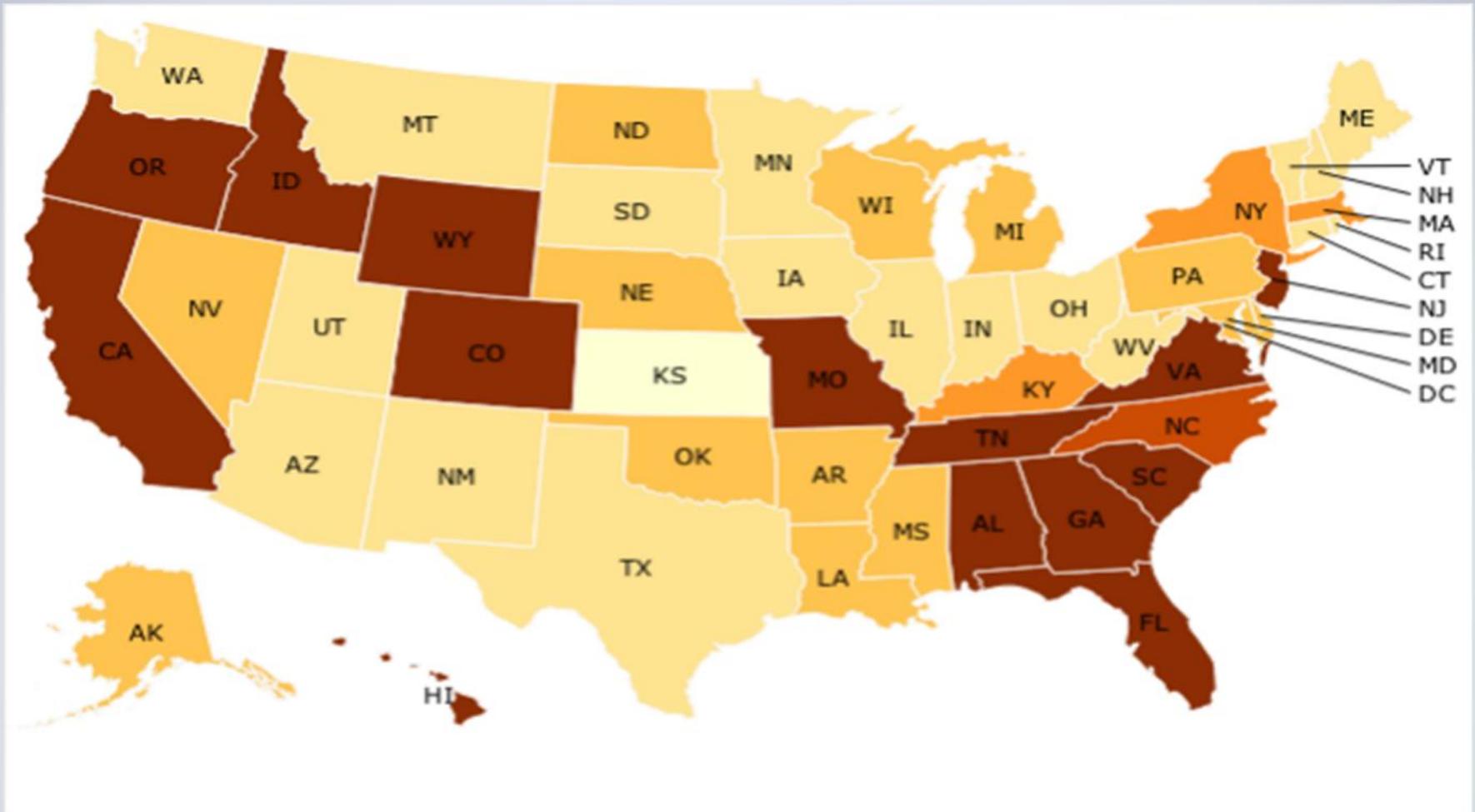
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Sex Offenders

- ✓ In all states, registered sex offenders are required by their status for a defined period of time to register as with local law enforcement.
- ✓ Periods of registration vary based on the level of the offense and based on the sentence handed down.
- ✓ State laws also vary based on the age of the victim of the sex offense.



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Minimum registration duration for sex offenders

- 5 years
- 10 years
- 15 years
- 20 years
- 25 years
- 30 years
- Life

Source: Washington College of Law at American University



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Sex Offender Levels

✓ Level 1

- Have a low risk of re-offending
- Pose a low degree of danger to the public
- Limits apply to access to sex offenders information for the public

✓ Level 2

- Have a moderate risk of re-offending
- Pose a moderate degree of danger to the public
- The public can have greater access to sex offenders information

✓ Level 3

- Have a high risk of re-offending
- Pose a high degree of danger to the public
- Greater restrictions apply to release



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Who do you let on campus

- ✓ Issues involving:
- ✓ Students with criminal backgrounds including sex offenses or related crimes
- ✓ Parents with criminal backgrounds involving sex offenses or related crimes
- ✓ Visitors
- ✓ Volunteers
- ✓ Employee issues



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Students with Criminal History

- ✓ Colleges and Universities using background checks to make admissions decisions on students in admission with little or no training for school employees.
- ✓ Jurisdictions and state system boards are implementing “ban the box” type legislation or implementing policy changes to address this.
- ✓ Exceptions for sex offenders, stalking and other violent crimes are in place in these policies, but the training issues remain.



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Minor Students

- ✓ Minor students are entitled to a free appropriate public education
- ✓ Students that engage in sexually aggressive conduct could be students that have been victims of sexual assault.
- ✓ Alternatively, these could be students with unresolved social emotional issues that require intervention



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Parent Restrictions

- ✓ State and individual school and District policies vary on parent sex offender status and access to schools.
- ✓ Likewise, the public school system must give meaningful access to parents of minors, even if those parents are RSO.
- ✓ Colleges and Universities that have knowledge should develop policies to address concerns related to parent access to campus.



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Visitors

- ✓ Is Instant Screening for you?
 - Some organizations have implemented instant screening policies for small campuses and closed buildings.
- ✓ How do you control visitation on open campuses?
 - You can't...
 - Security staff must be aware of and trained on how to engage and identify inappropriate activity
 - Security must know how to differentiate between
 - Students must be taught how to report suspicious activity



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Volunteers

- ✓ Background checks?
- ✓ Free access to campus, or guided access.
- ✓ Evaluating when volunteers are needed and for what purpose.
- ✓ Do you allow same day volunteers for activities at your institution?



Controlling your campus

- ✓ Sex Offenders are required to notify local authorities of their presence but individual institutions are not uniformly notified.
- ✓ Sex offenders in most states are required to notify institutions where children will gather.
- ✓ Institutions must implement their own policies to govern these activities.
- ✓ Educating your employees and students is key.



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Policy Creation

- ✓ Open campus settings create security and safety concerns that have to be identified and addressed.
- ✓ RSO must notify you of visit to campus
 - Timing of advanced notice.
 - What kind of notice is needed
 - What RSO must notify you of their visit to campus
- ✓ Escort RSO on Campus
 - Schools must escort all registered sex offenders on campus during their visits.
- ✓ Special Events on Campus
 - If events are open to the public, then restrictions on access to RSO are more difficult.



More Policy

- ✓ Background checks for volunteers.
 - Who pays for them.
 - Who needs them.
- ✓ Contract service providers disclosing individuals who have a criminal history that could cause a concern regarding health, safety, and welfare of students.
- ✓ Indemnity from service providers is necessary to protect your institutions.
- ✓ Communication issues and how to monitor them.



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Training

- ✓ Policies are helpful, but training is essential for staff not to create additional liability for entities.
- ✓ Policies and training should be concise, clear, and regularly given.
- ✓ Employees should have clear criteria to follow regarding policies and how to deal with issues to avoid liability.
- ✓ Rules regarding contact with students at any level to avoid Title IX issues, are critical.



Train Staff

- ✓ Investigation Staff must be trained.
- ✓ Policies regarding how investigations are conducted are critical.
- ✓ Clear decisions on internal or external investigations and who decides.
- ✓ Training for general employees should be simple.
- ✓ Common sense is underrated but has to be guided.



Rules for Training Staff

- ✓ DO NOT HAVE SEX WITH STUDENTS
 - Seems simple enough
- ✓ DO NOT PUT YOUR SELF IN A POSITION TO BE FALSEY ACCUSED.
- ✓ IF YOU SEE SOMETHING, SAY SOMETHING.
- ✓ EVERYBODY CANNOT BE A COMMEDIAN.
 - 12 STRANGERS RULE
- ✓ MANDATORY REPORTING OBLIGATIONS.



More Rules

- ✓ Rules for students
 - Awareness
 - Use the buddy system
 - You are your brother's or sister's keeper
 - Social media is forever
 - We are in a hyper charged environment and words matter
- ✓ Rules for Staff are helpful as well.



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Insurance Policies and Coverage

- ✓ Coverage is being implicated beyond Sexual Misconduct claims.
- ✓ General Liability Concerns
- ✓ Civil Rights Litigation



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Coverage Concerns

- ✓ Plaintiffs counsel has sought to get coverage under general liability policies for “harm” or “bodily injury” under a general negligence theory and are trying to get evade exclusions from policies by claiming that the “negligent act” was not one that was caused by the actual sextual assault.
 - Administrators are negligent for failing to warn
 - Supervisors are negligent for failure to disclose information
 - Pupil services or Employment assistance do not notify prospective employers of information that indicates a student engaged in misconduct.



Coverage Exclusions

- ✓ Crafting effective and clear coverage exclusions will provide clear lines of liability and coverage
- ✓ Example:
 - The General Liability Policy excludes payment for bodily injury that arises out of any:
 - Refusal to employ;
 - Termination of employment;
 - Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, sexual misconduct, or other employment related practices, policies, acts or omissions; or
 - Consequential bodily injury as a result of 12.a., 12.b., 12.c. above.
 - This Exclusion applies where the insured is liable either as an employer or in any other capacity; or there is an obligation to fully or partially reimburse a third person for damages arising out of 12.a., 12.b., 12.c. or 12.d. above. A clear understanding of coverage exclusions must be obtained.



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- ✓ Review damages exclusions in general liability policies to determine the scope of the exclusion for general liability for injury caused by sexual misconduct
 - Review claims exclusion and covered individuals to ensure that a claim cannot be made identifying an “employee” of the school
- ✓ The General Liability Policy also does not extend to sexual acts.
- ✓ “We do not pay for loss of any kind arising directly or indirectly out of or in connection with any actual or alleged sexual act (but, if Sexual Acts Coverage is properly shown as an additional coverage on the declarations, then we will provide the coverage added in the applicable Sexual Acts Liability Endorsement, but strictly subject to the terms of limits of such Sexual Acts Coverage”).



Definitions Matter

✓ Sexual acts is defined as:

(a) Any act that would be considered a criminal act under any applicable federal, state, or local statute, ordinance or law relating to sexual offenses; or

(b) any actual or attempted touching of a person by another person for the purpose of obtaining sexual arousal or sexual gratification; or

(c) any other act undertaken by a person for the purpose of obtaining sexual arousal or sexual gratification; or

(d) any conduct characterized or interpreted as sexual harassment; or

(e) any kind of conduct characterized or interpreted as being sexual in nature.



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Coverage Disputes

- ✓ Insureds are bringing actions seeking general liability coverage against carriers claiming that schools and specialized training entities can be liable if they allow sex offenders to become employed without disclosure of the sex offenders.
- ✓ Courts and Arbitrators will focus on the definitions of covered individuals, bodily harm or injury, insureds and the exclusions to determine if the conduct at hand is covered under the general liability policy.



Examples

- ✓ The University Visit
- ✓ The teacher with the background.
- ✓ Guess who's coming to Parent Teacher Night?



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Questions

- ✓ If you have any questions, please do not hesitate to ask now or contact me at:

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