



Liability Issues and Consent Violations

The world is changing for kink groups. There has been a huge influx of people into the organized BDSM community in the last few years. This is good for kinky people because discrimination is decreasing due to a greater understanding and tolerance of BDSM. This also means more kinky people are coming out. Because of the lessening of the stigma as well as the number of newbies who aren't well-educated about informed consent, NCSF has seen a dramatic rise in kinky people reporting assault and sexual assault to the police. Kink organizers around the country are taking action to protect their groups and their members by banning consent violators and establishing consent policies to help guide their members.

Criminal Complaints

In 2014, NCSF's Incident Reporting & Response dealt with 55 incidents involving consent violations, most of which were reported to law enforcement as assault or sexual assault. The majority – 42 – were victims seeking help in reporting an alleged crime against them.

Here are some of the ways a criminal investigation can impact your group when a consent violation happens at your play party or event:

1. Witnesses are subpoenaed in criminal trials. That means anyone who saw what happened during the consent violation can be called into court and are therefore outed because they don't have anonymity. NCSF has been consulted by three witnesses so far in 2015 who are looking for information to mitigate the damage done to them from being outed as a witness to an assault or sexual assault.
2. The Board of Directors, Dungeon Monitors and any other staff member may be interviewed by a detective as part of the investigation. You can also be called into court as a witness to the activity, or to testify as to your group's consent policy and rules, or to discuss how you dealt with the violation when it was reported to you.
3. Venues have refused to host group events due to criminal complaints made about activities that took place on their premises, for a variety of reasons including liability and insurance issues.

Civil Lawsuits

In 2013 & 2014, NCSF provided resources for 4 cases that involved civil lawsuits over injuries that happened during consent violations. It is becoming more common for victims of assault and sexual assault to get justice through civil court—Bill Cosby is the most famous case involving civil lawsuits, which have no statute of limitations.

Here are some of the ways a consent violation that causes injury can impact your group if it is taken to civil court:

1. If you are aware that a member has committed a consent violation, and yet you allow them access to your group events, then your group can also be held civilly liable if that member commits another consent violation that results in physical injury or damage to someone's property. That means that the injured person can sue the group as well as the person who violated them.
2. General Liability (CGL) policies and D&O insurance may not cover a civil lawsuit if the Board was made aware that the member has committed a consent violation that resulted in injury, yet they are allowed to remain a member. The Volunteer Protection Act does not protect a volunteer from liability for harm "caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer." The act does not prohibit lawsuits against volunteers nor does it provide any protection for nonprofits.
3. If your group is aware that one of your Board Members, Dungeon Monitors or staff members has violated someone's consent, and they are allowed to remain in a position of authority, then the group and the Board may be held civilly liable if that person injures someone who they meet through the group.

See NCSF's other resources for groups dealing with consent violations:

Guide for Groups
Dealing with Consent Violations
Drawing the Line

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