New California Sexual Abuse Prevention Legislation
AB2669 modifies AB506 requirements

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What did AB506 require?
Which AB506 requirements are modified by AB2669, and how?
What potential error is created by the 'Legislative Digest'?

In the wake of the largest sexual abuse settlement in US history, Assembly Bill No. 506 (AB506) became law in California on September 16, 2021 with an effective date of January 1, 2022. The legislative history of AB506 makes it clear that lawmakers in California do not want a repeat of the sexual abuse crises encountered by Boy Scouts of America.

Many have criticized AB506, and two criticisms are addressed by AB2669, which was signed into law on September 6, 2022.

STANDARD OF CARE
All organizations serving children must meet a *standard of care* related to all known or foreseeable risks. In child-serving contexts, a standard of care related to child sexual abuse risk requires that organizations take *reasonable steps to address the known risk of sexual abuse* by the implementation of an effective Safety System.

Effective screening is *one* element of an effective Safety System; every child-serving organization must make a reasonable effort to obtain information about any staff member or volunteer's past criminal history. Background checks are a critical element of effective screening. Well before the passage of AB506 or AB2669, background checks were required or mandated by existing licensure or standard of care requirements.

AB506 – NEW REQUIREMENTS
AB506 was aimed at 'Youth Service Organizations' and outlined requirements related to training, background checks and policies. AB2669 modifies AB506 requirements related to background checks and policies.

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AB506 – BACKGROUND CHECK REQUIREMENT
Long before AB506 was promulgated, California Youth Service Organizations had access to California Department of Justice information through Penal Code Section 11105.3:

> (a) Notwithstanding any other law, a human resource agency or an employer may request from the DOJ *[California]* records of all convictions or any arrest pending adjudication ... of a person who applies for a license, employment, or volunteer position, in which they would have supervisory or disciplinary power over a minor ... . [emphasis added]

Prior to AB506, this access was not *required*: an employer 'may' request DOJ records from the state of California. If an organization chooses to request DOJ records, the particular process for doing so is known as *Live Scan*. As many child-serving entities have learned, the Live Scan process is expensive, administratively challenging and requires fingerprinting. Notwithstanding these obstacles, California DOJ records were available to any child-serving organization willing to overcome the administrative and financial challenges – *and many organizations did*.

AB506 changed 'may' to 'shall': all Youth Services Organizations *shall* perform a Section 11105.3 search on all administrators, employees and regular volunteers (effective January 1, 2022).

This requirement created immediate difficulty for many California entities, more fully described in this prior article.

AB2669 Delays 'Effective Date'
AB2669 pushes back the requirement that Youth Service Organizations perform Section 11105.3 searches until *January 1, 2024,* by adding subparagraph (2):

> **Section 18975(b)**
> **(1)** An administrator, employee, or regular volunteer of a Youth Service Organization shall undergo a background check *pursuant to Section 11105.3 of the Penal Code* to identify and exclude any persons with a history of abuse.
>
> **(2)** Until January 1, 2024, paragraph (1) shall not apply to a Youth Service Organization that, prior to January 1, 2022, did not require administrators, employees, or regular volunteers to undergo background checks pursuant to Section 11105.3 of the Penal Code.

In short, the California legislature learned that California Youth Service Organizations needed a longer runway to accommodate the newly required search.

Avoid Legislative Digest
A 'Legislative Counsel's Digest' provides a summary expression of any statute, putting legislative intent into easy-to-understand language, removing the necessity for a layperson to fight through code section additions, removals and legislative structure. In this case, the Legislative Digest has created unnecessary confusion in its description of AB2669, suggesting

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that any Youth Service Organization *not* undertaking background checks *prior* to AB506 need not begin undertaking background checks until January 1, 2024. See below:

> **AB2669 (effective immediately)**
> This bill would, until January 1, 2024, exclude from this background check requirement youth service organizations that, prior to January 1, 2022, did not require administrators, employees and regular volunteers to undergo background checks.

This is neither the intent nor the content of AB2669.

Instead, the new legislation states that Youth Service Organizations not already accessing California DOJ records through Live Scan prior to AB506 (January 1, 2022) may delay compliance until January 1, 2024.

In either case, all Youth Service Organizations should meet current standards of care, which requires a reasonable search for information related to past criminal history – a criminal background check. AB2669 allows Youth Service Organizations to plan for the administrative and financial challenges related to AB506 compliance; it does not give a pass to organizations not otherwise performing background checks, thereby failing to meet *pre-existing* standards of care.

AB506 – TWO ADULT REQUIREMENT

Pre-existing standards of care related to child protection require effective Policies and Procedures as an element of an effective Safety System. Policies and Procedures provide a written framework describing what *is* and *is not* permissible within a child-serving program. Depending on the type of programs or services offered, population served and facilities utilized, Policies and Procedures should address the abuser's *grooming process,* common *grooming behaviors*, forms of acceptable touch and talk, use of electronic communication and social media, peer-to-peer sexual abuse, internal reporting processes and other topics.

AB506 focuses on two policy expressions, one of which essentially codifies the *two adult rule* –requiring the presence of two adults in any program providing services to children. AB2669 attempts to solve a problem created by AB506 for a very narrow program model: one-to-one mentoring. AB2669 modifies AB506, adding subparagraph (B) as follows:

> **Section 18975(c)**
> A Youth Service Organization shall develop and implement child abuse prevention policies and procedures, including, but limited to, both of the following:
> (1) Policies to ensure the reporting of suspected incidents of child abuse to persons outside the organization ... and
> (2) (A) Policies requiring, to the greatest extent possible, the presence of at least two mandated reporters whenever administrators, employees, or volunteers are in contact with, or supervising, children.
> (B) This paragraph shall not apply to an organization that provides one-to-one mentoring to youth that has adopted and implemented the policies described in paragraph (1) and has adopted and implemented policies to ensure comprehensive screening of volunteers, training of volunteers and

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parents or guardians, and regular contact with volunteers and parents or guardians.

In essence, AB2669 removes the requirement for the 'presence of at least two mandated reporters' in programs providing one-to-one mentoring to youth. Not surprisingly, this modification was requested by Big Brothers Big Sisters, an organizational model significantly impacted by the *two-adult* requirement. Other entities challenged by the two-adult requirement include youth counseling programs and religious organizations having one-to-one interaction in preparation for religious rituals and rites (i.e., Confirmations, Bar and Bat Mitzvahs) and youth counseling programs.

The removal of the two-adult requirement, however, is conditioned upon the organization having specific controls in place, including adoption of policies described in paragraph (1): *the requirement that suspected incidents of child abuse are reported to persons outside the organization*. In addition, an organization must have adopted and implemented:

-Policies to ensure *comprehensive screening of volunteers,*
-Training of volunteers and parents or guardians, and
-Regular contact with volunteers and parents or guardians.

Big Brothers' point is this:
The value of our one-to-one program model is mission critical for a high-risk segment of the population; one-to-one mentoring facilitates life change. Our programming model precludes compliance with the two-adult rule, but we work to offset the risk inherent in one-to-one interaction with *other* child protection protocols. These 'other protocols' were incorporated into AB2669's modification of AB506.

In short, AB2669 says this: if an organization has a program (or program element) involving *one-to-one mentoring,* the two-adult requirement may be set aside *IF* the organization maintains regular contact with all parties involved (volunteers, parents or guardians), and has implemented reporting policies, comprehensive screening and effective training. Unfortunately, no specificity is provided by AB2669.

Reporting Requirements
AB2669 requires that mentoring organizations have policies in place that clearly state that suspected child abuse or neglect *must* be reported to appropriate authorities. This policy expression constitutes compliance with fundamental standard of care (and mandatory reporting requirements), and pre-existed both AB506 *and* AB2669.

Policies to Ensure 'Comprehensive Screening of Volunteers'
AB2669 presents two immediate challenges inherent in this requirement: (1) the law contains no clear expression or definition of 'comprehensive'; and (2) no requirement that 'comprehensive screening' include *employees,* who arguably have *greater* direct contact with children.

<u>What Constitutes 'Comprehensive Screening'?</u>
Though not defined, the law presumably requires something more intensive than *basic screening,* as the *comprehensive* nature of the required screening is meant to offset the heightened risk of sexual abuse inherent in unsupervised one-to-one interaction with a child (e.g. mentoring programs).

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In its most basic form, what does *screening* entail? Where child sexual abuse risk is concerned, *the best predictor of future behavior is past behavior.* Effective screening gathers information about a candidate's *past behavior* to discern indicators of *future* behavior. Two important purposes for screening include:
(1) fitness for purpose: CAN the candidate do the work; and
(2) child safety: SHOULD the candidate work in child-serving contexts.

Many employers understand screening related to fitness for purpose, but not child safety. Given the fact that the requirement for 'comprehensive screening' stems directly from child sexual abuse risk, the *comprehensive* nature of the required screening should be keyed to protecting children from sexual abuse.

MinistrySafe and Abuse Prevention Systems recommends Skillful Screening Training to all child-serving organizations. Effective *child protection* screening, an important element of any child-serving organization's Safety System, is required under *pre-existing* standards of care. Effective screening in child-serving contexts includes use of state-of-the-art screening forms (applications, reference checks, interview forms) as well as *training* in the use of those forms. *Forms are just paper* unless screening personnel are trained to recognize *risk indicators,* known from literally decades of offender studies. 98% of convicted offenders participate in offender studies, because if they choose to not, they do not have access to probation, in most states. Forty years of offender studies have yielded incredibly helpful information concerning male and female offender characteristics, and screening personnel should be trained to understand these characteristics; again, child sexual abuse is not an intuitive risk.

An appropriate screening process includes a written application (for both employees and volunteers), an appropriate criminal background check, reference checks and an interview. Every element of the process must include *questions meant to elicit high-risk indicators* or responses from the applicant. Skillful Screening Training describes an effective screening process in child-serving contexts, addressing male and female offender characteristics.

Learn more about Skillful Screening.

Employees Not Included
It is clear from AB2669's legislative history that this modifying legislation was introduced by Big Brothers Big Sisters – a mentoring program where mentors are volunteers. The modifying legislation is limited to contexts similar to BBBS: requiring comprehensive screening of the volunteer mentor, as well as significant ongoing communication with the minor child and the child's parents or guardians.

Other programs providing one-to-one mentoring do not necessarily rely on volunteers; services are provided instead by paid staff members (i.e., counselors, clergy). Though it seems intuitive that an individual serving as a mentor undergo comprehensive screening, AB2669 does not require it. The new legislation was passed to clean up oversights in the original piece of legislation, creating other issues to be addressed along the way.

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Regular Contact with Volunteers and Parents or Guardians
This provision is meant to ensure ongoing communication with the child's caregivers, ensuring lines of communication for feedback related to high-risk behaviors, activities or communication from the mentor.

AB2669 EFFECTIVE IMMEDIATELY
Clearly, AB506 modified existing standards of care for Youth Service Organizations. One-to-one mentoring programs, for example, were immediately impacted in such a way that compliance was not possible. Each day since the effective date of AB506, one-to-one mentoring programs were failing to meet standard of care under the new law – a significant issue for liability and insurability purposes.

Given the immediate and irreparable circumstance, proponents of AB2669 applied for and received 'urgency status', ensuring the law would take effect immediately. The bill was signed into law on September 6, 2022 *and is now in effect*.

AN EFFECTIVE SAFETY SYSTEM
The principle underlying purpose of both AB506 and AB2669 is to prevent child sexual abuse in Youth Serving Organizations. The new legislation requires training, background checks and policies. An effective Safety System, however, requires more than the presence of two adults who have received training concerning abuse indicators and reporting.

Five-Part Safety System
The MinistrySafe Five-Part Safety System includes:
-Sexual Abuse Awareness Training
-Skillful Screening Processes and Training
-Appropriate Criminal Background Check
-Tailored Policies & Procedures
-Systems for Monitoring and Oversight

MinistrySafe provides each Safety System element, with an online management system allowing child-serving organizations to deploy a sustainable system that tracks and archives Safety System data. *Learn more about MinistrySafe or the MinistrySafe 5-Part Safety System.*

Child Abuse Prevention Training
MinistrySafe provides professionally produced Child Abuse Prevention Training, including our California supplement designed to comply with AB506, covering the following topics:
-Forms of Child Maltreatment (sexual and physical abuse, neglect, bullying, emotional abuse)
-Identifying Risk Indicators
-Abuser Characteristics
-The Offender's Grooming Process
-Common Grooming Behaviors
-Peer to Peer Sexual Abuse

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-Impact of Abuse on a Child
-California Reporting Requirements
-California Reporting Process

MinistrySafe offers an online system to send, track and renew Child Abuse Prevention Training. To preview the training or view the online management system, contact a MinistrySafe staff member at Support@MinistrySafe.com.

SUMMARY
Through AB506, the California legislature intended to introduce legislation requiring Youth Service Organizations to take necessary steps to protect children from sexual abuse. Unfortunately, AB506 requirements created challenges unforeseen by lawmakers. AB2669 modified two significant issues presented by AB506 related to the Live Scan background check requirement mandated by the new law and one-to-one mentoring programs.

Notwithstanding AB506 and AB2669, all Youth Service Organizations must meet *existing* standard of care requirements: implementation of an effective Safety System.

Kimberlee Norris and **Gregory Love** *are partners in the Fort Worth, Texas law firm of Love & Norris and founders of MinistrySafe and Abuse Prevention Systems, providing child sexual abuse expertise and preventative protocols to organizations worldwide. After representing victims of child sexual abuse for more than three decades, Love and Norris saw recurring, predictable patterns in predatory behavior. Abuse Prevention Systems (APS) and MinistrySafe grew out of their desire to place proactive tools into the hands of child-serving professionals. Together, as Visiting Faculty at Dallas Theological Seminary, Love and Norris teach the only graduate-level course currently in existence dedicated exclusively to sexual abuse prevention.*

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