

 <p data-bbox="354 394 792 420">national coalition for sexual freedom inc.</p> <h2 data-bbox="365 535 771 703">Liability Risks for Groups, Clubs and Individuals</h2> <hr data-bbox="406 829 722 835"/> <p data-bbox="430 840 673 877">NCSFreedom.org</p>	<h3 data-bbox="820 388 974 420">AGENDA</h3> <ul data-bbox="820 430 1242 913" style="list-style-type: none">• Incident Reporting and Response• Liability Waivers• Defamation• Liability Payouts• Choking• Outing• Dealing with reports• Anti-Discrimination• More ways to protect yourself
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Accommodations: You are Important

<p data-bbox="422 1417 738 1648">Slides are available</p>	<p data-bbox="836 1375 1226 1480">Is there any accommodation we can provide that would be helpful?</p>  <p data-bbox="893 1648 1161 1701">Please ask!</p>
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What is IRR



NCSF's Incident Reporting & Response (IRR) program is a resource for the members of the kink, polyamory and Lifestyle communities and for people seeking information about them. IRR provides individuals, groups, clubs, events, and professional with educational information and referrals to services.

We help hundreds of people each year, which is where NCSF gets data and statistics to help us develop resources.


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Why don't you know about these things we will discuss?
Because many never appear in the media or they hit the media and are gone quickly.

NCSF has been taking reports from groups for 27 years, and we have amassed a database and are able to see the trends in what the risks are for organizers and individuals.

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Liability Waivers

You can't rely on liability waivers to protect organizers, attendees, and the group/club:

- Under Appellate law, all injuries sustained during kink/sexual activities are considered serious and illegal (including choking/suffocation).
- Waivers will protect you from accidents, but not from intentional harm (like kink activities) or negligent behavior.
- Waivers don't protect you if someone can claim they were intoxicated or under the influence of drugs when they signed it.
- The club can be challenged as in the wrong zoning area or is an improperly organized sexually oriented business.


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Volunteer Protection Act

The Volunteer Protection Act does not protect individuals or nonprofits against 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."



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Civil Lawsuits

- **Advance Notice:** You can be sued for advance knowledge and failure to protect. If you're notified of a consent violation that resulted in physical injury, then you can be sued by someone who is injured by them or if their property is damaged if they meet them at your event.
- **Problematic Staff:** If you are aware that one of your Board Members, 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 liable if that person injures someone whom they met through the group.



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Defamation is knowingly saying false information that harms the reputation of a person, business, or organization – typically false criminal accusations made in public in writing are most actionable.

- Defamation includes both libel and slander. Libel generally refers to **statements that are published on the Internet** (more permanent) while slander refers to verbal defamatory statements (more fleeting).
- Defamation lawsuits are used to keep people from talking about their own experiences with play partners if it includes criminal accusations – that's why **social media won't let you name names**, and why you can't name names in your group or club's workshops or Discord. If you want to talk about your experience, share the name privately through DM after posting about what happened.
- NCSF got 10 reports of defamation in 2023 from people being sued or who wanted to sue someone. This is why **groups don't talk about why they've banned someone**. Anyone who makes false criminal accusations against someone, or anyone who witnesses those accusations, or hosts a forum for those accusations can be sued.

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Defamation Examples

- NCSF's Coalition Partner Infliction Hall was sued for 1 million for publicly accusing someone of consent violations and of being unfit.
- Metro Vancouver Kink had to disband after holding a town hall to discuss alleged consent violations by one of their members. The organizers were still liable in civil court after the group was disbanded.
- A presenter accused a former partner of defamation in a Google listserve after they reported their consent was violated. Both parties spent about \$18,000 on attorney's fees, and settled in court by saying they would both agree to not talk about each other.

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Other defamation issues

Groups/events should never tell someone why you are banning them. This could be actionable in court.

The best words to use are "You are not a good fit."

The Constitution protects our Freedom of Association, so if your actions are not discriminatory, that is all someone needs to know.

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Liability Payouts

It Will Cost You

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Legal Extortion

We call this “personal injury attorney payouts” because these incidents don’t go to court because the people involved don’t want to have to pay **\$5,000-10,000** for an attorney to fight the case and perhaps draw media attention to the case.

This involves **injuries** – often from punching or choking – or **sexual assault**. How it happens is that individuals and groups/events received a demand letter if they or one of their presenters, organizers, volunteers or attendees is involved. The risk of attendees causing injury is why groups need rules to prohibit choking and consent violations to show their own rules were violated.

The injured person doesn’t even have to sue you because most people who report to NCSF **pay up immediately** rather have their brand damaged, and draw the attention of law enforcement to their club, and risk being outed to their employers and the whole thing published on the internet forever.

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Organizers and owners are putting their own lives in other people's hands. In the past few years we've seen:

- House party: choking injury, **payout \$40,000** – the host choked his partner and she had a stroke. The owners and the host both paid. The home owners had to take out an equity line on their house.
- Club: a volunteer teaching massage was accused of sexual assault, **payout \$10,000**. There wasn't even a witness, just the accusation. The club didn't want to ruin their brand or raise their club to the attention of law enforcement.
- BDSM group: accusations of force oral sex during aftercare, against someone banned by another group. Payout solely by the group and directors **was \$24,000** – because there were FetLife Writings that he'd done this before, he was banned by other groups, yet he wasn't banned by this group.
- Kink Event: injury from consensual branding on two people, **\$75,000** and counting due to medical bills, missed work, pain and suffering, mental health issues.

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Stigma is the main reason people are paying these demands and aren't fighting them.

Sex and swing clubs are stigmatized with most cities/towns using zoning to keep them to industrial areas. Sexually Oriented Business regulations are also designed to tax clubs out of existence. If there is an opportunity for the local authorities to go after you, then they will do it. If you are running a House Party in a residential neighborhood, you have no legal protection, and your insurance won't cover even ordinary accidents if it's found you're running regular and habitual parties.

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Law Enforcement

Kink and swing clubs can't be run like knitting circles – there's an inherent, serious risk in running a group where people meet each other to have sex and may use erotic force or restraint where consent is not a defense.

- **Law enforcement looks for "sex rings" and sex trafficking.** Your club has been visited by Vice and you may even have undercover officers as volunteers.
- **Anyone can file an anonymous report when it comes to prostitution or sex trafficking.** Think of all the writings on FetLife, Discord and social media by people who are angry and the harm they could do by filing an anonymous report.

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Choking

The Highest Risk Factor

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Ultra Hazardous Activity

Mainstream News Articles – 2000-2024 – 58 deaths due to choking & suffocation during alleged rough sex/kinky sex:

- 50 people were convicted of murder/manslaughter (17 since 2017)
- 5 committed suicide
- 1 were acquitted
- 2 weren't charged
- 14 of the victims were kinky
- 16 of the perps were kinky

NCSF IRR Data - 2014-2024 – out of 688 criminal reports (excluding sex worker issues):

- 49 involved choking, suffocation & breathplay (45 since 2017)
- 8 deaths
- 6 people were choked to unconsciousness
- 26 reported to the police – more than half
- 40 of the victims were kinky
- 47 of the perps were kinky

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Choking Liability Risks

If a 3rd party played a substantial factor in the death – such as allowing choking/strangulation and breath play at an event, or teaching attendees how to do choking/strangulation breathplay even though it is well-known that it can cause death, then you can be held liable in a wrongful death lawsuit.

Federal Law: Title 18 USC § 113; Assault within Maritime and Territorial Jurisdiction (2013) states choking/strangling and suffocation are illegal.

- Recent Research has found there are serious health risks associated with choking:
- Up to 40% of fatal strangulations have no signs of injury (de Boos, 2019).
- Memory issues: Those who have been choked show a need for more neural resources to do memory tests (Huibregtse, 2022).
- Structural Brain Damage: There is no 3-4 second “rule.” Once blood flow is stopped and then re-established, the brain tissue suffers from damaging proteins and lipids, and pro-inflammatory mediators are produced, triggering cell death (Busl and Greer, 2010).
- Mental Health: Women who had been choked more than five times in the past month were more likely to feel sad, lonely, anxious, and depressed compared to women who haven't been choked (Herbenick et al., 2021).

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The latest Appellate Case involving choking: Oregon v. Sunny Sky Stone

- Defendant admitted to choking her in March 2020 with an electrical cord and claimed **that she had consented to his conduct for sexual reasons.**
- The court instructed the jury that **consent is not “a portion or element of” the crimes of strangulation or second-degree assault.**
- The Defendant claimed that he asked her if he had a “green light,” and claimed **she said yes, indicating her consent.** Defendant testified that he was “gentle” in tightening the cord and was “looking for taps, looking for struggle.” He perceived her to be enjoying being choked.
- The survivor contended that she lost consciousness and fell to the floor hurting her knees. Defendant told the police that she did not, and he testified at trial that he “wasn’t looking for a loss of consciousness, just a gray, because it is dangerous.” He also denied that he injured her knees in the incident, asserting that her knees were red from something else.
- Defendant acknowledged on cross-examination that strangling someone is dangerous and **could cause death** and stated that “that’s why you include them.”

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Harm Reduction

The following is legal in every State and under **Explicit Prior Permission**, and reduces the risk of harm that can be caused by choking:

- Breath play where you tell someone to hold their breath or obstruct their own nose or mouth
- “Neck holding” where a hand is placed on someone’s neck without any pressure from pressing or squeezing (typical in pornography depictions of choking and in power exchange roleplay)
- Pressing on the collar bone to simulate the pressure of choking without blocking the blood vessels or airway.
- Gags, hoods, and collars that are not intended to impede the normal breathing or circulation of the blood

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Outing

The Other Risk Factor

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Outing Risks

- You have to take the risk of outing into account because it can affect everything from child custody to your career, and family can also have a serious impact on people's lives.
- You might not realize it, but you don't have anonymity as an accessory to a crime, **nor as a witness to a crime**, nor in a civil case where the victim seeks money for injury and damages.
- NCSF gets reports from people every year who are called as witnesses to a crime and are outed. The police show up at their workplace and it can cause huge problems.
- NCSF's IRR stats also show a sharp rise in outing for retaliations or revenge: 19 groups or individuals reported being outed or doxed in 2023, compared to 20 in 2022, 20 in 2021, and 4 in 2020.

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Dealing with Reports

Consent Policy & Procedures

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There is no right to access a private membership group

You're not depriving someone of their rights by keeping them from attending. You're keeping them and your members safe by making a reasoned decision that they are a risk. As a group organizer, you shouldn't be making decisions based on your personal feelings of friendship or animosity towards someone – that's what your insurance carrier and the plaintiff's attorney will call "bias."

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NCSF CAN HELP

You can find our SAMPLE Consent Policy & Procedures on our website under our Consent Counts page:

- Different versions suited for kink groups or swing clubs
- Our Consent P&Ps go into how to make sure that your investigation and discussion about the incident are neutral.

NCSF helped 22 groups last year with their Consent P&Ps, and nearly the same number the year before. The organizers aren't spending all this time for fun. It's because of the liability risks we've been discussing.



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You cannot ignore reports

If a group or club receives a credible report of a criminal nature, we recommend that you **investigate and act even if it didn't happen at your venue.**

- Your insurance doesn't cover willful neglect, which is what it is when you allow someone who you've been notified is risky to have access your members
- There doesn't even have to be a real injury – staged slip and falls do happen. All it takes is one person who doesn't like that you've allowed a known consent violator to access your group, to make a claim of assault or sexual assault against that person after meeting them at your club or having a scene with them at your club. All they have to do is show the attorney the social media writings that surrounded the initial incident or the writings that happen when it looks like someone is coming back, as proof that the organizers were aware of the risk and allowed that person entry anyway.

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If your group has banned someone, then **that's** real proof that the perpetrator was reported to you, and it was found serious enough to ban them.

- Everyone knows, so that banned person is at high risk of being accused by someone else, and shouldn't try to come back.
- 1 in 5 reported consent violations are reporting an organizer or presenter – 20% - both in NCSF's IRR and in our Consent Surveys. **You don't hear about these people coming back into the community** because of they would have a huge target on their back.
- The reason for the ban doesn't matter – violating group rules is just as serious as reports of assault in this context. People you don't know can leverage your actions against you and the formerly banned person.

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False Reports

- **False accusations are only 3-4% of the reports** of consent violations (as we've found from our surveys and our IRR).
- Those false reports can be devastating because they're driven by motives of revenge. Serial reporters will ask groups/clubs to an all of their ex's because they're uncomfortable with them around. They will go after organizers and the club in a scorched earth campaign, very similar to the vendettas that accompany outing. People can be very self-righteous and think they are doing the right thing by forcing groups to do what they want.

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Interpersonal Issues

NCSF's SAMPLE Consent P&Ps suggests that groups only deal with criminal issues rather than try to mediate interpersonal issues. Anyone can have a bad breakup.

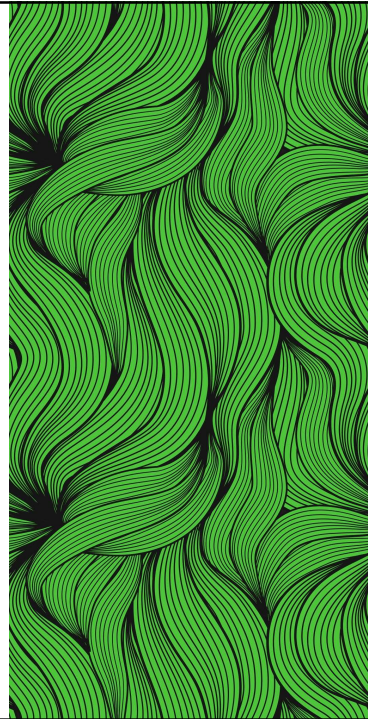
Organizers aren't equipped to deal with gaslighting or emotional abuse – that's best left to mediators and mental health professionals. It's not possible for organizers to make sure an ex-partner stays on one side of the room, for example. Instead, they need to deal with liability risks which involve criminal incidents.



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Restorative Justice isn't for Public Resolution of Consent Violations

Public Restorative Justice processes work for systemic DEI issues within the community or by the group itself, but not for dealing with consent violations – that's for the individuals involved to handle privately with professionals. It can expose the group, organizers and any attendees to accusations of defamation.



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Anti-Discrimination Policy
It is also critical to have an anti-discrimination policy for ANY 501(c) structure to deal with harassment that happens at your event. You need to make sure that your group/club is a welcome and inclusive space for everyone, especially those in protected classes such as: disability, race, gender.

NCSF has our own nondiscrimination policy that includes specific action items, including honoring Awareness Months. For example, April is neurodiversity awareness and there are great tips in our monthly spotlights about making your group more accessible.


<https://ncsfreedom.org/2023/02/14/creating-policy-prohibiting-discrimination-and-harassment/>

<https://ncsfreedom.org/2024/04/12/ncsf-honors-neurodiversity-awareness-month-in-april-2/>

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Other ways
to protect
yourself and
your
group/club

- If you are having a Munch or social gathering, allow some structured activities as well (NCSF's Consent Mixer, a consent negotiation demo etc.) If you are only offering a space for small talk and mingling that can be really challenging for neurodiverse people (15%-20% of adults in the U.S. and up to 40% of those under 30) or those that are shy.
- If you are hosting a play event, try and build in a quieter area with less sensory input for those who need a calmer space to regulate and recover.



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Other things NCSF can help you with...

- Sexually Oriented Business Tax
- Zoning Challenges
- City Challenges
- Consent Incidents
- Policy and Procedure
- Membership Structures

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There are many ways to support NCSF!

Join: Become a Coalition Partner, Supporting Member or Individual Member. By becoming a member, you support our lobbying efforts, Incident Reporting & Response, Kink Aware Professionals Directory and Professional Outreach.

Give: Make a tax-deductible donation to the Foundation of the NCSF. Or ask your group to do a fundraiser and donate to NCSF.

Volunteer: Volunteer and be part of the solution! Give your energy to NCSF efforts that impact your lives, those of your friends and loved ones, and the community at large.

Spread the Word: Order free NCSF brochures and materials, and take them to your groups and events.

Wear with Pride: Shop for NCSF merchandise at Cafe Press, and wear your support of NCSF with pride.

Support KAP: If you are a lawyer, doctor, therapist or other professional who can offer “Sex-Positive Support for Kink and Non-monogamy,” please add your listing to the Kink Aware Professionals Directory. NCSF manages the largest known free directory of kink and polyamory Aware professionals.



Join NCSF



Donate to NCSF

<https://ncsfreedom.org/get-involved/>

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TO REACH TESS
Tess@NCSFreedom.org



Additional Resources:
Slide Deck and Links

NCSFreedom.org

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Questions?

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