

1. Mandated Reporting & Presbyterians in New York State



New York State Law

Does New York State law designate clergy as mandated reporters of the sexual abuse of children and/or adolescents (minors)?

No. Clergy are not specified in the list of nearly 40 categories of occupations and official positions designated as mandated reporters in New York.

Reference: New York Social Services Law, Article 6, Title 6, § 413, Persons and officials required to report cases of suspected child abuse or maltreatment, ¶1(a). [Source accessed 12/23/17: http://codes.lp.findlaw.com/nycode/SOS/6/6/413]



PC(USA)

What is the Book of Order's position on the reporting of sexual abuse?

- a. According to the Book of Order (2017-2019), G-4.0302, Mandatory Reporting: Church-mandated reporters of abuse, sexual and physical, are deacons, ruling elders, commissioned ruling elders, certified Christian educators, and teaching elders. (There is no mention of members of churches.)
b. In addition to the abuse of minors, the mandate to report includes the abuse of adults who lack mental capacity.
c. The Church-mandated person "shall report to ecclesiastical and civil legal authorities knowledge of harm, or the risk of harm."
d. If the person in one of the above ordered ministries gains the information while functioning in a role that is bound by an obligation of privileged communication under law (e.g., a deacon who is a lawyer talking with a client, or a ruling elder who is a physician talking with a patient), the person is not mandated by the Church to report.
e. If a commissioned ruling elder or teaching elder gains the information within "a confidential communication as defined in G-4.0301," the person is not mandated. [G-4.0301 in the Book of Order is described below. The term confidential is not explicitly defined in the paragraph.]

Take no part in the unfruitful works of darkness, but instead expose them.

Ephesians 5:11

2. Privileged Communication & Presbyterians in New York State



New York State Law

Are any categories of communication between clergy and congregants protected under New York State law?

- a. Yes. The law protects the category of a formal religious confession of sin made by an individual to a clergy person. The law, originally adopted in 1828, treats the content of the formal confession of sin in its religious context as privileged communication between the confessing person and the clergy.
- b. Sometimes referred to as *priest/penitent privilege*, the content of the communication is protected from disclosure in a New York court of law. This is similar to the protection of the communication of a patient who is treated by a physician, or that of a client who is represented by an attorney.
- c. Current law reads: “Unless the person confessing or confiding waives the privilege, a clergyman [sic], or other minister of any religion or duly accredited Christian Science practitioner, shall not be allowed [sic] disclose a confession or confidence made to him [sic] in his professional character as spiritual advisor.” Consistently, New York courts have ruled to define this law in the strict sense as a formal confession of sin made in a religious context. Case law in New York State courts has determined that protection does not extend to heart-to-heart talks or disclosures not made for the purpose of seeking religious counsel.

Reference: New York Civil Practice Law & Rules, § 4505, Confidential communication to clergy privileged.

[Source accessed 12/23/17: <http://codes.lp.findlaw.com/nycode/CVP/45/4505>]



PC(USA)

What is the *Book of Order* position on confidentiality?

- a. G-4.0301 applies to teaching elders and commissioned ruling elders. It requires them to “maintain a relationship of trust and confidentiality” and to “hold in confidence all information revealed to them in the course of providing care and all information relating to the exercise of such care.”
- b. Note that neither the term *care* nor *confidential* is defined.
- c. The provision concludes: “A teaching elder or a ruling elder commissioned to pastoral service may reveal confidential information when she or he reasonably believes that there is risk of imminent bodily harm to any person.” Note that the use of *may* in that sentence gives the elder greater discretion than the provision at G-4.0302, Mandatory Reporting, which uses the term *shall*. A person not disclosing or reporting when there is a reasonable risk of harm could be assuming responsibility for very serious negative outcomes.

[Reference: *Book of Order* (2017-2019), G-4.0301, Trust and Confidentiality.]

3. Disclosure vs. Non-disclosure & Presbytery of Genesee Valley



PGV

Does the *PGV Sexual Misconduct Policy* provide direction and rationale for disclosing knowledge or a reasonable concern regarding abuse?

Definitely! Examine the following sections. The message and intent are clear.

1. III. Principles, A. Principle of veracity, or truth, 2.
 - “Truth is a means to prevent foreseeable harm to others, especially those who are vulnerable and rely on the Church’s care and guidance.”
2. VI. Intervention Procedures, A. Receipt of a written allegation or accusation of sexual misconduct, 4.
 - “In the instance of any submission of written information involving a minor..., the individual under jurisdiction of Presbytery who receives the report shall promptly inform... **Disclosure to, and consultation with, civil authorities is the primary action to be achieved...**” [emphasis added]
3. VI. Intervention Procedures, F. Civil authorities and obligation to cooperate and report.
 - 1. “Each person to whom this policy applies shall cooperate with civil authorities in a civil investigation of sexual abuse or other criminal sexual misconduct allegations.”
 - 2. “Each person to whom this policy applies shall follow child abuse and neglect reporting obligations as mandated by New York State Social Services Law, Article 6, Title 6...”
 - 3. “Ministers of Word and Sacrament, elders, deacons, Commissioned Lay Pastors, and Certified Christian educators of Presbytery are **expected to comply with Church-mandated abuse reporting provisions** in the *Book of Order...*” [emphasis added]
4. Attachment C., Safe Sanctuaries: Protecting Children in Our Congregations, 4. Plan for Responding to Allegations of Child Sexual Abuse A.
 - “**Safety of the child is always the church’s primary concern.**” [emphasis added]

Reference: *Presbytery of Genesee Valley Sexual Misconduct Policy*. [Source accessed 12/23/17 on PGV website. Go to Committee on Ministry section, subsection on “Sexual Misconduct Policies & Resources”:
<https://pbygenval.org/committees/committee-on-ministry/sexual-misconduct-policies-resources/>]

4. Recognizing Sexual and Physical Abuse



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What is the basis for a reasonable concern about physical abuse, neglect, and/or sexual molestation or abuse of a minor?

- a. Based on rational observations or knowledge of circumstances, you have a concern or suspicion that a child under 18-years-old is exposed to the danger of harm, or conditions exist that would reasonably result in abuse or neglect.
- b. Here is a link to *The Concerned Citizens Guide*, (2006) New York State Office of Children and Family Services, Bureau of Training, source accessed 12/23/17: <http://ocfs.ny.gov/ohrd/ccg/ccg.asp> The video format includes a list of possible indicators of maltreatment or abuse. [For greater detail, see *Summary Guide for Mandated Reporters in New York State*. (2016), source accessed 12/23/17: <http://ocfs.ny.gov/main/publications/Pub1159.pdf>]
- c. Neither *certainty* nor *proof* is required to communicate a concern. The threshold is **good faith, reasonable concern** for a child's safety or well-being.
- d. Worried about making an accusation that is false? Communicating a **reasonable concern** is not an accusation. If you smell smoke in your church and call the fire department, you're alerting the experts to a possible fire, based on your reasonable concern. You're not required to confirm that an active fire is underway before calling. The experts in New York at determining whether child abuse is occurring are the staff of Child Protective Services.
- e. When a voluntary, non-New York mandated person makes a "good faith" report, the person is immune from civil or criminal liability. [State-mandated reporters are also immune from liability if they act in "good faith" in the discharge of their duties and within the scope of their employment.]

5. Reporting Abuse to Civil Legal Authorities in New York



New
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How do I communicate a concern about possible maltreatment of a child, or report the abuse of a child to civil legal authorities?

- a. If a child is in immediate danger, call 911 or your local police. Otherwise, call:
New York State Child Abuse Hotline: (800) 342-3720 [24 hours / 7 days]
- b. If you suspect child sexual abuse and are uncertain about calling the Child Abuse Hotline, call confidentially to a trained professional. For a list of regional resources, see Attachment A., "Resources for Reporting Maltreatment of Children," Presbytery of Genesee Valley *Child and Youth Safety Policy*. Accessed 12/23/17: <https://pbygenval.org/wp-content/uploads/sites/25/2017/08/Approved-PGV-Child-Safety-Policy-5.23.17.pdf>

6. Calling the Child Abuse Hotline



New
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What kinds of information will I be asked to provide when I call the Child Abuse Hotline?

- a. Here are some typical kinds of questions that would be asked of a caller:
 - What concern prompted you to call?
 - Has the child been injured, or is the child at risk of being injured?
 - What is the child's name, age, and home address?
 - What is the name of the parent or other person legally responsible who injured the child, or created the risk of harm?
 - Are there other children in the household, like sisters or brothers?
- b. You may communicate your concern anonymously. If you provide your name and phone number, it allows for the Child Protective Services caseworker to contact you for further information, which could assist in an investigation.

Source: *Concerned Citizens Guide*, (2006), New York State Office of Children and Family Services, Bureau of Training, source accessed 12/23/17: <http://www.ocfs.state.ny.us/ohrd/ccg/ConcernedCitizensGuide.pdf> See the text for the slide on page 17 for a list of typical questions.

7. After a Call to the Child Abuse Hotline



New
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What happens after I contact the Child Abuse Hotline?

- a. Depending on the information provided, there a number of steps that can be taken. For example, if the information meets the legal requirements, it will be registered as a report, and the county Child Protective Services unit will begin an investigation in 24 hours.
- b. For more information, consult the following:
 - *Concerned Citizens Guide*, (2006), New York State Office of Children and Family Services, Bureau of Training, source accessed 12/23/17: <http://www.ocfs.state.ny.us/ohrd/ccg/ConcernedCitizensGuide.pdf> See slides and accompanying text on pages 18-21 for an overview.
 - On the website of Prevent Child Abuse New York, see the *Reporting Child Abuse – Frequently Asked Questions* section, source accessed 12/23/17: <https://www.preventchildabuseny.org/resources/about-child-abuse/reporting-faq/>

Biblical models of interventions by third parties on behalf of children at risk:

- Shiphrah and Puah, the Hebrew midwives, on behalf of male babies (Exodus 1:15-21).
- Miriam on behalf of the infant Moses, her brother, and his birth mother (Exodus 2:1-10).
- Elisha on behalf of the widow's children (2 Kings 4:1-7).
- God's angel warns Joseph and Mary of King Herod's intentions (Matthew 2:13-14).

Original document reviewed March, 2017, by Mel Olver, attorney for Presbytery of Genesee Valley.