

## Constitutional Musing - Note # 21

### Reporting Requirements

Issued August 2009

In July 2005 three provisions were added to the Constitution of the Presbyterian Church (U.S.A.) in the Form of Government which require officers of the church to report knowledge gained of harm or risk of harm of physical or sexual abuse of a minor.

#### Ministers of the Word and Sacrament

**G-6.0204b.** *A minister of the Word and Sacrament shall report to ecclesiastical and civil legal authorities knowledge of harm, or the risk of harm, related to the physical abuse, neglect, and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity when (1) such information is gained outside of a confidential communication as defined in G-6.0204a<sup>1</sup>; or (2) she or he reasonably believes that there is a risk of future physical harm or abuse.*

This provision of the *Book of Order* attempts to balance conflicting moral duties for officers of the Presbyterian Church (U.S.A.) who are ordained ministers.

For ministers of the Word and Sacrament, the provision strives to balance the duty to protect children from future harm with the duty of a minister to hold in confidence any information revealed to them during the exercise of pastoral care.

Ministers of the Word and Sacrament have a duty under the *Book of Order* to report to both ecclesiastical and civil legal authorities when they have knowledge of harm or risk of harm related to the physical abuse, neglect and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity.

The exception to this duty is when the knowledge is gained within a confidential communication. The *Book of Order* defines the confidential communication that must be held in confidence by a minister as all information revealed to the minister in the course of providing pastoral care and all information relating to the exercise of pastoral care. There is an exception to the exception and that is when the minister reasonably believes that there is a risk of imminent bodily harm to any person or a risk of future physical harm or abuse to a minor or an adult who lacks mental capacity; in that case the minister may voluntarily reveal the information.

At this time, we do not have an interpretation as to which ecclesiastical and civil legal authorities must the ministers report their knowledge. Within the ecclesiastical context, presumably any information should be reported to the individuals who have responsibility for the

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<sup>1</sup> G-6.0204a. Information Held in Confidence

In the exercise of pastoral care, ministers of the Word and Sacrament shall maintain a relationship of trust and confidentiality, and shall hold in confidence all information revealed to them in the course of providing such care and all information relating to the exercise of such care. When the person whose confidences are at issue gives express consent to reveal confidential information, then a minister of the Word and Sacrament may, but cannot be compelled to, reveal confidential information. A minister of the Word and Sacrament may reveal confidential information when she or he reasonably believes that there is risk of imminent bodily harm to any person.

pastoral care of the victim and their family members and to the individuals who have the responsibility for discipline if the perpetrator is a member, employee or volunteer of the Presbyterian Church (U.S.A.). If the perpetrator is a member of the PC(USA) any reporting would be made to the clerk of session for members, elders and deacons or to the presbytery stated clerk for ministers of the Word and Sacrament. If the perpetrator is an employee or volunteer, the report should be made to the supervising entity of the employee or volunteer. The congregation or the governing body may have a sexual misconduct policy that provides a guide as to who is the appropriate person within the church to receive such a report. Within the civil context, any information should be reported according to state law.

The Presbyterian Church (U.S.A.) does not have an authoritative interpretation as to the definition of “knowledge of harm” or “knowledge of risk of harm.” Ministers who are trying to determine whether they have a duty to report, will have to use a reasonable determination as to whether the person has been harmed or is at risk of the above harms.

The Presbyterian Church (U.S.A.) General Assembly has not interpreted the terms: “physical abuse”, “neglect”, “sexual molestation” or “sexual abuse” within this provision. Ministers who are trying to determine whether they have a duty to report, will have to use a reasonable determination as to whether the person has been harmed or is at risk of the above harms.

The 1993 General Assembly passed a Sexual Misconduct Policy in which child sexual abuse is defined: “Child Sexual Abuse includes, but is not limited to, any contact or interaction between a child and an adult when the child is being used for the sexual stimulation of the adult person or of a third person. The behavior may or may not involve touching. Sexual behavior between a child and an adult is always considered forced whether or not consented to by the child. No upper age limit for child sexual abuse has been given in this policy because the age of adulthood varies from state to state. The upper age limit is intended to be that recognized in the state in which the act was committed.”

The 2001 General Assembly passed a policy “*Turn Mourning into Dancing: A Policy Statement on Healing Domestic Violence*” in which physical abuse is defined as the use of brute force, such as hitting, biting, kicking, slapping, burning or scalding, to damage a person’s body. The weapon may be a fist, a knife, a gun, or other object. To see the policy go to <http://www.pcusa.org/oga/publications/dancing.pdf>.

The Presbyterian Church (U.S.A.) does not have an authoritative interpretation of the terms “a minor or an adult who lacks mental capacity.” It is reasonable to presume that “mental capacity” is limited to the mental capacity to consent to sexual conduct. Since the age of adulthood varies from state to state, the term “minor” will presumably vary according to the law of the state until the PC(USA) has defined this provision in this context.

## **Elders and Deacons**

**G- 6.0304b.** *An elder shall report to ecclesiastical and civil legal authorities knowledge, gained in the course of service to the church, of harm, or the risk of harm, related to the physical abuse, neglect, and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity when (1) such information is gained outside of privileged communication; or (2) she or he reasonably believes that there is risk of future physical harm or abuse.*

**G-6.0402b.** *A deacon shall report to ecclesiastical and civil legal authorities knowledge, gained in the course of service to the church, of harm, or the risk of harm, related to the physical abuse, neglect, and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity when (1) such information is gained outside of privileged communication; or (2) she or he reasonably believes that there is risk of future physical harm or abuse.*

These provisions of the *Book of Order* attempt to balance conflicting moral duties for ordained officers of the Presbyterian Church (U.S.A.).

For elders and deacons, the provisions strive to balance the duty of an officer of the church to protect children from harm and any secular duty the officer may have to hold in confidence any information revealed as a result of a secular relationship such as attorney/client, counselor/client, or physician/patient. The secular duties will be a function of secular law and may vary from state to state.

Elders and Deacons have a duty under the *Book of Order* to report to both ecclesiastical and civil legal authorities when they have knowledge gained in the course of service to the church of harm or risk of harm related to the physical abuse, neglect and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity.

The exception to this duty is when the knowledge is gained within a “privileged” communication. The General Assembly intended to provide an exception for a secular relationship such as attorney/client, counselor/client, or physician/patient that may be granted certain confidential privileges under state law. Since it is probable that the secular definition of “privileged” will vary from state to state, the term “privileged” is deliberately left undefined in the church Constitution.

There is also an exception for knowledge gained outside of service to the church. This acknowledges that officers of the church may have access to knowledge gained outside of service to the church that may result in the individual having conflicting professional confidentiality issues. This exception acknowledges those potential conflicts of interests. However, to date the Presbyterian Church (U.S.A.) does not have a definition of “service to the church” for the purposes of this provision. The service may be limited to when the officer is specifically doing work approved by and commissioned by the church, or it may be defined broadly, as whenever there is the appearance that the officer is engaged in “service for the church.” The officer who is trying to determine whether or not they have a duty under the *Book of Order* to report any knowledge of abuse is advised to make a reasonable determination whether there is a reasonable risk of future harm, whether the information was gained while the officer was in service to the church, and whether there is a secular legal duty to report.

If the elder or deacon gains knowledge during the course of service to the church, her duty to report may not be limited to knowledge of risk of future physical harm or abuse, but also to report when she has knowledge of past harm related to physical abuse, neglect and/or sexual molestation of a minor or an adult who lacks mental capacity.

The Presbyterian Church (U.S.A.) does not have an authoritative interpretation as to the definition of “knowledge of harm” or “knowledge of risk of harm.” Elders and deacons who are trying to determine whether they have a duty to report, will have to use a reasonable determination as to whether the person has been harmed or is at risk of the above harms.

The Presbyterian Church (U.S.A.) General Assembly has not interpreted the terms: “physical abuse”, “neglect”, “sexual molestation” or “sexual abuse” within this provision. Elders and deacons who are trying to determine whether they have a duty to report, will have to use a reasonable determination as to whether the person has been harmed or is at risk of the above harms.

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The Presbyterian Church (U.S.A.) does not have an authoritative interpretation of the terms: “a minor or an adult who lacks the mental capacity.” It is reasonable to presume that “mental capacity” is limited to the mental capacity to consent to sexual conduct. Since the age of adulthood varies from state to state, the term “minor” presumably will vary according to the law of the state until the PC(USA) has interpreted it in this context.

### **Clerks of Session, Stated Clerks, Moderators and Governing Body Staff**

The new provisions to the *Book of Order* make it mandatory for any officer of the church to report any knowledge of harm or risk of harm of a minor to the ecclesiastical and civil legal authorities. There are exceptions to this duty that are described above. The General Assembly has not issued an authoritative interpretation of the term “ecclesiastical authority.”

All members of governing bodies should be aware of any sexual misconduct policies adopted by the governing body that define the appropriate reporting procedure. If the perpetrator is a member of the Presbyterian Church (U.S.A.) the reporting procedure would be according to the Rules of Discipline of the *Book of Order*, so that any reporting would be made to the clerk of session for allegations against members, elders and deacons or to the presbytery stated clerk for allegations against ministers of the Word and Sacrament. If the perpetrator is an employee or volunteer, the report should be made to the supervising entity of the employee or volunteer.

### **Certified Christian Educators**

In July, 2007 one provision was added to the Constitution of the Presbyterian Church (U.S.A.) in the Form of Government to require Certified Christian Educators to report knowledge gained of harm or risk of harm of physical or sexual abuse of a minor.

**G-14.0732** *Certified Christian educators and certified associate Christian educators shall report to ecclesiastical and civil legal authorities knowledge gained in the course of service to the church, of harm, or risk of harm, related to the physical abuse, neglect, and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity when (1) such information is gained outside of privileged communication; or (2) he or she reasonably believes that there is risk of future physical harm or abuse.*

See Elders and Deacons above for advice regarding interpretation of this provision.

For more information regarding creating safe churches and the prevention of sexual misconduct in the church context, please see [www.pcusa.org/sexualmisconduct](http://www.pcusa.org/sexualmisconduct).