

MANDATORY REPORTING
An Advisory Paper
by and for
The Presbytery of Baltimore

In the spring of 2018, an Investigating Committee empaneled by the Presbytery of Baltimore concluded its work without bringing charges, but was left with a number of nagging questions, particularly about the subject of mandatory reporting for those in ordered ministry in the Presbyterian Church (U.S.A.) They were especially troubled by the realization that, although the alleged behavior was quite serious in nature, the chain of reporting was quite circuitous, and involved persons, including the alleged perpetrator, who were not members of the PCUSA, or were not in ordered ministry. And even though knowledge of the alleged offense was ultimately brought to the Pastor and at least some of the Session, by the time it reached those persons the message was at least third or fourth hand.

This circumstance, along with several other aspects of the case, led the IC to write a series of recommendations to the Presbytery leadership, including the following, which has resulted in the present paragraphs:

That Presbytery leadership, in conjunction with members identified as having expertise and in conversations with civil authorities, draft an advisory paper to provide clarity to the following questions regarding G-4.0302:

- a. *Is "knowledge of harm" limited to direct knowledge from contact with the victim, or does it extend to second hand reporting of abuse, or tertiary, and so forth?*
- b. *Must every second-hand report, regardless of the perceived credibility of the reporter, be reported?*
- c. *Is "harm, or risk of harm" subject to the discernment of the one serving in ordered ministry, or is it objectively quantifiable?*
- d. *How far does the legal (both civil and ecclesiastical) responsibility to report extend beyond those specifically entrusted to our care, such as members and regular attendees or regular guests to a church sponsored community program? Is there ever a time or place when a person in ordered ministry is "off duty" and not a mandated reporter?*
- e. *Are those in ordered ministry subject to the state of Maryland mandatory reporting requirements, and if so, how does this interact with G-4.0302?*
- f. *What rises to the level of "abuse" in the context of different cultures? Is corporal punishment always abuse? Is incessant cursing at a child always abuse?*

It fell to the Office of the Stated Clerk to take the lead in this project; we first consulted with the Presbytery's Sexual Misconduct Response Team, which includes a retired psychologist and a licensed professional counselor. We reviewed G-4.03 and the Maryland regulations on mandatory reporting. We then participated in a videoconference with Mike Kirk, Associate General Counsel for the PCUSA in Louisville, and Laurie Griffith, Associate Director of Constitutional Interpretation for the PCUSA, who helped us to understand the intent of G-4.03, and to see both the legal and ecclesiastical aspects of the provision.

G-4.0302 of the *Book of Order* states: *Any member of this church engaged in ordered ministry and any certified Christian educator employed by this church or its congregations, 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-4.0301, (2) she or he is not bound by an obligation of privileged communication under law, or (3) she or he reasonably believes that there is risk of future physical harm or abuse.

The purpose of this paragraph is to *facilitate* the making of a report of alleged wrongful behavior or misconduct to the appropriate authorities, rather than to delineate or limit the circumstances under which reporting should occur. It is not up to the mandated reporter to investigate the alleged incident or to determine guilt or to have first-hand knowledge of the incident, but only to determine if the report is reasonable and/or if there is a reasonable risk of future harm or abuse. In fact, some states or jurisdictions explicitly state that the reporter is forbidden to investigate; this is a task better left to the civil authorities. Moreover, failing to observe this principle can lead to charges being brought against the reporter him/herself, since more harm or abuse could happen during the period that the reporter is "investigating."

Regarding the specific questions raised in the IC's recommendations:

a. *Is "knowledge of harm" limited to direct knowledge from contact with the victim, or does it extend to second hand reporting of abuse, or tertiary, and so forth?*

The answer here is that "knowledge of harm" is *not* limited to direct knowledge. If it is reasonable, it should be reported. And while circumstances themselves may be confusing, and may challenge those in ordered ministry to make judgment calls about what is reasonable, the best advice is always: Report.

b. *Must every second-hand report, regardless of the perceived credibility of the reporter, be reported?*

The *Book of Order* is not a criminal code but is rather ecclesiastical in nature; G-4.0302 intends to set forth broad ecclesiastical guidelines, rather than narrow, legal definitions. Again, it's not the task of the reporter to investigate, but rather to bring the allegation to the attention of responsible authorities. When in doubt, report.

c. *Is "harm, or risk of harm" subject to the discernment of the one serving in ordered ministry, or is it objectively quantifiable?*

Again, the purpose of this provision is to facilitate making a report, not to set a standard that must be met. If you have a reasonable belief that harm has occurred, or that future harm may occur, you have an obligation to report. There is no objectively quantifiable standard that may apply in every situation; and there again, it's not up to the reporter to find out if the report finally is true.

d. *How far does the legal (both civil and ecclesiastical) responsibility to report extend beyond those specifically entrusted to our care, such as members and regular attendees or regular guests to a church sponsored community program? Is there ever a time or place when a person in ordered ministry is "off duty" and not a mandated reporter?*

On church property or at a church-sponsored event, on church grounds or not, the duty is very clear: those employed as certified Christian educators and those in ordered ministry—including Deacons, Ruling Elders, and Ministers of Word and Sacrament—are under a clear mandate to report behavior causing harm, abuse, or molestation. On a very broad basis, the duty to report is always there, and so those in ordered ministry are never “off duty.” When in doubt, report.

e. Are those in ordered ministry subject to the state of Maryland mandatory reporting requirements, and if so, how does this interact with G-4.0302?

Maryland mandatory reporting requirements (see attached) view church officials as “Human Service Workers.” As noted in the requirements, such persons are required to report incidents which come to their attention. Proof is not required, guilt need not be proved. The reporter making a “good faith” report is protected from civil or criminal liability. The provisions of G-4.0302 are actually broader; all in ordered ministry are designated mandatory reporters. The legal requirements must be followed, but church officers have a special duty to report suspected abuse, and are responsible not only to the state but also to the councils of the church.

f. What rises to the level of "abuse" in the context of different cultures? Is corporal punishment always abuse? Is incessant cursing at a child always abuse?

Although differing cultures have varying attitudes toward corporal punishment, those in ordered ministry in the PCUSA should be advised that recent cases in the courts have tended to view corporal punishment as abuse, citing evidence that corporal punishment does have a damaging psychological and physical impact over the long term.

CONCLUSION

Although Deacons, Ruling Elders, ~~and~~ Ministers of Word and Sacrament, and certified Christian educators in the PCUSA are guided by principles of love and forgiveness, there is also a clear mandate both in civil and ecclesiastical law that information about abuse and neglect must not be ignored. Though it may challenge church officers to speak up to proper authorities both in the church and in civil authority, it must be stated that the bar for reporting is very “low.” We don’t get to decide what constitutes abuse; the rule of thumb is, when in doubt, report. We are not required to provide proof; to the contrary, we should not go searching for proof. We should be bold to make a “good faith” report of suspected misconduct, abuse, or neglect. The guiding principle here is that our ordination vows require us to “work for the reconciliation of the world,” and so our responsibility to be advocates for those who are most vulnerable.

Maryland Mandated Reporting of Abuse or Neglect

You are a mandated reporter if you are one of the following:

- Health Practitioner
- Educator
- Human Service Worker
- Police Officer

Reporting does NOT require PROOF that child abuse or neglect has occurred. Incidents are to be reported as soon as they are suspected. Waiting for proof may involve grave risk to the child and impede services to the family. Witnesses to child abuse and neglect are rare. Professional judgment and knowledge should be used to evaluate any suspicion.

Please note that effective October 1, 2016, if a local department has reason to believe that a mandated reporter knowingly failed to make a report of suspected abuse or neglect of a child, the local department must file a complaint with the appropriate licensing board or employer of the mandated reporter. Anyone making a “good faith” report is immune from civil liability and criminal penalty.