

# Child Abuse, Mandatory Reporting, & Presbyterians in New York State: Part 1. What Is Required of Us?



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Rev. James S. Evinger & Mel Olver (former PGV Attorney)  
*6<sup>th</sup> update of material presented 2013-2017*

# Are clergy mandated by New York State law as reporters of the abuse of children and/or adolescent minors?

**No.**

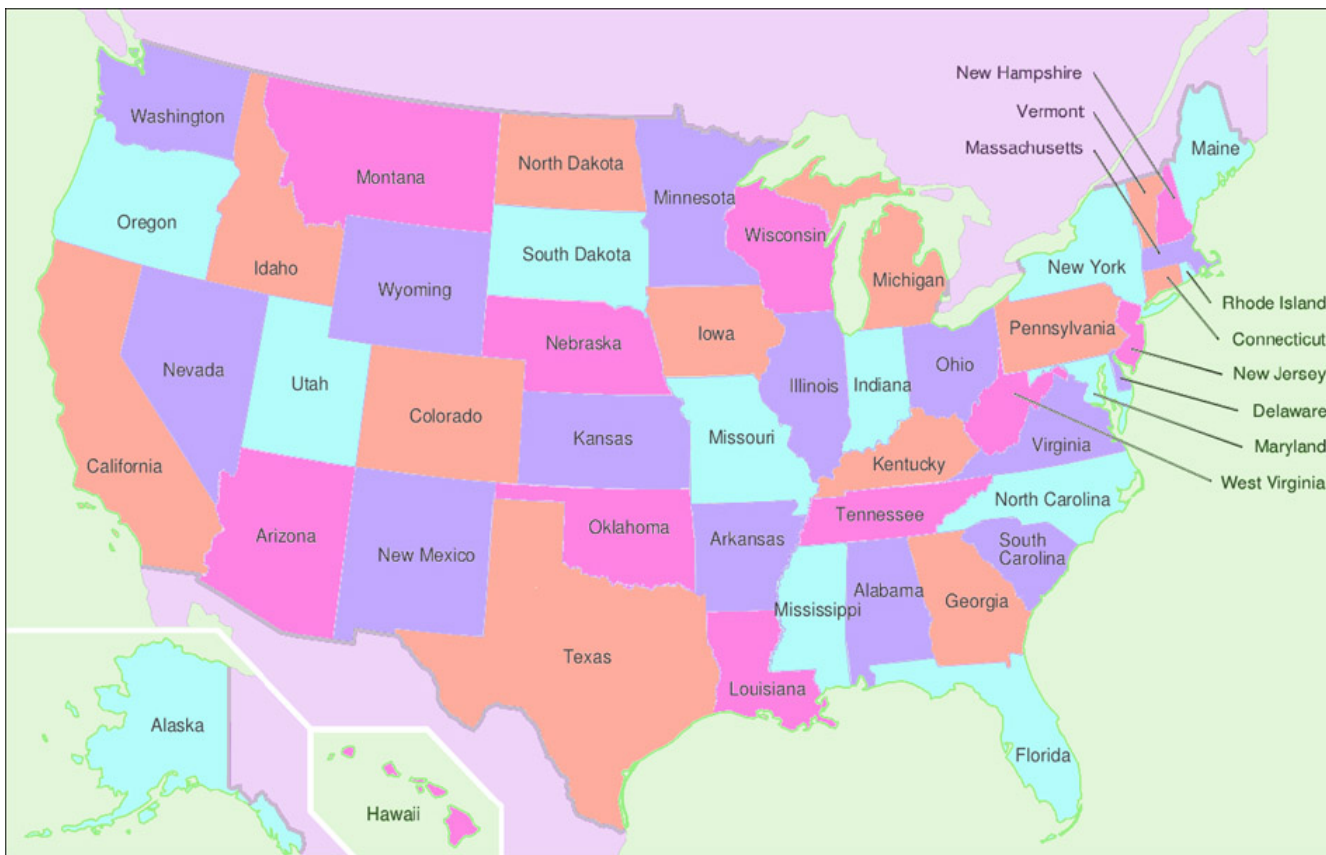
**In New York's list of nearly 40 categories of occupations and official positions designated as mandated reporters, clergy are not included.**

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).

Accessed 11/27/17:

<http://codes.lp.findlaw.com/nycode/SOS/6/6/413>





Does New York differ from other states regarding clergy as mandated reporters?

	<b>Privilege granted but limited to pastoral communications</b>	<b>Privilege denied in cases of suspected child abuse or neglect</b>	<b>Privilege not addressed in the reporting laws</b>
<b>Clergy enumerated as mandated reporters</b>	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Illinois, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Vermont, Wisconsin	Guam, New Hampshire, West Virginia	Connecticut, Mississippi
<b>Clergy not enumerated as mandated reporters but may be included with "any person" designation</b>	Delaware, Florida, Idaho, Kentucky, Maryland, Utah, Wyoming	North Carolina, Oklahoma, Rhode Island, Texas	Indiana, Nebraska, New Jersey, Tennessee, Puerto Rico
<b>Neither clergy nor "any person" enumerated as mandated reporters</b>	Virginia, Washington <sup>6</sup>	Not applicable	American Samoa, District of Columbia, Hawaii, Iowa, Kansas, New York, Northern Mariana Islands, South Dakota, Virgin Islands

## Source

Child Welfare Information Gateway. (2015, August). *Clergy as Mandatory Reporters of Child Abuse and Neglect*. Washington, D.C.: U.S. Department of Health and Human Services, Children's Bureau.



Accessed 01/06/18:  
[https://www.childwelfare.gov/systemwide/laws\\_policies/statutes/clergymandated.pdf](https://www.childwelfare.gov/systemwide/laws_policies/statutes/clergymandated.pdf)

# What does the *Book of Order* say about mandated reporters?

Designated as Church-mandated reporters of abuse (sexual and physical) are:

- Church-certified Christian educators
- commissioned ruling elders / pastors
- deacons
- ruling elders
- ministers



G-4.0302. *Book of Order* (2017-2019).

# What is the *Book of Order* threshold which requires us to take action?

“...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...”

G-4.0302. *Book of Order* (2017-2019).



# Does the *Book of Order* contain any qualifiers or exceptions to taking action?

“... 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.”

G-4.0302. *Book of Order* (2017-2019).

An example of # (2) is a physician or lawyer who is a ruling elder, and in the professional role receives role-protected privilege communication.





# What parties does the *Book of Order* mandate be informed of the abuse?

**“... ecclesiastical and civil legal authorities...”**

G-4.0302. *Book of Order* (2017-2019).



# Go back to the exceptions. How is “confidential communication” defined in G-4.0301?

The term is not explicitly defined.

- The context is described as “the exercise of pastoral care,” but the term “confidential communication” is not defined.
- Affected are only clergy and ruling elders commissioned to pastoral service.
- 2 exceptions which allow disclosure are identified.

G-4.0301. *Book of Order* (2017-2019).



# The exception: “obligation of privileged communication under law”. What is NY law here?

## New York law states:

“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 [sic] professional character as spiritual advisor.”

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

Accessed 11/27/17:

[http://codes.lp.findlaw.com/nycode/CVP/45/4505\]](http://codes.lp.findlaw.com/nycode/CVP/45/4505)



# That's the literal wording, but how have New York courts applied this language in cases?

Consistently, over decades, New York courts have ruled to define this law in the strict sense as requiring a formal confession of sin which was made in an explicitly religious context. The implied norm is a Roman Catholic parishioner who confesses sins to a priest.

Case law has determined the protection does not extend to heart-to-heart talks or disclosures not made for the purpose of seeking explicitly religious counsel.

E.g., see: Shaw, Gary. (2008). *Canudo on Evidence Laws of New York*. Charlottesville, VA: LexisNexis. Martin, Michael M., etc. (2003). *New York Evidence Handbook: Rules, Theory, and Practice*, 2<sup>nd</sup> ed. New York, NY: Aspen Law & Business.



# What norms and guidance does our Presbytery provide on this topic?

## *PGV Sexual Misconduct Policy*

- III. Principles, A. Principle of veracity, or truth

“Truth is a means to prevent foreseeable harm to others, especially those who are vulnerable and rely on the Church’s care and guidance.”

- VI. Intervention Procedures, A.

“In the instance of any submission of written information involving a minor... the individual under jurisdiction of the Presbytery who receives the report shall promptly inform... Disclosure to, and consultation with, civil authorities is the primary action to be achieved.”



# What are the sources of Presbytery's norms and guidance on this topic?

## *PGV Sexual Misconduct Policy*

### ■ VI. Intervention Procedures, F.

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.”

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...*”

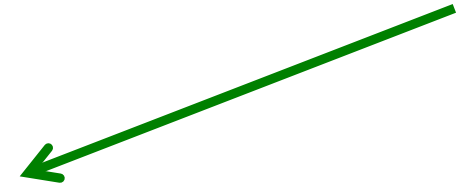


# What are the sources of Presbytery's norms and guidance on this topic?

## *PGV Sexual Misconduct Policy*

- Attachment C. Safe Sanctuaries: Protecting Children in Our Congregations

4. "Safety of the child is always the church's primary concern."



## *PGV Child and Youth Safety Policy*

- VI. Intervention Procedures
  - B. In the event of any maltreatment
- Attachment A. Resources for Reporting Maltreatment of Children



# This concludes Part 1.

**Part 2. Discerning Whether to Report**

**Part 3. Risk Assessment & Incident Data**

**Part 4. What Does Reporting Involve?**

