

Child Abuse, Mandatory Reporting, & Presbyterians in New York State:

Part 2. Discerning Whether to Report



Presbytery of Genesee Valley
January, 2018

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6th update of material presented 2013-2017

Case Study from a Presbytery of Genesee Valley church

A pastor seeks your consultation about a family whose situation is “potentially serious” and “so challenging.” A young couple, parents of a 19-months-old daughter, are physically separated. Weekdays, the child is kept by the mother, who now lives with her boyfriend, who lives with his mother. Weekends, the child is with the father, who now lives with his parents.

The pastor relies on the following information from the father:

- The father and his parents notice a change in the child’s behavior: she engages in self-hitting, and strikes her genitals with her fist while being bathed.
- The mother has been physically violent towards the father, acts which were witnessed by his parents.
- The father has not reported the mother’s behavior to authorities.
- The father suspects the mother’s boyfriend is using illicit drugs.

The pastor has no knowledge of the truth of these statements.

Based on recent pastoral visits, the pastor describes the mother as very angry and argumentative.

As relevant in discerning what to do next, the pastor identifies:

- Reluctance to contact authorities due to uncertainty about the facts.
- Not wanting to create more conflict, if there is no basis for the father's statements.
- A primary concern to maintain a pastoral relationship with the mother, based on a desire to “support” her.
- “Yet in my heart, I know that her [the mother's] hurt ought not be a penalty against her young daughter.”

The pastor asks, “What do you advise?”

1. How do you respond? Why? What's your basis?
2. What is your advice to the pastor? Why?
3. What content do you want in a session policy (*Sexual Misconduct or Child and Youth Safety*) to guide you?

Prevention Phase



Postvention Phase



Intervention Phase



- Disclosure, e.g., church leaders, people at risk, congregation.
- Reporting, e.g., civil authorities, insurance carrier.
- Obtain outside expertise.
- Offer assistance to those affected.

The question of whether to report child abuse is typically a question arising in the Intervention Phase.

Indicators of Physical Abuse Can Include

- * Injuries to the eyes or both sides of the head or body (accidental injuries typically only affect 1 side of the body);
- * Frequent injuries of any kind (bruises, cuts, &/or burns), especially if the child is unable to provide an adequate explanation of the cause. These may appear in distinctive patterns such as grab marks, human bite marks, cigarette burns, or impressions of other instruments;
- * Destructive, aggressive, or disruptive behavior;
- * Passive, withdrawn, or emotionless behavior;
- * Fear of going home or fear of parent(s).



Indicators of Maltreatment Can Include

- * Obvious malnourishment, listlessness, or fatigue;
- * Stealing or begging for food;
- * Lacking of personal care – poor personal hygiene, torn &/or dirty clothes;
- * Untreated need for glasses, dental care, or other medical attention;
- * Frequent absence from, or tardiness to, school;
- * Child inappropriately left unattended or without supervision.

Indicators of Sexual Abuse Can Include

- * Symptoms of sexually transmitted diseases;
- * Injury to genital area;
- * Difficulty &/or pain when sitting or walking;
- * Sexually suggestive, inappropriate, or promiscuous behavior or verbalization;
- * Expressing age-inappropriate knowledge of sexual relations;
- * Sexual victimization of other children.

Summary Guide for Mandated Reporters in New York State.

(2016, rev.)

<https://ocfs.ny.gov/main/publications/Pub1159.pdf> [Accessed 12/13/17.]

What does the evidence-based literature tell us?

“Statewide, the top five most frequently noted factors that place a child at risk of abuse/maltreatment within the next two year period are:

- Domestic violence or other dysfunctional adult relationship;
- Unreasonable expectations of children by the caregiver;
- Prior foster care placement;
- Primary caregiver’s mental health problems; and
- Drug problem by caregiver.”

New York Office of Children and Family Services. (2014, June). *New York State’s FY 2010-2014 Final Report And FY 2015-2019 Child and Family Services Plan*. Albany, NY: Author, p. 146.



“How does NYS define
maltreatment, abuse & neglect ?”

Maltreatment (includes Neglect)

Maltreatment means that a child's physical, mental or emotional condition has been impaired, or place in imminent danger of impairment, by the failure of the child's parent or other person legally responsible to exercise a minimum degree of care by:

- * Failing to provide sufficient food, clothing, shelter, education; or
- * Failing to provide proper supervision, guardianship, or medical care (refers to all medical issues, including dental, optometric, or surgical care); or
- * Inflicting excessive corporal punishment, abandoning the child, or misusing alcohol or other drugs to the extent that the child was placed in imminent danger.

Poverty or other financial inability to provide the above is not maltreatment.

Abuse

Abuse encompasses the most serious injuries &/or risk of serious injuries to children by their caregivers. An abused child is one whose parent or other person legally responsible for his/her care inflicts serious physical injury upon the child, creates a substantial risk of serious physical injury, or commits a sex offense against the child. Abuse also includes situations where a parent or other person legally responsible knowingly allows someone else to inflict such harm on a child.



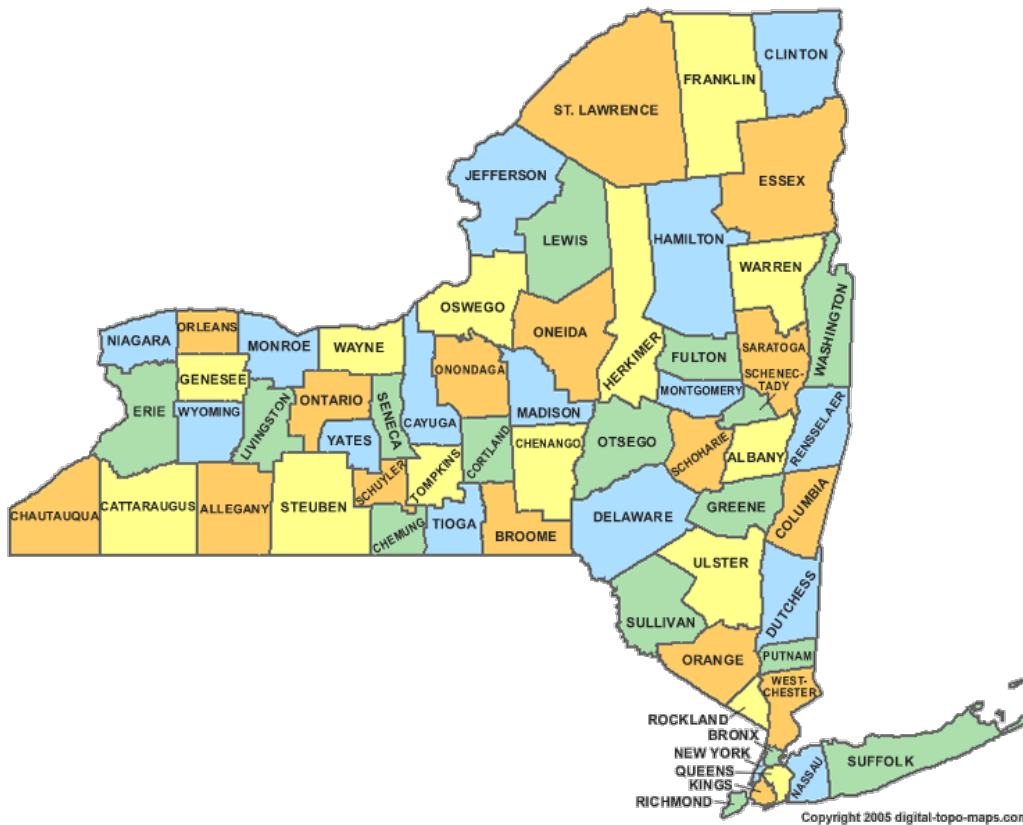
Summary Guide for Mandated Reporters in New York State. (2016, rev.)

<https://ocfs.ny.gov/main/publications/Pub1159.pdf> [Accessed 12/13/17.]

For the precise **legal definitions**, see:

New York State Family Court Act
Article 10, Child Protective Proceedings
Part 1 Jurisdiction, Definitions §1012

<http://codes.findlaw.com/ny/family-court-act/fct-sect-1012.html> [Accessed 12/12/17.]



“If I make a report, am I protected?
Will I incur any liability?”

“I’m concerned about revealing my identity.”

New York Social Services Law Article 6, Title 6, § 422-A, Child abuse and neglect investigations; disclosure, ¶ 4, provides confidentiality for mandated reporters and all sources of child abuse and maltreatment reports. The NYS Office of Children and Family Services and local Child Protective Services are not permitted to release to the subject of the report any data that would identify the source of a report unless the source has given written permission for them to do so. Information regarding the source of the report may be shared with court officials, police, and district attorneys, but only in certain circumstances.

Summary Guide for Mandated Reporters in New York State. (2016, rev.)
<https://ocfs.ny.gov/main/publications/Pub1159.pdf> [Accessed 12/13/17.]

Immunity for *Mandated* Reporters

N. Y. Social Services, Article 6, Title 6, § 419, Immunity from liability

<http://codes.findlaw.com/ny/social-services-law/sos-sect-419.html>

[Accessed 12/13/17.]

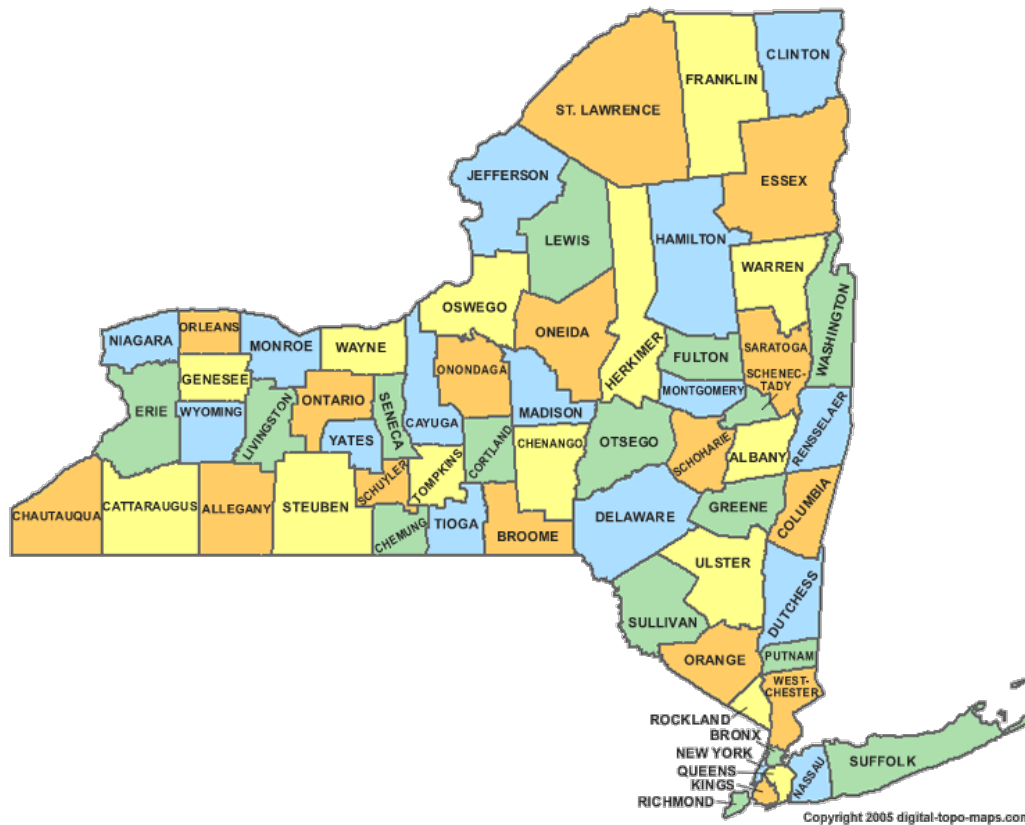
Immunity for *Voluntary, Non-Mandated* Reporters

“If you make a report in **good faith**, you are immune from civil or criminal liability.” from *Recognizing & Reporting Child Abuse and Neglect: Questions Often Asked by Friends, Neighbors and Relatives*.

http://www.preventchildabuseny.org/files/8913/7648/8128/Reporting_CAN_2013.pdf

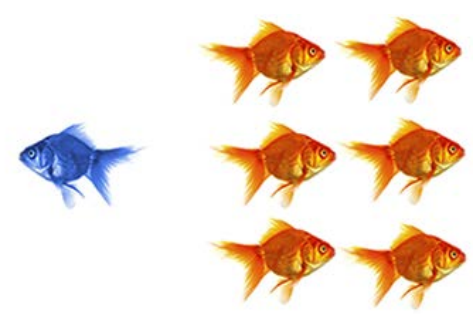
[Accessed 12/13/17.]





“I’m still struggling. I can think of a lot of reasons not to report.”

Resistance to reporting



- Denial, rationalization: “What I saw wasn’t really neglect.” “Someone else will take care of this.”
- Ignorance or minimization of consequences to the child: “It wasn’t that bad.” “It happens to a lot of kids.”
- Ignorance of the law or lack of experience, e.g., definitions, procedure, “I don’t have all the facts so I won’t try.” “I don’t know where to start so I won’t try.”
- Religious-based, e.g., forgiveness without accountability.
- Misguided priority, e.g., preserving the family over protecting a child at risk, or honoring a promise of confidentiality that excludes consideration of the consequences to people at risk of harm.
- Fear, e.g., taking action will lead to conflict or reprisal, be time-consuming, be ineffective: “I don’t want to get an innocent person in trouble.” “Even if I call, nothing will happen.”

Myths & misconceptions rationalizing non-reporting

- 1.) Sins in the church should be addressed internally (Mat. 18:15-20).
 - This historical context was a time when religious (Jewish) courts were established & administered religious laws.
 - We live in a secular country, the law of which guarantees separation of church & state, however the law does not exempt the church from all secular/civil law.
- 2.) Clergy should deal with an offender 1:1 in a supportive, confidential, & pastoral relationship.
 - This contradicts the co-governance model (teaching elders & ruling elders, professional staff & laity) of the Reformed tradition, & diminishes the value & role of gifts of the Spirit given to laity.
 - Clergy are not trained, skilled, or experienced in working with the complexities (legal, clinical) of one who is a sexual offender.

Myths & misconceptions rationalizing non-reporting

3.) Christians are to be compassionate, and reporting is not.

- Holding an offender accountable for behaviors that harm others is compassionate. It's in the offender's spiritual self-interest to face the reality of the sin & its consequences, to have the opportunity to confess, & to begin a process of repentance.

4.) We are taught to forgive 70 times 7 (Matthew 18:22).

- Forgiveness does not guarantee the offender will repent & cease to be a risk to those who are vulnerable.
- Forgiveness does not cancel the need for accountability & justice. "...rebuke the offender" says Jesus (Luke 17).
- Holding the offender accountable affirms the community's norm that abuse is wrong. Lack of accountability sanctions the abuse, and also re-victimizes those who were harmed.

Myths & misconceptions rationalizing non-reporting

5.) The congregation can't handle the truth of a scandal.

- This rationalization is based in fear. It shifts the believers' role from that of trusting in God's providential care for the church & believers to that of our assuming God's responsibility to sustain the community of faith. It displaces God's guidance with human wisdom. It denies the affirmation of Romans 8:38-39 – nothing will be able to separate us from the love of God in Christ Jesus our Lord.
- Faithful church members are further, & often more, scandalized when their leaders commit cover-ups.

Consequences of not reporting

- Harm to person abused continues unabated.
- Others at risk are not protected from future harm.
- Offender is not confronted, not held accountable.
- Risk of civil suit: “reasonable person” standard requires some basic action to intervene on behalf of the child.
- Invalidation of insurance coverage.
- Loss of trust: within a congregation, of the person who did not report, of church leaders.
- Spiritual: what failure to report communicates about the church’s convictions & the nature of God.

Practical Benefits of reporting

- Invites a 3rd-party assessment of the situation.
- Expedites the activation of resources for: protection of vulnerable, at-risk minors & adults, intervention, accountability, & healing.
- A step toward mobilizing people with expertise & experience: agencies designated to receive, investigate, & manage child abuse cases; individuals who can guide & support the faith community.
- Information allows a council (session, presbytery) to fulfill its governance responsibilities, including risk management, & preserve the integrity of its mission & ministry.
- Overcomes isolation of, & elicits support for, the reporter. Protects person from negative consequences of failing to report.

THE LASTING IMPACT

Child abuse and neglect may affect the long-term health and well-being of not only the children, but also the adults they become. Every experience is unique, and a child's personal characteristics and family and social context, as well as the severity, frequency, and timing of the abuse or neglect can affect outcomes.

— — — — — Long-Term Effects — — — — —

PSYCHOLOGICAL HEALTH

- Depression
- Posttraumatic stress disorder
- Heightened anxiety

BRAIN DEVELOPMENT

- Changes in the prefrontal cortex
- Changes to the stress response system

RELATIONAL SKILLS

- Poor peer relations
- Difficulty at work
- Aggression

RISK BEHAVIORS

- Alcoholism
- Early sexual activity

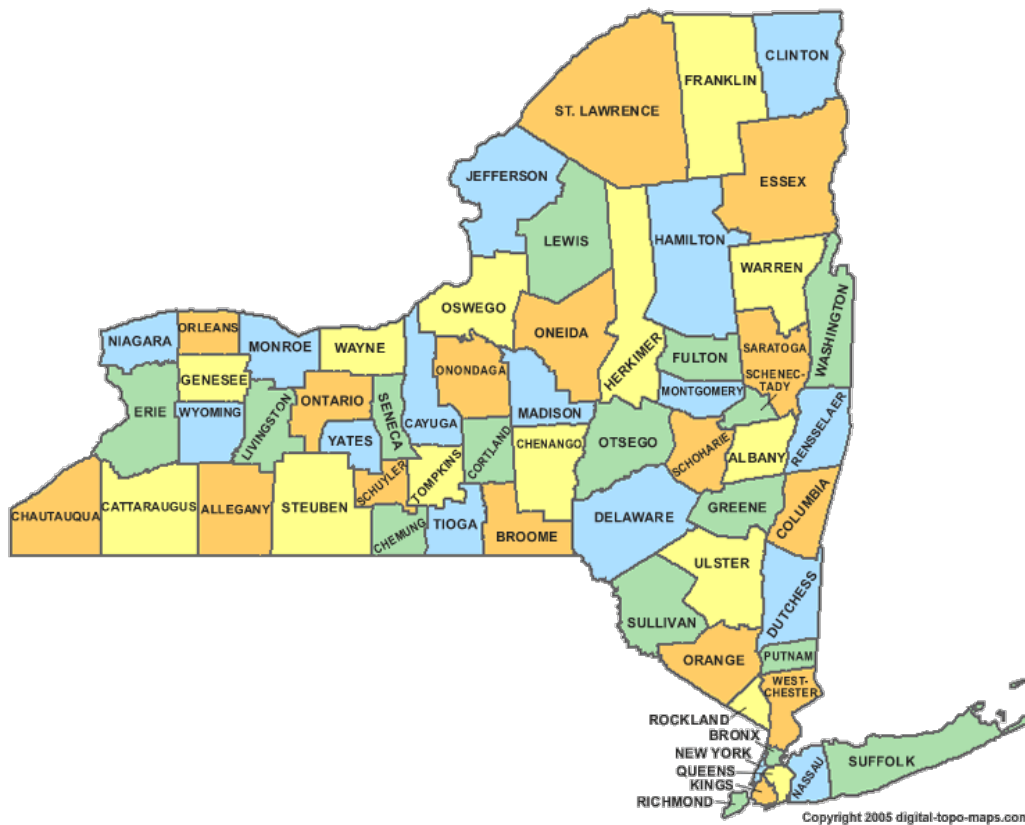
Institute of Medicine. (2013). *Infographic: Understanding Child Abuse & Neglect*.

THE LASTING IMPACT

Statistically significant association between sexual abuse (at any age) & outcome of a lifetime psychiatric disorder commonly encountered in general medical practice:

- Anxiety disorders
- Depression
- Eating disorders
- Post-Traumatic Stress Disorder (PTSD)
- Sleep disorders
- Suicide attempts

Chen, L. P., et al. (2010). Sexual abuse and lifetime diagnosis of psychiatric disorders: Systematic review and meta-analysis. *Mayo Clinic Proceedings*, 85(7, July):618-629.



“I’m concerned about false accusations.
I don’t want to be wrong.”

Alerting authorities based on a
“reasonable concern or suspicion”
is not the same as making an
“accusation.”

Making a “report” is:

- 1.) a request for
- 2.) trained professionals to
- 3.) check a situation involving a child
- 4.) who may be at risk of harm and
- 5.) make a reasonable assessment.

“I think I should say something, but what if I’m wrong?”

But what if you’re right?

“I think something is wrong, but I’m not certain.”

You don’t have to be certain.

“I think I should say something, but I’m afraid.”

How do you think the child feels?

How to think about calling the NYS hotline.

If you are in your church building and smell smoke, or see smoke, and if you call the local fire department, you are reporting a fire – in **good faith**. You had a **reasonable concern** for making the report. You are not required to document the existence of a fire before you call. You will not be prosecuted for making a false report. You simply alerted the experts – the fire department – so those who are trained and experienced can do their job. You acted in **good faith**, on a **reasonable concern**.



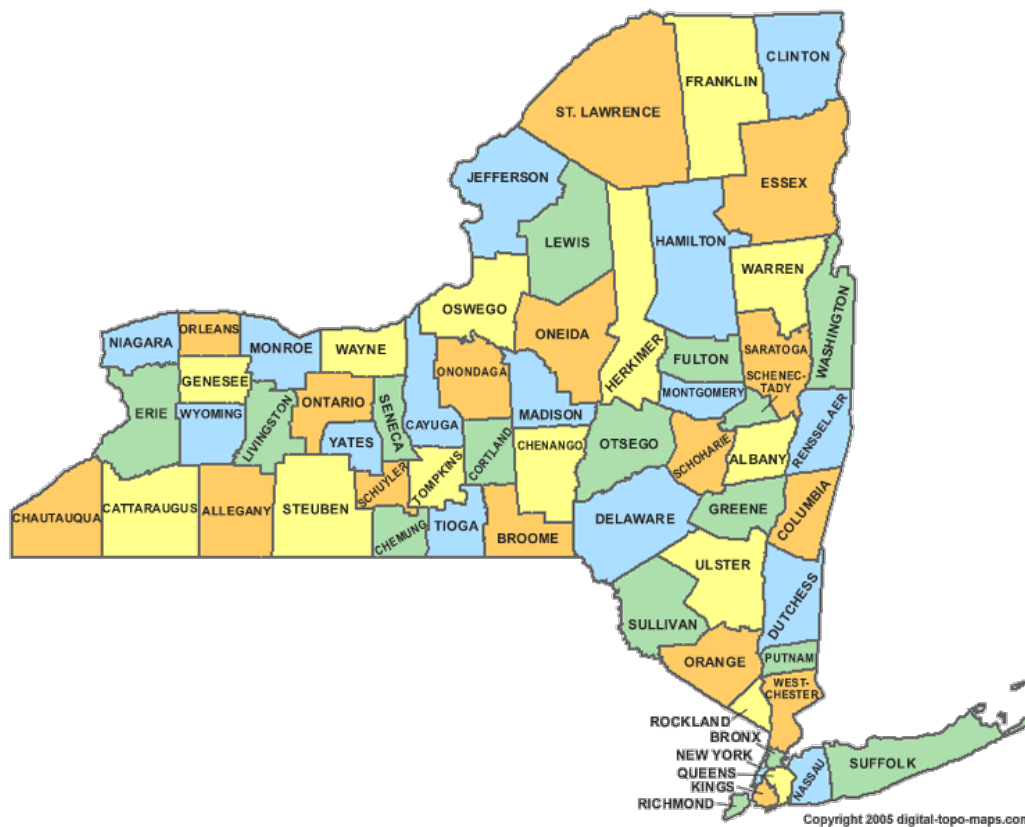
Practical tip ! ! !

Check the wording in your session's *Sexual Misconduct Policy* and in your session's *Child and Youth Safety Policy*.

What is the threshold for your church leaders' taking action?

Does your policy use the language of the *Book of Order* which is the basis for initiating formal disciplinary proceedings under the Rules of Discipline? That threshold involves submitting a formal, written statement of an allegation. That's incredibly high and unrealistic!

A much better threshold: “receipt of a communication made in good faith which expresses a reasonable concern for the well-being of a minor who has been harmed, is being harmed, or is at risk of being harmed.”

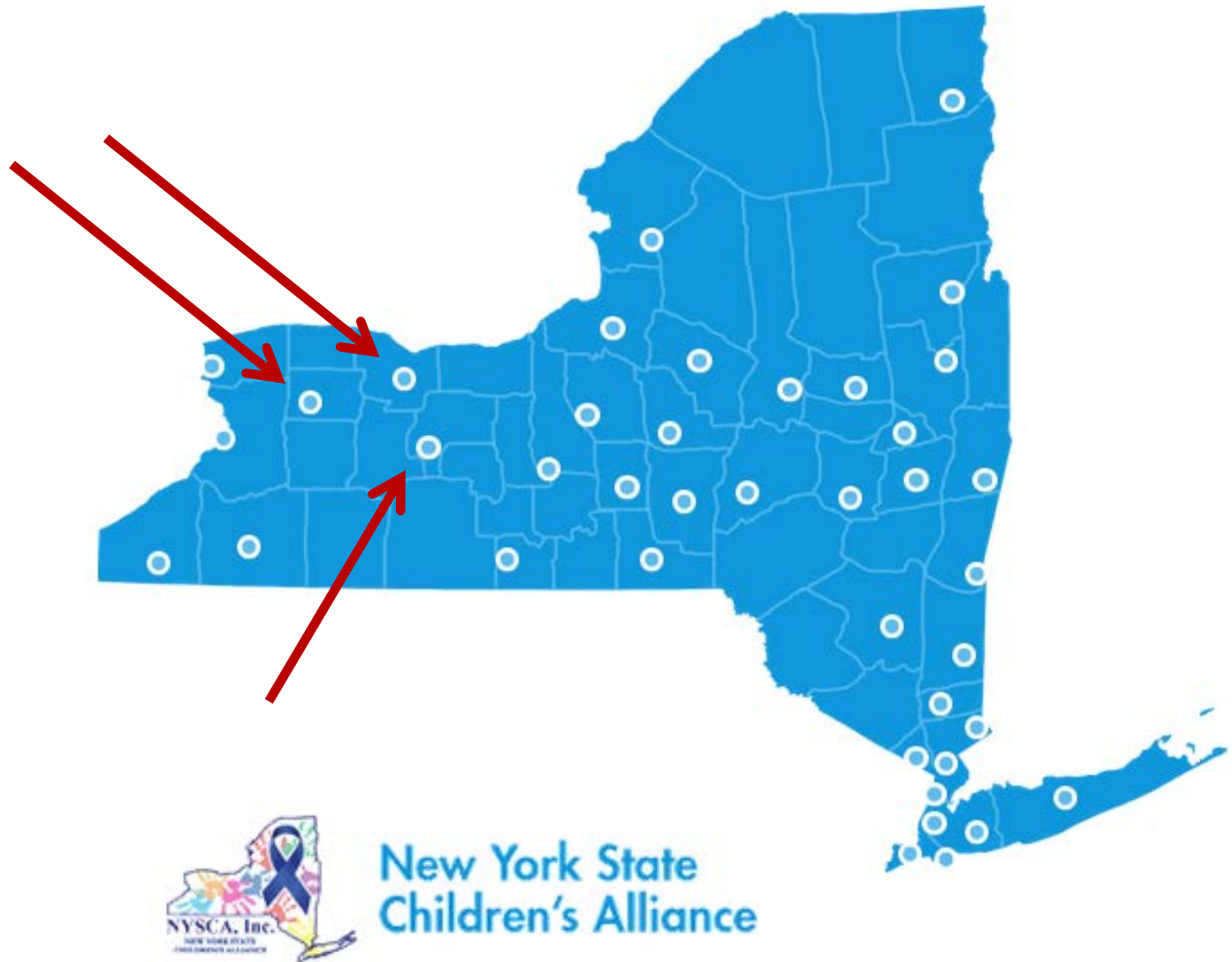


“I’m still not comfortable enough to make the call. Are there experts who can help me sort it out?”

Child
Advocacy
Center is a
national
model for
evaluating
& treating
abused
children.

3 are in
the PGV
bounds.

Child Advocacy Centers in New York



Monroe County

Children evaluated for sexual &/or physical abuse

2017: 2,000+

On average, 40% live in the suburbs.

1 Mt. Hope Ave.

Rochester

585-935-7803

Accessed 12/23/17:

<http://www.bivonacac.org>



Genesee, Livingston, Orleans, & Wyoming Co.s



304 East Main St.
Batavia
585-344-8576

Satellite offices:
Warsaw
Albion

Accessed 12/23/17:
<https://www.facebook.com/justiceforchildrencac/>



Child Advocacy Center of the Finger Lakes

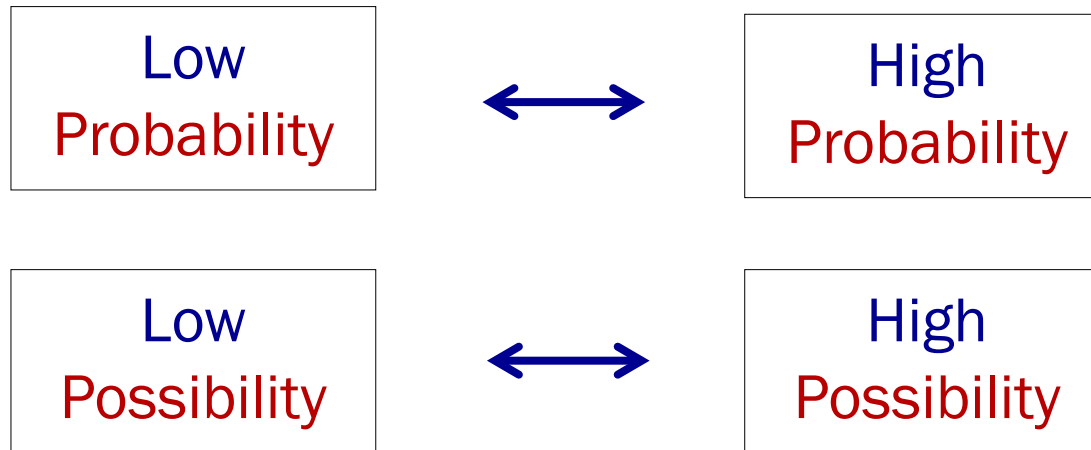
Accessed 12/23/17:
<http://cacfingerlakes.org>

482 North Main St.
Canandaigua
585-394-2573

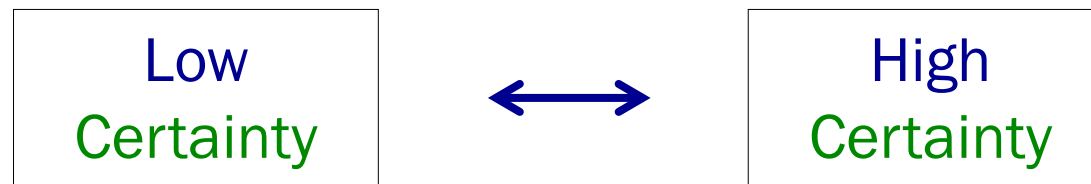
Satellite office: Geneva

Discovery – 2 typical questions & 2 thresholds

1. What is the **Likelihood** that an incident occurred which requires my taking action – communicating a concern, disclosing information, making a report...?



2. What is my **Confidence** that my taking action is needed and and the right thing to do?



Threshold for taking action

As the threshold to be crossed before action is taken, requiring a **High Certainty** will negate **any Possibility** or **Probability**. Likewise, requiring **High Probability** will negate **any Possibility**.

Outcome: The threshold risks perpetuating a child's abuse.

As the threshold to be met before action is taken, **a Reasonable Concern for the well-being of a child who is possibly at risk** allows qualified authorities to intervene.

Outcome: The threshold increases the possibility of stopping child abuse.

What is a basis in **law** for intervening on behalf of a child or youth who is at risk for being abused, or has been abused?

The church's Session, or its Board of Trustees, are the trustees of the church as a not-for-profit corporation under New York State law.

Trustees have a legal, fiduciary obligation to protect the corporation. Not intervening or not disclosing relevant information may expose the church to civil actions against it as a corporation. Violating standards of risk management may jeopardize a church's insurance coverage.

G-3.0112, *Book of Order*

“Each council shall obtain property and liability insurance coverage to protect its facilities, programs, staff, and elected and appointed officers.”

An analysis of 700+ federal & state legal case (1835-2016) decisions re the clergy-penitent privilege.

2 major trends since the 1980s

- Courts are ruling against the assertion of the privilege (75% denial in criminal cases; 55% denial in civil cases).
- Court decisions relied heavily on the testimony of clergy who were opposed to the privilege in that case.

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1015	

Why did the clergy choose not to assert the privilege in these cases? Analysis of the clergy testimony.

- Clergy differentiated between their roles and functions as spiritual advisor, counselor, confessor, disciplinarian, mediator, friend, etc.
- Thus the absolute privilege did not apply in every circumstance.

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What is a basis in **ethics** for intervening on behalf of a child or youth who is at risk for being abused, or has been abused?

- **Principle of *non-maleficence*** (do no harm) from biomedical ethics: (1) breach of confidence may result in loss of trust; (2) failure to report may result in harm to an innocent person(s); (3) either option secondarily could affect a congregation's trust. Can #1 be justified as end in itself, regardless of negative consequences to a person(s) at risk? Which option will cause more harm?
- **Principle of *beneficence*** (doing good): reporting serves justice by creating opportunities to hold an offender accountable, interrupts offenses underway, encourages victims to obtain assistance, prevents future harm, and sets an ethical example.
- **Principle of *non-maleficence*** can apply to a church as a not-for-profit corporation under NYS law: not reporting knowledge of abuse may be antithetical to the fiduciary and risk management best interests of the church.

If we don't make the phone call, we shift the ethical burden for the child's safety to the child or the abuser.



“If we don't stand up for children, then we don't stand for much”.

Miriam Wright Edelman
Founder & President, Children's Defense Fund

What is a basis in **Presbytery of Genesee Valley's** polity for intervening on behalf of a child or youth who is at risk of being abused, or has been abused?

PGV Sexual Misconduct Policy references

- III. Principles, A. Truth.
- VI. Intervention Procedures, A. 4.
- VI. Intervention Procedures, F.
- 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.”

What is a **Biblical** basis for intervening on behalf of a child or youth who is at risk for being abused, or has been abused?



"The Good Samaritan"

John Moser

“Which of these three, do you think,
was a neighbor...” **Luke 10:25-37**

Leviticus Chapter 19 וִיקָרָא

טז לא-תֵלֵךְ רִכִּיל בְּעַמִּיךָ, לֹא תַעֲמֹד עַל-דַּם רֵעֶךָ: אֲנִי, יְהוָה.

16 Thou shalt not go up and down as a talebearer among thy people; neither shalt thou stand idly by the blood of thy neighbour: I am the LORD. ←

יח לא-תִקֹּם וְלֹא-תִטּוֹר אֶת-בְּנֵי עַמֶּךָ, וְאֶהְבֶּתָּ לְרֵעֶךָ
כְּמוֹךָ: אֲנִי, יְהוָה.

18 Thou shalt not take vengeance, nor bear any grudge against the children of thy people, but thou shalt love thy neighbour as thyself: I am the LORD. ←

<http://www.mechon-mamre.org/p/pt/pt0319.htm>

A Hebrew - English Bible

According to the Masoretic Text

and the JPS 1917 Edition



Pictures are from the
2013 summer catalogue.

“...am I my brother’s keeper?”

Genesis 4:9b

No, we are sisters and brothers of
our sisters and brothers. We “are
the body of Christ and individually
members of it.”

1 Cor. 12:27

*When in doubt –
report, report, report.*

“For in the one Spirit we were all baptized
into one body...” 1 Corinthians 12:13



- Best practice: Train ruling elders & deacons in the reporting of abuse.
- Best practice: The session's sexual misconduct policy states that all members are church-mandated reporters of abuse or reasonable concerns about abuse.

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

Ephesians 5:11



- Honor our responsibility to, and covenant with, those whose faith is influenced by the disciples of Jesus Christ.
- Fulfill our obligations to the Church (per *Book of Order*) & our legal, fiduciary duties under New York not-for-profit law.

Biblical models of 3rd party intervention on behalf of children at risk



Shiphrah & Puah's witness
Exodus 1:15-21



Miriam's witness
Exodus 2:1-10

Biblical models of 3rd party intervention on behalf of children at risk



The prophet Elisha & the widow's children 2 Kings
4:1-7

Biblical models of 3rd party intervention on behalf of children at risk

The angel warns Joseph
& Mary to flee with Jesus
to Egypt

Matthew 2:13-14





The pool at Bethesda *John 5*

Healing comes only after the angel troubles the waters.

This concludes Part 2.

Part 1. What is Required of Us?

Part 3. Risk Assessment & Incident Data

Part 4. What Does Reporting Involve?

