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15 Things Richard Hammar Wants Pastors to Know

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Child Abuse Reporting

Learn what it means to be a mandatory reporter and state-by-state reporting requirements.

Richard R. Hammar [posted 3/03/2020]



Every state has a child abuse reporting law that requires persons designated as “mandatory reporters” to report known or reasonably suspected incidents of child abuse. It is imperative for ministers to be able to answer the following questions.

What is the definition of reportable “child abuse”?

[All 50 states](#) have enacted child abuse reporting statutes in an effort to protect abused children and prevent future abuse. *Child abuse* is defined by most statutes to include physical abuse, emotional abuse, neglect, and sexual molestation. A *child* ordinarily is defined as any person under the age of 18 years.

Some states specifically limit the definition of “child abuse” to abuse inflicted by a *parent, caretaker, or custodian*. Such a statute, if interpreted narrowly, might not require ministers and lay church workers who are mandatory reporters of child abuse under state law to report incidents of abuse inflicted by custodians, associate ministers, adolescents, or volunteer youth workers.

Am I a mandatory reporter of child abuse?

All 50 states enumerate categories of persons who are under a legal duty to report abuse to designated civil authorities. In most states, such “mandatory reporters” must report both actual and reasonably suspected cases of child abuse. Failure to do so is a crime (usually a misdemeanor).

Some states define *mandatory reporters* to include any person having a reasonable belief that child abuse has occurred. Obviously, ministers will be mandatory reporters under these statutes. The remaining states define *mandatory reporters* by referring to a list of occupations which generally includes physicians, dentists, hospital employees, nurses, coroners, school employees, nursery school workers, law enforcement officers, and licensed psychologists. Ministers are specifically identified as mandatory reporters under many of these statutes. But even if they are not, they may be mandatory reporters if they fall within a listed classification, such as school or child care workers, school administrators, or counselors. In summary, many ministers have a mandatory duty to report child abuse. Ministers should not assume that they have no duty to report.

Ministers who are not mandatory reporters under their state's law generally are considered "permissive reporters," meaning that they may report cases of abuse to the designated civil authorities but are not legally required to do so.

What if I learn of child abuse in the course of a conversation that is protected by the clergy-penitent privilege? Am I still required to report?

Ministers who are mandatory reporters of child abuse under state law are under a profound ethical dilemma when they receive information about child abuse in the course of a confidential counseling session that is subject to the clergy-penitent privilege. They have to choose between fulfilling their legal obligation to report or honoring their ecclesiastical duty to maintain the confidentiality of privileged communications.

A number of states have attempted to resolve this dilemma by specifically exempting ministers from the duty to report child abuse if the abuse is disclosed in the course of a communication protected by the clergy-penitent privilege. Other states, while not specifically excluding ministers from the duty to report, provide that information protected by the clergy-penitent privilege is not admissible in any legal proceeding regarding the alleged abuse. Some state child abuse reporting statutes do not list the clergy-penitent privilege among those privileges that are abolished in the context of child abuse proceedings. The intent of such statutes may be to excuse ministers from testifying in such cases regarding information they learned in the course of a privileged communication.

Even if the clergy-penitent privilege applies in the context of child abuse reporting, it is by no means clear that the privilege will be a defense to a failure to report, since (1) the information causing a minister to suspect that abuse has occurred may not have been privileged (that is, it was not obtained in confidence, or it was not obtained during spiritual counseling); and (2) a privilege ordinarily applies only to courtroom testimony or depositions, and not to a statutory requirement to report to a state agency.

Unfortunately, the failure by many states to recognize the clergy-penitent privilege in the context of child abuse reporting disregards the therapeutic purpose of the privilege. Many child abusers will be discouraged from seeking spiritual counsel if the privilege does not assure the confidentiality of their communications. This will only compound the problem. If, on the other hand, the privilege were preserved, many child abusers would seek out ministers for spiritual counseling, and the underlying causes of such behavior could be isolated and in some cases corrected.

Caution. Several states have enacted laws allowing child abuse victims to sue mandatory reporters who failed to report known or reasonably suspected incidents of abuse to the authorities. Such laws expose ministers and churches to potentially significant monetary damages. As a result, ministers should seek legal counsel before choosing not to report known or suspected incidents of abuse.

How do I report child abuse?

Persons who are legally required to report child abuse generally make their report by notifying a designated state agency by telephone and confirming the telephone call with a written report within a prescribed period of time. The reporter generally is required to (1) identify the child, the child's parents or guardians, and the alleged abuser by name, and provide their addresses; (2) give the child's age; and (3) describe the nature of the abuse. Most states have toll-free numbers that receive initial reports of child abuse.

Key point. Be aggressive in reporting child abuse. This means that consideration should be given to the following points (with input from legal counsel):

1. Resolve all doubts in favor of reporting.
2. Report even if you are a permissive rather than a mandatory reporter.
3. Report even if you are not certain the alleged abuse occurred (all that is required is reasonable cause).
4. Report even if information concerning abuse was obtained in a communication protected by the clergy-penitent privilege.
5. Report regardless of the status and reputation of the accused offender.

Such steps not only will protect ministers and churches from potentially substantial monetary damages in civil lawsuits, but more importantly, may reduce the risk of future incidents of abuse by placing the alleged offender in the criminal justice system thereby making it more likely that future searches of his background will reveal prior incidents of abuse.

What steps should clergy take after receiving an allegation of child abuse?

Clergy who learn of allegations of child abuse should consult with a local attorney and address the following questions:

- Am I a mandatory or a permissive reporter under state law?
- If the allegations are true, do they constitute child abuse as defined under state law? Remember, in some states the definition of child abuse is limited to abuse inflicted by a parent or person responsible for a child's care.
- Do I have reasonable cause to believe that abuse has occurred? Be sure to interpret this broadly. An alleged offender's denial of any wrongdoing does not preclude reasonable cause. Remember, offenders typically deny any wrongdoing.
- Did I receive the information in the course of spiritual counseling? If so, does the clergy-penitent privilege protect me from disclosing this information? In a

few states, it does. But this is often a difficult legal issue that should not be made without legal counsel.

- Do I (or my church) have any risk of civil liability under state law if I choose not to report the abuse? It is possible that abuse victims will be permitted to sue clergy who fail to report (even if they are not mandatory reporters) if their injuries are aggravated and perpetuated because of the failure to report.
- Can child abuse be reported to law enforcement officials in my state? Some states permit this. If you are in such a state, and you have a law enforcement officer in your congregation, consider reporting to that person.

Additional reading

For deeper readings on child abuse reporting and prevention, see the following:

- [*Reducing the Risk: A Child Sexual Abuse Awareness Program*](#)
- [*Youth Ministry in a #MeToo Culture*](#)
- [*Child Sexual Abuse Response Plan*](#)
- [*Church Board Guide to a Child Sexual Abuse Prevention Policy*](#)
- [*Sex Offenders in the Church*](#)
- [*Pastor, Church & Law*](#) (in the legal library) or [purchase the book](#) from the Church Law & Tax Store
- [*“What Churches Should Know About New Child Abuse Protection Requirements”*](#)
- [*“Child Abuse Reporting Laws: 21 Facts Church Leaders Should Know”*](#)
- [*“Q&A: What If a Prayer Request Card Implies Child Abuse?”*](#)

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