

# Genesee Valley Toolbox for Session Sexual Misconduct Policies

Presbytery of Genesee Valley

#3 in a series (2016, June)

## "Where do we start?" 4 Primary Sources that Affect Us all

<p>PC(U.S.A.)</p> <p>Key mandates in <i>Book of Order</i>, recent changes, implications</p> <p>pages 2-3</p>	<p>PGV</p> <p>Key features of two policies, relevance to congregations</p> <p>page 3</p>	<p>New York State</p> <p>Key provisions of state laws, resources</p> <p>pages 4-5</p>	<p>Scripture</p> <p>Source of policy wisdom and guidance</p> <p>pages 5-6</p>
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from the Resource Center

*Genesee Valley Toolbox* introduces a series of newsletters which provides resources to support sessions in the Presbytery of Genesee Valley as they develop, adopt, implement, and update their sexual misconduct policies. The series offers practical information, recommends best practices, and identifies reliable sources on a variety of topics. The intent is to deepen knowledge, encourage behaviors, and achieve important outcomes.

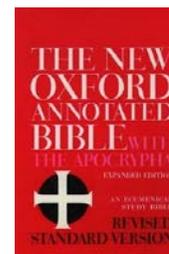
We affirm that each of our congregations is unique - by its composition, location, history, and how it responds to God's call to mission and ministry. We don't all sing from the same hymnal or follow the lectionary in our worship services. By offering a toolbox, we respect this uniqueness. Some of our quilters create hand-sewn works of functionality and beauty to donate, and some rely on their sewing machines. Some of our Habitat for Humanity volunteers prefer a powered nail gun, and others a hammer.

This first edition of *Genesee Valley Toolbox* applies to all congregations. We describe 4 primary sources. Each of these shapes, guides, and undergirds a policy, both as it exists two-dimensionally on paper and as it comes to life within the congregation. We draw on material presented in the February, 2016 training event for persons new to the Presbytery. The material is current as of that date.

...to equip the saints for the work of ministry,  
for building up the body of Christ...

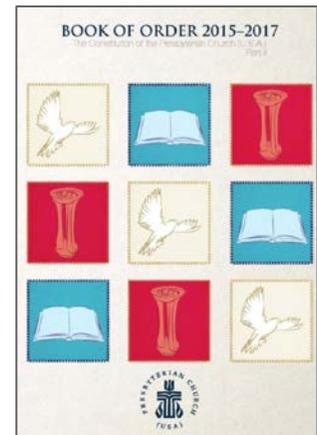
Ephesians 4:12

As disciples of Jesus Christ, we care about congregations. This means that when we think about Sessions adopting and implementing their sexual misconduct policies, we are thinking about more than documents, procedures, and forms. We are thinking of people. Our sisters and brothers in Jesus Christ.





## Key mandates in the Presbyterian Church (U.S.A.) *Book of Order, 2015-2017*



### 3 Mandates

#### 1. Sexual misconduct policy

The mandate that each session - and every presbytery and every other council in the Presbyterian Church - must have a sexual misconduct policy is found in the *Book of Order*.

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"All councils shall adopt and implement a sexual misconduct policy and a child protection policy..."

Form of Government, G-3.0106  
*Book of Order, 2015-2017*

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The word *shall* is a requirement. It is neither discretionary nor optional. It applies equally to all our congregations and every session, regardless.

In our Presbytery, a handful of sessions still persist in taking the Presbytery's sexual misconduct policy, adopting it as their own, and think they are in compliance. They are not. Consider the following:

- PGV policy is silent on background checks for Sunday School teachers and youth group leaders - neither circumstance applies to a presbytery.
- PGV policy is silent on a response to people who are convicted, registered sex offenders and seek to attend our meetings - because they don't; they seek participation in a congregation.
- PGV policy is dated. It does not address issues related to social media, electronic communications like cell phones or smart phones, or digital media, like the World Wide Web.

A session honors its faith community by developing a session policy unique to its people, context, and call from God.

#### 2. Child and youth protection policy

As of June, 2015, a new mandate is that every session - and every presbytery and every other council in the Presbyterian Church - must have a child and youth protection policy. The rationale accompanying this amendment to the *Book of Order* makes it clear the

intent is to differentiate

this policy as "completely separate" from the one for sexual misconduct. The rationale is also clear that this applies to youth, as well as children.

[[http://www.pcusa.org/site\\_media/media/uploads/oga/pdf/2014-proposed-boaelectronic-version\[1\].pdf](http://www.pcusa.org/site_media/media/uploads/oga/pdf/2014-proposed-boaelectronic-version[1].pdf)]

What is the implication? Some of our sessions have worked hard to ensure their sexual misconduct policy addresses circumstances related to children and youth in the mission and ministry programs, including minors from beyond the congregation. This new language requires those sessions to go a step further.

#### 3. Church-mandated reporters of abuse

The third mandate in the *Book of Order* to integrate into a session sexual misconduct policy concerns the "who" and "what" and "when" of the mandatory reporting of sexual molestation or sexual abuse.

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"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."

Form of Government, G-4.0302  
*Book of Order, 2015-2017*

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## Key features in 2 policies of the Presbytery of Genesee Valley

### 1. Policy on Automatic Administrative Leave in Cases of the Accusation of 'Sexual Abuse of Another Person'

By this policy, the Presbytery requires the imposition of automatic administrative leave when a teaching elder has been formally accused of the disciplinary offense of "sexual abuse of another person," as defined by the *Book of Order* (D-10.04001c.).

A wise session's sexual misconduct policy will note this fact: if PGV applied this policy to a pastor serving a congregation, it would significantly affect that congregation. The policy was adopted in December, 2008; it has not been invoked to date. Many sessions may be unaware of it. It is posted on the PGV website.

[<http://pbygenval.org/wp-content/uploads/sites/47/2016/03/PGV-Policy-on-Automatic-Administrative-Leave.pdf>]

### 2. Sexual Misconduct Policy

Depending on circumstances, several components of the PGV *Policy* could be very relevant to a congregation.

- It contains a strong commitment to, and rationale for, disclosing the truth of sexual boundary violations. It contains practices to implement this commitment. (These practices have been tested in this Presbytery, and are proven to be effective.) See section III., Principles, A. Principle of veracity, or truth; see VI., Intervention Procedures, H., Disclosure.
- Attachment C., Safe Sanctuaries: Protecting Children in Our Congregation, identifies core values - e.g., child safety "is always the church's primary concern" - and specific actions when responding to allegations of child sexual abuse.

[<http://pbygenval.org/wp-content/uploads/sites/47/2013/01/Policy-on-Sexual-Misconduct.pdf>]



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The wise session's sexual misconduct policy will welcome this mandate as an opportunity, a *teachable moment*. A strong policy will require that ruling elders and deacons be trained in the basics of how to recognize and report sexual molestation and abuse. Informed competence builds confidence.

Let's examine the three qualifiers to this mandate in the *Book of Order*.

- (1) references "confidential communication" as defined by G-4.0301. However, G-4.0301 does not authoritatively define "confidential."

- (2) applies directly to ruling elders and deacons who are in professional roles subject to laws regarding privileged communication. This includes physicians and lawyers, and, in New York, licensed mental health therapists. (For teaching elders and commissioned ruling elders, see the following section of *Toolbox* on New York State law.)
- (3) uses the term "reasonably believes" to set a threshold. This is critical language. To put it simply, it does not require certainty or evidence prior to alerting authorities regarding potential harm.





# Key provisions in New York State law



## Mandated Reporters

Are clergy in New York State mandated reporters of the sexual abuse of children and/or adolescents (minors)?

No. Clergy are not specified in the list of 38 categories of occupations and official positions designated as mandated reporters in New York.

[Reference: New York Social Services Law, Article 6, Title 6, § 413, Persons and officials required to report cases of suspected child abuse or maltreatment, ¶1. Source accessed 02/02/16: <http://codes.findlaw.com/ny/social-services-law/sos-sect-413.html>]

## Privileged Communication

Are any categories of communication between clergy and congregations protected under New York State law?

Yes. The law protects the category of a formal religious confession of sin made by an individual to a clergy person. The law, originally adopted in 1828, treats the content of the formal confession of sin in its religious context as privileged communication between the confessing person and the clergy.

Sometimes referred to as priest/penitent privilege, the content of the communication is protected from disclosure in a New York court of law. This is similar to the protection of the communication of a patient who is treated by a physician, or that of a client who is represented by an attorney.

Current law reads: "Unless the person confessing or confiding waives the privilege, a clergyman, or other minister of any religion or duly accredited Christian Science practitioner, shall not be allowed [sic] disclose a confession made to him in his professional character as spiritual advisor."

Consistently, New York courts have ruled to define this law in the strict sense as a formal confession of sin made in a religious context. Case law in New

York State courts has determined that protection does not extend to heart-to-heart talks or disclosures not made for the purpose of seeking religious counsel. The image symbolizing the law in New York is the Roman Catholic sacrament of penance between a confessing sinner and a priest.

[Reference: New York Civil Practice Law & Rules, § 4505, Confidential communication to clergy privileged. Source accessed 02/02/16: <http://codes.findlaw.com/ny/civil-practice-law-and-rules/cvp-sect-4505.html>]

## Sexual & Physical Abuse

What is the basis in New York for a reasonable concern about physical abuse, neglect, and/or sexual molestation or abuse of a minor?

Based on rational observations or knowledge of circumstances, you have a concern or suspicion that a child under 18-years-old is exposed to the danger of harm, or conditions exist that would reasonably result in abuse or neglect.

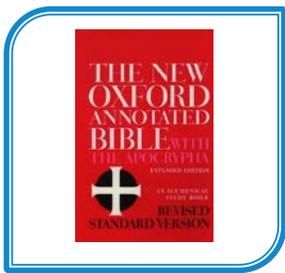
Here is a link to the *Concerned Citizens Guide* (2006), New York State Office of Children and Family Services, Bureau of Training. It's a 10-minute introduction that addresses the question. Source accessed 02/02/16: <http://ocfs.ny.gov/ohrd/ccg/ccg.asp>



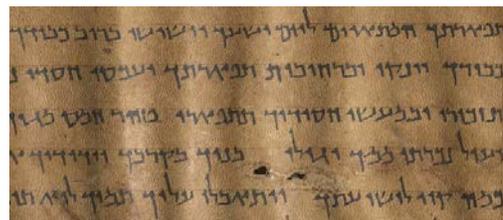
For greater detail, see *Summary Guide for Mandated Reporters in New York State* (2015). Source accessed 02/02/16: <http://ocfs.ny.gov/main/publications/Pub1159.pdf>

Neither certainty nor proof is required to communicate a concern. The threshold is **good faith, reasonable concern** for a child's safety or well-being.

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# Scripture as a source of policy wisdom and guidance



## Rule-Oriented

*Book of Order, PGV policies, NYS laws*

The three primary sources discussed previously in this edition of *Genesee Valley Toolbox* share one thing in common: they all contain rules. And rules both limit and shape our behaviors. This can be good!

- We teach the child not to touch the pot on the stove’s burner. “It’s hot. It will hurt.”
- At the intersection, we tell the toddler, “Take my hand before we take a step. Let’s be safe here.”
- We say to one sibling, “Please share this toy with your sister. In our family, we take turns. It’s her turn now.”

A sexual misconduct policy with clear rules helps all understand and apply them consistently. Too little detail is counter-productive. (One PGV session adopted a 4-page document that was too broad and vague; it simply did not work.) Too much detail is also counter-productive. (One PGV session edited a 40+-page first draft to a final 21 pages; the draft was overwhelming.) Regardless of how carefully drawn, no policy can anticipate every circumstance.

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Worried about making an accusation that is false? Communicating a reasonable concern is not an accusation. If you smell smoke in your church and call the fire department, you’re alerting the experts to a possible fire, based on your reasonable concern. You’re not required to confirm that an active fire is underway before calling. The experts in New York at determining whether child abuse is occurring are the staff of Child Protective Services.

If a voluntary, non-mandated person reports in “good faith,” the person is immune from civil or criminal liability. [State-mandated reporters are also immune from liability if they act in “good faith” in the discharge of their duties and within the scope of their employment.]



## Relational-Oriented

*Covenants and trust, covenants and people*

Our faith communities are rooted in covenants between people and our God who calls us, between people within a specific faith community, between faith communities, and covenants we make with people beyond our faith community throughout the world, as well as covenants to care for the creation. These covenants share one thing in common: they all involve relationships.

Sexual boundary violations in a faith community threaten our relationships. Beyond a violation of a rule, whether it is found in the *Book of Order*, a PGV policy, or in NYS law, sexual boundary offenses breach relationships of trust. People, not just rules, are violated.

The impact of the harm is spiritual. Listen to the language in a congregation following discovery of a trusted leader’s commission of sexual abuse. Time and again, we hear the word “betrayal.” The word is not merely said. It is voiced in aching pain, arising

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## APPLICATION

How do I communicate a concern about possible maltreatment of a child, or report the abuse of a child to civil legal authorities?

If the situation is an emergency, call 911 or your local police. Otherwise, the source to call is:

New York State Child Abuse Hotline  
(800) 342-3720 [24 hrs./day, 7 days/week]

If you suspect child sexual abuse and are uncertain about calling the Hotline, call confidentially to a trained professional:

BeBraveForKids.org  
operated by Lifeline, serving 13 Finger Lakes counties  
(844) 232-7283 [Mon.–Fri., standard business hours]

