

Module 6

Special Issues for Clergy Members

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In this module, you will learn:

- Which members of a religious organization are mandated to report suspected child abuse and neglect
- How to deal with issues of confidentiality, and of penitential communications
- How you can make your religious institution more effective in preventing child abuse, and aiding its victims
- How to handle particular situations that might arise

Introduction

In 1997, California's Child Abuse and Neglect Reporting Act was amended to add members of the clergy to the list of mandated reporters. The Act defines clergy as a "priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple of recognized religious denomination or organization."

Each religious governing body, whether statewide or local, determines which specific faith leaders are designated as clergy. For example, the California Council of (Roman Catholic) Bishops determined in 1996 that bishops, priests, and deacons are clergy, but not others in religious orders.

The Act further mandates that any "custodian of records of a clergy member" must report suspected child abuse (P. C. 11165.7 [a]). The reporting requirements and protections for clergy are identical to the requirements and protections for childcare custodians, educators, health practitioners, and other mandated reporters—except for the provision made to clergy to protect "penitential communications."

Volunteers

Volunteers for a congregation are not legally mandated to report suspected children abuse; but probably consider themselves morally mandated by their beliefs that children should be protected. Therefore the child abuse reporting act states that "Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse" (P. C. 11165.7 [b]).

Confidentiality

It is generally expected that personal matters divulged to clergy are held in confidence, but a moral as well as legal obligation to report exists when there is the possibility to harm a child. Usually information can be held in confidence unless it leads the clergy member to believe that someone is being hurt or abused, is in danger of injury, or an offender presents a risk to other children. Then the clergy member must rely on the tenets, practices and discipline of his or her religious body to determine appropriate action. In some traditions, the sanctity of the confessional must be maintained even if someone appears to be at risk of harm.

No matter how strictly the clergy member's faith tradition protects confidentiality, pastoral resources can still help to protect a child or teenager. Because the behavior of offenders escalates over time if it is not stopped, effective intervention by child protection agencies is often the only motivation for the abuser to begin recovery. Rarely have strong words by a clergy member been effective in stopping an offender's behavior, yet spiritual guidance can be transformational during the necessary psychological treatment the offender requires. Faith communities can also provide support to the families of both offenders and victims, parenting classes, and help with resisting temptation to re-offend—but not if the abuse is kept secret.

Identity of Reporter

Mandated reporters are required to give their names when making a report. The reporter's identity is kept confidential and may only be disclosed as follows:

- Between child protective agencies
- To counsel representing a child protective agency
- To the district attorney in a criminal prosecution
- To the district attorney in an action initiated under Welfare and Institutions Code section 602 (wards; minors violating laws defining crime) arising from alleged child abuse
- To the child's counsel appointed pursuant to Welfare and Institutions Code section 317 (c)
- To the county counsel or district attorney in proceedings under Family Code section 7800, et seq. (termination of parental rights) or Welfare and Institutions Code section 300 (dependent children)
- To a licensing agency when abuse in out-of-home care is reasonably suspected
- By court order
- When the reporter waives confidentiality (P. C. 11167 [d])

Contents of Report

Reports of suspected child abuse and the information they contain are also confidential and may be disclosed only as follows:

- To persons or agencies to whom a reporter's identity may be disclosed (See above)
- To persons or agencies to whom disclosure of index and investigative information is permitted under P. C. 11170 (b)
- To persons or agencies with whom investigations of child abuse are coordinated under the regulations in P. C. 11174
- To multidisciplinary personnel teams as defined in Welfare and Institutions Code section 18951 (d)
- To persons or agencies responsible for the licensing of facilities that care for children, as specified in P. C. 11165.7
- To the state Department of Social Services or any county licensing agency that has contracted with the state, when an individual has applied for a community care license, child day care license, for employment in an out-of-home care facility; or when a complaint alleges child abuse by an operator or employee of an out-of-home care facility
- To hospital scan teams

- To coroners and medical examiners when conducting a postmortem examination of a child
- To the Board of Prison Terms when subpoenaed for parole revocation proceedings against a parolee charged with abuse
- To personnel from a child protective agency responsible for making a placement of a child
- To persons who have been identified by the Department of Justice as listed in the Child Abuse Central Index pursuant to subdivision (c) of Section 11170
- To out-of-state law enforcement agencies conducting an investigation of child abuse only when an agency makes the request for reports of suspected child abuse in writing and on official letterhead, identifying the suspected abuser or victim by name
- To persons who have verified with the Department of Justice that they are listed in the Child Abuse Central Index as provided by subdivision (e) of Section 11170
- To the chairperson of a county child death review team, or his or her designee (P. C. 11167.5 [b])

Any violation of these confidentiality provisions is a misdemeanor punishable by up to six months in the county jail, or by a fine of \$500, or by both.

Penitential Communications

An exception to mandated reporting law does exist if the knowledge or reasonable suspicion of abuse is acquired during the course of a "penitential communication." The code defines such communication as "... a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization has a duty to keep those communications secret" (P. C. 11166[c] [2]).

Whether a communication was truly confidential will require the clergy member to be true to his or her discipline or tenets in determining when an individual's communications are protected. The determination of whether the clergy member made a correct decision or not is likely to be made after-the-fact, when a question arises about whether abuse should have been reported and was not. The challenge for clergy members will be to honestly assess the situation in which the information was acquired, and not attempt to force it into one of the exempted types of communications.

How Religious Communities Can Combat Child Abuse

There are ways to make your religious institution a safe place for members to seek and find help. The leadership can confront the problem of child abuse with a broad vision of protecting children, equipping children, and healing the wounded. The following are suggestions of things you can do:

- Break the silence by speaking openly about the existence of abuse and preaching about exploitation and violence. Include those affected by family violence in your congregational prayers
- Ask a community-based child abuse specialist to speak to the congregation
- Offer prevention education programs for children in Sunday and Sabbath schools
- Develop a foster home recruitment program
- Provide classes on parenting skills, communication skills, and stress management
- Provide respite care for parents under pressure
- Organize support groups for parents and/or single parents
- Organize support groups for survivors of abuse
- Provide or support child care centers
- Operate “latch-key” programs for children
- Designate a day or month for educating and activating the congregation (April is National Child Abuse Prevention Month)
- Formally proclaim your congregation to be a “sanctuary” where repentant offenders and victims of family violence can participate in the community of faith and healing
- Write articles for your newsletter or bulletin about healthy family dynamics
- Train staff and prepare leaders of Sunday school, youth groups, on-site day care or nursery schools, vacation Bible schools, summer camp programs, etc., to receive and properly respond to stories from children and adults about domestic violence
- Include post-marital counseling (at least 3 sessions in the first year) as part of marriage contracts with the clergy
- Provide sponsors or mentors for new parents and young people
- Create “safe homes” for temporary shelter of individuals or families escaping abuse
- Research and publicize resources within your county, state, country and denominations. Display brochures about self-help groups, hotlines, community services, etc., for use by members of your congregation

- Cultivate professional “friends” in law enforcement, child protective service, the battered women’s shelter and adult protective service as resources and allies
- Advocate for resolutions and prevention policies by religious bodies and by government concerning child abuse, partner abuse, elder abuse, clergy misconduct, etc.

(Thanks to the Rev. Dr. Kibbie Ruth of the Kyros Ministry for many of these suggestions.)

Policies and Procedures

If your congregation does not have policy concerning child sexual abuse, help develop one. Four important components include:

1. Appropriately and carefully **screening** staff and volunteers who work with children
2. **Supervising** staff and volunteers who work with children
3. Conscientiously **responding to any allegation** or concern
4. **Reporting suspected abuse** to secular authorities

Screening

Screening of staff and volunteers should include:

- Application forms with information about employment and previous residences
- Criminal background checks
- Confidential reference checks
- Six-month church membership prior to acceptance of childcare workers
- Interviews to determine appropriate “fit” with assigned responsibilities

Supervision

Supervision procedures outlined in your policy should include:

- Training program for all staff and volunteers
- Written guidelines about appropriate behavior and boundaries with the children and youth, such as following the “two adult rule”
- A clear disciplinary policy for those who fail to follow guidelines and consistent enforcement of policies
- Periodic performance reviews

Response to Allegations

Your policy's section about response to allegations or concerns may be short, but it is absolutely vital. Effective response procedures, which specify the details of handling an allegation or rumor, should include guidelines to assure that:

- All concerns and allegations are taken seriously and receive some type of response, with due respect for individual's privacy and confidentiality
- Suspected abuse of children, elders, or dependent adults is reported to proper legal authorities, as required by state law
- Religious officials and the insurance company are notified of suspected abuse at congregation-sponsored events or on congregation property
- The accused volunteer or employee is suspended (but not fired) until an investigation is complete
- Adequate pastoral care is shown for the well-being of victims, the accused, and families involved
- Accusatory attitudes and statements are avoided. No victims should be identified publicly or blamed in any way

Final policies, procedures and forms should be reviewed by both a local lawyer and the congregation's insurance carrier. In the Appendix you will find a sample Congregational Policy on Child Abuse Prevention.

Frequently Asked Questions

Which members of a religious organization are mandated to report suspicion of child abuse?

The law requires clergy members, which it defines as a “priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple of recognized religious denomination or organization” to report child abuse, and also any “custodian of records of a clergy member” (P. C. 11165.7 [a]). Teachers and other employees of religious schools are also mandated reporters as an aspect of their role as childcare custodians. Volunteers are not mandated reporters under the law, unless they are performing the role of “custodian of records of a clergy member.” Volunteers who have contact with children are encouraged to obtain training in the identification and reporting of child abuse (P. C. 11165.7 [b]).

What if someone with greater authority in my organization does not want me to make a report?

The law is clear that telling an employer, supervisor, or coworker does not relieve a mandated reporter of his or her obligation to report suspected abuse to child protective authorities. It also specifies that no supervisor or administrator may impede or inhibit the reporting duties of a mandated reporter (P.C. 11166[g]). It carries a possible fine of up to \$5000 (P.C. 11166.01). You must not let anyone pressure you into breaking the law, because the consequences will fall on you. You must report.

Does the law allow organizations to develop special procedures for reporting child abuse?

Yes. Organizational procedures may dictate that of the several professionals who see an abused child (i.e., in a medical environment), the reporting duty falls on one particular member of the team.

Personnel who are mandated to report should be aware, however, that regardless of the existence of such procedures, reporting is still an individual responsibility. No supervisor or administrator may interfere with the individual reporting responsibility; nor may a mandated reporter be absolved of responsibility by relying on a supervisor or administrator to meet his or her individual reporting responsibility.

When two or more mandated reporters are present and jointly have knowledge of a known or suspected instance of child abuse, *they may elect one person to report*. However, if the person elected to report fails to do so, and another team member is aware of it, then that person must make the report (P. C. 11166 [g]).

What if I am not positive that what I have observed is a symptom of abuse?

Ask the child open-ended questions, such as “How did you get hurt?” to elicit more information. Asking the parent or guardian open-ended questions may also aid your decision. The bottom line, though, is that if you suspect, you must report. It is the job of the investigative agency to determine whether or not abuse has indeed occurred.

What if the investigation does not support the abuse I suspected? Can I be sued?

The Act protects mandated reporters from civil liability (lawsuit) resulting from required reporting (P. C. 11172 [a]). Although it has granted immunity to mandated reporters, the legislation cannot prevent a lawsuit from being filed. If a lawsuit is filed, the mandated reporter is entitled to be reimbursed by the State Board of Control for reasonable attorney’s fees to defend the suit (P. C. 11172 [c]).

What if I learn about abuse that occurred in the past?

A clergy member or custodian of records may report a past incident involving a victim who is now an adult (P. C. 11166 (c) [3]).

If I report suspected abuse, will child protective authorities take the child away from its parents?

Not necessarily. The goal of child protective agencies is to provide counseling and services to enable families to stay together whenever possible. A social worker will interview the child and the family to evaluate the situation. The child will only be removed from the home if it is determined that remaining in the home will put the child in danger of continued abuse, and/or if criminal charges are filed against the parent(s) due to the abuse.

Scenarios for Discussion

Scenario 1

After youth group, Marie tells you that she is being sexually abused by her dad. You go to your clergy person and discuss the situation. Marie's parents are highly respected in the community and very generous donors to the congregation. Your clergy person does not want to report the abuse and tells you to drop it. Besides, Marie is a problem teenager with a history of being manipulative and a liar.

What should you as the youth leader do?

Scenario 2

The behavior of Marc in the congregation has disturbed some of the adults; obviously he is under some sort of stress. As clergy person, you take Marc aside to talk, trying to set a casual, comfortable atmosphere. He tells you that his high-school babysitter plays games with him on the bed that require him to get undressed. The child is very confused because, although his babysitter told him the games were a “fun secret,” he doesn’t think the games are fun.

What should you do?

Scenario 3

You are newly ordained as clergy and fresh on the staff as an Associate at a large congregation. The senior clergy person is on vacation, so you will be preaching your first message to the congregation this weekend. But the night before your computer locks up, so you borrow the one in the senior clergy person's office. When you check the internet for scriptural commentary, you notice the names of several child pornographic sites in the list of previously viewed websites. In fact, a couple appear in the list of "favorites."

What should you do about what you just discovered?

