

Report and Response Procedure for Sexual Misconduct

Allegations Policy

Policy No. 20B

I. POLICY STATEMENT

It is the policy of the Presbytery of San Jose that all employees, members and volunteers of the Presbytery, and related agencies, shall maintain the integrity of ministerial employment and professional relationships at all times. Sexual misconduct is a violation of the principles set forth in Scripture and is never permissible. This policy lists the approved procedure for reporting and response on behalf of the Presbytery when allegations of sexual misconduct are brought to its attention.

The Presbytery of San Jose adopts this policy on Report and Response Procedure for Sexual Misconduct Allegations for use of all ministers, employees and volunteers under its jurisdiction. Its purpose is as follows:

- A. To set standards of ethical behavior consistent with Scripture and secular law, and to establish a process for the enforcement of those standards;
- B. To provide procedures for inquiry and effective response to allegations of sexual misconduct and/ or harassment;
- C. To serve as a guide for the application of the powers of Presbytery under the Form of Government and the Rules of Discipline of the Presbyterian Church (U.S.A.). See D-1.0100;
- D. To establish personnel employment practices and forms for the administration of appropriate employer/ employee relationships within the Presbytery and related agencies;
- E. To demonstrate pastoral concern to all parties affected by any alleged incidence of sexual misconduct.
- F. To insure that the Presbytery will NOT act in a self-protective manner by ignoring the victim(s) and their families.

II. RATIONALE

- A. Allegations of sexual misconduct are made in a variety of ways. It is important that officers, employees, and persons highly visible to church members and visitors understand how allegations of incidents are to be processed.

1. First steps to receive and make a report of alleged sexual misconduct:

- a. An accuser may report alleged sexual misconduct to any of the following:
 - i. the pastor of the accuser's church or the accused's church;
 - ii. the session of the accuser's church or the accused's church;
 - iii. a member on the Committee on Ministry;

- iv. the Executive Presbyter;
 - v. the Stated Clerk of Presbytery.
2. The first person to learn of alleged sexual misconduct must take the allegations seriously and confidentially. Allegation of sexual misconduct should be made to the proper officers of the Presbytery as promptly as possible.
 3. The person making the complaint shall complete the Report of Suspected Sexual Misconduct (Attached). The report shall immediately be delivered to and called to the attention of the Stated Clerk of the Presbytery.

NOTE:

- **It has been determined through case law that there is no confessional protection in the Presbyterian Church (U.S.A.).**
- **Any incident of suspected sexual abuse of a minor, by a person covered by this policy, shall IMMEDIATELY be reported to Child Protective Services, local law enforcement, and/ or the County Office of the District Attorney.**
- **There is no time limit on the filing of charges in cases of sexual misconduct (D-10.0401).**

III. RESPONSIBILITIES

A. Committee on Ministry Responsibilities

1. COM is available to receive reports of alleged sexual misconduct. The person receiving such report shall complete the Report of Suspected Sexual Misconduct. This report is to be immediately delivered and called to the attention of the Stated Clerk. **Any incident of suspected sexual abuse of a minor, by a person covered by this policy, shall IMMEDIATELY be reported to Child Protective Services, local law enforcement, and/ or the County Office of the District Attorney.**
2. The COM Chair shall work together with the Stated Clerk and Executive Presbyter to fulfill the initial report procedures, presbytery judicial response and presbytery pastoral responsibilities.
3. COM Chair shall, on behalf of the presbytery, offer to arrange for pastoral care and professional therapy to the alleged victim(s) of sexual misconduct and their families through an advocate.

4. COM Chair shall, on behalf of the presbytery, offer to arrange for pastoral care and professional therapy for those accused of alleged sexual misconduct and their families through a liaison. If the accused is a minister, this care is the responsibility of the COM (G-11.0502i). Any representatives of the Presbytery are not to make any presumption of the guilt or innocence, and must be aware that the accused is wounded by the experience. When allegations against the accused are not sustained, it is important for the Presbytery to take appropriate measures to ensure that healing for all the affected parties is encouraged.

B. Minister Responsibilities

1. Minister of the accused or accuser's church shall be available to receive reports of sexual misconduct. The minister receiving such report shall complete the Report of Suspected Sexual Misconduct. This report is to be immediately delivered and called to the attention of the Stated Clerk. **Any incident of suspected sexual abuse of a minor, by a person covered by this policy, shall IMMEDIATELY be reported to Child Protective Services, local law enforcement, and/ or the County Office of the District Attorney.**
2. Minister shall work with the Presbytery to be sure that the alleged victim(s) and alleged perpetrator receive appropriate pastoral care and professional therapy.

C. Session Responsibilities

1. The Session of the accused or accuser's church shall be available to receive reports of sexual misconduct. The Session receiving such report shall complete the Report of Suspected Sexual Misconduct. This report is to be immediately delivered and called to the attention of the Stated Clerk. **Any incident of suspected sexual abuse of a minor, by a person covered by this policy, shall IMMEDIATELY be reported to Child Protective Services, local law enforcement, and/ or the County Office of the District Attorney.**
2. The Session shall meet with the Stated Clerk, Executive Presbyter or other presbytery representative who will provide a briefing on the judicial process and assist the session in planning their care for the congregation through the process.
3. The session shall work with the Presbytery to be sure that the alleged victim(s) and alleged perpetrator receive appropriate pastoral care and professional therapy.

D. Presbytery Judicial Response

1. Immediately upon receipt of the Report of Suspected Sexual Misconduct, the Clerk shall inform the Executive Presbyter and COM Chair, and these three shall appoint an Investigating Committee (I.C.) as stipulated in the Rules of Discipline (D-10.0201).
2. The I.C. must promptly begin its inquiry into the allegations, having received orientation by the Stated Clerk, as delay may cause further harm to all parties involved. The I.C. will conduct a thorough investigation as called for in D-10.0200.
3. Administrative leave for the accused shall be evaluated, and recommended when appropriate by the I.C. to the Stated Clerk, Executive Presbyter and Chair of COM, who together will determine and take the appropriate action.
4. If the I.C. finds the allegations to be unsupportable, the report of that finding is forwarded to the Stated Clerk who shall then report the finding to the Presbytery.
5. If at any time during the investigation the accused admits to the allegations, the investigation shall proceed to its conclusion, the charges shall be filed with the P.J.C. along with the signed statement of the accused, and a settlement of consequences may be mediated.
6. If the accused does not concur with the allegations, charges are to be filed with the P.J.C. and the judicial process is to continue, per D-10.400ff.
7. The degrees of censure are listed in D-12.0100, and the terms of restoration are listed in D-12.0200.

E. Stated Clerk Responsibilities:

1. Stated Clerk shall receive reports of alleged sexual misconduct and immediately inform Executive Presbyter and COM chair.
2. The Stated Clerk shall work together with the COM Chair and Executive Presbyter to fulfill the initial report procedures, presbytery judicial response and presbytery pastoral responsibilities.
3. The Stated Clerk shall provide orientation for the IC.

F. Executive Presbyter Responsibilities:

1. The Executive Presbyter shall receive reports of alleged sexual misconduct and immediately inform the Stated Clerk and COM chair
2. The Executive Presbyter shall work together with the COM Chair and the Stated Clerk to fulfill the initial report procedures, presbytery judicial response and presbytery pastoral responsibilities.

G. Investigating Committee Responsibilities:

1. IC must begin its inquiry into the allegations promptly after receiving orientation from the Stated Clerk.
2. IC shall follow the Presbytery Judicial response.

IV. REFERENCES

- A. All references to the Book of Order are from the 2004-2005 edition.

V. ATTACHMENTS

1. Report of Suspected Sexual Misconduct- Presbytery of San Jose, California
2. Definitions of Sexual Misconduct

Report Form for Suspected Sexual Misconduct- Presbytery of San Jose¹

A. Reported by: _____

Name and Title

Address

City, State, Zip Code

Telephone

B. Date of Report: _____

C. Person Suspected of alleged misconduct:

Name and Title

Address

City, State, Zip Code

Telephone

D. Other Person(s) involved (alleged victim(s)):

Name and Title

Age and Sex

Address

City, State, Zip Code

Telephone

E. Witness(es):

Name and Title

Age and Sex

Address

City, State, Zip Code

Telephone

¹ This report is to be immediately delivered and called to the attention of the Stated Clerk. Any incident of suspected sexual abuse of a minor, by a person covered by this policy, shall IMMEDIATELY be reported to Child Protective Services, local law enforcement, and/ or the County Office of the District Attorney.

F. Describe incident(s) of suspected sexual misconduct with as much detail as you are able, including date(s), time(s), and location(s):

G. Identify other eyewitnesses to the incident, including names, addresses & telephone numbers, if available:

H. Other information that may be helpful:

Definitions of Sexual Misconduct

Policy 20B

A. Child Sexual Abuse includes, but is not limited to:

1. any sexual contact or sexual interaction between a child (under the age of eighteen years) and an adult;
2. any use of a child for the sexual stimulation of an adult, a third person, or the child;
3. any risqué jokes, innuendo, unacceptable visual contact, unwelcome casual touch, unwelcome and inappropriate hugs and kisses, and sexually suggestive pictures between an adult and a child, as deemed inappropriate by any reasonable adult.

B. Mutual Consent is NOT POSSIBLE when one party is a clergy/ professional lay leader in a pastoral, counseling, employer or leadership position within the church, related organization, or sponsored activity in which the other party is a parishioner, member, counselee, employer; OR, when one of the parties is a child.

C. Sexual Abuse is sexual misconduct in the context of a clear breach of professional trust and/ or misuse of the power, stature, influence, or authority of the clerical office or other leadership position. In the professional context, mutual expressions of affection do not abrogate the abusiveness of the relationship, for true consensuality may be considered, by definition, impossible between a professional and a person in that professional's care.

D. Sexual Harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or their continued status in the
2. Presbytery; or,
3. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or,
4. such conduct has the purpose or the effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment based on the declared judgment of the affected individual.
5. Lack of intent to harass is no defense.

a. Examples of sexual harassment include, but are not limited to:

i) Verbal: sexual innuendoes, risqué jokes, sexually suggestive or insulting questions, comments, or sounds, jokes or teasing of a sexual nature, sexual propositions or threats, continuing to make sexual advances or

comments or otherwise expressing personal interest after being informed that the interest is unwelcome, sexual remarks regarding clothing, body, or love life, or any type of subtle pressure for sexual activity.

ii) Visual: sexually suggestive or gender derogatory objects, pictures, computer software, posters, or letters; leering, whistling, or obscene or sexually suggestive gestures.

iii) Physical: unwanted physical contact, including touching, pinching, brushing the body, impeding or blocking movement, sexual intercourse or assault.

iv) Encouraging attitudes or patterns of verbal, visual, or physical conduct (may or may not be obviously directed at a particular person) which may be reasonably perceived as tending to legitimize, rationalize, or make light of unwanted sexual advances.

E. Sexual Misconduct is a comprehensive term used in this policy to include, but is not limited to:

1. child sexual abuse as previously defined;
2. rape or sexual contact by force, threat, or intimidation;
3. sexual malfeasance- as breach of trust by a religious leader, resulting from a relationship and/ or sexual contact within a ministerial or professional or leadership relationship;
4. production or distribution of pornography as defined by actions or policy statements of the General Assembly, Presbyterian Church (U.S.A.);
5. sexual harassment.