

Clerics' Legal Role in Instances of Abuse

Presented by: Kimberly L. Hall, Esq.



CRITCHFIELD
CRITCHFIELD
& JOHNSTON
ATTORNEYS

Pastoral vs. Legal

As pastors, you are men of God and have had spiritual training.

With experience and guidance, you will have a good feel for how to respond to most situations.

The “legal” is not always intuitive,

Different rules apply in Ohio for “clerics” and for others “rendering spiritual treatment through prayer.”

Overview

- This presentation is an overview, focused on Ohio law.
- This is a legal summary and is not intended to be specific legal advice addressing a specific set of facts.
- Consider consulting counsel of your choice if a situation arises and you are unsure how to proceed, because it is tricky.

What is Abuse and Neglect?

- “Neglected child” includes any child:
 - *Who is abandoned;*
 - *Who lacks adequate parental care;*
 - *Whose parents neglect the child or refuse to provide proper subsistence, education, medical or surgical care or treatment to the child;*
 - *Whose parents neglect the child or refuse to provide the special care made necessary by the child's mental condition;*
 - *Whose parents have placed or attempted to place the child in custody of an institution or foster home without following the proper legal protocol;*
 - *Who, because of the omission of the child's parents, suffers physical or mental injury that harms or threatens to harm the child's health or welfare;*
 - *Who is subjected to out-of-home care child neglect.*

What is Abuse and Neglect?

- “Abused Child” includes any child who:
 - *Is the victim of “sexual activity”, which is defined as:*
 - Vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.
 - “Sexual activity” also includes any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.
 - *(continued on next slide)*

What is Abuse and Neglect?

- “Abused Child” includes any child who:
 - *Is endangered;*
 - *Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. A child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, or other person having custody or control of a child is not an abused child;*
 - *Because of the acts of his parents, suffers physical or mental injury that harms or threatens to harm the child's health or welfare.*
 - *Is subjected to out-of-home care child abuse.*

Who Must Report?

- Mandatory Reporters:

- *Attorneys, medical professionals, licensed school psychologists, marriage and family therapists, coroners, employees of a child day-care center, employees of a child day camp, school teachers, school employees, persons (other than a cleric) rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion.*
- *These are examples. Ohio's law includes additional categories of mandatory reporters.*

Special Rules for Clerics

- Fasten your seat belts: Ohio has the most complicated law in the country on cleric responsibilities to report.
- “Cleric” means a member of the clergy or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.
- Remember, a person “other than a cleric” rendering spiritual treatment through prayer is a mandatory reporter, along with attorneys, doctors, schoolteachers, etc.

Rules for Clerics

- General Rule:

- *A cleric (and any other non-volunteer person acting in an official capacity as a leader or delegate on behalf of a church) must report:*
- *known or suspected abuse or neglect committed by another cleric or another non-volunteer person designated by the church as a leader, official, or delegate.*

Rules for Clerics

- Exception to the general rule:
 - *A cleric does not have a duty to report if the cleric learned about the suspected abuse or neglect in a conversation protected by the cleric-penitent privilege.*
- In order to be privileged, the communication must be:
 - *Made in confidence;*
 - *Made to a cleric; and*
 - *Made for the purpose of seeking spiritual counsel.*

Rules for Clerics

- Narrow exception to the exception:
 - *A cleric must report, even if learned in the cleric-penitent context, if (a) the penitent under 18 (or 21 if disabled); (b) the penitent has suffered or is at risk of suffering abuse or neglect and (c) the abuse does not arise from the penitent's attempt to have an abortion.*

Rules for Clerics

- Overriding exception:
 - *A cleric has no duty to report if reporting would violate the sacred trust.*
- "Sacred trust" means a confession or confidential communication made to a cleric if both of the following apply:
 - *The confession or confidential communication was made directly to the cleric; and*
 - *The confession or confidential communication was made in the manner and context that places the cleric specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine.*

Rules for Clerics (summary)

- General rule: Duty to report abuse and neglect suspected by another cleric/church official on a minor or disabled person under 21.
- Exception if cleric learns of abuse/neglect through privileged conversation with penitent.
- The above exception does not apply if the penitent is under 18 (under 21 if disabled) and has been, or is going to be, victimized by another cleric/church official.
- Overriding exception: No reporting duty if disclosure of information would violate the sacred trust.

How Does One Report?

- When to report:
 - *You must report immediately by telephone or in person.*

How Does One Report?

- Where to report:

- *To the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect occurred.*
- *To the state highway patrol, if the child is an inmate at a state correctional institution.*

How Does One Report?

- What to include in the report:
 - *The names and addresses of the child and the child's parents or guardian (if known);*
 - *The child's age and the nature of the child's injuries, abuse, or neglect that is known or suspected to have occurred, including any evidence of previous abuse, or neglect; and*
 - *Any other information that might be helpful in establishing the cause of the injury, abuse, or neglect.*

Is anonymity provided to the reporter?

- With several exceptions, a report made by a mandatory reporter is confidential. The information provided in a report and the name of the person who made the report shall not be used as evidence in any civil action brought against the person who made the report.
- But:
 - *If you violate your duty to report, other reports of abuse can be used as evidence against you.*
 - *A report is admissible in evidence in a criminal proceeding.*
 - *If a child who is the subject of a report dies after the report is made but before the child reaches the age of 18, the report is available for review by the child fatality review board or director of health.*
 - *A public children services agency must disclose confidential information discovered during its investigation to any government entity that needs the information to carry out its responsibilities to protect children from abuse or neglect.*
 - *R.C. 2151.421(I); R.C. 2151.423.*

Potential civil/criminal consequences for failing to report if you are required to report.

■ Criminal:

- *It is a misdemeanor of the fourth degree to violate the mandatory reporting statute. R.C. 2151.99.*
- *A person required to report by § 2151.421(A)(4) [requiring reports by clergy] who fails to report when knowing that a child has been abused or neglected and knowing that the person who committed the abuse or neglect was a cleric or another church leader is guilty of a misdemeanor of the first degree if the person who has failed to report and the person who committed the abuse or neglect belong to the same church or faith.*
- *The person who fails to report is guilty of a misdemeanor of the first degree if the child is under the direct care or supervision of another person over whom the offender has supervisory control.*

■ Civil:

- *A person who violates the mandatory reporting statute can be held liable for compensatory and exemplary damages to the child who would have been the subject of the report that was not made. R.C. 2151.421(N).*

Big Picture/Review: Your Role as Clerics

- You have been discussing your pastoral role earlier today.
- Cleric's legal obligations:
 - *It is never a legal infraction to report if you believe there could be abuse or neglect.*
 - *You may report at any time you have a good faith belief that abuse or neglect has occurred or might occur, especially abuse or neglect of a minor or person under 21 with a disability.*
 - *You must report under the circumstances we previously discussed.*
 - *Your conversations with legal counsel are protected by the attorney-client privilege.*

Example #1:

- A 40 year old church member confesses to you that he has been abusing his 10 year old daughter.
- Q: Must you report?

Example #1:

- A: You are not required to report, but you may report.
- The perpetrator is not a cleric or other church leader, so there is no mandatory reporting duty.

Example #2:

- A member of the church staff tells you in a meeting that she witnessed another cleric repeatedly kicking a 12 year old boy in the basement of the church one day.
- Q: Must you report?

Example #2:

- A: Unless you believe the church staff member is untruthful (which would be risky), you must report.
- The suspected abuse was committed by another cleric, and you did not learn of the abuse through a conversation protected by the cleric-penitent privilege.

Example #3:

- You are in the grocery store parking lot and you see an adult put out a cigarette on a child's arm.
- Q: Must you report?

Example #3:

- A: You are not required to report, but you may report.
- You did not encounter the abuse while serving in your official capacity as a cleric, and the abuser is not another cleric or church leader.

Example #4:

- A 16 year old girl tells you in confidence that a church leader has been sexually abusing her.
- Q: Must you report?

Example #4:

- A: You must report, unless doing so would violate the sacred trust.
- The abuse was committed by another cleric, and the exception to the cleric-penitent privilege applies. (The penitent is under age 18 and is suspected of having been abused.)

Example #5:

- A cleric, who is also a third grade teacher, is teaching a class and notices one of his students has a black eye. The teacher speaks with the student and the student discloses that his grandfather punched him in a fit of rage.
- Q: Must you report?

Example #5:

- A: You must report.
- Because you learned of the abuse in your capacity as a teacher (mandatory reporter), you must report, and it does not matter if the perpetrator is a cleric/church leader or not.

Example # 6

- A 30 year old developmentally disabled man comes to you as his pastor and tells you in confidence that another cleric has been sexually abusing him.
- Q: Must you report?

Example # 6

- A: You are not required to report, but you may report.
- The victim is not a developmentally disabled person under the age of 21.
- Many states would require reporting under these circumstances.
- While you may not face legal consequences for failing to report, you should seriously consider reporting, or strongly urging the victim to report.

Example # 7

- You hear that the youth minister went to the movies alone with a 17 year old church member.
- Q: Must you report?

Example # 7

- A: You are not required to report, and it is probably best not to report.
- The youth minister is not a cleric or other church leader, and going to the movies with someone, without more, is not “abuse”. Without more information, you probably lack reasonable cause to believe abuse occurred.
- Of course, you can impose church discipline if warranted.

Suggested Protocols

- It is important to understand there are different rules for non-cleric employees (youth ministers, counselors, teachers, etc.) and clerics.
 - *There are broad reporting obligations for non-cleric church employees.*
- Develop a church policy that requires reporting by mandatory reporters and creates guidelines for clerics.
- One size does not fit all for such a policy. Some churches have multiple employees and volunteers; others may have few or none.
- Take every allegation or claim seriously.
- There is no obligation to personally investigate; the obligation is to report when appropriate.
- If you are from another state: the reporting requirements are generally stricter than Ohio.

Other States

- Kentucky, Pennsylvania, Illinois, Maryland, Missouri:
 - *Limited protected for clergy for certain confidential communications.*
- Indiana:
 - *No special statutory provision for clergy; any individual who has reason to believe that a child is a victim of abuse shall make a report.*

Thank you.

Critchfield, Critchfield & Johnston, Ltd.

Kimberly L. Hall, Esq.

225 North Market Street

Wooster, OH 44691

Phone: (330) 264-4444

Fax: (330) 263-9278

khall@ccj.com

www.ccj.com

Ashland / Millersburg / Medina / Mount Vernon / Wooster