

PRESBYTERY OF SANTA BARBARA
SEXUAL MISCONDUCT POLICY

I. Policy Statement

It is the policy of the Presbytery of Santa Barbara (hereinafter referred to as PSB) that all Presbytery members, officers, non-member employees, and volunteers of this Presbytery are to maintain the integrity of the ministerial, employment, and professional relationship at all times. Persons who engage in sexual misconduct are in violation of the principles set forth in Scripture, and also of the ministerial, pastoral, employment, and professional relationship. It is never permissible or acceptable for a Presbytery member, officer, employee, or volunteer to engage in sexual misconduct. In the event of conflict between this policy and the constitution of the Presbyterian Church (USA) (“PC(USA)”) or secular law the latter two shall prevail.

The Presbytery has a separate Child Protection Policy.

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Distribution

Copies of this policy and its procedures shall be made available to all Presbytery and entity offices. This policy and its procedures should be made available to persons who accuse others of misconduct, including those who are or claim to be victims of sexual misconduct and their families.

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Definitions

Accused is the term used to represent the person against whom a claim of sexual misconduct is made.

Accuser is a term used to represent the person claiming knowledge of sexual misconduct by a person covered by this policy. The accuser may or may not have been the victim of the alleged sexual misconduct. A person such as a family member, friend, or colleague may be the accuser.

Civil authorities are the governmental bodies, whether city, county, state, or federal, who are given the responsibility to investigate, criminally prosecute, and/or bring civil charges against individuals accused of sexual crimes or offenses against adults and children.

Employee is the comprehensive term used to cover individuals who are hired or called to work for the Presbytery for salary or wages.

Entity is the term used to refer to any program or office managed by a board, committee, council, or other body whose membership is elected by this Presbytery.

Inquiry is the term used in the Rules of Discipline to determine whether charges should be filed based upon allegations of an offense received by Presbytery. See *Book of Order*, D-10.0000.

Mandated Reporter includes a person under the PCUSA constitution who is mandated to report to the civil authorities any reasonably held belief that there will be future harm and is also described by the State of California laws as a person who is required to report any and all suspected incidents of child abuse, including child sexual abuse that come to their attention.

Misuse of technology; use of technology that results in sexually harassing or abusing another person, including texting or emailing suggestive messages and images to persons with whom one has a ministerial relationship. It is never appropriate to view pornography on Presbytery property. When this includes a person under the age of eighteen, it is considered child abuse. There is never an expectation of personal privacy when using technological equipment owned by a Presbytery or Presbytery entity or within the context of ministry.

Persons covered by this policy includes Presbytery members, Presbytery officers, employees and staff of the PSB. Members of congregations of PSB are subject to this policy when participating in PSB activities.

Presbytery when spelled with the initial letter capitalized refers to the Presbytery of Santa Barbara.

Presbytery Council when spelled with the initial letters capitalized refers to that entity defined in the Standing Rules of the PSB. When used without the adjective “Presbytery” the term *council* may refer to other entities.

Presbytery member is a member of the Presbytery of Santa Barbara as defined by the Book of Order (G-3.0306). For purposes of the policy the term “Presbytery member” includes Commission Ruling Elders. When used without the adjective “Presbytery” the term *member* may refer to membership in other groups or organizations.

Rape is sexual contact by force, threat, or intimidation.

Response is the action taken by the PSB when a report of sexual misconduct is received. It may include (1) inquiry into facts and circumstances, (2) possible disciplinary action (administrative or judicial or both), (3) pastoral care for victims and their families and others, and (4) pastoral care and rehabilitation for the accused and care for their families.

Secular law is the body of municipal, state, and federal laws and is often referred to collectively as civil and criminal law. Prohibited behavior addressed by this policy may result in criminal and/or civil charges filed under secular law.

Sexual abuse as defined in the *Book of Order*: “Sexual abuse of another person is any offense involving sexual conduct in relation to (1) any person under the age of eighteen years or anyone over the age of eighteen years without the mental capacity to consent; or (2) any person when the conduct includes force, threat, coercion, intimidation, or misuse of ordered ministry or position” (*Book of Order*, D-10.0401c).

Sexual conduct is offensive, obsessive or suggestive language or behavior, unacceptable visual contact, unwelcome touching or fondling that is injurious to the physical or emotional health of another.

Sexual harassment; defined for this policy is as follows: unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, or their continued status in an institution; b. submission to or rejection of such conduct is used as the basis for employment decisions affecting such an individual; c. such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, or offensive working environment; or d. an individual is subjected to unwelcome sexual jokes, unwelcome or inappropriate touching, or display of sexual visuals that insult, degrade, and/or sexually exploit men, women, or children.

Sexual malfeasance; is defined by the broken trust resulting from sexual activities within a professional ministerial relationship that results in misuse of office or position arising from the professional ministerial relationship.

Sexual misconduct is the comprehensive term used in this policy to include: *Child sexual abuse*; including, but is not limited to, any contact or interaction between a child and an adult when the child is being used for the sexual stimulation of the adult person or of a third person. The behavior may or may not involve touching. Sexual behavior between a child and an adult is always considered forced whether or not consented to by the child. In the Presbytery of Santa Barbara, the sexual abuse definition of a child is anyone under age eighteen.

Stated Clerk whether or not written with initial capital letters shall refer to the stated clerk of PSB.

Victim is a person claiming to have been harmed and/or abused by a person covered under this policy.

Volunteer is the term used for those who provide services for PSB. Volunteers include persons elected or appointed to serve on boards, committees, and other groups. For purposes of this policy, volunteers are treated the same as employees.

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II. Standards of Conduct

... As [God] who called you is holy, be
holy yourselves in all your conduct;
... Tend the flock of God that is in your charge, ...
not under compulsion but willingly, ...
not for sordid gain but eagerly. ...
not lord it over those in your charge,
but be examples to the flock.

... You know that we who teach will be judged with greater strictness.

1 Pet. 1:15; 5:2–3; Jas. 3:1, NRSV

The ethical conduct of all who minister in the name of Jesus Christ is of vital importance to the Presbytery because through these representatives an understanding of God and the gospel's good news is conveyed. "Their manner of life should be a demonstration of the Christian gospel in the Presbytery and in the world" (*Book of Order*, G-2.0104a).

The basic principles of conduct guiding this policy are as follows:

1. Sexual misconduct is a violation of the role of pastors, employees, volunteers, counselors, supervisors, teachers, and advisors of any kind who are called upon to exercise integrity, sensitivity, and caring in a trust relationship. It breaks the covenant to act in the best interests of parishioners, clients, co-workers, and students.
2. Sexual misconduct is a misuse of authority and power that breaches Christian ethical principles by misusing a trust relation to gain advantage over another for personal pleasure in an abusive, exploitative, and unjust manner. If the parishioner, student, client, or employee initiates or invites sexual content in the relationship, it is the pastor's, counselor's, officer's, or supervisor's responsibility to maintain the appropriate role and prohibit a sexual relationship.
3. Sexual misconduct takes advantage of the vulnerability of persons who are less powerful to act for their own welfare, including children. It is antithetical to the gospel call to work as God's servant in the struggle to bring wholeness to a broken world. It violates the mandate to protect the vulnerable from harm.

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III. Presbytery Response to Allegations of Sexual Misconduct

A. Principles

In responding to allegations of sexual misconduct, Presbytery members, officers, and employees of the Presbytery should seek healing and assure the protection of all persons. Where possible, the privacy of persons should be respected and confidentiality of communications should be

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maintained. In responding to allegations of sexual misconduct, Presbytery members, officers, and employees of the Presbytery should seek to uphold the dignity of all persons involved, including persons who are alleging harm, persons who are accused of sexual misconduct, and the families and communities of each.

The PSB has jurisdiction over its Presbytery members, officers, and employees such that if a Presbytery member, officer, or employee is alleged to have committed an offense against Scripture or the PSB Bylaws or Standing Rules, the Presbytery has the duty to inquire into the allegations and, if the allegations are proven, to correct the behavior of the Presbytery member, officer, or employee and ensure the safety of others in the community. Allegations of sexual misconduct are always considered allegations of offense against Scripture or the PSB Bylaws or Standing Rules that trigger the disciplinary processes of the PSB set forth in the *Book of Order*. In the case of an active employee or volunteer with the Presbytery who is not a Presbytery member, the individual will be covered by the procedures of the written personnel policies of the PSB.

If the person accused of sexual misconduct is no longer a Presbytery member, officer, or employee of the PSB, but the conduct occurred while the person was acting on behalf of the PSB, the Presbytery does not have jurisdiction to correct the behavior, but it does have a duty to hear the allegations of offense and to take measures to prevent future occurrences of harm. The Presbytery may appoint an administrative committee or commission (including a Permanent Judicial Commission) to hear the allegations of sexual misconduct. The Presbytery may also take measures to prevent future occurrences of harm through education and policy.

B. Reporting Requirements

1. Reporting Sexual Misconduct

A person needing to report that a Presbytery member, officer, employee, or volunteer of the PSB has committed sexual misconduct is encouraged to seek guidance from a PSB teaching elder or ruling elder regarding filing the report.

Congregation: If the person who is accused of committing sexual misconduct is a member, ruling elder, deacon, volunteer, or employee of a congregation, the report of allegations should be made to the teaching elder, the clerk of session, or the chair of the personnel committee. If the accused is a nonmember employee or volunteer, the congregation will respond by using procedures set forth by the session of the congregation. If the accused is a Presbytery member or officer of the Presbytery, the Presbytery will respond by using the procedures set forth in the Rules of Discipline of the *Book of Order*.

Presbytery: If the person who is accused of committing sexual misconduct is a teaching elder, the report of allegations should be made to the stated clerk of the Presbytery. If the report of allegations is placed in writing, the Presbytery will respond by using the procedures set forth in

the Rules of Discipline of the *Book of Order*. If the person who is accused of committing sexual misconduct is a volunteer or non-Presbytery member employee of the presbytery, the report of allegations may be made to any of the staff or volunteers of the Presbytery. The Presbytery will respond by using procedures set forth by this policy or bylaws or standing rules of the Presbytery.

2. *Receiving Reports of Sexual Misconduct*

Reports of allegations of sexual misconduct will occur in a variety of ways. Because PSB cannot control to whom the victim of sexual misconduct will speak first, it is important that officers, employees, and persons highly visible to Presbytery members and visitors understand how reports of incidents are channeled to the proper person. The allegations may come from persons who have or who do not have a formal relationship with the PSB and may be made to a variety of officers or leaders within the PSB. It is the duty of these officers to see that any allegation of sexual misconduct is reported appropriately keeping in mind the mandatory reporting requirements for allegations of child abuse.

Reports of allegations of sexual misconduct should never be taken lightly or disregarded and allowed to circulate without concern for the integrity and reputation of the victim, the accused, and the Presbytery. Reports of allegations should be dealt with as matters of highest confidentiality, both before and after they have been submitted to appropriate authorities as outlined below.

The first person to learn of an incident of sexual misconduct should not undertake an inquiry alone or question either the victim or the accused unless the incident is divulged in the process of pastoral care, counseling, or a therapy session. If the victim is hesitant to talk to “higher authorities,” the person who has received the initial report has a special pastoral responsibility to build trust and willingness to speak with the accuser, lest the Presbytery be unable to respond because no one is able to give firsthand information. The person receiving the initial report of allegations of sexual misconduct shall analyze the relationship of the person accused of sexual misconduct with the PSB and shall make sure that the allegations of offense are filed with the organization with jurisdiction over the person accused. This may be done by the person alleging harm or by any Presbytery member.

If the report is made orally, the person receiving the report of allegations should request that the person making the report of allegations place it in writing. A report of allegations of sexual misconduct in writing from a Presbytery member alleging another Presbytery member or officer of the PSB committed an offense must be acted on according to the Rules of Discipline of the *Book of Order*. If a clerk or stated clerk receives a report of allegations in writing from a non-Presbytery member alleging a Presbytery member or officer committed sexual misconduct, the report also should be acted on according to the Rules of Discipline of the *Book of Order*. If the person who makes the report is unwilling or unable to place it in writing, any Presbytery member

may make the written statement that will automatically trigger the Rules of Discipline of the *Book of Order*.

3. *Mandatory Reporting of Child Abuse*

All ruling elders, deacons, Certified Christian Educators, and teaching elders are required to report knowledge of child abuse to the civil and ecclesiastical authorities according to the *Book of Order*. The *Book of Order* requires that:

“Any member of this Presbytery engaged in ordered ministry and any certified Christian educator employed by this Presbytery 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” (G-4.0302)

Further,

“In the exercise of pastoral care, teaching elders (also called ministers of the Word and Sacrament) and ruling elders who have been commissioned by a presbytery to limited pastoral service (G-2.10), shall maintain a relationship of trust and confidentiality, and shall hold in confidence all information revealed to them in the course of providing care and all information relating to the exercise of such care. When the person whose confidences are at issue gives express consent to reveal confidential information, then a teaching elder or a ruling elder commissioned to pastoral service may, but cannot be compelled to, reveal confidential information. A teaching elder or a ruling elder commissioned to pastoral service may reveal confidential information when she or he reasonably believes that there is risk of imminent bodily harm to any person” (G-4.0301).

All persons covered by this policy have an additional duty to report knowledge of child sexual abuse to the employing entity, supervisor, or PSB representative. All persons should be informed of and must comply with state and local laws regarding incidents of actual or suspected child sexual abuse. These reports should be made within a reasonable time of receiving the information.

These provisions of the *Book of Order* attempt to balance conflicting moral duties for officers of the Presbytery of Santa Barbara.

For teaching elders, the provision strives to balance the duty to protect children from future harm with the duty of a teaching elder to hold in confidence any information revealed to them during the exercise of pastoral care in any ministry setting as defined in G-4.0301 in the *Book of Order*.

For ruling elders, deacons, and certified Christian educators, the provisions strive to balance the duty of an officer of the Presbytery to protect children from harm and any secular duty the officer may have to hold in confidence any information revealed as a result of a secular relationship such as attorney/client, counselor/client, or physician/patient. The secular duties will be a function of California secular law.

C. Responding

The appropriate PSB response will vary according to the relationship of the PSB with the person who is accused of sexual misconduct. Presbytery members and officers are subject to inquiry and discipline (censure and correction) under the *Book of Order*. Non-Presbytery member employees and volunteers are subject to oversight and correction by PSB.

1. Accused Covered by Book of Order

When an allegation of offense of sexual misconduct has been received by the stated clerk of the PSB, the stated clerk will report to the Presbytery Council and to the permanent judicial commission (who shall proceed with consideration of administrative leave as required by the Book of Order D-10.0106) that an offense has been alleged and that the Presbytery Council will proceed according to the procedures set forth in the Rules of Discipline of the *Book of Order*. The Presbytery Council should appoint an investigating committee to inquire into the allegations. The investigating committee must promptly begin its inquiry into the allegations. Delay may cause further harm to the victim and/or the accused.

PSB will must cooperate with civil authorities in an investigation of child sexual abuse or other criminal sexual misconduct. Presbytery disciplinary proceedings cannot interfere with a criminal investigation by civil authorities and may have to be suspended until these are completed.

The session has original jurisdiction in disciplinary cases involving church members, ruling elders, and deacons of the Presbytery, each congregation having jurisdiction only over its own members.

PSB has original jurisdiction in disciplinary cases involving teaching elders. PSB may dissolve a pastoral relationship when the “Word imperatively demands it” (G-2.0904). However, PSB may only place a teaching elder on administrative leave when allegations of child abuse have been received and PSB has followed the *Book of Order* procedures to conduct its risk evaluation to determine whether or not a teaching elder Presbytery member accused of child abuse should be placed on administrative leave (D-10.0106). It is recommended that the permanent judicial commission (PJC) members who will conduct this risk evaluation based upon the allegations and a hearing should also take into account secular legal advice. When a Presbytery officer renounces jurisdiction, the stated clerk shall report the renunciation at the next meeting of the Presbytery Council and shall record the renunciation in the minutes of the Presbytery Council. The status of any pending charges may be shared with the Presbytery Council at that time.

2. Accused Not Covered by Book of Order

When PSB receives an accusation of offense of sexual misconduct against a nonmember employee or volunteer, the procedural response of PSB will be guided by the written personnel policies of PSB. If PSB does not have a written personnel policy covering such allegation, it may appoint either a committee or administrative commission for the review of the allegation. The committee or commission that will respond to the allegation of offense of sexual misconduct will do the following:

- a. Determine whether or not the allegation gives rise to a reasonable suspicion of sexual misconduct by the accused.
- b. If so, gather additional information necessary to make a decision about correcting the behavior.
- c. Determine any remedies, including limiting ministry, suspension, or termination necessary and advisable under the circumstances. If the accused is a member of another denomination, that denomination will be notified of the allegations and the response.
- d. Inform the victim and the accused of the remedy.
- e. In all cases, the personnel committee shall prepare a written report, which shall be included in the accused's permanent personnel file. The accused shall be allowed to attach any written statements to said documents, also for permanent inclusion in the permanent file. All procedures shall follow the guidelines set forth by PSB, or the employing agency.

3. Record Keeping

PSB shall keep detailed records of its actions and minutes of its deliberations and its conversations with the accuser, the accused, and other parties involved, correspondence, and copies of the reports received from committees or commissions. Such records will be kept confidential as far as possible. In Case # 208-6, the General Assembly Permanent Judicial Commission (GAPJC) interpreted the Rules of Discipline to say that a council or entity may share the contents of inquiry reports with other councils or entities of the Presbyterian Church (U.S.A.) when necessary. The stated clerk of PSB or executive of PSB will maintain the records while the inquiry is in process.

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IV Prevention and Risk Management

A. Implementation

The Book of Order requires that all councils adopt and implement a sexual misconduct policy (G-3.0106). The PSB urges all congregations of the Presbytery to establish policies and

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procedures, that make it a violation of the employer's work rules to engage in sexual misconduct and that encourage reporting of sexual misconduct. Churches of the Presbytery are strongly encouraged to take appropriate steps to inform their members, employees, and volunteers of the church's sexual misconduct policy and the standards of conduct and the procedures for effective response when receiving a report of sexual misconduct.

B. Liability and Insurance

An entity can be held liable for harm caused by sexual misconduct of an officer, teaching elder or employee based on a number of legal theories. PSB shall take such potential liability into consideration when establishing hiring and supervisory practices. PSB's standard insurance policy should usually be enhanced by endorsements to cover specific exposures such as camps, day-care operations, shelters, or other outreach programs. It is advisable that PSB obtain an endorsement to its general liability insurance policy specifically covering sexual abuse and molestation. Such coverage may provide for legal defense expenses and judgments in civil suits brought against PSB by its officers, directors, or employees.

C. Employment Practices

1. Record Keeping

Accurate record keeping is an essential part of hiring and supervision practices of PSB. PSB shall maintain a personnel file on every employee, including teaching elders. The file should contain any application for employment, any employment questionnaires, background checks, references responses, and all other documents related to an employee's employment, except records which may be required, by law, to be kept in separate files.

2. Prescreening Applicants

PSB shall establish thorough and consistent hiring practices. If an applicant is unknown to the employer, the employer should confirm the applicant's identity by requiring photographic identification such as a driver's license. The Committee on Personnel should cause a background check to be performed, including a national criminal background check, on all applicants that may have interaction with children and youth. Part of pre-employment screening should include specific questions related to discovering previous complaints of sexual misconduct.

3. References

PSB shall contact references for prospective teaching elders, employees, or volunteers. A written record of conversations or correspondence with references should be kept in the teaching elder or employee's personnel file. If false or misleading information is given by the applicant, or relevant information is withheld, the applicant should be eliminated from consideration.

Applicants should be informed of negative comments regarding sexual misconduct and shall be given an opportunity to submit additional references or to give other evidence to correct or respond to harmful information obtained from a reference.

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V. Educating and Training- Awareness

Since the issue of sexual misconduct has become an ever more present reality, there is an emerging need to educate and train a wide variety of persons. Persons needing this specific education include: teaching elders; volunteers; officers; nonprofessional and professional staff; ministerial candidates; professionals who will be working with this issue within the denomination; and PSB staff including supervisors, employees, and stated clerks. Education for these persons and groups will be different on a group-by-group basis. A primary requirement for all persons should be common knowledge regarding professional and ministerial boundaries, the General Assembly Sexual Misconduct policy and specific PSB policy.

PSB shall ensure that all employees are well acquainted with, understand, and abide by this policy.