

Presbytery of the James

SEXUAL MISCONDUCT/HARASSMENT POLICY



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**Presbytery of the James
Presbyterian Church (U.S.A.)**

Sexual Misconduct/Harassment Policy

I. *Introduction*

A. Policy Statement

It is the policy of the Presbytery of the James, Presbyterian Church (U.S.A.) (“Presbytery”) that all church members, church officers, non-member employees, and volunteers serving within its jurisdiction are to view one another as parts of the Body of Christ and members one of another. This oneness means that we should model and order all our relationships in Christ’s Church using the self-giving love of Jesus Christ as the ideal and example.

As Christians, caring for one another in the spirit of our Lord precludes the objectification, victimization, and oppression of sexuality expressed in ways that are inappropriate, coercive, or degrading. It is only by outdoing one another in showing honor to one another that the Christian community may maintain the integrity of the ministerial, employment, and professional relationships at all times.

Sexual misconduct is a violation of Scriptural principles and a violation of the trust inherent to ministerial, employment, and professional relationships. **It is never permissible.**

B. Purposes

The purposes of this policy on sexual misconduct are:

1. To set and enforce standards of behavior consonant with Scripture and secular law;
2. To serve and advance the peace and purity of the Church;
3. To develop procedures for the enforcement of these standards, fully consistent with the *Book of Order* (“BoO”) and to ensure the confidentiality of issues and individuals as may be necessary;
4. To promote the understanding of what sexual misconduct is and what the Presbytery expects of those covered by this policy;
5. To minimize occurrences of sexual misconduct and to ensure prompt and faithful responses to all allegations and reports; and
6. To demonstrate pastoral concern for alleged victims and their families, as well as for those accused of sexual misconduct and their families.

C. Scope of Policy

As defined below under the term “Persons Covered,” this policy only applies to those situations in which the Presbytery has jurisdiction over at least one of the individuals involved in allegations of sexual misconduct as defined herein. For example, this policy does not apply to situations involving allegations of sexual misconduct involving only the ruling elders, members, employees, volunteers, or visitors of a church. While such situations may

be governed by the Rules of Discipline in the *BoO* and/or by the sexual misconduct policies approved at the time by the Session of the church in question, they do not fall under the jurisdiction of the Presbytery.

Each church belonging to the Presbytery must adopt its own sexual misconduct / harassment policy to protect the congregation, employees, volunteers, and visitors. If a church does not have a policy, this policy shall apply to the greatest extent possible.

Persons with questions about this policy should contact the Stated Clerk of the Presbytery.

II. *Definitions*

A. Accused

is the term for the person(s) against whom a claim of sexual misconduct is made.

B. Accuser

is the term for the person(s) claiming knowledge of sexual misconduct by a person(s) covered by this policy. The accuser may be someone other than the alleged victim of alleged sexual misconduct.

C. Child Sexual Abuse

includes, but is not limited to, any unlawful contact or interaction between a child and an adult where the child is being used for sexual purposes or the sexual stimulation of the adult or some third person. The prohibited behavior does not necessarily require touching. Sexual activity between a child and an adult shall always be considered as forced since the child is deemed not legally capable of consenting. The Presbytery intends to follow Virginia Code §1-204 which defines a child as anyone under eighteen years of age.

D. Church

when spelled with the initial letter capitalized ("Church") refers to the Presbyterian Church (U.S.A.). Church when spelled with the initial letter in lowercase ("church") refers to a local congregation. The word "congregation" shall include both members and participants in a church.

E. Complaint

is a statement in written form which outlines the alleged facts of the sexual misconduct and/or harassment and the basis for which a remedy is sought.

F. Council

is a representative body in the Church composed of ruling and teaching elders; these are sessions, presbyteries, synods, and the General Assembly. A Council may establish entities such as day-care centers, conference centers, camps, or homes for the aged. A Council may have both church members and non-members as employees.

G. Employee

is the comprehensive term used to cover all individuals hired or called to work for the Church, a Council, a local member church, or any other institution or entity formally related to the Church or one of its constituent bodies, who are paid a salary or wages for their services.

H. Entity

is any congregation, program, or office managed by a board, committee, council, or other body whose membership is elected by a Council (see *Manual of the General Assembly*, Standing Rule 47.418).

I. High Risk Occupations

are those which call for a person to work in close contact with those who are vulnerable and less capable of protecting themselves, such as children, the elderly, the incapacitated, or those receiving counseling. (Pastoral care of four sessions or fewer is not considered counseling.)

J. Inquiry

is the term used in the Rules of Discipline in the *BoO* to determine whether charges should be filed based upon allegations received by a Council that an offense has occurred (see *BoO* D-10.0200).

K. Investigation/Investigating

is the term used in the Rules of Discipline regarding the investigation of allegations of an offense received by a Council.

L. Mandated Reporter

is a person required by civil law to report any and all suspected incidents of child abuse, including child sexual abuse. As of July 1, 2019, Virginia law no longer exempts certain persons from its mandatory reporting requirements including regular ministers, priests, rabbis, or imams or duly accredited practitioners of any religious organization or denomination usually referred to as a church. There is an exception for these practitioners when confidentiality is required by the religious organizations (e.g., the confessional). In implementing this policy the Presbytery shall adhere to the requirements of the *Code of Virginia* and the *BoO* G-4.03 as amended at the time of the alleged incident. The pertinent rules of the *BoO* G-4.03 on mandatory reporting state as follows:

“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.” (G-4.0302)

Also,

“In the exercise of pastoral care, 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 minister of the Word and Sacrament or a commissioned pastor (also known as commissioned ruling elder) may, but cannot be compelled to, reveal confidential information.

A minister of the Word and Sacrament or a commissioned pastor (also known as commissioned ruling elder) 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 others who are aware of or suspect an incident of child abuse must report that suspicion or knowledge to the appropriate civil authorities and to the Stated Clerk of the Presbytery.

The *BoO*, amended in 2019, addresses the time limits of filing charges as follows:

“For instances of sexual abuse of another person, the five-year time limit shall not apply. There is also no time limit for charging that a person who knew or reasonably should have known of the reasonable risk of sexual abuse of another as defined in D-10.0401c(1) or (2) failed to take reasonable steps to minimize the risk. Both charges may be brought regardless of the date on which an offense is alleged to have occurred.” (D-10.0401b)

M. Persons Covered

by this policy include church members, church officers, ministers of the Word and Sacrament (also known as teaching elders), and non-members who are employees or volunteers under the supervision of the Presbytery, or volunteers involved in an activity sponsored by or affiliated with the Presbytery. Those included shall include those accused of sexual misconduct under circumstances in which (1) access to the alleged victim is related to some form of service to or appointment by the Presbytery or entity, (2) the sexual misconduct alleged arises in a non-church related setting, the circumstances of which raise questions of character and effectiveness of a person covered by this policy, or (3) the alleged improper conduct occurs in a setting in which access is granted to the alleged victims by a particular church of the Presbytery, whether with members or non-members.

N. Reasonable Suspicion

is a subjective criterion that refers to a belief or opinion based on facts or circumstances that are sufficient for a reasonable person to want to inquire further, to take protective action, or to report to authorities.

O. Response

is the action taken by the Council or entity when it receives a report of sexual misconduct. It may include:

1. Inquiry into facts and circumstances;
2. Disciplinary action (administrative, judicial, or both);
3. Pastoral care for involved parties;
4. Exoneration and pastoral care for those falsely accused;
5. Pastoral care and rehabilitation for the perpetrators and care for their families;
6. Administrative leave (with or without pay) for the accused during the investigation.

If the body receiving the report considers the alleged act to be criminal in nature, it shall refer the report to the appropriate authorities.

P. Response Panel

is a group of ministers and laity trained by the presbytery and ready to serve on Response Teams.

Q. Response Team

is a group of four or more persons from the Response Panel appointed by the moderator and vice-moderator of the Committee on Ministry (“COM”) to provide assistance and pastoral care to the appropriate parties after an allegation is presented to the presbytery.”

R. Secular Authorities

are the governmental bodies—whether city, town, county, state, or federal—responsible for investigating, criminally prosecuting, and/or bringing charges against individuals accused of sexual crimes or sexual misconduct offenses against other adults or children.

S. Secular Law

is the body of city, town, county, state, or federal laws, often referred to collectively as civil or criminal law. Prohibited behavior addressed by this policy is that which is governed by criminal or civil law regarding sexual misconduct.

T. 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 without mental capacity to consent; or
2. Any person when the conduct includes force, threat, coercion, intimidation, or misuse of ordered ministry or position.

U. Sexual Harassment

for this policy is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, the individual's pastoral relationship, or the individual's participation in Presbytery-sponsored programs or activities, or their achieving or continuing a given status in an institution;
2. Submission to or rejection of such conduct by an individual is threatened or used as the basis for employment, pastoral, or Presbytery-sponsored program participation decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or volunteer performance or an individual's pastoral or camping experience, or creating an intimidating, hostile, or offensive working, pastoral, camping, or conference environment.

Sexual harassment can occur in the form of physical, verbal, and/or non-verbal harassment. Among the examples of behavior that may constitute sexual harassment are, without limitation: pressure for sexual activity; uninvited physical contact, including touching, pats, squeezes, repeated brushing against, the impeding or blocking of one's movement, or behavior intended to be playful; disparaging remarks about one's gender; lewd or sexually suggestive comments; sexual suggestions disguised as humor; requests for sexual favors accompanied by implied or overt threats; dissemination or display of sexually offensive materials, including pictures, drawings, or cartoons; the use of pornographic materials; and unwelcome communications, notes, phone calls, text messages, instant messages, e-mail, and social media posts or other means of electronic messaging.

V. Sexual Misconduct

is the comprehensive term used in this policy to include:

1. Child sexual abuse as defined above;
2. Sexual harassment as defined above;
3. Rape or sexual contact by force, threat, or intimidation;
4. Sexual conduct (such as obscene, prurient or suggestive language or behavior, unacceptable visual contact, unwelcome touching or fondling) which is reasonably injurious to the physical or emotional health of another; and
5. Sexual malfeasance as defined below.

W. Sexual Malfeasance

is defined for this policy as physical contact within a ministerial (e.g., clergy with a member of their congregation) or professional (e.g., counselor with a client, lay employee with a church member, presbytery executive with a committee member) relationship involving a person's genitals, breasts or buttocks.

X. Victim

is the person alleged to have been subjected to and/or injured by sexual misconduct as defined above.

Y. Volunteer

is anyone who provides services for Councils and entities of the Church and who receives no benefits or remuneration. 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. Responsibilities of the Council or entity are the same for volunteers as for employees.

III. Guiding Principles

The members of the Presbytery and its congregations are charged with the care, nurture, and spiritual well-being of those persons who come to us. This is a sacred trust and is based implicitly and explicitly on Scripture, the Confessions of the Church, the ordination vows for the Church officers (*BoO W-4.0404*), and the traditions of the Church. In trying to follow the model of our Lord Jesus Christ, we are directed to remember:

As God who called you is holy,
be holy yourselves in all your conduct.

Tend the flock of God that is your charge,
not under compulsion but willingly, not for sordid gain but eagerly,
do not lord it over those in your charge, but be examples to the flock.

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

1 Peter 1:15; 5:2; James 3:1, NRSV

The ethical conduct of all who minister in the name of Jesus Christ is of vital importance to the Church. Through these representatives an understanding of God and the Gospel's good news is conveyed. Their manner of life should demonstrate the Gospel in the Church and the world (*BoO G-2.0104a*). Thus, the Presbyterian Church (U.S.A.) and the Presbytery, in order to uphold the honor of the Church and the Christ it is pledged to serve, has every biblical, ecclesiastical, and pragmatic right to expect of its servants a life and general behavior consonant with the above principles.

Sexual misconduct is a violation of the role of pastors, educators, employees, volunteers, counselors, supervisors, teachers, and advisors called to exercise integrity, sensitivity, and caring in a trust relationship. As the place where the Body of Christ gathers for work, worship, and edification, the church is charged by its founder to act in the best interests of parishioners, clients, co-workers, and students. When sexual misconduct occurs, this commission from our Master is rejected, and faith is broken with those who trust the church to be a place of Christian nurture.

Sexual misconduct is a misuse of authority and power which 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 a parishioner, student, client, employee, or volunteer

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.

Sexual misconduct takes advantage of the vulnerability of others, especially those who are less powerful and therefore unable to act for their own welfare. Sexual misconduct is antithetical to the Gospel's call to work as God's servant in the struggle to bring wholeness to a broken world. Sexual misconduct violates the mandate to protect the vulnerable from harm.

IV. Response Team

Purpose

The purpose of the Response Team is to provide assistance and pastoral care to anyone making an allegation of sexual misconduct, or any alleged victim(s) of sexual misconduct by anyone covered by this policy, and to anyone who is so accused. The Team is not to investigate any allegation, nor is it to take any part in the disciplinary process of the Church, save for assisting the accuser, or the alleged victim(s) address the disciplinary process through the filing of an allegation (D-10.0100). The Team shall meet within seven (7) days of being appointed.

Response Panel

The Response Panel is composed of those people whom the Presbytery shall train to serve on Response Teams. Training shall cover both the Presbytery policy and *BoO* guidance, particularly D-10, "Disciplinary Cases."

Response Team Constitution

1. Each Response Team shall consist of at least four (4) members drawn from the Response Panel. It shall have both men and women. The moderator and vice-moderator of COM shall appoint members to each Team and shall designate one to serve as moderator. Two members of the Response Team shall provide support for the accuser and/or the alleged victim(s); one of the two must be of the same gender as the accuser. Two members of the Response Team shall provide support for the accused; one of the two must be of the same gender as the accused. Once assigned, Response Team members providing support for the accuser shall not discuss the content of the case with members providing support for the accused.
2. The moderator of COM shall avoid conflicts of interest in appointing Team members. See Appendix A.
3. If either the moderator or vice-moderator of COM is unable to make an appointment, or is involved or implicated in the case reported, then the Stated Clerk shall designate a member of the Response Panel to assist in making the appointment.

Response Team Duties

The duties of the Response Team are detailed in Appendix B.

V. Guidelines for Reporting a Complaint

BoO G-4.03 CONFIDENCE AND PRIVILEGE

G-4.0301 Trust and Confidentiality

In the exercise of pastoral care, 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 minister of the Word and Sacrament or a commissioned pastor (also known as commissioned ruling elder) may, but cannot be compelled to, reveal confidential information.

A minister of the Word and Sacrament or a commissioned pastor (also known as commissioned ruling elder) may reveal confidential information when she or he reasonably believes that there is risk of imminent bodily harm to any person.

G-4.0302 Mandatory Reporting

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.

The Presbytery shall follow the reporting procedures of the Rules of Discipline in the *BoO* D-10.0100.

VII. Implementation

The structures and procedures for responding to allegations of sexual misconduct are mandated, in part, by the *BoO*, such as the roles of COM and the Investigating Committee (see G-3.0307 and D-10.0201). When sexual misconduct occurs, especially child sexual abuse, the secular authorities shall be notified as provided above (II.O.). The Presbytery also has a duty to make inquiry and enforce appropriate disciplinary procedures when it can do so without interfering with the secular authority.

This may include filing charges against a church member or minister under the Rules of Discipline and may lead to temporary or permanent removal from membership or office.

VIII. *Compliance*

A. Employment Practices

The Presbytery shall establish stringent 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. Part of the pre-employment screening shall include specific inquiry related to discovering previous complaints or accusations of sexual misconduct.

B. Access

Presbytery shall provide public access to this policy on its website in a downloadable format. It shall also annually remind all Presbytery employees, congregations, ministers, educators, and commissioned ruling elders of their obligation to review the policy annually and to certify to the Stated Clerk that they have done so.

C. Training and Education

1. All incoming ministers, educators, and commissioned ruling elders shall, as part of their orientation to the Presbytery, read this policy and sign a document (attached) stating that they have read and understood this policy. The Stated Clerk shall keep the original signed document in the person's personnel file.
2. Every third year, beginning in 2016, the Presbytery shall include a copy of this policy in the packet for the October Presbytery meeting. The meeting docket shall include time for silent reading of the policy, ensuring regular and sustained awareness. A signed copy of the acknowledgement page shall be returned to the Stated Clerk of the Presbytery.

All minister members, certified Christian educators and commissioned ruling elders enrolled by the Presbytery shall complete an online course on maintaining appropriate boundaries including abuse prevention, specified and approved by the Presbytery or its COM. Such persons must complete this requirement no later than six months after being enrolled in the Presbytery. Thereafter, such persons shall complete "refresher" education or training every five (5) years, again using curriculum specified by the Presbytery or its COM.

Honorably retired ministers, CCEs, and CREs who are no longer preaching or serving in an official capacity may apply to COM to be exempt from these education requirements.

D. Volunteers

While these guidelines are intended for volunteers of the Presbytery, no requirement for screening and application is usually applied. The increase of litigation requires that local churches do a better job of screening and supervising unpaid volunteers. Every church is encouraged to have policies consistent with this document and procedures in place before allowing volunteers to work in high-risk positions such as youth advisor, children's worker, lay counselor, Boy or Girl Scout leader, camp counselor, or conference chaperone.

Appendix A

Conflict of Interest

In staffing Response Teams, the moderator and vice-moderator of COM shall seek to avoid conflicts of interest as well as appearances thereof. Anyone asked to serve on a Response Team should decline if a conflict of interest exists.

An individual has a conflict of interest in the following situations:

1. The individual has, or may have, information about the alleged misconduct and may be interviewed by an Investigating Committee or may be called as a witness in a formal proceeding;
2. The individual is related to the accuser or accused by blood or marriage, or has in the past been related by marriage;
3. The individual currently has, or in the past has had, a close relationship with the accuser or accused. The relationship may be pastoral, social, work-related, or financial. A “close relationship” is one in which a reasonable person would believe that a conflict of interest may exist. It is not a conflict, for example, if the individual has only served on a committee with, or is only casually acquainted with, the accused or accuser.

If the accused or accuser believes that a Response Team member has a conflict of interest, the accused or accuser shall promptly notify the moderator or vice-moderator of COM, who will determine whether continued service is warranted. Doubtful or uncertain cases should be resolved in favor of avoiding the possibility of a conflict of interest.

Appendix B

Response Team Duties

When the Stated Clerk becomes aware of an allegation of sexual misconduct, s/he shall direct the Moderator and Vice-Moderator of COM to appoint a Response Team, which they shall accomplish within 72 hours of receiving this direction. Once appointed, the Response Team shall:

1. Inform the accused that allegations of sexual misconduct have been reported, and that the accused is to have no further contact with the accuser and/or the alleged victim(s) of sexual misconduct. The Response Team shall make this communication by the time it first meets with the accuser and/or alleged victim(s) of sexual misconduct;
2. Provide pastoral care for an accuser and/or an alleged victim(s) of sexual misconduct, and their family;
3. Provide pastoral care for an accused and his/her family;
4. Provide pastoral care, appropriate information about the allegation, and resource persons to the congregation or other entities;
5. Assist the congregation in securing after-care resources;
6. Determine to the best of its ability whether any principal person or family member needs psychological counseling and report its opinion to the General Presbyter. If the General Presbyter is in any manner connected to the allegations, the Response Team shall report to the moderator of COM;
7. Assure the accuser and/or alleged victim(s) that the whole Church through the Presbytery takes this matter very seriously and will support them through the process;
8. Inform the accuser of next steps available to them and, if the accuser desires to pursue further action, refer them to the Stated Clerk;
9. Suggest to principal persons, where appropriate, that they obtain an advocate, i.e., a person chosen by the person to accompany them throughout the process and to provide moral support. This shall not relieve the Response Team from its pastoral duties. In this policy, an advocate does not necessarily denote legal representation; and
10. Maintain strict confidentiality in all matters and discuss the allegations and reports only with authorized persons.

The Response Team shall not:

1. advocate for any party involved;
2. provide or act as legal counsel;
3. usurp the responsibilities of COM or an Investigating Committee under the Rules of Discipline of the *BoO*;
4. determine guilt or innocence of the accused; or
5. enforce any specific remedy or disciplinary action.

The Response Team shall continue to perform its duties until released by COM.

Continuing Education Requirements

Since 2014, the presbytery has required all its members (ministers of the Word and Sacrament, certified Christian educators, and commissioned ruling elders) to travel to Richmond to complete introductory training on appropriate boundaries. Now excellent online training is available, obviating burdensome travel and scheduling.

Beginning in the fall of 2019, every member of the Presbytery of the James shall complete POJ-approved online training on maintaining appropriate boundaries, including abuse prevention. Please contact the presbytery office to obtain instructions and access to the training. The individual or their congregation shall bear the cost of the training.

Additionally, every member shall complete Refresher Training within five years of completing the initial course, and again for every subsequent five-year period of membership. The Presbytery will provide instructions for accessing this Refresher Training.

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Return this half-sheet to the POJ Office

Acknowledgment of Sexual Misconduct / Harassment Policy of the Presbytery of the James

As part of my annual certification to serve within the Presbytery of the James, I acknowledge that I have received, read, and reviewed the Presbytery of the James' Sexual Misconduct / Harassment Policy dated October 19, 2019.

Printed Name

Date

Signature