

# PRESBYTERY OF WEST VIRGINIA POLICY ON PREVENTING AND RESPONDING TO SEXUAL MISCONDUCT

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 our charge, but be examples to the flock.

I Peter 5:2 (NRSV)

The Presbytery of West Virginia believes and proclaims that all people are created by God who intends that everyone -- children, women, and men -- have worth and dignity in all relationships. Our sexuality is a gift from God and when rightly expressed leads to the wholeness of life which God intends for all people. Inappropriate sexual behavior distorts the goodness of God's gift of sexuality, is destructive of relationships and is an abuse of power and trust.

The Presbytery of West Virginia proclaims that sexual misconduct in any form is never permissible. It is a sin against God as well as the person victimized by the sexual misconduct. It is a violation of ministerial, professional and employment relationships. The Church can never be well served by overlooking an abuse of power and trust. When a breach of ethics takes place, this transgression will be dealt with swiftly, with fairness and justice. While the Church is called to offer forgiveness to all persons, it is not called to overlook acts of misconduct by any person.

The purpose of this policy is:

1. To safeguard the members, congregants, and staff of the churches of the Presbytery of West Virginia, the members and staff of the Presbytery, and the people we serve, especially those who are vulnerable, against any form of sexual misconduct, particularly the disciplinary offense of sexual abuse, within the Presbytery of West Virginia.
2. To express our commitment to prevent sexual misconduct by creating an atmosphere in our Presbytery where acts of silence, ignorance, and minimization regarding sexual misconduct are overcome by acts of understanding, respect, care, and justice.
3. To obtain justice and compassion in cases that involve reports or written accusations of sexual misconduct within our Presbytery.
4. To promote healing for all persons, congregations, or entities in cases involving sexual misconduct.
5. To ensure the effectiveness of our Presbytery's judicial processes in cases of sexual misconduct so that the truth shall be determined, the due process rights of those involved shall be honored, wrongdoing shall cease, and all shall be held accountable for their actions.

The persons covered by this policy include those who serve within the Presbytery of West Virginia and are: Teaching Elders, Certified Christian educators, Certified Associate Christian educators, Commissioned Ruling Elders, candidates, inquirers, and supply preachers who are approved by Presbytery, who serve within the Presbytery of West Virginia; officers and employees of the Presbytery of West Virginia; and the volunteers and lay persons serving on

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Presbytery committees, boards, councils and commissions, and other entities in support of Presbytery programs: The expectations of all persons covered under this policy are that they:

1. shall exercise responsible sexual behavior and maintain the integrity of employment and professional relationships at all times;
2. shall not engage in sexual misconduct as defined in this policy; (See Definitions)
3. shall deal with allegations of sexual misconduct with seriousness;
4. shall report accusations or instances of sexual misconduct to the appropriate Presbytery officials;
5. shall maintain confidentiality in recognition of the effects of reported sexual misconduct on the reputation and effectiveness of all involved;
6. shall respect the accused's presumption of innocence;
7. shall comply with all applicable local, state and federal laws.

### **BASIC PRINCIPLES**

1. Sexual misconduct is a violation of the role of pastors, employees, volunteers, counselors, supervisors, teachers and advisers of any kind who are called upon to exercise integrity, sensitivity and caring in a trust relationship.
2. Sexual misconduct is a misuse of authority and power which breaches Christian ethical principles by misusing a trust relation to gain advantage over another 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 responsibility of the pastor, counselor, officer or supervisor to maintain the appropriate role and prohibit a sexual relationship.
3. Sexual misconduct takes advantage of the vulnerability of children and persons who are less powerful to act for their own welfare. It may range from covert and subtle harassment to quite overt use of force. It is antithetical to the Gospel. The Biblical mandate to protect the vulnerable from harm is violated by sexual misconduct.

### **DEFINITIONS**

**Accused-** the person against whom an allegation of sexual misconduct is made.

**Accuser** - any person reporting sexual misconduct by a person covered by this policy. The accuser may or may not be the victim of alleged sexual misconduct.

**Administrative Leave** – (*Book of Order D-10.0106*) When a written statement of an alleged offense of sexual abuse toward any person under the age of eighteen, or who it is alleged lacked

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the mental capacity to consent, has been received against a minister of Word and Sacrament, the stated clerk receiving the allegation shall immediately communicate the allegation to the permanent judicial commission. The moderator of the permanent judicial commission shall within three days designate two members, who may be from the roster of former members of the permanent judicial commission, to determine whether the accused shall be placed on a paid administrative leave during the resolution of the matter. The cost of such shall be borne by the employing entity whenever possible or be shared by the presbytery as necessary. While administrative leave is in effect, the minister may not perform any pastoral, administrative, educational, or supervisory duties, and may not officiate at any functions such as Baptisms, funerals or weddings.

**Advocate** is the person who, at the request of the victim or the accuser, may accompany the victim or accuser, at each and every conference with the investigating committee, the prosecuting committee, and the session or the permanent judicial commission. The role of the advocate is to provide support and consultation. The advocate may be the same person assigned by the Response Coordination Team to be the victim or accuser's liaison. See D -10.0203 a., b.

**Child Sexual Abuse** - includes, but is not limited to, any contact or interaction between a child and an adult when the child is being used for sexual stimulation. Sexual behavior between a child and an adult is always considered forced whether or not consented to by the child. In the Presbyterian Church (USA), the sexual abuse definition of a child is anyone under age 18. The upper age limit for child sexual abuse shall be that recognized in the state or commonwealth in which the act was committed. 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 under the age of eighteen.

**Church** - Capitalized it refers to the Presbyterian Church (U.S.A.). Church when spelled with a lower case refers to particular churches.

**Civil Authorities** - 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.

**Civil Law** - The body of municipal, state, and federal laws 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 civil law.

**Confidentiality** - is maintained when information is withheld from anyone, except those who need to know.

**Congregation** - A general term for members and participants of a particular church.

**Employee** - A collective term used to cover individuals who are hired or called to work for salary or wages.

**Governing Body** – A representative body composed of elders and ministers of the Word and Sacrament; these are sessions, presbyteries, synods, and the General Assembly.

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**Inquiry** - The process prescribed in the Rules of Discipline to determine whether charges should be filed based upon allegations of an offense received by a governing body. (D.10.0101, D-10.0102, D-10.0103)

**Investigating Committee** - as defined in D-10.0201 is the body charged with performing the investigation/inquiry on behalf of the presbytery. Response by an Investigating Committee is required by the Rules of Discipline (in the case of a minister member of Presbytery). See D-10.0103-10.0105, D-10.0201, and D-10.0202, which give specific direction regarding the Investigating Committee's work and report. This committee determines whether charges should be filed. The Investigating Committee is appointed by rule of Presbytery as soon as notified by the Stated Clerk that an allegation has been received. The Investigating Committee shall conduct its investigation in accordance with the Rules of Discipline in the *Book of Order*. At the beginning of each and every conference with the accused the Investigating Committee shall inform the person of his/her rights as stated in D-10.0203. The Investigating Committee's conclusions will be communicated to all as provided by D-10.0300-10.0303. If charges are filed, the provisions of D-10.0400 shall be followed, and trial shall proceed in accordance with D-11.000.

**Investigation** - The term generally used by police, secular prosecutors, and child protective services when responding to allegations of an offense.

**Liaison** refers to the person who relates to the victim, or the accused or the congregation throughout the inquiry process and any subsequent proceedings. It is the role of the liaison to determine needs and deploy resources to those to whom the liaison has been assigned. The liaison may also serve as an advocate (see definition above) if called to do so. The out-of-pocket expenses of the person serving as liaison will be covered by the Presbytery.

**Mandated Reporter** - a person who is required by civil law to report any and all suspected incidents of child abuse, including child sexual abuse. (See West Virginia Code 49-6A-2)

**Offense** as defined by the *Book of Order*, Rules of Discipline, D-2.0203b., "is any act or omission by a member or officer of the Church that is contrary to the Scriptures or the Constitution of the Presbyterian Church (U.S.A.)." Behavior that violates this policy may be cited in a formal complaint or allegation of sexual misconduct filed with the Stated Clerk which accuses a member or officer of a disciplinary offense.

**Parishioner** - An individual who is a member of a particular minister's congregation, or someone who is relating to the minister as "pastor" as in a non-member counseling setting. For clergy serving in specialized ministries (chaplain, pastoral counselor, campus minister, etc.), "parishioner" is any person receiving the benefit of the minister's exercise of the office of ministry.

**Production or Distribution of Pornography** is defined by the actions or policy statements of the General Assembly of the Presbyterian Church (U.S.A.).

**Response** - Action taken when a report of sexual misconduct is received. It may include (1) inquiry into facts and circumstances, (2) possible disciplinary action, (3) pastoral care for victims and their families and others, and (4) pastoral care and rehabilitation for the perpetrators and care

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for their families. Investigation and disciplinary action will be handled by the investigating committee and pastoral care will be provided by the response team.

**Response Team** - The body constituted to facilitate the process of responding to allegations of sexual misconduct by a person covered by this policy.

**Sexual Abuse of Another Person** is defined by this policy and by Title VII of the Civil Rights Act of 1964 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, or their continued status in an institution.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
3. 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 based on the declared judgment or the affected individual.
4. 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, employee or participant or is under the age of eighteen or is an adult of diminished capacity.

**Sexual Malfeasance** – defined as sexual conduct within a ministerial (e.g. clergy with member of the congregation) or professional relationship (e.g. counselor with a client, lay employee with a church member, presbytery executive with a committee member who may be a layperson, a minister, or an elder). Sexual conduct includes unwelcome sexual advances, request for sexual favors, and verbal or physical conduct of a sexual nature. This definition is not meant to cover relationships between spouses, nor is it meant to restrict church professionals from having normal, social, intimate, or marital relationships.

**Sexual Misconduct** is the comprehensive term in this policy to include:

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

**Victim** - The person alleged to have been injured by sexual misconduct as defined above.

**Volunteer** - The term for those who provide services and receive no benefits or remuneration. Volunteers include persons elected to serve on boards, committees, and other groups. For purposes of this policy volunteers are treated the same as employees. Liabilities are the same for volunteers as for employees.

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## DISTRIBUTION

A copy of this Policy shall be distributed to all of the following: inquirers and candidates for the [ministry of Word and Sacrament](#) who are enrolled in this Presbytery, Teaching Elders who are members of the Presbytery or who have permission to labor within its bounds, Certified and Certified Associate Christian educators, Commissioned Ruling Elders, candidates, inquirers and preachers who are approved by the Presbytery, all officers, employees and volunteers of the entities of the Presbytery of West Virginia, and all clerks of sessions of congregations and to any person who requests a copy. The policy shall be made available to all persons who accuse others of misconduct, as well as those accused of misconduct.

The following notice shall be posted in the Presbytery office and all churches shall be encouraged to post it, so that members, employees and volunteers may know of the existence and contents of this Policy:

The Presbytery of West Virginia has a sexual misconduct prevention policy and all church professionals and those laboring on behalf of the Presbytery of West Virginia are expected to adhere to the same code of conduct. Any offenses reported in writing to the stated clerk of the presbytery (D- 10.0100) will be investigated as provided by the Rules of Discipline (D-10.0200) and additionally may be subject to civil or criminal review according to the laws of the state. In the event of any suspected sexual abuse involving children, appropriate local, county or state agencies will be notified. All ministers and church professionals of the Presbytery of West Virginia will observe strict standards of confidentiality, truth-telling, protection of alleged victims and the principle that a person is innocent until proven guilty. All reports of sexual misconduct must be confidentially reported to appropriate presbytery authorities for investigation.

## ACKNOWLEDGMENT

Teaching Elders who are members of the Presbytery or who have permission to labor within its bounds, Certified and Certified Associate Christian educators, Commissioned Ruling Elders, candidates, inquirers and preachers who are approved by the Presbytery, all officers, employees and volunteers of the entities of the Presbytery of West Virginia, and all clerks of sessions of congregations and to any person who requests a copy is required to sign a written acknowledgment indicating that she/he has received, read, understands, and agrees to conduct her/himself in accordance with this Policy. This signed acknowledgment shall be kept in the files of Presbytery.

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## MANDATORY EDUCATION

The Presbytery of West Virginia requires that the following persons shall complete a Presbytery-sponsored training workshop regarding the forms of sexual misconduct addressed in the policy: all Teaching Elders who are members of the Presbytery, all Certified and Certified Associate Christian educators, Commissioned Ruling Elders of the Presbytery, and all employees of the Presbytery. The workshop will be conducted annually for those persons in the previous categories who are new to the Presbytery in that calendar year or are new since the last workshop.

The names of those who have not completed the training workshop will be noted in a Committee on Ministry report to Presbytery, and the Committee on Ministry will initiate appropriate action to secure compliance with this requirement. Appropriate action may include a warning letter; refusal to approve or renew covenant agreements and/or administrative leave.

Each governing body is responsible for providing training concerning sexual misconduct issues. The Presbytery workshops are open to persons from congregations and entities to which this policy does not apply but who may benefit by participation, *e.g.*, an elder or a youth worker.

The Presbytery assigns to the **Committee on Preparation for Ministry** the responsibility to ensure that inquirers and candidates for the ministry of Word and Sacrament who are enrolled with this Presbytery receive a copy of this policy and sign an agreement acknowledging receipt of the policy and agreement to abide by same.

## SCREENING PROCESS

Part of pre-employment screening shall include a criminal background check and specific questions related to discovering previous complaints of sexual misconduct. The Ministry Committee shall screen all persons seeking ministerial calls with special attention to the Sexual Misconduct Self-Certification as found in the Pastoral Information Form. The **Personnel and Administration Committee** shall be responsible for screening persons applying for presbytery staff positions. Each committee or unit of Presbytery is responsible for screening the volunteers it enlists. It shall be the Ministry Committee's responsibility to hold all entities of Presbytery responsible in the implementation of this policy.

The following questions are recommended to each entity:

- (1) Has a civil, criminal, or ecclesiastical complaint ever been filed against you alleging sexual misconduct? If so, indicate the date, nature, and place of these allegations, and the name, address, and phone number of your employer at the time.
- (2) Have you ever resigned or been terminated from a position for reasons relating to allegations of sexual misconduct? If so, indicate the date, nature, and place of these allegations, and the name, address, and phone number of your employer at the time.
- (3) Have you been required to obtain professional treatment, physical or psychological, for reasons related to sexual misconduct by you? If so, would you be willing to sign a release of information to an appropriate entity of Presbytery.

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## REFERENCES

In addition to the Executive reference checks and search committee reference checks, the Ministry Committee chairperson may be asked to obtain additional references. The **Personnel and Administration Committee** shall obtain all references regarding applicants for presbytery staff positions. Each entity and committee of Presbytery shall obtain references on all volunteers under its direction. References should include inquiries regarding sexual misconduct. A written record of conversations or correspondence shall be kept in Presbytery's files.

## PREVENTIVE PRACTICES

1. The Presbytery of West Virginia will take appropriate steps to inform all those covered by this policy and all sessions of the standards of conduct and the procedures for effective response when receiving a report of sexual misconduct.
2. The Presbytery, through its appropriate entities, shall present educational programs designed to prevent sexual misconduct. All those covered by this policy shall be encouraged to attend such programs.
3. The Presbytery shall encourage all sessions to establish similar policies, procedures and practices related to sexual misconduct and to inform members, employees, volunteers, and candidates of the Presbytery's and session's Policy and Procedures with respect to sexual misconduct.

## LIABILITY AND INSURANCE

The Presbytery shall maintain and urge sessions to maintain liability insurance covering sexual misconduct on the part of a minister, employee, volunteer or other person acting on its behalf. Insurance against sexual misconduct should include coverage for mental anguish on the part of the abused. The Presbytery or congregations seeking such insurance should fully and regularly inform their liability insurers of their programs, activities, and staff who may be considered to hold high-risk occupations.

## THE PROCESS FOR REPORTING AN INCIDENT OF SEXUAL MISCONDUCT

### Initial Reports

**Importance of Prompt Reporting: Allegations of sexual misconduct should be made as promptly as possible.** The ability of the Presbytery to respond quickly and justly to sexual misconduct is related in part to the opportunity to receive allegations and to gather evidence soon after the occurrence. This Policy, however, recognizes the special problems sometimes related to discovery and recognition of certain forms of sexual misconduct. For example, child sexual abuse may not be recognized until the victim of abuse reaches the age of awareness or recognition, or fear may deter a victim from coming forward. Therefore, reports of certain forms of sexual misconduct may be delayed for many years.



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**Statute of Limitations:** There is no statute of limitations for filing charges alleging sexual abuse of any person under eighteen years of age or adults of diminished capacity or when the conduct includes force, threat, coercion, intimidation, or misuse of office or position. (D-10.0401c.)

**Awareness of Reporting Channels:** Reports of sexual misconduct may occur in a variety of ways. Because a governing body or entity cannot control to whom the accuser of sexual misconduct will first speak, it is important that officers, employees, and persons highly visible to Church members and visitors understand how reports of incidents are channeled to the proper persons.

**Importance of Confidentiality:** Allegations of sexual misconduct should never be taken lightly or disregarded and allowed to circulate without concern for the well-being, integrity, and reputation of the accuser, the accused, and the Church. Allegations should be dealt with as matters of highest confidentiality, before and after they have been submitted to appropriate authorities as outlined below.

**Notice of Opportunity to File Written Statement:** The first person to learn of an incident of alleged sexual misconduct should, based on information from the accuser, encourage the accuser to speak to a higher authority, lest the Church be unable to respond because no one is able to give firsthand information. The person should not seek to investigate or corroborate on his or her own. A report should be directed to the Stated Clerk when the accused is a minister of Word and Sacrament, and to the clerk of session of the congregation when the accused is a non-minister. In all cases, and particularly in cases where the accuser is hesitant to talk to a higher authority, the person receiving the initial report should advise the accuser of the opportunity to submit a written report. The Stated Clerk shall initiate Book of Discipline procedures and shall also notify the Response Team.

### Written Statements

**Filing Written Statement When Victim Unwilling or Lacks Standing:** A member of a governing body receiving information from any source that an offense may have occurred may submit a written statement of the alleged offense. See D-10.0102b. That written statement should be submitted to the Stated Clerk of the Presbytery when the accused is a Teaching Elder and to the clerk of session when the accused is a congregation member. D- 10.0101 a member of a governing body who receives information of an alleged offense should submit a written statement when the victim of the alleged offense is not a person under the jurisdiction of the PC (USA) and therefore does not have standing to file a written statement directly.

### Handling Written Statements:

**Against Minister Member of Presbytery:** Upon receipt of a written statement that a minister member of the Presbytery has committed an alleged offense, the Stated Clerk, without undertaking further inquiry, shall then report to the governing body only that an offense has been alleged, without naming the accused or the nature of the alleged offense, and refer the statement immediately to an investigating committee (D-10.0103). As outlined below, the Stated Clerk shall also notify the Chair of the Presbytery's Response Team of the allegation so that it may

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provide a pastoral response.

**Against Others:** For members of the PC (USA) who are employed by the presbytery, an allegation of sexual misconduct will trigger the applicable procedures outlined in the *Book of Order*, D-10.0000 (Disciplinary Cases), with a written statement of alleged offense being sent to the stated clerk for Ministers of Word and Sacrament or the clerk of session of the church where an individual is a member. Procedures outlined in the Personnel Policies will still be in effect for the employment relationship and may be used concurrent with any *Book of Order* Disciplinary inquiry or charges.

### **Mandatory Reporting Duties of Ministers, Elders, and Deacons Under the *Book of Order***

**Ministers:** Teaching Elder, **Certified** and Certified Associate Christian Educators shall report to ecclesiastical and civil legal authorities knowledge of harm, or the risk of harm, related to the 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 made in connection with the exercise of pastoral care (as defined in *Book of Order* G-6.0204a and G- 14.0732), or (2) the minister reasonably believes that there is risk of future physical harm or abuse.

**Ruling Elders and Deacons:** Under the *Book of Order* (see G-6.0304b, G-6.0402a), Ruling Elders and Deacons are also required to report such sexual molestation or abuse of a minor or an adult who lacks mental capacity when (1) they gain knowledge of the sexual molestation or abuse in the course of service to the church, (2) but outside of a privileged communication, and (3) they reasonably believe that there is risk of future physical harm or abuse.

**Ecclesiastical and Civil Authorities:** The appropriate ecclesiastical and civil authorities to whom ministers, certified educators, elders, and deacons shall report suspected abuse are as follows:

a. Ecclesiastical authorities: For ministers, to the Stated Clerk of the Presbytery; for elders and deacons, to the pastor of the congregation and/or the clerk of session.

b. Civil legal authorities: In the case of suspected abuse of a minor, to the county office of the West Virginia Department of Health and Human Resources (DHHR). Reports can also be made to the Abuse and Neglect Hotline (1-800-352-6513) 7 days a week, 24 hours a day. In the case of suspected abuse of an adult who lacks mental capacity, to the appropriate police authority or district attorney. One may also report to the Virginia Department of Social Service 1-800-552-7096 from within Virginia or 1-804-786-8536 from outside Virginia; the Kentucky Child Abuse Hotline 1-800-752-6200; or in Ohio call the Childhelp® USA National Child Abuse Hotline at 1-800-422-4453.

### **Reporting Requirements Under West Virginia Law**

Anyone may report suspected child abuse or neglect. Under West Virginia Law (WV Code 49-6A-2) certain persons are required to report. These persons include:

- medical, dental, or mental health professionals
- religious healers
- social services workers

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- school teachers and other school personnel
- members of the clergy
- child care or foster care workers
- emergency medical services personnel
- peace officers or law enforcement officials circuit court judges
- family court judges or magistrates
- Christian Science practitioners

The purpose of required reporting is to identify suspected abused and neglected children as soon as possible so that they may be protected from further harm. Child Protective services cannot act until a report is made.

Without detection, reporting and intervention abused and neglected children may remain victims for the rest of their lives. These children do not grow up and forget their childhood. They carry physical and emotional scars throughout their lives, often repeating the pattern of abuse and neglect with their own children.

West Virginia law provides immunity from civil or criminal liability for persons reporting in good faith (WV Code 49-6A-6)

### **PCUSA Hotline**

The Presbyterian Church (USA) has a sexual misconduct hotline. The number is 1-888-728-7228 ext.5207 or 1-502-569-5207. It is staffed by the sexual misconduct ombudsperson. The purpose of this hotline is to report events, even if the victim is not ready to pursue a formal complaint at this time. The caller has the ability to control the information and how it is used. This can be especially helpful for those who want more information about the process, or who want a historical record kept in the event that s/he decides to pursue a complaint at a later date. If the person accused of the violation is named, then it could be helpful in the event that another victim files a complaint against the same person. The ombudsperson can be a listening ear as well as resource as to options and process. The important point is that the caller controls the information.

### **Immediate Consideration of Administrative Leave in Certain Cases of Alleged Sexual Abuse**

When the Stated Clerk of the Presbytery receives a written statement of alleged sexual abuse committed by a minister of Word and Sacrament against a person under the age of 18 or a person alleged to lack mental capacity to consent, the moderator of the permanent judicial commission designates two members, who may be from the roster of former members of the permanent judicial commission, to determine whether the accused should be placed on paid administrative leave during resolution of the matter. For details regarding the process by which this determination is made, see D-10.0106. Even in circumstances in which the Book of Order does not require consideration of administrative leave, any investigating committee appointed to investigate the allegations should consider whether an agreement on administrative leave is desirable, keeping in mind that the purpose of administrative leave is preventive and not punitive.

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## Request to Refer

Whenever the circumstances of an alleged offense by a minister member of Presbytery involve matters or questions for which it is desirable or necessary that a higher governing body decide the case, the Presbytery Permanent Judicial Commission may submit a written request to the Synod Permanent Judicial Commission to refer the matter to it. Similarly, a session may request to refer a matter to the Presbytery Permanent Judicial Commission when an alleged offense by a member involves matters or questions for which it is desirable or necessary that the Presbytery decide the case. D-4.0100.

## IMPLEMENTATION PROCEDURE

In any incident of sexual misconduct there are two dimensions that necessitate a response: 1) a pastoral response and 2) a judicial or disciplinary response. Both are key elements in accomplishing the goals of justice and compassion.

### PASTORAL RESPONSE

In responding to accusations of sexual misconduct, the Church should seek healing and assure the protection of all persons. Where possible and within the limits of the process contemplated under this policy, the privacy of persons should be respected. The Book of Order assures all persons of fair procedures in the disciplinary process, and all persons involved should be informed of these procedures at the outset.

When the Stated Clerk of the Presbytery receives a verbal report or written statement of an alleged offense, the Stated Clerk shall immediately notify the chair of the Presbytery's Response Team. The Presbytery's pastoral response will be managed by the Presbytery's Response Team. A fundamental principle in responding to an accusation of sexual misconduct is to ensure that the actions of the Response Team promote and enhance the process of reconciliation and healing by effectively supporting those affected, without compromising or disrupting (i) any investigation by civil authorities and due process or (ii) inquiry or judicial process that may be undertaken by the governing body.

For the following procedures to be used, the accused must be a **Teaching Elder, Certified or Certified Associate Christian educator**, Commissioned Ruling Elder, candidates, inquirers and preachers who are approved by the Presbytery, all officers or employees of the Presbytery of West Virginia; a volunteer or lay person serving a congregation under its supervision, including anyone who serves on Presbytery committees, boards, councils and commissions, and other entities in support of Presbytery programs. In such a case, the presbytery declares its intention to deal clearly and fairly with the alleged sexual misconduct when experienced by any person while involved in any professional or volunteer relationship with the presbytery.

### Goals of Procedure:

- 1) listen to all parties

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- 2) inform all parties of their options (including resources for consultation, counseling, mediation, as well as the steps and resources necessary to utilize the disciplinary procedures in the Book of Order)
- 3) provide, if requested, mediation with the hope of reconciliation for the parties involved.

If disciplinary procedures are begun, the role of the response team is concluded. Continuing pastoral care will be provided by the Presbytery.

### THE RESPONSE TEAM

In order to fulfill this intention, the presbytery shall elect at least six persons, composed of Ruling Elders, Teaching Elders, or Certified Christian educators, to serve staggered three-year terms on the Response Team. Presbytery should be careful to maintain appropriate gender balance, and representation by quadrants when choosing members. The initial classes shall be two members for a one-year term, two for a two-year term, and two for a three-year term. The Response Team shall elect a chair from among its members. Normally individuals will serve two three-year terms and can be reappointed following a one year absence.

The Ministry Committee shall nominate to Presbytery members of the Response Team and provide for appropriate training for all people elected, with such training updated annually. It shall be the responsibility of the Committee on Ministry to evaluate the work of all Response Teams that have been active during the year.

When a request is made to the Presbytery, the chair of the Response Team shall be notified. The Response Team will assign a liaison for the victim, accuser, accused, and affected congregation(s). The liaison's tasks are (1) to assess the needs for pastoral, therapeutic, or other assistance and (2) to refer the person(s) to the appropriate resources. Liaisons should make contact with the victim, accuser, accused, or congregation's pastor (or if the pastor is the accused, then with the clerk of session of the congregation) as quickly as possible after being assigned as a liaison. As the first responder in these situations, liaisons should be sensitive to the pastoral care needs of the person to whom they are assigned as they undertake to assess what referral needs might exist and provide the person with names of appropriate resources from the resource pool who might be available to assist them in addressing those needs. In certain circumstances, the competencies of the liaison may be such that it is appropriate for the liaison to continue, beyond the assessment and referral stage, to serve in the role of accompanying the person throughout any administrative or judicial ecclesiastical processes and thus becoming an advocate (see D-10.0203 a., b.). This accompaniment role is ***not*** intended to be in lieu of any therapeutic or longer term pastoral counseling that may be needed.

In making their assessment the liaisons should be sensitive to the differing pastoral needs to be addressed. Some of the potential needs are outlined below:

#### **Victims and Families**

It has sometimes been the case that the alleged victim or family is so angry and alienated from the Church that offers of help have been perceived as insincere or attempts at a cover-up. If the alleged victim or family at first refuses, the liaison should continue to offer help. The Presbytery's concern shall never be to protect itself or the congregation but, rather, to seek the truth and to offer care to alleged victims and accused.

The extent of the damage to the alleged victims of sexual misconduct will vary from person to

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person, influenced by such factors as the degree of severity of abuse, the age and emotional condition of the alleged victim, personality dynamics, and the importance of their religious faith. The liaison shall assume in all cases in which a person has been determined to have been a victim that the person has been wounded by the experience.

Feelings of guilt, shame, anger, mistrust, lowered self-esteem, unworthiness, and feelings of alienation from God, self, the religious community, and family are frequent injuries suffered by victims. It is important for the Response Coordination Team to be sensitive to the victim's pain and need for healing and to make appropriate discretionary pastoral care available.

### **Congregations or Employing Entity**

The allegations against a minister, employee, member or volunteer may polarize the congregation or organization, damage morale, and create serious internal problems. Efforts should be taken to recognize and identify the problems and heal the damage done to the congregation or organization.

The congregation should also seek to be a community of healing for victims. The Response Team may need to provide resources and training for the congregation in this ministry.

### **Accused**

In working with the accused and the family of the accused, the liaison should be aware of these possible needs:

- (a) To receive information about the charges. When an accusation of sexual misconduct has been received by the Response Team, the accused must be notified in writing. The accused shall be warned that any statements made to the Response Team may be used against the accused in later proceedings.
- (b) To be informed in a timely way about the process with regard to an accusation. The Response Team shall explain the process used by the governing body when an accusation of sexual misconduct has been made and the options available to the accused. The Response Team shall recommend that the accused seek legal advice immediately since the accusation could result in Church discipline or civil or criminal court action. The liaison shall direct the accused to the Stated Clerk for any information regarding the ongoing process of any judicial case.
- (c) To receive legal advice and assistance. The accused may seek legal advice from any source, but it should be noted that in Church disciplinary or remedial cases "no person shall act as counsel who is not a member of the Presbyterian Church (U.S.A.)" (D-11.0301). The accused is responsible for his or her attorney fees, but if an accusation proceeds to the initiation of disciplinary case and the accused is unable to employ counsel, the accused may request appointment of counsel under the provisions of the Book of Order (D-11.0302).
- (d) To receive personal and therapeutic support. The accused may require spiritual and professional assistance. The Response Team should offer to help arrange for such support from a pastor or therapist, if the accused desires.

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(e) To receive assistance with economic security and care for the family. When an allegation of sexual misconduct has been made against a minister or staff of the Presbytery, the economic security of the accused is directly threatened along with reputation, career, and family relationships. The Presbytery may be of assistance when the accused is a minister. The Response Team may alert the Executive Presbyter to the possible spiritual, emotional, and financial needs of the family of an accused minister and recommend expert resources. The Response Team shall not become personally involved with trying to meet these needs.

### **Non-Victim Accuser**

In many cases the non-victim accuser is the parent, guardian, or other advocate for a child who has been the alleged victim of sexual misconduct. Because of a child's minority status, an adult often files the action on behalf of the child. In cases where the accuser is a non-Presbyterian, verbal notification may be turned into a formal allegation under the Rules of Discipline by any member of the Presbyterian Church (USA).

### **TIME FACTORS**

When a person notifies the Executive Presbyter, Stated Clerk or the Ministry Committee Chair, of allegations of sexual misconduct, the chair of the Response Team shall be notified. The chair shall attempt to make immediate contact with the alleged victim. After contact with the alleged victim, the chair shall attempt to make contact with the accused. Ordinarily, from the time notification is made, no longer than ten (10) days shall elapse until the alleged victim and representatives of the Response Team shall hold an initial meeting. Following the meeting with the alleged victim, the Response Team shall meet with the accused.

From the date of the initial meeting of the Response Team and the alleged victim, no longer that thirty (30) days shall elapse until recommendations are made to the parties involved and a report filed with the Committee on Ministry regarding the allegation.

### **RECORDS**

The only required records of each case shall include the names of the Response Team members; the name of the victim of an alleged incident; the name of the person accused; the date(s) of the incident(s); the date of all meetings with the alleged victim, the accused, and other parties to the incident; the date on which the final recommended disposition of the matter was made; the specifics of the final disposition; and any recommendations for further action. One copy of these records shall be kept in the permanent files of the Chair of the Ministry Committee, and the Presbytery of West Virginia shall retain one copy in its office. Such records will be marked confidential and securely stored. The Response Team shall keep no separate records of this confidential material.

The person within Presbytery giving a reference is obligated to give truthful information regarding allegations, inquiries, and administrative or disciplinary action related to sexual misconduct. The response, however, must be limited to information that is a matter of record.

### **JUDICIAL RESPONSE**

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### **Appointment of Investigating Committee**

Immediately upon receipt of a written statement of alleged sexual misconduct by a Teaching Elder, the Stated Clerk of the Presbytery shall notify the Moderator of Presbytery who shall appoint an investigating committee (*Book of Order* D-10.0201b and the *Manual of Presbytery of West Virginia 2010*, lines 951-954). In the case of alleged sexual misconduct by an elder or deacon, the Session shall appoint an investigating committee (D-10.0201a). The investigating committee shall be composed as outlined in D-10.0201 of the *Book of Order*, and shall proceed with its investigation as outlined in D-10.0202.

### **Authorized Communications Concerning Status of Accusation During Investigation or Disciplinary Proceeding**

**General Rule of Confidentiality:** Prior to the filing of charges, the *Book of Order* protects the confidentiality of the identity of an accused and of the allegations of a disciplinary offense by limiting the disclosure of information in the Presbytery minutes to the facts that an allegation has been received and an investigating committee appointed. (D-10.0103)

**Permitted Communications to Address Pastoral Needs:** During the course of the investigating committee's work, the Response Team has primary responsibility for ensuring that any pastoral care needs are met. Liaisons/advocates for an alleged victim, the accused, and the affected congregation(s) may have a need, for pastoral reasons, for information about the status of the investigation, and the investigating committee itself may identify additional persons who have a need for pastoral care. Under these circumstances, the following communications may be made:

- (1) The liaison/advocate for a victim, accuser, accused, or affected congregation(s) should communicate with the Stated Clerk of the Presbytery to receive general information about the status of the matter—such as when the investigating committee expects to make a recommendation on whether charges should be filed or when the presbytery will receive a report on the filing of charges. If the accused is represented by counsel, then counsel for the accused should direct inquiries to the investigating committee.
- (2) If the investigating committee's work uncovers other victims or affected persons who may have a need for a pastoral response from the Presbytery, the investigating committee may communicate that information to the Stated Clerk, who may communicate the need for additional pastoral care to the chair of the Response Team. These communications shall not disclose confidential factual details about the underlying allegations, but only the fact of a potential need for pastoral care.

### **Consideration of Administrative Leave by Investigating Committee**

As set forth in the definition of Administrative Leave, D-10.0106, a Permanent Judicial Commission must consider whether administrative leave should be imposed upon a minister of the Word and Sacrament who has been accused of sexual abuse of a minor or an adult lacking mental capacity to consent. When a minister has been accused of another type of sexual



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misconduct by a minister, and when other persons covered by this policy are accused of any type of sexual misconduct as defined herein, an investigating committee should consider whether administrative leave is desirable, keeping in mind that the purpose of administrative leave is preventive, and not punitive.

### **Investigating Committee's Work**

The investigating committee's responsibilities are detailed in D-10.0202.

(a) No charges filed: If the Investigating Committee concludes, after a thorough investigation, that there is no probable cause to believe that an offense was committed by the accused or that charges cannot reasonably be proved based on the available evidence and witnesses, then it shall report that conclusion to the Stated Clerk, and the Presbytery shall be informed only that no charges were filed. D-10.0202f., g., i.

(b) Charges to be filed and accused concurs: 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 permanent judicial commission, along with the signed statement of the accused, and a settlement of consequences may be mediated. Any settlement must be approved by the Presbytery Permanent Judicial Commission in accordance with D-10.0202h.

(c) Charges to be filed and accused does not concur: If the Investigating Committee concludes that probable cause exists and charges can reasonably be proved, but the accused does not concur with the allegations, charges are to be filed with the permanent judicial commission, and the judicial process is to continue as outlined in D-10.0400.

### **Consideration of Alternative Form of Resolution**

Where an Investigating Committee determines there is probable cause to believe that any offense falling within the definition of sexual misconduct has been committed, an alternative form of resolution may be used to reach agreement on the consequences of the offense. In other words, in cases where the Investigating Committee believes sexual misconduct has occurred and can reasonably be proved, mediation of guilt or innocence is not appropriate. Rather, the alternative form of resolution must include an acceptance of responsibility for the offense. Such an admission of responsibility by the accused is an important demonstration that one of the pastoral aims of discipline—namely, repentance—will be served by the use of an alternative form of resolution.

In all cases where an alternative form of resolution is pursued through mediation, the mediation shall be completed within 120 days from the appointment of the Investigating Committee, unless an extension is granted by the session or Permanent Judicial Commission. Any settlement agreement must be presented to the session or permanent judicial commission for its approval, as outlined in D-10.0202h.

In negotiating a settlement, the parties are encouraged to agree on the extent of the background facts that will be disclosed to the session or Permanent Judicial Commission to enable it to exercise its approval responsibility in an informed fashion.

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### **Terms of Censure and Restoration**

The degrees of censure that may be imposed by a permanent judicial commission are listed in D-12.0100, and the terms of restoration in D-12.0200.

### **Communicating an Acquittal**

Because of the harm to a person's reputation and career that can accompany allegations of sexual misconduct, the appropriate governing body or entity should report an acquittal of any such charges as fully as it deems appropriate when it is requested to do so by the accused.

### **Request for Vindication**

A member of the Presbyterian Church (U.S.A.) who feels injured by rumor or gossip may invoke the procedures outlined in D-9.0101 to request an inquiry for vindication.

### **Pastoral Inquiry by Administrative Commission When Accused in Sexual Abuse Case Dies or Renounces Jurisdiction**

A governing body may appoint an administrative commission to make pastoral inquiry when judicial proceedings in a sexual abuse case end because the accused dies or renounces jurisdiction. Such an inquiry is NOT part of the church's judicial process, but the inquiry shall be empowered to receive witnesses and consider evidence, to reach a determination of the truth of the accusation, and to make a full report to the appointing governing body, including recommendations for appropriate action. See G-9.0503(a) (7).

The appointment of such an administrative commission should be considered when the truth-telling that accompanies this process is needed to promote the healing of those persons and congregations who have been affected by the alleged abuse.

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**ACKNOWLEDGMENT OF RECEIPT**

I hereby acknowledge that I have received a copy of the Presbytery of West Virginia’s Policy on Sexual Misconduct and Appendix dated \_\_\_\_\_. I have read the policy, understand its meaning, and agree to conduct myself in accordance with the policy. I further understand that the Presbytery of West Virginia has a policy of “no tolerance” regarding sexual misconduct and abuse. In addition, if required by this policy, I agree to attend Sexual Misconduct Prevention Training provided by the Presbytery of West Virginia with regard to this Sexual Misconduct Prevention Policy.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title/Position \_\_\_\_\_

Date \_\_\_\_\_

Received by \_\_\_\_\_

Date \_\_\_\_\_

**Updating This Policy**

Annually, Ministry Committee shall see that this Policy is in compliance with all constitutional requirements of the Presbyterian Church (USA), and all requirements of the laws of the States of West Virginia, Virginia, Kentucky and Ohio. Any necessary changes shall be submitted to the Presbytery for action.

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**APPENDIX**

**WEST VIRGINIA CODE § 49-6A**

**ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

*§49-6-1. Petition to court when child believed neglected or abused; notice.*

- a.** If the department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or to the judge of such court in vacation. The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how such conduct comes within the statutory definition of neglect or abuse with references thereto, any supportive services provided by the department to remedy the alleged circumstances and the relief sought. Upon filing of the petition, the court shall set a time and place for a hearing and shall appoint counsel for the child. When there is an order for temporary custody pursuant to section three of this article, such hearing shall be held within thirty days of such order, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.
- b.** The petition and notice of the hearing shall be served upon both parents and any other custodian, giving to such parents or custodian at least ten days' notice. Notice shall also be given to the department, any foster or preadoptive parent, and any relative providing care for the child. In cases wherein personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to such person by certified mail, addressee only, return receipt requested, to the last known address of such person. If said person signs the certificate, service shall be complete and said certificate shall be filed as proof of said service with the clerk of the circuit court. If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. A notice of hearing shall specify the time and place of the hearing, the right to counsel of the child and parents or other custodians at every stage of the proceedings and the fact that such proceedings can result in the permanent termination of the parental rights. Failure to object to defects in the petition and notice shall not be construed as a waiver.
- c.** At the time of the institution of any proceeding under this article, the department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

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**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR  
NEGLECTED. Check to see if current**

*§49-6A-1. Purpose.*

It is the purpose of this article, through the complete reporting of child abuse and neglect, to protect the best interests of the child, to offer protective services in order to prevent any further harm to the child or any other children living in the home, to stabilize the home environment, to preserve family life whenever possible and to encourage cooperation among the states in dealing with the problems of child abuse and neglect.

*§49-6A-2. Persons mandated to report suspected abuse and neglect.*

When any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, member of the clergy, circuit court judge, family law master, employee of the division of juvenile services or magistrate has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than forty-eight hours after suspecting this abuse, report the circumstances or cause a report to be made to the state department of human services: Provided, That in any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made to the division of public safety and any law-enforcement agency having jurisdiction to investigate the complaint: Provided, however, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

*§49-6A-3. Mandatory reporting to medical examiner or coroner; postmortem investigation.*

Any person or official who is required under section two of this article to report cases of suspected child abuse or neglect and who has reasonable cause to suspect that a child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner or coroner. Upon the receipt of such a report, the medical examiner or coroner shall cause an investigation to be made and report his findings to the police, the appropriate prosecuting attorney, the local child protective service agency and, if the institution making a report is a hospital, to the hospital.

*§49-6A-4. Photographs and X rays.*

Any person required to report cases of children suspected of being abused and neglected may take or cause to be taken, at public expense, photographs of the areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child. Any photographs or X rays taken shall be sent to the appropriate child protective service as soon as possible.

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*§49-6A-5. Reporting procedures.*

Reports of child abuse and neglect pursuant to this article shall be made immediately by telephone to the local state department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department shall establish and maintain a twenty-four hour, seven-day-a-week telephone number to receive such calls reporting suspected or known child abuse or neglect. A copy of any report of serious physical abuse, sexual abuse or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner's office. All reports under this article shall be confidential and unless there are pending proceedings with regard thereto shall be destroyed six years following their preparation. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

*§49-6A-6. Immunity from liability.*

Any person, official or institution participating in good faith in any act permitted or required by this article shall be immune from any civil or criminal liability that otherwise might result by reason of such actions.

*§49-6A-7. Abrogation of privileged communications.*

The privileged quality of communications between husband and wife and between any professional person and his patient or his client, except that between attorney and client, is hereby abrogated in situations involving suspected or known child abuse or neglect.

*§49-6A-8. Failure to report; penalty.*

Any person, official or institution required by this article to report a case involving a child known or suspected to be abused or neglected, or required by section five of this article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ten days or fined not more than one hundred dollars, or both.

*§49-6A-9. Establishment of child protective services; general duties and powers; cooperation of other state agencies.*

- a. The state department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.
- b. The local child protective service shall investigate all reports of child abuse or neglect: Provided, That under no circumstances shall investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services necessary to ensure the safety of children. The local child protective service shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families: Provided, however, That under no circumstances may the secretary or his or her designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services. Each local child protective service office shall:

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1. Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a twenty-four hour, seven-day-a-week basis and cross- file all such reports under the names of the children, the family, any person substantiated as being an abuser or neglecter by investigation of the department of human services, with use of such cross-filing of such person's name limited to the internal use of the department;
  2. Provide or arrange for emergency children's services to be available at all times;
  3. Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within fourteen days, there shall be: A face-to-face interview with the child or children, and the development of a protection plan, if necessary for the safety or health of the child, which may involve law- enforcement officers or the court;
  4. Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within seventy-two hours, there shall be: A face-to-face interview with the child or children; and the development of a protection plan which may involve law-enforcement officers or the court; and
  5. In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or family law master may refer allegations of child abuse and neglect to the local child protective service for investigation of the allegations as defined by this chapter and require the local child protective service to submit a written report of the investigation to the referring circuit court or family law master within the time frames set forth by the circuit court or family law master.
- c. In those cases in which the local child protective service determines that the best interests of the child require court action, the local child protective service shall initiate the appropriate legal proceeding.
- d. The local child protective service shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care.
- e. To carry out the purposes of this article, all departments, boards, bureaus and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective service plan shall, upon request, provide to the local child protective service such assistance and information as will enable it to fulfill its responsibilities.
- f.

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1. In order to obtain information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary of the department of health and human resources may serve, by certified mail or personal service, an administrative subpoena on any corporation, partnership, business or organization for the production of information leading to determining the location of the child.
2. In case of disobedience to the subpoena, in compelling the production of documents, the secretary may invoke the aid of:
  - A. The circuit court with jurisdiction over the served party, if the person served is a resident; or
  - B. the circuit court of the county in which the local child protective services office conducting the investigation is located, if the person served is a nonresident.
3. A circuit court shall not enforce an administrative subpoena unless it finds that:
  - A. The investigation is one the division of child protective services is authorized to make and is being conducted pursuant to a legitimate purpose;
  - B. the inquiry is relevant to that purpose;
  - C. the inquiry is not too broad or indefinite;
  - D. the information sought is not already in the possession of the division of child protective services; and
  - E. any administrative steps required by law have been followed.
4. If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

*§49-6A-10. Educational programs.*

Within available funding and as appropriate, the state department shall conduct educational programs with the staff of the state department, persons required to report, and the general public in order to encourage maximum reporting of child abuse and neglect, and to improve communication, cooperation and coordination among all agencies involved in the identification, prevention and treatment of the abuse and neglect of children.