

Clergy as Mandatory Reporters of Child Abuse and Neglect

(This report is not intended to offer legal advice – any specific questions on this topic should be referred to your attorney, the Nebraska Department of Human Services or your local law enforcement agency.)

The law has traditionally respected “privileged communication” between clergy and penitent. Yet these parameters which shape the ethical demand for confidentiality for the clergy person must be considered in a larger context. Are there “reasons sufficient to override the force of all these premises, as when secrecy would allow violence to be done to innocent persons...”?

The law is unclear as to the Clergy’s duty to disclose intent to commit future crimes and to cause harm to another: is the Clergy who does not report the probability that a crime will be committed and a person harmed legally liable for damage done to that person? What of the ethical obligation to protect the innocent?

There is a distinction between confidentiality and secrecy. Secrecy is the absolute promise never under any circumstance to share any information which comes to a clergy person; this is the essence of sacramental confession. But a commitment to secrecy may also support maintaining the secret of the abuse of a child which likely means that the abuse continues.

Confidentiality means to hold information in trust and to share it with others only in the interest of the person involved, i.e. with their permission, in order to seek consultation with another professional, or in order to protect others from harm by them. Confidentiality is intended as a means to assist an individual in getting help for a problem which they have so as not to cause further harm to themselves or others.

Confidentiality is not intended to protect abusers from being held accountable for their actions or to keep them from getting the help that they need. Shielding them from the consequences of their behavior likely will further endanger their victims and will deny them the repentance which they need.

There is another set of ethical principles which enter into this discussion from a faith perspective. They have to do with one’s professional responsibility to victims of abuse. Within both Jewish and Christian traditions, there is the responsibility of the community to protect those in its midst who are vulnerable to harm. Thus Hebrew scripture refers to the hospitality code in regard to the sojourner, the orphan, and the widow. These were the persons specifically vulnerable to exploitation and who did not have built-in supporters in family or community. Thus it was the entire community’s responsibility to protect them in their powerlessness.

In today’s society, it is surely the abused child who is most powerless to protect her/himself and who is in need of support from the wider community.

The other ethical principle which applies here is that of justice-making in response to harm done by one person to another. Christian scripture here is very specific: “Take heed to yourselves; if your brother sins, rebuke him, and if he repents, forgive him;...” (Luke 17.3) The one who sins and who harms another must be confronted so that he might seek repentance. Both Hebrew and Christian scriptures are clear that repentance has to do with change: “... get yourselves a new heart and a new spirit!... so turn and live.” (Ezekiel 18.31-32); the Greek word used for repentance is *metanoia*, “to have another mind”. In this context of repentance, accountability and justice, forgiveness and reconciliation may be possible. This should be the primary concern of the pastor.

It is critical also to keep in mind the context of sexual and physical child abuse as there are aspects of these criminal behaviors which must be considered:

1. Batterers or incest offenders will re-offend unless they get specialized treatment.
2. Offenders against children minimize, lie, and deny their abusive behavior.
3. Offenders cannot follow through on their good intentions or genuine remorse without help from the outside.
4. Treatment of offenders is most effective when it is ordered and monitored by the courts.
5. The secret of the child's abuse must be broken in order to get help to the victim and offender.
6. Clergy do not have all the skills and resources necessary to treat offenders or to assist victims.
7. Quick forgiveness is likely to be cheap grace and is unlikely to lead to repentance.

The question which faces the pastor or minister in his pastoral relationship to a congregant is, if that person has received information in the course of conversation with a congregant which reveals the probable abuse of a child and which indicates that the child is still in danger of being further abused, what is their obligation? This question arises regardless of legal requirements of mandatory reporting or exemption.

It is in this context that confidentiality must be understood: when faced with a conflict of ethical norms (confidentiality vs. protection of a child from abuse). Can both be fulfilled in bringing forth repentance for an abuser?

In practice, the ethical and pastoral issues are posed somewhat differently. Seldom does an offender against children come forward voluntarily and "confess". It is much more likely that a child or teenager who is being abused or a non-offending parent or other family member will come to a clergy seeking assistance. Hence what is presented is not confessional on the part of an offender but a cry for help from a victim. Confidentiality is still a concern but not in the sense of the "confessional seal". Instead it is a matter of respecting the victim's control of the information which she/he shares.

Scripture makes the case for attending to safety and security. The wise men, after spending time with the newborn King, were warned about Herod in a dream, and as a result, "They returned to their country by another route" (Matthew 2:12). Likewise, Joseph was told by an angel that Herod was wanting to kill Christ, and so "He got up, took the child and his mother and left for Egypt" (Matthew 2:14). Throughout Scripture we see illustrations of people being warned of danger and choosing a safer way.

It is imperative for pastors and ministers to be able to answer the following questions:

1. What is the definition of reportable "child abuse" under my state child abuse reporting law?
2. Am I a mandatory reporter of child abuse?
3. What if I learn of child abuse in the course of a conversation that is protected by the clergy-penitent privilege? Am I still required to report?
4. How do I report child abuse?

What is Child Abuse?

All 50 states have enacted child abuse reporting statutes in an effort to protect abused children and prevent future abuse. In Nebraska, abuse is defined in three ways:

1. Physical abuse exists when a child has a non-accidental injury.
2. Emotional abuse exists when parents always put blame on a child or always reject the child.
3. Sexual abuse exists when an adult uses a child as a part of any type of sexual act.

What is Neglect?

1. Emotional neglect is when the child suffers from the parent's not giving them chances for feeling loved, wanted, secure, and worthy.
2. Physical neglect is when a parent does not provide basic needs or a safe place to live. Examples include but are not limited to:
 - not having enough food or clothing;
 - not following doctor's orders;
 - not providing the supervision needed to keep the child safe;
 - not having heat in the winter.

Are Pastors And Ministers Mandatory Reporters Of Child Abuse?

All 50 states identify *mandatory reporters*, those persons who are under a legal duty to report abuse to designated civil authorities. In most states, mandatory reporters must report both actual and reasonably suspected cases of child abuse. Failure to do so is a crime (usually a misdemeanor).

Nebraska Statute states that **anyone** (health care providers, law enforcement officials, or **any other person**) who has reasonable cause to believe that a child has been subject to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in abuse or neglect shall report the abuse to a law enforcement agency or to the Department of Health and Human Services. Iowa law is similar and neither state exempts clergy from this reporting requirement.

Reports of suspected child abuse or neglect are made to the Child Abuse/Neglect Hotline at 1-800-652-1999. In an emergency, local law enforcement should be contacted immediately.

The Department investigates all reports of suspected child abuse and neglect that meet the screening criteria. The Department and police work together on reports and the police may also do an investigation. Due to the confidential nature of the investigation, the person who reports the abuse cannot be informed of the action taken or the result of the report.

By law, the Department of Health and Human Services must keep electronic records of individuals who the Department or the courts find responsible for abuse and neglect of a child or vulnerable adult. These records are maintained in the Nebraska Child Abuse and Neglect Central Register/Adult Abuse and Neglect Central Registry. This registry is used to conduct pre-employment background checks, approve licenses for child care programs and to approve placement of children for foster care or adoption.

Only registered providers may request a pre-employment background check on the Register/Registry. If you would like to access information on this registry, submit a letter on your church's letterhead briefly describing your reason for needing to conduct registry checks and mail your letter to:

**Children and Family Services Policy Unit
Attn: APS/CPS Registry/Register
P.O. Box 95026
Lincoln, NE 68509**