

**CHURCHES, CHILD ABUSE REPORTING REQUIREMENTS,
AND CHILD ABUSE PREVENTION**
[updated through October 30, 2008]

By: Attorney Timothy W. Denney
Rickard, Denney, Garno & Associates
110 N. Saginaw Street, Ste. 1
Lapeer, Michigan 48446
(810) 664-0750
e-mail: tdenney@twdpclaw.com
website address: www.christiansandthelaw.com

I. MANDATORY CHILD ABUSE REPORTING REQUIREMENTS UNDER MICHIGAN LAW

A. Who Must Report Child Abuse:

1. Persons in Certain Occupations:

- clergy: (defined as “a priest, minister, rabbi . . . or other religious practitioner, or similar functionary of a church”(underlining added):
NOTE: Earlier versions of the law limited the “clergy” definition to ordained clergy, but the bill that passed deleted this limitation. Thus, anyone with the title or functions of a “pastor”, even if not ordained, should probably assume they are a mandatory reporting person).

- physician

- physician’s assistant

- coroner

- dentist

- registered dental hygienist

- medical examiner

- nurse

- a person licensed to provide emergency medical care

- audiologist

- psychologist

- marriage and family therapist
- licensed professional counselor
- certified social worker
- social worker
- social work technician
- school administrator
- school counselor
- school teacher
- law enforcement officer
- regulated child care provider

2. The Confidential Clergy Communications Exemption:

a. Basic Rule: Members of the clergy are not required to report child abuse they become aware of through communications made to the member of the clergy in his professional capacity as a confession or similarly confidential communication.

b. Interpreting the Basic Rule: Let me offer the following observations about the confidential clergy communications exemption:

1. Secondhand Communications: Communications to the clergy are probably not confidential if they come to the clergy secondhand. For example, if someone tells the pastor that another member of the church committed child abuse, the communication is not confidential. (A question still remains if a member of the clergy has “reasonable cause” to suspect child abuse based on secondhand or thirdhand comments).

2. Who Decides If the Communication Is Confidential? The legislative history suggests that a communication about child abuse to the clergy is confidential only if there is mutual agreement between the clergy and the counsellee that what is shared is confidential. It would be wise for members of the clergy to, at the very beginning, carefully explain the extent to which matters

shared are or are not confidential. Clarify expectations at the very beginning of a counseling session. Ideally this understanding should be reduced to writing. Clergy should avoid putting themselves in a situation where they do not discuss whether the counsellee's comments will be confidential only to later discover that the counsellee plans to tell them about committing child abuse, thus leaving them wondering whether or not they have a duty to report it. Another factor to consider is this. Members of the clergy may want to allow for some exceptions to the "confidentiality" rule. For example, if a church leader who teaches an elementary age Sunday School class comes and confesses child molestation, the church must certainly reserve the flexibility to share that information with enough leaders to make the decision to remove the leader from their teaching position if they refuse to step down. In short, it seems wise to have a "church discipline" exception to any commitment of confidentiality. The bottom line is this. If the counsellee asks the pastor "is what I tell you confidential?", the pastor ought to think carefully before the question is answered.

3. What if the Clergy Wears Multiple Reporting "Hats"? Many members of the clergy wear multiple "hats": they are not only clergy, but teachers, EMS volunteers, policemen, etc. If a communication about child abuse comes to the clergy while they are wearing these other occupational "hats", the clergy must report the child abuse.

B. When Must a Mandatory Reporting Person Report Child Abuse:

1. Generally: Mandatory reporting is required when a person has reasonable cause to suspect child abuse or neglect
2. When to Report:
 - a. Oral Report: Make immediate oral report to Department of Human Services (DHS) (child protective services division): the person "shall make immediately, by telephone or otherwise, an oral report, or cause an oral report to be made, of the suspected child abuse or neglect" to DHS.
 - b. Written Report: Make a written report to DHS within 72 hours after oral report is made: (If the reporting person is a staff member of a hospital, social service agency or school, the reporting person also needs to file a copy of the written report with their employer).

3. Contents of the Written Report (to the extent the information is available):
 - a. Name and address of the child's parents, the child's guardian, or the persons with whom the child resides
 - b. The child's age
 - c. Any other information available which might establish the cause of the abuse or neglect and the manner in which it occurred
4. What Happens to Child Abuse Report Once it Is Made:
 - a. If DHS believes the report has merit, it will forward the report and the results of its investigation to the prosecuting attorney and the probate court
 - b. Often (not always) the report will prompt a speedy DHS and police investigation
 - c. If the prosecuting attorney determines that there is sufficient evidence, a criminal prosecution may be initiated

C. What Conduct Triggers a Duty to Report: (for mandatory reporting persons)

Child abuse and neglect defined:

1. General rule: If you are a mandatory reporting person, you have a mandatory duty to report if you have reasonable cause to suspect child abuse or neglect.

2. Definitions: Michigan's child abuse reporting law includes the following definitions:

“Child abuse” “means harm or threatened harm to a child's health or welfare by a parent, legal guardian or any other person responsible for the child's health or welfare or by a teacher or teacher's aid, that occurs through non-accidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment.” For purposes of this law, the pregnancy of a child less than 12 years of age or the presence of a venereal disease in a child who is over 1 month of age but less than 12 years of age is automatically considered to be reasonable cause to suspect that child abuse and neglect have occurred.

“Child neglect” means harm or threatened harm to a child’s health or welfare by a parent, legal guardian, or any other person responsible for the child’s health or welfare that occurs through either of the following:

(i) Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(ii) Placing a child at an unreasonable risk to the child’s health or welfare by failure of the parent, legal guardian, or any other person responsible for the child’s health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

“Sexual abuse” means engaging in sexual contact or sexual penetration as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, with a child.

“Sexual exploitation” includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as defined in section 145c of 1931 PA 328, MCL 750.145c.

“Child” means a person under 18 years of age.

3. Mandatory Reporting Duty May Depend on Who Committed the Abuse:

a. The Mandatory Duty to Report is Triggered Only When Abuse or Neglect is Reasonably Expected to Have Occurred Through “Non-accidental Physical or Mental Injury, Sexual Abuse, Sexual Exploitation or Maltreatment” By a Person in One of the Following Categories:

- a parent
- a legal guardian
- any person responsible for the child’s health or welfare (see definition below)
- a teacher or teacher’s aid

b. The Phrase “Person Responsible for the Child’s Health or Welfare” Includes the Following:

- parent

- legal guardian

- person 18 years of age or older who resides for any length of time in the same home in which the child resides

- owner, operator, volunteer or employee of a licensed or registered child care organization, a licensed or registered adult foster care family home, or adult foster care small group home

- a non-parent adult (which means a person age 18 or older who, regardless of where they live, has regular and substantial contact with the child, has a close personal relationship with the child's parent or a person responsible for the child's health or welfare and is not a parent or relative of the child) (NOTE: I understand that this provision was targeted at the increased prevalence of abuse by boyfriends)

4. What about Statutory Rape and Abusers under Age 18?

- a. Under Michigan law, sexual contact with a child under age 16 is a criminal offense. Accordingly, for example, if a 17 year old boyfriend has sexual relations with his 15 ½ year old girlfriend, he has committed a criminal offense commonly known as statutory rape. However, under Michigan's child abuse reporting law, this conduct is typically not "child abuse" or "child neglect" so as to require reporting of the conduct to Department of Human Services. This is because Michigan's child abuse reporting law requires reporting of child abuse only when it is caused by a parent, legal guardian, teacher, teacher's aide, or other person responsible for the child's health or welfare. In almost all such instances, the 17-year-old boyfriend will not be someone who is responsible for the child's health or welfare. Therefore, typically sexual contact by the boyfriend (under age 18) with the girlfriend under age 16 will not require that the incident be reported to Department of Human Services. However, there is a mandatory duty to report if the boyfriend is age 18 or older, and he resides for any length of time in the home on which the underage girlfriend resides or, even if he does not reside in the same home, if the boyfriend has regular and substantial contact with the child, has a close personal relationship with the child's person or a person responsible for the child's health or welfare and are not a parent or relative of the child. Mandatory reporting would be required if the sexual contact with the 15 year old girl were caused by a parent, legal guardian, teacher, teacher's aide or someone else responsible for the girl's health and welfare. Obviously, if the alleged abuser were under

age 18, his actions would still require mandatory reporting if he were the victim's parent (which would, of course, mean that the abuse would involve a family's young child).

(Note: The Michigan courts have ruled that child abuse involving sexual contact between a 12 and 13 year old was not subject to mandatory reporting under Michigan's child abuse law.) (People of the State of Michigan v Beardsley, 263 Mich App 403 (2004)).

D. Consequences of Non-Reporting Under Michigan Law:

1. If you are a mandatory reporting person and you do not timely report child abuse, you are guilty of a crime (a misdemeanor)
2. If you fail to report as required, you can also be held civilly liable for all damages caused by failing to report

E. Opportunity and Civil Liability Protection for Optional Reporting: Persons who voluntarily and in good faith report child abuse or neglect (even if they are not required to do so) are given qualified immunity from liability (unless it is proven that the report was made in bad faith). This is significant because even if it turns out that you were not required by law to report the child abuse, you are still given protection from civil liability. Being protected from civil liability does not mean you can't get sued. Theoretically, it means that if you get sued, the judge should dismiss the claims against you. The Michigan Court of Appeals, in a non-binding unreported opinion, has also held that the liability protection is not lost if the person reporting the child abuse fails to satisfy the letter of the law in every respect, i.e., reports late, in the wrong manner, or to the wrong agency. Groat v Coulston, 1997 WL 33343314 at *2 (Mich.App. 1997) (unreported).

F. Protection of Identity of Person Reporting Child Abuse:

The identity of a reporting person is theoretically supposed to be kept confidential. The statute provides that "the identity of a reporting person is confidential subject to disclosure only with the consent of that person or by judicial process." MCL § 722.625. There are exceptions to this rule which allow a child protective agency and the police or other law enforcement agency investigating a report of child abuse and the children's ombudsman to have access to the reporter's name. MCL § 722.625 & MCL § 722.627(2). Subject to these exceptions the identity of a reporting person is confidential and should only be disclosed with the reporter's consent or by judicial process. MCL § 722.625. An adult named in a report as a perpetrator or alleged perpetrator of the child abuse is entitled to receive a copy of any report, document, or photograph filed as provided in the Child Protection Act. MCL § 722.627(2)(f). However, such a report is supposed to only be given out if the identity of the reporting person is protected as required by MCL § 722.625. MCL § 722.627(2)(f). It is important

to note however, that while the system is theoretically structured to protect the identity of a reporter, that protection is not, practically speaking, ironclad. For example, in some cases it may be obvious from the circumstances who the reporting individual is and it is not hard to conceive of other circumstances where the identity of the person making the child abuse report becomes known.

II. **CHURCHES: DEVELOPING A PLAN FOR CHILD ABUSE PREVENTION:**

There is an implied sign at virtually every church door that says “Sinners are welcome.” Churches invite sinners to come learn about repentance and forgiveness. It should then be no surprise that churches must also confront some of the same problems the world does, including the threat of child abuse. Here are some suggestions to lessen the threat of child abuse in the church.

1. **Screen Children’s Workers:** It is best if no one is allowed to work in a children’s ministry unless they are first screened and approved by the church. Child abusers should not be allowed to slip into children’s ministries just because the church did not ask if the abuser had a history of child abuse. Some churches require criminal background checks for all prospective children’s workers. This requires written permission from the applicant. Before implementing criminal background checks, churches should also check with their local law enforcement agency to see if they agree to do the background checks for the church. Also, for a small fee, you can, if you have enough information (preferably name and date of birth), do an internet criminal background check via the Michigan State Police.
 - a. **Michigan Public Sex Offender list:**

Even if churches do not do full criminal background checks on children’s workers, it is advisable to check the Michigan Public Sex Offender list. This list – which is accessible on-line at www.mipsor.state.mi.us – will allow you to see which individuals have been convicted of criminal sexual misconduct. You can search alphabetically within any zip code area.
2. **Require at Least Two Responsible Workers Per Class:** Children’s workers should avoid working alone. Even one extra worker significantly minimizes the risk of child abuse and false accusations. In smaller churches, it may be impossible to strictly adhere to the two-person principle but it is definitely a worthy goal to strive toward.
3. **Investigate Promptly:** Child abuse allegations should be investigated and resolved promptly. If there is a duty to report an incident to the DHS, it must be done immediately. Those with a demonstrated willingness to harm children should always be denied any opportunity to do so.

4. Develop Clear Written Policies: The church should develop clear written child abuse policies. The purpose of such policies is typically twofold: to prevent child abuse and to prevent false accusations. Children's workers should be trained what the policies are. All workers should be required to read and agree to follow the policy. A sample church child abuse prevention policy and child worker's application form is attached hereto. However, one policy seldom fits every church. You will likely need to tweak the sample policy to meet the needs of your particular church.
5. Make Necessary Building Changes: Sometimes simple changes in the church building structure can help prevent child abuse and false accusations. In children's rooms, it is best to use half-doors or see-through doors or windows so that what goes on in the room is open for all to see.

EXPLANATORY NOTE

This outline is intended for informational and educational purposes only and should not be treated as legal advice. If you have specific questions, you should consult an attorney familiar with this area of the law.

Child Abuse Prevention
Guidelines for Workers in Children's Ministries

Consistent with the _____ mission to remain a good testimony for the Lord and to abide by Biblical principles, the following guidelines are established for the safety and protection of the children and members of the _____. _____ acknowledges that these guidelines are not ironclad rules, but the guidelines should be adhered to as much as possible. Because _____ relies almost exclusively on volunteers to staff its ministries where child care is required, it is understood that some flexibility is required to meet child care needs in emergencies and unusual circumstances. Nonetheless, _____ strongly urges its staff and volunteers to adhere to these guidelines and above all, even if variations from these guidelines take place, that the two primary objectives of these guidelines be maintained: that the children be protected from harm and that children's workers be protected from false accusations.

Guidelines:

1. All workers or volunteers serving in children's ministries (i.e. - those serving in ministries serving or caring for children under age 10) must be Christians and have attended _____ on a regular basis for at least three months. Exceptions to this guideline which would allow service prior to the 3 month deadline may be authorized only by one of the Pastors or by vote of the Deacon Board and in no event shall such exceptions be allowed unless the person has completed the Children's Workers Disclosure Form and attended _____ regularly for at least one month.
2. Age - Workers must be at least eighteen years old and recognized by the adult immediately responsible for the ministry as mature and responsible. Individuals less than eighteen may serve as helpers under the direct supervision of a qualified adult worker. In no case shall a teen under eighteen serve in a supervisory capacity.
3. Serious Communicable Diseases - Individuals with a known serious communicable disease shall not serve in children's ministries under circumstances where others may contract the disease from them.
4. Child Abuse, Molestation, Neglect, etc. - Persons who have been involved as a perpetrator in any incident of child abuse, child molestation, child neglect, assault of a child, homosexual acts or other deviant sexual behavior will not be allowed to serve in any children's ministry. The Pastors are available to counsel and provide direction to determine what areas of service would be appropriate. Persons known by the _____ to be the subject of a pending felony arrest or pending felony charge for an alleged incident of child abuse, molestation, neglect, assault of a child, homosexuality or other sexually deviant behavior shall not serve in a children's ministry without express prior approval of the Deacon Board.
5. All workers in children's ministries must complete the Children's Workers Disclosure Form. No person shall be permitted to serve as a children's worker without first completing the

form.

6. Staffing Guidelines:

a. Children's workers should be present 15 minutes early when scheduled. A worker should not begin receiving children into a room until a second qualified worker has arrived.

b. Only assigned workers or approved substitutes are to be allowed to work in children's ministries. The only exception is a parent or guardian with an upset child. If an usher discovers someone in the nursery-through-toddlers level, other than workers or approved substitutes on the attendance sheet, they should ask the person to leave.

c. Absent exceptional circumstances, children shall be released from a children's ministry only to parents, grandparents, guardians, other responsible adults or siblings deemed responsible by the qualified adult in charge. Workers may at their discretion refuse to release a child in their care if the person picking up the child cannot properly identify themselves as having authority to pick up the child or if the worker has concerns about the person's authority or maturity to take the child.

d. Except in emergency situations, no children's ministry should be staffed at any time by less than one qualified adult and at least one qualified helper.

e. Children should not be permitted to leave the room without being accompanied by an adult. Workers should strictly avoid circumstances where a worker is left alone with children. Where an in-room restroom is available, divided doors (and doors left ajar) should be used to avoid having workers present alone with children behind closed doors. It is preferable for workers to remain outside the in-room restroom when the child is inside. Where out-of-room restrooms are used, workers should exhaust all possible means to avoid the need to accompany a child alone to the restroom. Workers should not allow themselves to be left alone with a child who is totally or partially disrobed (for diaper changing, toilet use, etc.). Where an absolute emergency requires a worker to be left alone with children, this should never be done unless another qualified worker is made aware of it and the worker in charge approves. The _____ cannot emphasize enough that it strongly disapproves of workers allowing themselves alone with children.

7. Children Leaving Church Services:

Parents are urged never to allow children under age 8 to leave a church service to go to the restroom or elsewhere in the church building without being accompanied by an adult or a responsible older child. If ushers observe a child leaving a church service without being accompanied by an adult or an older child they deem sufficiently responsible to escort the child, the child should be stopped and escorted back into the service to the adult or other person responsible for the child.

8. Reporting Procedure:

Any children's workers who have reason to believe that a child in their care has, during a church activity, been subjected to child abuse, child molestation, fondling, or unlawful assaultive behavior, they should immediately report the incident to the Senior Pastor, if available, if not, then to any of the associate pastors or to the Chairman of the Deacon Board or, if none of the above are available, to any member of the _____ Board. Any such reported incidents shall be promptly investigated by the Pastoral staff and the _____ Board and may be reported to the church insurance company and, if required by law or if deemed appropriate by the _____ Board or the Senior Pastor, to the proper legal authorities. Any church worker determined to be guilty of improper sexual or assaultive misconduct shall be disciplined pursuant to the _____ Constitution.

CHILDRENS WORKERS DISCLOSURE FORM

Name: _____

To properly protect our children and church ministries, all those serving in children's ministry capacities at _____ need to provide the following information. Please sign and date your response. Your Pastoral staff has also completed this form. We regret if the form seems intrusive but, in light of the social climate in which we live, we believe that the protection of our children and of our testimony requires that precautions such as these be taken.

Confidentiality: The information in these forms is confidential and under normal circumstances it will be reviewed only by the Executive Committee of the Deacon Board, which consists of the Senior Pastor, the Chairman, Vice Chairman and Secretary of the Deacons. However, if there is an actual incident or accusation of child abuse, it may become necessary for this information to be reviewed by others including but not limited to the church attorney and the church insurance company. In addition, the _____ guidelines require that any person known by the _____ to be the subject of a pending felony arrest or pending felony charges involving an alleged felony incident of child abuse, molestation, neglect, assault of a child, homosexuality or other sexually deviant behavior shall not serve in a children's ministry without express prior approval of the Deacon Board. Therefore, in circumstances involving such pending felony arrests or pending charges the Deacon Board may also need to review the information regarding those pending charges or arrests.

1. During your lifetime, have you ever been convicted for an alleged incident or assault, domestic violence, child molestation, child abuse, child neglect, assault or sex offense of any nature?

Yes [] No []

If yes, please explain the nature of the conviction.

2. Have you ever been convicted of a crime, other than a traffic offense?

Yes [] No []

If yes, please explain:

3. Do you currently have any pending felony charges or pending felony arrest for any alleged incident involving assault, domestic violence, child abuse, child neglect, assault, molestation, or sex offense of any nature?

No [] Yes []

If yes, please explain: _____

4. Have you ever previously been involved in any prior incidents in which you molested, abused, fondled or unlawfully assaulted a child?

Yes [] No []

If so, please explain the nature of this incident.

5. Are you a Christian? If so, please describe when and how you became a Christian?

6. Have you read the _____ Child Abuse Prevention Guidelines for Workers in Children's Ministries and do you agree to abide by them?

The above information is accurate and truthful and I consent to its disclosure under the conditions described above. If my answers to these questions would change due to events taking place after the date of this form, I understand it is my responsibility to disclose this immediately to a member of the Pastoral staff.

Signature _____ Date _____

Print Name _____

IF YOU ARE UNDER AGE 18:

If you are under age 18, you need to have your parent or guardian sign below to consent to your completion of this form, to your participation as a children's worker and to the completion of the criminal background check:

Signature of Parent or Guardian

Date of Signature: _____

BACKGROUND CHECK RELEASE FORM

Would you consent to a police check of your criminal record for prior criminal convictions and for any pending felony arrest or pending felony charges, if any, and to the release of that information to _____?

Yes [] No []

If the answer is yes, please provide the following information:

Driver's License No: _____

Date of Birth: _____

Social Security Number: _____

Signature _____

Date _____

Print Name _____