

POLICY B

SEXUAL MISCONDUCT

I. Introduction

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

....

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

....

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

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

We believe and proclaim that all people are created by God. God values all human life and intends that everyone—men, women and children—have worth and dignity in all relationships.

We further believe in justice for all persons. Sexual misconduct is an abuse of power and trust, therefore, unjust. Scripture asserts that religious leadership involves a covenant relationship that presumes the trustworthy exercise of power in behalf of those in our care. A betrayal of this trust is more than just a personal tragedy for the victim. It reflects a tragic breakdown in the character of the abuser that seriously threatens, not only those immediately affected, but the well being of the church itself.

For too long, incidents of sexual misconduct have been glossed over, rationalized or subverted for "the good of the church." The Presbytery of Northern New England here proclaims that, the "good of the church" can never be served by overlooking an abuse of power and trust, that sexual misconduct is wrong and that charges of misconduct must be dealt with swiftly, fairly and with compassion for both the accused and the accuser.

The purpose of this policy is to make clear the presbytery's position on sexual misconduct and to establish the procedures to be followed in investigating and resolving instances where misconduct is alleged to have occurred. The general assembly's "Policy and Procedures on Sexual Misconduct" has inspired and informed this policy.

II. Policy Statement

It is the policy of the Presbytery of Northern New England that all ministers, church officers, church members, youth leaders, volunteers and non-member employees **not** engage in sexual misconduct as defined in this policy. Sexual misconduct is a violation of the principles set forth in Scripture and is never permissible. Further, it is the policy of this presbytery that charges of sexual misconduct be treated with the seriousness they deserve and dealt with according to the time frames and procedures set forth in this document for the benefit of all parties concerned. In keeping with American law and tradition, the presumption of innocence regarding the accused must be respected.

III. Definitions

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

Accuser: The person reporting alleged sexual misconduct by a member, officer, employee or volunteer of the church or presbytery or other entity related to a church or to the presbytery.

Entity: The term used to refer to any program or office managed by a board, committee, council or other body whose membership is elected by a governing body.

Governing Body: A representative body composed of elders and ministers of the Word and Sacrament such as a session or presbytery, having responsibilities and powers as defined in the *Book of Order*. A governing body may establish entities such as day care centers, conference centers, camps, or home for the aged. A governing body may have both church members and non-members as employees.

Inquiry: The term used in the Rules of Discipline to determine whether charges should be filed based upon allegations of an offense received by a governing body. See *Book of Order* D-7.0200.

Mandated Reporter: A person described by some states' laws as a person who is required to report any and all suspected incidents of child abuse, including child sexual abuse that comes to their attention. State laws vary from defining "all persons having knowledge" as mandated reporters to specifying very limited lists of professions whose members are required to report. Each governing body and entity is responsible for becoming familiar with the reporting laws of its jurisdiction.

Response Coordination Team: The group appointed to facilitate the process of responding to allegations of sexual misconduct. The structure and function of the response coordination team are outlined in Section IV of this policy.

Sexual misconduct: Sexual misconduct is the comprehensive term that includes the following:

- A. *Child sexual abuse:* Any sexual contact or sexual interaction between an adult and a child, whether verbal or physical.
- B. *Sexual harassment:* Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:
 1. submission to such conduct is made either explicitly or implicitly a term or a condition of an individual's employment or their continued status in an institution; or
 2. submission or rejection of such conduct by an individual is used as the basis for employment decision affecting such individual; or

3. such conduct has the purpose or effect of unreasonable interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment; or
4. such conditions create an intimidating, hostile or offensive environment for another individual regardless of the specific setting or circumstances or the relationship between the two individuals most directly involved.

C. *Rape or sexual contact by force, threat or intimidation*

D. *Sexual conduct*: 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.

E. *Sexual malfeasance*: Sexual contact within a ministerial (e.g., clergy with a member of the congregation) or professional relationship (e.g., counselor with a client, lay employee with a church member, general presbyter with a committee member who may be a lay person, a minister, or an elder). Sexual conduct includes unwelcome sexual advances, requests 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, mutual, social, intimate, or marital relationships.

Sexual Misconduct Committee: A committee of council charged with the responsibility of overseeing implementation of this policy.

Victim: The term used to identify the person alleged to have been injured by the sexual misconduct described above.

IV. Procedures

A. Reporting Allegations:

Reports of sexual misconduct will occur in a variety of ways. Because an individual church or the presbytery cannot control to whom the accuser of sexual misconduct will first speak, it is important that all church leaders and employees understand how reports of incidents are to be channeled to the proper person.

In most cases, the accuser will be the person who has experienced the alleged misconduct. That person should be informed that, once received through the proper channels, her or his accusation will be addressed expeditiously and sensitively according to the procedures set forth in this policy. The alleged victim-accuser should, whenever possible, immediately receive a copy of this policy and be encouraged to communicate the accusation to the moderator of presbytery or the general presbyter or to someone who can contact the appropriate people on behalf of the alleged victim-accuser.

In some cases, there will be a non-victim accuser who is the parent, guardian, or other advocate for a child who has been the alleged victim of sexual misconduct. Because of the child's minority status, an adult is requested to file the action on behalf of the child.

In cases where the alleged victim is an adult, the non-victim accuser shall observe the following guidelines:

1. For their own protection, the non-victim accuser should have something in writing from the victim detailing the charges.
2. The non-victim accuser should be certain that the victim is willing to come forward to testify if an action is filed.
3. Some evidence of sexual misconduct should be available to substantiate the charges.

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

All persons covered by this policy have a particular duty to report suspected child sexual abuse. The person receiving the initial report shall report the incident to civil or criminal authorities as required by local or state law. All persons should be educated by their local church and must comply with state and local laws regarding incidents of actual or suspected child sexual abuse.

The person receiving the initial report of sexual misconduct as defined in this policy shall immediately inform either the moderator of presbytery or the general presbyter. If either of these individuals is himself or herself the accused, the other shall be notified. If, for any reason, it is not possible or not preferred by the person receiving the initial report to notify either the moderator or the general presbyter, the stated clerk shall be notified. The presbytery shall make names and telephone numbers of these persons available.

The importance of properly reporting allegations of sexual misconduct cannot be overemphasized. Attempts to resolve accusations informally at the lowest organizational level, while understandable, can often result in nothing more than covering up the problem or trying to make it "go away."

B. Appointment of the Response Coordination Team:

A response coordination team and its chairperson shall be appointed by the moderator of presbytery within twenty-four hours from a pool of qualified persons identified by the general presbyter working in consultation with the

Committee on Ministry and the Personnel Committee and the Committee on Sexual Misconduct. If the moderator of presbytery is the accused, the vice moderator shall appoint the response coordination team. The moderator or executive presbyter shall see that appropriate insurance agencies have been notified of any allegations.

C. Sexual Misconduct Response Coordination Team:

The sexual misconduct response coordination team (hereinafter referred to as the RCT) is a group of people appointed by the presbytery to respond to reports of sexual misconduct. The RCT's primary responsibility is (1) to assess whether there is reasonable cause to believe that behavior has occurred which would give rise to a charge for which, if proved, the church would impose discipline and (2) to assess the spiritual and psychological needs of the alleged parties and, if applicable, their congregation in order to facilitate pastoral care and other support. The team will, of course, do its work with sensitivity and loving care for the parties involved in the allegation.

The RCT shall be composed of three to five persons and, ideally should include a trained psychological counselor and a trained legal professional. The majority of the RCT should be of the same sex as the alleged victim. The RCT must be trained to respond to allegations of sexual misconduct. Team members should be familiar with the legal, administrative, and disciplinary procedures of the church.

1. Responsibilities of the RCT (response coordination team):

- a. Meet on the call of the appointed chairperson as soon as possible, but not later than five days after receiving the report alleging sexual misconduct from the moderator or general presbyter. (To fulfill the requirements of this provision, the first meeting may be accomplished by telephone conference.)
- b. Confirm that civil authorities and appropriate insurance companies have been notified if applicable.
- c. Provide a letter to the accused outlining the accusations that have been made and recommending that he or she seek legal advice immediately, since the accusation could result in church discipline or civil or criminal court action.
- d. Before each and every conference with the accused, inform the accused of the right to remain silent and to be represented by counsel.
- e. Gather from the parties involved only as much information as necessary to establish whether there is reason to believe that an offense has occurred. At least two members of the RCT must participate in interviews of principal parties to the allegation, especially interviews involving either the accuser/victim or the accused; however, there may

be special circumstances in which the alleged victim may ask to meet with only one person from the RCT.

- f. Assure that the needs of those affected are being adequately met in an ongoing manner. Concerns or complaints about the provision of services should be directed to the RCT chair. Also, the RCT should make sure that the accuser/victim and the accused are well advised regarding both the steps for instituting formal PC(USA) judicial process and non-judicial options. (See Book of Discipline, Chapter VII, for the former and paragraph "h" below for the latter.)
 - g. A local session or entity shall be notified soon after the RCT begins its assessment of alleged misconduct and prior to submission of the team's final report.
 - h. If it appears that professional mediation or counseling is appropriate and would bring justice and peace to the parties involved, this action may be recommended and coordinated by the RCT. Caution must be exercised to assure that this provision of the presbytery's policy is not used to make real problems just "go away."
 - i. If the accused has admitted to the misconduct as charged, so advise the accuser. The full RCT should be so informed in order that they might properly fulfill their role as process coordinators.
 - j. Advise the accuser of the desirability for a written account of the alleged misconduct.
 - k. Within 20 days of receiving the initial complaint, a written report of information gathered by the RCT will be submitted to the stated clerk of presbytery or clerk of session or the director of an entity and to the Committee on Sexual Misconduct for action, as appropriate. The report will include the following:
 - (1) names of the parties involved;
 - (2) governing body membership of the parties involved;
 - (3) a written account of the allegation, signed by the alleged victim; if not available, the report will detail the reason for its absence.
 - (4) response made by the accused, if known;
 - (5) any other relevant information;
 - (6) recommendations for further action, such as pastoral care of the accuser, the alleged victim, the accused, their families and the congregations of all parties involved.
 - (7) Any remedies sought by the alleged victim and/or the accused.
2. Recommend an administrative leave of absence for the alleged victim and/or the accused, if appropriate.
3. Record Keeping

The response coordination team will keep all records confidential, including detailed records of its actions and minutes of its deliberations and its conversations with the accuser, accused and other parties involved. No discussion of its activities shall be shared with anyone outside of the response coordination team, nor shall anyone be provided with any of its records with the exception of the report furnished to the stated clerk or clerk of the governing body and the Committee on Sexual Misconduct as provided herein. After preparing its report, all records will be forwarded to the clerk of the governing body where they will be marked "confidential" and securely stored. Any remaining records of the response coordination team pertaining to the allegation shall be destroyed.

D. Governing Body or Entity Response

Response of presbytery or of individual churches or other entities involved will vary according to the status of the accused. Church members and ministers are subject to inquiry and discipline under the *Book of Order*, D-5.0100. The pastoral relationship of ministers serving congregations is subject to oversight by the presbytery, G-14.0601, G-14.0602 and G-14.0603.

1. Accused covered by the *Book of Order*

Upon receipt of a report filed by the response coordination team that includes sufficient information to give rise to reasonable suspicion of sexual misconduct by the accused, the clerk of the governing body, without undertaking further inquiry, shall report to the governing body only that an offense has been alleged without naming the alleged offender, or the nature of the alleged offense, and refer the report immediately to a special disciplinary committee designated by the governing body in accordance with the *Book of Order*, D-7.0300. Subsequent actions of the governing body shall be in accord with the provisions of Chapter 7 of the *Book of Order*.

In the event that charges are not filed by the special disciplinary committee, it shall refer the matter back to the presbytery's Sexual Misconduct Committee for appropriate follow-up to insure that pastoral care is provided to all parties and that peace and justice have been served. In such instances, the Sexual Misconduct Committee shall file a report of its actions with the stated clerk or the clerk of the governing body.

2. Accused not covered by the *Book of Order*

Upon receipt of the report filed by the response coordination team, the director of the entity should immediately submit the report to the personnel committee of the organization. A session or entity which ordinarily functions without a personnel committee may appoint an administrative commission for the function described in this section. The

personnel committee will refer to and be guided by the written personnel policies of the governing body or entity in determining the guilt or innocence of the accused and the remedies to be applied.

3. Record keeping

All records of actions and minutes, including conversations with the accuser and accused shall be kept confidential and maintained in the care of the clerk of the governing body or the director of the appropriate entity. After the case has been resolved, a copy of the summary report will be included in the permanent personnel file of the accused and a copy of the report will be given to the accuser and the accused.

4. Statute of limitations

This policy recognizes the special problems related to discovery and recognition of various forms of sexual misconduct. Child sexual abuse may not be recognized until the victim of abuse reaches adulthood. Recognition of abuse and willingness to come forward by an adult victim may also be delayed for many years. Therefore, this policy recognizes no statute of limitations as to when sexual abuse may be reported and acted upon.

E. Role of the Sexual Misconduct Committee

The Sexual Misconduct Committee shall oversee implementation of this policy. Its responsibilities include:

1. Recommending revisions to this policy as appropriate.
2. Providing for the training of the presbytery's response coordination team.
3. Monitoring response coordination team actions to confirm implementation of both letter and spirit of this policy and to insure appropriate follow-up.
4. Serving as liaison to other committees of presbytery in matters relating to allegations of sexual misconduct.
5. Assisting the churches of the presbytery in developing appropriate educational programs to inform members, employees, volunteers and students of the church's standards of conduct and the procedures for reporting allegations of sexual misconduct.
6. Except as proscribed by the confidentiality requirements outlined in this policy, reporting annually to the presbytery on its activities.

V. Employment Practices

A. Personnel Files

Accurate maintenance of personnel files is an essential part of hiring and supervision practices. Every governing body and entity in the presbytery should maintain a personnel file on every employee including ministers. The file should contain the application for employment, any employment questionnaires, reference responses and other documents related to this policy.

B. Pre-Screening Applicants

Governing bodies and entities are urged to establish stringent hiring practices. The employer should confirm the identity of the applicant and make specific inquiries to discover if his or her prior employment involved any allegations of sexual misconduct. If so, the disposition of those allegations must be reviewed.

C. References

The employing governing body or entity is responsible for contacting references for prospective ministers, employees or volunteers. In churches seeking a minister, this is specifically the responsibility of the Pastor Nominating Committee. A written record of conversations or correspondence with references should be kept in the minister's / employee's personnel file. In addition to the reference checks described above, the general presbyter will conduct independent reference checks of ministers seeking new positions and will report to the Committee on Ministry and to the affected Pastor Nominating Committee either that there has been no reported sexual misconduct by the candidate or that the committees should inquire into the disposition of reported sexual misconduct.

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

If false or misleading information is given or relevant information is withheld by an applicant for any position in the Presbytery of Northern New England, that applicant will be eliminated from consideration. Also, providing false, misleading or incomplete information for any position in the Presbytery of Northern New England will be grounds for termination of that position (using appropriate *Book of Order* procedures) obtained using that information.

Any minister, member or employee within the presbytery who receives a reference inquiry regarding sexual misconduct of a former pastor or employee is obligated to give truthful information regarding past sexual misconduct of the applicant, if any. The response must be limited to information that is a matter of public record or is in the applicant's own personnel file which is maintained by the governing body or other entity.

D. Volunteers

Volunteers who are new to an organization or entity and are to be utilized in positions of particular trust, such as youth advisor, children's workers, lay counselor, boy or girl scouts or camp counselors, should be subject to some degree of pre-screening, including reference checks, and their work should be closely supervised until they are known to the responsible governing body or entity.

VI. Communications and Acknowledgement

The presbytery urges all governing bodies and related entities to establish supporting policies, procedures and practices related to sexual misconduct. In particular, governing bodies and entities are to take specific steps to inform members, employees, volunteers and students of the church's standards of conduct and the presbytery's procedures for reporting allegations of sexual misconduct. The Committee on Sexual Misconduct is responsible for assisting churches in the Presbytery in developing appropriate educational programs to this end.

All ministers, pastoral counselors and professional employees of the presbytery are required to sign a written acknowledgement (Exhibit B, attached) that they have received, read and will abide by the presbytery's policy and procedures on sexual misconduct. This acknowledgement shall be kept in the person's personnel file.

Revised 1/6/98

EXHIBIT A
EMPLOYMENT QUESTIONNAIRE

Name: _____
Last First Middle

Address: _____
Street

City State Zip

Business Phone: _____ Home Phone: _____

Have you ever been known by any other name? Yes _____ No _____

If yes, please provide the other name: _____

EMPLOYMENT RECORD (List current and previous employers for the last five years)

Employed by: _____

Address: _____

City, State and Zip Code: _____

Your Supervisor: _____ Phone Number _____

Supervisor's Title _____

Employed from (Month/Year): _____ To (Month/Year): _____

Why did you leave? _____

Employed by: _____

Address _____

City, State and Zip Code _____

Your Supervisor _____ Phone Number _____

Supervisor's Title: _____

Employed from (Month/Year): _____ To (Month/Year) _____

Why did you leave? _____

Please complete the following certification:

I certify that, (a) no civil, criminal, ecclesiastical complaint has ever been sustained or is pending against me for sexual misconduct; (b) I have never resigned or been terminated from a position for reasons related to my sexual misconduct; or (c) I have never been required to receive professional treatment for reasons related to sexual misconduct on my part.

Signed

Date

Note: If you are unable to make the above certification, you may instead attach to this questionnaire a description of any complaint, termination, or course of treatment in which you have been involved, giving names and addresses of employers or physicians, the outcome of the situation and any explanatory comments you care to add.

Release

The information I have provided on this questionnaire is accurate to the best of my knowledge and may be verified by the Employing Entity. I hereby authorize the (Name of Employing Entity)

to make any and all contacts necessary to verify my prior employment history and to inquire concerning any prior arrest or criminal records or any judicial proceedings involving me as a defendant. By means of this release I also authorize any previous employer and any law enforcement agencies or judicial authorities to release any and all requested information to the (Name of Employing Entity)

I have read this release and understand fully that the information obtained may be used to deny me employment or any other type of position from the Employing Entity. I also agree that I will hold harmless the Employing Entity, as well as any prior employer, law enforcement authority, or judicial authority from any and all claims, liabilities, and cause of action for the release or the use of any information.

Signature

Date

Witness

Date

Witness

Date

EXHIBIT B
ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge that I received on _____(date) a copy of the

"Presbytery of Northern New England Policy and Procedures on Sexual Misconduct"
dated

_____, that I have read the policy, understand its meaning, and agree
to

conduct myself in accordance with the policy.

Signature

Date