



THE SPOTLIGHT IS ON ...

The Church and the Law

Third in a series of articles

The Complex Relationship between Clergy Confidentiality and Child Abuse Reporting Requirements

By David T. Ball

In my experience as an attorney and as an educator, one of the most difficult topics to master and to teach to others is the topic of the relationship between two key clergy responsibilities: (1) the duty not to reveal information that is disclosed to clergy with the intent that it will remain confidential, which I'll call "clergy confidentiality," and (2) the duty to report child abuse to children services or the police.

When I teach clergy or theology students about the interrelationship between these two duties, most initially express their whole-hearted commitment to both duties. Then, when it emerges that these duties may conflict when one learns in confidence about the occurrence of child abuse, they aren't so sure about what they would do. Some come down on the side of maintaining confidentiality; others on the side of reporting possible child abuse.

Until recently, Ohio law skirted the issue. Clergy were not named as mandatory reporters of suspected child abuse, whereas many other types of professionals were. This left clergy to decide whether they would choose to report child abuse even though they were not required to do so, or choose to maintain confidentiality, in a particular situation.

This past summer, however, Ohio's legislature added clergy to the list of mandatory reporters of suspected child abuse, along with a long list of other professionals including attorneys; physicians, dentists, nurses and other health care professionals; psychologists and therapists; day-care administrators and employees; school teachers and other school employees; social workers; and social service employees, among others. The complexities of the relationship between clergy confidentiality and the clergy's responsibility to report child abuse, however, led the legislature to set out clergy reporting duties in a separate section of the statute. (Ohio Revised Code section 2151.421(A)(4)).

As it stands now, the complicated relationship between these potentially conflicting duties is probably best explained as follows. As a general rule, Ohio law exempts clergy from any legal obligation to reveal information that is communicated to them in confidence. (Ohio Revised Code section 2317.02(C)). The exception to this rule is that clergy may be required to re-

veal confidential information if the person who communicated that information to them gives the clergyperson permission to do so. (Persons under age 18, or who are mentally retarded or developmentally disabled and under the age of 21, who communicate information about child abuse to clergy are treated by statute as having given their permission for that information to be disclosed, even if they did not actually give permission for such disclosure.) Even with permission, however, clergy cannot be required to disclose information that is communicated in the context of a confession or other similar highly confidential situation. Clergy cannot be compelled to reveal information communicated as a "sacred trust" under any circumstances.

This means that even clergy are not required to reveal information communicated to them as a sacred trust, even if that information pertains to child abuse. This also means that unless the clergy confidentiality privilege is waived, clergy are not required to report information pertaining to child abuse that was communicated in confidence to them when they were acting in their professional capacity.

Ohio's requirement for clergy to report child abuse recognizes these exemptions that prevent clergy from being required to disclose information that is a sacred trust or that is entitled to be kept confidential. Under a variety of other circumstances, however, clergy may now be required by Ohio Revised Code section 2151.421(A)(4) to disclose information about child abuse. These situations would include when the person who communicated child abuse information has given permission for that information to be disclosed, or if that person has already testified about as to that information themselves. This would also include situations in which the child abuse information was not confidentially communicated in the first place. If the information is communicated in the presence of others, or if the clergyperson is not acting in their professional capacity when the information was communicated, then the information is not entitled to confidentiality protection.

The child abuse reporting statute contains some carefully chosen language about when clergy are required to report non-confidential information: when they have "reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe" that a child under 18 years of age (or someone under 21 years of age who is mentally retarded or developmentally disabled) has suffered or faces the threat of suffering physical or mental abuse.

The references here to "reasonable cause to believe" what a "reasonable person in a similar position" would believe mean that clergy cannot avoid their duty to report child abuse simply because they may not have actually believed that child abuse was taking place. The question is whether, in retrospect, a judge or other authority would determine that the clergyperson *should have believed* that child abuse was occurring, based on the facts and circumstances involved, regardless of what the clergyperson actually believed or didn't believe. If, objectively speaking, a "reasonable person" in a similar position would have found the information credible, it must be reported. In

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other words, clergy who decide that the information they have received is not credible can be second-guessed.

Going forward, there may be a need to fine-tune the current statutory relationship between clergy confidentiality and clergy child abuse reporting requirements. The current situation is a vast improvement over prior law, however, which completely avoided this complex relationship by omitting clergy from the list of mandatory child abuse reporters. Now the law requires that unless the information is protected as confidential or as a sacred trust, clergy have a duty to protect Ohio's children by reporting reasonable suspicions of child abuse.



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