



**Southeastern
Minnesota Synod**
Evangelical Lutheran
Church in America

POLICY STATEMENTS ON:

**Dealing with Allegations of
Sexual Misconduct Against
Clergy & Associates in
Ministry/Minnesota Chapter
148A**

and

Mandatory Reporting Laws

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A Policy Statement Dealing with Allegations of Sexual Misconduct Against Clergy and Associates in Ministry

I. Introduction

The Church needs to be a safe place for all. The Southeastern Minnesota Synod is committed to addressing sexual misconduct in the Church. Because the Church has the power and responsibility to seek justice for the people it is called to serve, it accepts the tasks of naming the evil in its midst and acting justly to rectify the harm. Therefore, the Church must be gentle, patient and accepting in order to respect dignity, to promote healing and to refuse to blame and/or shame victims.

The Southeastern Minnesota Synod is one of the 65 synods of the Evangelical Lutheran Church in America (ELCA) As of January 1, 1995, the synod was comprised of 184 member congregations. Each of these congregations is responsible for calling its pastor and/or associate in ministry and supervising his/her day-to-day ministry. The synod also has pastors and associates in ministry serving in specialized ministry settings. As with congregations, each employer is responsible for supervising the day-to-day ministry of its pastors and associates in ministry. The synod cannot be a safe place unless every one of its member congregations or specialized ministry settings is committed to preventing sexual misconduct and responding with compassion when such misconduct occurs. The synod's role is twofold. First, under the governing documents of the ECLA, the bishop is responsible for providing pastoral care and leadership to the synod's congregations, ordained ministers, and associates in ministry. Reports of clergy sexual misconduct invariably create an acute need for such care and leadership. Second, ordained ministers and associates in ministry may be subject to ecclesiastical discipline for committing sexual misconduct. Under the governing documents of the ELCA, the bishop is responsible for initiating and overseeing the disciplinary process within the synod.

II. The Importance of Standards of Conduct

The ELCA's governing documents embody the basic ethical standards expected of ordained ministers and associates in ministry. Under 7.22. of the ELCA Constitution, an ordained minister of the church must be a person "who is diligent and faithful in the exercise of the ministry; and whose life and conduct are above reproach." Under ELCA Bylaw 20.21.01.b., an ordained minister is subject to discipline for "conduct incompatible with the character of the ministerial office." Under ELCA Bylaw 20.22.01.b., lay persons on official rosters shall be subject to discipline for "conduct incompatible with the standards for the rostered ministries of this church."

On November 19, 1989, the ELCA's Church Council adopted policies and guidelines entitled "Definitions and Guidelines for Discipline." These policies prescribe various grounds for which ordained ministers and associates in ministry may be subject to discipline. This document states, "In all matters of morality and personal ethics, this church expects its ordained ministers to be exemplary in conduct." The sexual abuse of another or the misuse of counseling relationships for personal sexual gratification as well as adultery and promiscuity constitutes conduct incompatible with ministry.

Ordained ministers serving as parish pastors, as well as associates in ministry, may be highly involved in the personal lives of some of their parishioners. They often deal with people who are in crisis situations or who are otherwise vulnerable and in need of help. Pastors and associates in ministry should not become sexually involved with members of their congregations and thereby substitute their personal gratification for the needs of the people they are called to serve. To do so constitutes an abuse of the power inherent in the role of pastor or associate in ministry.

Members of congregations look to their pastors and associates in ministry as spiritual leaders. Leaders have varying degrees of power over those they lead. (Pastors and associates in ministry may not perceive or understand the degree of power held in relationship to their congregational members. This power is heightened when members come to them for counseling or spiritual help.)

Persons in such situations are extremely vulnerable. Pastors and associates in ministry who take advantage of this vulnerability by initiating or permitting any form of sexual misconduct act unethically and deprive the individual of a safe refuge in time of need.

Because of the inherent power of the office of the pastor, single ministers or associates in ministry are strongly cautioned against dating a member of the congregation in which they serve. By virtue of the minister's or associate in ministry's position, the dating parties would be highly vulnerable to manipulation, coercion and victimization. Full awareness and free and mutual choice without any fear or coercion are necessary to a truly consensual relationship. Therefore, we recommend the person dating the pastor or associate in ministry transfer his/her membership and worship in another congregation.

III. Legal Implications Under Minnesota Law

Minnesota law makes distinctions among various types of sexual misconduct such as "sexual harassment," "sexual abuse," and "criminal sexual conduct." Similarly, the governing documents of the ELCA define what types of sexual misconduct can lead to ecclesiastical discipline. Some types of sexual misconduct (e.g., sexual contact between a single pastor or associate in ministry and a person to whom they are not married) may provide grounds for discipline, but are not illegal. Other types of sexual misconduct (e.g., sexual jokes and remarks that create a hostile work environment) may be illegal, but do not provide grounds for discipline.

These distinctions should not concern a person who is troubled about the sexual conduct of a pastor, associate in ministry, or lay professional church worker. The synod is concerned about *all* forms of professional sexual misconduct in the church, regardless of whether or how the behavior is characterized by the law or by the governing documents of the ELCA. Any sexual contact between one of these professionals and a congregant, counselee, employee, volunteer, or anyone else to whom the professional is not married should be reported to the synod or to the employing congregation, as should any unwelcome sexual advance, request for sexual favor, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature. The synod and/or the congregation will then sort out their legal and ecclesiastical responsibilities.

IV. Reporting Procedures

Anyone who witnesses or hears of possible sexual misconduct by a pastor or associate in ministry should report, including:

- the victim or a member of the victim's family;
- a member of the congregation or other concerned person;
- the pastor or a colleague of the pastor.

Who should be notified?

1. Ideally, both the congregation and the synod should be notified. Notify the pastor of the congregation, or, if the pastor is involved in the sexual misconduct, notify one of the officers of the congregation or a member of the congregation council. Also notify the bishop or bishop's representative by phone (507/280-9457 or 800-426-6376), in person (Assisi Heights, 1001 14th Street NW, Suite 300, Rochester, MN), or in writing (1001 14th Street NW, Suite 300, Rochester, MN 55901). If you are uncomfortable notifying the congregation, notify only the bishop. If you are

uncomfortable notifying the bishop, notify only the congregation. But notify *someone!*

2. When the synod is notified of a report of sexual misconduct – either directly or by a member congregation – it will provide a list of trained advocates who are members of ELCA congregations not of this synod and advocates of other denominations. The complainant will be invited to contact an advocate and be accompanied by that advocate through the process of reporting and investigating. If the complainant requests, the synod will contact an advocate for her or him. The complainant is, of course, free to make use of an advocate who does not appear on the list.
3. A pastor or associate in ministry who knows or has reason to believe that a child or vulnerable adult is being or has recently been neglected or physically or sexually abused may be required to report that information to law enforcement authorities. All pastors, associates in ministry, and lay professional church workers are urged to review the document entitled “Reporting of Abuse or Neglect of a Child or Vulnerable Adult” (page 22). If questions about reporting obligations arise, the advice of an attorney should be sought immediately. Because the bishop and some members of the bishop’s staff are members of the clergy, they may be required to notify law enforcement authorities of possible sexual misconduct involving minors or vulnerable adults.

V. Investigation of Allegations

Upon receipt of an allegation of inappropriate sexual behavior committed by a pastor, or associate in ministry, the synod bishop or the bishop’s designee shall thoroughly investigate. All investigations and any resulting disciplinary actions against the accused shall be pursuant to the constitution and bylaws of the synod and in accord with this policy statement.

The investigator shall seek information and documentation from the complainant, the victim, the accused and other sources including any investigative reports obtained from civil authorities. The alleged offender may be asked to undergo psychodiagnostic evaluation by a diagnostician from a synodically approved referral list.

The bishop’s office shall notify the proper civil authorities when required by law. During the investigative process, the victim will be invited to meet with the bishop. Advocates and/or legal counsel may be present. Each victim will be advised of the steps involved in the ELCA’s disciplinary procedures.

Victims will be informed about the synod’s sexual abuse policy, church constitutions and state law. The synod may request a written summary of the alleged incidents.

The synod will discuss with the complainant how she or he feels about the possibility that her or his identity may become known to the accused or others. Insofar as possible, the synod will respect the wishes of the complainant regarding confidentiality. However, at some point, the synod may be required by civil law or the governing documents of the church to disclose the identity of the complainant. Also, in unusual circumstances, the ultimate responsibility of the bishop and the bishop’s designee to the synod may require that they act contrary to the request of the complainant. Finally, the identity of the complainant may become known despite the best efforts of the synod to protect it. No church can guarantee confidentiality to a complainant.

VI. Hearing and Discipline

All rostered personnel, clergy and certified associates in ministry, are subject to the disciplinary procedures as outlined in chapter 20 of the ELCA Constitution, (see pages 139-156, ELCA Constitution).

The synod bishop may suspend a pastor or associate in ministry without making a determination as to guilt or innocence (without prejudice) when an allegation of sexual impropriety is reported to the bishop's office. Suspension may continue until the synod's investigation is completed and disciplinary action, where appropriate, is taken.

If, upon completion of the investigation, there is reasonable cause to believe that disciplinable sexual misconduct has occurred, a report shall be forwarded to either the synod's consultation panel or the synod's advisory panel and then to the synod's Discipline Committee for action pursuant to the synod constitution. Discipline may involve censure, suspension or removal from the roster of the ordained ministry or, in the case of associates in ministry, removal from the official roster for lay persons of this church. The disciplinary determination shall be reported to the parties affected by the decision. A pastor or associate in ministry may appeal the disciplinary determination to the Committee on Appeals. A victim who feels that the initial hearing, disciplinary action or the appeal has been unfair may request a private consultation with the synod bishop. The victim will be encouraged to have an advocate present.

In some cases, the bishop may ask the pastor or associate in ministry to resign his or her call, but not ask them to resign from the clergy or official lay roster of the ELCA. If the pastor or associate in ministry agrees to resign, the Executive Committee of the synod will then have responsibility for determining whether and under what conditions they may remain on the official roster of the ELCA. In other cases, the bishop may ask the pastor or associate in ministry to resign from the clergy or official lay roster of the ELCA. The bishop cannot force a pastor or associate in ministry to resign his or her call from the clergy or official lay roster. Only a congregation can terminate the call of a pastor, or in the case of an associate in ministry, the congregational council may dismiss the associate in ministry by a two-thirds majority vote. Only a discipline hearing committee can remove a pastor or associate in ministry from the clergy or official lay roster of the ELCA.

The pastor or associate in ministry will be allowed approximately a week to consult with family, attorney or other advisors in order to determine a course of action in response to a request to resign. The synod recognizes the difficulty of the situation and endeavors to be as supportive as possible under the circumstances. An attempt by the pastor or associate in ministry to delay a decision unreasonably will generally result in the initiation of disciplinary proceedings.

If the pastor or associate in ministry decides to resign, the synod will disclose the nature of the allegations to the congregation. The congregational council will have to resolve several issues in the wake of the resignation, including setting a time for the end of the pastor's or associate in ministry's active ministry in the congregation and considering severance arrangements. The synod is available to provide counsel and guidance on these matters. The synod will try to ensure that pastoral care and support are available to the pastor, or associate in ministry and their family during their transition.

If the pastor or associate in ministry decides not to resign, the synod will begin disciplinary proceedings.

VII. Disclosure to the Congregation

The congregation will be informed if its pastor or associate in ministry is accused of sexual misconduct. It is healthier for a congregation to deal with the matter, no matter how unpleasant, if it is confronted openly rather than shrouded in secrecy. A pastor or associate in ministry who has been involved in sexual misconduct cannot be relied upon to be truthful in dealing with the church council or congregation. Without disclosure by the synod, the entire matter may never be resolved. Allegations of sexual misconduct are particularly susceptible to rumors and distortions which, over a period of time, could destroy a congregation. The synod has found that the disclosure of the problem is the first step in

the healing process leading to the congregation's future health and well-being.

The synod also disclosed to fulfill its mission of reaching out to those who need love, healing and reconciliation. Disclosure may also help prevent future abuse within the congregation and the community.

Finally, disclosure helps protect both the synod and the congregation from potential legal liability for the actions of a pastor or associate in ministry involved in sexual misconduct. The synod will work with the lay leadership and church council of the congregation involved in determining the most appropriate means of disclosure.

VIII. Education for Prevention

This synod intends to establish a comprehensive ongoing education process designed to inform pastors, lay staffs, church councils, congregations and individual parishioners of the gravity of this issue and to give guidance and support in resolving problems.

All pastors and associates in ministry are strongly urged in this synod to: 1) become familiar with statute 148A; 2) read "A Policy Statement Dealing with Allegations of Sexual Misconduct Against Clergy and Associates in Ministry (this document); and 3) attend a sexual ethics workshop conducted by the bishop within the first year of service in this synod. Congregations will be encouraged to remind pastors, associates in ministry, lay staff, and volunteer leaders of their ethical responsibilities and to develop a congregation policy on sexual misconduct.

1/95

Guidelines for Pastoral Care

These guidelines set forth the goals of the synod in responding to most allegations of sexual misconduct. Because every report of sexual misconduct involves unique circumstances and unique people, it will not be possible or appropriate to follow every one of these guidelines in every case. Nevertheless, these guidelines are offered to help those affected by sexual misconduct to understand the synod's general approach.

For the Victim(s):

The bishop's office will:

- listen respectfully to the allegations
- respect requests for confidentiality to the extent possible
- affirm that the church cares
- make available a list of possible advocates
- provide the synod's policy guidelines
- help to arrange for pastoral care by a person of the victim's choice

For the Accused:

The bishop's office will:

- help to arrange for pastoral care by a person of the accused's choice
- advise the pastor or associate in ministry of allegations, process and support
- present the allegations without bias
- follow due process of the ELCA disciplinary procedure
- provide the synod's policy guidelines
- outline potential consequences including possible changes in salary and benefits

For the Congregation:

The bishop's office will:

- inform the congregation of the allegations
- request a meeting with the council
- with the permission of the council, draft a letter to be distributed to each member of the congregation
- share the policy guidelines at a congregational meeting
- assist the congregation to arrange interim pastoral care where needed
- update council and congregation regularly
- make efforts to determine if there are other victims in the congregations, and, if so, encourage them to come forward
- provide ongoing care and healing support for the congregation, its staff and its next pastor(s)

For the Accused's Spouse and Family:

The bishop's office will:

- inform the accused's spouse and family of the allegations
- help to arrange for pastoral care by a person of their choice
- review possible changes in salary and benefits
- provide the synod's policy guidelines

For Area Pastors and Associates in Ministry:

If the accused resigns or formal disciplinary proceedings are initiated, the bishop's office will inform

area pastors and associates in ministry of the situation by letter, meet with them when appropriate, and inform them of significant developments in the process as well as the final outcome.

10/94

Chapter 148A

Action for Sexual Exploitation; Psychotherapists

148A.01. Definitions

Subdivision 1. General. The definitions in this section apply to sections 148A.01 to 148A.04, 148A.05, and 148A.06.

Subd. 2. Emotionally dependent. "Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to believe that the patient or former patient is unable to withhold consent to sexual contact by the psychotherapist.

Subd. 3. Former patient. "Former patient" means a person who was given psychotherapy within two years prior to sexual contact with the psychotherapist.

Subd. 4. Patient. "Patient" means a person who seeks or obtains psychotherapy.

Subd. 5. Psychotherapist. "Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, marriage and family therapist, mental health service provider, or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Subd. 6. Psychotherapy. "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Subd. 7. Sexual contact. "Sexual contact" means any of the following, whether or not occurring with the consent of a patient or former patient:

(1) sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion, however slight, into the genital or anal openings of the patient's or former patient's body by any part of the psychotherapist's body or by any object used by the psychotherapist for this purpose, or any intrusion, however slight, into the genital or anal openings of the psychotherapist's body by any part of the patient's or former patient's body or by any object used by the patient or former patient for this purpose, if agreed to by the psychotherapist;

(2) kissing of, or the intentional touching by the psychotherapist of the patient's or former patient's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts;

(3) kissing of, or the intentional touching by the patient or former patient of the psychotherapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the psychotherapist agrees to the kissing or intentional touching.

"Sexual contact" includes requests by the psychotherapist for conduct described in clauses (1) to (3).

"Sexual contact" does not include conduct described in clause (1) or (2) that is a part of standard medical treatment of a patient.

Subd. 8. Therapeutic deception. "Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

HIST: 1986 c 372 s 1; 1Sp1986 c 3 art 2 s 22; 1987 c 347 art 1 s 19

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148A.02. Cause of action for sexual exploitation.

A cause of action against a psychotherapist for sexual exploitation exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred:

- (1) during the period the patient was receiving psychotherapy from the psychotherapist; or
- (2) after the period the patient received psychotherapy from the psychotherapist if (a) the former patient was emotionally dependent on the psychotherapist; or (b) the sexual contact occurred by means of therapeutic deception.

The patient or former patient may recover damages from a psychotherapist who is found liable for sexual exploitation. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.

HIST: 1986 c 372 s 2

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148A.03. Liability of employer.

(a) An employer of a psychotherapist may be liable under section 148A.02 if:

(1) the employer fails or refuses to take reasonable action when the employer knows or has reason to know that the psychotherapist engaged in sexual contact with the plaintiff or any other patient or former patient of the psychotherapist; or

(2) the employer fails or refuses to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the psychotherapist as a psychotherapist within the last five years, concerning the occurrence of sexual contacts by the psychotherapist with patients or former patients of the psychotherapist.

(b) An employer or former employer of a psychotherapist may be liable under section 148A.02 if the employer or former employer:

(1) knows of the occurrence of sexual contact by the psychotherapist with patients or former patients of the psychotherapist;

(2) receives a specific written request by another employer or prospective employer of the psychotherapist, engaged in the business of psychotherapy, concerning the existence or nature of the sexual contact; and

(3) fails or refuses to disclose the occurrence of the sexual contacts.

(c) An employer or former employer may be liable under section 148A.02 only to the extent that the failure or refusal to take any action required by paragraph (a) or (b) was a proximate and actual cause of any damages sustained.

(d) No cause of action arises, nor may a licensing board in this state take disciplinary action, against a psychotherapist's employer or former employer who in good faith complies with this section.

HIST: 1986 c 372 s 3

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148A.04. Scope of discovery.

In an action for sexual exploitation, evidence of the plaintiff's sexual history is not subject to discovery except when the plaintiff claims damage to sexual functioning; or

(1) the defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history; and

(2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

HIST: 1986 c 372 s 4

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148A.05. Admission of evidence.

In an action for sexual exploitation, evidence of the plaintiff's sexual history is not admissible except when:

(1) the defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the history; and

(2) the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the admission only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other such evidence may be introduced.

Violation of the terms of the order may be grounds for a new trial.

HIST: 1986 c 372 s 6

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148A.06. Limitation period.

An action for sexual exploitation shall be commenced within five years after the cause of action arises.

HIST: 1986 c 372 s 7

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Summary of Definitions:

Sexual misconduct is sexual activity in which the pastor or associate in ministry engages in sexual behavior with a parishioner, client or employee. Other sexual conduct (adultery, fornication, etc.) may not be a violation of state law but may be conduct unbecoming a pastor or associate in ministry.

Sexual harassment is any unwelcome sexual advance including verbal abuse, joking, innuendo, physical contact or assault. It may include demanding sexual favors with covert or overt threats. Any sexual conduct that creates an offensive, hostile or intimidating environment in the church, workplace, school or public service is considered harassment.

Sexual abuse is criminal sexual conduct inflicting emotional, physical, mental and spiritual harm on its victim.

Sexual exploitation is inappropriate sexual conversation, suggestion or sexual involvement by the pastor, associate in ministry or other church leader and/or any sexual or romantic contact between such leaders and parishioners, clients or counselees including, but not limited to, sexual intercourse, kissing and/or touching breasts or genitals.

Vulnerable adult is any person eighteen years of age or older who, regardless of residence or type of service received, is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status.

4/92

Policy Statement

Mandatory Reporting Laws

I. Reporting of Abuse or Neglect of a Child

Policy:

It is the policy of the Southeastern Minnesota Synod of the Evangelical Lutheran Church in America to comply with the Minnesota law that requires clergy (and other professionals) to report physical abuse, neglect, or sexual abuse of children.

Introduction:

The Legislature has declared that the public policy of Minnesota is to protect children from physical abuse, neglect, and sexual abuse. The Legislature has tried to further this policy by requiring certain professionals – including clergy – to contact law enforcement authorities when they suspect that a child has been abused or neglected.

Definitions:

A **child** is a person who is 17 years of age or younger.

The **physical abuse** of a child occurs when a person responsible for the child's care (such as a parent, guardian, teacher, counselor, babysitter, or, in some circumstances, pastor) intentionally inflicts or threatens to inflict physical or mental injury on the child.

The **neglect** of a child occurs when a person responsible for the child's care fails to provide the child with necessary food, clothing, shelter, medical care, or fails to protect the child from conditions or actions that threaten to harm the child imminently and seriously. The neglect of a child also occurs when a pregnant woman uses a controlled substance for nonmedical purposes during pregnancy.

The **sexual abuse** of a child occurs when a person responsible for the child's care or a person in a position of authority has or threatens to have sexual contact of any type with the child, or involves or threatens to involve the child in prostitution or child pornography.

Persons Mandated to Report:

A member of the clergy who knows or has reason to believe that a child is being neglected or physically or sexually abused within the preceding three years must immediately report the information. This is true only if the information was received by the clergy person while engaging in ministerial duties.

Mandatory Reporting Procedures:

A verbal report must be made *immediately*. This means as soon as possible but in no event longer than 24 hours after receiving the information.

The report must identify the child, identify the person responsible for the abuse or neglect of the child, describe the nature and extent of the abuse or neglect, and provide the name and address of the reporter (to the extent that this information is known by the reporter).

The report must be made to the local welfare agency, police department, or county sheriff.

The verbal report must be followed within 72 hours (excluding weekends and legal holidays) by a written report to the same welfare agency, police department, or county sheriff. The report must contain at least the same information as the verbal report.

Voluntary Reporting:

Even if a member of the clergy is not *required* to report, he or she may *voluntarily* report to the local welfare agency, police department, or county sheriff if the clergyperson knows, has reason to believe, or suspects that the child is being or has at any time has been neglected or physically or sexually abused. Such reports may be made in the same manner as mandatory reports.

Privileged Information:

A member of the clergy does not have to make a report if the information that he or she has received is legally privileged. Indeed, it is probably *unlawful* for a member of the clergy to report abuse or neglect of a child when that information has been learned in a privileged setting.

Information is privileged if it was conveyed to the member of the clergy in the course of a confession or by a person seeking religious or spiritual advice, aid, or comfort. Privileged information can be reported by a member of the clergy only if the person from whom the information came consents.

Immunity From Liability:

A member of the clergy who, in good faith, makes a mandatory or voluntary report of child abuse or neglect is immune from civil and criminal liability that might otherwise result from the report. The employer of a member of the clergy who makes such a voluntary or mandatory report is forbidden from retaliating against the clergyperson for making the report. A member of the clergy can be held liable for knowingly or recklessly making a false report of child abuse or neglect.

Failure to Report:

A member of the clergy who is required to report and fails to do so is guilty of a misdemeanor.

II. Reporting of Abuse or Neglect of a Vulnerable Adult**Policy:**

It is the policy of the Southeastern Minnesota Synod of the Evangelical Lutheran Church in America to comply with the Minnesota law that requires some professionals to report the abuse or neglect of vulnerable adults.

Introduction:

The Legislature has declared that the public policy of Minnesota is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to abuse or neglect. The Legislature has tried to further this policy by requiring certain professionals – which may include some clergy – to contact law enforcement authorities when they suspect that a vulnerable adult has been abused or neglected.

Definitions:

A **vulnerable adult** is a person who is 18 years of age or older and who is unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status, including all hospital patients and nursing home residents.

The **abuse** of a vulnerable adult occurs in several circumstances:

1. when the vulnerable adult is the victim of criminal sexual conduct;
2. when a staff person of a hospital, nursing home, or similar facility has sexual contact with the vulnerable adult;
3. when the vulnerable adult is subjected to nontherapeutic conduct that produces or could reasonably be expected to produce pain, injury, or mental or emotional distress;

4. when a person illegally uses the vulnerable adult's person or property for that person's advantage, such as by obtaining money from a vulnerable adult through the use of harassment, duress, or fraud; and
5. when the vulnerable adult suffers from other forms of mistreatment.

The **neglect** of a vulnerable adult occurs when the vulnerable adult is not provided necessary food, clothing, shelter, health care, or supervision.

Persons Mandated to Report:

The vulnerable adult reporting law requires that certain professionals and employees of certain facilities make a report when they:

1. have knowledge of the abuse or neglect of a vulnerable adult;
2. have reasonable cause to believe that a vulnerable adult is being or has been abused or neglected; *or*
3. have knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained.

Clergy who are employed as chaplains in hospitals, nursing homes, and similar facilities are clearly among those who must report the abuse of vulnerable adults. The law's application to other clergy is less clear, however. Unlike the child abuse reporting law, the vulnerable adult reporting law does *not* expressly list clergy among the professionals to which the law applies. However, the law does apply to "persons providing services in a facility" such as a hospital or nursing home. Most members of the clergy visit people in hospitals and nursing homes; therefore, the mandatory reporting law probably does apply to them, or at least to the information that they obtain while making professional visits to such facilities.

Mandatory Reporting Procedures

A verbal report must be made *immediately*.

The report must be made to the local police department, county sheriff, welfare agency, or appropriate licensing or certifying agency. A verbal report must be followed as soon as possible by a written report to the same police department, county sheriff, welfare agency, or licensing agency. The written report must identify the vulnerable adult, identify the person or facility responsible for the care of the vulnerable adult, describe the nature and extent of the suspected abuse or neglect, and provide the name and address of the reporter (to the extent that this information is known by the reporter).

Voluntary Reporting

Even if a member of the clergy is not *required* to report, he or she may *voluntarily* report to the local police department, county sheriff, welfare agency, or appropriate licensing or certifying agency under the circumstances described above. Such reports may be made in the same manner as mandatory reports.

Privileged Information:

The law is unclear regarding whether a member of the clergy has to make a report if the information that he or she received is legally privileged. If the information is privileged and the clergyperson is not required to report, he or she should probably not make a voluntary report. If the information is privileged and the clergyperson *is* required to report, he or she should immediately seek consent to make the report from the person who provided the privileged information. If the person declines to consent, then the clergyperson should consult an attorney. The question of whether a clergyperson is required to report privileged information is extremely complicated, and the advice of an attorney is likely to depend upon the particular facts of each case.

Immunity from Liability:

A member of the clergy who, in good faith, makes a mandatory or voluntary report of abuse or neglect is immune from civil and criminal liability that might otherwise result from the report. The employer of a member of the clergy who makes such a voluntary or mandatory report is forbidden from retaliating against the clergy person for making the report. A member of the clergy can be held liable for intentionally making a false report of abuse or neglect.

Failure to Report:

A member of the clergy who is required to report and intentionally fails to do so is guilty of a misdemeanor.

A member of the clergy who is required to report and intentionally or negligently fails to do so can be required to pay money damages to the vulnerable adult.