

Rocky Mountain Conference
United Methodist Church
March 2009

**SURVEY OF REPORTING REQUIREMENTS
AND OTHER MATTERS
UNDER CHILD PROTECTION STATUTES
IN COLORADO, UTAH AND WYOMING:**

All three states within the Rocky Mountain Conference have statutes which identify persons who are required to report child abuse or child neglect under specific circumstances.¹ Clergypersons are mandatory reporters in each state. Colorado limits mandatory reporters to persons falling within certain defined occupations, and permits reporting by all other persons. Utah and Wyoming more broadly define mandatory reporters as “any person”. In the context of local church activities, it is important to recognize that any number of lay and clergy persons at any point in time could be mandatory reporters.

Colorado’s definitions of “abuse” and “neglect” appear to cover more ground than either Utah or Wyoming, although the definitions in all three states are quite broad.

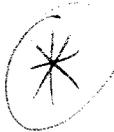
This survey is organized for each state by the following topics or questions. The information is current through the 2008 legislative sessions in each state.

1. Who has a duty to report?
2. What triggers the duty to report? What is “abuse” or “neglect”?
3. Status of clergy confidences or confessions.
4. Statutory immunity from liability for reporting.
5. Failure to report.
6. False reports.
7. Faith healers.
8. Miscellaneous.

This survey provides basic information about the laws of each state. Caution is counseled in the application of these laws to particular circumstances.

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¹ For an excellent overview of mandatory reporting requirements in all 50 states, see the website, “Child Welfare Information Gateway”, maintained by the U.S. Department of Health and Human Services: www.childwelfare.gov.



COLORADO:
Colo.Rev.Stat. §§ 19-3-301 et seq. 315

Colorado's Child Protection Act is found at Colorado Revised Statutes, §§19-3-301 to 315. The portions of the statute dealing with reporters read as follows:

"[A]ny person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately upon receiving such information report or cause a report to be made of such fact to the county department or local law enforcement agency." *C.R.S. §19-3-304(1)*

"In addition to those persons specifically required by this section to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in abuse or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the local law enforcement agency or the county department." *C.R.S. §19-3-305(3)*

1. Who has the duty to report?

In Colorado, mandatory reporters are identified by occupational category. *§19-3-304(1)* The persons "specified in subsection (2)" consist of a list of over 30 occupational categories, ranging from health care providers through public safety personnel and licensed therapists of all kinds to employees of public and private schools.

Clergypersons are mandatory reporters. A "clergy member" is defined as:

"a priest, rabbi, duly ordained, commissioned or licensed minister of a church, member of a religious order, or recognized leader of any religious body." *§19-3-304*

Persons who do not fit within these occupational categories, while not mandatory reporters, may nonetheless report abuse or neglect and still enjoy the statutory immunity. *§19-3-305(3)*

A couple of points to note on the duty to report:

First, mandatory reporters need not be engaged in their occupation at the time their duty to report is triggered. For example, a clergyperson may be "off-duty", at the mall, on vacation, at school, or even retired from active ministry, and still the duty to report exists. The duty to report does not end on the way out of the sanctuary or church office door. By virtue of occupation alone, the duty is 24/7/365, regardless of where in Colorado the clergyperson happens to be.

Second, policies and procedures of the local church or conference *cannot* interfere with this duty. The duty is owed to the State for the benefit of the child in question. Take, for example, a local church "Safe Sanctuary" policy that requires church Sunday School teachers to report suspected child abuse or neglect to the PPR/SPR committee which, in turn, decides whether to report the incident to the appropriate local agency. If the Sunday School teacher is a mandatory reporter by virtue of her/his "day job" (e.g., a public school teacher), then the Sunday School teacher has not necessarily satisfied the statutory duty to report by complying with the "Safe Sanctuary" policy. The mandatory reporter must report directly to the appropriate local agency, or ensure that a report is made through someone else. The local church can *add* an internal reporting duty to the external duty of the mandatory reporter, or integrate its policies and procedures to be consistent with the duty of mandatory reporters, but neither the church nor the conference can replace, complicate, dilute or otherwise interfere with the duty of the mandatory reporter to make sure that the report is filed with the appropriate local agency.

2. What triggers the duty to report? What is "abuse" or "neglect"?

The duty to report is triggered when a mandatory reporter either (1) knows; *or* (2) suspects; *or* (3) observes that a child is being subjected to abuse or neglect. The duty does not require actual knowledge, but may be based upon a reasonable suspicion that abuse or neglect has occurred. The duty does not require actual observation of acts of abuse or neglect, but may be based on observations of the apparent effects of abuse or neglect. Information forming the basis for knowledge or suspicion may come from any source, including the child, the suspected perpetrator, other persons, documents, emails, websites, public records and so forth.

The definitions of "abuse" and "neglect" are written broadly and effectively set minimum living and thriving standards for children in Colorado. §19-1-103(1)(a) In all cases, the question is whether the conditions or circumstances of the child's life threaten the health or welfare of the child. A "child" is a person under 18 years of age. §19-1-103(18)

The definitions of "abuse" and "neglect" include the following:

- a. Unexplained bruises, burns, bleeding, broken bones.
- b. Unexplained malnutrition or failure to thrive.
- c. Cases where a parent/guardian/custodian fails or refuses to provide adequate food, clothing, shelter, medical care or supervision of a child.
- d. Cases where a child is subjected to "emotional abuse", defined to mean "an identifiable and substantial impairment of the child's intellectual or psychological functioning or development".
- e. Cases where the child lacks "proper parental care".
- f. Cases where the child's environment is injurious to the child's welfare.
- g. Cases where the child is subjected to unlawful sexual behavior. Such behavior includes sexual assault, unlawful sexual contact, enticement of a

child, incest, sexual exploitation of a child, and sexual assault on a child by one in a position of trust.

- h. The use or manufacture of unlawful controlled substances in the presence of a child, or on the premises where a child is found.

(For complete list of definitions, go to *C.R.S. §19-1-103.*)

Investigators of reports are instructed to take into account “accepted child-rearing practices of the culture in which the child participates”, including accepted work-related practices of agricultural communities. Additionally, the statute provides an exception for acts “that could be construed to be a reasonable exercise of parental discipline”. *§19-1;103(1)(b)*

3. Status of clergy confidences or confessions.

What if the source of knowledge or suspicion of child abuse or neglect is acquired during a confidential communication with a clergy member?

Prior to the 2004 General Conference, United Methodist Church law had long protected clergy confidences and confessions from *any* disclosure. The clergy or confessional confidence was “inviolable”, even with respect to confessions of child abuse. *See*, Judicial Council Decision No. 936 (10/25/2002) (Striking down policy of Kansas East Annual Conference which would have required pastors to report information of child abuse acquired from a confession). In that case, the Council held that

“church law does not except confessions of child abuse from this absolute duty of confidentiality. The Judicial Council interprets church law. It has no authority to make law. That is the purview of the General Conference.” *JCD 936*

Church law changed in 2004. The 2004 General Conference amended the clergy or confessional confidence to create exceptions for child abuse and neglect, and for mandatory reporting required by civil law. In this regard, the *Book of Discipline* now provides:

“All clergy of The United Methodist Church are charged to maintain all confidences inviolate, including confessional confidences, except in the cases of suspected child abuse or neglect or in cases where mandatory reporting is required by civil law.” *2008 BOD ¶341.5* (To same effect, *2004 BOD ¶341.5*)

Colorado law has also long protected communications made in a clergy-confidant or clergy-penitent relationship. Under Colorado law, neither the clergyperson nor the confidant can be compelled by law to disclose the contents of the communication without the consent of each other; nor, generally, can a unilateral disclosure by one of parties be used against the other party. *§13-90-107(c)* The protection afforded by this law is

similar to the attorney-client privilege, and is sometimes called the clergy-penitent or clergy-confidant privilege.

The Colorado Child Protection Act recognizes the protected nature of clergy-confidant communications. The duty of mandatory reporting does not apply to a clergy person "who acquires reasonable cause to know or suspect [abuse or neglect] during a communication [protected by the clergy-confidant privilege]." §19-3-304(2)(aa) Where, however, the clergy person also acquires information of reasonable cause from other sources, the mandatory reporting duty continues to apply.

These provisions of church and Colorado law seem consistent in prioritizing the welfare of the child. However, they also present potential legal and ethical quandaries for the conscientious UMC clergy person.

Assume, for example, that a woman shares in confidence to a clergy person that her husband may be engaged in unlawful sexual behavior with a child.

Did the clergy person warn the wife before she divulged the "secret" that the clergy person may have to report to the authorities if the information concerns child abuse or neglect? Will she remember the warning, or is it in writing?

If no such warning was given, what does the clergy person do with the information imparted by the wife? Does the clergy person attempt to secure her consent to disclosure? What if she refuses?

Should the clergy person undertake to investigate the matter in the hope that some other source will confirm the "secret"? Even if a non-protected source confirms the "secret", how does the clergy person explain to the wife that the clergy person *must* now report to the authorities?

Is the act of investigation itself ethical where the wife is concerned? Did the clergy person tell the wife that he/she would be free to use the "secret" as the basis for an investigation?

Now assume that the woman and her husband are active members in leadership positions of the clergy person's church. What will disclosure of the "secret" do to the congregation?

Now assume that the clergy person knows the child in question.

As you can see, despite the fact that both church and Colorado law authorize disclosure of the "secret", the clergy person is still faced with very difficult questions. The matter is further complicated by the statute's admonition that the report be filed "immediately upon receiving such information."

4. **Statutory immunity from liability for reporting.**

Both mandatory and permissive reporters enjoy immunity from civil or criminal liability in making or providing reports of child abuse or neglect; *provided* that they participate "in good faith" in the making of the report. §19-3-309 The "good faith" of the reporter is presumed, meaning that the person challenging whether the report was made in good faith bears the burden of proving that the reporter did not act in good faith.

An employer of a mandatory reporter enjoys the same scope of immunity from liability as the reporter. *Montoya v. Bebensee*, 761 P.2d 285 (Colo.App.1988)

5. **Failure to report.**

A "willful" refusal by a mandatory report to make a report of child abuse or neglect is a Class 3 misdemeanor punishable by a minimum \$50 fine to a maximum of 6 months imprisonment and a \$750 fine. §19-3-305(4)

A person acts "willfully" when the person is aware that her/his conduct is of such a nature as to constitute a refusal to make a mandatory report. §18-1-501(6)

6. **False reports.**

A person who "knowingly" makes a false report of abuse or neglect to a county department or local law enforcement agency commits a Class 3 misdemeanor punishable within the same range as a failure to report.

A person acts "knowingly" when the person is aware that her/his report is false. §18-1-501(6)

7. **Faith healers.**

The statute makes an exception for faith healers, as follows:

"No child who in lieu of medical treatment is under treatment solely by spiritual means through prayer in accordance with a recognized method of religious healing shall, for that reason alone, be considered to have been neglected or dependent . . . However, the religious rights of a parent, guardian, or legal custodian shall not limit access of a child to medical care in a life-threatening situation or when the condition will result in serious disability." §19-3-1-3(1)

END OF COLORADO SECTION

UTAH:
Utah Code Ann. §§ 62A-4a-401 et seq. 412

Utah's Child And Family Services statute is found at Utah Code Annotated, §§62A-4a-401 to 412. The portion of the statute dealing with reporters reads as follows:

“[W]hen any person including person licensed under [Utah Medical Practice Act and Utah Nurse Practice Act] has reason to believe that a child has been subjected to abuse or neglect, or who observes a child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, that person shall immediately notify the nearest peace officer, law enforcement agency, or office of the division.” *Utah Code Ann. §62A-4a-403(1)(a)*

1. Who has the duty to report?

In Utah, mandatory reporters include “any person” who believes or observes that a child is being subjected to abuse or neglect. *Utah Code Ann. §62A-4a-403(1)(a)* The word, “notify”, is used instead of the word, “report”; however, the effect is the same. Clergypersons are clearly mandatory reporters.

The same two points made in the discussion of Colorado law apply equally in Utah. First, the duty of the mandatory reporter in Utah is 24/7/365. Second, local church or conference policies and procedures cannot interfere with the mandatory reporter's duty to report. (See the discussion under the Colorado heading.)

2. What triggers the duty to report? What is “abuse” or “neglect”?

The duty to report is triggered when a mandatory reporter either (1) has reason to believe; *or* (2) observes that a child is being subjected to abuse or neglect. The duty does not require actual knowledge, but may be based upon a reasonable belief that abuse or neglect has occurred. The duty does not require actual observation of acts of abuse or neglect, but may be based on observations of the apparent effects of abuse or neglect. Information forming the basis for belief may come from any source, including the child, the suspected perpetrator, other persons, documents, emails, websites, public records and so forth.

The definitions of “abuse” and “neglect” are broad and intended to set minimum standards for the health and welfare of children in Utah. §78A-6-105 That said, Utah's definitions do not cover as much territory as the definitions in Colorado. A “child” is a person under 18 years of age. §78A-6-105(6).

The definition of “abuse” includes the following:

- a. Nonaccidental harm of a child.
- b. Threatened harm of a child.
- c. Sexual exploitation, incest or sexual abuse.

The definition of “neglect” includes the following:

- a. Abandonment.
- b. Lack of proper parental care by the parents.
- c. Failure or refusal of parent/guardian/custodian to provide proper or necessary subsistence, education, or medical care, or any other care necessary for the child’s health, safety, morals, or well-being.

(For complete list of definitions, go to *Utah Code Ann. §78A-6-105.*)

3. Status of clergy confidences or confessions.

Utah’s child protection statute recognizes the protected nature of clergy-confidant communications. (See this topic under Colorado heading for discussion of United Methodist Church law on clergy confidences.) The statutory notification requirements:

“do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to the clergyman or priest in the professional character of the clergyman or priest in the course of discipline enjoined by the church to which the clergyman or priest belongs, if: (a) the confession was made directly to the clergyman or priest by the perpetrator; and (b) the clergyman or priest is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.”
§62A-4a-403(2)

If the “clergyman or priest” receives information about abuse or neglect from any source other than the confession of the perpetrator, the mandatory notification duty applies, and the clergyperson must notify the authorities. *§62A-4a-403(3)*

The Utah statute is similar to Colorado law on this topic. See the discussion of the Sunday School teacher above under this topic for Colorado.

4. Statutory immunity from liability for reporting.

Reporters enjoy immunity from civil or criminal liability in making or providing reports of child abuse or neglect; *provided* that they participate “in good faith” in the making of the report. *§62A-4a-410* There is no presumption of “good faith” on the part of the reporter.

5. Failure to report.

A “willful” failure to notify the authorities of suspected abuse or neglect is a Class B misdemeanor punishable by up to 6 months imprisonment and/or a \$1,000 fine.. *§62A-4a-411*

6. **False reports.**

A person who "knowingly" gives false information concerning child abuse or neglect has committed a Class B misdemeanor punishable by up to 6 months imprisonment and/or a \$1,000 fine. §76-8-506

7. **Faith healers.**

The Utah statute makes an exception for faith healers, as follows:

"A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect." §78A-6-105(25)(c)

If a "health care decision" is not "reasonable and informed", the parent or guardian may not safely rely on this exception. §78A-6-105(25)(d)

8. **Miscellaneous.**

Utah law provides that retaliation against a reporter or witness by a person under investigation is a third degree felony punishable by up to 5 years imprisonment and/or a \$5,000 fine. §78A-8-508.3

END OF UTAH SECTION

WYOMING:
Wyo.Stat. Ann. §§14-3-2201 et seq. 216

Wyoming's child protection statute is found at Wyoming Statutes Annotated, §§14-3-201 to 216. The portion of the statute dealing with reporters reads as follows:

“Any person who knows or has reasonable cause to believe or suspect that a child has been abused or neglected or who observes any child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, shall immediately report it to the child protective agency or local law enforcement agency or cause a report to be made.” *W.S.A. §14-3-205(a)*

1. Who has the duty to report?

In Wyoming, mandatory reporters include “*any person*” who knows, believes, suspects or observes that a child is being subjected to abuse or neglect. *W.S.A. §14-3-205(a)* Clergypersons are clearly within the definition of mandatory reporters.

The same two points made in the discussion of Colorado law apply equally in Wyoming. First, the duty of the mandatory reporter in Wyoming is 24/7/365. Second, local church or conference policies and procedures cannot interfere with the mandatory reporter's duty to report. (See the discussion under Colorado heading.)

2. What triggers the duty to report?

The duty to report is triggered when a reporter either (1) knows; *or* (2) believes; *or* (3) suspects; *or* (4) observes that a child is being subjected to abuse or neglect. The duty does not require actual knowledge, but may be based upon a reasonable belief or suspicion that abuse or neglect has occurred. The duty does not require actual observation of acts of abuse or neglect, but may be based on observations of the apparent effects of abuse or neglect. Information forming the basis for knowledge, belief or suspicion may come from any source, including the child, the suspected perpetrator, other persons, documents, emails, websites, public records and so forth.

The definitions of “abuse” and “neglect” are broad and intended to set minimum standards for the health and welfare of children in Wyoming. *§14-3-202* A “child” is a person under 18 years of age. *§14-3-202(a)(iii)*

The definition of “abuse” includes the following:

- a. Inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child.
- b. Excessive or unreasonable corporal punishment.
- c. Malnutrition or substantial risk thereof.
- d. Commission of or allowing commission of sexual offense against a child.

The definition of "neglect" includes the following:

- a. Failure or refusal by those responsible for child's welfare to provide adequate care, maintenance, supervision, education, medical or other care necessary for child's well being.

(For a complete list of definitions, go to *Wyo.Stat.Ann. §14-3-202.*)

3. **Status of clergy confidences or confessions.**

Wyoming's child protection statute recognizes the protected nature of certain clergy-confidant communications. (See this topic under Colorado heading for discussion of United Methodist Church law on clergy confidences.) However, the scope of the protection does not appear to excuse the reporting of abuse or neglect by the clergyperson. Instead, the clergyperson cannot be made to testify in a "judicial proceeding" resulting from a report of abuse or neglect. *§14-3-210(a)(ii)* This treatment differs from Colorado and Utah.

4. **Statutory immunity from liability for reporting.**

Reporters enjoy immunity from civil or criminal liability in making or providing reports of child abuse or neglect; *provided* that they participate "in good faith" in the making of the report. *§14-3-209* The "good faith" of the reporter is presumed, meaning that the person challenging whether the report was made in good faith bears the burden of proving that the reporter did not act in good faith.

5. **Failure to report.**

Wyoming law does not address this issue.

6. **False reports.**

Any person who "knowingly and intentionally" makes a false report of child abuse or neglect, or who encourages or coerces another person to make a false report, is guilty of a misdemeanor punishable by up to 6 months imprisonment and/or a fine of \$750. *§14-3-205(d)*

7. **Faith healers.**

The Wyoming statute makes an exception for faith healers, as follows:

"Treatment given in good faith by spiritual means alone, through prayer, by a duly accredited practitioner in accordance with the tenets and practices of a recognized church or religious denomination is not child neglect for that reason alone." *§14-3-202(a)(vii)*

8. Miscellaneous.

The Wyoming statute contains an criminal anti-retaliation provision for employers of a reporter. An employer cannot retaliate against an employee "solely for making a report of neglect or abuse" and, it does, the act is a misdemeanor punishable by up to 6 months imprisonment and/or a \$750 fine. §14-3-205(c)

END OF WYOMING SECTION