

THE PRESBYTERY OF LOS RANCHOS November 20, 2008

## PREVENTION AND RESPONSE POLICY: SEXUAL MISCONDUCT

### PART I: PREFACE

#### A BRIEF OUTLINE OF GUIDING PRINCIPLES AND PROCEDURES

The goals of this policy are to prevent sexual misconduct and to provide appropriate response to instances of alleged sexual misconduct. The policy is intended solely for guidance in ecclesiastical governance. It is not intended to create or modify any civil responsibility.

A brief overview of the policy:

1. Clergy have the responsibility to set appropriate boundaries in relationships with others.
2. By virtue of ordained office, clergy are empowered in a manner that precludes equality in relationships (“consensual relationship”); sexual expression to or relationship with a parishioner or staff (outside the bounds of marriage) is a breach of trust and Biblical mandates and is never acceptable.
3. All claims of alleged sexual misconduct will be taken seriously, and responded to by presbytery.
4. Clergy accused of sexual misconduct may be encouraged to take a voluntary leave of absence or administrative with or without pay.
5. In instances governed by Book of Order, “Rules of Discipline”, D-10-0106, Administrative Leave may be imposed.
6. Actions of the presbytery (and those individuals under the jurisdiction of the presbytery) shall be governed by the Book of Order.
7. To the extent not inconsistent with the Book of Order, the presbytery shall respond to initial reports of sexual misconduct through its Sexual Misconduct Response Team (“SMRT”), and its Committee on Ministry or their respective designees.
8. The Sexual Misconduct Response Team (SMRT), in its sole and absolute discretion, may arrange, in consultation with the Committee on Ministry, for the pastoral care of affected persons, including the alleged victim and the alleged victim’s immediate family, the accuser and the accuser’s immediate family, the accused and the accused’s immediate family, and the congregation and staff of the accused (and accuser if from different congregations).
12. All clergy, as a prerequisite for approval of a call within Los Ranchos Presbytery, will be required to sign a statement acknowledging that they have received a copy of this Policy and have read it along with material related to Mandatory Reporting. Continuing members of presbytery and presbytery personnel will be required to sign a similar statement.

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13. All Ministers of Word and Sacrament, continuing members of presbytery, individuals commissioned by the presbytery to a position provided for in the Book of Order, and presbytery personnel will be required to participate in presbytery training for the prevention of Sexual Misconduct. This means
  - a. Providing a certificate of completion of Sexual Misconduct Prevention training in another presbytery or by a validated provider (see II,B,7);  
*OR, FOR PASTORS NEW TO PRESBYTERY NOT ABLE TO SATISFY "A"*
  - b. Attendance at a presbytery of Los Ranchos training event within two years of Call;  
*OR, FOR MINISTERS OF WORD AND SACRAMENT AT THE TIME THIS POLICY IS PASSED*
  - c. Completion of sexual misconduct prevention training provided by this presbytery (or pre-approved by the SMRT) by no later than December 31, 2012. Failure to abide by these conditions of Call may result in dissolution of pastoral relationship (G-611.0103o) or non-renewal of temporary pastoral relationship.
14. The SMRT, the Committee on Ministry and the presbytery will work with churches to take steps to prevent and avoid incidents of sexual misconduct, including support in creating their own Sexual Misconduct Prevention Policies as part of their Personnel Policies and/or Standing Rules.
15. Copies of this Policy shall be distributed to members and staff of the presbytery, those serving on presbytery committees, commissions, task forces, Investigating Committees, the Committee on Ministry, and Initial Response Teams. The policy will be posted on the presbytery web site and available to all church members, any accuser of sexual misconduct, the accused, and the alleged victim(s) of sexual misconduct and their families.
16. We recognize that a primary barrier to responding appropriately to sexual misconduct has often been because religious leaders are not able to recognize and/or believe that such behavior happens. In a context of pastoral or religious trust, it may be difficult to recognize abusive behavior and/or misconduct because it is not expected and few people encounter it on a regular basis. When we fail to report it, we too become complicit, whether knowingly or unknowingly, in the abuse and/or misconduct. As we become aware of the grievous problem, we must assume responsibility for appropriate prevention and intervention strategies.

## **PART II. PASTORS: WHAT AND WHY**

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...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.  
Do 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.

For human ways are under the eyes of the LORD  
And God examines all their paths.

I Peter 1:15; 5:2-3; James 3:1; Proverbs 5:21 NRSV

## II. A. EXPECTATIONS OF PASTORS AND CHURCH PROFESSIONALS

1. This document is intended to

- assure consistency of practice by the presbytery,
- provide an information base for educating ministers and lay members,
- and serve as a model for local congregations.

**2. Sexual Misconduct is a breach of trust and a violation of the roles that clergy, presbytery personnel, ordained officers, commissioned individuals and those entrusted with the care of others are called upon to exercise.** Sexual misconduct calls into question the integrity, sensitivity, and fitness for office of any person who engages in such misconduct. Such misconduct is contrary to the principles set forth in the gospels and the call to work as God's servant in the struggle to bring wholeness to a broken world. (Infidelity, while not necessarily "sexual misconduct" as defined here, is nonetheless a violation of covenant vows, an affront to the gospel, a betrayal of trust, and a chargeable offense.)

Sexual misconduct includes, but is not limited to

- Sexual acts or sexual contact with a minor;
- Sexual acts or sexual contact involving inducement, threat, coercion, force, violence, or intimidation of another person;
- Sexual acts or sexual contact with a person in a professional relationship (see #4 below)
- Sexual acts or sexual contact with a person who is incapable of understanding the nature or consequences of the behavior or is physically incapable of declining participation. (#5 below)
- Sexual acts or sexual contact involving the use of drugs or intoxicants that impair the ability to govern the situation.
- Rape and physical assault
- Internet pornography addiction
- Sexual Harassment as defined in this policy.

**THE ABOVE CONDUCT IS NEVER ACCEPTABLE BEHAVIOR.**

3. The ethical conduct of all who minister in the name of Jesus Christ is of vital importance to the Church because it is through these representatives that an understanding of God and the gospel's good news is incarnated. Their manner of life should be a demonstration of the Christian gospel in the church and the world. See Book of Order, Rule G-6.0106.

4. Sexual misconduct also describes a misuse and/or abuse of authority and power that breaches Christian ethical principles. It misuses a relationship of trust to gain advantage over another for personal pleasure in an abusive, exploitative, and unjust manner. Even if the alleged victim initiates or invites sexual contact in his or her relationship with clergy or presbytery personnel, it is always the responsibility and duty of the clergy or presbytery personnel to maintain the appropriate role boundaries and prohibit a sexual relationship. When there is any structured relationship of superior/subordinate between two people (not married to each other), sexual expression between the two is an abuse of that relationship by the person in the superior position.

5. Sexual misconduct can also be taking advantage of the vulnerability of children and persons who are less able to act for their own welfare. Thus, abuse does not have to involve physical contact; it may include photos, internet, text messaging, etc. Those serving in high risk occupations have a special duty to avoid this type of sexual misconduct.

6. Sexual harassment is a particular form of sexual misconduct. When it rises to the level of affecting employment, advancement or performance, it must be treated with the same seriousness as any behavior which is an abuse of power, position, or authority. See Glossary.

## **II. B. EDUCATION AND TRAINING**

Implementation of this policy requires the presbytery to:

- ☞ adopt and offer educational programs to address boundary issues,
- ☞ assist clergy in dealing with inappropriate sexual advances and/or false accusations of sexual misconduct,
- ☞ provide training in pastoral and disciplinary response procedures.
- ☞ and prevent sexual misconduct,

1. New members of presbytery must complete (normally within the first 12 months of accepting a call if they cannot provide a certificate of completion of an equivalent training) at least one educational event approved by the presbytery (e.g. 4 and 7 below). This is a condition of all calls **and wording to this effect will be included in all calls.** -No call will be approved, validated, or continued if this condition is not met within two years of the effective date of the call. Members of presbytery at the time this policy is approved must complete an approved educational event prior to December 31, 2012. Honorably retired pastors not engaged in pastoral work only have to sign an acknowledgement of having received the policy with expectation they have read and understand it—but will be required to attend an event before being validated for a return to active service in a validated call.

2. Any member of presbytery may be required by the Committee on Ministry to attend additional training/events when such attendance is recommended by the Committee on Ministry; or directed by an Administrative

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Commission appointed to deal with matters at a church; or when a change in applicable rules, laws or standards warrant additional educational sessions . It may also be required as part of Censure and Restoration in a Disciplinary case. Non-clergy staff of the presbytery shall attend such educational sessions as directed by the Executive Presbyter. Other presbytery personnel and volunteers may be required to attend such training as a condition of service on a particular committee, commission, council, task force, team or group.

3. The Committee on Ministry and the SMRT will co-sponsor at least once every calendar year, a one-day training event (in understanding and preventing sexual misconduct) for clergy, youth ministry staff, Christian Educators, Commissioned Lay Pastors, personnel committees, and individuals responsible for the recruitment and training of volunteers. The SMRT will coordinate and lead the training. Other specialized training and education aimed toward prevention of sexual misconduct and appropriate responses to sexual misconduct may occasionally be offered for churches and the presbytery by the SMRT or other approved groups.

4. The SMRT may be available to participate in training and educational events for churches and make training and educational materials available to congregations to help churches recognize, respond to, and prevent sexual misconduct.

5. The SMRT will work with the presbytery to encourage churches to adopt policies and procedures for preventing and reporting child abuse, including child sexual abuse.

6. The SMRT may make additional recommendations to the presbytery regarding matters of sexual misconduct policy and procedures, including, for example, recommendations regarding employment practices, education of clergy, training and education materials for clergy and the presbytery.

7 Clergy who have participated in comparable training in or through another presbytery or Presbyterian seminary or validated provider may certify their attendance in such other training and seek a waiver from these training requirements. The Committee on Ministry shall determine what constitutes comparable training and who is a validated provider and whether any waiver will be granted.

## **PART III. PROCEDURES:**

### **RESPONDING TO AN ALLEGATION OF SEXUAL MISCONDUCT**

#### **REPORTS:**

##### **III. A. SPECIAL CIRCUMSTANCES OF THE THIRD PARTY ACCUSER**

1. In many cases the third party accuser is the parent, guardian or other advocate for a child who is the alleged victim of sexual misconduct. In other cases, the third party accuser may be a colleague or friend of the accused. When the accuser is not the direct alleged victim of the alleged sexual misconduct, the situation may be more complex and difficult to address, and special care shall be taken to respect the privacy and other interests of the persons involved.

2. In cases where the alleged victim is an adult, a third party accuser subject to this policy should consider the following before making an allegation of sexual misconduct:

a. The third party accuser should let the alleged victim know in advance that he or she is going to make a report of sexual misconduct, and should urge the alleged victim to make his or her own report, if possible.

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- b. When the alleged victim is unwilling or unable to make a report of sexual misconduct and a third party accuser decides to report, that individual should take reasonable steps to respect the privacy interests of the alleged victim. In some cases, the alleged victim may want to keep his or her identity confidential, which may not be possible.
  - c. When the alleged victim is unwilling to make a report of sexual misconduct and the third party accuser proceeds to report, the third party accuser should take reasonable steps to make certain that there is a reasonable factual basis for making the report but should not initiate a private investigation of the matter or become a fact finder. The third party accuser should be sensitive to making false charges that could damage the reputation and well being of the accused, the accused's immediate family, the alleged victim, the alleged victim's immediate family, and the church. The third party accuser should also be aware of the potential for personal civil liability for allegations that cannot be substantiated. In no case, shall presbytery personnel file allegations as a third party accuser without first obtaining legal advice and counsel (provided by presbytery).
3. Individuals who are considered a **Mandated Reporter** under the provisions of state law are expected to fulfill the requirements of that law. (see Glossary) Note that California law has special provisions for ordained ministers consistent with G-6.0204 *The California Penal Code section is provided as an attachment to this policy.*

### **III. B. RECEIVING INITIAL REPORTS**

1. Reports of alleged sexual misconduct will occur in a variety of ways. Initial reports may be oral or written. Because the presbytery cannot control how a report will first be made or to whom a report may first be made, it is important that officers, employees, and persons highly visible to church members and visitors understand that it is critical to report alleged sexual abuse and allow the presbytery to see that it is channeled to the proper persons.
2. Reports and/or rumors of alleged sexual misconduct should not be taken lightly or disregarded and should not be allowed to circulate. Reports of possible sexual misconduct should be dealt with as matters of high concern at all times. Since time is of the essence, the presbytery shall begin its response to a report of alleged sexual misconduct within 30 days of becoming aware of an actual report.
3. The first person(s) to learn of a report of sexual misconduct shall not undertake any investigation or inquiry alone or question either the accuser or the accused. If the accuser is reluctant to talk to others, the person receiving the initial report should encourage the accuser to report the incident, lest the Church be unable to respond appropriately or on a timely basis.
4. The person receiving the initial report of alleged sexual misconduct from the accuser shall report the incident to the Executive Presbyter, the Chair of the Committee on Ministry, or a member of the SMRT. The Executive Presbyter, Chair of the Committee on Ministry (or designee) and Chair of the SMRT shall consult with each other and appropriate professionals and determine whether the report does involve an allegation of sexual misconduct and, if so, determine how best to proceed based on the information received. As noted above, persons receiving a report of sexual misconduct shall report as required and permitted to appropriate civil or criminal authorities in a manner consistent with the Book of Order (see G-6.0204a & b concerning privileged information) and applicable secular law.
5. When an initial report of sexual misconduct has been received, and at least two of the persons who are

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the Executive Presbyter, the Chair of the Committee on Ministry (or their designee), the Chair of the SMRT concur that if the facts as presented were proved to be true that an incident of sexual misconduct has occurred, the SMRT will be asked to implement the procedures for pastoral response outlined in IIIC below.

6. The Chair of the Committee on Ministry, the Executive Presbyter and the Chair of the SMRT (or their designees) shall be the “Initial Response Team” and shall work together to coordinate their responses from this point forward--or until such time as an Investigating Committee is formed under the Rules of Discipline (Book of Order D-10-0103) or proceedings under secular law begin. The Initial Response Team shall make contact with the accused, the accuser, and the Clerk of Session if the accused is pastor of a church. The Initial Response Team shall formulate an initial response plan appropriate under the circumstances. The nature of the report from the accuser, whether the report involves current or ongoing activity versus past activity, whether minor children are involved, whether the alleged sexual misconduct involves acts of touching or violence, whether charges have been filed with the Stated Clerk, and other considerations will inform the Initial Response Team as they formulate an initial response plan. The Initial Response Team or appropriate members of the SMRT shall meet with the Session as early as practicable.

When the accused is a non-parish pastor, the Initial Response Team shall consult with an attorney before initiating any contact with the minister’s employer.

7. In any case where the Executive Presbyter, the Chair of the Committee on Ministry, the Stated Clerk, or the chair of the SMRT is the accused, is otherwise personally involved with the situation or is unavailable, the other two members of the Initial Response Team, in consultation with the Committee on Ministry, may appoint one or more other members of the PCUSA to act as the Initial Response Team. Such persons may be from another presbytery.

8. The Initial Response Team may assist in providing for the pastoral needs of the church congregation, including pulpit supply. The SMRT shall assist the Initial Response Team as requested.

9. The Initial Response Team should consult with the presbytery’s attorney as soon as possible in matters involving alleged sexual misconduct. Legal counsel will assist the Initial Response Team and the SMRT in responding to the legal issues involved in an instance of alleged sexual misconduct, including, by way of example and not limitation, the duty to make reports of the allegations under secular law consistent with Book of Order, G-6.0204a & b (privileged information) and issues of Clergy/Penitent confidentiality, and personnel matters. When there are proceedings under secular law, the SMRT, the Initial Response Team and the presbytery should be kept informed about the situation, and legal counsel may assist in that process.

10. Leave of Absence

In some cases, it may be advisable for the accused to take an immediate leave of absence from his or her position, particularly if the position involves ministry in a church or in a high risk occupation. The session (or other employer—see #6 above) and the accused may be willing to agree to an immediate leave of absence, which may be a paid leave, if the circumstances warrant it. The accused is strongly encouraged to take advantage of the opportunity for an immediate leave of absence or administrative leave, whether paid or unpaid.

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In the event that the accused, and the session, and/or the accused's employer are unwilling or unable to agree to any leave of absence, the Initial Response Team, or the Committee on Ministry, or the presbytery and/or others as authorized by the Book of Order, may, as conditions warrant, take all appropriate steps provided for in the Book of Order (D-10.0106 and/or G-11.0103o and/or G-6.0702 and/or other sections) for removal of the accused from his or her position or the session from its leadership role.

Invocation of “constitutional processes” is particularly important to remove any clergy from any setting if there is a continued risk of immediate physical, psychological, or spiritual harm to another person, or if the allegations includes child sexual abuse or sexual abuse of someone purportedly lacking the mental capacity to consent, and all clergy must agree to employment of this process as a condition of their continued employment in this presbytery.

Any presbytery personnel may be similarly removed by the Staff Relations Committee of presbytery, and all presbytery personnel agree to such as a condition of their continued employment by the presbytery.

Responsibility for continuation of compensation of the accused while on a paid leave of absence or administrative leave shall normally be the responsibility of the employer. If such arrangements cannot be made, the Initial Response Team may recommend that the presbytery contribute to the support of the family of the accused during a leave of absence or administrative leave

### 11. Final Action/Report

At the conclusion of a matter involving allegations of sexual misconduct, the SMRT shall prepare a report for the Committee on Ministry and the presbytery that shall summarize the issues, the responses made and the lessons learned. The SMRT should obtain information from the Initial Response Team for this report. This report shall be prepared in a manner that respects the legitimate privacy interests of those involved and is consistent with confidentiality requirements. The purpose of the report is to document how the situation was managed so that the presbytery may learn from the experience and make appropriate changes and modification in the future. Such report shall be maintained in the presbytery's files of the church and the accused.

12. Throughout the time that it is dealing with a matter of alleged sexual misconduct, the presbytery and the Committee on Ministry shall have all the authority, rights, and responsibilities prescribed to them by the Book of Order and the presbytery's “Standing Rules”.

## **RESPONSE**

### **III. C. PASTORAL RESPONSE TO THOSE INVOLVED IN AN INCIDENT OF SEXUAL MISCONDUCT**

**SEXUAL MISCONDUCT RESPONSE TEAM:** The Sexual Misconduct Response Team (SMRT) is one of two teams that may be called upon to respond to initial reports of sexual misconduct within the Presbytery. As such, SMRT, in consultation with the Committee on Ministry, may arrange for the pastoral care of affected persons (victim and immediate family, accuser and immediate family, and congregation and staff, of the accused). SMRT, and the Committee on Ministry, will also work with churches to prevent sexual misconduct and to support the creation of individual church sexual misconduct policies.

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1. In its sole and absolute discretion, the SMRT may take reasonable steps to minister to the needs of those persons most directly involved in an incident of alleged sexual misconduct. The particular needs for pastoral care and counseling will vary in each instance. In some cases, others, such as co-workers and colleagues of the accused, may also request pastoral care. In most cases, the Executive Presbyter or the moderator of the Committee on Ministry will notify the chair of the SMRT of a pending matter and the possible need for pastoral care for one or more persons.
2. The needs of an alleged victim of sexual misconduct will vary and may be influenced by such factors as the degree, duration, and severity of abuse; the age and emotional condition of the alleged victim; personality dynamics; and the alleged victim's religious faith. Alleged victims frequently suffer from feelings of guilt, shame, anger, mistrust, lowered self-esteem, unworthiness, alienation from God and the religious community, and alienation from self or family. The SMRT should strive to be sensitive to the alleged victim's pain and need for healing. The SMRT is not responsible for providing professional counseling and not obligated to provide pastoral care, but will normally make reasonable efforts to act in a supportive role for those involved in an instance of alleged sexual misconduct.
3. The SMRT may offer pastoral care for the accused and the immediate family of the accused. The goal of church discipline is to build up the body of Christ, not destroy it; to redeem it, and not to punish it. (*See Book of Order*, Preamble to the "Rules of Discipline") The SMRT may provide opportunities for pastoral care of the accused and the immediate family of the accused with this goal in mind, and should not prejudge the accused.
4. The SMRT may recommend to the presbytery that additional assistance be provided to any person involved in an incident of alleged sexual misconduct based on the specific circumstances in a particular case.
5. If the SMRT believes that professional counseling is needed for one or more of the persons involved in an instance of alleged sexual misconduct, it may refer that person to a professional counselor trained to deal with issues of sexual misconduct. The SMRT should maintain a referral list of counselors and counseling centers sensitive to issues of sexual misconduct, faith and spiritual needs.
6. The SMRT and the presbytery will strive to be sensitive to all parties' financial ability to pay for psychological counseling. The SMRT may refer persons in need of professional counseling to an agency that sets fees based upon client's ability to pay. Although the presbytery and the church are not legally obligated to pay for any counseling, they may in their sole and absolute discretion offer to assist with the cost in some circumstances.
7. The SMRT should remind the alleged victim, the accuser and the accused that they may choose to have someone accompany them throughout the process. When so requested, the SMRT will help identify a person to be available to these parties as a pastoral presence throughout the process. SMRT members will not be expected to act as an advocate for any person in a Disciplinary or legal proceeding. [see Book of Order, D-10.0203 for "Rights of the Persons Involved" to have an advocate, notice of which is a function of the Investigating Committee.] The presbytery is never obligated to provide paid legal counsel for any person involved in Disciplinary process.
8. In cases where pastoral care is being provided, the SMRT will not ask any person(s) providing support to the accused or the accused's immediate family to also provide support to the alleged victim or the accuser or their immediate families, and *vice versa*. In some cases, such as when a pastor prominent in

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the presbytery or presbytery staff is the accused, the Initial Response Team (defined above) may direct the SMRT to utilize resources from outside the presbytery for pastoral support.

10. The SMRT should keep a complete and accurate record of all the offers for pastoral care, referrals, and any pastoral care provided. Such records shall be considered confidential. The chair of the SMRT will assist those providing such pastoral care in maintaining an appropriate record.

### **III. D. RESPONSE TO CONGREGATIONS**

1. The SMRT should be aware of the problems a congregation may experience following an accusation of Sexual misconduct within the Church or involving clergy serving the church. The allegations may polarize the congregation, damage morale of staff and members, and create serious internal conflicts.

2. When a church's pastor is accused of sexual misconduct, the ramifications are severe and immediate. The SMRT will work to support the efforts of the Committee on Ministry in providing for pastoral care and support for the congregation, including, for example, listening sessions, educational events, or training opportunities.

3. At the invitation of the Committee on Ministry, members of the SMRT may play a role in working to heal the damage to a congregation where there has been an alleged or proven incidence of sexual misconduct. This may include continued involvement following a decision in a disciplinary trial. This should include conversations intended to prevent "secrets" from creating long term dysfunctions in the life of the church.

## **RESULTS**

### **III. E. PROCEEDING TO A DISCIPLINARY CASE**

1. If the Initial Response Team reasonably believes there is a factual basis for the allegations and sufficient evidence to suggest the possibility of a favorable verdict, the alleged victim and/or accuser may be counseled to commence a Disciplinary case against the accused. If the accuser agrees they shall be asked to make a signed, written report of the accusations and to file them with the Stated Clerk. If the alleged victim or accuser is unwilling to commence a Disciplinary case, and the Initial Response Team reasonably believes a Disciplinary case should be brought, any one of them may, following legal consultations, commence the case under the appropriate provisions of the Book of Order. The Stated Clerk shall receive such reports and proceed according to the "Rules of Discipline". (D-10.0101) The accuser or alleged victim need not have the concurrence of the Initial Response Team or SMRT to start a Disciplinary case. In some cases, an accuser may bring a Disciplinary case directly, and if so, the role of the SMRT and the Initial Response Team will be limited and guided by the Book of Order and the Investigating Committee.

2. If the accused has admitted to Sexual misconduct, the Book of Order "Rules of Discipline" regarding guilty pleas/self accusations shall be followed. D-11.0402d.

3. If a Disciplinary case is not commenced (as for example, because the matter involves issues other than sexual misconduct, or the time for bringing a Disciplinary case has lapsed), or until such time as one is commenced, the Initial Response Team and/or the Committee on Ministry shall respond to the situation. The SMRT may be involved as appropriate and as requested.

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4. Once a Disciplinary case has been commenced and an Investigating Committee has been formed pursuant to “Rules of Discipline” D-10.0103 and D-10.0200, the Investigating Committee shall take charge of responding to the allegations, and it shall follow the procedures in the “Rules of Discipline” D-10.0200.
5. When alternative forms of resolution are used (*see* “Rules of Discipline” D-10.0202h), the Investigating Committee may involve members of the Initial Response Team and/or the SMRT as appropriate. The SMRT will continue to fulfill its responsibilities for pastoral responses as set forth above.
6. The Initial Response Team and/or SMRT may continue to work with the church, its session, and other clergy at the church {and/or other employer of the accused when the accused is not serving a church. ed. note: see III. B. 6 above} while a disciplinary case is pending. The IRT and SMRT shall understand that they have a subordinate role to that of the Investigating Committee (IC) and Permanent Judicial Commission (PJC) which have the authority to order the SMRT to cease and desist all involvement in a case. For that reason, they shall inform the IC of their activities, preferably in advance.
7. The Initial Response Team and the SMRT have no authority to negotiate any form of censure or discipline for the accused under the “Rules of Discipline”. However, at the conclusion of a Disciplinary case, the Committee on Ministry and the SMRT may be asked by the church or the presbytery to help address the accuser’s/accused’s needs for reconciliation with the church or similar matters. [D-11.0403e, D-12.0103d, 12.0104c, ]
8. Renunciation of Jurisdiction. Should an accused Renounce Jurisdiction (Book of Order, G-6.0501 or G-6.0503) during an investigation or trial, the SMRT shall continue its work with the accuser and/or alleged victim, the congregation (if there is one), and other involved individuals following the report provided for in “Rules of Discipline”, D-3.0106.

**III. F** FALSE ACCUSATIONS

1. If the Initial Response Team reasonably believes that the accusation is false or, after Disciplinary proceedings, the accusations are found to be false (or not sustained), it shall work with the accuser and the accused to reach an appropriate resolution under the circumstances. Any member of the PCUSA who has been accused of Sexual misconduct may request an inquiry for vindication under Book of Order, “Rules of Discipline” D-9.0101.
2. Even if the Initial Response Team believes an accusation is false, the accuser may proceed under the Book of Order, “Rules of Discipline” to commence a disciplinary case.
3. Making a false accusation of sexual misconduct is a serious offense, and may result in the bringing of disciplinary charges against the accuser. Churches are urged to implement child protection and similar policies to minimize the risk that clergy and Church personnel will be falsely accused of sexual misconduct.

**PART IV: PRESBYTERY ISSUES**

**IV A.** THE SEXUAL MISCONDUCT RESPONSE TEAM

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1. The Sexual Misconduct Response Team (SMRT) shall consist of at least seven members, reasonably divided between Ministers of Word and Sacrament and members of Los Ranchos congregations, and men and women. There shall be at least one member from the Committee on Ministry (not subject to the following terms of service). The SMRT shall be organized into three classes of as nearly equal numbers as possible; serve for three year terms, and may be elected for one additional three year term.
2. The Sexual Misconduct Response Team shall be elected by the presbytery from nominations provided by the Committee on Ministry.
3. The SMRT shall be trained for its task, and the presbytery shall provide budgetary and staff support for the SMRT.
4. Persons with specific gifts, skills, training desired for the group:  
Psychologists/psychiatrists/psychotherapists/clinical social workers/certified counselors (MSW, MFT or Pastoral)  
Attorney/judge (especially with experience/training in domestic law and/or criminal proceedings and/or tort litigation).  
Knowledge of community resources—how to find such resources.  
Knowledge/experience in insurance and risk management.  
Conflict management in congregations.  
Personnel and/or Human Resources.  
Experience in victim advocacy.

At least one of the above persons should be able to provide an empathetic presence to a pastor's spouse and family. (e.g. is a pastor's spouse, child of pastor, etc.)

5. No member may simultaneously serve on this team and the Permanent Judicial Commission, an Investigating Committee, the Initial Response Team, or an Administrative Commission involving this individual or congregation..

**IV. B. EMPLOYMENT PRACTICES**

1. Risk of liability from negligent hiring or supervision of employees, including clergy, should be minimized. In addition to the training and other provisions of this policy, the presbytery and churches should review their policies and practices of securing paid and volunteer personnel with the intent of minimizing the risk of sexual misconduct or a claim of negligent hiring or supervision.
2. Accurate record keeping is an essential part of hiring and supervisory practices. The presbytery office will maintain personnel files on all clergy. The file will contain Personal Information Forms ("PIFs"), Executive Presbyter notes, reference responses, training attendance records, Clearance Checks, and other documents related to implementation of this policy and the hiring of clergy.
3. Pastor Nominating Committees are responsible for contacting references for prospective clergy. A written record of conversations or correspondence with references shall be available to the presbytery for clergy called to pastoral positions and shall be kept by the church in the clergy personnel file.

4. When clergy desire to transfer into the Presbytery of Los Ranchos from another presbytery, the Presbytery of Los Ranchos will assume responsibility for contacting *AT LEAST* the clergy's previous employer through the Executive Presbyter or other authorized persons who shall report to the Committee on Ministry either that there have been no reported incidents of sexual misconduct, or that the committee and/or PNC should inquire further into matters pertaining to sexual misconduct. A national criminal background check shall be conducted on all ministers called to service in this presbytery. ***Pastors unwilling to sign a release form for securing such information shall be provided an opportunity to explain their reason and be informed that failure to do so places their call and membership in jeopardy.***

5. The person within the presbytery authorized to give a reference/clearance check from the presbytery for a clergy transferring out of the presbytery, is obligated to give truthful information regarding allegations and inquiries of sexual misconduct (and their outcome)--and administrative or disciplinary action related to sexual misconduct of the applicant. Any such references shall be consistent with the information contained within the written reports and records of the presbytery.

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

7. The provisions of this section apply equally to presbytery personnel and all members of presbytery regardless of employment status.

8. All churches are expected to screen and supervise their paid staff and unpaid volunteers who work with children, youth under age 18 or others in high risk categories. With the signed, written consent of the employee or volunteer, churches are encouraged to conduct a criminal record background check and/or use other means to check for past instances of sexual misconduct and other illegal behavior before allowing any person, paid or unpaid, to work in any high risk position or with children or youth under age eighteen.

#### IV. C. CONFIDENTIALITY AND MEDIA CONTACT

1. Matters involving sexual misconduct should be treated with sensitivity and with consideration for the privacy interests of those involved. The accused is presumed innocent until proven guilty. The alleged victim, the alleged victim's family, the accuser, the accused's family, and the church have interests in maintaining appropriate levels of confidentiality consistent with their interests and the stage at which a proceeding may be.

2. The privacy interests of any person should never cause the presbytery or others to give false information or withhold important information in the context of employment matters or in any other context where there is an obligation of truthful and accurate disclosure.

3. Throughout the process of dealing with an incident of alleged sexual misconduct, those involved should avoid discussing the matter with those who have no "need-to-know" information about the matter.

4. Particular individuals involved in an incident of alleged sexual misconduct may have special confidentiality obligations, such as those in a counseling relationship, spiritual director, and the attorney-

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client relationship. Nothing in this policy is intended to countermand such special confidentiality obligations. [G-6.0204]

5. Nothing in this policy is intended to violate confidentiality requirements of the Book of Order or to violate mandated reporting requirements for the reporting of child abuse. [G-6.0204]

6. Inquiries from the public, the press or the media for information about a matter involving alleged sexual misconduct shall be referred to the Executive Presbyter<sup>1</sup> or his or her designee. No member of the SMRT, COM, or presbytery staff should respond to inquiries from the public, press or media. Reporting failure to follow the procedures mandated by this policy is not a breach of this requirement.

#### **IV. D. INTERFACE WITH OTHER RULES AND LAWS**

1. Where specific provisions of the Book or Order mandate a particular response to an allegation of sexual misconduct, those provisions will control. E.g., the responsibilities of the Committee on Ministry (Book of Order G-11.0502i-j) and of an Investigating Committee in Disciplinary process (Book of Order D-10.0101 et seq.) will control the actions of such entities.

2. In some cases secular laws impose additional requirements (such as requirements for reporting of child abuse). In the case where there is a criminal law proceeding against the accused under secular law, the presbytery will follow the “Rules of Discipline”, and may seek a delay its proceedings until criminal law proceedings have been concluded. The presbytery will also take note of any pending civil law proceedings, and, in consultation with its attorney, may accord deference as appropriate to any such proceedings. In all cases where criminal or civil law actions are pending concurrently with procedures under this Policy, the SMRT and the Initial Response Team shall consult with the presbytery’s attorney and coordinate their actions accordingly and in a manner consistent with the Book of Order for adhering to or suspending or tolling ecclesiastical time requirements.

3. Congregations are expected to fulfill all legally mandated requirement for training, education, and prevention of sexual misconduct. [There are special provision for employers with more than 50 employees—contact a your insurance company or a labor attorney for clarification regarding which laws may apply to you.]

#### **IV E. INSURANCE**

1. Because of the risk that the presbytery or any of its churches may be held liable for harm caused by sexual misconduct by clergy or presbytery personnel, on any number of theories, (including, for example, negligent hiring and supervision), appropriate insurance or indemnification policies shall by obtained by the presbytery and should be obtained by churches. These should include specific language regarding coverage (or lack of coverage) in cases of alleged sexual misconduct.

2. Churches should take advantage of materials, training and resources provided by insurance carriers to guide and direct efforts to prevent all forms of Sexual Abuse and Misconduct.

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<sup>1</sup> In the absence or incapacity of the EP, the Docket Committee of Council shall designate a spokesperson.

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3. Special insurance policy endorsements to cover specific exposures such as camps, day-care operations, pastoral counseling centers, shelters, or other outreach programs should be considered. It is also recommended that the presbytery and churches consider obtaining special endorsements specifically covering sexual abuse and molestation, employment practices, volunteers, etc.. The presbytery may have available-one or more models of such coverage to churches.

**Part V. Glossary**

1. **“Accused”** The person against whom a claim of Sexual misconduct has been made.
2. **“Accuser(s)”** The person(s) claiming knowledge of sexual misconduct by a person covered by this policy. The accuser may or may not be the alleged victim of alleged sexual misconduct (*i.e.*, the “third party accuser”). The accuser need not be a person with first hand knowledge of the alleged sexual misconduct. A person such as a family member, friend or colleague of the alleged victim may be the accuser whose information initiates an inquiry.
3. **“Alleged victim”** The person alleging being injured by or alleged to have been injured by sexual misconduct.
4. **“Child Sexual Abuse”** Any contact or interaction between a child and an adult when the child is being used for the sexual stimulation or gratification of the adult person or of a third person. The behavior may or may not involve touching. Sexual behavior between a child and an adult is never consensual and is always considered forced or coercive. The upper age limit of “child” in this policy is intended to be that recognized in the state in which the act was committed.
5. **“Church”**. When spelled with the initial “c” capitalized refers to the Presbyterian Church (U.S.A.). When the initial “c” is lower case, it means a congregation or local church of the PCUSA.
6. **“Clergy”** means an ordained Minister of Word and Sacrament or a Commissioned Lay Pastor and includes without limitation a pastor, associate pastor, co-pastor, interim pastor, designated pastor, temporary or stated supply, and ministers serving specialized ministries. As used in this Policy, “clergy” includes those who are actively serving a call and those who are continuing or at large members of the presbytery.
7. **“Certified Christian Educators”**, for purposes of this document, are included in this policy as “other church employees”.
8. **“Confidentiality”**. The legitimate need to protect persons, information, or “confessional office”. It is not the same as “secret”, which is often used in cases of sexual misconduct to describe a reluctance or unwillingness to reveal or divulge information resulting in an inability to address the problems created by certain behaviors.
9. **“Dependent Adult”**. Any person above the age of “child” who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including (but not limited to) persons with physical or developmental disabilities or whose physical or mental disabilities have diminished because of age; and any person above the age of “child” with psychological or mental conditions, diseases, illnesses, or disorders that render them incapable of making informed judgment about their own well being.
10. **“Disciplinary”**: The formal disciplinary process of the PC(USA) as set forth in the “Rules of Discipline” of the Book of Order.
11. **“Entity”**. Any program or office managed by a board, committee, council or other type governing body whose membership is elected by a governing body or from among a governing body’s constituent members.
12. **“High Risk Occupation”** A position that calls for a person to work in close contact with those who

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are vulnerable and less capable of protecting themselves, such as with children, elderly persons, those who are wholly or partially incapacitated, or counseling clients having emotional or personal problems.

13. **“Initial Response Team”** The Executive Presbyter, the Chair of the Committee on Ministry, and the Chair of the Sexual Misconduct Response Team or their designees.

14. **“Investigating Committee”** The committee formed by the presbytery pursuant to Book of Order Rules of Discipline D-10.0201.

15. **“Mandated Reporter”** is defined by state law. Typically a person is required to report any and all suspected incidents of abuse of children or dependent adult, including sexual abuse, regardless of how such information comes to them. State law may exempt certain persons from this category—and may provide for “privileged communication” in narrowly defined circumstances (per Book of Order).

16. **“Other Employee or Volunteer”**. Those employed by or recognized as a volunteer in a church or other organization related to a church, governing body, or other validated employer. This may be in a paid or unpaid, elected or appointed position, and includes board members and others serving in administrative or governing positions.

17. **“Parishioner”** Any member of the church that the clergy is serving, any person who is relating to the clergy as their pastor or minister, and all individuals who are in a counseling relationship with the clergy person. For clergy serving in specialized ministries, “parishioner” means any person receiving the benefit of the clergy’s exercise of the office of ministry (such as by way of example and not limitation, patient/hospital chaplain, pastoral counselor/client, camp director/camper, or campus minister/student).

18. **PCUSA**” The Presbyterian Church (U.S.A.).

19. **“Presbytery Personnel”** All staff employed by the Presbytery of Los Ranchos and any person, whether clergy or elder, serving in any official capacity for the presbytery on any of its committees, councils, commissions, task forces, teams, or otherwise.

20. **“Reasonable Suspicion”** Subjective criteria referring to a belief or opinion based on facts or circumstances that are sufficient for a prudent person to want to inquire further, take protective action, or report to civil or ecclesiastical authorities.

21. **“Secular or Civil Law/Authorities”** The body of municipal, state, and federal laws and enforcement agencies, whether civil or criminal, that relates to the matters addressed by this Policy.

22. **“Sexual Harassment”**

No person, male or female, should be subject to unsolicited or unwelcome sexual overtures or conduct, either verbal or physical. Sexual Harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, that is demeaning, that persists after clear boundaries are articulated, and that undermines the integrity of employment or faith-based relationships.

It may, among other behaviors, include

- ⇒ physical, verbal or visual sexual advances or propositions
- ⇒ requests for sexual favors, and other sexually oriented conduct, that is offensive or objectionable to the recipient or which creates a hostile work environment
- ⇒ physical contact (including touching, pinching, or brushing the body)
- ⇒ verbal harassment (such as derogatory or suggestive comments, slurs or gestures)

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- ⇒ sexual innuendoes, jokes of a sexual nature, sexual propositions, and threats
- ⇒ non-verbal conduct, such as display of sexually suggestive objects, posters, cartoons, pictures, drawings, screen savers, or clothing
- ⇒ leering, whistling, or obscene gestures
- ⇒ use of computers to embarrass or threaten others
- ⇒ acts of physical aggression, intimidation, hostility, threats, or unequal treatment based on sex (even if not sexual in nature)

23. **“Sexual Malfeasance”** Conduct by clergy or presbytery personnel directed toward parishioners, their subordinate staff or others that involves physical contact and particularly contact involving the genitals, breasts, buttocks, or pubic areas; inappropriate hugging, kissing, neck rubs, massages, and so on; inappropriate discussion or comments of a sexual nature or sexually-oriented topics; obscene or suggestive language or behavior. Sexual Malfeasance is inappropriate activity. It does not include relationships between spouses, nor is it meant to restrict church professionals from having normal mutual, social, intimate or marital relationships outside of their relationships with parishioners and their subordinate staff.

24. **“Sexual Misconduct”** The comprehensive term used in this policy to mean any unwanted and/or unsolicited and/or nonconsensual physical activity between clergy and parishioner or non-church member or other clergy, and may include any and/or all of the following: Child Sexual Abuse; rape, sexual assault or battery, or any activity of a sexual nature deemed illegal under California secular law; sexual abuse as that term is defined by Book of Order “Rules of Discipline” D-10.0401c; sexual contact with another person by force, threat, intimidation, duress, use of drugs, or other nonconsensual means; sexual harassment; sexual malfeasance; or viewing or use of matter of sexual or pornographic nature on church or presbytery premises or property or by means of use of a church or presbytery computer.

25. **The Sexual Misconduct Response Team (“SMRT”)** is a group of people elected by the presbytery to aid it and the Committee on Ministry to respond quickly, pastorally, and objectively to reports of sexual misconduct and to assist the presbytery and its member churches in activities aimed at the prevention of sexual misconduct. It is not intended to replace, and should not be understood as replacing, the work of an Investigating Committee as provided for in the “Rules of Discipline”.

IN ADDITION, THERE IS A THREE PAGE LEGAL DOCUMENT ON MANDATORY REPORTING THAT WILL BE ADDED TO THE ACKNOWLEDGMENT PAPER WHEN RECEIVED FROM THE ATTORNEY. IT IS NOT SUBJECT TO EDITING OR VOTE AS THE WORDING IS FROM THE STATUTES ON THE SUBJECT AND IT’S DISTRIBUTION IS REQUIRED OF EMPLOYERS.

**Appendix D**

## **2008 ACKNOWLEDGMENT FORM & "MANDATED REPORTER" CERTIFICATION**

### **PREVENTION AND RESPONSE POLICY: SEXUAL MISCONDUCT**

By my signature I acknowledge that I have received a full and complete copy of the "Prevention and Response Policy: Sexual Misconduct" of the Presbytery of Los Ranchos.

By my signature, I further understand that I am a "mandated reporter" as that term is defined in the California Child Abuse and Neglect Reporting Law and have certain reporting obligations pursuant to California Penal Code Section 11166 as well as certain confidentiality obligations under subdivision (d) of Section 11167. I certify that I have been provided a copy of California Penal Code Sections 11165.7, 11166, and 11167 and have reviewed them.

{Relevant sections follow. The full document is attached separately}

I also acknowledge that I understand that it is the expectation of the presbytery that I have read the above documents and am familiar with the behavioral boundaries created by these documents, the consequences of violating those boundaries, and the procedures that will be followed if allegations of sexual misconduct are made by me or against me. I further understand the education and training requirements established by this policy and the consequences of failure to attend such opportunities.

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Signature

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Name Printed

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Date Signed

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Witness

Every Minister of Word and Sacrament in the Presbytery of Los Ranchos, those commissioned by the presbytery to professional office, and every member of the Presbytery staff shall have a signed copy of this document in their Personnel file.

### **Summary of Major Points from Penal Code**

**(32) A clergy member, as specified in subdivision (d) of Section 11166. As used in this article, "clergy member" means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.**

(e) Unless otherwise specifically provided, the absence of training shall not excuse a mandated reporter from the duties imposed by this article.

**11166.** (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written followup report thereof within 36 hours of receiving the information concerning the incident. The mandated reporter may include with the report any nonprivileged documentary evidence the mandated reporter possesses relating to the incident.

(1) For the purposes of this article, "reasonable suspicion" means that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared and sent, faxed, or electronically transmitted even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to submit an initial report by telephone, he or she shall immediately or as soon as is practicably possible, by fax or electronic transmission, make a one-time automated written report on the form prescribed by the Department of Justice, and shall also be available to respond to a telephone follow-up call by the agency with which he or she filed the report. A mandated reporter who files a one-time automated written report because he or she was unable to submit an initial report by telephone is not required to submit a written follow-up report.

(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written follow-up report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

**(d)**

**(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.**

**(2) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.**

**(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.**

**(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.**

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

**11167.** (a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name, business address, and telephone number of the mandated reporter; the capacity that makes the person a mandated reporter; and the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information. If a report is made, the following information, if known, shall also be included in the report: the child's name, the child's address, present location, and, if applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.