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## Clergy confidentiality at issue in Amish bishop's case



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The criminal complaint against the Amish bishop is clear about how he learned of a church member’s alleged sexual assault on three young teenage girls:

“John G. Beiler confessed the sexual assault incidents to Bishop Levi S. Esh Sr.,” says the complaint, pending in Lancaster County and filed by Pequea police in April.

“Confessed.” Whether the case moves forward could hinge on that word.



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In April, Pequea police charged Mr. Esh, 63, with felony and misdemeanor charges of failing to report suspected child abuse to authorities after Mr. Beiler allegedly confessed to the sexual assaults.

The case is believed to be the first in Lancaster County — hub of the nation’s largest population of Amish — in which one of their spiritual leaders is charged with violating a Pennsylvania law that includes clergy among those mandated to report suspected child abuse.

But Pennsylvania law allows a privilege, or exemption, for clergy who learn about suspected abuse in “confidential communications” while in the course of their “duties.”

Mr. Esh’s attorney plans to challenge the charges on that and other grounds.

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The case also involves the latest in a series of allegations of sexual abuse and coverup among Amish and closely related Mennonites, both part of the Plain church tradition. In 2017, a Dauphin County Amish bishop pleaded guilty to failing to report abuse, and in 2019, a Huntingdon County Mennonite pastor pleaded no-contest to a similar charge. Both received probation.

The Post-Gazette reported in its [“Coverings” series in 2019](#) that Amish and Mennonite elders have often treated sexual abuse allegations as sins to be dealt with through church discipline rather than as crimes, and that victims are often pressured to reconcile with abusers who profess repentance. Church leaders say they have improved their responses and their cooperation with law-enforcement and child-welfare officials.

In Mr. Esh’s case, police cited witnesses from within the Amish community who said while his church excommunicated Mr. Beiler, the bishop had the matter “handled internally” to keep the incident quiet. Two congregants told police when they raised concerns in October 2019, Mr. Esh said, “It’s been taken care of, and it’s none of your business.”

State law has evolved on mandated reporting of abuse. Since December 2014, the law has explicitly required several categories of persons, including clergy, to report suspected child abuse. (The charge against Mr. Esh alleges a continuous failure to report through October 2019.) Mr. Beiler himself faces nine criminal charges.

While part of Mr. Esh’s defense will center on which laws were in place at the time of Mr. Beiler’s alleged confession, defense attorney Christopher Sarno said he would also defend Mr. Esh’s actions under the clergy-confidentiality exemption.

“It says it right there in the complaint,” said Mr. Sarno, a former prosecutor. “The way he was told — it fits the privilege.”



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of child sexual abuse.

He said that's unnecessary. Particularly when the 2014 mandated-reporting law took effect, "they got the message," he said. "They want to report it. They're not covering it up, like people say they do."

He said he's regularly consulted by the Conservative Crisis Intervention Committee, comprised of Plain church leaders to respond to abuse cases and serve as a liaison between churches and public officials.

"I get calls all the time asking if something is reportable," he said. "They always report it. If anything they err on the side of caution."

Bruce Ledewitz, a professor of law at Duquesne University, said there's an "absolute immunity" for clergy when it comes to what they learn in a confession.

But if a clergy member learns about alleged abuse in a confession, then hears about it in another setting, the cleric is mandated to report it. "It doesn't matter how it was learned if the matter is talked about generally," he said.

Child-welfare advocate Marci Hamilton said she doesn't believe Mr. Esh can claim the privilege. She noted that Mr. Esh required Mr. Beiler to make a confession to the father of the alleged victims and that the church as a whole excommunicated Mr. Beiler.

Once a third party is in on the information confessed, the exemption ends, she maintained.

"It's highly unlikely this information was limited to the confession," said Ms. Hamilton, chief executive officer of Child USA, a University of Pennsylvania-based think tank focused on preventing child abuse.



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“The truth is, we only know what we know about religious organizations covering up child sexual abuse and endangering children because of the discovery in civil and criminal proceedings,” she said. “It’s in the interest of the public to get these answers.”

Some states limit the clergy-confidentiality privilege to confessions, but Pennsylvania’s privilege applies to confidential communications in clerics’ performance of their “duties.”

The Pennsylvania Supreme Court has interpreted “duties” to include confessions and spiritual counseling. In a 1997 ruling, it rejected a Catholic diocese’s bid to use that privilege to withhold evidence, such as its records on an allegedly abusive priest, from a subpoena.

## **Mixed rulings**

But rulings in other states are mixed.

In Montana, which defines clergy confidentiality broadly, its Supreme Court overturned a \$35 million verdict in January against the Jehovah’s Witnesses, saying the church couldn’t be held to account for failing to report alleged abuse disclosed in confidential discussions, even though multiple church officials were in on those discussions.

In an Ohio sexual-abuse case, however, an appellate court ruled that a congregation of Jehovah’s Witnesses had to turn over documents between its elders and others if they did not involve spiritual counsel. “Not every word authored or spoken by a cleric is privileged,” the 2016 court opinion said.

A bill passed the California Senate in 2019 would have curtailed, but not eliminated, that state’s clergy-penitent privilege. The Catholic Church, supported by some other religious groups, vigorously fought back, and the measure failed to get out of committee in California’s Assembly.

The confidentiality requirement is crucial, say advocates.



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at Stanford Law School.

“It honors the separation of church and state as well as society’s broader interest in personal confession and its benefits — contrition, reconciliation, reparation,” he said via email. “Like other privileges, however, it applies only within the protected context; here, what would’ve been said in a confidential confession. If a religious leader has knowledge of wrongdoing ‘outside the booth,’ therefore, the privilege is an unlikely shield against disclosing that knowledge.”

Mr. Esh faces a May 13 preliminary hearing, although Mr. Sarno said that would likely be rescheduled because of pandemic-related delays.

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