

1 **OVERTURE 2021-35 (48th GA)** from Pacific Northwest Presbytery (to 49th OC)  
2 “Amend *BCO* 38-1 re Counsel for Case Without Process”  
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4 **[Editorial Note: This overture was originally submitted to the 48th General**  
5 **Assembly (2021), which referred it to the 49th GA Overtures Committee.]**  
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7 **Be it resolved** that *BCO* 38-1 be amended by the addition of a final sentence. (Addition  
8 underlined.)  
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10 ***BCO* 38-1.** When any person shall come forward and make his offense known to the  
11 court, a full statement of the facts shall be recorded and judgment rendered  
12 without process. In handling a confession of guilt, it is essential that the person  
13 intends to confess and permit the court to render judgment without process.  
14 Statements made by him in the presence of the court must not be taken as a  
15 basis of a judgment without process except by his consent. In the event a  
16 confession is intended, a full statement of the facts should be approved by the  
17 accused, and by the court, before the court proceeds to a judgment. The accused  
18 person has the right of-complaint against the judgment. The person has the right  
19 to be represented by counsel at any point, in accord with the stipulations of *BCO*  
20 32-19.  
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22 **Rationale:** In one of the *BCO* 38-1 Cases this year, a presbytery commission refused to  
23 allow the accused to be accompanied by anyone during the investigation phase or  
24 during the *BCO* 38-1 discussions. The presbytery commission contended that the  
25 *BCO* only allows post-indictment representation (i.e., their interpretation of *BCO*  
26 32-19).  
27

28 This revision makes it clear that persons in cases without process also have that right.  
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30 32-19. No professional counsel shall be permitted as such to appear and  
31 plead in cases of process in any court; but an accused person may, if he  
32 desires it, be represented before the Session by any communing member of  
33 the same particular church, or before any other court, by any member of that  
34 court. ...”<sup>1</sup>  
35

36 Furthermore, proper requests and objections from competent counsel can sometimes help  
37 the court avoid mistakes that would otherwise result in an appeal or complaint being  
38 sustained by the higher court.  
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41 See next page for General Note.  
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<sup>1</sup> Case 2020-07 *TE Wilbourne v. Pacific*

General Note:

If the four separate Overtures on *BCO* 38-1 from Pacific Northwest are adopted (Overtures 19, 33, 34, 35), the *BCO* 38-1 would be revised as follows (Underlining for additions, Strike-through for deletions):

**38-1.** When any person shall come forward and make his offense known to the court, a full statement of the facts shall be recorded and judgment rendered without process. In handling a confession of guilt, it is essential that the person intends to confess and permit the court to render judgment without process. Statements made by him in the presence of the court must not be taken as a basis of a judgment without process except by his consent. In the event a confession is intended, ~~a full statement of the facts should~~ a written Confession (i.e., a sufficient summary of the facts, the person's specific confession, and any expression or evidence of repentance) must be approved by the accused, and by the court, before the court proceeds to a judgment, and the co-signed document shall be appended to the minutes (regular or executive session). No other information may be presented without written consent from the accused and the court, and this prohibition includes individuals, prosecutors, committees, and commissions. ~~The accused person has the right of complaint against the judgment.~~

A person may proffer a confession, and request the matter be handled as a case without process, prior to an investigation, during an investigation, or after process has commenced. If a confession is proffered after the court has instituted process (*BCO* 31-2, second paragraph), the prosecutor shall ascertain whether the accused is pleading guilty to the charge (*BCO* 32-3) or is seeking to proceed via *BCO* 38-1. If the latter, and if the prosecutor accepts the Confession, he shall suspend process and recommend the court approve the Confession. He may also recommend a censure. However, if no agreement is reached on the Confession, and the matter proceeds as a case of process, confession discussions between the prosecutor and the accused are not admissible as evidence.

The person has the right to be represented by counsel at any point, in accord with the stipulations of *BCO* 32-19. A censured person has the right to appeal (*BCO* 42).

**So that the revised *BCO* 38-1 would read:**

When any person shall come forward and make his offense known to the court, a full statement of the facts shall be recorded and judgment rendered without process. In handling a confession of guilt, it is essential that the person intends to confess and permit the court to render judgment without process. Statements made by him in the presence of the court must not be taken as a basis of a judgment without process except by his consent.

1 In the event a confession is intended, a written Confession (i.e., a sufficient summary  
2 of the facts, the person’s specific confession, and any expression or evidence of  
3 repentance) must be approved by the accused, and by the court, before the court  
4 proceeds to a judgment, and the co-signed document shall be recorded in the  
5 minutes. No other information may be presented without written consent from  
6 the accused and the court, and this prohibition includes individuals, prosecutors,  
7 committees, and commissions.  
8

9 A person may proffer a confession, and request the matter be handled as a case without  
10 process, prior to any investigation, during an investigation, or after process has  
11 commenced. If a confession is offered after the court has instituted process (*BCO*  
12 31-2, second paragraph), the prosecutor shall ascertain whether the accused is  
13 pleading guilty to the charge (*BCO* 32-3) or is seeking to proceed via *BCO* 38-  
14 1. If the latter, and if the prosecutor approves the Confession, he shall suspend  
15 process and recommend the court approve the Confession. He may also  
16 recommend a censure. However, if no agreement is reached on the Confession,  
17 and the matter proceeds as a case of process, confession discussions between  
18 the prosecutor and the accused are not admissible as evidence.  
19

20 The person has the right to be represented by counsel at any point, in accord with the  
21 stipulations of *BCO* 32-19. A censured person has the right to appeal (*BCO* 42).  
22

23 **Conclusion:** We believe this Overture’s revision to *BCO* 38-1, and the other three proposed  
24 by Pacific Northwest Presbytery, will actually *encourage* confessions by providing  
25 clearer procedures related to them. And confession is a good thing.<sup>2</sup> In addition,  
26 better procedures can help avoid time-consuming, complicated, and often  
27 unnecessary judicial process, along with avoiding many complaints and appeals.<sup>3 4</sup>  
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29 *Adopted and filed by a Commission of Presbytery on March 20, 2021.*

30 *Attested by TE Nathan Chambers, Presbytery Interim Stated Clerk*

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<sup>2</sup> e.g., *WCF* 15:6; 1 John 1:9; James 5:16; Proverbs 28:13

<sup>3</sup> For a discussion of the different timings of confessions (i.e., pre-investigation, during investigation, and post-indictment) – and processes for handling them, consider one of the Concurring Opinions in Case 2019-10: *Evans v. Arizona* in the SJC’s 2021 Report, and at the link below.  
[https://drive.google.com/file/d/10Vi\\_D1HVNmtvMty-t6HMYK-bHfZID4Qr/view?usp=sharing](https://drive.google.com/file/d/10Vi_D1HVNmtvMty-t6HMYK-bHfZID4Qr/view?usp=sharing)

<sup>4</sup> For brief summaries of how criminal courts address confessions, see:  
*Admissibility of Confessions* - [www.law.cornell.edu/uscode/text/18/3501](http://www.law.cornell.edu/uscode/text/18/3501)  
*Charge v. Sentence Negotiations* - [www.nolo.com/legal-encyclopedia/how-plea-bargains-get-made.html](http://www.nolo.com/legal-encyclopedia/how-plea-bargains-get-made.html)  
*Plea Bargains* - [www.nolo.com/legal-encyclopedia/plea-bargains?utm\\_source=nolo-content&utm\\_medium=nolo&utm\\_campaign=nolo-related-products](http://www.nolo.com/legal-encyclopedia/plea-bargains?utm_source=nolo-content&utm_medium=nolo&utm_campaign=nolo-related-products)