

1 **OVERTURE 27** from Pacific Northwest Presbytery

(to CCB, OC)

2 “Amend *BCO* 38-1 re Confessions and Offended Parties”

3
4 **Be it resolved** that *BCO* 38-1 be amended. The following shows three paragraphs: the current
5 *BCO* 38-1, then the paragraph with the proposed amendment annotated, followed by a clean
6 amended paragraph showing the changes incorporated.

7
8 **Current** (April 2023)

9
10 **38-1.** When any person shall come forward and make his offense known to the court,
11 a full statement of the facts shall be recorded and judgment rendered without process.
12 In handling a confession of guilt, it is essential that the person intends to confess and
13 permit the court to render judgment without process. Statements made by him in the
14 presence of the court must not be taken as a basis of a judgment without process except
15 by his consent. In the event a confession is intended, a written Confession (i.e., a
16 sufficient summary of the facts, the person’s specific confession, and any expression
17 or evidence of repentance) must be approved by the accused, and by the court, before
18 the court proceeds to a judgment, and the co-signed document shall be appended to
19 the minutes (regular or executive session). No other information may be presented
20 without written consent from the accused and the court, and this prohibition includes
21 individuals, prosecutors, committees, and commissions. The accused person has the
22 right of complaint against the judgment.

23
24 **Proposed** - The amendment proposes to delete the parts shown by strikethrough and add the
25 parts shown underlined. (Footnotes are used only to briefly explain some of these changes,
26 but footnotes *will not* appear in the *BCO*.)

27
28 **38-1.** When any person shall come forward and make his offense known to the
29 court, before his court of original jurisdiction¹ and confess to an offense,² a full
30 statement of the facts shall be recorded, and judgment rendered without process.
31 The court may assign any or all the following tasks to a commission.³

32 In handling such a confession of ~~guilt~~, it is essential that the court⁴ be persuaded
33 that the person intends to confess acknowledge the offense and his guilt and permit the
34 court to render judgment without process. The court, with due diligence and great
35 discretion,⁵ shall evaluate the accuracy and sufficiency of the statement of facts and
36 confession before it approves the same. Statements made ~~by him~~ in the presence of
37 the court in connection with the provisions of this paragraph shall ~~must~~ not be taken
38 as a basis of a judgment without process except by his the confessor's consent.

39 ~~In the event a confession is intended, a written Confession (i.e., a sufficient~~
40 ~~summary of the facts, the person’s specific confession, and any expression or~~ The

¹ Clarifies that the only court to which this would apply is the court of original jurisdiction.

² Clarifies that the person is *confessing* to an offense and not merely "making his offense known."

³ Reminds the courts that a commission might be a more prudent way to handle *BCO* 38-1 matters.

⁴ It is important that the *court* be persuaded of such, and not just the confessor intending such.

⁵ Mirrors the wording of *BCO* 31-2 to remind the court of the standards for evaluation.

1 Statement ⁶ to be recorded (i.e., shall include evidence of repentance) must shall
2 include (1) a summary of the facts, (2) the person's confession as above, (3) any
3 evidence of repentance, and (4) a description of the confessor's efforts to reconcile
4 with any individuals against whom the court deems his offense bears a special relation
5 (BCO 29-3). ⁷

6 The written Statement must be approved by the accused confessor ⁸, and by the
7 court, before the court proceeds to a judgment, and the co-signed document shall be
8 appended to the minutes (regular or executive session). No other information may be
9 presented without written consent from the accused confessor and the court, ~~and this~~
10 This prohibition includes information from individuals, prosecutors, committees, and
11 commissions.

12 In any instances involving a personal offense (BCO 29-3), the court shall
13 attempt to inform the offended person(s) of that part of the Statement the court
14 deems pertinent to the offense against him or her. The court shall invite the offended
15 person to provide the court comment on the Statement prior to final approval of the
16 Statement by the confessor and the court. The court shall encourage the offended
17 person to enlist the help of an advisor in preparing any such comments. ⁹ In all
18 instances, the court shall report the way such offended persons were informed of
19 the parts of the Statement pertinent to them.

20 The accused person has the right of complaint against the judgment.

21
22 **Clean** - Below is how 38-1 would read if the amendment is adopted as shown above.

23
24 **38-1.** When any person shall come before his court of original jurisdiction and
25 confess to an offense, a full statement of the facts shall be recorded, and judgment
26 rendered without process. The court may assign any or all the following tasks to a
27 commission.

28 In handling such a confession it is essential that the court be persuaded that the
29 person intends to acknowledge the offense and his guilt and permit the court to render
30 judgment without process. The court, with due diligence and great discretion, shall
31 evaluate the accuracy and sufficiency of the statement of facts and confession before
32 it approves the same. Statements made in the presence of the court in connection with
33 the provisions of this paragraph shall not be taken as a basis of a judgment without
34 process, except by the confessor's consent.

35 The Statement to be recorded shall include (1) a summary of the facts, (2) the
36 person's confession as above, (3) any evidence of repentance, and (4) a description

⁶ Because the document will have four parts, including a confession, it's probably more helpful to call it a "Statement" than a "Confession."

⁷ Ordinarily, it's important to ascertain what efforts were made at reconciliation. But it should be the court, and not just anyone who believes he was offended against, that ultimately decides who should be invited to provide comment. See also Rationale point 4 on when interaction between offender and offended should be mediated.

⁸ It's more accurate to describe the person as the "confessor" rather than as the "accused."

⁹ In many instances, the offended person will be unfamiliar with PCA procedures and should be encouraged to enlist the help of an advisor. The court might even consider recommending one. In addition, apart from BCO procedures, this advisor could be valuable in helping the offended person frame any comments.

1 of the confessor's efforts to reconcile with any individuals against whom the court
2 deems his offense bears a special relation (*BCO* 29-3).

3 The written Statement must be approved by the confessor and by the court before
4 the court proceeds to a judgment, and the co-signed document shall be appended to
5 the minutes (regular or executive session). No other information may be presented
6 without written consent from the confessor and the court. This prohibition includes
7 information from individuals, prosecutors, committees, and commissions.

8 In any instances involving a personal offense (*BCO* 29-3), the court shall
9 attempt to inform the offended person(s) of that part of the Statement the court deems
10 pertinent to the offense against him or her. The court shall invite the offended person
11 to provide the court comment on the Statement prior to final approval of the
12 Statement by the confessor and the court. The court shall encourage the offended
13 person to enlist the help of an advisor in preparing any such comments. In all
14 instances, the court shall report the way such offended persons were informed of the
15 parts of the Statement pertinent to them.

16 The accused person has the right of complaint against the judgment.
17

18 **Rationale**

- 19
20 1. The amendment should aid courts in taking adequate steps to evaluate the integrity of a
21 confession and have reasonable assurance of both its accuracy and sufficiency.
22
- 23 2. At present, there's no constitutional requirement in *BCO* 38-1 for courts (or their
24 commissions) to ascertain, from a person against whom the court deems a personal offense
25 was committed, his or her comment or response to a confession. This amendment would
26 require courts to invite such a person to review and comment on the written Statement
27 prior to its approval by the court and the confessor, but it would be entirely voluntary for
28 the offended person. And the court (or its commission) must record how it informed, or
29 tried to inform, that person.
30
- 31 3. While the court would invite comment from offended persons for whom the court deems
32 comment is warranted, those comments would not ordinarily become part of the final
33 Statement or recorded in the court's minutes. And it would be *unnecessary* when the court
34 authorizes a commission to handle the *BCO* 38-1 process to completion, because the
35 voting members of that commission would be fully aware of the comments from offended
36 parties when the commission votes on the sufficiency of the Statement, and on any censure
37 thereafter.
38
- 39 4. Regarding reconciliation attempts, we note that in some instances it might not be
40 appropriate for an offender to attempt to reconcile with an offended party without some
41 sort of mediation and guidance, and such efforts to reconcile should not be forced on the
42 offended party. (See, in the 2022 Report of the GA's Ad Interim Committee on Domestic
43 Abuse & Sexual Assault, Appendix 9: *Forgiveness*, pp. 2485-88, and Appendix 10:
44 *Repentance*, pp. 2489-91. www.pcahistory.org)
45

- 1 5. If an offended person's comments bring into question the accuracy or sufficiency of the
2 written Statement, and the confessor declines to amend it, the court will exercise its
3 judgment and discretion in determining the adequacy of the written Statement. If there are
4 significant differences between facts presented by the confessor and those in the offended
5 person's comments that can't be reconciled, the court might need to consider whether
6 formal judicial process would be more suited to resolve the matter.

7 In all instances, the confessor should be aware, or made aware, that if the *BCO* 38-1
8 process does not go to completion, and the matter goes to trial, any statements he made
9 during the incomplete *BCO* 38-1 process might be admissible during judicial process.

- 10
11 6. At the presbytery level, it would seem best for a *BCO* 38-1 matter to be handled by a
12 commission having full authority to render the final decision on adequacy of the written
13 Statement. (At present, that would be a *BCO* 15-1 commission, not a 15-3 commission.)
14 Otherwise, presbyteries run the risk of introducing information additional to what's in the
15 Statement, which could invalidate the *BCO* 38-1 process. (See SJC Decisions in Cases
16 2019-10 *Evans v. Arizona*, 2019-04 *Williams v. Chesapeake*, and 2020-07 *Wilbourne v.*
17 *Pacific*. Each of these three complaints were sustained due to additional information being
18 introduced.)

19 The use of full-authority commissions for *BCO* 38-1 matters might become more
20 common in the future because the amendments proposed to *BCO* 15-1 and 15-3 last year
21 appear to have received sufficient support from our presbyteries. As of April 11, 2023 the
22 unofficial presbytery vote on Item 3 was 66 in favor and 13 against (with nine not yet
23 reported), which means it has been affirmed by 75% of our 88 presbyteries. Last year, the
24 Birmingham Overtures Committee recommended approval of the amendments by a vote
25 of 126-2 and the 49th GA sent to presbyteries by a vote of 2,062-33 (in the omnibus). If
26 the amendments to *BCO* 15-1 and 15-3 are approved and enacted by the 50th GA, it will
27 allow a presbytery to appoint a commission to adjudicate *any* matters without needing to
28 make *any* final recommendation to presbytery.

- 29
30 7. Note: The 49th GA approved two amendments to *BCO* 38-1 and sent them to presbyteries
31 for a vote. As of April 11, 2023, presbyteries had voted 77-1 & 78-0 in favor. If the 50th
32 GA in Memphis also approves them, then the current final sentence in *BCO* 38-1 ("*The*
33 *accused person has the right of complaint against the judgment*") will be revised to read:
34 "A censured person has the right to appeal (*BCO* 42)." And an additional sentence will
35 be added after it: "The person has the right to be assisted by counsel at any point, in accord
36 with the stipulations of *BCO* 32-19." These two new sentences would not be touched or
37 effected by this Overture.

38
39 *Initially considered by Pacific NW Presbytery at its Stated Meeting on February 3, 2023.*
40 *Approved by a Pacific NW BCO 15-1 Commission on April 12, 2023.*
41 *Attested by TE Nathan Chambers, Pacific NW Clerk*