

# PROCEDURES OF THE DIOCESE OF FORT WAYNE-SOUTH BEND FOR AN ACCUSATION OF SEXUAL ABUSE AGAINST A PRIEST OR DEACON

## STATEMENT OF INTENT

It is the intent of the Diocese of Fort Wayne-South Bend, Inc. to maintain compliance with the provisions of applicable law of the State of Indiana concerning the protection of children and young people and with the Charter for the Protection of Children and Young People, and to adopt procedures compliant with the Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons, as approved by the full body of the United States Catholic Bishops in November 2002 and revised in June 2005 (“Essential Norms”).

Further, it is the intent of the Diocese of Fort Wayne-South Bend, Inc. to maintain compliance with the provisions of applicable law of the State of Indiana concerning other sexual crimes involving a priest or deacon and with the Apostolic letter *Vos Estis Lux Mundi* issued by Pope Francis on May 7, 2019 (“*Vos Estis*”).

## SCOPE

1. These procedures apply to all circumstances involving allegations regarding the following made against a current or former diocesan priest or deacon (living or deceased, active or inactive):

- a) of sexual abuse of a minor<sup>1</sup>
- b) of performing sexual acts with a vulnerable person<sup>2</sup>
- c) of forced submission to or performance of sexual acts made by violence, threat, or abuse of authority
- d) of production, exhibition, possession or distribution, including by electronic means, of child pornography<sup>3</sup>, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions.

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<sup>1</sup> “sexual abuse of a minor” is defined as: a delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; a person who habitually has the imperfect use of reason is to be considered equivalent to a minor.

<sup>2</sup> “vulnerable person” means: any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence.

<sup>3</sup> “child pornography” means: any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes.

Any such allegation against a priest or deacon of another diocese or against men or women religious shall be referred to the Diocesan Bishop or the superior of the religious congregation, as appropriate, for investigation and review, provided that the Bishop of the Diocese of Fort Wayne – South Bend, Inc. (“the Bishop”) shall retain all rights provided under canon law to revoke faculties of individuals within this diocese or take such other steps concerning men and women religious as he believes necessary.

2. The categories mentioned above, as applied in these procedures, refers to recent acts as well as to events alleged to have occurred many years in the past. For purposes of these procedures, “sexual abuse of a minor” includes any conduct or interaction by a priest or deacon with a child or young person under the age of eighteen (18) which is considered to qualify as:

a. delict<sup>4</sup> against morals, specifically:

- the delict against the sixth commandment of the Decalogue committed by a cleric with a minor under the age of eighteen; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor;
  
- the acquisition, possession, or distribution by a cleric of pornographic images, whether real or simulated, of minors under the age of eighteen, for purposes of sexual gratification, by whatever means or using whatever technology; or

b. a violation of any applicable civil or criminal law involving a minor, including but not limited to Indiana’s prohibitions against child molesting, child exploitation (which includes possession of child pornography), vicarious sexual gratification (sexual conduct in the presence of a minor), child solicitation, child seduction, sexual misconduct with a minor, rape, criminal deviate conduct, sexual battery, public indecency (indecent exposure), prostitution and incest; or

c. any other inappropriate sexual behavior.

3. These procedures supplement, and do not supplant, any other child abuse or neglect detection and reporting policies or procedures adopted by the diocese for use in its schools, religious education programs, or any of its other programs or agencies. In every instance, all diocesan personnel (religious, employee, and volunteer) are expected to comply with applicable law and appropriate diocesan policy regarding the reporting of incidents of abuse or neglect of a minor, sexual or otherwise, to appropriate civil and diocesan representatives. These procedures are not intended to nor do they change, restrict, or expand any legal right or claim provided under any civil law.

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<sup>4</sup> A “delict” is a crime in canon law, an external violation of a law or precept gravely imputable by reason of malice or negligence.

## STANDARDS

These procedures are intended to provide a non-adversarial investigation and decision-making framework consistent with canon law which is fair and responsive to the temporal and pastoral needs of all concerned. Optimum utilization is dependent upon the voluntary cooperation of all participants. For the sake of due process, an accused will be encouraged to retain the assistance of civil and canonical counsel. All findings, recommendations, and decisions made pursuant to these procedures shall be made in good faith based upon that information which is cooperatively offered and that which is discovered without means of compulsion through available investigative processes. Findings, recommendations, and decisions shall be made in accordance with canon law, even if not sufficient to meet civil law standards of guilt or innocence or rules of evidence. Decisions shall be appealable pursuant to the applicable provisions of canon law.

## PROCEDURES

1. Allegations of sexual abuse as described above against a priest or deacon should be reported to the diocese's Victim Assistance Coordinator by telephone at 260 399-1458 or a Vicar General by telephone at (260) 422-4611, in writing to the Diocese of Fort Wayne-South Bend, c/o Victim Assistance Coordinator or Vicar General, 915 South Clinton Street, P.O. Box 390, Fort Wayne, Indiana 46801, in person at 915 South Clinton Street, Fort Wayne, Indiana, or via email ([victimassistance@gmail.com](mailto:victimassistance@gmail.com)).
2. Every person making an initial report of alleged sexual abuse, and every alleged victim of sexual abuse that diocesan personnel may contact as a result of an initial report, shall be advised of the right or obligation to report information concerning alleged sexual abuse to appropriate civil authorities.
3. Regarding sexual abuse of a minor, if anyone acting on behalf of the diocese has reason to believe that a minor is the victim of sexual abuse, that person shall immediately report such information to the appropriate civil authorities, as required by law. All pertinent civil laws should be followed. The diocese reports all allegations of sexual abuse of minors against living clergy, even when the alleged victim is no longer a minor, to the appropriate civil authorities, even when such reporting is not required by law. The diocese will also support the right of alleged victims to make their own report to public authorities and will advise and encourage those affected to do so. The diocese will also cooperate in any eventual investigation that are opened by civil authorities. If the diocese receives a request from civil authorities to suspend its investigation in deference to an investigation being conducted by civil authorities, it will do so.
4. The request of an alleged victim of sexual abuse to keep disclosure of his or her name from the accused or others (excepting the Bishop) shall be honored to the extent possible. An individual making such a request shall be advised that the inability to disclose his or her identity may hinder or impede the internal investigation process.

5. After the allegation is received by the diocese, the Bishop shall be notified of the allegation. The Bishop will appoint an “investigator” in accord with *CIC/83* can. 1717<sup>5</sup>. The investigator is to have suitable experience and expertise to promptly make efforts to contact and interview, by telephone or in person, the individual who presents the allegation(s) in order to gather appropriate information such as the name(s) of the alleged victim(s), the name(s) of the accused, a detailed description of the alleged sexual abuse, and the specific dates, places, and other circumstances of the alleged sexual abuse, including the names, addresses, and telephone numbers of others who may have knowledge pertinent to the incident(s) of alleged sexual abuse whom the investigator will also contact as far as possible at the appropriate time in the overall investigation. If the person making the report is an alleged victim and is a minor, the alleged victim’s parent(s)/legal guardian(s) will be contacted and apprised of the circumstances. If the person making the initial report is not an alleged victim, discreet efforts shall be made to contact the alleged victim(s), or parent(s)/legal guardian(s) if a minor, with respect for the right of the alleged victim(s) to not engage or cooperate with these procedures.

6. If undisputed facts discovered in the initial investigation make it clear that the allegation(s) is not credible or, despite reasonable efforts, the diocese is unable to collect sufficient firsthand information regarding the allegation(s) and/or the alleged victim to assess whether the allegation is plausible or not credible, the accused priest or deacon shall still be contacted to notify him of the allegation(s) and to document his response. In both cases, unless new or additional information is discovered, no further investigation will be conducted unless the response of the accused priest or deacon lends itself to further investigation as specified below.

7. If the initial information or information discovered through investigation makes the allegation(s) appear plausible, the investigator will visit the accused priest or deacon and, after informing him of his right to canonical and civil counsel, question him about the matter, whenever possible. If the accused priest or deacon admits to the allegation(s) or does not provide facts sufficient to make it clear that the allegation(s) is not credible, the Bishop shall proceed according to the norm of law<sup>6</sup>, including notifying the Congregation for the Doctrine of the Faith (CDF)<sup>7</sup> if the alleged offenses fall under *Sacramentorum Sanctitatis Tutela* (SST), Art. 6<sup>8</sup>. In this notification, the Bishop will give to the CDF all

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<sup>5</sup> “*CIC/83* can.” refers to a specific canon in the 1983 Code of Canon Law, the collection of laws which govern the functioning of the Latin Rite of the Roman Catholic Church.

<sup>6</sup> If the offense is not reserved to the CDF, the bishop follows the directives of c. 1718ff. by which the bishop proceeds according to extrajudicial decree to judge the matter himself or constitutes a Tribunal to judge the matter.

<sup>7</sup> The “Congregation for the Doctrine of the Faith” (CDF) is an ecclesiastical body which assists the Pope in adjudicating certain matters, including the sexual abuse of minors by clerics.

<sup>8</sup> The offenses reserved to the CDF are sexual abuse of a minor by a cleric and the offenses related to child pornography by a cleric. *Sacramentorum Sanctitatis Tutela* is the document which states this.

relevant information along with his *votum*<sup>9</sup> with his recommendation concerning how to proceed in the case. At this time, while indicating the relevant grave reasons, the Bishop may also seek from the CDF a derogation from prescription<sup>10</sup> if the case so warrants. According to SST, Art. 7, prescription for delicts against the sixth commandment with a minor is twenty (20) years and begins to run from the day that the minor had completed his eighteenth year of age. Prescription for the other delicts covered by these procedures, in accord with *CIC/83* can. 1362, is five (5) years from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased.

At the same time, the accused priest shall be placed on administrative leave and excluded from all public ministry, in accord with *CIC/83* can. 1722 as soon as possible, or the deacon suspended from all public ministry while the investigation continues. A priest removed from his ministry for this reason shall be assigned to a place of residence where his activities can be monitored and he shall be prevented from engaging in any public ministry until receiving further notice from the Bishop. Should a priest or deacon under investigation move or travel from the diocese, the Bishop shall notify the bishop of the diocese into which the accused priest or deacon is moving or traveling of the investigation. All appropriate steps shall be taken to protect the reputation of the accused during the investigation.

8. The alleged offender will be requested to seek, and will be urged voluntarily to comply with, an appropriate medical and psychological evaluation at a facility mutually acceptable to the diocese and to the accused. The Vicar General shall contact a qualified facility (not owned by or affiliated with the diocese), mutually acceptable to the diocese and the accused, to conduct an appropriate evaluation of the priest removed or deacon suspended due to an allegation of sexual abuse of a minor.

9. To assist the Bishop, the diocese will have a Review Board which will function as a confidential consultative body to the Bishop in discharging his responsibilities. The functions of this Board will include:

- a. advising the Bishop in his assessment of allegations of sexual abuse and in his determination of suitability for ministry;
- b. reviewing Diocesan policies for dealing with sexual abuse of minors; and
- c. offering advice on all aspects of these cases, whether retrospectively or prospectively.

10. In every case that information of alleged sexual abuse of a minor by a cleric is presented, including the offenses related to pornography involving minors, the allegations made and the actions taken shall be brought to the attention of the Diocesan Review

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<sup>9</sup> A “*votum*” is an authoritative opinion.

<sup>10</sup> “derogation from prescription” means to dispense from a statute of limitation. In other words, to allow for prosecution of a crime even if the time period allowed for prosecution has expired.

Board promptly. The Review Board shall consist of at least five (5) but no more than twelve (12) individuals appointed by the Bishop, the majority of whom will be lay persons not in the employ of the diocese and at least one (1) of whom should be a respected and experienced pastor of the diocese. It is desirable that the Bishop and the diocesan Promoter of Justice<sup>11</sup> participate in the Review Board meetings. If considered necessary to facilitate the initial investigation of or response to an allegation, a special meeting of the Review Board may be scheduled to occur on a date and at a time and place so that the Vicar General, Bishop, and at least a majority of the Review Board members may participate in person or by telephone. At such meeting the Vicar General shall apprise the Bishop and participating Review Board members of the full allegation(s), the status of the investigation, any initial evaluation report from a facility concerning the accused priest or deacon (if available), and the steps already taken to provide assistance and support for the alleged victim and the accused. The Review Board members may ask questions and offer suggestions concerning the investigation and provision of assistance and support, which shall be considered by the Vicar General and Bishop, respectively.

11. If the diocese receives the initial evaluation report from a facility concerning an accused priest or deacon after the Review Board's first consideration of the allegation(s) against the accused, the Vicar General shall provide each of the Review Board members an update on the investigation to date and a summary of the report from the facility. In any case, if the report includes advice for a more prolonged period of evaluation or in-patient therapy, that advice will be followed subject to civil law obligations.

12. If the case has been referred to the CDF, the CDF will then direct the diocesan bishop as to how to proceed with the canonical investigation. The CDF has a number of options:

a. The CDF may authorize the diocesan bishop to conduct a judicial penal trial before a local Church Tribunal. Any appeal in such cases would eventually be lodged to a tribunal of the CDF.

b. The CDF may authorize the diocesan bishop to conduct an administrative penal process before a delegate of the bishop assisted by two assessors. The accused priest or deacon is called to respond to the accusations and to review the evidence. The accused has a right to present recourse to the CDF against a decree condemning him to a canonical penalty. The decision of the Cardinal members of the CDF is final.

Should the cleric be judged guilty of a delict, both judicial and administrative penal processes can condemn a cleric to a number of canonical penalties, the most serious of which is dismissal from the clerical state. In its initial directive, the CDF will instruct the diocesan bishop whether the imposition of a penalty must be referred back to the CDF.

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<sup>11</sup> "Promoter of Justice": the person appointed in each diocese and in the higher tribunals of the Catholic Church whose responsibility it is to provide for the public good. In penal proceedings, he brings the accusation on behalf of the Church, and prosecutes it before the tribunal.

In very grave cases where a civil criminal trial has found the cleric guilty of sexual abuse or crimes or where the evidence is overwhelming, the CDF may choose to take the case directly to the Holy Father with the request that the Pope issue a decree of "ex officio" dismissal from the clerical state. There is no canonical remedy against such a papal decree.

The CDF also brings to the Holy Father requests by accused priests who, cognizant of their crimes, ask to be dispensed from the obligation of the priesthood and want to return to the lay state. The Holy Father grants these requests for the good of the Church ("pro bono Ecclesiae").

If it is established by the administrative process that the priest or deacon is guilty of a delict, considering all available information, hearing the advice of the participating Review Board members, and consulting any other professional he determines necessary, the Bishop will make a judgment about the future of the priest or deacon consistent with the Essential Norms. The Bishop's judgment may result in the imposition of canonical penalties by the Bishop under his own authority or by the Holy See at the Bishop's request, or restoration to public ministry. The Bishop will convey his decision directly to the priest or deacon. In every case involving canonical penalties, the process provided for in canon law must be observed, and the various provisions of canon law must be considered. The Bishop's decision will be reported to the Review Board.

13. When even a single act of sexual abuse of a minor by a priest or deacon is admitted or is established after following these procedures, the accused priest or deacon will be removed permanently from ecclesiastical ministry, including dismissal from the clerical state, if warranted. If the penalty of dismissal from the clerical state has not been applied (e.g., for reasons of advanced age or infirmity), the offender ought to lead a life of prayer and penance. He will not be permitted to offer Mass publicly or to administer the sacraments. He will not be permitted to wear clerical garb, or to present himself as a cleric. If the priest or deacon moves outside the diocese, and the Bishop is aware of the move, the Bishop shall inform the bishop of the diocese in which that priest or deacon is residing of the restrictions imposed.

14. No priest or deacon who has committed an act of sexual abuse of a minor may be transferred for a ministerial assignment in another diocese. The bishop who receives a priest or deacon from outside his jurisdiction will obtain an affidavit or other certification of suitability to attest that there has been no past act of sexual abuse of a minor perpetrated by the priest or deacon in question.

15. If during the course of the canonical investigation, any priest or deacon who is diagnosed as or found to be a pedophile, hebephile, or an ephebophile, or who is diagnosed with or found to have a related sexual disorder that presents a risk of harm to minors, will be subject to permanent removal from ecclesiastical ministry in accord with canons 1040-1049 which regard Irregularities and Other Impediments to the exercise of orders.

16. Any priest or deacon who is removed from ecclesiastical ministry as the result of a credible allegation of sexual abuse of a minor, or the diagnosis or determination of being a pedophile, hebephile, or an ephebophile, or who is diagnosed with or found to have a related sexual disorder that presents a risk of harm to minors, shall be prohibited from engaging in any activity on behalf of the Diocese either as a paid person or volunteer in any of the external works of the Diocese.

17. The diocese shall commit to ensuring that those who state that they have been harmed, together with their families, are to be treated with dignity and respect, and, in particular, are to be:

- a) welcomed, listened to and supported, including through provision of specific services;
- b) offered spiritual assistance;
- c) offered medical assistance, including therapeutic and psychological assistance, as required by the specific case.

The Victim Assistance Coordinator will act as the diocese's liaison for these purposes.

18. In all cases, no diocesan representative or agent shall ever request or suggest that the victim or the victim's family refrain from or delay in exercising or pursuing any right or claim which may be available under civil law. The diocese respects the right of the victim to engage in such processes subject to the limitations imposed by civil law.

19. The diocese shall not require or suggest that the provision of pastoral care or other assistance to an alleged victim be conditioned on a confidentiality agreement. The diocese will not enter into confidentiality agreements on such issues except for grave and substantial reasons brought forward by an alleged victim, which then must be noted in the text of the agreement.

20. Any allegation of sexual abuse against a former, deceased, or infirm priest or deacon will be responded to in the same manner as for an active priest or deacon, with appropriate modification to account for the circumstance.

21. In addition to any special Review Board meetings necessitated by specific allegations which warrant investigation, the Review Board shall have at least two (2) scheduled meetings per year. The purpose of the scheduled meetings shall be for the Bishop and the Vicar General to review and consult with the Review Board on: any prior cases brought to the attention of the diocese or any member of the Review Board; all report(s) of sexual abuse received by the diocese since the last scheduled meeting of the Review Board; any need for revision of these procedures; and, any other matters necessary to assist the diocese in protecting minors from the harms of sexual abuse.

22. Care will always be taken to protect the rights of all parties involved, particularly those of the person claiming to have been sexually abused and of the person against whom the charge has been made. When an accusation has been shown to be unfounded, every step possible will be taken to restore the good name of the person falsely accused.



23. The Diocese is committed to being open and transparent in communicating with the public about sexual abuse by clergy within the confines of respect for the privacy and the reputation of the individuals involved. This is especially so with regard to informing parish, school, and other church communities directly affected by sexual abuse claimed to have been perpetrated by a member of the clergy. As part of this commitment to transparency, the diocese is committed to maintaining on its website a current list of all clergy who have been credibly accused of sexual abuse of a minor.

23. These procedures are subject to revision at any time by the Bishop as he determines necessary after consultation with the Vicar General, the Review Board, or any other consultant(s) whom he may select.

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I hereby decree that these revised procedures be promulgated as particular law for the Diocese of Fort Wayne-South Bend with immediate effect. All previous versions are hereby abrogated.

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Most Reverend Kevin C. Rhoades,  
Bishop of Fort Wayne-South Bend

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Very Reverend Mark A. Gurtner, J.C.L.  
Chancellor

Given at the Archbishop Noll Center,  
Fort Wayne, Indiana,  
on February 29, 2020.