

## CANON 1339

### CARE AND OVERSIGHT OF OFFENDERS

*The Code of Canon Law calls for penal remedies and penances in the new version of canon 1339. How are bishops and leaders of religious institutes to understand and apply these provisions?*

#### OPINION

In the latter part of the 20th century, many Church leaders, including bishops and major religious superiors, were guilty of not dealing adequately with perpetrators of sexual abuse. Since then, there has been a move towards permanent removal from ministry and, in most cases, loss of the clerical state, for even one justified allegation of sexual abuse of a minor. Pope John Paul II told the American cardinals on April 23, 2002, that:

It must be absolutely clear to the Catholic faithful, and to the wider community, that Bishops and superiors are concerned, above all else, with the spiritual good of souls. People need to know that there is no place in the priesthood and religious life for those who would harm the young.<sup>1</sup>

This statement of principle by Pope John Paul II was reiterated in the particular law of the United States of America Bishops Conference often referred to as the Dallas Charter:

Art. 5. We affirm the words of St. John Paul II, in his Address to the Cardinals of the United States and Conference Officers: "There is no place in the priesthood or religious life for those who would harm the young." Pope Francis has consistently reiterated this with victims of clergy sexual abuse.<sup>2</sup>

Pope Francis also adopted this approach to abuse. He wrote a letter to the bishops of the Church on the Feast of the Holy Innocents 28 December 2016 in which he stated:

The Church also weeps bitterly over this sin of her sons, and she asks forgiveness. Today, as we commemorate the feast of the Holy

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<sup>1</sup> John Paul II, "Address to the Cardinals of the United States," April 23, 2002, *Origins* 31 (2001–2002) 759.

<sup>2</sup> USCCB, *Essential Norms for Diocesan/ Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, <https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final.pdf>, art. 5 (accessed on 2 Aug. 2023).

Innocents, I would like us to renew our complete commitment to ensuring that these atrocities will no longer take place in our midst. Let us find the courage needed to take all necessary measures and to protect in every way the lives of our children, so that such crimes may never be repeated. In this area, let us adhere, clearly and faithfully, to “zero tolerance.”<sup>3</sup>

There is zero tolerance for the sins and crimes of sexual abuse especially by priests and religious brothers and sisters.

As we are aware, the sexual abuse crisis and the resulting scandals have gravely damaged the reputation of the Catholic Church. They have been a major challenge for the popes, who have legislated to deal with perpetrators and to make the Church’s leadership more accountable for dealing with perpetrators.

During Pope Francis’ visit to Hungary in April 2023, a Jesuit priest asked Pope Francis how it was possible to follow Jesus’ commandment to love enemies when the enemy was a sexual abuser:

“How do we approach, how do we talk to the abusers for whom we feel disgust? Yes, they too are children of God. But how can you love them? It’s a powerful question,” Francis responded.

“The abuser is to be condemned, indeed, but as a brother,” Francis said, calling it “a form of loving the enemy,” although he acknowledged that such an attitude was difficult to live out because of the effect abusers have on people’s lives.

“The abuser is an enemy. Each of us feels this because we empathize with the suffering of the abused . . . even talking to the abuser involves revulsion; it’s not easy. But they are God’s children too. They deserve punishment, but they also deserve pastoral care,” he said.<sup>4</sup>

There have been a few clerics who have been accused of sexual abuse who have committed suicide or attempted to commit suicide. It is essential, that when a priest or religious brother or sister does not drive to or from the meeting with the bishop or major superior to be informed about an accusation, It is also

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3 Pope Francis. “Letter of His Holiness Pope Francis to Bishops on the Feast of the Holy Innocents,” December 28, 2016, [https://www.vatican.va/content/francesco/en/letters/2016/documents/papa-francesco\\_20161228\\_santi-innocenti.html](https://www.vatican.va/content/francesco/en/letters/2016/documents/papa-francesco_20161228_santi-innocenti.html) (accessed on 2 Aug. 2023).

4 Carol Glatz, “Zero tolerance for priests guilty of abuse, pope says in interview,” *Catholic Review*, September 6, 2022, <https://catholicreview.org/zero-tolerance-for-priests-guilty-of-abuse-pope-says-in-interview/> (accessed on 2 Aug. 2023).

important that the accused does not stay alone that night. Arrangements need to be made for a family member or a friend to stay with them that night.

The *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* for the United States constitutes particular law for the dioceses, eparchies, clerical religious institutes and societies of apostolic life of the United States. These norms were approved by the Apostolic See and state:

When an allegation of sexual abuse of a minor by a priest or deacon is received, a preliminary investigation in accordance with canon law will be initiated and conducted promptly and objectively (*CIC* c. 1717; *CCEO* c. 1468). During the investigation the accused enjoys the presumption of innocence, and all appropriate steps shall be taken to protect his reputation. The accused will be encouraged to retain the assistance of civil and canonical counsel and will be promptly notified of the results of the investigation. When there is sufficient evidence that sexual abuse of a minor has occurred, the Congregation of the Doctrine of the Faith shall be notified. The bishop/eparch shall then apply the precautionary measures mentioned in *CIC* canon 1722, or *CCEO* canon 1473—i.e., withdraw the accused from exercising the sacred ministry or any ecclesiastical office or function, impose or prohibit residence in a given place or territory, and prohibit public participation in the Most Holy Eucharist pending the outcome of the process.<sup>5</sup>

Great care needs to be taken over the accommodation arrangements for the accused. It is also important that the accused only stays where he is appointed or approved to stay.

There are approximately 1.3 billion members of the Catholic Church in many countries all over the world and from hundreds of ethnic and cultural backgrounds. Obviously civil laws concerning privacy, safeguarding and financial matters will vary enormously from one country to another. It is impossible to have detailed universal law on all these matters encompassing the needs of the faithful in every culture and country, and therefore particular law is very important.

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5 Norm 6 of the USCCB, "Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons," *Origins*, vol. 32/25 (28 Nov. 2002) 415 ff.; <https://www.usccb.org/resources/Charter-for-the-Protection-of-Children-and-Young-People-2018-final%281%29.pdf>, p. 23 (accessed on 2 Aug. 2023).

## Warning, Precepts, and Vigilance

There is a long tradition in the Church of having penal remedies to prevent crimes or reoffending. If the perpetrator ceases from committing the offence of his own accord, the perpetrator may still, “[i]f scandal or some other grave harm or danger has resulted, . . . be punished with a just penalty, although one lesser kind than that established for the completed delict.”<sup>6</sup> Penal remedies may be necessary to provide for the good the perpetrator and the community, as well as to deal with the scandal that has resulted.

Canon 1339 §1. An ordinary, personally or through another, can warn one who is in the proximate occasion of committing a delict, or one upon whom, from an investigation having been carried out, falls grave suspicion of a delict having been committed.

§2. An ordinary can rebuke one whose behavior causes scandal or grave disturbance of order, in a manner accommodated to the particular conditions of the person and the facts.

§3. The warning, or rebuke must always be established at least by some document that is to be kept in the secret archive of the curia.

§4. If one or several warnings or rebukes have been given to one without effect, or if an effect cannot be expected from them, the ordinary is to give a penal precept in which he clearly prescribes what is to be done or avoided.

§5. If the gravity of the case warrants it, and especially if one is in danger of relapsing into a delict, the ordinary is to submit the person to vigilance in a manner determined by a singular decree, even beyond the penalties imposed or declared by a sentence or decree according to the norm of law.<sup>7</sup>

If someone offends in a moral or disciplinary matter, the ordinary or superior should give the perpetrator a warning in writing.<sup>8</sup> If necessary, the warning can be given verbally.<sup>9</sup> However, the fact of the “warning or rebuke must always be

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6 *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (Vatican City: Libreria Editrice Vaticana, 1983). English translation in *Code of Canon Law, Latin-English Edition, New English Translation* (Washington, DC: Canon Law Society of America, 2023) c. 1328 §2. All subsequent English translations from this code are from this source unless otherwise indicated. Canon.

7 Canon 1339.

8 Canon 1339 §1.

9 Canon 55.

established at least by some document that is to be kept in the secret archive of the curia.”<sup>10</sup>

A warning is necessary before a medicinal penalty can be imposed.<sup>11</sup> A warning is also necessary before expiatory penalties are imposed according to canons 1394, 1395 and 1396. A superior or an ordinary may issue a correction, which is aimed at changing attitudes or behaviours.<sup>12</sup> This also must be recorded in writing (c.1339 §3)

The ordinary can issue a penal precept to the perpetrator to ensure the change in conduct is permanent (c. 1339 §4). Canon 1339 §1 states that the ordinary can warn one “who is in the proximate occasion of committing a delict, or upon whom, from an investigation having been carried out, falls grave suspicion of a delict having been committed.” Vigilance may be exercised over the perpetrator to prevent reoffending (c. 1339 §5). When the perpetrator has offended a number of times, vigilance must be imposed upon him. Canon 1346 points out: “Whenever the offender has committed several delicts, however, it is left to the prudent decision of the judge to moderate the penalties within equitable limits if the sum of the *ferendae sententiae* penalties appears excessive, and to subject the offender to vigilance.”<sup>13</sup>

The Church has recognized the importance of implementing comprehensive safeguarding policies and measures to address the issue of sexual abuse within the Catholic Church and promote the healing and well-being of all the faithful.

#### Therapeutic Interventions

Therapeutic interventions play a crucial role in addressing the effects of sexual abuse within the Catholic Church. Sexual abuse is a grave violation that can have severe psychological, emotional, and spiritual consequences for survivors. In recent years, there has been a growing recognition within the Church of the need to provide appropriate support for perpetrators of sexual abuse. Many perpetrators are victims themselves, or they have suffered from other traumas in their upbringing. Therapeutic interventions should be conducted by qualified professionals who have expertise in trauma and abuse. Perpetrators need to understand why they have abused victims, and to understand the dynamics of trauma or what lies behind their abusive behaviour.

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10 Canon 1339 §3.

11 Canons 1347; 1365; 1371.

12 Canon 1339 §2.

13 Canon 1346 §2.

## Safety Plan

A safety plan is an important part of the vigilance to be exercised over a particular perpetrator. An investigation of a complaint or a report may have proven grooming or behaviours that are unsafe or inappropriate. The behaviour might include flirting, inappropriate actions, alcohol consumption, or other such behaviours. The perpetrator may need a safety plan to be protected from intended or unconsciously motivated unsafe behaviour. A safety plan also creates some transparency about management of the perpetrator because reports are shared with the local ordinary.

Because an individual has engaged in inappropriate behaviour, or has committed crimes in the past, there needs to be a safety plan in place to protect others. Putting a safety plan in place does not mean that the individual is guilty of a crime they were accused of, but in the current climate it is best practice to do as much as possible to create a safe Church environment for everyone.

If a cleric or religious brother or sister has offended against minors or is guilty of another serious crime, it may well be impossible to return the person to active ministry. Regardless of whether the offender is returned to ministry, a safeguarding plan, tailored to each person's past behaviour, is very important. However, if the offender is being returned to ministry, a safeguarding plan is essential.

There needs to be a monitor supported by a monitoring group of appropriate people to monitor the implementation and observance of the plan. The monitoring group should include people with a day-to-day knowledge of the monitored person, such as the parish secretary and/or a teacher at the parish school.

Safety plans must be held by the Church entity and the offender concerned who must sign acknowledging both receipt of the plan and commit to abide by it. If the offender will not sign and commit to abiding by the safeguarding plan, the offender is not suitable to be returned to ministry.

Every case must be dealt with on a case-by-case basis. The circumstances of each individual vary: from living alone or living in a community; their grooming behaviours and sexual orientation; and their different ministries. Therefore, the monitor and/or the group monitoring the plan must be tailored for each case.

The monitor must ensure that the safeguarding plan is understood, and that the offender is committed to implementing it. The monitor must report any difficulties or breaches to the monitoring group and the local ordinary. The individual must be supervised when in contact with minors or vulnerable persons.

The use of social media, alcohol and computers needs to be part of the plan. The plan will also specify who and how the plan is monitored and the frequency of meetings with the monitor(s). Provision needs to be made for at least an annual report to the local ordinary (and religious superior if the individual is a religious). The plan also needs to include the consequences for violations of any of the terms of the safeguarding plan.

### **Sample Safeguarding Plan**

(to be adapted case-by-case)

This safeguarding plan is structured to ensure that, as far as possible, the safety of ..... (name) and others in our faith community are supported and maintained.

..... (name) is required to follow these practices during and in connection with ministerial/apostolic activities where one or more people are involved:

- to live at an approved address, and
- to obtain written approval of the Local Ordinary to travel outside the diocese, and
- to be supervised and accountable for his use of the internet and who he has contact with at home or anywhere else, and
- to never meet with minors or vulnerable people without a supervising adult present, and
- to have a simple lifestyle that is not a scandal to the faithful or the community, and
- to have a safety plan relating to the circumstances of the cleric or religious.
- To accept anything else the Local Ordinary may consider necessary on a case-by-case basis. e.g. he is to have no contact with ..... (name) in face-to-face meetings, he is not to have phone calls or social media contact with ..... (name); and/or he must regularly attend AA meetings.
- The monitor is..... (name).
- The plan will be shared with the Monitoring Group.
- The plan will be reviewed every three years. An annual report will be provided to the Local Ordinary by the monitor.

Signed.....Date.....

Individual the plan is for

Signed.....Date.....

Monitor

Signed.....Date.....

Local Ordinary

Signed.....Date.....

Religious Superior (if plan is for a religious)

Msgr. Brendan Daly