



1402 DIOCESAN POLICY STATEMENT ON SEXUAL MISCONDUCT

Principles

Incidents of sexual misconduct are a cause of grave personal tragedy. The Diocese of San Jose is deeply committed to addressing this problem, not only as an employer but also, and above all, as bearer of the Gospel message.

Sexual misconduct is contrary to the fundamental dignity of each person, to our faith in Jesus Christ and to the teachings of the Church. Therefore, beyond any provisions of civil law, sexual misconduct by personnel of the Diocese of San Jose is inappropriate and is never within the scope of their duties and employment.

For the prevention of sexual misconduct, the Diocese is committed to the careful selection and training of all personnel.

All personnel of the Diocese will comply with applicable provisions of civil and ecclesiastical law as well as the procedures of the Diocese regarding allegations of sexual misconduct.

The Diocese of San Jose deals with all reported allegations of sexual misconduct in a prompt, confidential and thorough manner. Every effort is made to show compassion and consideration for all involved. The prime concern of the Diocese is the survivor/victim and his/her family. The needs of others injured by sexual misconduct, viz., those who have placed their trust in diocesan personnel, as well as the many who have their service and reputation questioned because of the failures of a few, will be addressed.

The individuals who serve the Diocese - clergy, religious and lay – are expected to exercise their ministry in an exemplary manner. Recognizing the harm of sexual misconduct, as well as false accusation, each allegation of sexual misconduct will be investigated to establish the truth of the matter.

The Diocese will avoid exacerbating the hurts of all parties involved by respecting their confidentiality in the public forum. The Diocese will preserve the due process of civil and canon law in any statements made at the public level.

Cases involving allegations of sexual misconduct by clergy are treated in more detail in the companion policy, *Diocesan Policy on Sexual Misconduct by Clergy* (Revised June 28, 2003).

I. Definitions

Sexual Misconduct means any sexual conduct on the part of diocesan personnel within a ministerial relationship which is:

- Unlawful as described by the laws of California, or
- Contrary to the moral instructions, doctrines and canon law of the Catholic Church.

Sexual misconduct may include certain behaviors described as sexual harassment, sexual exploitation and sexual abuse as defined in civil law and in the *The Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*.¹

Administrative Leave – relieving the accused of assigned duties, pending further notice from the Vicar General or the Director of Personnel.

Credible Accusation – an allegation that, based upon the facts of the case, meets one or more of the following thresholds:

- Believable and plausible
- Natural, reasonable and probable
- Corroborated with other evidence or another source and/or
- Acknowledged/admitted to by the accused.

In making this determination, consideration should be given to the trustworthiness of the source.

Diocese or diocesan includes the parishes, missions, schools and agencies operating under the Roman Catholic Bishop of San Jose, a (California) corporation sole, and the Roman Catholic Welfare Corporation of San Jose.

¹ “Sexual abuse of a minor includes sexual molestation or sexual exploitation of a minor and other behavior by which an adult uses a minor as an object of sexual gratification. Sexual abuse has been defined by different civil authorities in various ways, and these norms do not adopt any particular definition provided in civil law. Rather, the transgressions in question relate to obligations arising from divine commands regarding human sexual interaction as conveyed to us by the sixth commandment of the Decalogue. Thus, the norm to be considered in assessing an allegation of sexual abuse of a minor is whether conduct or interaction with a minor qualifies as an external, objectively grave violation of the sixth commandment (USCCB, Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State, 1995, p.6). A canonical offence against the sixth commandment of the Decalogue (CIC, c. 1395 §2; CCEO, c. 1453 §1) need not be a complete act of intercourse. Nor, to be objectively grave, does an act need to involve force, physical contact, or a discernible harmful outcome. Moreover, “imputability [moral responsibility] for a canonical offense is presumed upon external violation ... unless it is otherwise apparent” (CIC, c. 1321 §3; CCEO, c. 1414 §2). Cf. CIC, canons 1322-27, and CCEO, canons 1413, 1415, and 1416. If there is any doubt whether a specific act qualifies as an external, objectively grave violation, the writings of recognized experts should be appropriately obtained (Canonical Delicts, p. 6). Ultimately, it is the responsibility of the diocesan bishop/eparch, with the advice of a qualified review board, to determine the gravity of the alleged act.”

Diocesan personnel means

- All clerics, seminarians and members of religious communities who are subject, under civil and canon law, to the administration, authority and/or governance of the Diocese;
- all lay persons directly employed by the Diocese, or by any parish, mission or other Catholic institution and organizations which are subject under civil law to the administration, authority and/or governance of the Diocese;
- all lay persons when in the capacity as a non-employed volunteer or lay minister which are subject under civil law to the administration, authority and/or governance of the Diocese.

Vulnerable persons are incompetent persons.² Any person 18 years of age or older is considered “vulnerable” when that person, because of advanced age, impairment of mental or physical function or emotional status is unable or unlikely to report abuse or neglect without assistance. All persons under 18 years of age are “vulnerable persons”.

The Office for the Protection of Children and Vulnerable Adults oversees and coordinates the pastoral care and outreach offered to victims. The Office for the Protection of Children and Vulnerable Adults reaches out to every person who has been the victim of sexual abuse, whether the abuse was recent or occurred many years in the past. This outreach will include provision for services agreed upon by the victim and the Diocese, such as counseling, spiritual assistance, support groups, and other social services (i.e. Department of Social Services, Department of Mental Health, etc).

The Diocesan Review Board There are nine individuals on the Diocesan Review Board that functions as a confidential, consultative body to the Bishop. This board consists of eight persons, appointed by the Bishop, who are not employees of the Diocese of San Jose. In keeping with the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, 2002, this Review Board also includes one pastor. The Diocesan Review Board assesses allegations of sexual abuse of children and vulnerable adults by priests, deacons, and other church personnel in order to advise the Bishop on whether or not the allegations appear to be credible. The Board also hears and assesses allegations of sexual misconduct brought by adults who believe that they, as adults, may be victims of sexual misconduct by members of the clergy or other Church personnel when the sexual misconduct is a violation of a pastoral relationship.³

The Pastoral Outreach Committee functions as a consultative, advisory body to the Director of the Office for the Protection of Children and Vulnerable Adults. This committee’s primary purpose is to provide support and communication to the survivors/victims and their families with information and resources available, to plan and facilitate events within the Diocese or in collaboration with neighboring Dioceses and to be a resource for education and training for the

² Advisory Task Force, October 9, 2002, p.2.

³ Op cit, p. 7.

parishes in the Diocese. The Director of the Office for the Protection of Children and Vulnerable Adults works in collaboration with the Pastoral Outreach Committee.

The Victims Assistance Coordinators are individuals on retainer who work most directly with the survivor/victim. VACs provide non-judgmental outreach throughout the investigation and focus on the emotional and spiritual well being and healing of the survivor/victim. The Victim Assistance Coordinator seeks to determine the type of care and counseling a person needs, and find appropriate help for the survivor/victim. The VAC may also accompany the alleged victim to meetings, to offer assistance throughout the inquiry process.

II. Applicability

This policy applies to all diocesan personnel. Receipt of this policy is to be acknowledged in writing by all paid diocesan personnel before engaging in any work or ministry on behalf of the Diocese. Receipt of this policy is to be acknowledged in writing by all diocesan volunteers who work with minors and vulnerable persons. Publication of this policy constitutes an official canonical warning (monitum) in accord with the general law of the Catholic Church to all to whom it applies. (Cf. Canon 1347, et. al.)

III. Prevention

Each adult must be responsible for his or her sexual growth and maturity. To support this responsibility the Diocese will, from time to time, arrange programs that include information and training applicable to the recognition and prevention of sexual misconduct. All paid diocesan personnel will be required to attend such programs as directed with follow up in-services every three years. Volunteers who work with children, youth and other vulnerable persons will also be required to attend these programs. All others are strongly encouraged to attend.

Background and Reference Checks

All persons seeking positions with the Diocese of San Jose are to execute a Declaration of Responsibility upon employment or volunteer work (Cf. Appendix 1). This declaration is to be filed in the Personnel Office. The Declaration of Responsibility for priests and deacons is to be retained in the files of the office of the Vicar for Clergy.

The Diocese utilizes the resources of law enforcement and other community agencies and will employ adequate screening and evaluative techniques. To this end, all priests, deacons, seminarians, school personnel and persons employed or volunteering in positions with supervising oversight over minors and vulnerable adults are fingerprinted to assure measures of safety.

“Safe Environment” Programs

The Office for the Protection of Children and Vulnerable Adults and the Department of Education assists parishes and schools in implementing, maintaining and evaluating “Safe Environment” programs, which involve a Code of Conduct for adults and youth. All those involved with minors and vulnerable persons are required to acknowledge and abide by this Code of Conduct.

IV. Code of Conduct⁴

Conduct With Youth

Clergy, religious, staff and volunteers working with youth shall maintain an open and trustworthy relationship between youth and adult supervisors.

Clergy, religious, staff and volunteers must be aware of their own and others' vulnerability when working alone with youth. Use a team approach to manage youth activities.

Physical contact with youth can be misconstrued and should occur (a) only when completely nonsexual and otherwise appropriate, and (b) never in private.

Clergy, religious, staff and volunteers should refrain from (a) the illegal possession and/or illegal use of drugs and/or alcohol at all times, and (b) the use of alcohol when working with youth.

Staff and volunteers should not provide shared, private, overnight accommodation for individual young people including, but not limited to, accommodations in any Church-owned facility, private residence, hotel room, or any other place where there is no other adult supervision present.

- In rare, emergency situations, when accommodation is necessary for the health and well-being of the youth, the clergy, staff, or volunteer should take extraordinary care to protect all parties from the appearance of impropriety and from all risk of harm.
- Use a team approach to managing emergency situations.

Sexual Conduct

Clergy, staff and volunteers must not, for sexual gain or intimacy, exploit the trust placed in them by the faith community.

Clergy and religious who are committed to a celibate lifestyle are called to be an example of celibate chastity in all relationships at all times.

Clergy, religious, staff and volunteers who provide pastoral counseling or spiritual direction services must avoid developing inappropriately intimate relationships with minors, other staff, or parishioners. Staff and volunteers must behave in a professional manner at all times.

No clergy, religious, staff, or volunteer may exploit another person for sexual purposes.

Allegations of sexual misconduct are taken seriously and must be reported to the Diocese of San Jose's Office for the Protection of Children and Vulnerable Adults, and to civil authorities. Policy procedures will be followed to protect the rights of all involved.

Clergy, religious, staff and volunteers must review and know the contents of the child abuse regulations and reporting requirements for the state of California and should follow those mandates.

⁴ Adapted from the *Model Code of Conduct*, VIRTUS, The National Catholic Risk Retention Group, Inc., 2003

Harassment

Clergy, religious, staff and volunteers must not engage in physical, psychological, written or verbal harassment of staff, volunteers, or parishioners and must not tolerate such harassment by other clergy, religious, staff or volunteers.

Clergy, religious, staff and volunteers shall provide a professional work environment that is free from physical, psychological, written or verbal intimidation or harassment.

Harassment encompasses a broad range of physical, written or verbal behavior, including, but not limited to, the following:

- Physical or mental abuse.
- Racial insults.
- Derogatory ethnic slurs.
- Unwelcome sexual advances or touching.
- Sexual comments or sexual jokes.
- Requests for sexual favors used as:
 - A condition of employment, or
 - To affect other personnel decisions, such as promotion or compensation.
- Display of offensive materials.

Harassment can be a single severe incident or a persistent pattern of behavior where the purpose or the effect is to create a hostile, offensive, or intimidating work environment.

Allegations of harassment are taken seriously and reported immediately to the pastor of the parish, the diocesan Personnel Office or the Office for the Protection of Children and Vulnerable Adults. Policy procedures will be followed to protect the rights of all involved.

V. Reporting Requirements

California State Law, Article 2.5 of the Penal Code, provides reporting requirements for child abuse whether sexual abuse, physical non-accidental injury or neglect. Diocesan personnel will comply with those requirements promptly and exactly as required by law.

This policy provides for an additional diocesan reporting requirement covering all incidents of sexual abuse, whether the individual believed to be harmed is an adult or a child.

Whenever any person who is a mandated reporter has reasonable cause to believe that a child or an adult has been subject to sexual abuse by diocesan personnel, that person must make an immediate report to the civil authorities and to the Director of the Office for the Protection of Children and Vulnerable Adults (see Appendix 2 for report format).

The Diocesan Attorney will make other such reports as may be required by law.

No requirement of this policy is to be construed in such a way that it would violate the priest/penitent relationship of the Sacrament of Penance.

VI. Diocesan Response

Initial action involves receipt of a complaint of sexual misconduct. The Director verifies that a report has been filed with the police and other authorities. Where such a report has not been filed, the Diocese will contact civil authorities. The Bishop, the Chair of the Diocesan Review Board, the Vicar(s) General and the Diocesan Attorney are notified of the complaint.

The Director of the Office for the Protection of Children and Vulnerable Adults assigns a Victim Assistance Coordinator who aids in the immediate pastoral care of the survivor/victim. The Diocese offers the survivor/victim and, as appropriate, his or her family, therapeutic intervention, spiritual direction and assistance during the investigatory process.

Upon completion of any criminal investigation by civil authorities, the Diocesan Review Board assesses the allegations of sexual abuse/misconduct in order to advise the Bishop on whether or not the allegation(s) appears to be credible.

VII. Investigation

The Diocesan Review Board hears and assesses allegations of sexual misconduct by members of the clergy or other Church personnel.

The Diocesan Review Board may enlist the services of a qualified professional investigator/researcher when necessary.

The accused party may be placed on immediate administrative leave.

Each party mentioned in the initial report will be contacted as soon as possible to set up an appropriate time for an interview. The parties will be advised of their right to have an advocate of their choice present during the interview.

The accused will be advised of the right to decline to be interviewed.

This investigation, which is to be “conducted promptly and objectively” (*Essential Norms 6*), can be entrusted to an individual investigator or investigative body.

No diocesan personnel other than the Director of the Office for the Protection of Children and Vulnerable Adults, an appointed investigator/researcher and the Victim Assistance Coordinators are to interview the alleged survivor/victim or investigate the incident. The Diocesan Review Board may request the presence of the survivor/victim to obtain additional information. A Victim Assistance Coordinator may accompany the survivor/victim.

The individual or group to whom the investigation is entrusted has the responsibility of gathering proofs related not only to the incidents of abuse but also proofs which will address the guilt or imputability of the accused cleric, religious or other diocesan personnel. Interviews with the victim or with witnesses should not simply be summarized but taken under oath and transcribed.

The written record of the investigation is acknowledged in writing, and by a signature, by the person interviewed.

Within five working days after the investigation has been concluded, the Diocesan Review Board will meet to review the results of the investigation and to render a report to the Bishop.

This report to the Bishop will include a summary of the allegations reported, an assessment of the substance of the allegations and a recommendation for appropriate further administrative and/or judicial action.

Supplementary reviews may be called as necessary to consider new information or to request medical and/or psychological or psychiatric assessment.

The assessment of the Diocesan Review Board will be communicated to the Bishop and the accused.

The Bishop evaluates the recommendation of the Diocesan Review Board and will notify the Chair of the Board of the disposition of the recommendation(s).

VIII. Credible Allegation against a Priest or Deacon

In the case of a priest or deacon, if there is credible evidence that sexual misconduct/abuse of a minor has occurred, the Congregation of the Doctrine of the Faith shall be notified.

The Bishop shall then apply the precautionary measures outlined in canon 1722 (i.e., remove the accused from ministry or from any ecclesiastical office or function, including public participation in the celebration of the Mass, pending the outcome of the process).

When even a single act of sexual abuse of a minor by a priest or deacon is admitted or is established after an appropriate process in accord with canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants (c.1395,2).

IX. Credible Allegation against a Lay Person

In the case of a lay employee or volunteer, if there is credible evidence that sexual misconduct/abuse of a minor has occurred, the employee or volunteer is immediately terminated, and is not eligible to work as an employee or volunteer in the Diocese in the future.

X. Confidentiality

Confidentiality and discretion during the investigation and, to the extent possible, protection of the privacy and good name of both the victim and the accused is to be maintained at all times.

The Diocese of San Jose will not enter into confidentiality agreements except for grave and substantial reasons brought forward by the survivor/victim and noted in the text of the agreement.

The Chair of the Diocesan Review Board is the point of contact for any information requested regarding the Diocesan Review Board and its proceedings. Any media contact or inquiries will be addressed only by the Diocesan Director of Media Relations, after consultation with the Diocesan Attorney.

XI. False Accusation

There is always the possibility of false accusations or unsubstantiated claims. Both civil and canon law provide penalties for the crime of falsehood in which individuals become victims of false denunciation and calumny. Care will always be taken to protect the rights of all parties involved. When an accusation has proved to be unfounded, every means possible will be taken to restore the good name of the person falsely accused.

XII. Financial Responsibility

It is the policy of the Diocese that no person who has been a victim of sexual misconduct as a minor, living within the diocese, will be denied treatment even if the alleged abuse took place outside the Diocese of San Jose.

There will be limits to the treatment that is offered, depending upon the diagnosis and prognosis that is put forth by the therapist, and the financial ability of the Diocese.

The Diocese will seek reimbursement from the responsible diocese or religious order for expenses related to treatment for victims who were abused outside the Diocese of San Jose.

Effective June 15, 1993

Revised January 15, 1999

Revised June 28, 2003