

POLICY AS OF JULY 1, 2003

**POLICY AND PROCEDURAL GUIDELINES
FOR THE ARCHDIOCESE OF MIAMI
RELATING TO PROTECTION OF CHILDREN AND VULNERABLE ADULTS**

I. INTRODUCTION

The Archbishop of the Archdiocese of Miami is committed to the well being of those who are served by the Church. The People of God have a right to be able to trust those who minister to them in God's name. The violation of this trust through any sexual abuse by Church Personnel is a source of great pain, for those involved and for the entire Church community.

The Archbishop of the Archdiocese of Miami will make every reasonable effort to prevent sexual abuse, and to respond promptly to all allegations of abuse where there is a reasonable belief that abuse has occurred. The Archdiocese also will comply with all obligations of civil and canon law. The Archdiocese will promote healing where it is needed, provide education, training and guidance when it is appropriate, and endeavor to prevent any sexual abuse of minors with firm justice and mercy towards all. No person, including clergy, who has been determined to have engaged in sexual abuse of a minor, will be allowed to remain in active ministry. Such actions violate Christian principles and are outside the scope of duties and employment of all Church Personnel. The Archdiocese will not tolerate such behavior. This policy applies to all Archdiocesan agencies, and all parishes and parish activities within the Archdiocese.

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

II. DEFINITIONS

For the purposes of this policy:

(A) **ALLEGATION**: A statement or accusation of sexual abuse.

(B) **CHILD OR MINOR**: A person less than eighteen (18) years of age.

(C) **VULNERABLE ADULT**: Such persons as so defined in Chapter 415, Florida Statutes. A copy of the statutory definitions is attached.

(D) **DCF**: The Florida Department of Children and Families.

(E) **CHURCH PERSONNEL**: For purposes of this policy only, Church Personnel shall include any person who is employed by, or engaged in ministry, or providing service, either directly or indirectly, for the Archdiocese, an agency controlled by the Archdiocese, or a parish. Church Personnel shall include, but not be limited to, priests, deacons, religious, employees, and any volunteer involved in any Archdiocesan or parish activity. "Personnel" as defined herein, has reference only to the applicability of this policy, and is not indicative of any agency or employment relationship between the Archdiocese and the party whose compliance with this policy is sought.

(F) **SEXUAL ABUSE**: Sexual abuse means any act constituting sexual abuse as defined in Chapter 39 and Chapter 415, Florida Statutes, whether perpetrated against a child or vulnerable adult as defined herein. A copy of the applicable provisions of the statutes is attached to the end of this policy.

(G) **ARCHDIOCESAN CONTACT PERSON**: The Archbishop has designated the office of the Vicar General, 9401 Biscayne Boulevard, Miami Shores, Florida 33138, 305-762-1222, to be the contact person.

(H) **PROMOTER OF JUSTICE**: The prosecuting attorney in Church courts.

III. DISCLOSURE & REPORTING

A. Summary and Purpose

This policy is intended to establish requirements and procedures in an effort to prevent sexual abuse by Church Personnel and the resulting harm to the victims and the Church community, and to provide guidance on how to respond to allegations of sexual abuse. All Church Personnel must comply with applicable laws regarding incidents of actual or suspected sexual abuse of minors or vulnerable adults and with these procedural guidelines.

B. Distribution of Policy

A copy of this policy shall be distributed to all Archdiocesan agencies and parishes.

C. Obligation to Report Abuse

(1) All Church Personnel who know, or have reasonable cause to suspect, that a child or vulnerable adult has been a victim of sexual abuse, shall immediately make any report required by law directly to the Department of Children and Families (DCF). Any mandatory report may be made by calling the toll free statewide abuse or neglect registry at 1-800-96ABUSE, or by calling the local DCF office responsible for receiving such reports. Any verbal report to DCF, which is required by law to be confirmed in writing, shall be confirmed in writing to the local DCF office within forty-eight (48) hours of making the verbal report. The statutory clergy confidentiality

privilege, as provided in Section 39.204, F.S., and as described in Section 90.505, F.S., shall apply to all reporting required under this paragraph.

(2) All allegations of sexual abuse by Church Personnel or on church premises shall be reported promptly to the Archdiocesan Contact Person. The Archdiocesan Contact Person shall immediately notify the Archdiocesan Attorney who will in turn notify the local State Attorney. Procedures for making a complaint will be readily available in printed form.

(3) Any report made to DCF should contain, when possible, the names and addresses of the child or vulnerable adult and of the child or vulnerable adult's parent, guardian, or other adult having custody and control of the child or vulnerable adult, the child or vulnerable adult's age, the nature and possible extent of the child or vulnerable adult's injuries, and any other information that the person reporting believes may be helpful with respect to the investigation of the alleged abuse, and the identity of the alleged perpetrator.

(4) If the complaint is not received from or does not involve the parent or guardian of the child or vulnerable adult, arrangements should be made to notify immediately the parent or guardian. Notice should not be given to the parent or guardian if he or she is the person against whom the complaint is made. Appropriate pastoral concern and support shall also be shown to all parties involved, including the family. All information relating to a child or vulnerable adult incident, in which a complaint is made against Church Personnel, shall be assembled and retained in a written form in a confidential manner.

(5) The Archdiocese will cooperate with public authorities about reporting in cases when the person alleged to have been abused is no longer a minor. In every instance, the Archdiocese will notify the Archdiocesan Attorney who will in turn notify the local State Attorney. In addition, the Archdiocese will advise and support a person's right to make a report to public authorities.

(6) In cases of child sexual abuse, the Archdiocese will not enter into confidentiality agreements except for grave or substantial reasons brought forward by the victim or survivor and noted in the text of the agreement.

(7) If an allegation is made against the Archbishop or an Auxiliary Bishop, the Apostolic Nuncio will be notified of the allegation. The Archdiocesan Contact Person shall make certain that the Apostolic Nuncio is notified. In cases of financial demands for settlements involving allegations of any sexual misconduct by the Archbishop, the Apostolic Nuncio will be informed.

IV. PASTORAL RESPONSE & REVIEW BOARD

A. Pastoral Commitment

When an allegation of sexual abuse of a minor by any Church Personnel is received, a preliminary investigation in harmony with canon law will be initiated and conducted promptly

and objectively. The accused will be encouraged to retain the assistance of civil and canonical counsel and will be promptly notified of the investigation. If an allegation of sexual abuse of a minor by Church Personnel is found credible, the alleged offender will be temporarily relieved of any ecclesiastical ministry or function, in harmony with canon law. The Archdiocese will not interfere with any investigation by law enforcement. When there is sufficient evidence that sexual abuse of a minor by a cleric has occurred, the Congregation of the Doctrine of the Faith shall be notified.

B. Assistance Coordinator

The Archdiocesan Victim Assistance Coordinator sees to the immediate pastoral care of persons who claim to have been sexually abused by Church Personnel when they were minors or vulnerable adults. The Archdiocese is concerned for the spiritual and emotional well being of alleged victims and is committed to promote healing and reconciliation. The Archdiocesan Victim Assistance Coordinator will offer appropriate counseling, spiritual assistance, access to support groups and other agreed upon social services.

C. Review Board

1. Membership

To assist the Archbishop in his work, the Archdiocese has a Review Board that functions as a confidential consultative body established by the Archbishop, which is composed of at least five persons of outstanding integrity and good judgment. The majority of the Review Board members will be laypersons who are not in the employ of the Archdiocese; but at least one member must be a priest who is an experienced and respected pastor of the Archdiocese. At least one member should have particular expertise in the treatment of the sexual abuse of minors or vulnerable adults. The members will be appointed for a term of five years, which can be renewed. It is desirable that the Promoter of Justice and the Archdiocesan Attorney participate in the meetings of the Review Board.

2. Functions

The functions of this Review Board include:

- a.** Advising the Archbishop; 1) in his assessment of allegations of sexual abuse of minors and vulnerable adults; and, 2) in his determination of suitability for ministry;
- b.** Reviewing Archdiocesan policies for dealing with sexual abuse of minors and vulnerable adults, offering advice on all aspects of these cases, whether retrospectively or prospectively.

3. Procedures

- a.** The Review Board shall develop its own procedures for implementing this policy.

b. The Review Board or its designee shall report to the Archbishop regarding their deliberations. At the Archbishop's request, the Review Board or its designee and the Archdiocesan Attorney shall meet with the Archbishop to respond to any questions he may have, or provide additional information desired by him. All information received by the Review Board shall be considered confidential and shall not be revealed by any member of the Review Board, except to the Archdiocesan Attorney, other members of the Review Board, and the Archbishop, unless compelled by law.

D. Removing Church Personnel

Nothing in this section shall be construed to preclude the Archbishop from temporarily or permanently removing Church Personnel upon receipt of an allegation, either pending or after the Review Board's completion of its proceedings.

E. Communications Policy

The Archdiocese has a communications policy that reflects a commitment to transparency and openness. Within the confines of respect for the privacy and the reputation of the individuals involved, the Archdiocese will deal as openly as possible with members of the community. This is especially so with regard to assisting and supporting parish communities directly affected by alleged ministerial misconduct involving minors.

V. ABUSE BY PRIEST OR DEACON

A. Clinical Evaluation

If a credible allegation of sexual abuse of a minor or vulnerable adult involves a priest or deacon, the alleged offender may be requested to seek, and may be urged voluntarily to comply with, an appropriate medical and psychological evaluation at a facility mutually acceptable to the Archdiocese and to the accused.

B. Response to Admitted or Established Abuse

When sexual abuse by a priest or deacon is admitted or is established after an appropriate investigation in accord with canon law, the following will pertain:

1. The Archdiocesan policy provides that for even a single act of sexual abuse of a minor—past, present, or future—the offending priest or deacon will be permanently removed from ministry. At all times, the Archbishop has the executive power of governance, through an administrative act, to remove an offending cleric from office, to remove or restrict his faculties, and to limit his exercise of priestly ministry. Because sexual abuse of a minor is a crime, for the sake of the common good and observing the provisions of canon law, the Archbishop shall exercise this power of governance to ensure that any priest who has committed even one act of sexual abuse of a minor as described above shall not continue in active ministry.

2. In every case, the processes provided for in canon law must be observed, and its various provisions be considered (cf. *Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State*, 1995; Letter from the Congregation for the Doctrine of the Faith, May 18, 2001). These provisions may include a request by the priest or deacon for dispensation from the obligations of Holy Orders and the loss of the clerical state, or a request by the Archbishop for dismissal from the clerical state, even without the consent of the priest or deacon. For the sake of due process, the accused is to be encouraged to retain the assistance of civil and canonical counsel. When necessary, the Archdiocese will supply canonical counsel to a priest.

3. If the penalty of dismissal from the clerical state has not been applied, the offender ought to lead a life of prayer and penance. He will not be permitted to celebrate Mass publicly or to administer the sacraments. He will be instructed not to wear clerical garb, or to present himself publicly as a priest.

4. The priest or deacon may at any time request a dispensation from the obligations of the clerical state. In exceptional cases, the Archbishop may request of the Holy Father the dismissal of the priest or deacon from the clerical state *ex officio*, even without the consent of the priest or deacon.

C. Transfer Requirements

No priest or deacon who has committed an act of sexual abuse of a minor may be transferred for ministerial assignment to another diocese or religious province. Before a priest or deacon can be transferred for residence to another diocese or religious province, the Archbishop shall forward in a confidential manner to the local bishop or religious ordinary of the proposed place of residence any and all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger to children or young people. This shall apply even if the priest or deacon will reside in the local community of an institute of consecrated life or society of apostolic life.

Approved by the Archbishop on July 1, 2003

Citations from Florida Statutes

From Section 415.102:

(24) “Sexual abuse” means acts of a sexual nature committed in the presence of a vulnerable adult without that person's informed consent. “Sexual abuse” includes, but is not limited to, the acts defined in s.794.011(1)(h), fondling, exposure of a vulnerable adult's sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. “Sexual abuse” does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

(26) “Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.

From Section 39.01 Definitions:

Section 39.01 (63):

(63) “Sexual abuse of a child” means one or more of the following acts:

- (a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.
- (b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
- (c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.
- (d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:
 - 1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or
 - 2. Any act intended for a valid medical purpose.
- (e) The intentional masturbation of the perpetrator's genitals in the presence of a child.
- (f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827.

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.--

(1) Any person, including, but not limited to, any:

- (a) Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
- (b) Health or mental health professional other than one listed in paragraph (a);
- (c) Practitioner who relies solely on spiritual means for healing;
- (d) School teacher or other school official or personnel;
- (e) Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;
- (f) Law enforcement officer; or
- (g) Judge, who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

Section 39.204:

39.204 Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.--The privileged quality of communication between husband and wife and between any professional person and his or her patient or client, and any other privileged communication except that between attorney and client or the privilege provided in s. 90.505, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect and shall not constitute grounds for failure to report as required by s. 39.201 regardless of the source of the information requiring the report, failure to cooperate with the department in its activities pursuant to this chapter, or failure to give evidence in any judicial proceeding relating to child abuse, abandonment, or neglect.

90.505 Privilege with respect to communications to clergy.

(1) For the purposes of this section:

(a) A “member of the clergy” is a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him or her.

(b) A communication between a member of the clergy and a person is “confidential” if made privately for the purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.

(2) A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.

(3) The privilege may be claimed by:

(a) The person.

(b) The guardian or conservator of a person.

(c) The personal representative of a deceased person.

(d) The member of the clergy, on behalf of the person. The member of the clergy's authority to do so is presumed in the absence of evidence to the contrary.