

CHURCH LAW AND CHILD SEXUAL ABUSE BY CLERGY

There is a significant degree of confusion surrounding the use of church law to consider allegations of child sexual abuse. This memo seeks to explain why church law considers these allegations, how the church law has developed, and, briefly what is current church law. This is written in ordinary language, avoiding, in as much as possible, technical terms or explaining them. For further reading the Vatican website presents useful resources at www.vatican.va .

Why does church law consider child sexual abuse by clerics?

The civil law of the state is concerned with the legal implications of the sexual abuse of minors, including punishment of offenders. The responsibility rests with the legislature to provide appropriate laws, the police to investigate crime and the judicial system to assess guilt and, where this is established, to punish the offender; in addition, Social Services have responsibilities arising from civil law and procedures. It is for this reason that an allegation of the sexual abuse of a minor should be reported to the civil authorities. The processes of church law, also known as canon law, should not in any way impede or prohibit the reporting of alleged abuse to the civil authorities or investigation by those authorities. In the recent document, issued by the Holy See, entitled *Guide to Understanding Basic CDF Procedures concerning Sexual Abuse Allegations*, it is made clear that “civil law concerning reporting of crimes to the appropriate authorities should always be followed”.

Given that the civil law of the state deals with offenders and supports victims, why does church law consider child sexual abuse by clergy? Why should this matter not be left exclusively and totally to the civil authorities? There are areas of the crime of child sexual abuse which the civil law does not consider. Church law considers those elements of the crime of the sexual abuse of minors which are internal to the church and not considered by the state. For instance, the civil process might lead to the imprisonment of a cleric who has offended, but cannot consider the dismissal of that person as a cleric. The church process may end with the dismissal of an offending cleric from the clerical state or restrictions that can be placed on him over and above those which the civil law imposes. In other words, in considering the position of an offender within the church, church processes can assist in safeguarding children, by adding to, but not substituting for, the restrictions imposed by civil law on an offender. Safeguarding children goes beyond the establishment of guilt in a criminal court.

The church process should, in child safeguarding, provide added value.

A brief history of the church's legal process, over the past one hundred years, in relation to child sexual abuse by clerics.

The 1917 *Code of Canon Law* identified a number of crimes which, when considered in the church's own internal processes, were reserved to the Holy See's *Sacred Congregation of the Holy Office*. In 1922, the first edition of *Crimen Sollicitationis* was issued, which provided procedural norms for cases of solicitation during Confession; this is the crime committed when a priest solicits a penitent in the Sacrament of Confession to a sin against the sixth commandment. The document also had a relatively short section referring to *crimen pessimum*, which includes what is now described as child sexual abuse. In 1962, a revised edition was prepared for the bishops attending the Second Vatican Council. This edition was not issued to all the bishops, as originally intended, as, it would appear, an insufficient number of copies had been printed.

The 1983 *Code of Canon Law*, which was produced in the light of the reforms of the Second Vatican Council, established that canonical trials were to be held, for the most part, in local dioceses.

In 1996, the Holy See, through a document granting special permission, extended prescription in Ireland to 10 years from the 18th birthday of the person who is abused; prescription, which in common law jurisdictions is known as the statute of limitations, is the canonical term for the period after which a church investigation cannot be started. At the same time, the age for the crime of the sexual abuse of a minor was raised from 16 to 18.

In 2001, the *Motu Proprio 'Sacramentorum Sanctitatis Tutela'* was promulgated by Pope John Paul II. While this document concerns a number of other issues which are not linked to child sexual abuse, the relevant key change established in this document is that the internal church consideration of the crime of sexual abuse of a minor under the age of 18 is reserved to the Holy See's *Congregation for the Doctrine of the Faith (CDF)*, not the local bishop. Along with this *Motu Proprio*, a further document *Normae de Gravioribus Delictis* was issued which provided norms on how to process crimes reserved to CDF. The result of the 2001 changes is that in every case where a bishop has an allegation of the grave crime of child sexual abuse by a cleric, where there is at least the semblance of truth, once the preliminary investigation in canon law has been completed, the bishop is obliged to communicate the matter to CDF. The preliminary investigation does not in any way delay or interfere with normal notification to the civil authorities; rather, it begins the church's consideration of those elements of the crime of the sexual abuse of minors which are internal to the church and not considered by the state. The practice of communicating the matter to CDF should help to assist in ensuring that the crime is examined and that there is consistency throughout the church.

In the years that followed 2001, Pope John Paul II gave additional powers to CDF, later confirmed by Pope Benedict XVI, to strengthen the Congregation's ability to consider the crime of child sexual abuse. An example is the faculty to derogate from prescription on a

case by case basis; this is the authority by which the Congregation is able to consider crimes even after the period of prescription has passed.

What is different in the New Norms of 2010?

Pope Benedict XVI ordered the promulgation of new Norms on *Graviora Delicta* in 2010, to update the 2001 Norms, including the various faculties granted since 2001 and additional measures.

While some of the changes might appear technical, others are of substantial significance. The following are the headline changes in relation to internal church investigation of child sexual abuse by clerics:

- The term of prescription has been extended to twenty years from the 18th birthday of the person abused, with the possibility remaining that this can be further extended. This ensures that all cases up to twenty years after the 18th birthday must be considered and allows the possibility that even older cases may be considered;
- The Congregation can dispense from the need for a full judicial church trial and proceed to an extra-judicial decree, by administrative process, which is quicker;
- The Congregation can present to the Pope most grave cases, where it is manifest that the crime has been committed, having given the guilty party the possibility of defending himself, so that the Pope may consider dismissal from the clerical state. In this way, the Pope may intervene speedily in the most serious cases, to dismiss a priest from the clerical state, without the need for a full trial;
- There is now the possibility of lay people being on the tribunal staff considering these grave crimes. This ensures that the expertise of appropriately qualified lay people may be used in church trials where there are allegations of child sexual abuse;
- The crime of sexual abuse has been extended to include also those who are 'developmentally disabled' over the age of 18;
- A specific crime has been created of the acquisition, possession or distribution, by a cleric, of pornographic images of minors under the age of 14;
- The ability of the bishop to apply the cautionary measures described in canon 1722 against a cleric, is extended so that these may even be applied even during the preliminary process. Canon 1722 states: "to prevent scandals, to protect the freedom of witnesses, and to guard the course of justice, the Ordinary, after having heard the promoter of justice and cited the accused, at any stage of the process can exclude the accused from the sacred ministry or from some office and

ecclesiastical function, can impose or forbid residence in some place or territory, or even can prohibit public participation in the Most Holy Eucharist. Once the cause ceases, all these measures must be revoked; they also end by the law itself when the penal process ceases". This strengthens the bishop's ability to intervene with cautionary measures, even at the very earliest stages of the process, while the guilt, or otherwise, of the cleric is being established.

Conclusion

Church law should never be seen as replacing or interfering with civil law. Child sexual abuse is a serious crime in civil society and should always be treated as such. A report of all such crimes should be made, in accordance with law and safeguarding guidance, to civil authorities – the Gardaí and HSE in the Republic of Ireland and the Health and Social Services and PSNI in Northern Ireland. However, it is also important that church law processes should be used to deal with offending clerics, so that those issues which are internal to the church, such as the possibility of a priest being dismissed from the clerical state or otherwise restricted, may also be considered. Church law can be a valuable asset in the common interest in all of society to strive for the safeguarding of children.