

Decree
Concerning the Non-Penal Disposition of
Allegations of Sexual and Other Forms of Abuse of
Minors and Other Vulnerable Persons

I. General Provisions.

This Decree summarizes and clarifies the particular law of the Diocese of Wilmington regarding the non-penal disposition of allegations of the sexual or other forms of abuse of minors and other vulnerable persons by clerics, employees and volunteers of the Diocese of Wilmington. This Decree shall be promulgated by publication in the *For the Sake of God's Children* program materials.

In view of circumstances in the Diocese and throughout the United States since the mid-1990's, but especially since 2001, with respect to the sexual abuse of minors by clerics, employees and volunteers of the Roman Catholic Church, this Decree sets forth the manner of proceeding in relation to allegations of the sexual abuse of minors and other vulnerable persons in the Diocese of Wilmington when penal measures are either not available canonically or are deemed impractical. The measures outlined herein are not penal in nature, but rather precautionary in order to provide appropriately for the protection of children, minors and other vulnerable persons relying on the executive power of governance of the Ordinary of the Diocese. They have been put in place in order to protect children, minors and other vulnerable persons from those who are known to have harmed such persons in the past, to protect the Diocese of Wilmington and the Church in general from the consequences of such behavior by clerics, employees and volunteers, and to serve the best interests of the Church and the Faithful, while respecting the importance of ascertaining with as much certitude as possible that those against whom allegations are made have, in fact, committed such acts. Ascertaining the truth of an allegation or other information is to be carried out in a manner which is sensitive to and respects the dignity of survivors of such abuse, while also being sensitive to and respecting the dignity of those who are suspected of committing, or alleged to have committed, such acts. It is also to scrupulously respect the presumption of innocence on the part of one who is suspected of such acts until the fact of such conduct has been established through appropriate administrative procedures that respect, as well, the natural and canonical right of defense in a manner appropriate to administrative as opposed to penal matters of those against whom an allegation has been made or with respect to whom information has come to light that places them under suspicion.

Those against whom allegations of sexual or other abuse are made, and those who it becomes known have committed such acts, are to be treated with compassion and when truly repentant forgiven for the moral fault involved. However, Christian compassion and the willingness to forgive someone who is truly repentant cannot be allowed to override the responsibility of the Church and all adults to protect children, young people and other vulnerable persons from those who might harm them. Whether knowingly and intentionally or as the result of some psychological defect that may or may not be understood very well, whenever someone has committed even one act of sexual or other abuse of a child, a young person or some other vulnerable person, he or she may never again be knowingly placed in a position to do such harm again. This means, as far as the Church is concerned, in particular the Church in the Diocese of

Wilmington, that the Church must and will do everything it can to assure that persons who are known to have harmed a child, a young person or another vulnerable person at any time in the past are not placed in circumstances by the Church through which they could gain access to such persons again under circumstances where such harm might be repeated. Thus, anyone who is known to have ever harmed a child, young person or other vulnerable person in these ways in the past, even as the result of a single act, shall not be given any Church assignment or ecclesiastical office, nor will they be allowed to minister or do volunteer service on behalf of the Church, or identify themselves in any way as affiliated with the Church in any official capacity, other than as a baptized member of the faithful, in the Diocese of Wilmington. Conscious that “the salvation of souls. . . must always be the supreme law in the Church” (CIC 1752), it is also acknowledged that sexual and other forms of abuse by clerics, employees and volunteers of the Church, in addition to being crimes under applicable civil law, can do irreparable harm to survivors of abuse and their families, and that it is always a source of grave scandal which can threaten the faith, and therefore the salvation, of survivors and members of the faithful scandalized by such acts. It is the policy of the Diocese of Wilmington, therefore, that the safety, well-being, faith and salvation of victims and members of the faithful who are not perpetrators of sexual abuse and who are gravely injured and scandalized by such acts, and the good of the Church, must be a first and foremost consideration in disposing of allegations or other information concerning the sexual or other abuse of minors and other vulnerable persons. Even where moral or strict canonical culpability is lacking, acts of the sexual or other abuse of minors and other vulnerable persons by clerics, employees and volunteers of the Church does serious harm to survivors of such abuse, and threatens the faith, and therefore the salvation, of survivors and members of the faithful. For the salvation of souls as the first law of the Church, therefore, perpetrators of such acts must be separated from active ministry, employment and volunteer service and prohibited from future ministry on behalf of the Church, whenever in their lives such acts may have occurred, and it is the policy of the Diocese, to be enforced through particular law, that those who have committed such acts be so separated and prohibited from future ministry, employment or volunteer service, certainly for as long as it is not proven that there is no risk of future such acts. Sad experience has shown that once a person has committed an act of the sexual or other abuse of a minor or other vulnerable person, seldom if ever can it be said that risk of re-offending has been eliminated. It is prudent and just, therefore, to place the burden of proving by conclusive evidence that no such risk exists upon anyone making the claim.

The particular law and policies of the Diocese with regard to these matters have been put in place conscious of the admonition of His Holiness St. Pope John Paul II, in his Address to the Cardinals of the United States and Conference of Officers, that, “There is no place in the priesthood or religious life for those who would harm the young.” Nor is there any place in the Church for employees or volunteers who would harm the young. It is the policy and particular law of the Diocese of Wilmington that there is no place for anyone who would harm the young, or for those who are known to have harmed the young, clerics and laypersons alike, in active ministry or an ecclesial assignment, employment or volunteer service in the Diocese of Wilmington. The policies and particular law of the Diocese of Wilmington acknowledge as well the statement of Our Lord, recorded in the Gospel of Mathew, that for anyone who would lead little ones astray, it would be better for such a person “to have a great millstone hung around his neck and to be drowned in the depths of the sea” (Mt 18:6).

It is intended that allegations of the nature addressed by this Decree be disposed in a way that respects the dignity of those who make allegations and those who have been victimized by sexual or other forms of abuse, but also the dignity and natural and canonical rights of those against whom allegations are made or whom it otherwise becomes known have sexually or otherwise abused a minor or other vulnerable person. It is recognized, and hereby declared that once it becomes known that a cleric, employee or volunteer of the Diocese of Wilmington has sexually or otherwise abused a minor or vulnerable person, he or she may not hold any position of active ministry, employment or volunteer service on behalf of the Church in the Diocese of Wilmington.

These policies and the particular law of the Diocese of Wilmington are based in part on the basic principle of the *Charter for the Protection of Children and Young People* and the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons* of the United States Conference of Catholic Bishops as approved by the Holy See (the “Charter”), to wit that “Diocesan/eparchial policy is to provide that for even a single act of sexual abuse of a minor—whenever it occurred—which is admitted or established after an appropriate process in accord with canon law, the offending priest or deacon is to be permanently removed from ministry and, if warranted, dismissed from the clerical state.” Therefore, in the Diocese of Wilmington, any priest or deacon who has committed an act of the sexual abuse of a minor or other vulnerable person, whenever it occurred, whether prior to or after ordination and entry into the clerical state, shall be removed from ministry through the exercise of the Bishop’s executive power of governance for as long as any risk exists that the priest or deacon might re-offend. It is also the policy and particular law of the Diocese that any such priest or deacon shall be permanently removed from ministry when it is possible canonically, and that he be dismissed from the clerical state if warranted. It is also the policy and particular law of the Diocese that the same standard applies to laypersons: Any employee or volunteer of the Diocese who it becomes known has sexually or otherwise abused a minor or other vulnerable person shall be dismissed from employment or volunteer service by the Diocese and permanently barred from future employment or volunteer service.

Whenever it becomes known that a lay person or cleric has sexually abused a minor, whether after or before ordination, he or she shall be removed from ministry or employment by the Diocesan Bishop or other Ordinary with competence to do so, and prohibited from future ministry or employment unless and until it shall be conclusively proved that there is no risk of recidivism. His or her removal from and prohibition against future employment or ministry and any limitation of his or her employment, ministry or faculties imposed, are not applied as a penalty, but rather as a precautionary measure for the protection of children and young people, relying on the executive power of governance of the Bishop. Such removals, limitations and prohibitions are necessary as a result of what has been learned about the phenomenon of the sexual abuse of minors during the Church’s recent experience, particularly through the *John Jay Study* and other credible psychological, sociological and medical studies, which make it apparent that once an individual has sexually abused a minor, he or she may never again be put in a position to have access to minors or other vulnerable persons by the Church or other institutions, due to the risks of recidivism and repetition of such acts. Thus, the measures referred to herein have not been and are not imposed as punishment for wrongdoing, but rather as protective measures to guard against the proven tendency of those who have engaged in the sexual abuse of a minor to repeat such behavior, a risk that continues, so far as is known, throughout the entire

life of one who is known even only one time to have sexually or otherwise abused a minor or other vulnerable person. Clerics who are found to have sexually or otherwise abused a minor or other vulnerable person are to be considered morally incapacitated from engaging in ministry or volunteer service on behalf of the Church, or holding any office in the Church, or receiving any assignment for ministerial service other than one of prayer and penance by the Diocesan Bishop or other Ordinary with the competence to give assignments in the Diocese.

These measures are likewise imposed to protect the Church and its mission in the future from the catastrophic financial consequences that have befallen the Church as a result of the sexual abuse of minors by deacons, priests and bishops and lay employees and volunteers. It is not possible to obtain liability insurance that will cover acts of sexual abuse by those who are known to have committed such acts in the past, nor if it appears that the Church has not taken sufficient measures to prevent such acts. Therefore, it is necessary for the Diocese to enforce provisions of particular law that will assure to the greatest extent possible that the Church will not experience such consequences again in the future due to acts of the sexual or other abuse of a minor, young person or other vulnerable person by anyone who is known to have committed even one such act at any time in the past. This can only be done by assuring that persons who have committed such acts at any time in the past are never allowed to hold an office or other position of trust and responsibility or ministry, employment or volunteer service in the Church, again if they have held such a position in the past or ever in the future if they have not but are known to have committed such an act.

II. Investigating Allegations.

When an allegation is made, or it otherwise comes to the attention of the Ordinary that a cleric, employee or volunteer of the Church has or may have sexually or otherwise abused a minor or other vulnerable person, steps are to be taken as soon as possible to ascertain the truth of the allegation or other information. These steps shall include:

- a. Assistance is to be offered to the victim or victims, if practicable, to assist them in obtaining counseling or other assistance deemed appropriate to helping them address the personal consequences of the alleged behavior.
- b. The Ordinary shall appoint an Assessor to determine if the allegation or other information has at least the semblance of truth, unless doing so would be entirely superfluous because it is obvious on the face of things that the allegation or other information either is or is not true. The Ordinary may resort to the Diocesan Review Board established in accordance with the Charter and/or qualified professionals to assist in assessing the truth of the allegation or other information and making a recommendation to the Assessor and to the Diocesan Bishop or other Ordinary with competence in the matter. If the Assessor concludes that the allegation or other information lacks even the semblance of truth, he or she shall recommend to the Bishop or Ordinary that the matter be dismissed. The Bishop or Ordinary shall then decide in conscience whether he ought to dismiss the matter or appoint two Assessors to proceed in accordance with the following provisions. If the matter is dismissed, the Bishop or Ordinary shall issue a decree to that effect to be kept with the acts of the investigation.

- c. If the Assessor concludes that the allegation or other information has the semblance or truth, or it is obviously true on the face of things, the Ordinary shall appoint two Assessors to make further diligent inquiry to ascertain with certitude the truth of the allegation or other information. The Assessors may resort to the Lay Review Board of the Diocese or qualified professionals to assist in assessing the truth of the allegation or other information and making a recommendation to the Diocesan Bishop or other Ordinary with competence in the matter.
 - i. If at any stage of the inquiry the Assessors determine that the allegation or other information is not true, the inquiry is to be halted and they shall recommend to the Diocesan Bishop or other Ordinary with competence in the matter that the allegation or other information be disregarded and the matter dismissed and declared concluded. The Bishop or other Ordinary shall consider the recommendation of the Assessors and make a prudent decision in his conscience concerning whether the matter should be concluded or further inquiry should be made and procedures employed. If the matter is to be concluded, he shall issue a decree dismissing the matter to be kept with the acts of the investigation.
 - ii. If the Assessors conclude that the allegation or other information is true, or is probably true, they are to recommend to the Bishop or Ordinary that the accused be offered an opportunity to either admit or deny that the allegation or other information is true.
 - iii. An admission by the accused of the truth of the allegation or other information is to be considered conclusive, and the accused is to be immediately removed from ministry or dismissed from employment or volunteer service and prohibited from future ministry, employment or volunteer service on behalf of the Church, by a decree.
 1. A guilty or other plea or admission of the truth of the allegation or other information in a civil court or other civil proceeding is to be considered conclusive as an admission of the truth of the allegation or other information, even if the civil authority permits a subsequent withdrawal of the guilty or other plea or admission pursuant to sentencing provisions of the civil law. As soon as the Ordinary becomes aware of such a plea or admission, he shall declare by a decree that the allegation or other information has been established as true and the cleric, employee or volunteer is to be immediately removed from ministry, employment or volunteer service and prohibited from future ministry, employment or volunteer service on behalf of the Church by the Diocesan Bishop or other Ordinary by a decree.
 - a. If an accused person wishes to claim that an accusation or other information leading to a guilty plea or other admission before the civil authority was not true as a matter

of fact, the burden rests upon the accused to prove that his guilty plea or other admission did not express the truth of the underlying allegation. Absent positive proof of the falsehood of a guilty plea or other admission before the civil authority, the guilty plea or other admission shall be conclusive as to the truth of the allegation or other information regardless of the application of other provisions of civil law that permit the withdrawal of a guilty plea or other kind of admission upon the fulfillment of conditions of probation or other conditions that do not pertain to the truth or falsehood of facts alleged.

2. If the cleric, employee or volunteer denies that the allegation or other information is true, the Bishop or Ordinary shall decree that the matter be re-examined by the Assessors affording the accused the opportunity to exercise his or her right of defense in a manner appropriate to an administrative inquiry that is not penal in nature. The Assessors may utilize the assistance of qualified professionals when deemed necessary or useful in assessing the information presented in the course of their inquiry and the truth of the allegation or other information.
3. If the accused neither admits nor denies the truth of the allegation or other information, the Bishop or Ordinary is to decree that the matter proceed according to paragraph 2 above.
4. Upon completing their inquiry and after affording the accused the appropriate exercise of his or her right of defense, the Assessors are to present their conclusions to the Diocesan Review Board for its opinion regarding the matter, unless doing so would be completely superfluous due to the conclusive weight of the information gathered establishing either the truth or lack of truth of the allegation or other information. When the Assessors determine that they have uncovered sufficient information to arrive at a conclusive determination regarding the truth of the allegation or other information, the observations of the Diocesan Review Board having been received and considered, they are to make a recommendation to the Bishop regarding whether truth of the allegation or other information has been established. The Bishop shall then weigh the information uncovered and the recommendation of the Assessors and decide in conscience whether or not the truth of the allegation or other information has been established. If he concludes that it has not, he is to dismiss the matter and restore the cleric, employee or volunteer to ministry, employment or the ability to offer volunteer service. If he concludes that the truth of the allegation or other information *has* been established, he is to remove the cleric from ministry or the

employee from employment by the Church in the Diocese or volunteer from volunteer service on behalf of the Church, and prohibit the person who it has been established sexually or otherwise abused a minor or other vulnerable person from future ministry, employment or volunteer service in or on behalf of the Church in the Diocese and to the extent practicable anywhere, by a decree.

III. Clerics Removed from Ministry.

- a. Clerics whom it has become known sexually or otherwise abused a minor or other vulnerable person at any time before or after ordination who are removed from ministry, employment or volunteer service in accordance with the provisions of this Decree as a precautionary measure against further abuse, and who have not been found guilty of an ecclesiastical delict and penalized or dismissed from the clerical state, are to have their priestly faculties formally restricted to the greatest extent possible under canon law, are to be prohibited from exercising any kind of ministry and from dressing as a cleric, or from celebrating Mass or any of the other sacraments in public, by a decree. Upon application to the Diocesan Bishop in writing, the Bishop may permit a cleric who has been removed to celebrate Mass in private if he considers it appropriate.
- b. Clerics removed from ministry under the provisions of this Decree are to be considered morally incapable of ministering, and therefore incapacitated within the meaning of CIC 281 §2. Because clerics who have been removed from ministry by the Bishop or other Ordinary in exercise of his executive power of governance as a precautionary measure against the future sexual or other abuse of a minor or other vulnerable person are morally incapable of holding office in the Church, and do not hold any office or assignment in the Church in the Diocese, they are not entitled to remuneration under CIC 281 §1. They are to be provided social assistance to provide for their needs suitably in accordance with CIC 281 §2 and any particular law of the Diocese that pertains to the provision of social assistance to priests who have been administratively removed from ministry due to moral incapacity resulting from the sexual or other abuse of a minor or other vulnerable person at any time before or after ordination.

Given in the Chancery on July 14, 2014

Most Rev. W. Francis Malooly
Bishop of Wilmington

Very Rev. Steven P. Hurley
Vicar General