

# Catholic Conference of Ohio

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## MEMORANDUM

**TO:** All Catholic Clergy in the State of Ohio  
**FROM:** Tim Luckhaupt and Dan Ritter  
**DATE:** August 3, 2006  
**RE:** Clergy Responsibility under Amended Substitute Senate Bill No. 17

This memorandum is to provide information as to the key provisions of Amended Substitute Senate Bill No. 17 ("SB 17") which apply to all Catholic clergy in Ohio. SB 17 (1) changes Ohio law for the reporting of child abuse and child neglect; (2) creates a civil registry for persons who are found, through a declaratory judgment action, to have committed child sexual abuse if such claims are barred by the statute of limitations on or before August 3, 2006; and (3) extends the statute of limitations for civil actions based on the sexual abuse of children.

**This new law becomes effective August 3, 2006.**

### 1. **REPORTING CHILD ABUSE OR NEGLECT**

As an initial point, 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 as adopted and revised by the United States Conference of Catholic Bishops, and any pertinent Diocesan policies, apply to any allegation of sexual abuse of minors. Ohio statutory law, including the new provisions of SB 17 establish Ohio civil law as to child abuse and child neglect.

The following is an explanation of Ohio statutory law including the newly enacted provisions of SB 17.

A. What is child abuse and child neglect?

Child abuse means any sexual conduct or sexual contact with a person who is under 18. Sexual conduct refers to specific sexual acts. Sexual contact means any touching of an erogenous zone of another.

Child neglect refers to neglected children and includes any child who is abandoned by the child's parents, a guardian or custodian; who lacks adequate personal care because of the faults or habits of the child's parents, guardian or custodian; whose parents, guardian or custodian neglect the child or refuse to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals or well-being; or whose parents, guardian or custodian neglect the child or refuse to provide the special care made necessary by the child's mental condition.

B. Who Must Report Child Abuse and Child Neglect?

(i) Clerics

Ohio law prior to S.B. 17 contained a mandatory provision that certain individuals such as doctors, attorneys, teachers and social workers must report abuse or neglect of children to the appropriate authorities. Previous law did not include clerics as mandatory reporters. The new provisions of S.B. 17 now place mandatory reporting requirements on clerics. The term "cleric" includes a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited or licensed minister of an established and legally cognizable church, denomination or sect. This definition includes Catholic priests and deacons. The new mandatory reporting rules for clerics are:

- (a) A cleric must report if the cleric (i) knows or (ii) has reasonable cause to believe, that another cleric has caused, or poses the threat of causing, abuse or neglect to a child under 18, or a mentally retarded, developmentally disabled or physically impaired child under 21.
- (b) The proof required to establish that a cleric "knows" another cleric has committed abuse is actual knowledge.
- (c) The proof required to establish that a cleric "has reasonable cause to believe" that another cleric caused or poses the threat of causing abuse or neglect consists of facts which would cause a reasonable person in a similar situation to believe that abuse or neglect has occurred or there is a threat of causing abuse or neglect.
- (d) Reporting is not required if the information is provided by a person to a cleric and the information would be confidential under canon law. Information received under the priest-penitent sacred trust is not subject

to reporting. Communication to a cleric made in confidence may also not be subject to reporting if the confidential communication is inviolate under canon law.

(ii) Other Persons Required to Report

The following persons must also report child abuse and child neglect if they have reasonable cause to suspect based on facts that would cause a reasonable person in a similar position to suspect that a child is or has been abused or neglected: registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist; licensed school psychologist; independent marriage and family therapist or marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a child day care center; administrator or employee of a residential camp or child day camp; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of a county humane society; person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendent, board member, employee or investigative agent of a county board of mental retardation; and, an employee of the department of mental retardation and developmental disabilities.

C. Where and When Must Child Abuse and Child Neglect Be Reported?

Reporting is to be made to the public childrens services agency or municipal or county police officers in the county in which the child resides or in the county in which the abuse or neglect is occurring or has occurred. A report may be made by telephone or in person, and is to be followed by a written report if requested by the receiving agency or officer. The reporting can be done through the Diocesan attorney, or any other properly-designated Diocesan official.

The reporting must be made immediately upon receipt of information.

Failure to report as required is a misdemeanor of the fourth degree. However, failure to report actual knowledge of abuse or neglect is a more serious misdemeanor of the first degree if the cleric who

committed the abuse or neglect belongs to the same church, religious society or faith as the cleric required to report.

## 2. **CREATION OF CIVIL REGISTRY**

If, as of August 3, 2006, an individual is precluded from commencing a civil action for assault or battery based on child sexual abuse because of the running of the applicable statute of limitations, the Ohio Attorney General or a prosecuting attorney may bring an action in a common pleas court seeking a declaratory judgment that the alleged child abuser (hereinafter “defendant”) would have been liable for assault or battery based on child sexual abuse but for the expiration of the statute of limitations. Such an action may be brought only for child sexual abuse that allegedly occurred in Ohio.

If an individual believes that, but for the expiration of the statute of limitations, the individual would have a cause of action against a defendant for assault and battery based on sexual abuse, the individual may serve written notice of the individual’s belief and basis for the belief simultaneously on the defendant, the Ohio Attorney General and the prosecuting attorney of the county in which the defendant resides or, if the defendant does not reside in Ohio, the prosecuting attorney of Franklin County.

The prosecuting attorney, within 45 days after receipt of the written notice, may commence the civil action in the common pleas court in the county in which the prosecuting attorney is elected. If the prosecuting attorney does not commence an action within that 45-day period, the Ohio Attorney General has 90 days after receipt of the notice to commence a civil action in the Franklin County Common Pleas Court or the common pleas court of the county in which the defendant resides.

If neither the Ohio Attorney General nor the prosecuting attorney commences the civil action within the appropriate 45- or 90-day period after receiving the notice, the individual may commence a civil action in the common pleas court in the county in which the individual or defendant resides or in the county in which the childhood sexual abuse allegedly occurred. Such civil action shall seek a declaratory judgment finding from the court that the defendant would be liable for assault or battery based on childhood sexual abuse.

If a common pleas court which hears the civil action filed by the Ohio Attorney General, the prosecuting attorney or the individual who was the victim of the childhood sexual abuse finds that the defendant would have been liable for assault or battery based upon the childhood sexual abuse, the court shall enter a judgment with that finding against the defendant and shall order that the defendant be listed on the civil registry maintained by the Ohio Attorney General pursuant to Section 3797.08 of the Revised Code. If placed on a civil registry, an abuser must register with the local sheriff and verify the registration annually. The sheriff is to notify neighbors and schools of the location of the registrant, and a registrant may not reside within 1,000 feet of a school.

In a civil action brought by an individual the court may award reasonable attorney fees to the prevailing party.

After six years, a registrant can apply to be removed from the registry. The court can remove a registrant from the registry if the court finds by clear and convincing evidence that the registrant has not been found liable in damages in an action for assault and battery based on childhood sexual abuse since the registrant was placed on the registry, the registrant is not on a criminal registry in any state, and the court determines that it is not likely that the registrant will commit an act requiring registration in the future.

### **3. EXTENSION OF THE STATUTE OF LIMITATIONS FOR CIVIL ACTIONS BASED ON SEXUAL ABUSE OF CHILDREN**

A. A new statute of limitations has been adopted for childhood sex abuse. The new statute of limitations applies to civil suits against various groups of people, including teachers, school administrators, coaches, scouting troop leaders, and clerics if the victim is a member of or attends the church or congregation served by the cleric. Under the new statute of limitations as applicable to a cleric, if a cleric commits an act of childhood sexual abuse against a person who is a member of or attends the church or congregation served by the cleric, the victim may commence a civil action within 12 years after the victim reaches age 18. The 12-year statute of limitations applies to claims against the cleric who commits the act of abuse, and any person or entity liable by reason of the abuse, such as a bishop and/or a diocese for a claim such as negligent supervision.

B. If any defendant has fraudulently concealed facts that would give the victim a claim (such as fraudulent concealing of prior acts of an abuser), the statute of limitations as to the claim against the concealing defendant remains open until the victim discovers or should have discovered the concealed facts.