



Constitution

Erie Diocesan Review Board

A. Preamble --

To serve as a confidential consultative body to the Bishop

B. Membership --

- ◆ **At least five persons of outstanding integrity and good judgment, who are in full communion with the Catholic Church, the majority of whom are lay persons not in the employ of the diocese**
- ◆ **At least one experienced and respected pastor**
- ◆ **At least one member with particular knowledge and expertise *re* sexual abuse of minors**
- ◆ **Ex-officio, the Promoter of Justice**
- ◆ **Consultant, the Pastoral Assistance Coordinator**

C. Role of the Review Board --

- ◆ **To advise the Bishop in assessing allegations of the sexual abuse of minors by priests, deacons and other diocesan personnel**
- ◆ **To assist the Bishop in determining suitability for ministry of priests, deacons and other diocesan personnel**
- ◆ **To advise the Bishop regarding all aspects of cases, whether retrospectively or prospectively**
- ◆ **To advise the Bishop during the course of a preliminary investigation of an allegation (See Section G)**
- ◆ **To approve diocesan policies *re* sexual abuse of minors**

D. Role of the Pastoral Assistance Coordinator --

To serve as indicated in the profile for this position (See Attachment A)

E. Term of Office --

Members are appointed by the Bishop and serve for renewable terms of five (5) years.

F. Media Relations --

The Bishop and one lay member, elected by a majority of the members, serve as spokespersons for the Board.

G. Diocesan Review Board and the Preliminary Investigation --

According to the USCCB *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, and the corresponding policies of the Diocese of Erie, the Diocesan Review Board has a role in advising the diocesan bishop in his assessment of allegations of sexual abuse of minors¹. This assessment of allegations is made especially during what is known as the preliminary investigation. The following is a practical commentary on the preliminary investigation and the role of the Diocesan Review Board in this most important process.

What does the Code of Canon Law say about the preliminary investigation?

The notion of the preliminary investigation is set forth in the following norm from the Code of Canon Law.

Canon 1717 §1. Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire

¹ United States Conference of Catholic Bishops, *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, n. 4, in **Promise to Protect, Pledge to Heal**, Washington, DC: USCCB (2002) 30. "To assist diocesan/eparchial bishops, each diocese/eparchy will also have a review board which will function as a confidential consultative body to the bishop/eparch in discharging his responsibilities. The functions of this board may include (a) advising the diocesan bishop/eparch in his assessment of allegations of sexual abuse of minors and in his determination of suitability for ministry; (b) reviewing diocesan/ eparchial policies for dealing with sexual abuse of minors; and (c) offering advice on all aspects of these cases, whether retrospectively or prospectively."

personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous.

§2. Care must be taken so that the good name of anyone is not endangered from this investigation.

§3. The person who conducts the investigation has the same powers and obligations as an auditor in the process; the same person cannot act as a judge in the matter if a judicial process is initiated later.

Why the preliminary investigation?

This investigation is commonly called preliminary because it must be made before the ordinary (i.e., the bishop) makes an assessment about an accusation or takes any action against the accused. The phrase “whenever an ordinary has knowledge of a delict,” indicates the importance and sense of immediacy that should be given to allegations of child sexual abuse that are reported to diocesan officials. Basically it means that no accusation is to be ignored and there should be no unreasonable delay in looking into the accusation. In practical terms, the bishop or his delegate should meet with the accuser as soon as possible after first notice of the accusation. The purpose of the meeting is to listen to the accuser and to begin gathering facts about the alleged sexual abuse of a minor. This meeting is different from the contact made by the diocesan victim assistance coordinator whose concern is for the spiritual and psychological well-being of the alleged victim.

What actions take place before the preliminary investigation?

a. Reporting to civil authorities. According to the laws of the Commonwealth of Pennsylvania, the USCCB *Essential Norms*, and the newly revised policy of the Diocese of Erie regarding sexual abuse of minors by priests or deacons, all accusations must be reported immediately to the proper civil authorities. In most cases, the preliminary investigation required by canon law will be postponed until the civil authorities have completed their investigation. It will likely be further delayed if the civil authorities proceed with a criminal prosecution.

It should be noted that in many cases the bishop is not the first to learn of the alleged offense. If a victim first shares the information with a mandated reporter, the matter will have already been reported to the civil authorities. If the alleged offense is reported to the bishop or his delegate, then the matter must be reported to the civil authorities since both are mandated reporters according to state law. It is already the

policy of the Diocese of Erie for the bishop or his delegate to advise alleged victims to report the matter directly to the proper authorities.²

b. Notifying the Diocesan Review Board. The Diocesan Review Board is informed when the bishop has knowledge of some offense that “at least seems true” and he has decided to initiate the preliminary investigation. In those cases where the alleged offense does not “at least seem true,” the bishop consults with the Diocesan Review Board. Whenever there is a doubt concerning the veracity of the allegation, the jurisprudence calls for a preliminary investigation. The bishop also notifies the Diocesan Review Board when the preliminary investigation is found to be superfluous. These concepts are explained below.

What is a “delict” and what does it mean that it “at least seems to be true”?

The phrase “knowledge of a delict which at least seems true” is key to understanding why or when the preliminary investigation must be conducted. First, the alleged act(s) must involve a delict. A delict is an external violation of a law to which a penalty is attached and which is imputable to the one who violated the law. In order for the violation to be external, it need not be public or known to many people. It must at least be an act that could be perceived by another person if another person is present. (Thus, for example, if a person had lustful thoughts, it may be even a gravely sinful act, but it is not considered external because it is not manifest and cannot be perceived by others. However, if for example, a person has lustful thoughts about minors and it is manifest or perceivable because that person possesses child pornography as an object of those lustful thoughts, then the act is external.)

A delict must also entail an act which is a violation of a specific law. For example, having lustful thoughts about minors may be a sin, but there is no law that punishes a person for their thoughts in this regard. Engaging in sexual abuse of a minor is delict because it is a violation of a specific law. A delict also has a penalty attached for violation the applicable law. For example, a priest or deacon who sexually abuses a minor is to be punished with a just penalty, up to and including dismissal from the clerical state.³ Finally, a violation of a specific law to which a penalty is attached must also be imputable to the one who committed the act in order for it to be considered a delict. Imputability refers to the legal

² USCCB, *Essential Norms*, n. 11, in **Promise to Protect**, 33. “The diocese/eparchy will comply with all applicable civil laws with respect to the reporting of allegations of sexual abuse of minors to civil authorities and will cooperate in their investigation. In every instance, the diocese/eparchy will advise and support a person’s right to make a report to public authorities.”

³ The sexual abuse of minors is expressly established as a delict in canon 1395 §2 of the 1983 Code of Canon Law and in subsequent ecclesiastical legislation, including the 2002 USCCB *Essential Norms*.

responsibility a person has for any act that involves an external violation of a law to which a penalty is attached. Church law presumes that one who commits a delict is responsible (and therefore punishable) for committing a delict, unless a lack of or diminished responsibility is demonstrated. The notion of “imputability” is treated further below.

The canon indicates that a preliminary investigation is to be made when “the knowledge of a delict at least seems true.” First, the accusation must be about a delict. If for example, it is alleged that in speaking to a minor, a priest or deacon used inappropriate language with some sexual overtones, and nothing more is alleged, it may have been unbecoming or inappropriate and perhaps even sinful. However, there is no delict involved. In that case no preliminary investigation is required.⁴ As for the semblance or appearance of truth, this means that the accusation must be based on some fact(s) that can be substantiated and not merely on rumor, hearsay, or innuendo. If what has been alleged lacks any factual basis and is completely untrue, then even a preliminary investigation may not be necessary. However, the traditional jurisprudence is that if there is any doubt about the veracity of the accusation, then the preliminary investigation is warranted. Finally, if the allegation “at least seems true,” then the preliminary investigation is warranted.⁵

When might the preliminary investigation be superfluous?

A preliminary investigation may be superfluous if the accused readily admits of having committed the alleged act(s). It should be noted that no one can be coerced into confessing to a crime, even in canon law.⁶ Also, it may be superfluous if the crime has already been proven in another forum (e.g., the police investigated and there was a criminal trial

⁴ N.B. Some actions such as provocative language or physical gestures may fall short of the substance of a delict. However, such actions may be precursors to more serious acts. The preliminary investigation may be appropriate to resolve any doubt in this regard.

⁵ Thomas J. Green, “Book VI, Sanctions in the Church,” in Beal, Coriden & Green, eds., **New Commentary on the Code of Canon Law**, Mahwah, NJ: Paulist Press (2000) 1540, correctly states that there is no definition of the term *delict* in the Code of Canon Law. He explains there are objective, subjective, and legal dimensions to any delict, which taken together, constitute such a punishable offense. “First of all, there must be an external or perceivable violation of a law provable in the external forum (objective dimension). However, the violation need not be public, or known to many people; certain violations may be occult, or known only to a few people. Furthermore, the mere breaking of the law does not necessarily mean that a delict has been committed. There must also be grave juridical imputability, rooted primarily in a free and deliberate intent to violate the law or secondarily in culpable negligence (subjective dimension). Finally, prescinding from serious moral culpability, which must always be verified, not every legal violation constitutes a delict. The violation must normally be expressly sanctioned in universal or particular law (legal dimension).” Green is professor of canon law at The Catholic University of America, Washington, DC.

⁶ **Canon 1728 §2.** The accused is not bound to confess the delict nor can an oath be administered to the accused.”

and conviction in a state court), in which case ample evidence is readily available. If sufficient evidence is already identified, the bishop issues a decree declaring that the preliminary investigation is unnecessary.

What is the object or final goal of the preliminary investigation?

It is not the goal of the preliminary investigation to end with a pronouncement of guilt or innocence. That determination and the final disposition of the case will be made by the competent judicial or administrative authority of the Church. The object of the preliminary investigation is to determine whether there is sufficient evidence to prosecute the case through the penal procedures established by Church law. The standard for determining whether an allegation should be prosecuted is comparable to the concept of “probable cause” in the jurisprudence of American civil and criminal law⁷.

The evidence sought after in the preliminary investigation would include the testimony of the victim and any witnesses. In most cases there are no eyewitnesses to acts of child sexual abuse. However, witnesses who have learned about the alleged act(s) directly from the victim and persons who can speak to the credibility of the victim are able to be witnesses. There may be tangible or demonstrative evidence that is discovered during the investigation (e.g., letters, photographs, videotapes, etc., relating to the allegation). The preliminary investigation must also take into account any exculpatory evidence which would indicate the innocence of the accused.⁸ Finally, the preliminary investigation may reveal that there is no evidence to substantiate the allegation or it may reveal that the evidence is contrary to the allegation.

What is the subject of the preliminary investigation?

There are actually two subjects of the investigation. First, the investigation must inquire about the facts and circumstances of whatever is alleged. The facts include what happened, where did it happen, when did it happen, and who was involved in the act. What happened must be an act or acts that are punishable crimes (delict) according to the norm of law. In cases of sexual abuse of minors, the issues of who and when are important, because the punishable crime is limited to acts against minors (those 18 or younger, and 16 or younger if it occurred before April 1994). The circumstances would involve whatever led up to or followed an act of

⁷ **Black’s Law Dictionary**, 5th ed., St. Paul, MN: West Publishing (1979) 1081. “**Probable Cause**. An apparent state of facts found to exist upon reasonable inquiry (that is, such inquiry as the given case renders convenient and proper), which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged, or, in a civil case, that a cause of action existed.”

⁸ **Black’s Law Dictionary**, 508. “**Exculpatory**. Clearing or tending to clear from alleged fault or guilt; excusing.”

abuse (e.g., the so-called pattern of “grooming” a potential victim; or the use of drugs or alcohol to seduce the victim; or the use of threats to silence the victim after the abuse, etc.).

Second, the investigation must inquire about the imputability of the offense, i.e., whether the accused is legally responsible for the offense and whether the accused can be punished according to the norm of law. The preliminary investigation must look for any factors that determine whether the alleged abuse was the result of malice (i.e., intended to commit the act) or negligence (i.e., knowingly failed to take precaution to avoid the act) on the part of the accused. It should be noted that the law of the Church presumes that if a person committed a crime, then that person can be punished.

The issue of imputability also takes into account whether the statute of limitations has expired. It should be noted that the bishop may petition the Congregation of the Doctrine of the Faith for a dispensation from the statute of limitations in cases involving sexual abuse of a minor by a priest or deacon. The issue of imputability must take into account whether the accused is mentally competent. If the accused is completely mentally incompetent (e.g., lacks the use of reason or is insane), then imputability may be entirely lacking. If the accused is partially mentally incompetent, the imputability may be diminished.⁹ Finally, punishment may be more serious when a person has abused a position of dignity or authority or office in order to commit a delict (canon 1326 §2).

Who initiates the preliminary investigation and how is it begun?

Even though an accusation may be initially reported to someone else who represents the Church, the bishop is the one who must decide whether to initiate the preliminary investigation. As noted above, this inquiry begins once he has knowledge that some offense has occurred and that the allegation “at least seems true.” The preliminary investigation formally begins when the bishop issues a decree to that effect.

What is the time frame for starting and completing the preliminary investigation?

⁹ “**Canon 1321 §1.** No one is punished unless the external violation of a law or precept, committed by the person, is gravely imputable by reason of malice or negligence. **§2.** A penalty established by a law or precept binds the person who has deliberately violated the law or precept; however, a person who violated a law or precept by omitting necessary diligence is not punished unless the law or precept provides otherwise. **§3.** When an external violation has occurred, imputability is presumed unless it is otherwise apparent.” A list of factors that may or may not eliminate or reduce imputability is found in canons 1323-1325.

With the exception of any delay that is warranted while the case is under investigation or adjudication in the state justice system, there should be no undue delay in initiating the preliminary investigation. Likewise, the investigation itself should proceed to its conclusion in a timely manner. As long as the victim and witnesses are readily available and they cooperate, the preliminary investigation can be completed in a matter of days. Given the seriousness of such allegations, those who conduct the investigation must normally make it a high priority.

Who conducts the preliminary investigation?

The ordinary (i.e., the bishop) may conduct the preliminary investigation personally or through some other suitable person who is appointed by the bishop. Actually, there may be more than one person involved, and in some cases it is better if more than one person interviews the victim and any witnesses. Canon 1717 §3 indicates that the investigator(s) has the same power as an auditor. An auditor is to be a person of good character, and outstanding for prudence and sound doctrine. As an auditor, the investigator is also to be trained and experienced in the manner of interviewing witnesses and collecting evidence according to the requirements of a canonical process (see canon 1428).

How is the preliminary investigation brought to a conclusion?

Before the bishop issues a decree that the preliminary investigation is completed, the findings of the investigation are shared with the Diocesan Review Board and the bishop should seek the advice of the review board concerning the sufficiency of the evidence. Based on the facts and circumstances of the alleged act(s), and the factors pertaining to the imputability of the offense as discovered in the investigation, the Diocesan Review Board offers its advice concerning what recommendations will be included in the report that must be submitted to the Congregation for the Doctrine of the Faith. The Diocesan Review Board may recommend that the evidence does not support the allegation and that there should be no prosecution. When the evidence supports the allegation, the Diocesan Review Board may recommend prosecution of the accused priest or deacon through a canonical trial or that some other disposition should be made in accord with the USCCB *Essential Norms* (e.g., no further ministry, but lead a life of prayer and penance). This latter form of final disposition may be recommended when a canonical trial is not feasible or warranted (e.g., due to the old age of the accused), but the priest or deacon is not suitable for ministry.¹⁰

¹⁰ USCCB, *Essential Norms*, n. 8, in *Promise to Protect*, 31-32.

What are the potential conclusions that may result from the preliminary investigation?

The facts and circumstances gathered in the investigation may indicate that probable cause exists that a delict has occurred as alleged. The investigation may also indicate that the delict did not occur as alleged. Finally, the preliminary investigation may be indeterminate, i.e., something appears to have occurred, but the evidence is not sufficient to reach moral certitude. Regardless of these potential outcomes, the law requires that the bishop, after having consulted the Diocesan Review Board, will forward the acts of the case to the Congregation for the Doctrine of the Faith with a summary of the conclusions and a recommendation as to whether the case should be prosecuted by way of a judicial trial. It is the sole competence of the Congregation for the Doctrine of the Faith to determine how the case will proceed once the preliminary investigation has been completed.

How is the preliminary investigation documented?

The depositions of the victim and all witnesses must be committed to writing. They should also be signed by whoever gave the testimony and the signature notarized by an ecclesiastical notary. The testimony obtained during the preliminary investigation must be preserved so that it can be used during a subsequent trial or any other canonical process. Also, any tangible or demonstrative evidence (e.g., letters, other documents, photos, videotapes, etc.) must be catalogued and preserved. The acts of the case are kept in the restricted archives with access limited to those who are responsible for the adjudication of the case or its final disposition.

What other values or canonical principles must guide the Diocesan Review Board and those who must make decisions regarding these cases?

The constant jurisprudence of the Church remains that canonical penalties are applied when other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, or reform the offender. In some cases, fraternal correction, rebuke, psychological evaluation and treatment, or penance, have brought about a reform in the offender. In other cases, there is no reform. But the canonical crime of sexual abuse of children is not just about the individual priest or deacon who has committed an offense. The scandal caused by such acts must also be repaired so that the Christian faithful and others may have their trust in the Church preserved or restored. There is also the matter of restoring justice. For individual victims of child sexual abuse this would involve providing for their spiritual and psychological healing. For the rest of

society this involves safeguarding the public good, especially by protecting children. The totality of these three values or principles (repairing scandal, restoring justice, reforming the offender) must be kept in mind by all who have a role in implementing the policies of the Diocese of Erie in responding to allegations and in safeguarding against the sexual abuse of minors.

Finally, the goal of every canonical process is always the search for the truth. The sexual abuse of minors is an offense that cries out for justice. Pope Pius XII once said, “The world has need of that truth which is justice, and of that justice which is truth.” In reflecting on these words of his predecessor as they apply to canonical procedures such as the preliminary investigation, Pope John Paul II reminds us, “all acts of the ecclesiastical judgment, can and must be a source of truth. This is especially true of the acts of the case, and among these, the acts of the instruction or investigation, since the instruction has as its specific purpose the gathering of proofs concerning the truth about the alleged fact, in order that the judge may on this foundation pronounce a just judgment.”¹¹ These words underscore the importance of the preliminary investigation and the responsibility of all to seek after the truth so that justice may be served. Even those who assist in their role as members of the Diocesan Review Board have a share in this responsibility to seek the truth.

Approved by the Diocesan Review Board

August 5, 2003

Erie, Pennsylvania

¹¹ John Paul II, Allocution to the Roman Rota, “Truth, Justice and Law,” February 4, 1980, **Origins** 9 (1979-1980) 698.