



Catholic Diocese of Sioux Falls

Sexual Misconduct by Clergy and Lay Ministers of the Church: Norms for Responding

I. Essential Context

The Diocese of Sioux Falls has been blessed with many excellent and upstanding clergy ordained for the Catholic Church who have ministered in the State of South Dakota. They have served and continue to serve the People of God diligently and faithfully, some as bishops, vicars of the diocesan bishop, and members of the diocesan curia, and most as pastors or parochial vicars in parishes or as chaplains in hospitals, schools, and other institutions. Incidents of sexual abuse of minors and vulnerable adults by some clerics have demonstrated a need to emphasize the procedure, which is to be followed when reports of sexual abuse of minors or vulnerable adults are brought to the attention of the Diocese of Sioux Falls, the local Church for which the Bishop of Sioux Falls is pastorally responsible.

In addition to the clergy, the Diocese of Sioux Falls has been blessed with the devoted, talented and upstanding ministry of dedicated lay people. Because reports of sexual abuse of minors or vulnerable adults may be made against a member of the laity employed by the Diocese, a parish or an organization affiliated with the Diocese, or against one who has volunteered on behalf of any of these ministries, these procedures will also guide the response in such cases.

II. General Statement – Our Pledge

The Diocese of Sioux Falls will respond to the abhorrent sin of sexual abuse of minors and vulnerable adults by clergy, lay staff and volunteers in an open and straightforward manner. We will respond with compassion to those who have been harmed, take action to redress the wrongs, and extend God's healing love to those injured. We will establish safe environments wherein minors and vulnerable adults can come freely and without fear of harm to encounter our Lord through His Church's ministries. In our ongoing efforts to preserve those safe environments so that all individuals might freely and without fear encounter Christ through our ministry, we will strengthen the education program for all Church personnel that they might know well how to maintain appropriate boundaries and remain aware of the issue of sexual abuse of minors and vulnerable adults.

We will stand by Church personnel serving as ministers while maintaining the right of the faith community to a safe and secure environment in which to worship and pray together. Our actions will be grounded in a commitment to justice, accountability and mercy.

We are committed to regularly review and refine our norms and procedures. We will comply with all laws regarding the reporting to civil authorities of allegations of sexual abuse of a minor or vulnerable adult.

III. Definitions of Terms

Diocese is the Roman Catholic Diocese of Sioux Falls, which encompasses all portions of South Dakota lying east and north of the Missouri River. It is territorially subdivided among 120 separate parishes, Territorial lines, decreed by the Bishop, are on record at the Diocesan Chancery.

Diocesan Bishop as used in the context of this policy means the Roman Catholic Bishop of the Diocese of Sioux Falls or whoever governs the Diocese in accordance with canon law while the See is vacant, or such person as either of these may delegate from time to time to act in the place of the Diocesan Bishop in these matters.

Diocesan Chancery is the administrative function, including the governing authority of the Office of the Bishop, for the Diocese of Sioux Falls. It is incorporated as a nonprofit corporation under South Dakota Law as the Catholic Chancery Office.

Diocesan Ministries. Although parishes are part of the Diocese of Sioux Falls, they are also, by virtue of canon law, their own ecclesiastical juridic persons and are separately incorporated under South Dakota law. Some parishes sponsor and are responsible for the operation of Catholic schools, which are under the canonical and corporate control of the respective parishes. There are also other schools that are their own corporations and which have sought recognition as ecclesiastical juridic persons. Related to the Diocese of Sioux Falls are certain incorporated works, such as Catholic Family Services, which function as Diocesan ministries and are under the canonical authority of the Bishop of Sioux Falls.

Diocesan Clergy Review Board (CRB) is a group of individuals holding particular professional competencies who have been appointed by the Bishop of Sioux Falls to advise him on particular matters involving serious misconduct. See the Clergy Review Board Operational Guidelines which accompany this document as an essential appendix.

Child Pornography: Child pornography consists of sexually explicit images of minors that exist for purposes of sexual gratification. As defined in South Dakota Codified Law, it is illegal to produce, acquire, possess, or distribute by whatever means and using whatever medium or technology, child pornography. Child pornography is a form of sexual abuse of a minor.

Child abuse means inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a minor other than by accidental means, including abandonment; excessive or unreasonable corporal punishment; malnutrition or substantial risk thereof by reason of intentional or unintentional neglect; and the commission or allowing the commission of a sexual offense against a minor as defined by law. Child abuse also includes pornography in all its forms. Neglect includes the failure of a parent or custodian to provide adequate care, support for education, medication, or other care necessary for the minor's well-being. For the purposes of this policy, intentionally exposing a child to pornography of any form shall also constitute a form of child sexual abuse as such behavior has been used by abusers to groom their victims (See also Grooming).

Church personnel include all employees and volunteers (clergy, religious, seminarians, deacon candidates, extern clergy and laity) of the Diocese of Sioux Falls, parishes, schools or other entities

subject to the Bishop of Sioux Falls. See definition of volunteer below.

A **Credible** allegation of sexual misconduct is one that is not manifestly false or frivolous and bears the semblance of truth. In bearing the semblance of truth, it conforms to objective facts and particular circumstances surrounding the alleged misconduct. An allegation is typically deemed to be credible based upon preliminary information provided by the individual making the allegation and prior to an investigation.

Grooming involves predatory conduct undertaken to prepare a child for sexual activity at a later time. The offense applies where an adult communicates, by words or conduct, with a minor, where that person has care, supervision or authority for the child, with the intention of facilitating the child's involvement in sexual conduct, either with the groomer or another adult. Grooming does not necessarily involve any sexual activity or even discussion of sexual activity. For example, it may only involve establishing a relationship with the child, parent or caregiver for the purpose of facilitating sexual activity at a later time.

Minor is a human person who has not yet lived passed the 18th anniversary of his or her birth.

Sexual misconduct is any violation of the Sixth Commandment in which Our Lord commands that sexual relations are to be held between a husband and wife (CCC 2360). Examples include but are not limited to the following:

Sexual abuse includes sexual molestation or sexual exploitation and any behavior by which an adult uses a minor or a vulnerable adult as an object of sexual gratification. Sexual abuse includes behavior that is contrary to Catholic moral doctrine and to canon law of the Roman Catholic Church and that is unlawful as described by the laws of South Dakota. Sexual abuse does not need to be a complete act of intercourse. Sexual abuse, to be an objectively grave act, does not need to involve force, physical contact or a discernible harmful outcome. The production, acquisition, possession, or distribution of pornographic images of minors for purposes of sexual gratification, by whatever means and using whatever technology, is a form of sexual abuse of a minor.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature when:

- (1) Submission to that conduct is made a term or condition, either explicitly or implicitly, of obtaining employment and/or receiving accommodation, services, education, and/or housing;
- (2) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment and/or receipt of accommodations, services, education, and/or housing; or
- (3) That conduct or communication has the purpose or effect of substantially interfering with an individual's performance, employment, accommodations, services, education or housing, or creating an intimidating, hostile, or offensive employment, or housing environment; and in the case of employment, the employer knows or should have known of the existence of the harassment and fails to take timely and appropriate action.

The types of behaviors that constitute sexual harassment may include, but are not limited to:

unwelcome sexual flirtations, advances or propositions, derogatory, vulgar, or graphic written or oral statements regarding one's sexuality, gender or sexual experience, unnecessary touching, patting, pinching or attention to an individual's body, physical assault, unwanted sexual compliments, innuendoes, suggestions or jokes, the display of sexually suggestive pictures or objects.

Sexual exploitation (as it applies to any formal helper relationship) is any kind of sexual use of another person for one's own profit or advantage.

Consensual sex occurs between adults of sound mind who voluntarily agree to engage in sexual activity without abuse or exploitation of trust, power or authority, coercion or threats. In the context of Church ministers, if consensual sex occurs between two who have not exchanged marital vows, it shall be deemed sexual misconduct.

Intention to have Consensual Sex can be shown through the use of software application loaded onto an individual's personal electronic device that is used to facilitate meetings between random persons for the purpose of participating in sexual encounters with one another. Such applications must have been confirmed to have used geo-tracking technology that connects individuals with the same intention who are in close proximity to one another in order to demonstrate intent.

A **Substantiated** claim of sexual abuse is one that is supported by clear and convincing evidence such that reasonable grounds to believe, beyond reasonable doubt, that the abuse occurred can be established. A claim is determined to have been substantiated only after it has been deemed credible and an ensuing investigation confirms objective facts, corroborating testimony, and/or an admission by the individual alleged to have carried out the act of misconduct.

Victim Assistance Coordinator is a person appointed by the Bishop to assist victims and their families when they report sexual misconduct or abuse by Church personnel. The Victim Assistance Coordinator will verify that the authorities have been properly notified, will inform victims and, if minors, their families, about counseling and pastoral assistance opportunities, and will keep the victim and, if a minor, his or her family, informed about the progress of any internal investigation.

Volunteer (see Church personnel) for the purposes of this policy is defined as a person who acts in an unpaid but defined ministerial capacity for the Diocese of Sioux Falls, a parish, school or other Church entity. This category includes but is not limited to Extraordinary Ministers of Holy Communion to the homebound, coaches, youth ministers, catechists and religious educators, retreat leaders, after-school activity coordinators, classroom assistants, parish ministry coordinators, tutors, etc.

Vulnerable adults: A person who has lived passed the 18th anniversary of their birth yet who is incapable of giving consent. "(A)ny person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, if even occasionally, limits their ability to understand or to

want or otherwise resist the offence”.¹

Specific settings and/or circumstances can also be essential factors leading to a vulnerability. For example, in ministry settings, when seeking spiritual direction, marriage or grief counseling, or the sacrament of reconciliation, and adult will typically enter into a particular vulnerability; in employment settings, the authority of one position over another can also lead to a vulnerability particular to the employee.

IV. Obligation to Report

There are two distinct types of reporting: internal and external.

External reporting provides notice to local law enforcement agencies of suspected instances of *sexual abuse of minors and vulnerable adults*.

Internal reporting provides notice to diocesan officials of suspected instances of *sexual abuse of minors or vulnerable adults*.

External Reporting: South Dakota law requires that, where one has reasonable cause to suspect that a child under the age of 18 has been abused or neglected, an oral report will immediately be made by telephone or otherwise to the state's attorney of the county in which the child resides or is present, to the Department of Social Services, or to another law enforcement agency. In addition to sexual abuse of a minor or vulnerable adult, reasonably suspected abuse or neglect is required to be reported to the same authorities.

Any Church personnel having any doubt regarding their external reporting obligations should consult with the Diocesan chancellor, who will consult with diocesan legal counsel

Diocesan counsel will be consulted on all new allegations. The chancellor will ensure that every reasonably suspected incident of abuse or neglect of a minor or vulnerable adult be reported to the Department of Social Services or the local police/sheriff, as appropriate, on behalf of Church personnel who have knowledge of the allegation.

Those making external reports are to make them by phone *and in writing* to the Department of Social Services or the local police department/sheriff's office (or equivalent). A copy of the same written report must also be submitted to the chancellor. The Complaint of Abuse Intake Form (Appendix IV) used by the Diocesan Victims Assistance Coordinator may be used when completing any written report. A copy of the reporting form is attached as "Appendix III."

Internal Reporting: Church personnel who know or reasonably suspect an incident of sexual abuse of minors or vulnerable adults shall immediately provide a detailed report of the suspected incident as follows:

In the case of an accusation against Church personnel to the Chancellor (605-988-3704) or to the Victim's Assistant Coordinator (800-700-7867)

The Chancellor will inform the Bishop of all reports of alleged sexual abuse. Unless circumstances warrant otherwise, the Chancellor will promptly notify the administrator of any organization

¹ *Vos Estis Lux Mundi, Motu Proprio* Promulgated by Pope Francis, May 7, 2019, Art. 1, §2,B.

affiliated with the Diocese (hereinafter called “organization”) of an accusation against Church personnel of that organization. When an accusation is brought against a cleric involving a matter reserved to the Congregation for the Doctrine of the Faith and the preliminary investigation indicates there is reasonable cause to believe the truth of the matter, the matter will be referred to the Congregation.

When an accusation is brought against a lay or consecrated employee or volunteer serving in a ministerial function for the Church, after the Chancellor has informed the Bishop, the Bishop shall have the discretion to have the concern addressed at the location. In which case, the Chancellor shall serve as a resource to the proper authority at the particular location where the minister serves. While exercising this discretion, the Bishop shall also charge the Chancellor to ensure all canonical requirements are nonetheless met (Dec 8, 2021 revision to Book VI of the Code of Canon Law).

Canonical/Sacramental Duties Upheld:

Duty to Preserve the Seal of Confession: Confidential statements made under the seal of confession are inviolate under canon law and must never be disclosed. Both direct and indirect violations of the seal of confession are prohibited with the strongest sanctions available to the Church in canon law. Accordingly, both internal and external reporting requirements established by this policy do not apply when the information given rises to the duty to report is acquired exclusively through sacramental confession.

Spiritual Direction conversations are confidential by their nature, similar to a professional counseling relationship in civil law. This confidentiality is different in kind from the absolute seal of Confession which can never be violated directly or indirectly. However, both directors and directees should be apprised that in the Diocese of Sioux Falls, this confidentiality proper to spiritual direction does not extend to matters of sexual abuse of minors or vulnerable adults as defined in this policy which are disclosed in spiritual direction. From the date of enactment of this policy, disclosures of sexual abuse of minors or vulnerable adults in spiritual direction require reporting by the spiritual director, following the reporting procedures defined below.

Therefore it is very important that spiritual direction conversations and the sacramental confession of sins be assiduously kept distinct from each other. If the priest who serves as a spiritual director also hears the directee’s confession, best practice is to have those encounters as separate appointments. Alternatively, the Confessor can clearly and overtly transition to the celebration of the Sacrament of Reconciliation at the conclusion of the spiritual direction conversation. The practice of having the entire spiritual direction conversation “in the context of Confession” should be avoided to prevent possible confusion of this matter.

V. Assistance to Victims and Community

The Bishop of the Diocese of Sioux Falls will designate a competent Victim Assistance Coordinator (VAC) to organize and direct outreach to victims meant to ensure their receipt of assistance and support services. The VAC shall serve as the first contact for persons who come forward claiming to be victims of sexual misconduct at the hands of a minister of the Church.

The VAC of the Diocese of Sioux Falls will offer resources for receiving pastoral, psychological and/or spiritual support that can be given to victims, their families and the faith community. Such assistance is pastoral in nature, provided out of the Church’s moral responsibility to assist any who feel they have been harmed. The assistance shall not, in any way, be considered as an indication of legal responsibility for the actions of the accused. See also the VAC policy.

VI. Diocesan Investigation

The chancellor, in consultation with legal counsel for the Diocese, or her/his designee will select the Investigator or Investigators from a pool of individuals identified to have been formally trained in forensic techniques to carry out this function. When more than one Investigator is chosen, one man and one woman will be selected. Depending upon the circumstances and the decision of the chancellor, diocesan counsel may be present and serve as a resource during interviews or for other activities related to the investigation.

VII. Clergy Review Board

The Clergy Review Board (CRB) holds an essential role in advising the Bishop on matters of allegations involving sexual misconduct by clergy and/or Church personnel. All allegations of sexual misconduct by Church personnel, as defined in this policy, shall be referred to the Clergy Review Board.

The CRB verifies that all accusations of sexual misconduct have been referred to law enforcement. The CRB assists in the determination of whether or not evidence substantiates an allegation when reviewing reports compiled after the Diocesan investigation has been completed.

Determination of Credibility in the Absence of an Investigation by Law Enforcement. On those rare occasions when law enforcement has indicated that it will not be conducting an investigation in light of an allegation having been turned over to it and, after the Diocesan investigation determines that the credibility of an allegation is difficult to determine, it may be asked to advise on the credibility of an accusation. (See also Clergy Review Board Operational Guidelines, Chap. 6, paragraph (d)).

Determination of Fitness for Public Ministry. On those occasions when a substantiated allegation of sexual misconduct by a cleric has been made through a diocesan investigation, the CRB will be asked to advise the Bishop on the fitness for ministry of the individual cleric. It will offer its recommendation to the Bishop. The recommendation will be taken into account by the Bishop when he is discerning whether a canonical penal procedure is merited.

The Clergy Review Board's specified roles, duties, composition, and rules for conducting itself are defined in the accompanying appendix entitled **Clergy Review Board Operational Guidelines**.

VIII. Treatment of the Accused

Presumption of Innocence. In both civil and canon law, a person is presumed innocent until proven guilty. The presumption of innocence, however, does not preclude the Diocese of Sioux Falls from taking immediate, prudent action to protect individuals and the community in response to complaints and before an investigation is complete. A prompt, objective investigation of the allegation of sexual abuse of a minor or vulnerable adult will be undertaken. During this investigation, the Diocese of Sioux Falls will take all appropriate steps to protect the reputation of the accused.

Accused as a Penitent. After an allegation is made, no bishop or priest involved in the investigation may hear the sacramental confession of the accused.

Clergy: When a reasonable allegation of sexual abuse of minor or vulnerable adult has been made against a priest or deacon, the Diocese of Sioux Falls will initiate a prompt and objective preliminary canonical investigation (c. 1717). At any point after the allegation has been received, the Bishop may exclude the accused cleric from performing sacred ministry, restrict the exercise of his office and/or ecclesiastical function, determine where the cleric will or will not reside, and/or prohibit his public participation in the Most Holy Eucharist. If the cleric is currently serving in a ministry assignment, public announcement of this exclusion will be made to the faithful of that assignment (typically in the parish[es] where he had been assigned).

Any restrictions on the accused cleric will be reevaluated at the conclusion of the preliminary canonical investigation and may continue during a canonical penal process that may be initiated as a result of the preliminary investigation's findings. Remuneration shall be provided in accord to the *Diocesan Guidelines for Compensating Priests who are Incardinated, Non-Retired, and in Unique Circumstances*.

When the preliminary canonical penal investigation has been concluded, the matter is to be referred to the Congregation for the Doctrine of the Faith.

Non Clergy Church Personnel: When a reasonable allegation of sexual abuse of a minor or vulnerable adult has been made against a layperson or religious, if it has not already been reported, the Diocese of Sioux Falls will bring the allegation to law enforcement. If it has already been reported to law enforcement, the Diocese of Sioux Falls, through its legal counsel, will make contact with the investigators in an effort to provide full cooperation with investigators. The Diocese will await direction from law enforcement as to the criminality of any abuse and/or the treatment of the non-clergy Church personnel.

At the appropriate time and with the knowledge of law enforcement, the Diocese of Sioux Falls will subsequently initiate a prompt and objective investigation. At any point after the allegation has been received, the accused may be placed on administrative leave until the diocesan investigation is concluded. Paid Church personnel may continue to receive pay and benefits until the conclusion of the diocesan investigation.

Right to Obtain Counsel: The accused shall be advised of their right to seek and retain both civil and canonical counsel.

Pastoral and Psychological Support: The accused will be offered pastoral, psychological and spiritual support from approved counselors. If the accused is married or has a family, pastoral, psychological and spiritual support will also be offered to the accused's spouse and children.

Assessment as Part of the Investigative Process. The Bishop may refer an accused cleric for psychological assessment, evaluation, counseling and/or treatment. If the accused declines to participate, he is non-cooperative with the process or refuses to release information to the Bishop, these actions will be considered in determining the future ministry of the accused cleric.

Accused non-clergy Church personnel also may be referred for psychological assessment, evaluation, counseling and/or treatment. If the accused declines to participate, is non-cooperative with the process or refuses to release information, the accused may be dismissed immediately, regardless of the outcome of the diocesan investigation.

Restitution. When allegations are substantiated, the Diocese of Sioux Falls may seek restitution from the offender for the services provided to persons harmed by the offender's sexual abuse. The offender may be held responsible for the costs of therapy and for all other expenses incurred by the Diocese, including, but not limited to, attorney fees, court costs and judgments.

IX. Transfer of Clergy

A priest or deacon who has engaged in sexual abuse of a minor or vulnerable adult will not be transferred from one parish to another within the Diocese of Sioux Falls and will not be approved for ministry or incardination in another diocese.

When a priest or deacon seeks to reside in another diocese, the Bishop of Sioux Falls will forward, in a confidential manner with a confirmation of receipt requested to the diocesan bishop of the proposed place of residence, any and all information concerning the cleric's sexual abuse of a minor or vulnerable adult and any other information that he has been or may be a danger to minors or vulnerable adults. This disclosure shall be made regardless if the cleric desires to present himself publicly as an ordained minister in the new/different locale.

X. Disciplinary Action

If Church personnel have engaged in inappropriate behavior with minors and vulnerable adults, short of sexual abuse, corrective action will be applied. Corrective action shall depend on the seriousness of the behavior. It shall range from a warning or reprimand up to and including termination of employment, termination of the privilege of volunteering in Church ministry, and/or the loss of office.

If non-clergy church personnel have been determined to have sexually-abused a minor or vulnerable adult, the individual will be permanently removed from his or her position or appointment in the Diocese of Sioux Falls.

If a member of the **clergy** has been determined to have sexually abused a minor or vulnerable adult, the Bishop will, in accordance with the Church's Norms of canon law, enforce the determination by the Congregation for the Doctrine of the Faith. When the penalty of dismissal from the clerical state has not been imposed, the offender is to lead a life of prayer and penance, and may be forbidden from exercising any sacred ministry, office or function, from wearing garb, and from presenting himself publicly as a priest or deacon.

XI. Release of Information

The Diocese is "open and transparent in communicating with the public about sexual abuse of minors by clergy within the confines of respect for the privacy and the reputation of the individual involved. This is especially so with regard to informing parish and other communities directly

affected by sexual abuse of minors”².

There will be a designated spokesperson for the Diocese of Sioux Falls. The spokesperson shall be responsible for responding to all inquiries and news conferences regarding allegations of sexual abuse of minors or vulnerable adults and will be informed upon the receipt of any allegations. Generally, the release of information concerning the sexual abuse of minors or vulnerable adults and the timing of the release are decided upon on a case-by-case basis.

To protect the identity of those who have been harmed, all complaints to the Diocese of Sioux Falls are treated as confidential. Until such time that an allegation has become public record, the Diocese of Sioux Falls will neither confirm nor deny to the media:

- a. That a complaint has been made;
- b. The identity of any person reporting incidents, concerns, or allegations; and,
- c. The identity of any person against whom a complaint is pending.

Allegations shall be deemed a matter of public record when:

- (1) criminal charges by governmental prosecution have been filed before a court, and/or
- (2) the matter has become general public knowledge, and/or
- (3) the nature of the allegation warrants public notice.

When an allegation becomes public record, the Diocese will confirm:

- a. the identity of the accused,
- b. the ministry location(s) of the alleged abuse,
- c. that it is cooperating with any and all criminal investigations,
- d. that it is conducting its own investigation, and/or
- e. that it has taken appropriate action to ensure the safety of minors and vulnerable adults.

Once the accusation has been determined to be credible and has been investigated, a public announcement will be made to the Diocese as a whole, parishes, Catholic schools, other Catholic entities, and to the general public. The announcement will state that an accusation has been determined to be credible, that the Diocese is cooperating with any and all criminal investigations, the name of the accused, the nature of the offense, any restrictions for the accused, and that assistance is being offered to the victim.

The Diocese of Sioux Falls will consistently notify the people of the Diocese and the general public of its Norms for Responding to Reports of Sexual Abuse of Minors or Vulnerable Adults.

XII. Educational Tasks

Church personnel are required to participate in the Safe Environment Program (SEP) of the Diocese of Sioux Falls which is reviewed and endorsed by the Bishop of Sioux Falls regularly. The SEP Policy can be found as a separate policy of the Diocese.

² Charter for the Protection of Children and Young People, Article 7

ACKNOWLEDGEMENT AND AFFIRMATION

I, _____ acknowledge that I have received and
(Please print your name)

reviewed the **Sexual Misconduct by Clergy and Lay Ministers of the Church: Norms for Responding** policy of the Diocese of Sioux Falls, effective March 2, 2022.

I understand that this policy applies not only to diocesan employees, but also to employees of parishes, schools and affiliated organizations, as well as other Church workers identified in the policy. I affirm that I will comply with all obligations described by these Norms and any subsequent revisions of these Norms.

Signature

Date

For Official Use Only

Church Minister Designation (clergy, employee, volunteer): _____

Role in the Ministry Location: _____

Ministry Location(s): _____