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A FOCUS FOR CANONICAL AND CIVIL LAW ISSUES
IN PEDOPHILIA CASES

The issue of pedophilia is a serious one in our society today. It takes on new complexities when the pedophile is a priest. In these remarks I would like to make a few observations on some of the civil law and canon law realities and offer some practical insights. The legal issues, civil and canon, are very complex and it is impossible to address them in any depth in these brief remarks. I propose only to provide a focus which might be helpful to you in making a decision to proceed in a canon law criminal procedure against a priest who is a pedophile. What rights does a pedophile have? What is the responsibility of those in authority in dealing with a pedophile? What are the canonical procedures which are applicable? What are some of the civil law concerns as they affect the pedophile and the church?

As a result of the sexual activity of a pedophile, innocent victims have been injured. Criminal sanctions in civil law have been imposed and civil damages against ecclesial authorities have been awarded victims. What is the Canon Law perspective in dealing with this problem? The Canon Law of the Church, among other things, addresses the relationships we have with one another as baptized Christians. It outlines the responsibility of authority to deal with various church matters

and various church people in varying circumstances. It identifies the rights which individuals have in relationship to authority and ecclesial structures. When conflicts arise or where sanctions need to be imposed, the canon law provides for procedures by which rights are adjudicated, conflicts resolved and sanctions imposed. The processes which are used in the adjudication of rights or the imposition of penalties can be administrative or judicial in nature.

The administrative process is used in those situations identified by the law. The procedure is less formal. Allegations are usually filed, evidence is produced, and decisions are made by a competent authority which bind the parties in dispute. A Judicial process is a more formal way of proceeding in the protection or promotion of rights.

Under the Code of Canon Law the judicial process envisions contentious cases and criminal cases. In the contentious cases two parties are in conflict, they proceed according to the norms of law and judgments are made ordinarily by a judge or a group of judges. An appellate procedure is also in place and moves according to law.

In criminal cases the law provides for a procedure which is meticulous and highly sensitive to the rights of an individual. Where criminal conduct is proven, penalties or sanctions will normally be imposed. The law will sometimes indicate what penalties are to be imposed for what crimes; and

at other times, suitable sanctions or penalties can be imposed at the discretion of the judge.

Having noted this distinction between an administrative process and judicial process, when a priest seeks a decree of laicization and a petition for a dispensation from celibacy, he proceeds according to an administrative process. A diocesan bishop is incompetent to render a decision in this matter. Nevertheless he assists the petitioner in presenting his case pursuant to norms promulgated by the Congregation for the Doctrine of the Faith, adds his votum and submits the case to the Congregation for ultimate decision. Under our present practice the Congregation for the Doctrine of the Faith has as its competence to act on decrees of laicization and to make recommendations concerning the dispensation from celibacy. Ultimately it is the Holy Father who grants the dispensation from celibacy. In processing these requests for laicization and dispensation from celibacy, the Congregation proceeds according to its own norms. It should be underscored that in these cases the petitioner is always a priest who is seeking the favor. The diocesan bishop joins in the petition through his votum. It should be noted that because a priest is a pedophile does not mean that he will automatically be granted the decree of laicization and a dispensation from celibacy. The fact of pedophilia is certainly a very substantial factor which the Congregation will take under consideration, but it is not automatically to be assumed that a pedophilic condition

will automatically bring a decree of laicization and a dispensation.

When a priest is a pedophile and refuses to seek a decree of laicization, the Congregation for the Doctrine of the Faith will not act unilaterally in laicizing him. Why? To reduce a priest to a lay state against his will is a penalty. Penalties are normally imposed pursuant to the criminal procedure as laid down in the Code of Canon Law. The Congregation has no present authority to impose such a penalty in an administrative process. Consequently if the pedophile refuses to request the decree of laicization and dispensation from celibacy, the Congregation will not act unilaterally. The diocesan bishop will have to ascertain whether criminal conduct under the canon law is involved and whether he should proceed according to the criminal procedure in the Code of Canon Law. Ultimately, if the accused is found guilty, the competent tribunal could impose the penalty of laicization. It should be noted that the tribunal is not competent to grant a dispensation from celibacy.

In these cases, what is a bishop to do? How is he to be guided? No two pedophiles are alike. Certain cases may be such that a given person is hopelessly afflicted and will not respond to psychiatric treatment, to medical care and to ongoing supervision. On the other hand, there are some who with proper medical and psychiatric treatment, and counseling and ongoing supervision, can continue to function in society and in the Church in some capacity with limited risk to younger

people. In more serious cases where a canonical crime has been committed, a bishop may be well advised to invoke the criminal procedure and assess the penalty of laicization where a priest's condition is irretrievable. Three serious reasons could prompt such a decision.

- 1) Very serious potential harm to innocent victims; i.e. a commission of a crime in civil and/or canon law.
- 2) The potential for grave scandal in the church and serious damage to the image of priesthood.
- 3) Exposure to very serious financial liability should negligence on the part of ecclesial authority be proven.

In pursuing a decision to invoke a canonical criminal procedure, it should be noted that because a crime has been committed in civil law, does not necessarily mean that a crime has been committed in canon law. To invoke canonical sanctions, the fact that a canonical crime has been committed must be established under the criminal procedure of the Code. If the criminal procedure is invoked and it is proven that the pedophile has committed a crime, the following practical observations are made..

- a. The pedophile can be reduced to a lay state by a decree of the judge.
- b. The judge or the local bishop cannot grant a dispensation from celibacy. This dispensation is reserved solely to the Holy Father.
- c. In justice, because of the decree of laicization, there is no longer an obligation on the part of the

diocesan bishop to provide for financial needs of the laicized pedophile. The ecclesial "bargain" made by reason of incardination ceases. In charity, however, there may be a serious responsibility to provide for a laicized pedophile. This decision depends upon the prudent judgment and discretion of the diocesan bishop.

- d. With laicization the pedophile can no longer function as a priest. A bishop no longer exercises authority or assumes responsibility over him as he would a cleric. Consequently in civil law exposure to huge financial liability is significantly reduced.

. Some canonists observe that because a pedophile is a sick person, his culpability is diminished, and therefore it is improper to proceed in a criminal action against him. Some might even contend that the pedophile is incapable of committing a crime. However, in making the judgment as to whether or not to proceed in a criminal action, one must weigh the possible personal rights of the pedophile and his sickness and his culpability against the very serious potential harm to innocent victims, the great scandal to the Church, and the exposure to huge legal and financial liability to the diocesan bishop and diocese. It should be noted that in civil law, even if it is alleged that pedophilia is a sickness, this is not a defense against the crime. In virtually all civil law jurisdictions, sexual activity with a minor is characterized as a crime for which criminal sanctions can be imposed, including imprisonment. Furthermore, in proceeding against a pedophile,

the canon law provides that sexual activity with a minor is a crime, a criminal procedure is in place to impose a penalty if the crime is committed, and there is the opinion of many canon lawyers and the opinion of the Congregation for the Doctrine of Faith that invoking the criminal procedure and proceeding accordingly is proper in the case of pedophilia.

How do we look at the civil law side? The following brief comments are made in order to interface the canon law with the civil law. In the United States we live as church people under two laws, the canon law and the civil law. We are responsible and accountable to both. We must respect and honor both. On many occasions the civil law and the canon law recognize each other's jurisdiction and will accept judgments which are made pursuant to the laws. There are times, however, when these laws can be in conflict.

In addressing the issue of pedophilia, in the civil law we distinguish between criminal and civil suits. The criminal law identifies certain human actions or non-actions as crimes committed against society or individuals and it proposes a remedy or a penalty to fit the crime. As in canon law, the criminal law is meticulous in establishing a procedure to prove that a crime has been committed because very fundamental and basic human rights are usually involved. Depending on the crime committed, various penalties can be assessed depending on the nature of the crime, the culpability of the person and various circumstances. Much is left to the discretion of the judge, although he ordinarily proceeds within certain

parameters. It is generally a crime in most jurisdictions for an individual to be engaged in sexual activity with a minor.

When a pedophile has been found guilty of a crime, a civil suit may follow. The basis for instituting a civil suit is found in the tortious conduct of one in authority. It is usually alleged that one in authority was negligent in not acting as a reasonable person would act in dealing with one afflicted with pedophilia.

In civil law, there are five common liability theories used in these cases. Each in itself is complex and could be the subject of detailed discussion. An analysis of these liability theories has been provided to your diocesan attorney by the NCCB/USCC General Counsel in 1987. Other guidance and education was provided in 1985 and 1986 and more will be forthcoming in 1988. Because so much of any discussion of liability depends on factual circumstances and individual state law, I would urge you to contact your attorney for a particularized discussion of the civil law aspects of pedophilia.

In dealing with a pedophile and making judgments concerning his future ministry, it is most important to be guided by the opinions of doctors, lawyers, and other professionals. Counseling and on-going supervision may be required. In other words, it is incumbent upon a bishop to do a whole host of things which a reasonable person would do to protect society or potential innocent victims from the possible criminal activity of the pedophile.

Ultimately, it is a judgment call whether in a given case a bishop has acted reasonably and prudently in dealing with a pedophile.

It is possible to find that in a most serious case of pedophilia, the only reasonable action to take would be to proceed in accordance with canon law in a criminal procedure. To laicize a person so as to remove him from a position of trust as a clergyman, may ultimately be the only reasonable thing to do to protect innocent victims, to avoid serious scandal and to avert huge financial liability for the diocese.

This brief presentation is made to give a general canonical-civil law focus to the issue of pedophilia. Each individual case will generate its own complexities. Consequently, it is imperative that local canon and civil lawyers be consulted for proper guidance.

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Green Bay, Wisconsin
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