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Child Victims Act lawsuits to peel open decades of secrecy in clergy sex abuse

By Jay Tokasz, Dan Herbeck
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David Harvey, of North Buffalo, will be filing a lawsuit under the state's new Child Victims Act. (Sharon Cantillon/Buffalo News)

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The tight lid that the Catholic Diocese of Buffalo kept for decades on clergy sex abuse cases will be peeled open Wednesday with a new state law that gives abuse victims a year to file claims that previously were prohibited from moving forward in court.

Lawyers predicted the diocese would face more than 200 lawsuits by the end of the one-year "look-back" window that will open at 12:01 a.m.

The names of at least 17 Catholic priests who hadn't before been publicly accused of child sex abuse will emerge in the filings, according to lawyers filing the lawsuits.

[Related: Buffalo bishop apologizes to abuse victims before Child Victims Act lawsuits are filed]

Among the newly identified accused priests is the Rev. David J. Peter, who **died in 2017**.

David J. Harvey of Buffalo alleged that the diocese allowed Peter to rape and repeatedly molest him more than 35 years ago, when Harvey was an altar boy at St. Edmund Church in the Town of Tonawanda.

Harvey said the abuse was life-altering, triggering in him a seething rage that persisted through his teenage and young adult years.

"It destroyed me," the 48-year-old said.

Harvey said he twice attempted suicide. He started doing drugs at 15. He was so angry and violent he wanted to beat up anyone who dared look at him.

"My father once described me as a serial killer without his first kill," he said.

Harvey's case will be among the first to be filed under a provision of the **Child Victims Act** that suspends the civil statute of limitations on childhood sex abuse cases and allows victims to sue even in cases that date back decades.

Jeff Anderson & Associates, a Minnesota-based law firm, on Tuesday identified 14 priests, who had not been previously named by the Buffalo Diocese as molesters, that it will accuse of abuse in lawsuits it files. It named the Rev. Gary Bagley, the Rev. James Bartnik, Monsignor George Brennan, the Rev. John S. Doyle, the Rev. Daniel G. Duggan, the Rev. Ralph P. Frederico, the Rev. Duane G. Fimbel, the Rev. James Fitzgerald, the Rev. Edward L. Kazmierczak, Monsignor James G. Kelly, the Rev. David Roche, the Rev. Charles S. Rochford, the Rev. Leo F. Reddy and the Rev. Herbert Skurski. All but Kelly are deceased.

The late Rev. Marion M. Tolczyk, a principal at St. Francis High School in Athol Springs in the 1960s, who also had not been publicly accused of abuse before, will be named in a lawsuit against the diocese Wednesday that alleges Tolczyk molested a 16-year-old male student, attorney Samantha Breakstone of the Weitz & Luxenberg law firm announced Tuesday.

[Related: One clergy abuse survivor finds relief as Child Victims Act filings begin]

Buffalo Diocese Bishop Richard J. Malone issued a **written and videotaped apology** to clergy abuse victims Tuesday evening, about five hours before the first lawsuits were to be filed.

"As the Child Victims Act 'window' to bring claims of sexual abuse against the Diocese and other institutions in New York State opens, I want to again express my personal apology and that of the Diocese of Buffalo to victim-survivors of abuse," he said.

"So many cases of abuse occurred decades ago yet I know, from my own meetings with victim-survivors, that their pain and despair is ever-present in their daily lives. I continue to pray that victim-survivors achieve as much healing and wholeness as possible. It is my hope that the Child Victims Act will go a long way toward the justice they so deeply deserve," Malone said.

Malone lobbied state lawmakers in Albany against passage of the law as recently as 2018.

The Child Victims Act's look-back window flips the tables on the Catholic Church's ability to control information about its handling of victims and clergy accused of abuse. Dioceses across the state are expected to be a primary target of lawsuits, though any institution that works with children and employed a child molester is susceptible.

"This is the moment when victims become empowered," said Marci A. Hamilton, an expert on child sex abuse and CEO of Child USA, a national think tank. "No longer can they just tell their stories, they can actually take action against the ones who caused the abuse, whether it's the perpetrator or the institution."

The Buffalo Diocese already has **paid \$17.5 million to 106 victims** through a voluntary compensation program that concluded in May. Those victims gave up their rights to sue in exchange for the money. But 17 people rejected compensation offers, and the diocese turned down 135 claimants who were deemed ineligible for the program. All of them now will have the chance to sue in court.

The Child Victims Act doesn't make it easier for plaintiffs to win cases, though.

In cases of clergy abuse, lawyers will sue the diocese for negligence, arguing that bishops and other administrators knew or should have known that a priest was a molester and kept him away from children.

Malone has said the diocese has substantiated child sex abuse allegations against 80 priests who served in Buffalo since 1950. Malone has publicly identified the names of those priests.

But Malone also has acknowledged that the diocese received **complaints against 176 priests** and has kept the names of 48 deceased priests off its offender list, because he said those priests had a single allegation that came to the diocese's attention only after their deaths, making it impossible for the priests to defend themselves.

Former St. Francis High priest accused

Now, lawsuits will make it impossible for the diocese to keep the names of accused priests under wraps.

That includes Peter, who spent more than 50 years as a priest in multiple parishes.

It also includes the Rev. Luke Rutter, a Franciscan order priest who taught at St. Francis High School in the 1980s. Rutter died in 2000 at age 51. In a lawsuit expected to be filed Wednesday, Matthew “Scott” Heldwein accused Rutter, who is not included on the diocese’s offender list, of repeatedly molesting him when Heldwein was a student living in the high school’s residence hall.

“There’s no way I was the only one. He was just too brazen,” said Heldwein, who lives in Palmetto, Fla., where he owns and runs a small diving company.

Heldwein, 53, said Rutter gave him alcohol and sometimes took him to dinners at fancy restaurants over the course of two years of abuse, when he was a freshman and a sophomore at the all-boys high school, which is operated by the Order of Friars Minor Conventual, or Franciscan friars.

“I was one of the poorest kids in the school and he picked me off like a vulture,” said Heldwein.

Heldwein said he first reported the alleged abuse to the diocese around 2000.

Our Lady of Angels Province of the Franciscan friars released a statement late Tuesday saying they were not aware of any accusations against Tolczyk. The statement also said that the province provided Heldwein with “several years of counseling and treatment” in response to his allegations.

“Our first concern remains focused on the pastoral care of victim survivors who may have been abused by Friars or former Friars while continuing our mission of rebuilding the Catholic Church,” the statement said.

In 2018, Heldwein said the diocese sent him an application to its compensation program. He said he applied to the program and was denied, presumably because Rutter was an order priest and not a member of the diocese clergy.

It’s a distinction that matters little to Heldwein.

“They want to separate off this group or that group, when they all get their marching orders from the Vatican or the diocese. It all trickles down. They’re all connected, and they all can’t sit here and say, ‘We didn’t know about it and can’t be accountable and responsible for that,’ ” he said.

Attorney Michael T. Pfau of Seattle represents about 30 clients, including Heldwein, who are suing the Buffalo Diocese. He said he was puzzled by the diocese’s decision not to offer compensation awards to more victims.

“We have periodically spoken with the Buffalo Diocese about resolving the cases leading up to the statute and we’ve been very, very frustrated, and our clients are ready to file,” said Pfau. “With other dioceses, we’ve had a better experience settling some of the cases before we have to file. That has not been the case with the Buffalo Diocese. Our clients have been very frustrated with the settlement process, so we feel we have no choice but to file the lawsuits.”

Some victims weren’t interested in settling through the diocese’s compensation program, in part because the program didn’t involve the release of diocese records about the abuse. In court, lawyers will be able to use the discovery process to request documents and interview diocese leaders.

“The victims we speak with, generally the money is not the motivator,” said Jayne Conroy of Simmons Hanly Conroy. “These are not like accident cases. People are looking to make sure people know what happened and to make sure they’re stopping it going forward.”

Accuser sues for second time

Christopher Szuflita, 66, finally has an opportunity to take his case through the court system.

Szuflita tried **25 years ago to sue the diocese** over alleged clergy abuse but dropped his case after diocese attorneys argued that it violated the state’s statute of limitations.

“I’ve been trying to get some kind of justice for a long time,” Szuflita said. “Hopefully, some good will come from this, not only for me, but for all the victims.”

Szuflita said he was molested repeatedly at age 15 by the Rev. Joseph Friel, a priest at Fourteen Holy Helpers Church. He said the priest would sometimes take him out of religious education class in the late 1960s and lead him to a bedroom in the rectory, where Friel would remove his pants and have sex with him.

At age 17, Szuflita said, he went to the pastor of the church and told him about the abuse. He said the pastor, the late Rev. Martin Ebner, immediately accused him of lying and threw him out of the office.

Then, in 1994, at age 41, Szuflita did something that was virtually unheard of at the time. Using his own name, he filed a lawsuit against the Buffalo Diocese. He also told his story in newspaper and television interviews, speaking openly under his own name and allowing his photograph to be published.

“From the beginning, he took a very courageous and heroic stance. Nobody was going public, under their own name, back then,” said attorney Steve Boyd, who interviewed Szuflita as a television reporter in the 1990s and now represents him with co-counsel J. Michael Reck.

[Related: Man who sued over Buffalo priest sex abuse 24 years ago still seeking justice]

Friel died in 1995. A diocese official told The News in 1994 that Friel denied molesting Szuflita. But last year, **Malone added Friel to a list** of priests with substantiated allegations of child sex abuse.

Szuflita is among at least seven people planning to sue the diocese over Friel’s alleged abuses, said Boyd.

Szuflita, who lives in Melbourne, Fla., said he applied to the diocese's compensation program and was offered \$140,000, which he turned down, calling it "an embarrassment, an insult."

"If my case ever goes to trial, if a jury ever heard my whole story, I believe they would be very sympathetic," said Szuflita.

Victim: Abuse started when he was 8

After years of keeping quiet about it, Harvey said he wants to help other abuse victims by telling his story publicly.

He's represented by William Lorenz Jr. of the HoganWillig law firm, who was planning to begin filing lawsuits electronically, just after midnight on Tuesday.

"We hope to obtain Father Peter's record in discovery after the lawsuit is filed to find out if there are other victims that we don't know about and the world doesn't know about," said Lorenz.

Harvey said he didn't report his alleged abuse to the diocese until making a verbal complaint over the phone within the past year. He also posted a detailed account on Facebook in February.

It's unclear whether anyone else had complained to the diocese about Peter, but Harvey said it's hard for him to believe the diocese didn't know about the priest's misdeeds. Harvey said he was around age 8 when the abuse started and continued for about a year. Some of it happened in a kitchen of St. Edmund Church, prior to Masses, he said. He also said another priest serving in the parish witnessed Peter taking Harvey alone into another room and did not stop him. The first instance of abuse happened in the cabin of a boat, said Harvey.

Harvey hopes the lawsuit will hold the diocese accountable and help other survivors of childhood sex abuse who are struggling to come forward.

Harvey said he underwent years of counseling and therapy to overcome the trauma of the abuse. More than Peter, he blames the diocese, saying it gave the priest access to kids he otherwise would not have been able to reach.

“I feel that he was sick. I almost don’t have any anger toward him. My problem is with the church as an institution,” said Harvey. “I don’t need any money. It’s about people knowing that it happened to me. It was terror.”

A year later: More than 100 Buffalo priests linked to sex allegations