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Recurring Cardinal Sins: How the Holy See and Canon Law Have Perpetuated Child Sexual Abuse by Clergy Members

Gabriela Hidalgo*

“We showed no care for the little ones; we abandoned them. Looking back to the past, no effort to beg pardon and to seek to repair the harm done will ever be sufficient. Looking ahead to the future, no effort must be spared to create a culture able to prevent such situations from happening, but also to prevent the possibility of their being covered up and perpetuated.”¹

INTRODUCTION

On August 20, 2018, Pope Francis uttered the words above in response to one of the most egregious scandals the Roman Catholic Church has been faced with to date: the uncovering of decades-worth of child sexual abuse perpetrated by over three hundred priests in the state of Pennsylvania.² On August 14, 2018, an explosive grand jury report revealed over one thousand detailed accounts of children who had been sexually abused at the hands of numerous clergymen belonging to several Catholic dioceses in Pennsylvania.³ It also found that there had been a “systematic cover-up” by church leaders, specifically bishops.⁴ After the publication of this report, fourteen states⁵ and the District of Columbia announced investigative initiatives into the Catholic Church in their state.⁶

This is not the first time a diocese in Pennsylvania has been investigated for allegations of child sexual abuse. In 2016, a grand jury report was released investigating the Diocese of Altoona-Johnstown, which included the city of Pittsburgh.⁷ The report documented child sexual abuse by at least fifty different priests or religious leaders within the Diocese of Altoona-Johnstown, and hundreds of victims were identified.⁸ Even though these two incidents were, in and of themselves, unacceptable, they are only a fraction of the child sexual abuse scandals that have implicated the Catholic Church in the United States.

In January 2002, the *Boston Globe* exposed how leaders of the Roman Catholic Church in the Archdiocese of Boston covered up child sexual abuse by hundreds of priests over a period of

* J.D. candidate, May 2020, Loyola University Chicago School of Law; B.A. Psychology, Boston College, 2013.

¹ Sheena McKenzie, Barbie Nadeau & Livia Borghese, *Pope Francis on Pennsylvania Sex Abuse Report: ‘We Abandoned The Little Ones’* CBS BOS. (Aug. 20, 2018), <https://boston.cbslocal.com/2018/08/20/pope-francis-pennsylvania-sex-abuse-report-letter/>.

² 40TH INVESTIGATING GRAND JURY REPORT 1 INTERIM – REDACTED 1 (Aug. 14, 2018) [hereinafter GRAND JURY REPORT].

³ *Id.*

⁴ *Id.*

⁵ Fourteen States: Florida, Illinois, Kentucky, Maryland, Michigan, Missouri, Nebraska, New York, New Jersey, New Mexico, Vermont, Virginia, and Wyoming.

⁶ Tara Isabella Burton, *Even more states have launched investigations into clerical abuse since the Pennsylvania report*, VOX (Oct. 24, 2018), <https://www.vox.com/2018/9/17/17847466/state-investigations-clerical-abuse-dc-virginia-maryland-florida-new-york>.

⁷ COMMONWEALTH OF PA., OFFICE OF ATT’Y GEN., A REPORT OF THE THIRTY-SEVENTH STATEWIDE INVESTIGATING GRAND JURY 10 (2016).

⁸ *Id.*

forty years.⁹ This revelation swept the nation and caused hysteria among the masses. As a result, several states amended their civil and criminal child sexual abuse statutes in an effort to thwart the abuse.¹⁰ Unfortunately, the legislation and policies introduced have not been enough to protect victims whose abuse occurred in the past, due to the statute of limitations on reporting child sexual abuse. Currently, there are sixteen states that have yet to abolish their statute of limitations for sexual abuse crimes against children: California,¹¹ Connecticut,¹² Indiana,¹³ Iowa,¹⁴ Kansas,¹⁵ Louisiana,¹⁶ Minnesota,¹⁷ Montana,¹⁸ New Hampshire,¹⁹ New York,²⁰ Ohio,²¹ Oklahoma,²² Oregon,²³ Pennsylvania,²⁴ Tennessee,²⁵ and Washington.²⁶

Although legal barriers impede Pennsylvania from providing justice to the victims and their families, there are other factors that have allowed child sexual abuse by clergymen to continue:

⁹ See Walter V. Robinson, *Scores of priests involved in sex abuse cases*, BOS. GLOBE (Jan. 31, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/31/scores-priests-involved-sex-abuse-cases/kmRm7JtqBdEZ8UF0ucR16L/story.html>; see also Travis Andersen, *Pennsylvania grand jury cites Boston Globe role in uncovering clergy sexual abuse scandal*, BOS. GLOBE (Aug. 14, 2018), <https://www.bostonglobe.com/metro/2018/08/14/grand-jury-cites-boston-globe-role-uncovering-clergy-sex-abuse-scandal/kOMQTphQ0dMe2ZISrioXFL/story.html>; Michael Rezendes, *Church allowed abuse by priest for years*, BOS. GLOBE (Jan. 6, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTIrAT25qKGvBuDNM/story.html>.

¹⁰ MARCI A. HAMILTON, CHILDUSA, CHILD SEX ABUSE STATUTE OF LIMITATIONS REFORM IN THE WAKE OF THE BOSTON ARCHDIOCESE CLERGY SEX ABUSE SCANDAL JANUARY 2002 at 26 (Mar. 26, 2018), https://static1.squarespace.com/static/5a120b962aeba581dd692cd4/t/5b6a73958a922df70e3ddb8b/1533703061694/SOLReport_July18.pdf.

¹¹ Symone Shinton, *Pedophiles Don't Retire: Why the Statute of Limitations on Sex Crimes Against Children Must Be Abolished*, 92 CHI. KENT L. REV. 317 (2017); CAL. PENAL CODE § 801.1(a)(1) (West 2016) (victim has until age forty to report).

¹² Shinton, *supra* note 11; CONN. GEN. STAT. ANN. §54-193(a) (West 2016) (victim has to report within five years of abuse occurring. Class A sexual abuse felonies, aggravated sexual assault of minors do not have a statute of limitation).

¹³ Shinton, *supra* note 11; IND. CODE ANN. § 35-41-4-2(e) (West 2016) (victim has until age thirty-one to report for certain crimes, for the rest ten years from commission of abuse or four years from the victim leaving their abuser's dependence).

¹⁴ Shinton, *supra* note 11; IOWA CODE ANN. §802.2 (West 2015) (victim has until age twenty-eight to report).

¹⁵ Shinton, *supra* note 11; KAN. STAT. ANN. §§ 21-5107(c), 22-3717 (d)(1)(D) (West 2016) (victim has until age twenty-eight to report).

¹⁶ Shinton, *supra* note 11; LA. CODE CRIM. PROC. ANN. art. 571.1 (2016) (victim has until age forty-eight to report).

¹⁷ Shinton, *supra* note 11; MINN. STAT. ANN. § 628.26(e)-(f) (West 2016) (victim has to report nine years after the offense occurred or within three years of reporting the abuse).

¹⁸ Shinton, *supra* note 11; MONT. CODE ANN. §45-1-205(1) (West 2015) (victim has until age twenty-eight to report a felony and until age twenty-three to report a misdemeanor).

¹⁹ Shinton, *supra* note 11; N.H. REV. STAT. ANN. §625:8(III)(i) (2016) (victim has until age forty to report).

²⁰ Shinton, *supra* note 11; N.Y. CRIM. PROC. LAW §30.10(3)(e)-(f) (McKinney 2016) (victim has until age twenty-three to report).

²¹ Shinton, *supra* note 11; OHIO REV. CODE ANN. § 2901.13(3)(a) (West 2015) (victim has until age forty-three to report rape or sexual battery, until age thirty-eight to report felonies, and until age twenty to report misdemeanors).

²² Shinton, *supra* note 11; OKLA. STAT. ANN. tit. 22, § 152(C) (West 2016) (victim has until age forty-five).

²³ Shinton, *supra* note 11; OR. REV. STAT. ANN. § 131.125 (2)-(4) (West 2016) (victim has until age thirty to report a felony and until age twenty-two to report a misdemeanor).

²⁴ Shinton, *supra* note 11; 42 PA. CONS. STAT. ANN. § 5552(c)(3) (West 2016) (victim has until age fifty to report).

²⁵ Shinton, *supra* note 11; TENN. CODE ANN. §40-2-101 (West 2016) (victim has until age thirty-three to report rape and until age forty-three to report crimes of sexual exploitation committed after 2012).

²⁶ Shinton, *supra* note 11; WASH. REV. CODE ANN. §9A.04.080(1)(c) (West 2016) (victim has until age thirty to report a family and until age twenty to report a misdemeanor).

the Holy See²⁷ and the Code of Canon Law.²⁸ Both the Holy See and the Code of Canon Law seem to be preoccupied with maintaining the image of the Church more than protecting victims who have suffered at the hands of clergy members. By continuing to conform and adhere to the Pontifical Secret and not requiring mandatory reporting of child sexual abuse, the Roman Catholic Church plays an important role in perpetuating child sexual abuse by clerics.

The Roman Catholic Church is one of the oldest and most venerated establishments in the world; its origin can be traced to apostolic times circa AD 30–95.²⁹ There are roughly fifty-one million Catholic adults in the United States alone.³⁰ Despite it being the largest religious institution in the United States, the Catholic Church is met with much disdain and criticism.³¹ Ardent advocates for child victims of sexual abuse in all fields have spoken out against the Roman Church and its policies but, due to a slew of legal barriers and current state statutes, the grand jury report is unlikely to lead to criminal charges or civil lawsuits.³²

Part I of this article explains the function of the Holy See and the hierarchy of the Roman Catholic Church. Part II focuses on the role the Code of Canon Law has played in facilitating child sexual abuse by clergy members. Specifically, the section explores how the Pontifical Secret, sanctioning protocols, and the hierarchy of the Roman Catholic Church have ultimately enabled and encouraged underreporting of sexual abuse by adopting a stance which offers more protection to the offender than to child victims. The sanctioning protocol for offending clergy has created lenient, yet complex, penalties to be imposed at will. Additionally, the protocol has effectively diminished the chances of securing justice for past victims by establishing an extremely difficult standard of proof.

Part III focuses on Pennsylvania's current state law governing child sexual abuse and its mandatory reporting laws. The article further explores the grand jury report and its findings. Part IV proposes that Pennsylvania, as the most recent state affected by a sexual abuse scandal, further extend or eliminate both criminal and civil statutes of limitations pertinent to child sexual abuse. Additionally, it recommends that Pennsylvania legislators strongly consider adopting the suggestions posed by the grand jury. Finally, the article explores previous attempts by the state legislators to extend or alter both the criminal and civil statutes of limitations.

Part V of the article urges for a systemic reform within the Catholic Church. The reform should focus on removing the protection offered by the Pontifical Secret on any allegations or acts of child sexual abuse. Excluding child sexual abuse from the list of offenses the Pontifical Secret protects will allow for transparency and will facilitate the removal of offending clergy members. Further, in regard to the disciplinary system, this article suggests that the Church consider altering its approach to discipline from a rehabilitative approach to a punitive approach. Additionally, although Church and State remain separate, the Holy See should intervene and require bishops to

²⁷ See generally THE HOLY SEE, <http://w2.vatican.va/content/vatican/en.html> (last visited Mar. 11, 2019).

²⁸ See generally CODE OF CANON LAW, http://www.vatican.va/archive/ENG1104/_INDEX.HTM (last visited Mar. 11, 2019).

²⁹ Barton Gingerich, *What is Catholicism? – History, Tradition & Beliefs*, CHRISTIANITY.COM, <https://www.christianity.com/church/denominations/what-is-catholicism.html> (last visited Mar. 11, 2019).

³⁰ David Masci & Gregory A. Smith, *7 facts about American Catholics*, PEW RES. CTR. (Oct. 10, 2018), <http://www.pewresearch.org/fact-tank/2018/10/10/7-facts-about-american-catholics/>.

³¹ *Id.*

³² Dan Levin, *Why the Explosive Report on Catholic Church Abuse is Unlikely to Yield Criminal Charges*, N.Y. TIMES (Aug. 15, 2018), <https://www.nytimes.com/2018/08/15/us/pennsylvania-sex-abuse-statute-of-limitations.html>.

adhere to the Charter for the Protection of Children and Young People.³³ This requirement would give the National Review Board of civilians, created by the charter, the authority to help police clergy who are sexually abusing minors. If the Review Board were allowed to perform its function, it would assist in the identification of those committing child sexual abuse and those perpetuating it.

I. THE HOLY SEE AND THE HIERARCHICAL STRUCTURE OF THE ROMAN CATHOLIC CHURCH

A. *The Holy See*

The Holy See, meaning “the seat of the bishop of Rome,” is the episcopal jurisdiction of the Catholic Church in Rome.³⁴ It is the universal government of the Catholic Church that operates from Vatican City.³⁵ The Pope serves as the head of the government of Vatican City and also as the head of the Holy See.³⁶ Although it is common to hear the terms “Holy See” and “the Vatican” used interchangeably, they are not the same entity, nor do they serve the same function.³⁷

The Holy See is the top apostolic diocese and the supreme body of government for the entire Roman Catholic Church.³⁸ It is governed by the Pope, and he rules through the Roman Curia, which essentially functions as the papal court.³⁹ The Roman Curia is divided into departments called dicasteries; for example, the Secretariat of State is a dicastery.⁴⁰ The Holy See is recognized by international bodies as an independent sovereign entity capable of entering into and conducting diplomatic relations with other countries.⁴¹ The Holy See is also granted permanent observer status in all meetings of the United Nations.⁴² It is important to note that the Holy See acts as an independent sovereign out of the jurisdiction of United States courts, unless otherwise stated by the Foreign Sovereign Immunities Act (FISA).⁴³ Thus, the Holy See is the religious authority

³³ Jeremy Roebuck et al., *Failure at the top*, THE INQUIRER (Nov. 3, 2018), <https://www.philly.com/news/pennsylvania/catholic-church-bishops-sex-abuse-coverup-pennsylvania-west-virginia-wyoming-20181103.html>.

³⁴ Joyce Chepkemoi, *What is the Difference Between The Vatican And The Holy See?*, WORLD ATLAS, <https://www.worldatlas.com/articles/what-is-the-difference-between-vatican-city-and-the-holy-see.html> (last updated Aug. 1, 2017).

³⁵ U.S. DEP'T OF STATE, *U.S. Relations With the Holy See*, BUREAU OF EUROPEAN AND EURASIAN AFFAIRS FACT SHEET (Feb. 22, 2018), <https://www.state.gov/r/pa/ei/bgn/3819.html> [hereinafter *U.S. Relations With The Holy See*].

³⁶ *Id.*

³⁷ Chepkemoi, *supra* note 34.

³⁸ *Id.*

³⁹ Matthew Bunson, *Understanding the Roman Curia: An overview of the officers and leaders of the central government of the Catholic Church*, OURSUNDAYVISITOR (May 17, 2015), <https://www.osv.com/Article/TabId/493/ArtMID/13569/ArticleID/17441/Understanding-the-Roman-Curia.aspx>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See U.S. DEP'T OF STATE, *Foreign Sovereign Immunities Act, Bureau of Consular Affairs*, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internal-judicial-asst/Service-of-Process/Foreign-Sovereign-Immunities-Act.html> (last visited Mar. 11, 2019). The immunity of a state from the jurisdiction of the courts of another state is an undisputed principle of customary international law. FISA recognizes jurisdictional immunity and outlines exceptions.

presiding over Catholic churches all across the world; however, it can only exercise governmental authority over Vatican City.⁴⁴

Vatican City is the smallest country in the world, and it is located within the city of Rome, Italy.⁴⁵ It was established in 1929 as the last remnant of the Papal States and is home to the Holy See.⁴⁶ Vatican City is recognized as a sovereign country that is governed by a theological-monarchy—the Holy See.⁴⁷ It exists as an absolute ecclesiastical monarchy but is not recognized as a democracy, and as such is not a member of many international organizations, including the United Nations.⁴⁸ Individuals who work for the Holy See are usually granted Vatican citizenship.⁴⁹ The Pope exercises ultimate authority in Vatican City and can thus revoke Vatican citizenship.⁵⁰ If citizenship is revoked, the individual is automatically considered an Italian citizen.⁵¹

B. Structure of the Roman Catholic Church

It is essential to understand the hierarchy of the Church in order to comprehend how its disciplinary system functions. First, at the top of the Church's hierarchy is the Pope.⁵² The Pope has “full, supreme, and universal power over the whole Church, a power which he can always exercise unhindered.”⁵³ Second is the College of Cardinals, which serves in an advisory role to the Pope.⁵⁴ Cardinals are created by the Pope, and their chief responsibility is to elect a Pope upon the death or resignation of the incumbent.⁵⁵ Additionally, the Pope may call special meetings, called consistories, when he wishes to discuss important issues pertinent to the Church.⁵⁶ For example, Pope Francis called a consistory in Rome on June 29, 2018 to create fourteen new Cardinals.⁵⁷

Third is the College or Body of Bishops.⁵⁸ Bishops possess the authority to make decisions regarding the universal Church as a whole, but they cannot act on their own.⁵⁹ The bishops can only act in unison with the Pope.⁶⁰ As such, this College has “supreme and full authority over the

⁴⁴ *Id.*

⁴⁵ Chepkemoi, *supra* note 34.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Chepkemoi, *supra* note 34.

⁵² Kathleen Rohan, *Explaining the Hierarchy of the Church*, CATH. EXCHANGE (Feb. 17, 2005), <https://catholicexchange.com/explaining-the-hierarchy-of-the-church>; Jena McGregor, *Pope Francis and the power of five words*, WASH. POST (July 29, 2013), https://www.washingtonpost.com/news/on-leadership/wp/2013/07/29/pope-francis-and-the-power-of-five-words/?noredirect=on&utm_term=.abdc9e07086b; William S. Cossen, *The real reason the Catholic Church remains plagued by abuse scandals*, WASH. POST (Aug. 23, 2018), https://www.washingtonpost.com/news/made-byhistory/wp/2018/08/23/the-real-reason-the-catholic-church-remains-plagued-by-abuse-scandals/?utm_term=.82e038d6644c.

⁵³ McGregor, *supra* note 52; *Bishops, Archbishops, and Cardinals*, CANON LAW MADE EASY (Dec. 17, 2009), <http://canonlawmadeeasy.com/2009/12/17/bishops-archbishops-and-cardinals/> [hereinafter *Bishops*].

⁵⁴ *Bishops*, *supra* note 53.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Rohan, *supra* note 52.

⁵⁹ *Id.*

⁶⁰ *Id.*

universal Church, but this power cannot be exercised without the agreement of the Roman Pontiff.”⁶¹ Each individual bishop is tasked with overseeing a particular territory called a diocese.⁶² In overseeing his diocese, a bishop must ensure the authentic teaching of the Catholic faith, ensure the proper and regular celebration of the sacraments and other acts of devotion, foster the vocations to the priesthood and religious life, and govern the diocese with loyalty to the Holy Father.⁶³ To accomplish his mission, the bishop is allowed to extend his authority to priests in particular parishes.⁶⁴ A parish is simply the individual Catholic Church that serves a given community.⁶⁵ Every country or region has an Episcopal Conference, also known as a Conference of Bishops.⁶⁶ Disciplinary matters and decisions within the Church are referred to the bishops, but the Pope has the ultimate authority to decide any matter.⁶⁷ It is imperative to note that the entire Roman Catholic Church is not an incorporated body in the United States.⁶⁸ Individual bishops are responsible for overseeing their diocese as a corporation sole,⁶⁹ legally autonomous of one another and from the Holy See.⁷⁰ The dioceses themselves, rather than the bishops, may also be religious corporations.⁷¹

Fourth are archbishops, who are in charge of assisting the Pope in overseeing a particular geographical region of a diocese known as the “ecclesiastical province.”⁷² The archbishop presides over the bishops within a defined district made up of dioceses.⁷³ Fifth and last are priests, who serve as “co-workers” or “assistants” to the bishops.⁷⁴ Priests are usually tasked with serving a particular parish.⁷⁵ When a priest is ordained, he takes vows of chastity, poverty, and obedience to superiors.⁷⁶ Priests are under the immediate authority of their local bishop.⁷⁷

⁶¹ *Id.*

⁶² *Id.*

⁶³ William Saunders, *Bishops Is Source, Foundation of Unity*, ARLINGTON CATH. HERALD, <https://www.catholiceducation.org/en/culture/catholic-contributions/bishop-is-source-foundation-of-unity.html> (last visited Feb. 11, 2019).

⁶⁴ *What is difference between a diocese and an archdiocese? What about a bishop and an archbishop?*, CATH. STRAIGHT ANSWERS (2018), <http://catholicstraightanswers.com/what-is-the-difference-between-a-diocese-and-an-archdiocese-what-about-a-bishop-and-an-archbishop/> [hereinafter CATHOLIC STRAIGHT ANSWERS].

⁶⁵ See CATHOLIC STRAIGHT ANSWERS, *supra* note 64.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Marianne Perciaccante, *The Courts and Canon Law*, 6 CORNELL J.L. & PUB. POL'Y 171, 178 (1996).

⁶⁹ *Id.* at 178–79.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² CATHOLIC STRAIGHT ANSWERS, *supra* note 64.

⁷³ *Id.*

⁷⁴ Rohan, *supra* note 52.

⁷⁵ *Id.*

⁷⁶ Mathew Schmalz, *How the Catholic Church's hierarchy makes it difficult to punish sexual abusers*, THE CONVERSATION (Dec. 21, 2017), <https://theconversation.com/how-the-catholic-churchs-hierarchy-makes-it-difficult-to-punish-sexual-abusers-89477>.

⁷⁷ *Id.*

II. CANON LAW, SANCTIONING PROTOCOLS, AND THE CHURCH'S DISCIPLINARY SYSTEM

A. Code of Canon Law

The Code of Canon Law (the Code) is the code of ecclesiastical laws governing the Catholic Church.⁷⁸ It is theological in all aspects and represents the codification of church theology into legal language.⁷⁹ The Code does not constitute statutes or laws, it is more akin to exhortative or theological statements.⁸⁰ It is created and enforced by the hierarchical authorities of the Church to regulate external organizations and the government.⁸¹ It is binding and sets the policies for bishops to run their diocese, as well as the procedure on how to handle errant priests.⁸²

The first Code of Canon Law was created in 1917.⁸³ Prior to the codification of the laws from the fourth century up until 1904, the Roman Catholic Church followed separate decrees or Instructions created by different Popes to govern the Church.⁸⁴ The 1917 Code listed a series of crimes, including engaging in delict acts with a minor, adultery, and bestiality, among others, for which clergy members could be “suspended, declared infamous, and deprived of office.”⁸⁵ The Code allowed bishops to dismiss or depose priests from the clerical state without a canonical trial, but only in “more serious cases” and only after it was determined that reformation of the offender was impossible.⁸⁶ The Code also codified the Secret of the Holy Office, which was a vow of permanent silence that, if breached, led to automatic excommunication from the Church.⁸⁷ Knowledge of any crime involving sexual misconduct that was obtained through the Church's internal inquiries and trials was made subject to the Secret of the Holy Office.⁸⁸

Canon 243, Section 2, established that all those belonging to the Roman Curia were obliged to observe secrecy regarding matters they knew by virtue of their role as a cleric.⁸⁹ The Secret of the Holy Office reflected the concerns of the Holy See at the time.⁹⁰ Particularly, the Holy See was concerned with avoiding “scandal” and thus created this privilege for clergy members.⁹¹ Containing “scandal” within the walls of the Church meant that civil authorities would not be privy to any sexual misconduct occurring within the Church.⁹² The Church was to deal with the sexual misconduct in a manner it deemed fit and the major punishment within the canonical courts at this time was dismissal from priesthood.⁹³

⁷⁸ U.S. CONFERENCE OF BISHOPS, *What We Believe: Canon Law*, <http://www.usccb.org/beliefs-and-teachings/what-we-believe/canon-law/index.cfm> (last visited Feb. 11, 2019).

⁷⁹ Perciaccante, *supra* note 68, at 177.

⁸⁰ *Id.* at 177; *State v. Zimmer*, 487 N.W.2d 886, 891 n.3 (Minn. 1992).

⁸¹ Perciaccante, *supra* note 68.

⁸² See generally Perciaccante, *supra* note 68.

⁸³ Brendan Daly, *Sexual Abuse and Canon Law*, 43 COMPASS 33 (Sept. 15, 2009), <http://compassreview.org/spring09/6.pdf>.

⁸⁴ KIERAN TAPSELL, *CANON LAW ON CHILD SEXUAL ABUSE THROUGH THE AGES 10*, <https://www.catholicsforrenewal.org/Documents%202016/CanonLawOnChildAbuseThruTheAges.pdf>.

⁸⁵ *Id.*

⁸⁶ Daly, *supra* note 83; TAPSELL, *supra* note 84, at 10–11, 16.

⁸⁷ TAPSELL, *supra* note 84.

⁸⁸ *Id.* at 11.

⁸⁹ PHILIPPE LEVILLAIN, *THE PAPACY: QUIETISM-ZOUAVES, PONTIFICAL 1339* (Taylor & Francis US) (2002).

⁹⁰ TAPSELL, *supra* note 84, at 11.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

1. *Crimen Sollicitationis*

In 1922, Pope Pius XI issued an Instruction titled *Crimen Sollicitationis*.⁹⁴ The Instruction, amended in 1962, contained the following directive: “to be kept carefully in the secret archive of the Curia for internal use. Not to be published or augmented with commentaries.”⁹⁵ The Instruction was primarily focused on the crime of solicitation.⁹⁶ Solicitation occurs when a priest attempts to seduce a penitent.⁹⁷ But the Instruction also addressed other crimes, “*de crimine pessimo*”—the most obscene crimes a cleric can commit.⁹⁸ A *crimen pessimum* is “any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way with pre-adolescent children of either sex or with brute animals.”⁹⁹ The Instruction laid out a set of procedural norms for prosecuting child sexual abuse allegations against clerics for any of the following separate and distinct canonical crimes: (1) solicitation for sex in the act of sacramental confession, (2) homosexual sex, (3) sexual abuse of minor males or females, and (4) bestiality or sex with animals.¹⁰⁰ The *Crimen Sollicitationis* specifically states that anyone involved in the processing of such cases is bound by the Secret of the Holy Office.¹⁰¹ Meaning that any information regarding sexual misconduct within the Church was “to be kept in the secret archive of the Curia for internal use.”¹⁰² The Instruction further established that the only individual allowed to see and handle records evidencing any kind of sexual misconduct was the bishop heading the central office of the particular diocesan curia where an offense was committed.¹⁰³

Canon 489, Section 2 regulates the retention of all documents in the secret archive.¹⁰⁴ Evidence of any criminal cases concerning “moral matters” are to be burned or destroyed upon the death of the offending party or after ten years have elapsed since a condemnatory sentence concluded the affair.¹⁰⁵ The only requirement is that a brief summary of the facts be retained, along with the text of the definitive judgement.¹⁰⁶

2. *Secreta Continere*

In 1974, the Secretariat of State issued a canonical Instruction titled “*Secreta Continere*.”¹⁰⁷ The Instruction rebranded the Secret of the Holy Office as the Pontifical Secret and applied it to

⁹⁴ *Id.* at 10.

⁹⁵ Ian Waters, *The Law of Secrecy in the Latin Church*, THE CANONIST 75, 84 (1983).

⁹⁶ *Id.*

⁹⁷ *Id.*; Thomas Doyle, THE 1962 VATICAN INSTRUCTION “*CRIMEN SOLLICITATIONIS*,” PROMULGATED ON MARCH 16, 1962 (Apr. 1, 2008); *See generally* CATECHISM OF THE CATHOLIC CHURCH, http://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c2a4.html (last visited Apr. 16, 2019) (The sacrament of penance or reconciliation is the practice of private confessions of sins to a priest and the receiving of absolution.).

⁹⁸ Waters, *supra* note 95.

⁹⁹ *Id.*

¹⁰⁰ Doyle, *supra* note 97.

¹⁰¹ *Id.*

¹⁰² Waters, *supra* note 95, at 80.

¹⁰³ TAPSELL, *supra* note 84, at 10.

¹⁰⁴ Waters, *supra* note 95, at 80–81.

¹⁰⁵ TAPSELL, *supra* note 84, at 11; Waters, *supra* note 95, at 81.

¹⁰⁶ Water, *supra* note 95, at 81.

¹⁰⁷ *See Instruction Secreta Continere* [Secretariat of State], (Feb. 4, 1972); English translation in *Papacy Secrecy*, CANON LAW DIGEST 205, 207 (Feb. 4, 1974) [hereinafter CANON LAW DIGEST].

ten categories or situations.¹⁰⁸ The Instruction provided explicit rules to be followed in circumstances where allegations of delict conduct were made:

Extrajudicial denunciations received regarding delicts against the faith and against morals, and regarding delicts perpetrated against the sacrament of penance. Likewise, the process and decision which pertain to those denunciations, always safeguarding the right of him who has been reported to authorities to know of the denunciation if such knowledge is necessary for his own defense. However, it will be permissible to make known the name of the denouncer then only when authorities think it opportune that the denounced and the denouncer come face to face.¹⁰⁹

The Instruction clarified that the Pontifical Secret covered any penal process concerning major crimes that were handled by the Congregation for the Doctrine of the Faith, including cases involving the sexual abuse of minors, not just information obtained in the Church's internal inquiries and trials.¹¹⁰

3. *Sacramentorum Sanctitatis Tutela*

In 1983, the *Crimen Sollicitationis* was repealed, but the *Secreta Continere* remains in place.¹¹¹ In 2001, Pope John Paul II issued his *Motu Proprio, Sacramentorum Sanctitatis Tutela*, which introduced new procedures and protocols for how the Church must handle offending clergy members.¹¹² Pope John Paul II reiterated that the Pontifical Secret was to be applied to the new procedures regarding child sexual abuse.¹¹³ In 2010, Pope Benedict XVI extended the Pontifical Secret's coverage to clerics who possessed child pornography, as well.¹¹⁴

B. The Church's Disciplinary System

Crimen Sollicitationis introduced a pastoral approach as a disciplinary means for clergy members who sexually abused children.¹¹⁵ The Church selected a method that advocated for the reformation of an offending clergy member instead of dismissal.¹¹⁶ Among the penalties imposed on clerics who were found guilty of sexual abuse was being subjected to special supervision by a

¹⁰⁸ CANON LAW DIGEST, *supra* note 107, at 207.

¹⁰⁹ *Id.*

¹¹⁰ See *Rescriptum Ex Audientia*, ACTA APOSTOLICAE SEDIS, at VII, 89–92 (1974), <http://www.vatican.va/archive/aas/documents/AAS-66-1974-ocr.pdf>; English Translation at *Sacramentorum Sanctitatis*, SUBSTANTIVE NORMS (2001 with 2003 changes) 1, 2, 4 (Feb. 14, 2003), <https://assets.documentcloud.org/documents/243690/10-sacramentorum-sanctitatis-2001-with-2003.pdf> (It.).

¹¹¹ TAPSELL, *supra* note 84, at 14.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 16.

¹¹⁶ *Id.*

superior or being removed from a diocese and transferred to another for an arbitrary amount of time.¹¹⁷

In 1983, the 1917 Code was revised and re-codified, and is now known as the “1983 Code of Canon Law.”¹¹⁸ Canons 697 and 1341 afford either an administrative procedure for investigating allegations of abuse or an administrative or judicial means to determine guilt.¹¹⁹ Both methods allow for the imposition of a discretionary penalty.¹²⁰ If a priest is accused of sexual abuse, the bishop of the diocese to which the priest belongs has the responsibility to initiate, pursue, and finalize the process of dealing with an allegation against said priest.¹²¹ However, the penalty imposed does not necessarily, nor does it usually, end with excommunication.¹²² Available statistical data from the 1970s and 1980s indicate that bishops chose to follow the pastoral approach closely by referring offending priests to treatment centers or to be psychologically evaluated.¹²³ Further evidence suggests that many priests were allowed to return to ministry following a stint at a treatment center.¹²⁴

A study conducted by the Australian Royal Commission found that the “pastoral approach” had a negative effect in two ways on the Church’s response to clergy members committing acts of sexual abuse against children.¹²⁵ First, the pastoral approach encouraged the belief that child sexual abuse was a “moral failure rather than a crime that should be reported to the police.”¹²⁶ Second, it inhibited canonical action for dismissal because the pastoral approach was a precondition to instituting it.¹²⁷ That is, the approach requires superiors to “rebuke, warn, or try to cure” those against whom allegations were made before subjecting them to a canonical trial.¹²⁸

Another common response by the Church as a disciplinary method has been to relocate offending clerics to another parish or even another country.¹²⁹ Transferring an offender to a position with limited contact with children has also been employed.¹³⁰ There does not seem to be any requirement that a transferring priest alert his new diocese that he has been accused of sexual abuse.¹³¹ This practice has allowed many to continue abusing children and has done nothing

¹¹⁷ *Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation*, ART 63-64 CRIMEN SOLLICITATIONIS 2 (1962), http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html.

¹¹⁸ See 1983 CODE c.1341; see also 1983 CODE c.697.

¹¹⁹ See 1983 CODE c.1341; see also 1983 CODE c.697.

¹²⁰ See 1983 CODE c.1341; see also 1983 CODE c.697; see also Kieran Tapsell, ‘Catastrophic institutional failure’ can be fixed, NAT’L CATH. REP. 4-5 (Jan. 9, 2018), <https://www.ncronline.org/news/accountability/catastrophic-institutional-failure-cataloged-australian-abuse-commission-can-be>.

¹²¹ John J. Coughlin, *The Clergy Sexual Abuse Crisis and the Spirit of Canon Law*, 44 B.C.L. REV. 977, 981 (2003).

¹²² *Id.*

¹²³ *Child Sexual Abuse within the Catholic and Anglican Churches: A rapid evidence assessment, Independent Inquiry into Child Sexual Abuse*, IICSA RES. TEAM 45 (Nov. 2017), <https://www.iicsa.org.uk/key-documents/3361/view/iicsa-rea-child-sexual-abuse-anglican-catholic-churches-nov-2017-.pdf> (last corrected Nov. 8, 2018).

¹²⁴ *Id.*

¹²⁵ Tapsell, *supra* note 120.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ TAPSELL, *supra* note 84, at 16.

¹³⁰ *Id.* at 4.

¹³¹ Tapsell, *supra* note 120.

substantial to punish the offender; instead, it has inadvertently allowed abusers to find new victims.¹³²

If a bishop is accused of child sexual abuse, then the Pope determines how to proceed.¹³³ When the Pope learns that a bishop has sexually abused a child, he appoints auditors to investigate the matter and gather facts.¹³⁴ Upon reviewing the matter, the Pope decides whether to take administrative or judicial action.¹³⁵ If the Pope decides to take the administrative route, he may instruct the College of Bishops to order an offending bishop to a secluded monastery to live out a life of prayer and penance.¹³⁶ This method allows the offender to serve as a bishop and priest, and contains any modicum of a scandal within the Church walls.

If the Pope decides to take judicial action, he must follow the procedures set forth in Canon 1717.¹³⁷ Canon 1717 requires that any penal trial must begin with a preliminary inquiry about the facts, circumstances, and the responsibility of the accused.¹³⁸ If, upon completing his review, the Pope decides there is enough evidence to substantiate an allegation of sexual abuse, then the Congregation for the Doctrine of the Faith¹³⁹ steps in—an apostolic tribunal would ensue, and it would be handled under the direction of the Congregation for the Doctrine of the Faith.¹⁴⁰ It is possible, though not mandatory, for the Pope to invoke Canon 1722, which places the accused on administrative leave.¹⁴¹ Under this Canon, there are several options the Pope can select from to impose as punishment.¹⁴² The accused can be excluded from the sacred ministry or from his office and ecclesiastical functions.¹⁴³ The accused can also be forced to live in an arbitrarily-selected territory or he can be forbidden to live in a particular territory.¹⁴⁴ Finally, the accused can be prohibited from public participation in the Holy Eucharist.¹⁴⁵

There are three possible outcomes in a canonical trial: guilty, not guilty, or not proven.¹⁴⁶ The last verdict, “not proven,” indicates that, even though no condemnation or penalty was imposed, the allegations were concerning enough that Church officials should be wary when assigning the accused to unsupervised ministries with children.¹⁴⁷

¹³² *Id.*

¹³³ Cindy Wooden, *Canon lawyers explain how Vatican abuse trials function*, CRUX TAKING THE CATH. PULSE (Aug. 11, 2018), <https://cruxnow.com/vatican/2018/08/11/canon-lawyers-explain-how-vatican-abuse-trials-function/>.

¹³⁴ Patrick J. Wall, *Not-So-Great Expectations for the Canonical Trial of Archbishop Anthony Sablan Apuron OFM Cap* (Feb. 7, 2017), <https://patrickjwall.wordpress.com/2017/02/07/not-so-great-expectations-for-the-canonical-trial-of-archbishop-anthony-sablan-apuron-ofm-cap/>.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Rev. Francis Morrissey, IX, *The Preliminary Investigation for Penal Cases: Some Thoughts on Process*, ST. PAUL UNIV., <http://www.elephantsinthelivingroom.org/docs/Justice11.pdf>.

¹³⁸ *Id.*

¹³⁹ Wooden, *supra* note 133.

¹⁴⁰ *Id.*

¹⁴¹ Morrissey, *supra* note 137.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Wooden, *supra* note 133.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

III. CURRENT PENNSYLVANIA LEGISLATION REGARDING CHILD SEXUAL ABUSE AND GRAND JURY REPORT

Pennsylvania child sexual abuse laws are considered among the worst in the country in protecting children from sexual abuse due to the civil and criminal statutes of limitations.¹⁴⁸ Pennsylvania is lagging behind many states in updating its statutes, despite being the state that has generated the most grand jury reports on child sexual abuse in the country.¹⁴⁹

The civil system and the criminal justice system serve different functions.¹⁵⁰ The civil system serves the purpose of redressing the impact of abuse on the victim, past or present.¹⁵¹ It also creates a deterrent for future institutional misconduct by imposing damages for endangering children.¹⁵² The criminal justice system protects future victims through incarceration of the offender and by requiring the offender to register on the sex offender registry.¹⁵³ Altering one justice system and not the other, or altering neither, deprives victims of complete justice. No state has eliminated both civil and criminal statutes of limitations on child sexual abuse to date.¹⁵⁴

Under Pennsylvania's current civil statute of limitations, victims who were under the age of eighteen when the abuse occurred can file civil claims until they reach the age of thirty.¹⁵⁵ That means a victim only has twelve years to come forward. According to Pete Saunders, the founder of the National Association for People Abused in Childhood (NAPAC), "the average time for a victim to speak out is twenty-two years after the last incident of abuse, but it can be much, much longer."¹⁵⁶

There are forty-one states, plus the District of Columbia, that have amended their statute of limitations for criminal prosecution for child sexual abuse since 2002, including Pennsylvania.¹⁵⁷ In 2002, the criminal statute of limitations in Pennsylvania was extended from twenty-three years old to thirty-one years old.¹⁵⁸ In 2010, the statute was revised and now criminal charges in Pennsylvania can be brought until the alleged victim reaches the age of fifty, if he or she was born after August 27, 2002.¹⁵⁹

¹⁴⁸ Michelle Merlin & Carol Thompson, *How other state's lawmakers have dealt with sex abuse legislation, and why Pennsylvania's may be behind*, THE MORNING CALL (Sept. 8, 2018), <https://www.mcall.com/news/breaking/mc-nws-priest-sex-abuse-bills-20180827-story.html>.

¹⁴⁹ HAMILTON, *supra* note 10.

¹⁵⁰ *Id.* at 37.

¹⁵¹ *Id.* at 38.

¹⁵² *Id.*

¹⁵³ *Id.* at 37.

¹⁵⁴ HAMILTON, *supra* note 10, at 6.

¹⁵⁵ Dave Sutor, *House, Senate child abuse bills both address statute of limitations, differ on retroactivity*, THE TRIB.-DEMOCRAT (Feb. 28, 2017), https://www.tribdem.com/news/house-senate-child-abuse-bills-both-address-statute-of-limitations/article_1fb104ea-fe09-11e6-8154-2b774e538b47.html.

¹⁵⁶ Polly Dunbar, *Why abuse victims wait until their twilight years to come forward*, THE TELEGRAPH (June 19, 2016), <https://www.telegraph.co.uk/women/life/why-abuse-victims-wait-until-their-twilight-years-to-come-forward/>.

¹⁵⁷ HAMILTON, *supra* note 10, at 5; Merlin & Thompson, *supra* note 148; Kevin Jones, *Does the Pa. grand jury report mean changes for statutes of limitations?* CATH. NEWS AGENCY (Aug. 17, 2018), <https://www.catholicnewsagency.com/news/does-the-pa-grand-jury-report-mean-changes-for-statutes-of-limitations-58397>.

¹⁵⁸ HAMILTON, *supra* note 10, at 26.

¹⁵⁹ Sutor, *supra* note 155.

A. *Fortieth Statewide Investigating Grand Jury Report – Dioceses of Pennsylvania*

The grand jury was tasked with investigating child sexual abuse in six dioceses—every diocese in the state except Philadelphia and Altoona-Johnstown, because both were already subjects of previous grand jury investigations.¹⁶⁰ The grand jury heard testimony from dozens of witnesses and reviewed half a million pages of internal diocesan documents and secret archives.¹⁶¹ After two years, the investigation revealed credible allegations against over three hundred priests and identified over one thousand child victims.¹⁶² Out of the three hundred priests that were identified as offenders, there were only two presentments issued: one against a priest in the Greenburg Diocese, and the other against a priest in the Erie Diocese.¹⁶³ The report explained that these were the only two presentments that were possible due to Pennsylvania’s current statute of limitations.¹⁶⁴

The grand jury expressed its disdain for the current state of the statute of limitations, which ultimately allows for a lack of cleric accountability in the report, by stating:

Despite some institutional reform, individual leaders have largely escaped public accountability. Priests were raping little boys and girls, and the men of God who were responsible for them not only did nothing; they hid it all. For decades, Auxiliary bishops, bishops, archbishops, and cardinals have mostly been protected; many including some named in this report have been promoted.¹⁶⁵

It was the lack of accountability and the nature of the acts committed against children that led the grand jury to make the following four suggestions to reform Pennsylvania law: (1) eliminate the age limits for child victims of sexual abuse to file criminal complaints, (2) open a “civil window” to allow victims who have been barred by the statute of limitations to file suits against their perpetrators, (3) tighten mandatory reporting laws, and (4) eliminate nondisclosure agreements that bar victims from cooperating in criminal prosecutions.¹⁶⁶

B. *Mandated Reporting Laws*

Pennsylvania, along with every state, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, has a mandated reporting

¹⁶⁰ GRAND JURY REPORT, *supra* note 2.

¹⁶¹ Katie Meyer et al., *Report Reveals Widespread Sexual Abuse by Over 300 Priests in Pennsylvania*, WHYY (Aug. 14, 2018, 5:25 PM), <https://whyy.org/articles/report-detailing-widespread-child-sexual-abuse-by-pa-catholic-clergy-released-after-long-legal-battle/>.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Tim Darragh & Riley Yates, *Key Pennsylvania Grand Jury Recommendation Faces Opposition from Catholic Church*, THE MORNING CALL (Feb. 10, 2019, 12:05 PM), <https://www.mcall.com/news/nationworld/pennsylvania/mc-nws-grand-jury-recommendations-20180816-story.html>.

statute in place that requires designated professionals to report child abuse and neglect.¹⁶⁷ Title 23 – Domestic Relations of the Pennsylvania Statute, Section 6311 states that a “clergyman, priest, or any spiritual leader of any regularly established church” shall make a report of suspected child abuse if he has reasonable cause to suspect that a child is the victim of child abuse subject to Section 6311(b).¹⁶⁸ Section 6311(b) reads as follows:

A mandated reporter enumerated in subsection (a) shall make a report of suspected child abuse ... if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances: (1) the mandated reporter comes into contact with the child in the course of employment, occupation, and practice of a profession or through a regularly scheduled program, activity or service, (2) the mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution organization school regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child (3) a person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse, and (4) an individual of fourteen years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.¹⁶⁹

If a person who is required to report a suspected case of child abuse or make a referral to the appropriate authorities willfully fails to do so, under Section 6319(a) of Title 23, he has committed an offense.¹⁷⁰ An offense under this section is a third degree felony if the person willfully fails to report, if the child abuse constitutes a felony in the first degree or higher, and if the person has direct knowledge of the nature of the abuse.¹⁷¹ Any other offense not referenced in Section 6319(a) is considered a misdemeanor in the second degree.¹⁷² The statute calls for penalizing the continuance of failing to report abuse, but only if the abuse of the child is actively taking place.¹⁷³ To be clear, the statute does not require clergymen to report suspected past child sexual abuse.

C. Pennsylvania Senate Bill 261 and Amendments

Approximately six weeks after the Attorney General’s office released the grand jury report, Pennsylvania State House Representative Mark Rozzi introduced an amended version of Senate Bill 261 (“S.B. 261”).¹⁷⁴ The Senate’s original legislation sought to remove civil lawsuit time

¹⁶⁷ U.S. DEP’T OF HEALTH & HUM. SERVS., CHILDREN’S BUREAU, CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT 3 (2016), *available at* <https://www.childwelfare.gov/pubPDFs/clergymandated.pdf>.

¹⁶⁸ 23 PA. STAT. AND CONS. STAT. ANN. § 6311 (West 2015).

¹⁶⁹ *Id.*

¹⁷⁰ 23 PA. STAT. AND CONS. STAT. ANN. § 6319 (West 2014).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Darragh & Yates, *supra* note 166.

¹⁷⁴ Steve Esack, *Pennsylvania House Moves Closer to Approving Bill Giving Childhood Sexual Abuse Victims More Time to Sue*, THE MORNING CALL (Sept. 24, 2018, 7:35 PM),

limits for future victims or victims who have not reached the age of thirty.¹⁷⁵ The bill would also abolish criminal prosecution time limits on future sexual abuse cases.¹⁷⁶ The bill is ultimately seeking to eliminate the criminal and civil statutes of limitations for child sexual abuse crimes moving forward.¹⁷⁷ The amended version of S.B. 261 proposes a two-year retroactive window in which victims, who have surpassed the age of thirty can file civil complaints against their alleged abuser and his or her employer.¹⁷⁸

On October 17, 2018, the last day of the 2018 Pennsylvania Senate session term, discussions and negotiations regarding S.B. 261 were taking place.¹⁷⁹ However, critics of the bill were not willing to vote on the matters proposed in the amended version of S.B. 261.¹⁸⁰ Opponents of the bill argue that the two-year retroactive window violates the Remedies Clause of the Pennsylvania State Constitution.¹⁸¹ As such, S.B. 261 remains on the docket for review and was expected to be addressed in January 2019; as of the time of this writing, after January 2019, it has not yet been addressed.¹⁸² In addition to disagreement between senators, there was extreme opposition by lobbyists for the Church arguing that retroactive lawsuits would be a colossal financial blow to the community and the Church itself.¹⁸³ For example, the President of the Pennsylvania Catholic Conference, Bishop Ronald W. Gainer of Harrisburg, contended that the proposal “would force the people who make up an organization like the Catholic Church today to defend themselves against a crime that was committed in their parish, school, or charitable program years ago.”¹⁸⁴

VI. RECOMMENDATIONS TO PENNSYLVANIA LEGISLATORS

Pennsylvania House representatives lobbying to add the two-year window amendment to S.B. 261 are moving in the right direction. But, as the last attempted Senate vote demonstrated, it may not be the appropriate time to lobby for retroactive justice. Perhaps the House should follow the Senate’s recommendation and leave the retroactive window clause behind for now. Legislators should focus on specifically eliminating or extending the statutes of limitations and not on retroactive retribution. The primary purpose of the proposed changes should be to stem the tide of child sexual abuse and prevent future abuse from occurring—retroactive punishment should be a secondary goal. The two-year window, in theory, sounds just and fair to those who have missed

<https://www.mcall.com/news/nationworld/pennsylvania/mc-nws-pennsylvania-legislature-child-sex-abuse-20180924-story.html>; see also Ivey DeJesus, *Reform to aid child sexual abuse victims comes down to Senate’s last day*, PENN LIVE (Oct. 16, 2018), https://www.pennlive.com/news/2018/10/reform_to_statute_of_limitatio.html.

¹⁷⁵ Esack, *supra* note 174.

¹⁷⁶ *Id.*

¹⁷⁷ Russ O’Reilly, *Sen. Bill could waive statute of limitations*, ALTOONA MIRROR (Sept. 30, 2018), <http://www.altoonamirror.com/news/local-news/2018/09/sen-bill-could-waive-statute-of-limitations/>.

¹⁷⁸ *Id.*

¹⁷⁹ See DeJesus, *supra* note 174.

¹⁸⁰ See *id.*

¹⁸¹ Esack, *supra* note 174.

¹⁸² Ivey DeJesus, *Measure to aid child sex abuse victims appears stalled until January*, PENN LIVE (Oct. 18, 2018), https://www.pennlive.com/news/2018/10/senate_has_smattering_of_votes.html.

¹⁸³ Joe Messa, *PA Senate Has Opportunity to Provide Civil Justice to Long-Silenced Victims of Child Sexual Abuse*, Messa & Associates (Oct. 17, 2018), <https://www.messalaw.com/pa-senate-has-opportunity-to-provide-civil-justice-to-long-silenced-victims-of-child-sexual-abuse/>; DeJesus, *supra* note 182.

¹⁸⁴ Levin, *supra* note 32.

their opportunity due to the current laws in place but, at the moment, it is evident that the opposition is too strong. At this time, the best way to move forward would be to focus on victims who may be nearing the statute of limitations but have not yet missed the cut off. Focusing on passing the bill does not mean that the victims who have not been able to bring suit in the past deserve justice any less. In an effort to face less resistance, however, the opted stance should be taking incremental steps in order to reach the ultimate goal.

It is important to keep the mandated reporter statute in place, even though it may seem that clergymen have been choosing to neglect it as they continue to live by the Pontifical Secret. Although the statute may not be serving its purpose to the fullest when it comes to clergymen, eliminating it would allow for more child abuse from other predators. Expanding the statute, or “tightening” the law, as the grand jury suggested, may cause over-reporting. As seen after the 2014 changes to the statute (brought about after the conviction of former Pennsylvania State football coach, Jerry Sandusky), county child protection services were inundated with unfounded complaints.¹⁸⁵ Instead of granting more protection to child victims, the change in the statute diverted attention from children who needed the most help.¹⁸⁶

V. SUGGESTIONS TO THE ROMAN CATHOLIC CHURCH

As an institution that believes in redemption, rehabilitation, and forgiveness of sin, it is understandable that the Church continues to adhere to the Pontifical Secret and the pastoral approach to disciplining clergy members who have engaged in sexual abuse against children. Nevertheless, the time has come for the Church to accept that child sexual abuse is more than a moral sin. Child sexual abuse should be, first and foremost, considered a crime. It is true that an offender has both a constitutional right to confront his accuser and to a fair trial but, unlike a regular civilian, an offending clergy member has an extra layer of protection against incrimination. A cleric is, and will always be until further notice, protected by the Pontifical Secret if he or she has sexually abused a child. The Pontifical Secret has prioritized maintaining the image of the Church over punishing offending clerics. This stance has inadvertently denied children who have been abused the chance of obtaining justice. The Pontifical Secret, in tandem with the pastoral approach the Church has adopted, is allowing offenders to avoid any responsibility for the crimes they have committed. Even more egregious is the possibility that these two principals are affording offending clergy members the opportunity to continue sexually abusing children. Instead of promoting rehabilitation prior to or instead of judicial sanctioning, the Church should seek to rehabilitate an offender once he has been criminally or civilly punished so as to afford the victims the justice they deserve. This way, the mission of the Church would still be intact by offering the offender a chance to repent and redeem himself, while the victim receives the justice he or she deserves.

The Holy See should also consider revising the 1983 Code to allow bishops to temporarily remove or quarantine a suspected offender pending further investigation. There would need to be a standard of proof set in place for the bishop(s) to determine whether the priest is deserving of such treatment but waiting until a canonical trial to remove an offending member is too little, too late. A bishop should have the discretion to remove a possible offender from his environment just like a judge does when he remands an arrestee pending trial. Albeit, a bishop can invoke Canon 1722, but the definition of administrative leave is lacking. What should be imposed is a clear and

¹⁸⁵ Darragh & Yates, *supra* note 166.

¹⁸⁶ *Id.*

express policy allowing a bishop to temporarily remove the suspected offender if there is enough evidence to show that he might re-offend while awaiting trial. Allowing the accused to remain in the diocese or parish he serves gives him ample opportunity to continue abusing children, should he choose to do so.

Further, to assist in thwarting any future sexual abuse, the Church should reexamine whether acts of child sexual abuse should be under the protection of the Pontifical Secret. In 2014, a similar suggestion was brought forth by the United Nations' Human Rights Committee in the Convention on the Rights of the Child to the Holy See.¹⁸⁷ The Committee expressed deep concern about child sexual abuse committed by members of the Church operating under the authority of the Holy See and highlighted the following:

Due to a code of silence imposed on all members of the clergy under penalty of excommunication, cases of child sexual abuse have hardly ever been reported to the law enforcement authorities in the countries where the crimes were committed.¹⁸⁸

The Committee further spoke about how confidential proceedings conducted by the Holy See for disciplinary measures have ultimately allowed “the vast majority of abusers and almost all those who have concealed child sexual abuse to escape judicial proceedings in States where the abuses were committed.”¹⁸⁹ In a response to the Convention's suggestions, Pope Francis issued a formal letter seemingly dismissing the request to remove child sexual abuse cases from under the protection of the Pontifical Secret.¹⁹⁰

Although Pope Francis elected not to address the issue of the Pontifical Secret's coverage in 2014, he has now been forced by the court of public opinion to discuss the prevention of clergy sexual abuse and protection of children. In September 2018, Pope Francis summoned a global Bishop Conference to specifically address these issues.¹⁹¹ The summit took place from February 21st through the 24th in Vatican City.¹⁹² Never in the history of the Roman Catholic Church had a Pope called a summit to discuss clergy engaging in and or covering up child sexual abuse.¹⁹³ According to Cardinal Daniel DiNardo, the president of the U.S. Conference of Catholic Bishops, the four-day summit was fruitful.¹⁹⁴ Responsibility, transparency, and accountability were the main topics of discussion.¹⁹⁵ The summit itinerary included video testimony from child victims,

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ See Letter from Pope Francis, Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child (Feb. 5, 2014).

¹⁹¹ See Tiziana Fabi, *Pope Calls for February Meeting of Bishops on Sexual Abuse*, NBC NEWS (Sept. 12, 2018, 8:24 AM), <https://www.nbcnews.com/news/world/pope-calls-february-meeting-key-bishops-sexual-abuse-n908751>.

¹⁹² *Head of US bishops after Vatican abuse summit: 'Intensify the Dallas Charter'*, CATH. NEWS AGENCY (Feb. 24, 2019), <https://www.catholicnewsagency.com/news/head-of-us-bishops-after-vatican-abuse-summit-intensify-the-dallas-charter-58145> [hereinafter known as *Intensify the Dallas Charter*].

¹⁹³ Tom Gjelten, *As Pope Holds Sex Abuse Summit, U.S. Catholics Not Hopeful For 'Bold Moves'*, NPR, (Feb. 20, 2019), <https://www.npr.org/2019/02/20/696051008/as-pope-holds-sex-abuse-summit-u-s-catholics-not-hopeful-for-bold-moves>.

¹⁹⁴ *Intensify the Dallas Charter*, *supra* note 192.

¹⁹⁵ *Id.*

working group discussions, a penitential liturgy, and a closing mass.¹⁹⁶ In his final remarks, Pope Francis called for the creation of concrete and effective measures; however, Vatican aides stated that the Pope viewed the summit more as an opportunity for catechesis or religious education, instead of a formal policymaking conference.¹⁹⁷ No finite solutions were reached at the end of the summit, but DiNardo has said that he and the rest of the U.S. bishops are preparing proposals for an upcoming U.S. Bishops' Conference assembly in June of 2019.¹⁹⁸ It seems like the takeaway from the summit was an agreement that bishops and cardinals who abuse or cover up abuse must be held accountable, and that formal protocols must be established for handling such situations.¹⁹⁹ DiNardo alluded to the current charter in place, the 2002 Charter for the Protection of Young People, more commonly known as the Dallas Charter, and stressed a need to intensify it.²⁰⁰ While it is not clear what DiNardo meant by "intensifying" the Dallas Charter, he has advocated for active involvement and collaboration from the laity.²⁰¹ DiNardo's ideal situation includes ensuring that the lay board is independent while remaining a part of the Church.²⁰²

As the U.S. Conference of Bishops prepares their proposals for the June assembly, it is important that they keep DiNardo's suggestions in mind. Actively enforcing the Dallas Charter and explicitly setting out formal protocols may be the first step in correcting what the Church has allowed to go on for so long. The most important notion arising from DiNardo's suggestions is the idea of empowering the laity. The civilian-led review board can provide unbiased policing and decrease coverups. In order for bishops and cardinals to respect the instructions and decisions handed down by the civilian review board, the Holy See must require adherence to the Dallas Charter. In order for the review board to serve its purpose, the Holy See must quell resistance from bishops who argue that there are no "theological or canonical requirements" for them to obey the instructions provided by the review board.²⁰³

VI. CONCLUSION

As a society, we must strive to eliminate the threat of child sexual abuse. Our first step toward reaching that end should be to create and enforce retroactive solutions that offer the victims and their families justice. The suggestions and recommendations posed to revise current civil and criminal statutes of limitations in cases of child sexual abuse in Pennsylvania are as such. The government and legislators can play a part in providing adequate punishment to the offenders and justice for victims. But the ultimate goal is for the Roman Catholic Church, as an institution, to accept responsibility for the atrocities being committed by some of its clergy. It is time for the Church to devise a system that does not prioritize offending clerics over victims. It is time for the Church to shed the idea that shielding predators will mollify the public's concerns or stop child sexual abuse from occurring within the Church. Blindly trusting that the Church will police itself

¹⁹⁶ *Id.*

¹⁹⁷ Gjelten, *supra* note 193.

¹⁹⁸ *Id.*; *Intensify the Dallas Charter*, *supra* note 192.

¹⁹⁹ *Intensify the Dallas Charter*, *supra* note 192.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Cindy Wooden, *Summit affirms need to hold bishops accountable, U.S. cardinal says*, CRUX TAKING THE CATH. PULSE (Feb. 25, 2019), <https://cruxnow.com/february-abuse-summit/2019/02/25/summit-affirms-need-to-hold-bishops-accountable-u-s-cardinal-says/>.

²⁰³ Roebuck et al., *supra* note 33.

should no longer be acceptable. Of course, not all clergymen engage in these heinous acts or cover them up, but, as Pope Francis has so often declared, there should be zero tolerance for clergy who sexually abuse children.²⁰⁴ It is time for Pope Francis, as the leader of the Roman Catholic Church, to turn his words into actions.

²⁰⁴ Kieran Tapsell, *Zero Tolerance? The Facts Don't Support the Pope's Claims on Child Abuse*, THE GUARDIAN (Jan. 31, 2018), <https://www.theguardian.com/commentisfree/2018/jan/31/zero-tolerance-the-facts-dont-support-the-popes-claims-on-child-abuse>.