



## GUIDELINES

### **for dealing with sexual abuse of minors and of adult charges by clergy, religious and other staff within the domain of the German Bishops' Conference**

#### **A. INTRODUCTION**

##### **Fundamental matters**

1. The German bishops have agreed the following Guidelines in their responsibility to protect the dignity and integrity of young people and of adult charges. They therefore constitute a continuation of the 2002 and 2010 Guidelines and take account of the instructions given by the Congregation for the Doctrine of the Faith in its Circular letter to the Episcopal Conferences of 3 May 2011.<sup>1</sup>

Victims of sexual abuse require particular attentiveness. They must be protected against further sexual violence. They and their relatives must be offered support and guidance in dealing with experience of abuse. Sexual abuse above all of children and juveniles, as well as of adult charges, is a loathsome act. Particularly if it is committed by clergy, religious<sup>2</sup> or other staff of the Church<sup>3</sup>, this frequently shakes the victims' and their families' fundamental trust in God and in their fellow humans, at the same time as having the potential to cause serious psychological damage. The offenders cause serious damage to the credibility of the Church and Her mission.<sup>4</sup> It is Her duty to face up to Her responsibility.<sup>5</sup>

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<sup>1</sup> The Congregation for the Doctrine of the Faith stated on 5 April 2013 that Pope Francis had tasked the Congregation with pursuing the course taken by Pope Benedict XVI and with proceeding in a decisive manner with regard to the cases of sexual abuse; this means above all the measures to protect minors, help for those who have been victims of such attacks in the past, taking suitable action against the guilty parties and the contribution of the Episcopal Conferences in formulating and implementing the necessary instructions in this field, which is so important for the witness and credibility of the Church.

<sup>2</sup> Religious are understood below to be the members of the institutes of consecrated life and societies of apostolic life (cf. canons 573 to 746 CIC).

<sup>3</sup> Cf. Declaration by the German Bishops' Conference at its spring full assembly held in Freiburg from 22 to 25 February 2010 on the occasion of the discovery of cases of sexual abuse of minors within the Church

<sup>4</sup> Cf. Pope Benedict XVI, Address to the Bishops of Ireland on their *ad Limina* visit, 28 October 2006, 4th paragraph; the same talking with Peter Seewald in the interview book entitled "*Licht der Welt*" of October 2010: "It is a particularly grievous sin when someone who is actually to help people come to God, and in whom a child or young person trusts to

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The Guidelines are to guarantee that the German Bishops' Conference takes a coordinated approach. They form the basis for the regulations which the diocesan bishops are to issue for their own dioceses. Catholic institutions for which no diocese is responsible are only to be recognised by the (arch)diocese as eligible for promotion if they have undertaken to apply the Guidelines or the respective diocesan regulations. Where they have their own regulations, these must be recognised as equivalent regulations by the competent agency.

The Guidelines shall also apply to charitable institutions for which the bishop exercises the ultimate responsibility in accordance with the *Motu Proprio "Intima Ecclesiae natura"* of 11 November 2012.

The regulations of secular and ecclesial labour and privacy law shall remain unaffected.

The Regulation on Data Protection in the Church (*Anordnung über den kirchlichen Datenschutz – KDO*) shall apply unless the Guidelines provide otherwise in terms of privacy law. The Ordinary is to issue more detailed regulations on how to deal with personal data in minutes and other documents.

### **The definition of "sexual abuse" within the meaning of the Guidelines**

2. These Guidelines take account of the provisions of both ecclesial and secular law. The term "sexual abuse" within the meaning of these Guidelines shall include criminal sexual acts. The Guidelines shall hence be deemed to refer

- both to acts in accordance with Part 13, as well as to further sexual criminal offences as defined in the German Criminal Code (*StGB*),
- as well as to those in accordance with canon 1395 § 2 CIC in conjunction with Art. 6 § 1 SST<sup>6</sup>, in accordance with canon 1387 CIC in conjunction with Art. 4 § 1 n.4 SST, and in accordance with canon 1378 § 1 CIC in conjunction with Art. 4 § 1 n.1 SST, insofar as they are committed on minors or individuals who habitually lack the use of reason (Art. 6 § 1 n.1 SST).

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find the Lord, instead abuses them and leads them away from the Lord. This makes belief as such unbelievable, and the Church can no longer credibly portray itself as the Lord's proclaimer." (p. 42).

<sup>5</sup> Cf. Pope Benedict XVI, Pastoral Letter of the Holy Father Pope Benedict XVI to the Catholics of Ireland of 19 March 2010, No. 7: "You [who have abused children] betrayed the trust that was placed in you by innocent young people and their parents, and you must answer for it before Almighty God and before properly constituted tribunals. ... I urge you to examine your conscience, take responsibility for the sins you have committed, and humbly express your sorrow. ... God's justice summons us to give an account of our actions and to conceal nothing. Openly acknowledge your guilt, submit yourselves to the demands of justice, but do not despair of God's mercy."

<sup>6</sup> Pope John Paul II, Apostolic Letter *motu proprio datae Sacramentorum sanctitatis tutela* [SST] of 30 April 2001. The substantive part announced in this letter exists in its valid form as *Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis* of 21 May 2010. [These provisions are cited, referring to the applicable Article, adding the abbreviation for the reference document: SST.]

In addition, and taking account of the particularities of the individual case, they shall apply to acts falling below the threshold of punishability which constitute overstepping a line or another sexual attack in pastoral or teaching work, as well as in care or nursing, when dealing with children and juveniles and adult charges.

They shall relate to all forms of conduct and to the handling of matters with a sexual connection vis-à-vis minors and adult charges which take place with their alleged consent, without their consent or against their explicit will. This also includes all acts to prepare, implement and keep secret sexualised violence. Those acting on the part of the Church must therefore always bear in mind that points of view may differ when it comes to the punishable acts to be taken into account here in both fields of the law (for instance with regard to the group of individuals concerned, the age of the victim, the period of limitation). The provisions of both fields of the law must be complied with. The procedural rules which apply to the Church's actions shall be those which are applicable at the time of the start of the investigation, regardless of how long ago the sexual abuse took place.

3. Adult charges within the meaning of these Guidelines shall be deemed to be persons with a disability, or individuals who are frail or ill, vis-à-vis whom clergy, religious and other staff have a special duty of care because they have been entrusted to their care or custody and are particularly vulnerable within the meaning of Guideline No. 2 because they are in need of protection and assistance.

## **B. RESPONSIBILITIES**

### **Nomination of contact persons and establishment of a staff of advisers**

4. The diocesan bishop shall commission at least two suitable individuals as contacts to provide information regarding factual indications of suspicion of sexual abuse against minors, as well as against adult charges, by clergy or other staff in the service of the Church. It is recommended to ensure that both a woman and a man are nominated.

5. The commissioned contact persons should not be staff of the (arch)diocese on active service.

6. The name and address of the contact persons shall be made public in a suitable manner, in particular in the Official Gazette and on the diocese's Internet page.

7. The diocesan bishop shall establish a standing staff of advisers to provide advice on questions related to dealing with sexual abuse of minors and adult charges. This shall include both women and men with psychiatric-psychotherapeutic, pastoral as well as legal expertise<sup>7</sup>

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<sup>7</sup> In the event of a staff member in the service of the Church being affected, expertise in labour law must be guaranteed.

and expertise in ecclesial law, and well-founded specialist experience and skills in working with victims of sexual abuse. The staff of advisers may also include individuals who are employed in the service of the Church. Further individuals with suitable specialist areas may be involved in individual cases.

8. Several diocesan bishops together may establish an interdiocesan staff of advisers.
9. The responsibility of the diocesan bishop shall remain unaffected.

#### **Receipt of reports and information to the Ordinary**

10. The commissioned individuals shall accept information regarding sexual abuse against minors and adult charges by clergy, religious or other staff in the service of the Church, and shall effect an initial evaluation of the reports as to their plausibility and with regard to the further steps to be taken.

11. All staff who are in the service of the Church shall inform the responsible individual at management level of the institution in which they are employed as quickly as possible of such facts and reports coming to their notice. They may however also directly approach the commissioned contact persons. Taking account of the provisions on the sacramental seal (cf. canons 983 and 984 CIC<sup>8</sup>), the obligation shall always exist in the context of pastoral discussions to report to one of the commissioned contact persons when there is a risk to life and limb, as well as when further putative victims may be affected. The provisions contained in section 203 of the Criminal Code shall be complied with in so doing. All and any statutory obligations of confidentiality or obligations to notify with regard to state agencies (for instance youth welfare office, school supervision), as well as towards service superiors, shall remain unaffected thereby.

12. Anonymous reports shall be noted if they contain factual indications for investigations.

13. The Ordinary shall be informed by the commissioned contact persons promptly, regardless of the plausibility considerations (cf. Guideline No. 10). This shall also apply to the competent individual of the management level (cf. Guideline No. 11). The Ordinary shall ensure that others are informed who bear a particular responsibility for the accused individual: with clergy who belong to a different diocese or to another diocese of incardination, this shall be the Ordinary presiding over this diocese, and with religious this shall be the competent higher superior.

#### **Responsibilities within the further procedure**

14. The following may be responsible for the further procedure with regard to clergy: the local Ordinary of the domicile of the accused person (cf. canon 1408 CIC) or the local

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<sup>8</sup> Cf. also canon 1388 § 1 CIC in conjunction with Art. 4 § 1 n.5 SST.

Ordinary of the place where the delict was committed (cf. canon 1412 CIC), or the Ordinary presiding over the accused person's diocese of incardination. The Ordinary who is informed first shall ensure that a decision is taken quickly on responsibility for the further proceedings.

15. In cases of religious who act on an Episcopal mandate, the diocesan bishop who has issued this mandate shall be responsible, regardless of the responsibility of the higher superior. Where the religious no longer act on an Episcopal mandate, the diocesan bishop shall support the higher superior.

16. In other cases, responsibility shall lie with the respective higher superiors. The latter shall be strongly advised to inform the diocesan bishop with local responsibility of actual indications of suspicion of sexual abuse of minors or adult charges in their area of responsibility, as well as of any steps which have been taken (cf. Guideline No. 29).

### **C. METHOD TO BE FOLLOWED ON INFORMATION COMING TO NOTICE**

#### **Discussion with the putative victim**

17. Should a putative victim (where appropriate his/her parents or holders of personal custody) wish to provide information regarding suspicion of sexual abuse, one of the commissioned contact persons shall arrange a discussion. In coordination with the Ordinary, the commissioned contact person may consult a further individual. The putative victim (where appropriate his/her parents or holders of personal custody) may bring to the discussion a person enjoying his/her confidence. An indication shall be made at the beginning of the discussion of the obligation to forward suspicion of abuse in accordance with the provisions of Guidelines Nos. 29 and 30 to the public prosecution and other responsible authorities. The magnitude of the accusation shall also be appropriately indicated.

18. Particular account shall be taken of the protection of the putative victim and of protection from the public disclosure of information which is given in confidence.

19. Minutes shall be taken of the talks, in which the complete personal details shall be included where possible. The minutes shall be signed by all parties present.

20. The putative victim (where appropriate his/her parents or holders of personal custody) shall be encouraged to make his/her own report to the criminal prosecution authorities.

21. The Ordinary shall be informed of the outcome of the discussion.

#### **Interview with the accused person**

22. Insofar as the clarification of the facts is not placed at risk and the investigative work of the criminal prosecution authorities is not hindered thereby, a representative of the

Ordinary or of the employer with the consultation of a lawyer – possibly in the presence of the commissioned contact person – shall interview the accused person with regard to the accusations. The protection of the putative victim must always be ensured before the discussion takes place. In cases in which sexual abuse is connected with a delict against the sanctity of the Sacrament of Penance (cf. Art. 4 SST), the name of the putative victim may only be divulged to the accused person with that person's express consent (cf. Art. 24 §1 SST).

23. The accused person may bring a person enjoying his/her confidence.

24. The accused person shall be informed of the possibility to refuse to make a statement (cf. canon 1728 §2 CIC). If priests are accused, they shall be informed that they are absolutely obliged to keep the sacramental seal (cf. canons 983 and 984 CIC<sup>9</sup>).

25. Information shall be provided on the obligation to forward suspicion of abuse in accordance with the provisions of Guideline No. 29 to the public prosecution and other responsible authorities. The accused person shall be informed of the possibility to report him/herself to the criminal prosecution authorities.

26. Minutes shall be taken of the talks. The minutes shall be signed by all present.

27. The Ordinary shall be informed of the outcome of the talks.

28. The obligation of welfare shall also exist towards the accused person. He/she shall be presumed innocent until proven otherwise – regardless of any direct measures which are required.

**Cooperation with the state criminal prosecution authorities and other responsible authorities**

29. As soon as factual indications are available for the suspicion of a criminal offence in accordance with Chapter 13 or other sexual criminal offences of the Criminal Code (*StGB*) against minors or adult charges, a representative of the Ordinary shall forward the information to the state criminal prosecution authority and – insofar as legally required – to other responsible authorities (e.g. youth welfare office, school supervision). Legal obligations incumbent on other ecclesial bodies shall remain unaffected thereby.

30. The obligation to forward the information to the criminal prosecution authority shall only cease to apply exceptionally if this is the explicit will of the putative victim (or of his/her parents or holders of personal custody) and the waiver of a notification is legally permissible. In each case, the criminal prosecution authorities shall be involved if further dangers are to be

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<sup>9</sup> Cf. also Art. 24 § 3 SST; canon 1388 CIC in conjunction with Art. 4 § 1 n. 5 SST.

feared or further putative victims might have an interest in the criminal prosecution of the offences.

31. The reasons for the waiver of a notification shall require precise documentation, which shall be signed by the putative victim (where appropriate his/her parents or holders of personal custody).

**Preliminary Investigation in accordance with canon 1717 § 1 CIC**

32. In the event of a criminal offence having at least probably been committed by a member of the clergy, the Ordinary, in accordance with canon 1717 § 1 CIC, shall decree the initiation of a Preliminary Investigation, and shall nominate the person to carry out the Preliminary Investigation. The person who is to carry out the Preliminary Investigation shall hold the hearing of the accused person, complying with Guidelines Nos. 22 to 29. If there is a risk of the investigation work of the criminal prosecution authorities being hampered, the Preliminary Investigation must be suspended.

33. The person who is to carry out the Preliminary Investigation shall summarise the outcome of the Preliminary Investigation in a report to the Ordinary. The Preliminary Investigation files shall be kept in accordance with 1719 CIC.

34. If the Preliminary Investigation file confirms the suspicion of sexual abuse, the Ordinary shall inform the Congregation for the Doctrine of the Faith in accordance with Art. 16 SST in all cases which have been reported since 30 April 2001, and where the accused person is still alive, regardless of whether or not the Canonical criminal charge has lapsed. This information shall be furnished by completing a form provided by the Congregation, sending a copy of the Preliminary Investigation files, and enclosing a vote of the Ordinary, as well as a statement on the part of the accused. It shall be solely a matter for the Congregation to decide what further action is to be taken: whether it might derogate from prescription (Art. 7 § 1 SST), whether it takes on the case itself (cf. Art. 21 § 2 n.2 SST), and whether the decision is to be taken in a judicial process (Art. 21 § 1 SST) or by extrajudicial decree (Art. 21 § 2 n.1 SST).

35. A similar approach as in Guideline Nos. 32 to 33 is necessary with religious in accordance with canon 695 § 2 CIC, regardless of whether they are clergy. The higher superior is responsible for this.

**Measures to clarify the case**

36. If there are factual indications of the suspicion of sexual abuse of minors or adult charges, the Ordinary shall decide on the further steps to be taken, thereby taking the provisions of ecclesial and labour law into account. In the case of clergy, in accordance with Art. 19 SST the Ordinary can order concrete measures listed in canon 1722 CIC (for instance

exclusion from function; exclusion from the territory or place of work; exclusion from activities in which minors could be placed at risk).

37. Unless the Ordinary designates another suitable individual, he shall inform the commissioned contact person of the measures that have been decided on and of the respective state of implementation so that he/she may inform the putative victim (or his/her parents or holders of personal custody) thereof.

38. Insofar as regulations apply beyond this for the state area, those regulations shall apply accordingly.

#### **Steps to be taken in unsolved cases in accordance with state law**

39. If the suspicion of sexual abuse is not clarified in accordance with state law, for instance because it has become statute-barred, but factual indications exist justifying the presumption of sexual abuse of minors or adult charges, the responsible ecclesial agencies should endeavour wherever possible to bring about clarification themselves. Guidelines No. 36 and 37 shall apply *mutatis mutandis*, this ranging with clergy up to a decision of the Congregation for the Doctrine of the Faith.

40. In doing so, a forensic-psychiatric expert report on the accused person, and where appropriate also a plausibility report, can also be commissioned on the statement of the putative victim.

#### **Measures in the event of a false accusation**

41. If an accusation or suspicion proves to be ill-founded, this shall be recorded by the Ordinary in the final decree of the Preliminary Investigation. This decree shall be kept together with the investigation files in accordance with canon 1719 CIC.

42. It shall be the task of the Ordinary to restore the good name of an individual who has been wrongly accused or suspected by taking suitable steps (cf. canon 1717 § 2 CIC and canon 220 CIC).

### **D. ASSISTANCE**

#### **Assistance for the victim**

43. Assistance shall be offered or arranged for the victim and his/her relatives. The offers of assistance shall be orientated in line with the respective individual case. The offers of assistance shall include pastoral and therapeutic assistance. The victim may avail him/herself of the assistance of non-ecclesial facilities. This possibility shall also exist if the case has become statute-barred or the accused is deceased. This notwithstanding, victims may apply



for “benefits in recognition of the suffering imposed on the victims of sexual abuse” via the commissioned contact persons.

44. The Ordinary shall be responsible for the decision on the granting of concrete assistance; with regard to independent ecclesial institutions, the funding agency shall be responsible.

45. When granting assistance for a victim of abuse, there should where appropriate be close cooperation with the competent youth welfare office or with other specialist agencies.

#### **Assistance for ecclesial institutions, deaneries and parishes concerned**

46. The competent individuals of the ecclesial institutions, deaneries and parishes concerned shall be informed by the Ordinary regarding the state of any ongoing proceedings. They and their institutions and/or deaneries and parishes may receive support in order to be able to cope with the strains connected with the proceedings and their management.

#### **E. CONSEQUENCES FOR THE OFFENDER**

47. Action shall be taken against those acting in the service of the Church who have sexually abused minors or adult charges in accordance with the respective provisions of state and ecclesial service or labour law.

48. The person in question shall not be deployed in work with children, juveniles and adult charges within the Church.

49. A forensic-psychiatric expert report shall be commissioned in order to carry out a risk assessment on the person in question. Offenders who have a treatable psychological disturbance should undergo therapy.

50. The return of a member of the clergy to pastoral service – considering the punishments imposed on him – shall be ruled out if this service poses a danger for minors or adult charges or a nuisance.<sup>10</sup> This measure can also be taken if the offence has time lapsed.

51. It shall be incumbent on the Ordinary to ensure that the restrictions or conditions ordered by him/her are adhered to. With regard to clergy, this shall also apply for the period of retirement.

52. A member of a religious order who has been convicted of sexual abuse in accordance with canon 1395 § 2 CIC shall be treated in accordance with canon 695 § 1 CIC.

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<sup>10</sup> See Circular Letter of the Congregation for the Doctrine of the Faith to the Episcopal Conferences for developing guidelines (3 May 2011).

53. If a member of the clergy who has committed punishable sexual acts within the meaning of these Guidelines (cf. Guideline No. 2) is transferred within the diocese, and if he is appointed a new service superior, the latter shall be informed in writing of the special problems and of any instructions, whereby the statutory provisions shall be complied with. In the event of a transfer or move of place of residence to another diocese, the diocesan bishop or superior of the order in whose jurisdiction the offender is to be in future shall be informed in accordance with the above regulation. The same shall apply towards a new service superior in the Church, even if the sexual abuse becomes known after the transfer or move of place of residence, as well as after retirement. With staff in the service of the Church who change their workplace with the same legal entity, the new specialist superior shall be informed in a suitable manner, taking the statutory provisions into account. This duty to report shall also apply to the non-punishable sexual acts designated in Guideline No. 2.

#### **F. PUBLICITY**

54. The public shall be informed in a suitable manner, respecting the protection of the privacy of those concerned.

#### **G. SPECIAL PREVENTIVE MEASURE**

55. If there is reason for concern that a person has tendencies towards sexual deviance, a forensic-psychiatric assessment shall be urgently advised.

Furthermore, prevention shall be effected within the meaning of the Framework Regulation entitled "Prevention of sexual violence against minors and adult charges within the domain of the German Bishops' Conference" in the respectively valid version.

#### **H. STEPS TO BE TAKEN IN CASE OF SEXUAL ABUSE OF MINORS OR OF ADULT CHARGES BY PERSONS WORKING ON A VOLUNTEER BASIS**

56. The provisions of the Federal Child Protection Act (*Bundeskinderschutzgesetz*) shall apply when volunteers work with children and juveniles. Persons who have been guilty of sexual abuse of minors shall not be deployed in voluntary work with children and juveniles in the Church area (section 72a subs. 4 of Book VIII of the Social Code [*SGB VIII*]).

57. These Guidelines shall apply accordingly to reports of the sexual abuse of minors or adult charges by persons working on a voluntary basis in the domain of the Church with regard to the necessary procedural steps and offers of assistance.

**I. VALIDITY**

58. The above Guidelines shall apply for five years and shall be subject to a renewed assessment prior to extending the duration of their application.

Würzburg, 26 August 2013