



**House
Legislative
Analysis
Section**

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**CHILD ABUSE/NEGLECT
REPORTING BY CLERGY**

**House Bill 5984 as enrolled
Public Act 693 of 2002
Second Analysis (1-9-03)**

**Sponsor: Rep. Paul DeWeese
House Committee: Family and Children
Services
Senate Committee: Families, Mental
Health, and Human Services**

THE APPARENT PROBLEM:

Since January, the Catholic Church in the United States has been mired in a scandal involving scores of sexual abuse allegations levied against priests. In the vast majority of these allegations, the alleged incidents took place several decades ago. The scandal developed out of the case of Father John Geoghan, a priest in the Boston Archdiocese. The *Boston Globe* reported that since the mid-1990s, more than 130 people have come forward with stories of abuse at the hand of Father Geoghan. These allegations spanned more than three decades and involved at least six parishes throughout Greater Boston. In January, Father Geoghan was convicted of molesting a 10-year-old boy ten years ago.

In July 2001, the *Boston Globe* revealed that Boston Archdiocese Cardinal Bernard Law had known since 1984 that Father Geoghan had a history of sexually abusing minors. Indeed, Cardinal Law's knowledge of, and actions taken regarding, Father Geoghan's actions have been, in part, the subject of the Cardinal's deposition ordered by a Suffolk County, Massachusetts Superior Court Judge earlier this year. Despite the awareness of Geoghan's past actions and objections of several archdiocesan officials, Father Geoghan continued to serve several parishes. It wasn't until 1998 when Father Geoghan, who was ordained in 1962, was ultimately removed from the priesthood ("defrocked").

While the detail and the extent of Father Geoghan's actions have troubled many in the Catholic Church, others have been particularly troubled by the fact that it had taken three cardinals and several bishops within the Boston Archdiocese over three decades to finally remove Father Geoghan. The allegations in the Boston Archdiocese have resonated throughout the country. Indeed, people have come forward with decades-old stories and allegations of abuse from

nearly 30 states and the District of Columbia. Since January hundreds of priests suspected of sexually abusing minors have either resigned or have been taken off duty. That number continues to rise with each passing day. In several other states, diocesan officials have turned known cases over to law enforcement officials and local prosecutors. Others have checked personnel records to determine whether any old claims were filed and how they were handled.

Although sexual abuse has been a black cloud of sorts hanging over the head of the Catholic Church for a great number of years, the case that erupted out of Boston is extraordinary in terms of the sheer magnitude of the cases and the disclosure of the actions taken by the archdiocese in these cases. It was discovered that the archdiocese continued to shuttle accused priests from parish to parish for decades, and settle scores of lawsuits privately, many of which included confidentiality agreements that ensured that the allegations would not become public nor would they be turned over to law enforcement. Indeed, U.S. Conference of Catholic Bishops notes that "[i]n the past, secrecy has created an atmosphere that has inhibited the healing process and, in some cases, enabled sexually abusive behavior to be repeated." As the troubles of the archdiocese have continued to mount over the past year - some officials hinted at the possibility of bankruptcy - its embattled leader, Cardinal Bernard Law, resigned his post on December 14, 2002 amid a burgeoning chorus of protesters calling for his removal.

In Michigan, actions have been taken against several accused priests. The Detroit Archdiocese recently released the names of 51 priests who have been accused of sexual misconduct within the archdiocese over the 15 years. While the exact number of

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complaints against individual members of the clergy is not known, it is believed that several priests have had multiple complaints levied against them. In at least five of the cases, the archdiocese made confidential settlements with the alleged victims. The archdiocese sent its files of these cases to each of the counties within its jurisdiction: Macomb, Monroe, Oakland, St. Clair, and Wayne. Lapeer County, also within the archdiocese, did not have any cases.

The *Detroit Free Press* reported that Oakland County received complaints against 11 priests, Macomb County received 10 complaints, Wayne County received 19 complaints, Monroe County one complaint, and St. Clair County received two complaints. Currently, there are approximately 800 priests within the Archdiocese of Detroit alone.

Within the past year, officials have taken action against dozens of priests accused of sexual misconduct. A priest in Alpena was removed in March, ten years after the Detroit Archdiocese deemed him unfit for priesthood because of credible allegations that he molested teenage boys. In April, the Detroit Archdiocese removed a priest in Washington Township based on a review of an old allegation that was secretly settled for cash and the disclosure of previously undisclosed information. In March, a priest and administrator at two parishes within the Detroit Archdiocese resigned following credible allegations of sexual misconduct. A priest of two parishes in Edmore and Stanton within the Grand Rapids Archdiocese resigned in April after admitting that he molested a boy in another state several years ago. In January, a priest at a parish in Burton resigned after he admitted that he had inappropriate contact with an 8-year-old boy during the mid-1970's. It was recently reported that two priests from northern Michigan left their posts. One priest stepped down as pastor of parishes in Stephenson and Nadeau in Menominee County, amid a substantiated allegation of abuse that had taken place several years ago. The other priest stepped down as pastor of two parishes in Manton in Wexford County, due to an allegation in 1995 of abuse that had occurred in the 1970's. In May, the Associated Press reported that the Diocese of Grand Rapids reviewed old allegations of abuse dating from the 1950's to 1985 against 11 of its priests and substantiated 19 charges against eight priests. Though the statute of limitations has expired for each charge, none of the priests continued to hold a ministerial position.

Recently, the *Detroit News* reported that two more priests left their parishes within the Detroit

Archdiocese. One resigned his post as pastor of a parish in Memphis, and the other took a leave of absence from his post as priest of a parish in Taylor. The *Detroit Free Press* reported that the priest from Taylor continued to serve despite a 1997 settlement with an alleged victim of sexual assault. The *Detroit Free Press* also reported that of the 51 names of priests turned over to local prosecutors by the Detroit Archdiocese, four continue to serve. On May 10, 2002, the *Detroit Free Press* reported that the Wayne County Prosecutor's Office has opened investigations of 16 priests who have been accused of sexual abuse while serving in the Detroit Archdiocese. The announcement of the investigations came amid the disclosure that the archdiocese has removed another priest. In this case, the prosecutor's office received a complaint against a priest who had been disciplined a decade ago for molesting a young girl. At that time, the priest was removed from his parish and sent to receive therapy. Eventually, the priest was allowed to return after archdiocesan officials were told by therapists that the priest posed no danger.

In July, the *Detroit News* reported that the Archdiocese of Detroit disciplined four priests following credible allegations of sexual misconduct against each priest. A priest at a Livonia parish was placed on administrative leave following allegations against him dating back to 'the early years of his ministry', perhaps when he had served at a Detroit Parish. Another priest who most recently served at parishes in North Branch and Clifford, and who recently retired, was restricted from any public ministry following allegations from his 'earlier years' in the ministry, when he served at parishes in Warren, Gross Pointe Farms, Port Huron, and Trenton during the 1950s and 1960s. Another priest who was serving in Phoenix and who previously served as assistant pastor at a parish in Taylor was suspended from his ministerial activities in Phoenix following allegations of sexual misconduct dating back to the mid-1970s. The fourth priest resigned his post as pastor of a parish in Beverly Hills and was placed on senior priest status and placed on administrative leave by the Detroit Archdiocese in June.

More recently, the *Detroit Free Press* reported in late August that four other Catholic priests with connections to the Detroit Archdiocese were charged with sexual misconduct. In November, one who had left the priesthood 20 years ago after he was implicated in at least a dozen abuse cases in New Mexico pleaded no contest in Wayne County Circuit Court to seven counts of abuse involving two children during the 1960s and 1970s. He received one year in jail and five years of probation. Another

priest, who had been living in Hawaii at the time the charges were filed, spent 30 days in jail last month for molesting a child in the 1980s, though the *Detroit Free Press* reported that the priest allegedly sent a letter to the Detroit Archdiocese in 1993 admitting to sexually abusing 23 boys dating back to 1949. On December 18, 2002 a third priest was found guilty of indecent liberties with a child and acquitted on four counts of sodomy for molesting a child 30 years ago. The statute of limitations (see MCL 767.24) had not run out, due to the fact that the priest had left the Detroit area in 1976 for a parish in Key Largo, Florida. When the allegations first surfaced in March, the Archdiocese of Miami had placed the priest on administrative leave. The fourth priest is expected to go on trial in January.

The recent stories of the allegations involving priests from the Detroit Archdiocese and other dioceses throughout the state and country have revealed in many cases that church officials have not been very forthcoming in their disclosure of these alleged incidents and have allowed accused priests to continue to serve for decades despite an expanding roster of complainants. It should be noted, however, that child sexual abuse is by no means limited to Catholic priests or members of the clergy in general. Rather, the media circus that has ensued has shed light on the fact that in several states members of the clergy are not required to report suspected incidents of child abuse. It has been suggested that clergy members of all faiths and denominations should be added to the list of those who are mandated to report suspected child abuse or neglect.

THE CONTENT OF THE BILL:

The Child Protection Law (Public Act 238 of 1975) requires certain professionals who suspect child abuse or neglect to report the suspected abuse or neglect to the Family Independence Agency (FIA). The bill would add a member of the clergy to the list of mandated reporters. The bill would define "member of the clergy" to mean a priest, minister, rabbi, Christian Science practitioner, or other religious practitioner or similar functionary of a church, temple, or recognized religious denomination. A privileged communication between a member of the clergy in his or her professional character in a confession or similarly confidential communication would be grounds for not reporting any suspected abuse or neglect. However, such a privileged communication would not relieve a member of the clergy from reporting suspected child abuse or neglect if that member receives information concerning suspected abuse or neglect while acting in

any other capacity listed in the act as a mandated reporter. In addition, the bill would add to the definition of 'child abuse' any harm or threatened harm to a child's health or welfare by a member of the clergy that occurs through nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment.

Under the act, if a report or investigation of abuse indicates a violation of the child abuse and criminal sexual abuse provisions of the Penal Code (Public Act 328 of 1931) or that the suspected abuse was not committed by a person responsible for the welfare of the child, and the FIA believes the report has a basis in fact, the FIA is required to submit a copy of the report and investigation to the local prosecuting attorney. Under the bill, if an allegation, report, or investigation indicated a violation of the Penal Code or that the suspected abuse was committed by an individual who is not responsible for the child's welfare (including, but not limited to, a member of the clergy, teacher, or teacher's aide), the FIA would be required to submit a copy of the allegation, report, or investigation to a law enforcement agency in the county in which the incident occurred.

Similarly, the bill would add that if a local law enforcement agency were to receive an allegation of child abuse that indicated that the abuse or neglect was committed by a person responsible for the child's health or welfare, the law enforcement agency would refer the allegation to the county FIA office.

The bill also incorporates certain provisions of enrolled House Bill 5372 (Public Act 661 of 2002), as those provisions would amend some of the same sections of this bill. Specifically, the bill would require that if an allegation, written report, or subsequent investigation by FIA indicates that the individual who committed the suspected abuse or neglect is a child care provider and the FIA believes the report to be factual, the FIA would send a copy of the report or the results of the investigation to the DCIS. In addition, if a law enforcement agency receives an allegation or written report of suspected child abuse from a mandated reporter or the FIA, and the report or subsequent investigation by the law enforcement agency indicated that the person who committed the suspected abuse or neglect is a child care provider, and the law enforcement agency believes the report to be factual, the law enforcement agency would send a copy of the written report or the results of the investigation to the DCIS.

MCL 722.622 et al.

BACKGROUND INFORMATION:

Mandated Reporters. Under the Child Protection Law, those required to report suspected child abuse or neglect to the Family Independence Agency include: a physician, dentist, physician's assistant, registered dental hygienist, medical examiner, nurse, a person licensed to provide emergency medical care, audiologist, psychologist, marriage and family therapist, licensed professional counselor, certified social worker, social worker, social work technician, school administrator, school counselor, school teacher, law enforcement officer, and regulated child care provider.

In addition to those mandated to report, the CPL states that any person, including a child, who has reasonable cause to suspect child abuse or neglect, may report the matter to the department or a law enforcement agency.

Statutes in Other States. Nearly 30 states require, to some degree, members of the clergy to report suspected cases of child abuse or neglect. Most of the states specifically include clergy in the list of mandated reporters, while in other states, clergy would fall under more broad terms, such as statutes requiring "all persons" to report suspected abuse.

According to the National Clearing House on Child Abuse and Neglect Information, approximately 12 states require clergy to report suspected child abuse with no clergy-penitent privilege. Most states that require clergy to report suspected abuse exempt clergy members if knowledge of the suspected abuse was obtained through a confidential communication. States that allow for this exemption include Utah, Idaho, Maryland, Montana, Louisiana, and several others.

Utah. Under Utah law, the reporting requirements do not apply to a clergyman or priest, without the consent of the person making the confession, with regard to any confession made to him in his professional character if the confession was made directly to the clergyman or priest by the alleged perpetrator and if the clergyman or priest is required under canon law or church doctrine to maintain the confidentiality of that confession (Utah Code 62A-4a-403).

In addition, the law states that if a clergyman or priest receives information about abuse or neglect from any source other than the confession of perpetrator, he is required to report the abuse even if he also obtained

knowledge of abuse through the confession of the perpetrator.

Idaho. Under Idaho law, the reporting requirements do not apply to any "duly ordained minister of religion" who received any confession or confidential communication made to him in his ecclesiastical capacity if the church is tax-exempt under the federal Internal Revenue Code; the confession or confidential communication was made directly to the minister; and the confession or confidential communication was made in the manner and context which places the minister specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine (Idaho Statutes 16-1619).

Louisiana. Under Louisiana law, when a priest, rabbi, duly ordained minister, or Christian Science Practitioner has acquired knowledge of abuse or neglect from a person during a confession or other sacred communication, he shall encourage that person to report, but is not required to report information given in confession or sacred communication. (Louisiana Children's Code Article 603(13)(b)).

Maryland. Under Maryland law, a minister of the gospel, clergyman, or priest of an established church of any denomination is required to report suspected abuse or neglect unless the report would disclose a matter that is related to any communication that is protected by the clergy-penitent privilege; the communication was made to the minister, clergyman, or priest in his professional character; and he is bound to maintain the confidentiality of that communication under canon law, church doctrine, or practice (Maryland Code: Family Law 5-705).

Montana. Under Montana law, Christian Science practitioners, religious healers, and members of the clergy are required to report suspected child abuse. However, a member of the clergy or priest is not required to report if the knowledge or suspicion of abuse or neglect came from a statement or confession made to the member of the clergy or priest in his or her professional capacity; the statement was intended to be a part of a confidential communication between the member of the clergy or priest and a member of the church or congregation; and the person who made the statement or confession does not consent to the disclosure. In addition, a member of the clergy or priest is not required to report if the communication

is required to be confidential by canon law, church doctrine, or established church practice.

Recent Legislation in Other States. In Massachusetts, Acting Governor Jane Swift recently signed into law Chapter 107 of the Acts of 2002. The law requires priests, rabbi, clergy members, ordained or licensed ministers, leaders of any church or religious body, accredited Christian Science practitioners, persons performing official duties on behalf of a church or religious body that are recognized as the duties of the persons listed above, and other persons employed by a church or religious body to supervise, education, coach, train, or counsel a child on a regular basis to report any case of suspected abuse. However, the listed individuals would not be required to report any information solely gained in a confession or similar confidential communication.

In addition, the law requires priests and other clergy members to report any knowledge of previous abuse to the Department of Social Services or the local district attorney within 30 days of the law's effective date (May 3, 2002).

In New York, there have been at least two bills introduced that would require members of the clergy to report abuse. Senate Bill 6625 would add members of the clergy to the list of those required to report child abuse. However, a member of the clergy would not be required to report if the confession was made to him or her in the scope of his or her professional character as a spiritual advisor, unless the person confessing waived the privilege.

New York State Assembly Bill 10569, as introduced, would require specific reporting duties for members of the clergy as well as other employees and volunteers of religious institutions. Under the bill, if a member of the clergy or an employee or volunteer of a religious institution were to receive an oral or written allegation of abuse, except for information obtained through a privileged communication, he or she would submit a written report to the clergy administrator (the person responsible for supervising that person). If the allegation was against the administrator, or there is no administrator, the person would file the written report with a law enforcement agency. Upon receipt of the report, the clergy administrator would then notify the child's parents and provide them with a copy of the report, unless the allegations were against the parents. The administrator would also notify law enforcement authorities and provide them with a copy of the report.

The bill would prohibit a member of the clergy or clergy administrator from agreeing to withhold from law enforcement information of the alleged abuse by a member of the clergy or employee or volunteer of a religious institution, in exchange for the resignation or reassignment of the alleged perpetrator.

The bill would also require, within three months of the effective date, all clergy administrators and clergy members (if there are no administrators) to review all institutional records and other knowledge of abuse allegations against a member of the clergy or an employee or volunteer of a religious institution which have occurred within the last 20 years. In addition, clergy members and administrators would also review all records of allegations against those still in active service regardless of when the alleged incident took place. Also, if there exists sufficient suspicion, members of the clergy and clergy administrators would file a report with the local district attorney.

USCCB Policy. At its recent meetings in Dallas, Texas and Washington D.C., the United States Conference of Catholic Bishops (USCCB) amended its policy regarding child protection. The *Charter for the Protection of Children and Young People*, which was recently approved by the Vatican, sets forth several goals of the conference in addressing the problem of sexual abuse of children. These goals include the following:

- To promote healing and reconciliations with victims and survivors of sexual abuse;
- To guarantee an effective response to allegations of sexual abuse of minors;
- To ensure accountability of our procedures; and
- To protect the faithful in the future.

To achieve each of these goals, the policy states that each diocese will reach out to victims and their families and demonstrate a sincere commitment to their spiritual and emotional well-being and, therefore, the first obligation of the Church with regard to victims is healing and reconciliation. Each diocese will also have mechanisms in place to promptly respond to any allegation where there is reason to believe that sexual abuse of a minor has occurred. Further, each diocese shall not enter into confidentiality agreements save for instances of grave and substantial reasons at the behest of the victim.

In responding to an allegation of sexual abuse of a minor, each diocese will report an allegation to public

authorities; comply with all applicable civil laws regarding the reporting of such allegations; and cooperate with public authorities about reporting in cases where the alleged victim is no longer a minor. However, in every instance, each diocese will advise victims of their right to make a report to public authorities and will support this right.

Further, to protect members of the Church, each diocese will evaluate the background of all diocesan and parish personnel who have regular contact with minors, and will work to improve screening of personnel in reviewing their fitness for ordination. The policy goes on to state that, “no priest or deacon who has committed an act of sexual abuse of a minor may be transferred for ministerial assignment to another diocese.”

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, it appears that the bill would have an indeterminate impact on state and local costs. The inclusion of members of the clergy in the reporting requirement could result in an increased number of investigations conducted by Child Protective Services (CPS) workers and local law enforcement agencies, potentially increasing state and local costs. In addition, the legislation could result in additional court and correctional costs. However, due to the fact that the potential for increase in reports, investigations, and convictions is unknown at this time, the potential increase is indeterminate. (1-9-03)

ARGUMENTS:

For:

Members of the clergy of all faiths and denominations play a unique role in the spiritual and overall development of young children. Indeed, in many faiths this spiritual development of children and adolescents coincides with their physical, emotional, and psychological development. A member of the clergy is in a position to identify possible cases of abuse by virtue of his or her relationship with the child and the child’s family. They can identify abuse by looking for any physical marks on the child, and note any changes in the child’s behavior. Furthermore, a member of the clergy may often visit a child’s home, which makes him or her acutely aware of possible abuse or neglect perpetrated by family members. As such, members of the clergy often develop a close personal relationship with children. Children look to members of the clergy for spiritual advice, moral guidance, and

to be a trusted confidant. When that trusting relationship is seriously compromised because the child is abused, whether it is at the hands of a clergy member or it is perpetrated by another individual but goes unreported by the clergy, the child suffers irreparable harm and potentially faces a lifetime of adverse consequences, including a variety of emotional, behavioral, and psychological disorders, and even a higher risk of suicide.

Requiring members of the clergy to report is the first step in ending abuse. While it may not prevent it from occurring in the first place, adding the reporting requirements will better ensure that the abuse does not continue. What is shocking about the cases in Boston and here in Michigan is not so much the abuse itself, but rather the actions by church officials. In many of the cases, the church continued to reassign accused priests and settled privately with the alleged victims. Only in a few instances were law enforcement officials involved in the early stages of the process.

For:

The bill is necessary, because it will add the involvement of law enforcement and other trained individuals who can properly handle abuse situations. While many religious institutions do have policies in place for regarding sexual abuse allegations, these policies may not be as comprehensive as the policies and actions taken by the Family Independence Agency and law enforcement agencies. For instance, many religious institutions have set up committees of lay people and clergy to investigate the allegations. If it is believed that the allegations are unsubstantiated, no action is usually taken and the proper authorities are generally not notified. Any questions regarding the validity of an allegation should be addressed by those with the expertise to properly identify and confirm those cases. Furthermore, reporting to the FIA and law enforcement will provide the child with the necessary systems of support and counseling. Often, religious institutions offer the child counseling. However, if a member of the clergy abuses the child, the effectiveness of this counseling is seriously compromised.

For:

The bill protects the integrity and freedom of religious institutions. While the bill requires clergy to report suspected cases of abuse or neglect, it explicitly provides for an exemption if that information were obtained through confidential communications. By allowing for the clergy-penitent

privilege, the bill does not encroach on the Establishment Clause of the First Amendment and the Jeffersonian principle of the separations of church and state.

Against:

The bill, like others that have simply added to the list of mandated reporters, continues to fall short in its attempt to protect the welfare and well being of children. The Child Protection Law lists several professionals, who often have regular contact with children, who are required to report suspected incidents of abuse or neglect. For those who are not mandated, the law permits (though does not require) them to report suspected incidents of abuse or neglect. The children of the State of Michigan would be better served if everyone, not just certain professionals (including clergy), were required to report suspected incidents of abuse.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.