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## COMMENTARY ON THE MEMORANDUM OF UNDERSTANDING

### INTRODUCTION

The Catholic bishops of New Jersey have entered into an historic Memorandum of Understanding with the local county prosecutors to work together to protect children from abusive or harmful situations, and also to report to law enforcement authorities any unlawful sexual assault.

The Memorandum lists certain specific crimes which are completely set forth in the appendix attached to the Memorandum itself and which are outlined here. It provides that when any employee of the Diocese, or a parish or other entity affiliated with the Diocese, has received or discovered information in the course of his or her employment or professional responsibilities which establishes reasonable cause to believe that one of these crimes has been committed or attempted, or even planned, then that must be reported immediately to the designated diocesan liaison. It provides, however, that in the case of a kidnapping the report is to be made immediately to the local police department, rather than to the liaison. Such information regarding these reportable crimes might be received from various sources, but unless it is received in a context which the law specifically recognizes as privileged (such as a communication to a priest within the Sacrament of Reconciliation) it must be reported to the liaison regardless of how it might have come to the employee's attention. You should know that your report will not be considered an accusation or a formal charge, but is merely a referral of information to the liaison. It is also important to bear in mind that the consent of the victim, or of the victim's parents or guardian, is not required for you to make the report to the liaison; nor is the consent of the person who provided the information to you needed before you make your report to the liaison.

The diocesan liaison will, in turn, report the information which is provided to the appropriate law enforcement authorities. Needless to say, when making any report, as much information about the incident and the identity and whereabouts of all the individuals involved should be provided to the liaison. In the case of a child this should, if possible, include the child's age, the identity and whereabouts of the child's parents or guardian, the nature and extent of any injuries which the child has sustained, and the identity and whereabouts of the person suspected of having committed the offense.

Prudence dictates that if you have any concerns about whether the information which you have received should be reported to the liaison you should err on the side of caution and report it to the liaison while calling whatever concerns you might have to his attention.

### **SEXUAL ASSAULT / CRIMINAL SEXUAL CONTACT**

Not only does the law prohibit any type of sexual activity with one who is under 18 years of age, but it also protects adults from forcible sexual contact. It prohibits sexual activity with an adult which results from physical force or coercion; and it also prohibits sexual activity with an adult who is on probation or parole, or is detained in an institution, by one who has supervisory or disciplinary authority over the victim. It forbids sexual activity by an actor who is armed with a weapon or something that is fashioned to look like a weapon which the actor threatens to use, and also with an adult whom the actor knows - or should know - is “physically helpless, mentally defective or mentally incapacitated.”

### **CHILD ABUSE**

Some of the actions which constitute child abuse are self-evident. For example, employing, or permitting a child to be employed, in a way which is in any way injurious to the child’s health, or dangerous to the child’s life or physical safety, or dangerous to the child’s morals or contrary to law, all constitute child abuse. So, too, does the use of excessive physical restraint under circumstances that do not indicate that the child’s behavior is harmful to himself, or to others or to property. Engaging in any activity, or performing any indecent, unlawful or immoral act in the presence of a child, that may tend to debauch, endanger, degrade or impair the morals of the child, or permitting another person to do so also constitutes child abuse. Although we may seldom encounter such situations, disposing of the custody of a child contrary to law, or isolating the child from ordinary social contact in an institution under circumstances which indicate emotional or social deprivation, also constitute child abuse. Finally, the Legislature of New Jersey has also determined that the habitual use by a parent, or person having custody of the child, of profane, indecent or obscene language in the hearing of the child is also an example of child abuse.

### **CHILD SEXUAL ABUSE**

While we might tend to believe that we instinctively understand what constitutes the sexual abuse of a child, some definitions and certain explanations can prove useful.

Needless to say, engaging in any type of sexual activity of any kind with a child, or having the child engage in any such activity with himself or herself or with another, obviously constitutes sexual abuse. Intentionally touching a child’s intimate parts, or

having a child touch his or her own intimate parts or the intimate parts of another - regardless of whether the child or the other individual is clothed - also constitutes sexual abuse. Additionally, touching one's own intimate parts in a sexual manner for the purpose of sexual gratification in the view of a child, when one knows the child is present, also constitutes child sexual abuse.

The New Jersey Legislature's definition of "intimate parts" as constituting the sexual organs, the genital area and the anal area, the inner thigh, the groin, the buttock and the breast should be borne in mind. Furthermore, by definition "sexual abuse" must be sexual in nature and common sense tells us that when, for example, a health care provider is examining a child, or a parent or guardian is bathing a child or helping a child with his or her clothing, this would not normally constitute sexual abuse.

### **CHILD ABANDONMENT**

Child abandonment consists of failing to care for and keep control of a child with the result that the child is exposed to physical or moral risk without adequate protection, or with the result that the child must be cared for by persons or entities not legally chargeable with the child's care. Child abandonment also consists of willfully forsaking or abandoning a child. In this regard, however, it is very important to bear in mind that the New Jersey Legislature has wisely provided that, in the case of a child who is no more than 30 days old, it is "an affirmative defense to prosecution for abandonment of a child that the parent voluntarily delivered the child to and left the child at . . . a State, county or municipal police station . . . or the emergency department of a licensed general hospital in this State . . . ." or voluntarily arranged for another person to do so.

### **CHILD CRUELTY**

As with child abuse, most of what constitutes child cruelty is virtually self-evident. It includes unnecessarily severe corporal punishment, causing or permitting unnecessary mental or physical suffering or pain, or habitually tormenting, vexing or afflicting a child. Child cruelty also includes exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the child's health or moral well-being.

### **CHILD NEGLECT**

The willful failure to provide proper and sufficient food, clothing, education, medical and surgical attendance and a clean and proper home is an example of child neglect. Failing to care for the physical and mental well-being of one's child is another example, as is the continued inappropriate placement of a child in an institution with the knowledge that such placement may result in mental or physical harm to the child, or result in emotional or social deprivation.

## **ABUSED OR NEGLECTED CHILD**

A child is abused or neglected when the parents or guardian inflict or allow to be inflicted - or create or allow to be created a substantial or ongoing risk of - physical injury by other than accidental means which creates a substantial risk of death, or which would be likely to cause death, disfigurement or the loss or impairment of the function of any bodily organ. Obviously, it also arises when the parents or guardian commit, or allow to be committed, an act of sexual abuse against the child. A child is also considered to be abused or neglected when the parents or guardian have failed to provide the child with proper supervision by inflicting or allowing to be inflicted harm or the substantial risk of harm, including excessive corporal punishment, with the result that the child's physical, mental or emotional condition has been impaired or is about to become impaired.

## **ENDANGERING THE WELFARE OF CHILDREN**

One obviously endangers the welfare of a child if he causes or permits a child to engage in any type of sexual act, including nudity when done for the purpose of sexual gratification, or even the simulation of such an act when he knows, has reason to know, or intends that the act would be reproduced in any way whatsoever including in any computer-generated image. Further, one would obviously endanger the welfare of a child if he were to photograph or film a child in any type of sexual act, or the simulation of such an act, in order to reproduce or reconstruct that image.

Additionally, no one is to knowingly receive for the purpose of selling, or knowingly sell, procure, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, show, offer or deal in any way with any reproduction or reconstruction of any kind whatsoever depicting a child engaged in any type of sexual act or the simulation of such an act. The possession or viewing of any reproduction or reconstruction which depicts a child engaged in a sexual act, or the simulation of such an act, is also prohibited.

## **LURING OR ENTICING A CHILD**

A person commits a crime if he attempts, via electronic or any other means, which includes the Internet, "to lure or entice a child or one who he reasonably believes to be a child into a motor vehicle, structure or isolated area, or to meet or to appear at any other place, with a purpose to commit a criminal offense with or against the child."

## LEWDNESS

Lewdness consists of exposing one's intimate parts for the purpose of arousing or gratifying oneself or any other person under circumstances where the actor knows or reasonably expects that he is to be observed by a minor, or by someone who is mentally incapable of understanding the nature of the actor's conduct.

## KIDNAPPING

If, in the course of your employment or professional responsibilities, you have received or discovered information which establishes reasonable cause to believe that a child has been, or is about to be, kidnapped then you are to immediately notify the local police department in the area by using the 911 emergency telephone number.

## DIOCESAN LIAISON

The Diocese has designated Martin F. McKernan, Jr., whose law firm represents the Diocese, as the liaison with the local county prosecutors. You should err on the side of caution and if you have any question as to whether something ought to be reported you should immediately consult with the liaison. Mr. McKernan's office telephone number is (856) 964-7759. In the event that he is unavailable at that number or you are trying to reach him at a time other than regular business hours, you can leave a message at (856) 979-5925, which number is checked for messages twice every day including non-business days. In the event that contact cannot be made, or if you believe that the situation warrants immediate intervention, the telephone numbers of the local prosecutors and the local offices of the New Jersey Division of Child Protection and Permanency\* can be found on the web site of the Diocese of Camden. You may, of course, always report the matter to the local police using the 911 emergency telephone number. If you do so, the matter is to be communicated as soon as possible to Mr. McKernan.

1. In 2012, this agency changed its name from Division of Youth and Family Services.

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\* *Editor's Note:* The Division of Child Protection and Permanency was formerly the Division of Youth and Family Services.