

01 - Policy and Procedural Guidelines Relating to Screening of Church Personnel

Introduction. The Diocese of St. Augustine is committed to the safety and well being of those we serve. Each individual is created with a God-given dignity. Therefore, the diocese condemns all forms of abuse or neglect of all people of all ages.

Glossary of Terms.

For the purposes of these policies “**Church Personnel**” shall mean all of the following:

“**Clergy**” - shall mean all priests and deacons who have faculties of the diocese.

“**Employee**” - shall mean any lay individual who is employed by or engaged in ministry who is given payment for services (any form of compensation, whether monetary or otherwise) rendered, whether part-time or full-time. This definition shall include all such persons whether employed by the Diocese, Parish, School, Early Childhood Center, Nursing Home, Group Home, or any other diocesan entity that is controlled by or operated by the Bishop.

“**Religious Brothers and Sisters**” - shall mean religious brothers and sisters who are regularly involved in ministry at an entity controlled by or operated by the Diocese.

“**Seminarians**” - shall mean those men enrolled in a seminary who are officially sponsored by the Diocese.

“**Covered Volunteer**” - shall mean any unpaid person who is engaged or involved in any Diocesan institution or parish activity, and who is entrusted with the care or supervision of children or vulnerable adults.

Policy. It shall be the policy of this Diocese that abuse or neglect of persons is totally unacceptable behavior by our church personnel. Any such conduct is to be considered by its very nature completely contrary to Christian morality and, therefore, cannot be justified in the employment or ministry of those serving within the Diocese. All Church Personnel within this Diocese must comply with all State and applicable local or federal laws which require reporting incidents of actual or suspected abuse or neglect of persons, and with the screening provisions set forth herein.

Background Investigation. All Church Personnel shall allow an inquiry into their background to assess whether any reason exists that would suggest the person is not suitable for the position sought. Such background investigation shall include a Level 2 fingerprint criminal background search (“CBS”).

A Level 2 CBS includes:

– a statewide criminal and juvenile records check through the Florida Department of Law Enforcement, and

– a federal criminal records check through the Federal Bureau of Investigations.

The LiveScan method of fingerprint collection can and should be used whenever practicable, in addition to those circumstances in which it is required for certain groups of personnel.

Office of Safe Environment. The background investigation of Church Personnel shall be the responsibility of the Diocesan Office of Safe Environment (“OSE”), as supervised by the Chancellor. In the Diocese of St. Augustine the Director of the Office of Human Resources also serves as the head of the OSE and supervises the day-to-day functioning of the OSE.

Criteria for Excluding Church Personnel from Service. All Church Personnel shall meet and attest to good moral character. Any person who has been found guilty of, entered a plea of guilty, or entered a plea of nullo contendere for any offense listed on Appendix “A” hereto, shall be disqualified from employment/ministry regardless of the date of the offense.

Unless prohibited by law, an exemption from disqualification may be granted. In order for an exemption to be granted by the Diocese, the Church Personnel must demonstrate by clear and convincing evidence that he/she should not be disqualified from employment / ministry.

Exemption Procedures in Cases of Disqualification because of a Prohibited Offense. A person seeking an exemption has the burden of setting forth sufficient evidence of rehabilitation including, but not limited to:

- a. the circumstances surrounding the criminal incident for which the exemption is sought;
- b. the time period that has elapsed since the incident;
- c. the nature of the harm caused to the victim, if applicable; and
- d. the personal history of the Church Personnel since the incident, or any other evidence or circumstances indicating that the employee/volunteer will not present a danger if continued employment/ ministry is allowed.

Evidence of rehabilitation from a prohibited offense will consist of written explanations and supporting / corroborating statements from the Church Personnel being considered for clearance, and from other persons who may be knowledgeable of the incident(s) under consideration such as, for example, law enforcement officials, court officials or attorneys. Evidence of rehabilitation may also include any documentary evidence which might be relevant to the matter. When the Church Personnel concerned seeks an exemption, evidence of rehabilitation will be presented directly to the head of the OSE, who will make the initial clearance determination in all cases involving lay employees or volunteers of any parish or diocesan entity, unless the employee or volunteer is subject to a state - directed Level 2 CBS and clearance determination. The granting of an exemption by the head of the OSE will be considered final unless the pastor of a parish or head of a diocesan agency requests a review of any adverse decision by the Bishop.

In such a case, the matter will be presented to the Bishop through the chancellor's office.

Issues relating to the CBS and clearance of clergy will be referred directly to the chancellor, as the provisions of universal or particular canon law may be relevant.

State licensed and regulated facilities. Some Diocesan facilities are licensed or otherwise regulated by the State and may, in some circumstances, be governed by additional requirements; in those circumstances only the State can grant an exemption at those facilities.

Furthermore, if the state requires and performs a Level 2 CBS, the OSE may rely on the state's or other licensing authority's determination of eligibility and disqualification at those licensed facilities.

Guidelines for Implementation.

Distribution of Policy and State and Local Laws. A copy of this Policy shall be distributed and applied to all Parishes, Schools, Early Childhood Centers, Nursing Homes, Group Homes, and all other Diocesan entities, and to all persons identified as Church Personnel in the Glossary of Terms and to all future Church Personnel. All Administrators are to be familiar with these policies and their respective responsibilities with regard to the implementation of background screening of Church Personnel. Administrators shall conform to all applicable State and local laws, and shall preserve confidentiality to the fullest extent possible.

Implementation.

1. Clergy, Employees, Religious Brothers & Sisters, and Seminarians. For all Clergy, Employees, Religious Brothers & Sisters, and Seminarians a CBS is required and shall be implemented as follows:

a. In addition to any employment references that may have been furnished, all Pastors, Administrators, Supervisors, Executive Directors or other persons supervising or accountable for employment within the Diocese are required to have each existing and prospective Church Personnel undergo a CBS through the OSE. Prospective employees will not be officially hired until after they have been cleared by the OSE.

Please note that no CBS shall be required of priests who are granted temporary faculties of not more than thirty days.

b. The results of the CBS will be communicated confidentially to the responsible Supervisor. If an adverse employment decision is made to disqualify a person for employment, the provisions of law will be followed, including but not limited to the notices required by the Fair Credit Reporting Act.

c. The background investigation shall be updated at least every 5 years.

2. Covered Volunteers. Covered Volunteers as defined in this policy, shall undergo a CBS. The policy shall be implemented as follows:

a. Prior to service, volunteers must complete an application and be directed to the OSE to undergo the CBS.

b. When the results of the CBS are received, the volunteer shall be approved or rejected based upon a review of the results of the CBS in accordance with “Criteria for Excluding Church Personnel from Service,” under **Policy**, described above. Volunteers may not serve until after they have been cleared by the OSE.

3. Independent Contractors / Contractual Personnel (Jessica Lunsford Act Requirements). The policy of the diocese is to comply with the terms of the Jessica Lunsford Act in order to provide an added measure of safety and protection in school and parish environments. The Act states that contractual personnel who are permitted access to school grounds when students are present, or who have direct contact with students must meet Level 2 requirements as described in Section 1012.32, F.S., and as required elsewhere in this policy.

Independent contractors / contractual personnel shall include any vendor, individual or entity (or sub-contractor thereof) who has been retained by a school, parish or diocesan entity to perform work or services in or around any parish or diocesan school, or on the campus of any parish or diocesan entity while school or religious education classes are in session, or while there is an event on-going, the focus of which is children or youth. Prior to working on any parish or diocesan property, the contractor or sub-contractor must certify in writing to the principal, pastor or agency head, or their representatives, that all of his onsite employees or personnel have the requisite Level 2 background checks.

For schools, the contractor may provide this information once (updated as required) to the Office of Educational Services. Once this certification has been provided to the satisfaction of the Office of Educational Services, that certification may be accepted and relied upon by any principal in the diocese.

If an independent contractor is in possession of current clearances from the same county school district in which the parochial or diocesan school, parish or diocesan entity is located, principals, pastors and agency heads may rely upon those clearances, and need not require other or further clearances or certifications. Proof of such clearances must be presented to the parish, school diocesan agency or Office of Educational Services in advance of any work being performed on-site by the contractor’s employees.

Criminal Background Search Communications.

1. The results of the CBS shall be communicated confidentially to the responsible Supervisor.

2. On occasion, the CBS shows a criminal record, but is not definitive as to the charge and/or the disposition. Additional information will need to be obtained to determine if a person is disqualified. The burden of obtaining the additional information is on the Church Personnel.

Such additional information must be provided to the OSE for review. If the review process concludes that the person is disqualified, the responsible Supervisor will be notified.

Criminal Background Results.

Category I - those whose CBS shows no criminal record.

Category II - those persons whose CBS shows some criminal record, and the record is clear that there is no Category III offense. In these cases, the OSE, in consultation with the responsible supervisor, must make a determination if such Church Personnel will be permitted to work / minister at their entity. The OSE should discuss all criminal records with the Church Personnel to obtain the underlying facts as well as any extenuating circumstances. The OSE should obtain a written explanation from the Church Personnel and maintain it in their files. The decision of the head of the OSE whether or not to allow the Church Personnel to work / minister notwithstanding a non-disqualifying criminal record, will be communicated to the responsible supervisor and to the Church Personnel concerned.

Category III - those persons whose CBS shows a record of a prohibited offense described in “Criteria for Excluding Church Personnel from Service,” under **Policy**, above. In these cases, a notice of disqualification and the available exemption procedures will be provided.

Approved by the Archbishop and Bishops of the Province of Miami on September 18, 2010.

Appendix A - List of Disqualifying Offenses.

<u>Prohibited Misdemeanor or Felony Offenses</u>	<u>Statute</u>	<u>Origin</u>
Sexual misconduct with certain developmentally disabled clients and reporting of such conduct	Sec. 393.135	435.04 1012.31
Sexual misconduct with certain mental health patients and reporting of such misconduct	Sec. 394.4593	435.04 1012.315
Medicaid provider fraud	Sec. 409.920	408.809
Medicaid fraud	Sec. 409.9201	408.809
Adult abuse, neglect or exploitation of aged persons or disabled adults	Sec. 415.111	435.04 1012.315
Domestic violence	Sec. 741.28	435.04
Murder	Sec. 782.04	435.04 1012.315
Manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child	Sec. 782.07	435.04 1012.315

Vehicular Homicide	Sec. 782.071	435.04
Killing of an unborn quick child by injury to the mother	Sec. 782.09	435.04
Assault, if the victim of the offense was a minor	Sec. 784.011	435.04
Battery, if the victim was a minor	Sec. 784.03	435.04 1012.315
Kidnapping	Sec. 787.01	435.04 1012.315
False imprisonment	Sec. 787.02	435.04 1012.31
Luring or enticing a child	Sec. 787.025	435.04 1012.315
Taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings	Sec. 787.04(2)	435.04 1012.315
Carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person	Sec. 787.04(3)	435.04 1012.315
Exhibiting firearms or weapons within 1,000 feet of a school, or other weapon on school property	Sec. 790.115(1)	435.04 1012.315
Possessing an electric weapon or device, destructive device	Sec. 790.115(2)(b)	435.04 1012.315
Sexual battery	Sec. 794.011	435.04 1012.315
Prohibited acts of persons in familial or custodial authority	Sec. 794.041	435.04 1012.315
Unlawful sexual activity with certain minors	Sec. 794.05	435.04 1012.315
Prostitution	Ch. 796	435.04
Lewd and lascivious behavior	Sec. 798.02	435.04 1012.315
Lewdness and indecent exposure	Ch. 800	435.04 1012.315
Arson	Sec. 806.01	435.04 1012.315
Burglary	Sec. 810.02	435.04
Fraudulent acts through mail, wire, radio, electromagnetic, photo electronic, or photo optical systems	Sec. 817.034	408.809
False and fraudulent insurance claims	Sec. 817.234	408.809
Patient brokering	Sec. 817.505	408.809

Criminal use of personal identification information	Sec. 817.568	408.809
Obtaining a credit card through fraudulent means	Sec. 817.60	408.809
Abuse, aggravated abuse, or neglect of an elderly person or disabled adult	Sec. 825.102	435.04 1012.315
Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult	Sec. 825.1025	435.04 1012.315
Incest	Sec. 826.04	435.04 1012.315
Child abuse, aggravated child abuse, or neglect of a child	Sec. 827.03	435.04 1012.315
Contributing to the delinquency or dependency of a child	Sec. 827.04	435.04 1012.315
Negligent treatment of children	Sec. 827.05	435.04
Sexual performance by a child	Sec. 827.071	435.04 1012.315
Forgery	Sec. 831.01	408.809
Uttering forged instruments	Sec. 831.02	408.809
Forging bank bills, checks, drafts or promissory notes	Sec. 831.07	408.809
Uttering forged bank bills, checks, drafts or promissory notes	Sec. 831.09	408.809
Fraud in obtaining medicinal drugs	Sec. 831.30	408.809
Resisting arrest with violence	Sec. 843.01	435.04 1012.315
Depriving a law enforcement, correctional, or probation office means of protection or communication	Sec. 843.025	435.04
Aiding in an escape	Sec. 843.12	435.04
Aiding in the escape of juvenile inmates in correctional institutions	Sec. 843.13	435.04
Obscene literature	Ch.847	435.04 1012.315
Encouraging or recruiting another to join in a criminal gang	Sec. 874.05	435.04 1012.315
Drug abuse prevention and control if another person involved was a minor (Sale, Possession, Distribution)	Ch.893	435.04
Sexual misconduct with certain forensic clients and reporting of such sexual misconduct	Sec. 916.1075	435.04 1012.315

Inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm	Sec. 944.35(3)	435.04
Escape	Sec. 944.40	435.04
Harboring, concealing, or aiding an escaped prisoner	Sec. 944.46	435.04
Introduction of contraband into a correctional facility	Sec. 944.47	435.04 1012.315
Sexual misconduct in juvenile justice programs	Sec. 985.701	435.04 1012.315
Introduction, removal, possession of contraband at juvenile detention facility or commitment program	Sec. 985.711	435.04 1012.315
<u>Additional Prohibited Felony Offenses</u>	<u>Statute</u>	<u>Origin</u>
Assault, battery and culpable negligence	Ch. 784	435.04 1012.315*
Female genital mutilation	Sec. 794.08	1012.315
Voyeurism	Sec. 810.14	435.04 1012.315
Video Voyeurism	Sec. 810.145	435.04 1012.315
Theft, robbery and related crimes	Ch.812	435.04 1012.315
Fraudulent sale of controlled substances	Sec. 817.563	435.04 1012.315
Fraudulent use of credit cards	Sec. 817.61	408.809
Exploitation of an elderly person or disabled adult	Sec. 825.103	435.04 1012.315
Sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance	Sec. 831.31	408.809
Drug abuse, prevention and control (Sale, Possession, or Distribution) if no minor was involved	Sec. 893	435.04 1012.315

*Limited to Sections 784.021, 784.045 and 784.075

Approved by Bishop Galeone on May 11, 2011