

REVISIONS TO BOOK VI. PENAL SANCTIONS IN THE CHURCH

Study of Pascite Gregem Dei

Presented to the Texas Catholic Conference

March 15, 2022

PASCITE GREGEM DEI

- *Pascite Gregem Dei* was promulgated on May 23, 2021, and took effect on December 8, 2021.
- The incipit quotes 1 Peter 5:2 in reference to the pastoral role of bishops.
 - “Tend the flock of God that is your charge, not by constraint but willingly, as God would have you.”
- Bishops are responsible for ensuring obedience to ecclesiastical norms because the Church’s discipline expresses the faith. Bishops manifest the maternal mercy of the Church centered on the salvation of souls.
- All the People of God are responsible for the observance of the penal law, but the correct application of penal law lies specifically with the bishops and the superiors of individual communities.

PASCITE GREGEM DEI

- An essential part of their pastoral *munus* is the requirement of charity: to the Church, to the Christian community, to injured parties, and to the wrongdoer who needs mercy and correction.
- Charity is therefore necessarily connected to disciplinary sanctions that are required by justice. Past failures to appreciate the obligations of charity and justice have led to the toleration of immoral conduct.
- Mere canonical exhortations or suggestions have proven to be insufficient.
- Immoral conduct can become entrenched, making correction more difficult and creating greater scandal and confusion among the faithful.
- Bishops must not be negligent in correcting errors.

HISTORICAL DEVELOPMENTS IN CANON LAW

- Before 1917, canonists used collections of laws and decrees and opinions of scholars to state the law and provide interpretation.
 - Some fundamental and immutable canonical principles were recognized because of their longstanding and widely held status.
 - Developments in canon law came about through the promulgation of pontifical decrees and ecclesiastical laws that responded to changing circumstances.
 - Canon law had both a solid foundation based on canonical principles and also the capacity for flexibility.
- 1917: Gaspari composed the Code in order to organize and preserve existing law in force at the time. Future innovations were not precluded, but in effect, the Code became the sole source of ecclesiastical law.

HISTORICAL DEVELOPMENTS IN CANON LAW

- 1920s: Commentators exegeted the canons, faithfully explaining their legal sources, their motivation, and their relationship to previous law.
- 1930s: Commentators began to emphasize the Code as a perfect and orderly system. A more rigid application of the norms came into favor, and some previous flexibility in the application of the law was lost.
- 1950s: The Code was commonly considered an imperishable masterpiece in the articulation of the law, in line with the *societas perfecta* image of the Church.
- The sense of the law as perfect (i.e. complete) gave way to opinion that it was perfect (i.e. flawless). An infallible Church should have an infallible law based on Divine Law. Scholars adopted a dogmatic approach to the Code.

HISTORICAL DEVELOPMENTS IN CANON LAW

- 1960s: Opinions changed and the Code came to be considered overly legalistic and juridical. Change was anticipated with the coming Council, and improvements were anticipated regarding established canonical procedures.
- 1965: *Gaudium et Spes* balanced hope for the future with the recognition of human weaknesses. Yet, the document reflects a sense of optimism that was prevalent at the time regarding confidence in future human progress.
- 1965-1983: State of flux since the new law had not yet been promulgated, but aspects of the old law were commonly considered irrelevant.
- The goal of the Code Commission was to create a text that (a) maintained harmony with the previous Code while (b) reflecting the doctrine taught by the Council and the Code revision principles identified by the Council Fathers.

HISTORICAL DEVELOPMENTS IN CANON LAW

- 1983: The new Code “is characterized by simplicity, precision, elegance and true legal science” (Preface, *Sacrae Disciplinae Leges*, January 25, 1983). The 1983 Code presumes familiarity with the principles of the prior Code. (N.B. The 1985 CLSA Commentary frequently made connections to the 1917 Code.)
- 1990s: The study of the 1983 Code gradually became more disconnected from the 1917 Code. Penal law was considered theoretical and, in practice, superfluous. (N.B. The 2000 CLSA Commentary referenced the 1917 Code less frequently.)
- 2005: *Dignitas Connubii* clarified procedural law for marriage cases by making explicit many principles that were expressed in the 1917 Code but which were implicit in the 1983 Code.

HISTORICAL DEVELOPMENTS IN CANON LAW

- 2000s: The sexual abuse crisis uncovered a failure of leadership to enforce discipline for numerous clerics dating back to the 1970s. The previous instruction *Crimen Sollicitationis* of 1922 and 1962 had largely been ignored.
- 2001: *Sacramentorum Sanctitatis Tutela* clarified the procedures to be followed for cases of *graviora delicta*. It was revised in 2010 and 2021.
 - Penal processes, once considered theoretical or antiquated, suddenly became more common and even necessary.
- 2016: *As a Loving Mother* prescribed the removal of a bishop who is negligent in enforcing discipline in grave matters.
- 2019: *Vos Estis Lux Mundi* mandated reporting of sexual abuse cases involving clergy (including bishops), and established investigatory procedures. Religious were also included, resolving a *lacuna legis*.

CHANGING ATTITUDE TO PENAL LAW

Regarding subsidiarity in disciplinary matters:

- Code Revision Principle 5: Subsidiarity is to be more greatly applied. Bishops should provide for the common welfare through particular law and should enjoy a healthy autonomy in the use of particular executive power. Whatever is not necessary for the unity of the discipline of the universal Church should be provided for by a healthy “decentralization” (Preface, *Sacrae Disciplinae Leges*, January 25, 1983).

CHANGING ATTITUDE TO PENAL LAW

Regarding subsidiarity in disciplinary matters:

- The period from 1965 to 1983 “was marked by differing trends in canonical scholarship” regarding penal law, seeking a “de-centralized approach to cases with emphasis on the authority and discretion of the local bishops” (Historical Introduction, *Sacramentorum Sanctitatis Tutela*, 2001).
- Objective criteria have been established for identifying the most appropriate sanction in individual cases. Discretion has been reduced in the imposition of sanctions, for the sake of greater ecclesial unity in dealing with delicts that cause the greatest harm and scandal (*Pascite Gregem Dei*, 2021).

CHANGING ATTITUDE TO PENAL LAW

Regarding a pastoral approach to penal law:

- Code Revision Principle 3: Canon law must foster the pastoral care of souls. Besides justice, the law should observe charity, temperance, humaneness and moderation. Unduly rigid norms are to be set aside in favor of exhortations and persuasions where there is no need of a strict observance of the law (Preface, *Sacrae Disciplinae Leges*, January 25, 1983).
- “A ‘pastoral attitude’ to misconduct was preferred and canonical processes were thought by some to be anachronistic. A ‘therapeutic model’ often prevailed in dealing with clerical misconduct. The bishop was expected to ‘heal’ rather than ‘punish.’ An over-optimistic idea of the benefits of psychological therapy guided many decisions..., sometimes without adequate regard for the possibility of recidivism” (Preface, *Sacramentorum Sanctitatis Tutela*, 2001).

CHANGING ATTITUDE TO PENAL LAW

Regarding penalties and delicts in penal law:

- Code Revision Principle 9: Penal law is necessary in the Church. However, penalties are generally to be *ferendae sententiae*. *Latae sententiae* penalties are to be reduced in number and inflicted only for the most serious offenses (Preface, *Sacrae Disciplinae Leges*, January 25, 1983).
- The number of reserved delicts that are considered *graviora delicta* increased in 2001 and 2010 (*Sacramentorum Sanctitatis Tutela*).
- Several new types of crime were introduced corresponding to the growing need in various communities to ensure the restoration of justice and order (*Pascite Gregem Dei*, 2021).

CHANGING ATTITUDE TO PENAL LAW

Regarding fundamental canonical principles:

- Fundamental principles of penal law have been more clearly stated regarding:
 - the right to self-defense,
 - the prescription of penal action, and
 - greater precision in the determination of penalties.
- Charity demands that the Church's pastors resort to the penal system whenever it is required.
- Three fundamental aims make penal law necessary: the restoration of the demands of justice, the correction of the guilty party and the repair of scandals (*Pascite Gregem Dei*, 2021).

DELICTS AND PENALTIES IN GENERAL

BOOK VI. PENAL SANCTIONS IN THE CHURCH

Part I. Delicts and Penalties in General

DELICTS AND PENALTIES IN GENERAL

Text of the Code of Canon Law is available at

<http://www.jgray.org/codes/>

Download the “**Comparison table of the changes to the penal law in Book VI**”

Updated 3/9/2022

If you do not have the update from March 9, make these changes:

- In canon 1376 §2, after “**punished**” add “**with a just penalty**”.
- In canon 1389, change “**can be punished**” to “**is to be punished**”.

GENERAL PRINCIPLES OF PENAL LAW

- Canon 1311 §1: The Church has the innate and proper right of coercing the faithful with penal sanctions.
- Canon 1311 §2 (**NEW**): Those who lead the Church have the obligation to coerce the faithful with penal sanctions.
- “The one who is head of a Church must safeguard and promote the good of its own community and of each of the Christian faithful, through pastoral charity, example of life, advice and exhortation and, if useful, also through the imposition or declaration of penalties, according to the precepts of law applied with canonical equity, having before one's eyes the restoration of justice, the reform of the offender, and the reparation of scandal.”

GENERAL PRINCIPLES OF PENAL LAW

- A fundamental purpose of penal law is
 - the restoration of justice,
 - the reform of the offender, and
 - the reparation of scandal.
- These purposes were previously observed in cc. 1341 and 1344. In addition to these canons, these purposes are now also found in cc. 1311 §2, 1324 §3, 1335 §1, 1343 and 1345 (**NEW**).

GENERAL PRINCIPLES OF PENAL LAW

- Canon 1312: The general kinds of penal sanctions remain unchanged.
 - Medicinal penalties or censures (excommunication, interdict, suspension)
 - Expiatory penalties
 - Penal remedies (warning, rebuke) to prevent a delict
 - Penances to substitute or increase a penalty

PENAL LAWS AND PENAL PRECEPTS

- Canon 1313 has remained unchanged.
- §1. If a law is changed after a delict has been committed, the law more favorable to the accused is to be applied.
 - *Pascite Gregem Dei* was promulgated on May 23, 2021, and took effect on December 8, 2021. Be aware of this date when dealing with a penal process.
- §2. If a later law abolished a law or at least a penalty, the penalty immediately ceases.
 - Be aware that *Pascite Gregem Dei* added and revised some penal laws, but did not abolish any penal laws or penalties.

PENAL LAWS AND PENAL PRECEPTS

- Canon 1314 remains substantially unchanged: Penalties are ordinarily *ferendae sententiae*.
- Be aware that the number of *latae sententiae* penalties has increased and no *latae sententiae* penalties have become *ferendae sententiae*.
- Canon 1315 has changed from the term “particular law” to laws issued by an “inferior legislator.”
- Particular law is described in relationship to particular churches (c. 368). Beyond these, there are other structures of governance over territories or groups of persons, including religious orders with their own proper law.

PENAL LAWS AND PENAL PRECEPTS

- Regarding penal precepts, canon 1319 §1 has added:
 - Insofar as a person can impose precepts in the external form in virtue of the power of governance according to the prescripts of canons 48-58, the person can also threaten determinate penalties by precept, except perpetual expiatory penalties.
 - In particular, note:
 - Can. 50 Before issuing a singular decree, an authority is to seek out the necessary information and proofs and, insofar as possible, to hear those whose rights can be injured.
 - Can. 51 A decree is to be issued in writing, with the reasons at least summarily expressed if it is a decision.

THE SUBJECT LIABLE TO PENAL SANCTIONS

- Canon 1321 §1 (**NEW**): A person is considered innocent until the contrary is proved.
- This principle was already present implicitly in the following canons:
 - Can. 1321 §2. No one is punished unless the external violation of a law or precept, committed by the person, is gravely imputable by reason of malice or negligence.
 - Can. 1526 §1. The burden of proof rests upon the person who makes the allegation.
 - Can. 1608 §4. A judge who was not able to arrive at this certitude is to pronounce that the right of the petitioner is not established and is to dismiss the respondent as absolved...
 - Can. 1726 If at any grade and stage of the penal trial it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused even if it is also established that criminal action has been extinguished.

THE SUBJECT LIABLE TO PENAL SANCTIONS

- Drunkenness which is deliberately sought in order to commit or excuse a delict has been re-evaluated:
- In former c. 1325, deliberate drunkenness cannot be considered as a mitigating factor to lessen a penalty.
- In current c. 1326 §1, 4°, deliberate drunkenness can be considered as an aggravating factor for which a harsher penalty may be inflicted (**NEW**).
- (See 1917 CIC c. 2206.)

PENALTIES AND OTHER PUNISHMENTS

- Excommunication (c. 1331) is elaborated in a more detailed way.
- Interdict (c. 1332) prohibits the reception or the celebration of the sacraments, while excommunication also prohibits exercising or performing any power of governance.
- Suspension (c. 1333) remains largely unchanged, but can now affect lay persons and clerics (**NEW**).

PENALTIES AND OTHER PUNISHMENTS

- Canon 1336 §1. Expiatory penalties, which can affect the offender either perpetually, for a prescribed time, or for an indeterminate time, among others which the law may establish are those enumerated in §§2-5.
- Canon 1336 §§2-5 (**NEW**) include orders, prohibitions, privations, and dismissal from the clerical state.
- An expiatory penalty can affect place of residence, the power of orders or governance, an office, duty, ministry, function, faculty, privilege, right, or title. (See 1917 CIC cc. 2291 and 2298.)
- Multiple references will be found in Part II of Book VI to “one of the penalties mentioned in canon 1336 §§2-4.”

PENALTIES AND OTHER PUNISHMENTS

- Canon 1336 includes monetary penalties among possible expiatory penalties (**NEW**).
- Can. 1336 §2, 2°. An order to pay a monetary fine or a sum of money for the purposes of the Church, in accordance with the rules defined by the conference of bishops.
- Can. 1336 §4, 5°. A privation of all or some ecclesiastical remuneration, in accordance with the rules established by the conference of bishops, without prejudice to the prescript of canon 1350 §1.
- These canons conform to the principle that expiatory penalties can deprive a member of the Christian faithful of some spiritual or temporal good (c. 1312 §2).
- The USCCB has not yet issued complementary norms on these canons.

PENALTIES AND OTHER PUNISHMENTS

- Canon 1339 §1 refers to the ordinary who can issue warnings or rebukes. Recall canon 134 regarding the definition of an ordinary.
- Warnings and rebukes should be recorded in writing (c. 1339 §3) and serve as the obligatory warning before a censure can be imposed (see c. 1347).
- When warnings or rebukes are ineffective, canon 1339 §4 calls for a penal precept (**NEW**).
- Canon 1339 §5 (**NEW**) also allows for the person to be subject to vigilance by the ordinary (cf. 1917 CIC 2311). When dealing with multiple delicts, the judge can also subject the offender to vigilance (c. 1346 §2).

APPLICATION OF PENALTIES

- Can. 1335 §1 (**NEW**). If the competent authority imposes or declares a censure in a judicial process or by an extrajudicial decree, the same authority can also impose expiatory penalties considered necessary to restore justice or repair scandal.
- Can. 1341 An ordinary must initiate a judicial or administrative process to impose or declare penalties when he perceives that neither means of pastoral correction, especially fraternal correction, nor warnings nor rebukes will be able to sufficiently restore justice, reform the offender and repair scandal.
- *Ferendae sententiae* penalties are imposed.
- *Latae sententiae* penalties are declared.
- Judicial processes are trials, properly speaking, and end in the **sentence** and can be appealed.
- Extrajudicial processes are **administrative procedures** and end in a **decree** and can be subject to recourse.

APPLICATION OF PENALTIES

- Extrajudicial processes are described in canons 1342 and 1720.
 - A just cause must preclude a judicial process (c. 1342 §1).
 - Apply the laws for the imposition of a penalty, including the protection of the right of defense and the need for moral certitude (c. 1342 §§1 and 3).
 - The accused has the right to be informed of the accusation (c. 1720, 1°), to have an advocate (c. 1723), to refrain from taking an oath or self-incrimination (c. 1728 §2), and to speak last (c. 1725).
 - Perpetual penalties are excluded (c. 1342 §2), except for SST, Art. 19 §2.

APPLICATION OF PENALTIES

- Some ecclesiastical delicts are also civil crimes.
- The judge can defer the imposition of a penalty if it is foreseen that the accused will be punished sufficiently by the civil authority (c. 1344).
- In practice, the Congregation for the Doctrine of the Faith delays any canonical penal process until the civil criminal process is complete.
- Be sure to cite the accused in order to interrupt prescription (cf. c. 1512, 4°).

APPLICATION OF PENALTIES

- Perpetual penalties cannot be inflicted:
 - by a penal precept (c. 1319 §1),
 - in an extrajudicial process (c. 1342 §2), or
 - if the penalty for a delict is indeterminate (c. 1349).
- Perpetual penalties can be established in particular law by an inferior legislator, but
 - An inferior legislator cannot establish a penalty of dismissal from the clerical state (c. 1317).

APPLICATION OF PENALTIES

- A penalized cleric may be deprived of remuneration (cc. 281 §1 and 1336 §4, 5°).
- A penalized cleric must always have sustenance (c. 1350 §1).
- A dismissed cleric has no right to remuneration or sustenance except by charity (c. 1350 §2).

APPLICATION OF PENALTIES

- Can. 1353 An appeal or recourse from judicial sentences or from decrees, which impose or declare a penalty, has a suspensive effect.
 - Appeals can be made to an appellate tribunal in judicial processes.
 - Recourse can be taken to a hierarchical superior in an extrajudicial process.
- Note that there is no appeal from a sentence that is *res iudicata* (c. 1629, 3°).

REMISSION OF PENALTIES

- The canons on the remission of penalties are largely unchanged.
- Canon 1361 §4 (**NEW**). The remission must not be granted until, in the prudent judgement of the Ordinary, the offender has repaired any harm that may have been caused. The offender may be urged to make such reparation or restitution by one of the penalties mentioned in canon 1336 §§2-4; the same also applies when a censure is remitted for an offender [who has withdrawn from contumacy] according to the norm of canon 1358 §1.

PRESCRIPTION

- The rules of prescription (the statute of limitations) are revised and complex (cc. 1362).
 - Delicts are generally prescribed after 3 years.
 - Illicit alienation of ecclesiastical goods, bribery, abuse of office, exercise of a trade by a cleric or religious, sexual delicts involving adults, homicide, mutilation, abortion, and grooming a minor are prescribed after 7 years.
 - Sexual abuse of a minor is prescribed after 20 years.
 - Other *graviora delicta* are prescribed by the CDF after 20 years.
- Prescription can also bar the action to execute a penalty if it has not been done within the time prescribed (c. 1363).

PARTICULAR DELICTS AND PENALTIES

BOOK VI. PENAL SANCTIONS IN THE CHURCH

Part II. Particular Delicts and their Penalties

PARTICULAR DELICTS AND PENALTIES

General trends in the revision of canons on particular delicts:

1. The titles and individual delicts have been reorganized.
2. The code has retained and expanded the number of delicts with *latae sententiae* penalties.
3. The code has retained and expanded the number of delicts for which a cleric can be dismissed from the clerical state.

PARTICULAR DELICTS AND PENALTIES

General trends in the revision of canons on particular delicts:

4. The code has a preference for **prescriptive penalties**.
 - Some delicts with facultative penalties (“*puniri potest*”) have become prescriptive (“*puniatur*”).
5. The code has changed many **indeterminate penalties** into **determinate penalties**.
 - In place of the indeterminate expression, “*iusta poena puniatur*,” specific penalties are prescribed, especially the expiatory penalties in canon 1336 §§2-4, censures or even privation of office.

PARTICULAR DELICTS AND PENALTIES

Title	Original 1983 Code	Pascite Gregem Dei
Title I	Delicts Against Religion and the Unity of the Church	Delicts against the Faith and the Unity of the Church
Title II	Delicts Against Ecclesiastical Authorities and the Freedom of the Church	Delicts against Ecclesiastical Authority and the Exercise of Duties
Title III	Usurpation of Ecclesiastical Functions and Delicts in Their Exercise	Offences against the Sacraments
Title IV	The Crime of Falsehood	Offences against Good Reputation and the Delict of Falsehood
Title V	Delicts against Special Obligations	Delicts against Special Obligations
Title VI	Delicts Against Human Life and Freedom	Delicts against Human Life, Dignity and Liberty
Title VII	General Norm	General Norm

LATAE SENTENTIAE / IPSO FACTO PENALTIES

The *latae sententiae* or *ipso facto* penalties remain largely unchanged.

There are no delicts for which a *latae sententiae* penalty has become *ferendae sententiae* or been withdrawn.

- Heresy, apostasy, schism (c. 1364 §1)
- Physical attack on the pope or a bishop (c. 1370 §§1 and 2)
- Simulation of Mass or confession (c. 1379 §1; former c. 1378 §2)

LATAE SENTENTIAE / IPSO FACTO PENALTIES

- Ordination of a woman (c. 1379 §3; SST, Art. 5, 1°; **NEW** to the 1983 Code)
 - Can. 1379 §3. Both a person who attempts to confer a sacred order on a woman, and the woman who attempts to receive the sacred order, incur a latae sententiae excommunication reserved to the Apostolic See; a cleric, moreover, can be punished by dismissal from the clerical state.
- Desecration of the Eucharist (c. 1382 §1; former c. 1367)
- Absolution of an accomplice in a sin *contra sextum* (c. 1384; former c. 1378 §1)
- Violation of the seal of confession (c. 1386 §1; former 1388 §1)

LATAE SENTENTIAE / IPSO FACTO PENALTIES

- Ordaining a bishop without a papal mandate (c. 1387; former c. 1382)
- Ordaining and being ordained without dimissorial letters (c. 1388 §1; former c. 1383) *The one ordained is ipso facto suspended from the order received.*
- Presenting oneself for orders while bound by a censure or irregularity (c. 1388 §2; **NEW** to 1983 Code)
- Can. 1388 §2. A person who approaches sacred orders while bound by some censure or irregularity which is voluntarily concealed is ipso facto suspended from the order received, apart from what is established in canon 1044, §2, n. 1 [i.e. impeded from the exercise of orders].

LATAE SENTENTIAE / IPSO FACTO PENALTIES

- Falsely denouncing a confessor of solicitation (c. 1390 §1)
- A cleric or religious who attempts marriage (c. 1394)
- Completed abortion (c. 1397 §2; former c. 1398)

DISMISSAL FROM THE CLERICAL STATE

There are no delicts for which the penalty of dismissal from the clerical state has been withdrawn.

The following delicts can result in facultative dismissal from the clerical state according to the gravity of the case. Dismissal is never preceptive or ipso facto.

- Apostacy, heresy, schism (c. 1364). *Dismissal can be imposed if the cleric persists in contumacy.*
- Physical attack on the pope (c. 1370 §1)
- Ordination of a woman (c. 1379 §3; SST; **NEW** to the 1983 Code)

DISMISSAL FROM THE CLERICAL STATE

- Desecration of the Eucharist (c. 1382 §1; former 1367)
- Sacrilegious consecration of the Eucharist (c. 1382 §2; **NEW** to the 1983 Code)
- Can. 1382 §2. A person guilty of consecrating for a sacrilegious purpose one or both species within the Eucharistic celebration or outside it is to be punished according to the gravity of the offence, not excluding dismissal from the clerical state.
- NB: Can. 927 It is absolutely forbidden, even in extreme urgent necessity, to consecrate one matter without the other or even both outside the eucharistic celebration.

DISMISSAL FROM THE CLERICAL STATE

- Solicitation in the confessional (c. 1385; former c. 1387)
- Recording or maliciously divulging the content of a confession (c. 1386 §3; SST; **NEW** to the 1983 Code)
- Can. 1386 §3. Without prejudice to the prescripts of §§1 and 2, any person who by means of any technical device records or maliciously divulges through means of social communication that which is said by the confessor or the penitent in a sacramental confession, either real or simulated, is to be punished according to the gravity of the delict, not excluding, dismissal from the clerical state, if the person is a cleric.

DISMISSAL FROM THE CLERICAL STATE

- Illegitimate abandonment of ministry for six months (c. 1392; **NEW** to the 1983 Code)
- Can. 1392 A cleric who voluntarily and Illegitimately abandons the sacred ministry, for six continuous months, with the intention of withdrawing himself from the competent Church authority, is to be punished, according to the gravity of the delict, with suspension or even with the penalties established in canon 1336 §§2-4, and in the more serious cases can be dismissed from the clerical state.

DISMISSAL FROM THE CLERICAL STATE

- Attempted marriage by a cleric (c. 1394 §1). *Dismissal can be imposed if the cleric does not repent after a warning.*
- Concubinage or *Delicts contra sextum* with an adult by a cleric (c. 1395). *Dismissal can be imposed for concubinage after a warning. Other delicts are more serious and do not require a warning.*
- Homicide, mutilation, completed abortion (c. 1397; former cc. 1397 and 1398). The option for dismissal in c. 1397 §3 is **NEW**.
- *Delicts contra sextum* with a minor (c. 1398 §1; former c. 1395 §2)

PREFERENCE FOR PRECEPTIVE PENALTIES

There are no delicts for which a preceptive penalty was changed to a facultative penalty.

The following delicts have changed facultative penalties to preceptive penalties:

- Violating the obligations imposed by a penalty (c. 1371 §2; former c. 1393)
- Impeding or intimidating ecclesiastical powers or elections (c. 1372; former c. 1375)
 - In place of a facultative just penalty, now a preceptive expiatory penalty.

PREFERENCE FOR PRECEPTIVE PENALTIES

- Illegitimately performing another priestly function (c. 1389; former c. 1384)
 - In place of a facultative just penalty, now a preceptive just penalty, not excluding a censure.
- Falsehood in an ecclesiastical document (c. 1391)
 - In place of a facultative just penalty, now a preceptive expiatory penalty.
- Reporting another false denunciation or injuring a good reputation (c. 1390 §2)
 - In place of a facultative just penalty, not excluding a censure, now a preceptive expiatory penalty to which a censure can be added.

Only one delict, another grave external violation (c. 1399), continues to be punished by a facultative just penalty.

TITLE I: DELICTS AGAINST THE FAITH AND THE UNITY OF THE CHURCH

- Canons 1364 and 1365 (former c. 1371) bring together elements of the profession of faith and oath of fidelity more coherently. The three paragraphs that follow the Creed were promulgated in *Ad Tuendam Fidem* by John Paul II in 1998.
- First Paragraph: Defined in c. 750 §1. Rejection is heresy (c. 751). Delict punished in c. 1364.
 - “With firm faith, I also believe everything contained in the word of God, whether written or handed down in Tradition, which the Church, either by a solemn judgment or by the ordinary and universal Magisterium, sets forth to be believed as divinely revealed.”
 - Can. 1364 §1. Without prejudice to the prescript of can. 194, §1, n. 2, an apostate from the faith, a heretic, or a schismatic incurs a *latae sententiae* excommunication; in addition, a person can be punished with the penalties mentioned in can. 1336, §§2-4.

TITLE I: DELICTS AGAINST THE FAITH AND THE UNITY OF THE CHURCH

- Second Paragraph: Defined in c. 750 §2. Delict punished in c. 1365.
 - “I also firmly accept and hold each and everything definitively proposed by the Church regarding teaching on faith and morals.”
 - Can. 1365 In addition to the case mentioned in can. 1364, §1, a person who teaches a doctrine condemned by the Roman Pontiff or an ecumenical council or who obstinately rejects the doctrine mentioned in can. 750, §2 or in can. 752 and who does not retract after having been admonished by the Apostolic See or an ordinary, is to be punished by a censure and privation of office; to these sanctions those mentioned in canon 1336 §§2-4 can be added.
 - Canon 1365 has replaced the indeterminate just penalty with a determinate penalty.

TITLE I: DELICTS AGAINST THE FAITH AND THE UNITY OF THE CHURCH

- Third Paragraph: Defined in c. 752. Delict punished in c. 1365.
- “Moreover, I adhere with religious submission of will and intellect to the teachings which either the Roman Pontiff or the College of Bishops enunciate when they exercise their authentic Magisterium, even if they do not intend to proclaim these teachings by a definitive act.”

TITLE I: DELICTS AGAINST THE FAITH AND THE UNITY OF THE CHURCH

- Canon 1368 has not changed regarding the delict of using instruments of social communication to utter blasphemy, injure good morals, express insults, or excite hatred or contempt against religion or the Church.
- However, the canons on Instruments of Social Communication and Books in Particular (cc. 822-832) approach the question of competence territorially, either based on the proper ordinary of the author or of the place of publication.
- This does not adequately address communication through the Internet, which remains an area that may be addressed in future law.

TITLE II: DELICTS AGAINST ECCLESIASTICAL AUTHORITY AND THE EXERCISE OF DUTIES

- Beyond attacks on the pope or bishops, canon 1370 §3 adds lay faithful to clerics and religious regarding the use of physical force out of contempt for the faith.
- Canon 1371 §1 on disobedience of a precept now calls for a prescriptive penalty: a censure, privation of office, or an expiatory penalty.
- Canon 1371 §2 (former c. 1393) on violating the obligations imposed by a penalty calls for a prescriptive expiatory penalty.

TITLE II: DELICTS AGAINST ECCLESIASTICAL AUTHORITY AND THE EXERCISE OF DUTIES

- Canon 1371 §4 is **NEW**
 - §4. A person who violates the obligation of observing the pontifical secret is to be punished with the penalties mentioned in canon 1336 §§2-4.
 - NB: *Graviora delicta* are subject to the pontifical secret, except in the case of delicts involving sexual abuse of minors or child pornography (SST, Art. 28).
- Canon 1371 §5 is **NEW**
 - §5. A person who fails in the duty to execute an executive sentence or executive penal decree is to be punished with a just penalty, not excluding a censure.

TITLE II: DELICTS AGAINST ECCLESIASTICAL AUTHORITY AND THE EXERCISE OF DUTIES

- Canon 1371 §6 is **NEW**
 - §6. A person who neglects to report a delict, when required to do so by a canonical law, is to be punished according to the norm of canon 1336 §§2-4, adding other penalties according to the gravity of the offence.
 - See *Vos Estis Lux Mundi*, Art. 3 and *As a Loving Mother*, Art. 1
- This canon is an exception to the general principle that negligence is not punished in law.
 - Can. 1321 §3. A penalty established by a law or precept binds the person who has deliberately violated the law or precept; however, a person who violated a law or precept by omitting necessary diligence is not punished unless the law or precept provides otherwise.

TITLE II: DELICTS AGAINST ECCLESIASTICAL AUTHORITY AND THE EXERCISE OF DUTIES

- A second example of a penalty imposed for negligence:
- Canon 1376 §1 (former c. 1377) punishes those who steal ecclesiastical goods or hinder their acquisition, and those who alienate them or perform an act of administration illicitly or invalidly. The indeterminate penalty has been substituted by a determinate expiatory penalty.
- Canon 1376 §2 (**NEW**) punishes those who are negligent in performing illicit or invalid acts of alienation or administration, and those gravely negligent in the administration of ecclesiastical goods.

TITLE II: DELICTS AGAINST ECCLESIASTICAL AUTHORITY AND THE EXERCISE OF DUTIES

- A third example of a penalty inflicted on account of negligence:
- Canon 1378 §1 (former c. 1389 §1) punishes those who abuse an ecclesiastical power, office, or function either by action or omission. This canon is not new.
- Canon 1378 §2 (former c. 1389 §2) punishes those who are culpably negligent in illegitimately placing or omitting acts of ecclesiastical power. This canon is not new, but it strengthens an indeterminate penalty with a determinate expiatory penalty.

TITLE II: DELICTS AGAINST ECCLESIASTICAL AUTHORITY AND THE EXERCISE OF DUTIES

- New to the penal law is the explicit requirement to repair any harm caused by the delict
- Can. 1361 §4 (**NEW**). The remission must not be granted until, in the prudent judgement of the Ordinary, the offender has repaired any harm that may have been caused. The offender may be urged to make such reparation or restitution by one of the penalties mentioned in canon 1336 §§2-4; the same also applies when a censure is remitted for an offender according to the norm of canon 1358 §1.
- The obligation to repair harm is mentioned in:
 - Canon 1376 §§1 and 2 (stealing or improper alienation / administration of ecclesiastical goods)
 - Canon 1378 §§1 and 2 (abuse of office or negligence in ecclesiastical power)

TITLE II: DELICTS AGAINST ECCLESIASTICAL AUTHORITY AND THE EXERCISE OF DUTIES

- The obligation to repair harm is mentioned in Canon 1377 §§1 and 2
- Can. 1377 §1 (former c. 1386; **Revised**). A person who gives or promises something so that someone who exercises an office or function in the Church will do or omit something illegitimately is to be punished with a just penalty according to the norm of canon 1336 §§2-4; likewise, the one who accepts such gifts or promises is to be punished according to the gravity of the delict, not excluding privation of office, and without prejudice to the obligation to repair harm.
- §2 (**NEW**). A person who in the exercise of an office or function seeks an offering beyond the established sum, or additional sums, or something for personal benefit, is to be punished with an appropriate monetary fine or with other penalties, not excluding privation of office, and without prejudice to the obligation to repair harm.

THE REPAIR OF HARM

- The obligation to repair harm is also mentioned in:
- Canon 1390: the false denunciation of (§1) solicitation in confession or of (§2) another delict.
 - Canon 1390 §3. A calumniator must be compelled to make suitable reparation.
- Canon 1393 §2 (**NEW**): A cleric or religious who commits a financial delict or violates the prohibition of managing goods (c. 285 §4) may be required to repair any harm done.

TITLE III: OFFENCES AGAINST THE SACRAMENTS

- Canon 1379 §3 (**NEW**), already mentioned, punishes the ordination of a woman.
- Canon 1379 §4 (**NEW**). A person who deliberately administers a sacrament to those who are prohibited from receiving it is to be punished with suspension, to which other penalties mentioned in canon 1336 §§2-4 may be added.
- Canon 1380 punishes the delict of simony and adds an expiatory penalty to the possibility of interdict and suspension.
- Canon 1382 §2 (**NEW**), already mentioned, punishes the sacrilegious consecration of the Eucharist within or outside of Mass.

TITLE III: OFFENCES AGAINST THE SACRAMENTS

- Canon 1383 (former c. 1385) punishes profiting from Mass offerings with a determinate expiatory penalty in place of a just penalty.
- Canon 1386 §3 (**NEW**), already mentioned, punishes recording or maliciously divulging the contents of a confession.
- Canon 1388 §2 (**NEW**), already mentioned, punishes one bound by a censure or irregularity who approaches orders.
- Canon 1389 (former c. 1384) punishes the delict of illegitimately performing another priestly function, not previously mentioned, with a preceptive just penalty, adding the possibility of a censure.

TITLE IV: OFFENCES AGAINST GOOD REPUTATION AND THE DELICT OF FALSEHOOD

- Canon 1390 §2, already mentioned, punishes a false denunciation of a delict.
- Canon 1391 punishes falsehoods in ecclesiastical documents with a preceptive expiatory penalty in place of a facultative just penalty.

TITLE V: DELICTS AGAINST SPECIAL OBLIGATIONS

- Canon 1392 (**NEW**), already mentioned, punishes a cleric who abandons sacred ministry.
- Canon 1393 §1 (former c. 1392) punishes clerics who conduct a prohibited trade or business with a preceptive expiatory penalty in place of a just penalty.
- Canon 1393 §2 (**NEW**) punishes clerics or religious who commit other financial delicts with a preceptive expiatory penalty and with the obligation to repair harm.

TITLE V: DELICTS AGAINST SPECIAL OBLIGATIONS

- Canon 1395 has been changed from 2 paragraphs to 3 paragraphs. Canon 1395 §1 remains unchanged.
- Can. 1395 §1. A cleric who lives in concubinage, other than the case mentioned in can. 1394, and a cleric who persists with scandal in another external sin against the sixth commandment of the Decalogue is to be punished by a suspension. If he persists in the delict after a warning, other penalties can gradually be added, including dismissal from the clerical state.

TITLE V: DELICTS AGAINST SPECIAL OBLIGATIONS

- Canon 1395 §2. A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed publicly, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.
- Canon 1395 §3. A cleric who has committed a delict against the sixth commandment of the Decalogue by force, threats or abuse of his authority or who forces someone to perform or submit to sexual acts is to be punished by the same penalty mentioned in §2.
- Paragraph §3 has been separated in order to accommodate canon 1398 §2.
- The delict *contra sextum* with a minor has been moved to canon 1398.

TITLE VI: DELICTS AGAINST HUMAN LIFE, DIGNITY AND LIBERTY

- Canon 1397 (formerly cc. 1397 and 1398) punishes homicide and abortion and remains largely unchanged.
 - Canon 1397 §3 is **NEW** and adds the possibility of dismissal for these delicts.

TITLE VI: DELICTS AGAINST HUMAN LIFE, DIGNITY AND LIBERTY

- Can. 1398 §1 (former c. 1395 §2). A cleric is to be punished with privation of office and other just penalties, not excluding dismissal from the clerical state, if the case demands it, if he:
- 1° commits a delict against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one recognized by law with equal protection;
 - Definition of a minor
 - Definition of a person who habitually has an imperfect use of reason (*persona quae habitualiter usum imperfectum rationis habet*)
 - Definition of one recognized by law with equal protection (*ius parem tutelam agnoscit*)

TITLE VI: DELICTS AGAINST HUMAN LIFE, DIGNITY AND LIBERTY

- Can. 1398 §1, 2° (SST; **NEW** to the 1983 Code) grooms or induces a minor or a person who habitually has an imperfect use of reason or one recognized by law with equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated;
 - Definition of groom (devincit, devincire = “tie/bind up, hold fast, subjugate, constrain”)
 - (Not devincere = “subdue, defeat decisively, conquer entirely”)
 - Definition of induce (inducit, inducere)
 - Comment on term “real or simulated.”

TITLE VI: DELICTS AGAINST HUMAN LIFE, DIGNITY AND LIBERTY

- Can. 1398 §1, 3° (SST; **NEW** to the 1983 Code) immorally acquires, retains, exhibits or distributes, in whatever manner and by whatever instrument, pornographic images of minors or of persons who habitually have an imperfect use of reason.

TITLE VI: DELICTS AGAINST HUMAN LIFE, DIGNITY AND LIBERTY

- Can. 1398 §2 (VELM; **NEW** to the 1983 Code). A member of an institute of consecrated life or of a society of apostolic life, or a member of the faithful who enjoys a dignity or performs an office or function in the Church, who commits a delict mentioned in §1 or in canon 1395 §3 is to be punished according to the norm of canon 1336 §§2-4, adding also other penalties according to the gravity of the offence.
 - Based on Vos Estis Lux Mundi, 7 May 2019, Art. 1 §1

PARTICULAR DELICTS AND PENALTIES

The Penal Judicial Trial and The Penal Extrajudicial Administrative Process

OVERVIEW OF THE PENAL PROCESS

- If a potential delict is reported, how should the preliminary evidence be gathered ...?
 - The ordinary opens a preliminary investigation by decree and appoints an auditor to instruct the investigation (c. 1717). Evidence is gathered in a canonical manner.
 - The preliminary investigation can be omitted if all the evidence is already available.
 - The auditor who carries out the investigation cannot later be a judge and should not become an assessor (c. 1717 §3).

OVERVIEW OF THE PENAL PROCESS

- If the accused delict is reserved to the Congregation for the Doctrine of the Faith ...
 - The ordinary must notify the CDF and request competence, or ask for direction.
- If the accused delict is not reserved ...
 - The ordinary must determine whether a process should be initiated and whether it should be judicial or extrajudicial (c. 1718).
- The ordinary can impose restrictions on the accused (c. 1722). The judge may do the same in *graviora delicta* cases (SST, Art. 15).

EXTRAJUDICIAL ADMINISTRATIVE PENAL PROCESS

- After the preliminary investigation has gathered sufficient evidence, if the ordinary decides to use the extrajudicial process (c. 1720), he should consider ...
 - The extrajudicial process does not foresee additional instruction, so the collection of the proofs should be preferably complete.
 - The ordinary is the decision maker about the moral certitude that the delict was committed and what penalty is to be imposed.
 - The ordinary must have the help of two assessors.
 - Perpetual penalties cannot be imposed by extrajudicial decree, unless this faculty has been granted by the CDF for a *gravius delictum* (c. 1342 §2; SST, Art. 19 §2).

EXTRAJUDICIAL ADMINISTRATIVE PENAL PROCESS

- In order to carry out the extrajudicial process ...
 - The accused must be cited or summoned to be informed of the accusation and the proofs.
 - The accused must have the opportunity to present a defense which includes the right to an advocate.
 - The proofs and arguments are weighed by the ordinary with two assessors.
 - The ordinary issues a decree with reasons summarized in law and in fact.
 - The decree can be the object of hierarchical recourse.

ORDINARY PENAL TRIAL

- If the ordinary orders a judicial penal process, the first steps are ...
 - The promoter of justice must be given the acts (c. 1721).
 - The promoter of justice must present a libellus.
 - Judges must be appointed as normal. As a rule, there should be three judges (c. 1425).
 - In penal cases, if there is any question of partiality (c. 1448), it is common to seek judges from outside the diocese who do not know the accused. The diocesan bishop appoints them as judges to act in a particular case.

ORDINARY PENAL TRIAL

- The presiding judge must first ...
 - Accept the libellus and cite the accused.
 - The accused must be given an advocate unless he* has selected one (c. 1723).
 - After hearing the accused or his* advocate, the judge decrees the terms of the controversy in the joinder of the issue. The terms are typically:
 1. Whether or not N. has committed the delict of X?; and
 2. If so, whether or not N. is imputable for this delict?; and
 3. If so, what penalty is to be imposed?

* Male pronouns will be used, but note that the accused, the advocate, and the promoter of justice and the judge may be female.

ORDINARY PENAL TRIAL

- Proofs can consist of (cc. 1526-1586):
 1. Declarations of the parties
 2. Documents
 3. Witnesses
 4. Experts
 5. Judicial examinations or inspections

ORDINARY PENAL TRIAL

- Regarding the roles of the judge, the advocate, and the promoter of justice
 - The advocate should argue vigorously for the accused.
 - The promoter of justice is bound to argue in favor of guilt. He cannot renounce the case without permission from the ordinary (c. 1724).
 - The judge must always remain impartial.
 - Consideration should be given to the requests of the advocate (to present witnesses, to present documents, to be given more time) in order to protect the right of defense.
 - While being generous, the judge can and should set appropriate limits to these requests.

ORDINARY PENAL TRIAL

- Regarding the testimony of the accused...
 - The testimony of the accused can be sought.
 - The accused cannot be compelled to testify under oath nor to incriminate himself (c. 1728 §2).
 - The accused can and should have his advocate present to assist him.
 - The accused may choose not to respond (c. 1531 §2).
 - Although questions are not to be given to a witness in advance, circumstances may make it more advantageous to pose questions to the accused to answer in writing with the assistance of his advocate.

ORDINARY PENAL TRIAL

- Regarding the presentation of documents...
 - The promoter of justice and the accused (or his advocate) can both present documents.
 - Depending on the delict, useful documents may include: letters from the accused or from others, published writings, financial statements, parish bulletins, and even internet posts, emails, photos, or videos.
 - The judge does not have to admit an excessive number of documents into the acts if they are not useful or relevant (c. 1527). Documents presented by the advocate may be seen as necessary to the defense and should be given consideration.

ORDINARY PENAL TRIAL

- Regarding the presentation of witnesses ...
 - The promoter of justice and the accused (or his advocate) can both present a list of witnesses as well as topics on which they should be examined (c. 1552).
 - The promoter of justice and the accused (or his advocate) can request the exclusion of a witness for a just cause (c. 1555).
 - The judge can limit the number of witnesses to be heard (c. 1553). Even so, the advocate may ask that statements from excluded witnesses be admitted.
 - In cases involving the seal of confession, the accuser cannot be identified to the accused unless the accuser consents. The judge cannot inquire about the content of a confession (SST, Art. 4 §2).

ORDINARY PENAL TRIAL

- Regarding the hearing of witnesses ...
 - Witnesses are to be heard in person, and not by questionnaire (c. 1566).
 - The witness should take an oath (c. 1562).
 - The judge must not ask leading questions or communicate the questions in advance (c. 1565). The judge should safeguard his impartiality and not take sides or agree with the witness.
 - The promoter and the advocate (but not the accused) have the right to be present for the examination of witnesses, but may only ask questions through the judge (c. 1561).

ORDINARY PENAL TRIAL

- Regarding the recording of witness testimony ...
 - A notary must be present to record the testimony. It is not recommended that the tribunal hire a court transcriptionist. An ecclesiastical notary takes down the substance of the testimony, carefully recording the exact words at least in what relates to the direct substance of the trial (c. 1567).
 - The witness must be able to review his or her answers and sign the testimony (c. 1569).
 - The tribunal cannot travel outside the diocese to obtain testimony without permission (c. 1469 §2).

ORDINARY PENAL TRIAL

- Regarding the evaluation of witness testimony ...
- In marriage cases, the testimony of one party can have the force of full proof.
 - Can. 1678 §1. In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties, **can have the force of full proof**, to be evaluated by the judge after he has considered all the indications and supporting factors, **unless other elements are present which weaken them** (cf. *Mitis Iudex Dominus Iesus*).
- In penal cases, the prior principle stands regarding full proof.
 - Can. 1573 The testimony of one witness **cannot produce full proof** unless it concerns a qualified witness making a deposition concerning matters done ex officio, or **unless the circumstances of things and persons suggest otherwise**.

ORDINARY PENAL TRIAL

- Regarding the presentation of experts...
 - Experts can be appointed by the judge and are subject to recusal (c. 1576).
 - Beyond psychological court experts, various delicts might call for experts in various fields to testify before the tribunal (e.g. a theological, financial, or medical expert).
 - The advocate may want to present a contrary expert witness. While experts are appointed by the judge (c. 1575), the reports of other experts can be accepted by the judge.
 - In deciding how to proceed, the judge should give reasonable latitude to the defense.

ORDINARY PENAL TRIAL

- Regarding a judicial examination or inspection ...
 - A physical inspection may be useful according to the nature of the delict.
 - For example, in cases of abuse, the alleged victim's account of the place where the delict occurred can be substantiated or refuted by inspecting the location (c. 1582).
 - i.e. was it under a mastic tree or under an oak tree (cf. Dan 13)?

ORDINARY PENAL TRIAL

- Regarding delays and interventions by the parties ...
 - The judge should set time limits for the instruction of the case, the presentation of evidence and for the presentation of briefs.
 - Incidental questions may be presented by the promoter of justice or the advocate. They may also take exception to procedural decisions by the judge.
 - Whether the judge resolves these questions during the trial or with the final sentence (c. 1589), he must do so with a sense of equity, giving reasonable deference to the accused and reasonable protection to the right of defense.

ORDINARY PENAL TRIAL

- When the instruction is complete ...
 - The judge must publish the acts, at least for the advocate to come and inspect.
 - It is not uncommon for the advocate for the accused to request a copy of the acts. In deference to protecting the right of defense, this request is frequently granted perhaps even with a promise of confidentiality unless specific reasons suggest otherwise (c. 1598).
 - Briefs are submitted by the promoter of justice and the advocate. The advocate speaks last (c. 1725).

ORDINARY PENAL TRIAL

- Finally, the judges must ...
 - The judges must meet to decide the case. The ponens must write the sentence that is to be signed by all the judges.
 - The sentence must be published to the accused, his advocate, and the promoter of justice.
 - The sentence may be appealed by the advocate or by the promoter of justice to the appellate tribunal (c. 1628).
 - The parties should know that an appeal is a new hearing of the case and may be decided in the accused's favor or it may result in a more severe penalty.

QUESTIONS