

## HOW TO HEAL: EVALUATING THE REMEDIES FOR NEW JERSEY CLERGY SEX ABUSE VICTIMS

HANNAH TELLER

### I. Introduction

In 2019, the Catholic Church and New Jersey legislature responded to the crisis of clergy sex abuse by creating opportunities for survivors of abuse to seek redress. On May 13, 2019, New Jersey Governor Phil Murphy signed into law a bill extending the statute of limitations for civil lawsuits alleging sexual abuse.<sup>1</sup> The New Jersey Senate heard almost five hours of testimony from numerous survivors of sexual abuse regarding the need for retroactive legislation.<sup>2</sup> But, the Church was planning its own remedy to respond to the crisis – an Independent Victims Compensation Fund to resolve claims with survivors. In response to the bill's signing, the Archdiocese of Newark issued a statement:

While we disagreed on specific elements of the legislation, the Catholic community, the legislature, and the Governor sincerely agree on one key position – the need to restore justice for the victims of sexual abuse in New Jersey. The Catholic Community is confident that the Independent Victims Compensation Program established by the five dioceses in New Jersey is a significant step towards restoring justice for those who, as minors, were abused by ministers of the Church.<sup>3</sup>

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<sup>1</sup> Press Release, Office of the Governor, Governor Murphy Signs Legislation Extending the Civil Statute of Limitations for Sexual Abuse Claims in New Jersey (May 13, 2019), <https://www.nj.gov/governor/news/news/562019/approved/20190513c.shtml>.

<sup>2</sup> Matt Friedman, *Senate easily approves bill giving sex abuse victims more time to sue*, POLITICO (Mar. 14, 2019 5:06 PM), <https://www.politico.com/states/new-jersey/story/2019/03/14/senate-easily-approves-bill-giving-sex-abuse-victims-more-time-to-sue-914236>.

<sup>3</sup> Press Release, Archdiocese of Newark, Statement of the Archdiocese of Newark on NJ S477 – Legislation Extending the Civil Statute of Limitations for Sexual Abuse Claims (May 13, 2019), <https://www.rcan.org/statement-archdiocese-newark-nj-s477%E2%80%94legislation-extending-civil-statute-limitations-sexual-abuse>.

The recent legislation and the church compensation fund create deepening tension in the process of healing for survivors of sexual abuse in how they will choose to pursue justice.

This comment will analyze the two recent developments in New Jersey that create a choice of remedies for sex abuse survivors: (1) tort litigation under the new windows legislation, and (2) the administration of claims through the New Jersey dioceses' Independent Victims' Compensation Fund. Part II will provide a background of the clergy sex abuse scandal and the prevalence of the abuse in New Jersey. Part III will discuss the recent changes in New Jersey that created a choice of remedies for survivors. Part IV will analyze the differences between the windows legislation and the Independent Victims' Compensation Fund, as well as compare the choice of remedies in New York and Delaware. Part V will discuss whether there is a superior method for survivors to seek justice for the abuse they endured. Although filing a lawsuit or submitting a claim through the Independent Victims Compensation Fund can never remove the pain and suffering caused by childhood sexual abuse, New Jersey's recent developments demonstrate the evolution in legal remedies that strive to promote justice for survivors.

## II. Background on Clergy Sexual Abuse

The prevalence of clergy sex abuse in the Catholic Church reflects an institutional failure of accountability on a national scale. One definition of sexual abuse is, "contacts or interactions between a child and an adult when the child is being used as an object of sexual gratification for the adult."<sup>4</sup> The watchdog group, Bishop Accountability, reported that they received allegations of abuse from 6,721 priests totaling over 18,000 victims.<sup>5</sup> In a study presented to the United States Conference of Catholic Bishops and conducted by the John Jay College Research Team, the results indicated that there were a total of 4,392 priests with allegations of child sex abuse between 1950 and 2002.<sup>6</sup> The John Jay College Research Team study found 10,667

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<sup>4</sup> KAREN TERRY ET AL., THE NATURE AND SCOPE OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES 1950-2002 22 (2004), <https://tile.loc.gov/storage-services/master/gdc/gdcebookspub/20/19/66/72/66/2019667266/2019667266.pdf>.

<sup>5</sup> *Data on the Crisis: The Human Toll*, BISHOPACCOUNTABILITY.ORG, <http://www.bishop-accountability.org/AtAGlance/data.htm#sexualcrimes> (last visited Jan. 31, 2021).

<sup>6</sup> KAREN TERRY ET AL., THE CAUSES AND CONTEXT OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS IN THE UNITED STATES, 1950-2010 8 (2011), <https://www.usccb.org/sites/default/files/issues-and-action/child-and-youth->

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individual reports of sexual abuse by priests made known to dioceses by early 2003.<sup>7</sup> The extensive reporting on clergy sex abuse reveals a pattern of abuse, with the ensuing cover-up of allegations in dioceses across the country starting in the late twentieth century.<sup>8</sup> Survivors who experienced abuse as children often describe a pattern of grooming preceding the abuse, and a period of sexual abuse consisting of “repeated acts over prolonged periods.”<sup>9</sup> Sexually abusive relationships commonly involve the abuser’s exploitation of his power over the weaker victim.<sup>10</sup> The pattern of grooming and prolonged periods of abuse, along with strong ties to the Catholic Church, contributed to survivors’ decisions not to report.<sup>11</sup> When survivors and their families did decide to come forward, the Church would go to great lengths to protect the perpetrators. Supervisors would fail to investigate the claims, or remove and reassign the priests to different parishes.<sup>12</sup> The Church commonly entered into confidential settlements with survivors that contained non-disclosure agreements.<sup>13</sup> This practice furthered the culture of secrecy by hiding the identities of both the victims and its priests who could continue serving parishes.<sup>14</sup>

The Catholic Church enjoyed protection from litigation in state civil courts by asserting its institutional autonomy under the Establishment Clause of the First Amendment. The First Amendment prohibits the government from making any “law respecting the establishment of religion, or prohibiting the free exercise thereof.”<sup>15</sup> Courts and state legislatures for a time interpreted the First Amendment to create a shield of autonomy from governmental intervention in internal church affairs.<sup>16</sup> Until the late 1990s and early 2000s, the Church was

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protection/upload/The-Causes-and-Context-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-in-the-United-States-1950-2010.pdf (last visited Jan. 31, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Data on the Crisis: The Human Toll*, BISHOPACCOUNTABILITY.ORG, <http://www.bishop-accountability.org/AtAGlance/data.htm#sexualcrimes> (last visited Jan. 31, 2021).

<sup>9</sup> Thomas P. Doyle & Stephen C. Rubino, *Catholic Clergy Sexual Abuse Meets the Civil Law*, 31 *FORDHAM URB. L. J.* 549, 560 (2004).

<sup>10</sup> *Id.* at 561.

<sup>11</sup> *Id.* at 560 (asserting this statement from the authors’ joint experience and without citing statistical studies).

<sup>12</sup> See *The Assignment Record Project*, BISHOPACCOUNTABILITY.ORG, <http://app.bishop-accountability.org/member/psearch.jsp?op=assignments> (last visited Apr. 1, 2021).

<sup>13</sup> Vasundhara Prasad, *If Anyone Is Listening, #MeToo: Breaking the Culture of Silence Around Sexual Abuse Through Regulating Non-Disclosure Agreements and Secret Settlements*, 59 *B.C. L. REV.* 2507, 2517 (2018).

<sup>14</sup> *Id.*

<sup>15</sup> U.S. CONST. amend. I.

<sup>16</sup> Angela C. Carmella, *The Protection of Children and Young People: Catholic and Constitutional Visions of Responsible Freedom*, 44 *B.C.L. REV.* 1031, 1036-1037 (2003).

successful in defending sexual abuse claims involving negligent supervision of clergy by asserting that the claims involved an excessive entanglement of church and state.<sup>17</sup> Supporters of the autonomy doctrine reasoned that day-to-day decisions, including the hiring and supervision of clergy, fell within the protection of the First Amendment and could not be subject to civil liability.<sup>18</sup>

By the early 2000's, the *National Catholic Reporter* and the *Boston Globe* published eye-opening reports of the high prevalence of clergy sex abuse.<sup>19</sup> State courts responded to the widespread institutional failure by chipping away at the Church's autonomy defense and allowing survivors to adjudicate their negligent supervision claims in court.<sup>20</sup> Decisions like *Malicki v. Doe*<sup>21</sup> in state courts opened the floodgates for victims to sue for negligent hiring and supervision against the Church and other religious institutions.<sup>22</sup> Litigation and extensive reporting exposed numerous sexual abuse scandals within the Catholic Church "and its systemic failures to protect children."<sup>23</sup> Over the past twenty years, thousands of victims have brought claims resulting in nearly four billion dollars in lawsuit judgments and settlements.<sup>24</sup> Unfortunately, the momentum that granted survivors the power to sue the Catholic Church did not reach New Jersey courts for some time.<sup>25</sup> In New Jersey, the Catholic dioceses continued to enjoy protection from litigation

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<sup>17</sup> Angela C. Carmella, *Catholic Institutions in Court: The Religion Clauses and Political-Legal Compromise*, 120 W. VA. L. REV. 1, 47 (2017); see *L.L.N. v. Clauder*, 563 N.W.2d 434 (Wis. 1997); see also *J.M. v. Minn. Dist. Council of the Assemblies of God*, 658 N.W.2d 589 (Minn. Ct. App. 2003).

<sup>18</sup> Carmella, *supra* note 17, at 49.

<sup>19</sup> *Priest child abuse cases victimizing families; bishops lack policy response*, NAT'L CATHOLIC REP. (June 7, 1985) <http://www.natcath.org/crisis/070585b.htm>; Mark Feeney, *Globe wins Pulitzer gold medal for coverage of clergy sex abuse*, BOS. GLOBE (Apr. 8, 2003), <http://www.boston.com/globe/spotlight/abuse/extras/pulitzers.htm>. (Barbara Blaine founded Survivors Network of those Abused by Priests in 1988 and spearheaded efforts to advocate on behalf of clergy sexual abuse victims).

<sup>20</sup> *Malicki v. Doe*, 814 So. 2d 347, 367 (Fla. 2002) (finding that the First Amendment does not bar consideration of the plaintiff's claims of negligent hiring and supervision); see also *Roman Catholic Diocese v. Morrison*, 905 So. 2d 1213, 1230 (Miss. 2005) (holding that the prosecution of the civil claims, including negligent hiring and supervision, did not "excessively entangle the court in ecclesiastical matters").

<sup>21</sup> *Malicki*, 814 So. 2d at 365.

<sup>22</sup> *Malicki*, 814 So. 2d at 365.

<sup>23</sup> Emily Zogbi, *The Catholic Church Has Paid Nearly \$4 Billion Over Sexual Abuse Claims, Group says*, NEWSWEEK (Aug. 25, 2018) <https://www.newsweek.com/over-3-billion-paid-lawsuits-catholic-church-over-sex-abuse-claims-1090753>.

<sup>24</sup> *Id.*

<sup>25</sup> Samantha Kluxen LaBarbera, *Secrecy and Settlements: Is the New Jersey Charitable Immunity Act Justified in Light of the Clergy Sexual Abuse Crisis?*, 50 VILL. L. REV. 261, 263-64, n. 6 (2005).

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under the doctrine of charitable immunity, which “shield[ed] any ‘non profit corporation, society, or association organized exclusively for religious, charitable or educational purposes’ from tort liability arising from negligence.”<sup>26</sup> It was not until 2006 that Governor Codey signed into law an amendment to the Charitable Immunity Act that allowed litigation against the Church to proceed.<sup>27</sup> This amendment stripped immunity from religious, charitable, educational, and medical institutions for civil claims of negligent hiring, supervision, and retention of employees in cases of “sexual offense[s] being committed against a person under the age of 18 who was a beneficiary of the nonprofit organization.”<sup>28</sup>

Another roadblock for survivors in their pursuit of justice is the statute of limitations for civil claims of sexual abuse. Since most reports of clergy sexual abuse are from the late twentieth-century, the statute of limitations in many states lapsed long before judicial interpretation of the First Amendment changed to extend tort liability to religious institutions.<sup>29</sup> The California legislature responded to this problem by passing “windows” legislation that extends the statute of limitations to allow adults who experienced sexual abuse as children to sue their abusers and the institutions that failed to protect them many years later.<sup>30</sup> Legislation that creates a window to extend the statute of limitations is important in the adjudication of child sex abuse claims because, according to child advocate Marci Hamilton, the average age of a survivor “who is ready to come forward is 52 [years old].”<sup>31</sup>

The United States Conference of Catholic Bishops (the “Conference”) commissioned a report to understand the prevalence of the sex abuse crisis.<sup>32</sup> The study found that, of the 195 dioceses that participated, clergy sex abuse affected more than 95% of them.<sup>33</sup> The Catholic communities in New Jersey are no different. Clergy sex abuse survivors from the dioceses of Camden, Metuchen, Paterson, and

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<sup>26</sup> *Id.* at 276.

<sup>27</sup> N.J. STAT. ANN. § 2A:53A-7.4 (2006 amendment).

<sup>28</sup> N.J. STAT. ANN. § 2A:53A-7.4 (2006 amendment)

<sup>29</sup> See Diana L. Grimes, *Practice What You Preach: How Restorative Justice Could Solve the Judicial Problems in Clergy Sexual Abuse Cases*, 63 WASH. & LEE L. REV. 1693, 1712-13 (2006).

<sup>30</sup> See *Id.* at 1716-18 (discussing California’s revived statute of limitations).

<sup>31</sup> Michelle Merlin & Carol Thompson, *How other states’ lawmakers have dealt with sex abuse legislation and why Pennsylvania’s may be behind*, MORNING CALL (Sept. 8, 2018 12:00PM), <https://www.mcall.com/news/breaking/mc-nws-priest-sex-abuse-bills-20180827-story.html>. Marci Hamilton is also the CEO of Child USA, which is a leading advocacy group representing the interest of child survivors of abuse.

<sup>32</sup> TERRY, *supra* note 4, at 26.

<sup>33</sup> TERRY, *supra* note 4, at 26.

Trenton, and the Archdiocese of Newark have come forward with allegations against current and former priests. In February 2019, Roman Catholic bishops in New Jersey released the names of almost 200 priests who “have been found credibly accused of sexually abusing a child,” and included victims from all five dioceses in the state.<sup>34</sup>

As the prevalence of the massive institutional failure was uncovered in the early 2000s, the Conference and dioceses around the country reacted by passing reforms to prevent further abuse. In 2002, the Conference voted to adopt a new national policy that required the removal of perpetrators from any employment position in the clergy.<sup>35</sup> This was the first step in a series of reforms taken by American leaders of the Catholic Church. Many victims’ rights groups wanted more from the Conference, since this policy still allowed the perpetrators to remain members of the priesthood.<sup>36</sup> The Conference issued the “Charter for the Protection of Children and Young People” in 2002, with later revisions occurring in 2005, 2011, and 2018.<sup>37</sup> The Charter contains guidelines for various procedures with the aim of creating “a safe environment within the Church for children and youth” and to promote reconciliation.<sup>38</sup> The Charter also included a “zero tolerance” policy for perpetrators and required mandatory reporting of allegations of clergy sex abuse to local law enforcement.<sup>39</sup>

The Conference’s institution of new policies and the media’s coverage of the abuse hit a turning point in 2002.<sup>40</sup> It appears that the steps taken by American dioceses were effective, as allegations of clergy sex abuse and misconduct have declined post-Charter.<sup>41</sup> Nonetheless,

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<sup>34</sup> Rick Rojas, *New Jersey Catholic Bishops List Names of Nearly 200 Priests Accused of Abuse*, N.Y. TIMES (Feb. 13, 2019), <https://www.nytimes.com/2019/02/13/nyregion/list-of-priests-abuse.html>.

<sup>35</sup> Edward Walsh, *Bishops Pass Compromise on Sexual Abuse Policy*, WASH. POST (June 15, 2002), <https://www.washingtonpost.com/archive/politics/2002/06/15/bishops-pass-compromise-on-sexual-abuse-policy/df866b87-13eb-44e5-8ce2-b6f5da94aec9/>.

<sup>36</sup> *Id.*

<sup>37</sup> *Charter for the Protection of Children and Young People*, U.S. CONF. OF CATH. BISHOPS (June 2018), <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final.pdf>.

<sup>38</sup> *Id.* at 3-4, 8.

<sup>39</sup> Tara Isabella Burton, *The decades-long Catholic priest sex abuse crisis, explained*, VOX (Sept. 4, 2018 7:10 AM), <https://www.vox.com/2018/9/4/17767744/catholic-child-clerical-sex-abuse-priest-pope-francis-crisis-explained>.

<sup>40</sup> *Id.*

<sup>41</sup> David Gibson, *10 years after Catholic sex abuse reforms, what’s changed?*, WASH. POST (June 6, 2012), [https://www.washingtonpost.com/national/on-faith/10-years-after-catholic-sex-abuse-reforms-whats-changed/2012/06/06/gJQAQMjOJV\\_story.html](https://www.washingtonpost.com/national/on-faith/10-years-after-catholic-sex-abuse-reforms-whats-changed/2012/06/06/gJQAQMjOJV_story.html).

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“names of offenders and instances of abuse are still regularly being made public” as survivors come forward.<sup>42</sup> Despite the Catholic Church’s reforms, survivors who experienced abuse decades prior to these changes were left unable to access justice in civil court because of expired statutes of limitation.

### III. Recent Changes in New Jersey

In New Jersey, recent legislation shows a changing legal landscape for sex abuse survivors. These developments provide sex abuse survivors with new avenues to pursue justice.<sup>43</sup> Attorney General Gurbir S. Grewal instituted criminal reforms, including the formation and implementation of a special task force to investigate the allegations of clergy sex abuse in New Jersey dioceses.<sup>44</sup> Attorney General Grewal also established a toll-free hotline for reporting allegations.<sup>45</sup>

#### A. WINDOWS LEGISLATION

The most significant change for victims in New Jersey was the recent legislation that, among other things, confines survivors of sex abuse to a window of time to sue their abusers in civil court.<sup>46</sup> The new law, Senate Measure 477 (“S-477”), makes three sweeping changes: (1) it expands the statute of limitations in civil actions alleging sexual abuse; (2) increases the types of defendants retroactively liable in sexual abuses cases; and (3) creates a two-year window for victims to bring claims if their claim had previously expired due to the statute of limitations.<sup>47</sup>

S-477 defines sexual abuse as “an act of sexual contact or sexual penetration between a child under the age of [eighteen] years and an adult.”<sup>48</sup> First, S-477 eliminates the civil statute of limitations for a claim

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<sup>42</sup> Emma Green, *Why Does the Catholic Church Keep Failing on Sexual Abuse?*, ATLANTIC (Feb. 14, 2019), <https://www.theatlantic.com/politics/archive/2019/02/sean-omalley-pope-francis-catholic-church-sex-abuse/582658/>.

<sup>43</sup> See Suzette Parmley, *NJ Senate Approves Lifting Time Limits on Sex Abuse Civil Suits*, N.J. L. J. (Mar. 14, 2019), <https://www.law.com/njlawjournal/2019/03/14/nj-senate-approves-lifting-time-limits-on-sex-abuse-civil-suits/>.

<sup>44</sup> Press Release, Office of the Attorney Gen., *AG Grewal Establishes Task Force to Investigate Allegations of Sexual Abuse by Clergy in Catholic Dioceses of New Jersey* (Sept. 6, 2018), <https://nj.gov/oag/newsreleases18/pr20180906a.html>.

<sup>45</sup> *Id.*

<sup>46</sup> S. 477, 218th Leg. (N.J. 2019).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

of sexual abuse.<sup>49</sup> Previously, victims of sexual abuse had to bring their claim within two years of reasonable discovery of their injury, otherwise the statute of limitations time-barred their claim.<sup>50</sup> Under S-477, for an injury arising from sexual assault or sexual abuse against a minor, the victim must commence the action before they are fifty-five years old or within seven years from the date of reasonable discovery of the injury, whichever is later.<sup>51</sup> S-477 also extends the statute of limitations for an adult victim of sexual assault to seven years from the date of reasonable discovery of the injury.<sup>52</sup> States like New Jersey have pursued new legislation, like S-477, to extend the statute of limitations in sexual abuse cases because survivors often experience “delayed discovery” due to the emotional and psychological trauma of the abuse.<sup>53</sup> Delayed discovery refers to the time between when the abuse actually occurred and when the victim discovers the sexual abuse or its relationship to their injuries.<sup>54</sup> During this delay, the statute of limitations for their claim expires.<sup>55</sup>

Second, S-477 amends the Charitable Immunity Act to extend retroactive tort liability to nonprofit institutions for damages caused by a “willful, wanton, or grossly negligent act of commission or omission, including sexual assault and, any other crime of a sexual nature . . . or sexual abuse.”<sup>56</sup> This is a broad expansion of liability from the 2006 amendment because plaintiffs can bring sexual assault or sexual abuse claims against the institution, as opposed to the narrow negligent supervision claims.<sup>57</sup> S-477 redefines the Charitable Immunity Act to eliminate immunity for claims of sexual abuse.<sup>58</sup> Under S-477’s statute of limitations provision, nonprofit institutions can also be retroactively liable for the “negligent hiring, supervision or retention of an employee, agent or servant of a nonprofit corporation, society, or association organized exclusively for religious, charitable, educational or hospital purposes.”<sup>59</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> S. 477, 218th Leg. (N.J. 2019).

<sup>53</sup> *State Civil Statutes of Limitations in Child Sexual Abuse Cases*, NAT’L. CONF. OF ST. LEGISLATURES (May 30, 2017) <http://www.ncsl.org/research/human-services/state-civil-statutes-of-limitations-in-child-sexua.aspx>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> S. 477, 218th Leg. (N.J. 2019).

<sup>57</sup> *Id.*; N.J. STAT. ANN. § 2A:53A-7 (2019).

<sup>58</sup> S. 477, 218th Leg. (N.J. 2019).

<sup>59</sup> *Id.*



Third, S-477 creates a one-time, two-year window for survivors of sexual abuse and sexual assault to bring civil claims that would have otherwise been time-barred because of the statute of limitations.<sup>60</sup> The law went into effect on December 1st, 2019, and the time period for the look-back window will close on November 30, 2021.<sup>61</sup>

On June 17, 2019, the New Jersey Senate Judiciary Committee voted to pass Senate Measure 3739/A-5392.<sup>62</sup> Senate Measure 3739 clarifies that the liability standards in sexual abuse cases filed against public entities and public employees are the same as the standards against nonprofit entities in the Charitable Immunity Act.<sup>63</sup> The bill also clarified that the immunity in the Torts Claim Act, a statute of sovereign immunity that protects state actors from various types of liability, does not apply to cases of willful, wanton, or reckless conduct, as well as negligent hiring or supervision.<sup>64</sup> This provision effectively strips immunity from public entities so that they are equally as open to liability as private actors for sex abuse claims.<sup>65</sup> Legislators characterized this provision as a “clean up” to fill the gaps in S-477’s ambiguous phrasing.<sup>66</sup>

The purpose of S-477 is to create a window extending the statute of limitations for all survivors of sex abuse, not just those who suffered abuse at the hands of clergy members. The extension of the statute of limitations in New Jersey applies to all institutions—public, private, nonprofit, and religious—that are liable for sexual abuse.<sup>67</sup> Similar to the clergy sex abuse scandal, victims have accused several other well-known organizations and institutions of shielding perpetrators of sexual abuse. For example, the Boy Scouts of America is facing hundreds of cases following the release of internal documents that allegedly show a systematic effort to cover-up sexual abuse by adult leaders.<sup>68</sup> The “clean up” Senate Measure 3739 also ensures that public entities will be held

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<sup>60</sup> *Id.*

<sup>61</sup> See Suzette Parmley, *Bill Removing Statute of Limitations on Sexual Abuse Clears Senate Committee*, N.J. L. J. (Mar. 11, 2019), <https://www.law.com/njlawjournal/2019/03/07/bill-removing-statute-of-limitations-on-sexual-abuse-clears-senate-committee/>.

<sup>62</sup> Suzette Parmley, *‘Cleanup’ Bill on Liability of Public Entities in Sex Abuse Cases Progresses*, N.J. L. J. (June 20, 2019), <https://www.law.com/njlawjournal/2019/06/20/cleanup-bill-on-liability-of-public-entities-in-sex-abuse-cases-progresses/>.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> S. 477, 218th Leg. (N.J. 2019).

<sup>68</sup> Dune Lawrence, *Bankruptcy on the Table as Boy Scouts Confront Sex Abuse Claims*, BLOOMBERG (Dec. 19, 2018), <https://www.bloomberg.com/news/features/2018-12-19/bankruptcy-on-the-table-as-boy-scouts-confront-sex-abuse-claims>.

to the same standard of liability as religious and private institutions for sexual abuse claims.<sup>69</sup> This comment focuses on sex abuse in the Catholic Church, rather than on other institutions, because the five Catholic dioceses in New Jersey introduced a compensation program that created a unique choice of remedies for sex abuse victims.

#### B. INDEPENDENT VICTIMS COMPENSATION FUND

All five Roman Catholic dioceses in New Jersey (Camden, Metuchen, Newark, Paterson, and Trenton) created a state-wide Independent Victim Compensation Program to pay out claims of eligible victims of clergy sex abuse.<sup>70</sup> The Independent Victim Compensation Fund (“IVCP”) consists of exclusively Church funds, which means that no public money is used to pay claims.<sup>71</sup> If survivors choose to pursue compensation through the fund, they waive their right to pursue their claim through civil litigation.<sup>72</sup> Kenneth Feinberg and Camille Biros (“the Administrators”), are former administrators of the compensation fund for victims of the Penn State sex abuse scandal and the 9/11 Victim Compensation Fund. They serve as the Administrators of the Independent Victim Compensation Fund.<sup>73</sup> The Administrators independently evaluate individual claims through an alternative dispute resolution process.<sup>74</sup> The IVCP went into effect on June 15, 2019, and the deadline for registration was December 31, 2019.<sup>75</sup> This comment will examine the claims process in more detail in the analysis section.

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<sup>69</sup> Parmley, *supra* note 62.

<sup>70</sup> *Two Renowned Administrators Announce State-wide New Jersey Compensation Program for Victims of Church Sexual Abuse of Minors*, ARCHDIOCESE OF NEWARK (Feb. 11, 2019), <https://www.rcan.org/two-renowned-administrators-announce-state-wide-new-jersey-compensation-program-victims-church> [hereinafter *Two Renowned Administrators*].

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON, AND PATERSON, PROTOCOL FOR COMPENSATION OF CERTAIN INDIVIDUAL CLAIMS OF CLERGY SEXUAL ABUSE OF MINORS PREVIOUSLY REPORTED OR SUBMITTED 1 (June 15, 2019), [https://www.njdiocesesivcp.com/ords/m\\_453841\\_0001/prod/r/221/files/static/v73/protocol-english.pdf](https://www.njdiocesesivcp.com/ords/m_453841_0001/prod/r/221/files/static/v73/protocol-english.pdf).

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## IV. Analysis

### A. COMPARING REMEDIES

There are several procedural differences between the IVCP and traditional tort litigation that survivors must consider when deciding how to proceed with their claim. These considerations include differences in eligibility, confidentiality, standards of proof, award amounts, and the length of time for resolution. For a survivor who chooses to pursue civil litigation, the new law creates a two-year window to file a previously time-barred civil case alleging sexual abuse of an adult or a minor.<sup>76</sup> Under the new statute of limitations established by S-477, child sexual abuse survivors can bring their claim until they reach the age of fifty-five or within seven years of the reasonable discovery of their injury, whichever is later.<sup>77</sup> S-477 also allows survivors who were sexually assaulted as adults to bring their civil claim within seven years of reasonable discovery of their injury.<sup>78</sup> S-477 drastically expands the opportunities for survivors to pursue litigation of their claims.

The IVCP limits the eligibility of claims to survivors who experienced sexual abuse by clergy members when they were minors.<sup>79</sup> The IVCP will not pay out claims to survivors who experienced sexual abuse as adults.<sup>80</sup> The IVCP designates those who previously had their claims adjudicated by a court or an arbitrator, survivors who previously entered into a settlement agreement, and survivors with claims against a member of a different religious order or diocese as ineligible to participate.<sup>81</sup> The IVCP prioritizes participants who previously filed a claim directly against the diocese prior to the establishment of the fund.<sup>82</sup> Tort litigation is friendlier to survivors in terms of eligibility

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<sup>76</sup> Parmley, *supra* note 62.

<sup>77</sup> S. 477, 218th Leg. (N.J. 2019).

<sup>78</sup> *Id.*

<sup>79</sup> *Two Renowned Administrators*, *supra* note 70.

<sup>80</sup> See *Two Renowned Administrators*, *supra* note 70 (“The individual claimant must have previously submitted a complaint or report to one or more of the NJ Dioceses alleging that he or she was sexually abused by a cleric of one of the NJ Dioceses during the time that he or she was a *minor*.”) (emphasis added).

<sup>81</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 2-3.

<sup>82</sup> Diocese of Camden, *New Jersey Independent Compensation Program for Victims of Church Sexual Abuse of Minors Opens* (2019), <https://www.camdendiocese.org/new-jersey-independent-compensation-program-for-victims-of-church-sexual-abuse-of-minors-opens/> (last visited Apr. 1, 2021).

because the windows legislation allows survivors to pursue claims without limiting them by their age at the time of the alleged abuse.

The process of adjudicating a claim through the IVCP is highly confidential.<sup>83</sup> The dioceses agree that the claim information will not be disclosed for any other reason than the claim's processing, program administration, and child protection; however, the protocol states "participating claimants may at their sole and voluntary discretion, disclose information in their possession regarding their claim, the claims process and/or the compensation determination of the Administrators."<sup>84</sup> Administrators of the IVCP and its participants are required to forward information about their claims to the local office of the District Attorney for initial review.<sup>85</sup> In civil trials, litigation documents such as depositions and trial testimonies are generally made public unless a judge decides to seal the documents—this is rare.<sup>86</sup> If the litigants enter into a private settlement, they will frequently stipulate to keep information confidential as part of the settlement agreement.<sup>87</sup> But unlike civil trials, the IVCP process allows the survivor to decide whether the story and the compensation are made public or remain private.

One significant reason that victims turn to the IVCP, is that the IVCP requires a lower standard of proof than is required for tort litigation in civil court. Among the factors for consideration in evaluating the claim, the IVCP administrators will take into account whether there is "sufficient circumstantial evidence to find eligibility" and "whether the claims of the individual" are found "to be credible after a complete review of all relevant documentation."<sup>88</sup> The Administrators do not qualify exactly what this standard requires. The protocol explains that participants in the IVCP will tell their stories to the Administrators in person, by phone, over video calls, or through their counsel without

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<sup>83</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 6.

<sup>84</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 6.

<sup>85</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 2.

<sup>86</sup> See Timothy D. Lytton, *Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law*, 39 CONN. L. REV. 809, 834 (2007).

<sup>87</sup> Howard M. Erichson, *A Typology of Aggregate Settlements*, 80 NOTRE DAME L. REV. 1769, 1770 (2005).

<sup>88</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 3.

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Church officials present.<sup>89</sup> Ms. Biros, the Administrator, stated, “If there is corroboration, such as a police report or another accusation against the priest, the mediators will an offer.”<sup>90</sup> In civil litigation, the plaintiff must prove all elements of sexual abuse, including causation of harm, by a preponderance of the evidence standard.<sup>91</sup>

A survivor may choose the remedy by which to pursue their claim based on the potential value of the award. Under the protocol of the IVCP, the individual is required to waive their rights to litigate against the dioceses only if they are satisfied with the amount of compensation.<sup>92</sup> It is important to note that per the agreement of the IVCP, the New Jersey dioceses cannot reject the Administrators’ decision on the amount of compensation for individual claims.<sup>93</sup> Ms. Biros, speaking about the nearly identical New York Archdiocese Compensation Fund, said that settlement values generally depend on a variety of factors, including “the victim’s age and the type of abuse.”<sup>94</sup> For the New York Archdiocese Compensation Fund, awards “range from about \$500,000 to considerably lower.”<sup>95</sup> Nothing prevents a participant from refusing the IVCP’s final award offer, withdrawing their claim, and choosing to move forward with litigation.<sup>96</sup> Ms. Biros predicted that “ninety-five per cent of claimants will accept the [IVCP]’s offers[. . .].”<sup>97</sup>

If a survivor prevails in a civil action for sexual abuse, they will be awarded actual damages, which consist of compensatory and punitive damages, as well as the cost of the suit and reasonable attorney’s fees.<sup>98</sup> A victim can prove injury by producing records of medical treatment (both physical and psychological), loss of work (if applicable), or any

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<sup>89</sup> Ian Lovett, *Catholic Church Offers Cash to Settle Abuse Claims-With a Catch*, WALL ST. J. (July 11, 2019, 10:20 AM), <https://www.wsj.com/articles/catholic-church-offers-cash-to-settle-abuse-claimswith-a-catch-11562854848>.

<sup>90</sup> *Id.*

<sup>91</sup> JAMES T. O’REILLY & MARGARET S.P. CHALMERS, *THE CLERGY SEX ABUSE CRISIS AND THE LEGAL RESPONSES* 168 (2014).

<sup>92</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 7.

<sup>93</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 2.

<sup>94</sup> Lovett, *supra* note 89.

<sup>95</sup> Lovett, *supra* note 89 (internal quotation marks omitted).

<sup>96</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 7. (“Until a Final Release is executed, each individual claimant retains all rights under the law.”).

<sup>97</sup> Paul Elie, *What Do the Church’s Victims Deserve?*, NEW YORKER (April 8, 2019), <https://www.newyorker.com/magazine/2019/04/15/what-do-the-churchs-victims-deserve>.

<sup>98</sup> N.J. STAT. ANN. §2A:61B-1(h) (2019).

other quantifiable injury.<sup>99</sup> The New Jersey legislation prescribes that a plaintiff who wins a judgment in a civil action will receive “damages in the amount of \$10,000 plus reasonable attorney’s fees, or actual damages, whichever is greater.”<sup>100</sup>

The administration of claims through the IVCP is a two-phase process. Phase I will process allegations from participants who previously complained to Church officials about the allegation of abuse.<sup>101</sup> Phase II will focus on previously unreported claims to the Church.<sup>102</sup> The deadline to register a new allegation was October 31, 2019, and the extended deadline to submit a new claim was January 31, 2020.<sup>103</sup> The Administrators promise that eligible claims will be processed in “approximately 60-90 days.”<sup>104</sup> Ms. Biros predicted that if a survivor were to choose to litigate the claim, it would take “two or three years trying to get [the] case before a jury.”<sup>105</sup> Timing is essential to the resolution of claims in litigation and the IVCP because “[c]lergy sexual abuse cases rarely have specific photographic or physical evidence that can be timed definitively.”<sup>106</sup> In these types of cases, discovery can be the most important stage of the litigation process. Through discovery, some litigants have successfully uncovered concealed information in documents about the behavior of Church officials.<sup>107</sup> However, without tangible evidence, it can be difficult to prove the elements of a civil action through witness testimony in depositions or at trial because “children who have been seduced and molested are reticent to talk about it” and “confronting the abuser will be difficult.”<sup>108</sup>

The IVCP process also includes elements of discovery and documentation like in tort litigation. But in the IVCP process, the Church

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<sup>99</sup> O’Reilly & Chalmers, *supra* note 91, at 169.

<sup>100</sup> S. 477, 218th Leg. (N.J. 2019).

<sup>101</sup> *Two Renowned Administrators*, *supra* note 70.

<sup>102</sup> *Two Renowned Administrators*, *supra* note 70.

<sup>103</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75 at 2; Press Release, Diocese of Metuchen, New deadline established for NJ Independent Victim Compensation Program (Jan. 4, 2020), <https://diometuchen.org/news/new-deadline-established-for-nj-independent-victim-compensation-program>.

<sup>104</sup> Press Release, Diocese of Metuchen, Draft Protocol Details Policies, Procedures for victim compensation program (Mar. 20. 2019), <https://diometuchen.org/news/draft-protocol-details-policies-procedures-for-victim-compensation-program>.

<sup>105</sup> Elie, *supra* note 97.

<sup>106</sup> O’Reilly & Chalmers, *supra* note 91, at 64.

<sup>107</sup> Patrick S. Nash, *The Never-Ending Story? Or, Does the Roman Catholic Church Remain Vulnerable to Charges of Improper Handling of Clergy Child Sex Abuse?*, 8(2) Ox. J. L. RELIGION 270, 284 (2019).

<sup>108</sup> O’Reilly & Chalmers, *supra* note 91, at 64.

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officials do not provide a defense.<sup>109</sup> The administrators consider the extent to which documentation corroborates the participant's claim in their determination.<sup>110</sup> In making their determination, the Administrators decide whether, based on the allegations in the claim, the allegations are credible and there is "sufficient circumstantial evidence to find eligibility."<sup>111</sup>

Proponents of the IVCP argued that the New Jersey legislature should have waited to pass the windows legislation until 2020 so that the IVCP would have had the exclusive time to resolve claims.<sup>112</sup> Registration of claims and submission of all claim forms for IVCP participants closed on February 15, 2020, more than two months after New Jersey's new law went into effect.<sup>113</sup> There is tension between the two remedies because they both only exist for a limited time, and by accepting the award from the IVCP, victims relinquish their right to sue the dioceses in court.<sup>114</sup>

## B. WINDOWS LEGISLATION IN NEW YORK AND DELAWARE

### *i. New York*

Recent changes in New York exemplify the tension between Church compensation funds and windows legislation. In New York, the Catholic Diocese created a nearly identical compensation fund to New Jersey and Governor Cuomo signed windows legislation into law in early 2019. The New York State Legislature passed the Child Victims Act on February 14, 2019, effectively transforming New York's statute of limitations for adult victims who experienced abuse as children.<sup>115</sup> The Child Victims Act includes three changes to the law. First, the law extended the statute

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<sup>109</sup> Nash, *supra* note 107, at 282.

<sup>110</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75 at 3.

<sup>111</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75 at 3.

<sup>112</sup> Nicholas Pugliese, *NJ victims of sex abuse may soon get more time to file civil claims*, NORTHJERSEY.COM (Mar. 7, 2019) <https://www.northjersey.com/story/news/new-jersey/2019/03/07/nj-victims-sex-abuse-may-soon-get-more-time-file-civil-claims/3080314002/>.

<sup>113</sup> Press Release, Diocese of Metuchen, Draft Protocol Details Policies, Procedures for victim compensation program (Mar. 20, 2019), <https://diometuchen.org/news/draft-protocol-details-policies-procedures-for-victim-compensation-program>.

<sup>114</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75 at 7.

<sup>115</sup> Elizabeth Joseph, *'This is society's say of saying we are sorry,' New York Governor tells survivors of sex abuse before signing Child Victims Act into law*, CNN (Feb. 14, 2019 4:56 PM) <https://www.cnn.com/2019/02/14/us/new-york-child-victims-act-signed/index.html>.

of limitations for criminal cases against offenders who victimized children under eighteen.<sup>116</sup> Second, the law extended the statute of limitations for civil lawsuits based upon such criminal conduct.<sup>117</sup> Third, the law created a two-year window for civil lawsuits where the statute of limitations had already expired.<sup>118</sup> The Child Victims Act took effect on August 14, 2019.<sup>119</sup>

One the first day of its enactment, victims filed 427 lawsuits against various institutions, and New York courts designated forty-five judges to handle the “influx” of cases.<sup>120</sup> Ms. Biros shared that over 400 people submitted claims to the Archdiocese of New York’s Reconciliation and Compensation Program as of July 2019, and the program offered 84% of victims compensation from the fund.<sup>121</sup> Ms. Biros stated, “Just over \$65 million has been paid to 324 victims, an average of about \$200,000 each.”<sup>122</sup>

*ii. Delaware*

The Delaware legislature similarly passed a two-year window for survivors of child sexual abuse with previously time-barred claims.<sup>123</sup> Delaware passed the law in 2007 and opened a window in the statute of limitations for victims to bring claims against perpetrators and liable institutions until 2009.<sup>124</sup> Following the law’s introduction in 2007, Delaware saw more than 170 civil lawsuits against alleged abusers from various institutions, including the Catholic Church, schools, and the Boy Scouts of America.<sup>125</sup>

Delaware’s Child Victims Act additionally allows victims to sue their abusers directly, as opposed to the supervising institution or entity.<sup>126</sup> Survivors’ ability to sue their abusers directly is a fascinating choice for Delaware legislators, as individuals are likely to be insolvent,

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<sup>116</sup> N.Y. CRIM. PRO. LAW § 30.10(3)(f) (Consol. 2019).

<sup>117</sup> N.Y. C.P.L.R. 208(b) (CONSOL. 2019).

<sup>118</sup> N.Y. C.P.L.R. 214(g). (CONSOL. 2020).

<sup>119</sup> *Id.*

<sup>120</sup> Eric Levenson, *More than 400 lawsuits filed in New York courts as part of new child sex abuse law*, CNN (Aug. 14, 2019 7:43 PM) <https://www.cnn.com/2019/08/14/us/new-york-child-victims-law/index.html>.

<sup>121</sup> Lovett, *supra* note 89; see also *Reconciliation and Compensation Program for Victim-Survivors of Abuse*, ARCHDIOCESE OF NEW YORK <https://archny.org/ircp>.

<sup>122</sup> Lovett, *supra* note 89.

<sup>123</sup> DEL. CODE ANN. tit. 10, § 8145(b) (2009).

<sup>124</sup> Del. Code Ann. 10. 28 § 8145 (2007).

<sup>125</sup> Jenna Miller, *The Constitutionality of and Need for Retroactive Civil Legislation Relating to Child Sexual Abuse*, 17 CARDOZO J.L. & GENDER 599, 611 (2011).

<sup>126</sup> *Id.* at 610.



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incarcerated, or dead.<sup>127</sup> Despite the opportunity to sue abusers directly, of the 170 cases filed in Delaware, a majority involved a Catholic priest as the perpetrator and alleged that his superiors “quietly moved the offender, often first to treatment facilities and then to other parishes.”<sup>128</sup>

In 2009, the Diocese of Wilmington filed for Chapter 11 bankruptcy because of the institution’s liability from sexual abuse lawsuits following the change in Delaware law.<sup>129</sup> Eventually, in 2011, the Diocese of Wilmington reached a settlement with victims and agreed to pay 142 claims for \$77 million.<sup>130</sup> In addition to financial compensation, the terms of the settlement require the Diocese of Wilmington to publish a list of clergy members and employees accused of abuse, to release the victims from any confidentiality agreements pertaining to the abuse, and to retain a Child Protection Consultant on staff, among other terms.<sup>131</sup> It is impossible to determine whether the Diocese of Wilmington would have faced bankruptcy if it had instituted a compensation fund for survivors prior to the change in law.

#### C. FUTURE OF SEXUAL ABUSE LITIGATION IN NEW JERSEY

News outlets describe the recent change in New York’s statute of limitations for child sex abuse as “flooding the courts” with civil lawsuits.<sup>132</sup> New Jersey’s recent change may drastically increase the volume of lawsuits in state civil courts. New Jersey courts already face a high volume of cases. From July 2017 to June 2018, litigants filed 819,

<sup>127</sup> See generally Valerie Richardson, *Denver Archdiocese settles 18 sex-abuse cases*, WASH. TIMES (July 2, 2008), <http://www.washingtontimes.com/news/2008/jul/02/denver-archdiocese-settles-18-sex-abuse-cases>.

<sup>128</sup> Beth Miller, *In its two years, Child Victim’s Act brings 170 lawsuits alleging abuse*, NEWS J. (July 10, 2009), <http://www.sol-reform.com/Pages/bin/ChildVictimActBrings170Lawsuits-DE.html>.

<sup>129</sup> Ian Urbina, *Delaware Diocese Files for Bankruptcy in Wake of Abuse Suits*, N.Y. TIMES (Oct. 19, 2009), <https://www.nytimes.com/2009/10/20/us/20delaware.html?mtrref=www.google.com&gwh=2B25E74594799D4C4E3BA9B28BD69674&gwt=pay&assetType=PAYWALL>.

<sup>130</sup> Tom Hals, *Wilmington diocese agrees to \$77 million abuse settlement*, REUTERS (Feb. 3, 2011, 1:21 PM), <https://www.reuters.com/article/us-church-abuse/wilmington-diocese-agrees-to-77-million-abuse-settlement-idUSTRE7126WT20110203>.

<sup>131</sup> *Non-Monetary Settlement Undertakings*, DIOCESE OF WILMINGTON, <https://www.cdown.org/non-monetary-settlement-undertakings/> (last visited Jan. 30, 2021).

<sup>132</sup> See Julie Zauzmer & Sarah Pulliam Bailey, *New York braces for a flood of lawsuits, as one-year window opens for child sexual abuse victims to bring cases*, WASH. POST (Aug. 14, 2019), <https://www.washingtonpost.com/religion/2019/08/14/new-york-braces-flood-lawsuits-one-year-window-opens-child-sex-abuse-victims-bring-cases/>; see also <https://www.nytimes.com/2019/08/15/nyregion/child-sex-abuse-lawsuits.html>.

904 cases of all types in the civil, criminal, and family divisions of New Jersey state courts.<sup>133</sup> As of June 2018, there were 34,264 cases in backlog across all vicinages in New Jersey courts.<sup>134</sup> Backlog refers to active cases that are still pending over the time goal.<sup>135</sup> Although the 2017 to 2018 term saw a four percent decrease in the civil trial court backlog, there are still 34,264 cases remaining in backlog.<sup>136</sup> In the District of New Jersey, federal judges have to pick up the slack from six vacancies on the bench because of a severe judicial shortage.<sup>137</sup> Plaintiffs will likely pursue their claims in state court, but in rare cases of federal diversity jurisdiction, defendants have brought state claims of clergy sex abuse to federal district courts.<sup>138</sup>

It is impossible to predict the exact number of civil suits that survivors will file because of the recent change or their immediate impact in the efficiency of the courts. On December 2, 2019, the day after the law went into effect, plaintiffs filed over fifty lawsuits against Roman Catholic dioceses in New Jersey, Pennsylvania, and New York, and other institutions.<sup>139</sup> Despite the estimation of S477's impact on New Jersey courts being impossible, if the extensive backlog and New York's caseload is any indication, New Jersey courts will be facing an overwhelming number of cases.

## V. Evaluating the Victim's Choice

Survivors who seek justice for the abuse they suffered face a difficult choice on how to proceed with their claims. Tort litigation in

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<sup>133</sup> N.J. JUDICIARY, ANNUAL REPORT OF THE NEW JERSEY COURTS 2017-2018 52-53 (2018), [https://www.njcourts.gov/public/assets/annualreports/AnnualReportCY18\\_web.pdf?cacheID=YZTEQoo](https://www.njcourts.gov/public/assets/annualreports/AnnualReportCY18_web.pdf?cacheID=YZTEQoo).

<sup>134</sup> *Id.* at 52.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 21.

<sup>137</sup> Charles Toutant, *State's Federal Judge Shortage Deepens With Departure of Jose Linares*, LAW.COM (May 16, 2019, 4:30 PM), <https://www.law.com/njlawjournal/2019/05/16/states-federal-judge-shortage-deepens-with-departure-of-jose-linares/?slreturn=20190817153430>.

<sup>138</sup> *See Doe v. Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints*, 2012 U.S. Dist. LEXIS 124658, at \*6 (D. Idaho 2012) (applying Idaho state law on a variety of claims relating to sexual abuse of a minor after defendant Church of Latter Day Saints removed the case to federal court); *see also* *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 196 F.3d 409, 418 (2d Cir. 1999) (interpreting Connecticut statute of limitations to a claim of sexual assault of plaintiff by defendant priest);

<sup>139</sup> Jeremy Roebuck, *Catholic Church, Boy Scouts hit with dozens of sex abuse suits under new N.J. law extending victims' rights to sue*, PHILA. INQUIRER, (Dec. 2, 2019), <https://www.inquirer.com/news/new-jersey-sex-abuse-lawsuits-dioceses-camden-philadelphia-mccarrick-fortney-boy-scouts-20191203.html>.

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New Jersey civil court and the IVCP provide different advantages depending on the survivor's priorities in their pursuit of justice. The best choice for a survivor will depend entirely on what the survivor seeks to gain. For some survivors, their priority is an apology or a sense of healing from the IVCP process. For other survivors, litigation allows them to pursue justice by having their voice heard in front of a jury of their peers.

There are some significant disadvantages to each process for a survivor to consider. Critics of the Catholic Church's compensation fund point out that this alternative dispute resolution process lacks transparency for victims.<sup>140</sup> The leadership of the Catholic Church encourages victims to seek justice through the mediation process.<sup>141</sup> Church officials have also publicly opposed the passing of "windows" legislation and extensions of statutes of limitations in many states.<sup>142</sup> The Church's response is not a surprise, as an increase in litigation creates more scrutiny through public trials, more private settlements, and an increased possibility of bankruptcy for dioceses responsible for paying large judgments.<sup>143</sup> Additionally, it is estimated that the Catholic Church spent \$633,458 in lobbying costs in New Jersey with at least part of the aims in dissuading legislators from passing the extension of statute of limitations.<sup>144</sup> Lobbying was successful in the past against the efforts of victim advocacy groups, as the New Jersey Senate scheduled a vote on earlier versions of S-477 in 2010 and 2012, but abandoned both efforts for lack of support.<sup>145</sup>

Victims' rights groups now criticize the IVCP as an attempt "to circumvent the need for a law that would lift the statute of limitations on child sex abuse."<sup>146</sup> There is a mistrust around IVCP because survivors could possibly view the remedy as a way to quickly resolve

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<sup>140</sup> Jay Tokasz, *Buffalo Diocese offers sex abuse victims \$10,000 to \$360,000 to settle claims*, BUFFALO NEWS (Dec. 3, 2018) <https://buffalonews.com/2018/12/03/diocese-program-offers-35000-to-sex-abuse-victim/> (discussing survivors' frustration with the lack of transparency in the compensation efforts with the Dioceses of Buffalo).

<sup>141</sup> Jeffrey Pruzan, *Abuse, Mediation and the Catholic Church: How Enforcing and Improving Existing Statutes Will Help Victims Recover*, 13 CARDOZO J. CONFLICT RESOL. 593, 598 (2012).

<sup>142</sup> *Id.* at 606.

<sup>143</sup> *Id.*

<sup>144</sup> *Church Influencing State: How the Catholic Church Spent Millions Against Survivors of Clergy Abuse* (June 2019), <https://view.publitas.com/1234publications/church-influencing-state-how-the-catholic-church-spent-millions-against-survivors-of-clergy-abuse/page/1>.

<sup>145</sup> See Friedman, *supra* note 2.

<sup>146</sup> Michael Hill, *Abuse survivors mistrust compensation offer by NJ Catholic Church*, NJTV NEWS (Nov. 20, 2018, 5:00 PM), <https://www.njtvonline.org/news/video/abuse-survivors-mistrust-compensation-offer-by-nj-catholic-church/>.

claims without negative publicity. To promote trustworthiness and protect the rights of survivors, the IVCP protocol requires that participants consult with legal counsel before signing the release and agreeing to the compensation.<sup>147</sup> If a participant cannot afford an attorney, the Administrators will provide one pro bono to consult with them.<sup>148</sup>

In terms of sensitivity, the IVCP is likely more victim-friendly because the compensation process requires far less face-to-face interaction than litigation. The process of submitting a claim to the IVCP requires the registration of the claim and the completion of a Claim Form via mail.<sup>149</sup> Most communication through this process, including the notification of the program decision, is in writing.<sup>150</sup> If the survivor retains counsel to submit the claim, the administrators will communicate solely with counsel rather than the survivor.<sup>151</sup> The only personal interaction in the process is if the survivor or official of the relevant diocese requests a face-to-face meeting or phone meeting with the Administrator.<sup>152</sup> For a survivor who is hesitant to pursue justice because of fear of litigation's emotional toll, having to face the abuser or the institution in person, or publicly address the issue, the IVCP has far more advantages.

Tort litigation requires the victim to face more publicity, but this may be an advantage for survivors who want to shed light on the trauma they experienced as a way to promote justice.<sup>153</sup> In some states, including New Jersey, the survivors of sexual abuse who sue their abusers in civil court may sustain a level of anonymity by assuming the

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<sup>147</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 7.

<sup>148</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 7.

<sup>149</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 5.

<sup>150</sup> *See* ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 5-6.

<sup>151</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 4.

<sup>152</sup> ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 5.

<sup>153</sup> *See* Sharon Otterman, *Hundreds of Child Sexual Abuse Lawsuits Flood N.Y. Courts*, N.Y. TIMES (Aug. 15, 2019), <https://www.nytimes.com/2019/08/15/nyregion/child-sex-abuse-lawsuits.html> (James Grein, a survivor of sex abuse by his priest speaking about the chance to litigate his claim with New York's window legislation, "It is our chance, our historical gift from God, that we are able to go forward today and get this done.")

fictitious identity of “Jane” or “John Doe.”<sup>154</sup> Although there is no public right to the access of discovery in civil lawsuits, some courts create the presumption of public disclosure for pretrial discovery unless a party demonstrates good cause for sealing exhibits and depositions.<sup>155</sup> Survivors can bring to light their abusers and the institutions responsible for their abuse through civil litigation and a public trial.

Survivors may also choose not to pursue their claims in court for reasons such as either party calling them as a witness to testify about the abuse. A plaintiff’s testimony is more common in sexual assault cases where the abuse occurred years before the trial and the plaintiff’s case lacks physical evidence.<sup>156</sup> If called to testify, survivors are faced with reliving past trauma through testimony, and must balance their interest in privacy when determining how to proceed.

Another important consideration for survivors is how long it will take to receive the monetary award from their claim. This factor highlights the benefit of pursuing a claim through the IVCP because it is an efficient way to receive payment. Survivors of abuse may prefer to pursue their claims through alternative dispute resolutions like mediation or the IVCP because it ensures the finality of the ordeal.<sup>157</sup> Survivors who pursue relief through the IVCP are likely to obtain compensation quicker than if they sue in civil court.<sup>158</sup> Administrators promise that the IVCP will pay eligible claims within 90 days after they review and evaluate the claim.<sup>159</sup> The timeline in civil litigation is much more unpredictable, with many lawsuits taking years to resolve due to courts in New Jersey being overwhelmed.<sup>160</sup> Research shows that for

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<sup>154</sup> Joanne Zannoni, *Strengthening Sexual Assault Victims’ Right to Privacy*, OFFICE FOR VICTIMS OF CRIME (April 2009), <https://www.ojp.gov/pdffiles1/Digitization/226501NCJRS.pdf>; see also, e.g., *Doe v. R.J.L.*, 2018 N.J. Super. LEXIS 971, at \*1 (N.J. Super. Ct. App. Div. Apr. 26, 2018).

<sup>155</sup> Laurie Kratky Dore, *Public Courts Versus Private Justice: It’s Time to Let Some Sun Shine in on Alternative Dispute Resolution*, 81 CHI.-KENT L. REV. 463, 465 (2006).

<sup>156</sup> See David R. Katner, *Delayed Responses to Child Sexual Abuse, the Kavanaugh Confirmation Hearing, and Eliminating Statutes of Limitation for Child Sexual Abuse Cases*, 47 AM. J. CRIM. L. 1, 4 (2020) (“in many cases, if not most, there will be no physical evidence of the sexual misconduct.”).

<sup>157</sup> Pruzan, *supra* note 141, at 596.

<sup>158</sup> Lytton, *supra* note 86, at 880 (“Traditional views . . . have generated justifiable criticism of the litigation process as an often inefficient means of dispute resolution and risk regulation.”).

<sup>159</sup> Press Release, Diocese of Metuchen, Draft Protocol Details Policies, Procedures for victim compensation program (Mar. 20, 2019), <https://diometuchen.org/news/draft-protocol-details-policies-procedures-for-victim-compensation-program>.

<sup>160</sup> Marc Newman, *Why Does a Lawsuit Take so Long?*, MILLER LAW (Mar. 30, 2020), <https://millerlawpc.com/lawsuit-take-long/>; Joe Atmonavage, *One federal court judge in N.J. says she is handling thousands of cases as ‘judicial crisis’ worsens*, NJ.COM (Jun. 26,

victims of mass violence who have a choice to pursue compensation through a fund or civil litigation, the timing of payments can have an impact on their willingness to sue.<sup>161</sup> Participants in an empirical study expressed that the delayed payments in a fund can encourage a victim to pursue litigation.<sup>162</sup> In contrast, if a victim receives a payment too quickly, they may resort to litigation because there are concerns about potentially unforeseen injuries not included in the compensation award.<sup>163</sup>

The choice between the IVCP or litigation may also depend on the amount of payout from the claim. The data on the amount awarded from torts litigation is not as clear because many cases result in a settlement requiring the confidentiality of the survivor's award.<sup>164</sup> Settlement examples from the Catholic Church demonstrate that there is a wide variety of awards. The Camden Diocese paid fifteen survivors settlements ranging in amounts from \$10,000 to \$513,000.<sup>165</sup> Bishop Accountability reported that in 2005, the Paterson Roman Catholic Diocese settled with 27 survivors for a total of \$5,000,000 after claims were brought for abuse by a former pastor from St. Joseph's parish, other priests, and a deacon.<sup>166</sup> Most victims received monetary awards ranging from \$100,000 to \$200,000.<sup>167</sup> Bishop Accountability estimates that on average, a survivor of child sexual abuse has recovered approximately \$268,466 in settlements from the Catholic Church; however, the data does not include settlements after 2009.<sup>168</sup> It is possible that this settlement average is currently higher considering recent legislative changes.

Similar to the New York Archdiocese Compensation Fund, the administration of claims through the IVCP is likely to follow what Ms.

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2019) <https://www.nj.com/news/2019/06/one-federal-court-judge-in-nj-says-she-is-handling-thousands-of-cases-as-judicial-crisis-worsens.html>.

<sup>161</sup> Paul Heaton, Ivan Waggoner & Jamie Morikawa, *Victim Compensation Funds and Tort Litigation Following Incidents of Mass Violence*, 63 *BUFF. L. REV.* 1263, 1318 (2015).

<sup>162</sup> *See id.*

<sup>163</sup> *Id.*

<sup>164</sup> Erichson, *supra* note 87, at 1770.

<sup>165</sup> Maureen Graham, *Sources: Diocese Paid \$3.2 Million to Settle Sex Suits/the Abuse, Said South Jersey Accusers, Was Unspeakable. Fifteen Were Told to Keep it That Way*, *PHILA. INQUIRER*, Jan. 11, 1994, at A01.

<sup>166</sup> Abbott Koloff, *Behind the \$5M Sex Abuse Settlement*, *DAILY RECORD* (Feb. 16, 2005) [http://www.bishop-accountability.org/news2005\\_01\\_06/2005\\_02\\_16\\_Koloff\\_BehindThe.htm](http://www.bishop-accountability.org/news2005_01_06/2005_02_16_Koloff_BehindThe.htm).

<sup>167</sup> *Id.*

<sup>168</sup> *Sexual Abuse by U.S. Catholic Clergy Settlements and Monetary Awards in Civil Suits*, *BISHOPACCOUNTABILITY.ORG*, <http://www.bishop-accountability.org/settlements> (last visited Jan. 31, 2021).

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Biros said about New York survivors' claims compensation.<sup>169</sup> Ms. Biros has stated that settlement depends on a variety of factors, including the survivor's age and the type of abuse, and remedies typically "range from about \$500,000 to [a] considerably lower [amount]."<sup>170</sup> The IVCP protocol lists the following considerations as relevant to determine compensation: "[t]he nature extent, and frequency of the sexual abuse," any "aggravating circumstances" including location of abuse, severity of abuse, physical harm, psychological damage, and the credibility of the claim.<sup>171</sup> Ms. Biros has also stated that there is no cap on the amount an individual can recover through the fund.<sup>172</sup> The Archdiocese of Philadelphia administers a comparable compensation fund to the IVCP and has paid \$7 million dollars to eighty-five survivors as of February 2019.<sup>173</sup> In 2019, a spokeswoman for the New Jersey IVCP stated that the fund received 202 claims and has paid out \$4.7 million dollars.<sup>174</sup>

Generally, a survivor will likely recover a higher amount from tort litigation or settlements, if they can prove that the institution was negligent in preventing the sexual abuse or the institution engaged in willful, wanton, or grossly negligent conduct to further the sexual abuse because they would be entitled to punitive damages.<sup>175</sup> S-477 amended the Charitable Immunity Act to retroactively extend the liability of nonprofit institutions for damages caused by a "willful, wanton, or grossly negligent act of commission or omission, including sexual assault and, any other crime of a sexual nature or sexual abuse."<sup>176</sup> S-477 also retroactively extends liability for non-profit institutions for simple negligence in the hiring, retention, and supervision of employees that led to sexual abuse of a minor.<sup>177</sup> But if the survivor can prove by clear and convincing evidence that the institution engaged in willful,

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<sup>169</sup> See generally *Independent Reconciliation and Compensation Program*, ARCHDIOCESE OF N.Y. <https://archny.org/ircp> (last visited Jan. 31, 2021). The Archdiocese of New York's Independent Reconciliation and Compensation Program has the same structure consisting of two phases as New Jersey's IVCP, has the same Administrators, and has very similar protocols of reporting and evaluation.

<sup>170</sup> Lovett, *supra* note 89.

<sup>171</sup> See ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* 75, at 3-4.

<sup>172</sup> David Porter, *New Jersey Catholic Dioceses to Establish Fund for Sexual Abuse Victims*, NBC PHILADELPHIA (Feb. 11, 2019, 2:29 PM) <https://www.nbcphiladelphia.com/news/local/New-Jersey-Catholic-Dioceses-to-Establish-Fund-for-Sexual-Abuse-Victims-505673241.html>.

<sup>173</sup> *Id.*

<sup>174</sup> Roebuck, *supra* note 139.

<sup>175</sup> N.J. STAT. ANN. § 2A:15-5.12(a) (West 1994).

<sup>176</sup> S. 477, 218th Leg. (N.J. 2019).

<sup>177</sup> *Id.*

grossly negligent, or reckless conduct, they may recover punitive damages against the Church.<sup>178</sup>

New Jersey requires that punitive damages not exceed five times the amount of compensatory damages or \$350,000, whichever is greater.<sup>179</sup> In 2019, plaintiffs in two lawsuits filed sex abuse claims against Roman Catholic Cardinal Theodore McCarrick, placed in the Archdiocese of Newark at the time, as well as another priest, under the newly enacted statute of limitations window.<sup>180</sup> In both lawsuits, the plaintiffs are seeking an unspecified amount of punitive damages.<sup>181</sup> Punitive damage awards can range from conservative to extraordinary. For example, in 2013 a jury in Delaware awarded \$2.4 million in a sexual abuse case against a former member of the Marist Catholic religious order.<sup>182</sup>

Considering there is limited data about settlements and the fund's compensation awards, it is impossible to say which method would produce the higher payout, given the unique circumstances of each claim. Nevertheless, jury awards and settlements have produced far greater awards than the \$500,000 that Ms. Biros's claimed was the highest award paid out from the New York compensation fund.<sup>183</sup> A survivor who wishes to pursue litigation and hire counsel should note that most personal injury attorneys require a contingency fee if the plaintiff is successful with a jury award or settlement. The standard contingent fee is one-third of the award or settlement.<sup>184</sup> New Jersey caps contingent fees in excess of the following limits: 33 and 1/3 percent on the first \$750,000 recovered, 30 percent on the next \$750,000, 25

<sup>178</sup> N.J. STAT. ANN. § 2A:15-5.12(a) (West 1994).

<sup>179</sup> N.J. STAT. ANN. § 2A:15-5.14(b) (West 2006).

<sup>180</sup> David Porter, *Lawsuits filed under new child victim law in NJ*, BURLINGTON COUNTY TIMES (Dec. 2, 2019, 4:32 PM) <https://www.burlingtoncountytimes.com/news/20191202/lawsuits-filed-under-new-child-victim-law-in-nj>.

<sup>181</sup> *Id.*

<sup>182</sup> Sean O'Sullivan, *Jury awards \$2.4 million in Del. sex abuse case*, USA TODAY (Nov. 19, 2013, 4:32 PM) <https://www.usatoday.com/story/news/nation/2013/11/19/marist-order-sex-abuse-case/3643403/>.

<sup>183</sup> See generally *Sexual Abuse by U.S. Catholic Clergy Settlements and Monetary Awards in Civil Suits*, BISHOP ACCOUNTABILITY, <http://www.bishop-accountability.org/settlements> (last visited Jan. 31, 2021); see also MPR News Staff, *Jury awards more than \$8 million in northern MN clergy sex abuse case*, MPR NEWS (Nov. 4, 2015, 8:30 PM), <https://www.mprnews.org/story/2015/11/04/jury-award> (discussing the jury award of eight million dollars in favor of the survivor following Minnesota's enactment of windows legislation).

<sup>184</sup> Herbert M. Kritzer, *The Wages of Risk: The Returns of Contingency Fee Legal Practice*, 47 DEPAUL L. REV. 267, 285 (1998).



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percent on the next \$750,000, 20 percent on the next \$750,000, and a “reasonable fee” for all amounts in excess.<sup>185</sup> Although the potential award amount in litigation can be much higher than the average award through the IVCP, the amount of the award that the plaintiff actually receives can be substantially reduced by the contingency fee.

The preference between the IVCP and litigation may be more emotional than analytical for some survivors. The importance of an apology for a survivor pursuing healing or reconciliation cannot be overstated. An apology can have a great effect on the survivor’s anger towards the perpetrator or institution responsible for the abuse. For example, when a survivor does not receive an apology, it contributes to their anger towards the ordeal and makes the survivor more likely to pursue litigation.<sup>186</sup> In contrast, when a transgressor “unambiguously and emphatically” admits their wrongdoing, “the more likely the apology will induce meaningful reconciliation.”<sup>187</sup>

The priority of an apology or a sense of healing for survivors closely relates to the Catholic Church’s sacrament of reconciliation, which encourages confessing sin, taking responsibility, and working towards forgiveness.<sup>188</sup> The IVCP does not promise that victims will receive a formal apology from the Dioceses, but survivors may feel that the Dioceses’ payment of a claim reflects taking accountability for the abuse.<sup>189</sup> Tony Flynn, an attorney who represented the Diocese of Wilmington in the litigation following the Delaware Child Victims Act, stated, “A settlement is an acknowledgement of the abuse and an effort to help the victim heal by monetary compensation. But that is a one-shot deal.”<sup>190</sup> If a survivor chose to pursue litigation, which then resulted in negotiations of a settlement, an apology can be a useful tool in the mediation process.<sup>191</sup> For example, pursuant to the terms of the settlement agreement between the Diocese of Wilmington and survivors of sex abuse, the Bishop of Wilmington was required to visit parishes in Delaware and apologize on behalf of the diocese.<sup>192</sup>

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<sup>185</sup> N.J. Ct. R. 1:21-7 (c).

<sup>186</sup> Erin Ann O’Hara & Douglas Yarn, *On Apology and Consilience*, 77 WASH. L. REV. 1121, 1124 (2002).

<sup>187</sup> *Id.* at 1137.

<sup>188</sup> See *Sacrament of Reconciliation*, ARCHDIOCESE OF NEWARK, <https://www.rcan.org/offices-and-ministries/evangelization/reconciliation> (last visited Apr. 1, 2021).

<sup>189</sup> See ARCHDIOCESE OF NEWARK AND THE DIOCESES OF CAMDEN, METUCHEN, TRENTON AND PATERSON, *supra* note 75, at 7.

<sup>190</sup> Miller, *supra* note 128.

<sup>191</sup> Donna L. Pavlick, *Apology and Mediation: The Horse and Carriage of the Twenty-First Century*, 18 OHIO ST. J. ON DISP. RESOL. 829, 862-63 (2003).

<sup>192</sup> DIOCESE OF WILMINGTON, *supra* note 131.

Survivors may not prioritize healing, reconciliation, or money in their pursuit of justice.<sup>193</sup> When a victim chooses to pursue justice through litigation, there are other considerations that go beyond the money. Dr. Tamara Relis conducted an empirical study about plaintiffs' motivations in litigation.<sup>194</sup> In her study, she found that a majority of plaintiffs did not mention financial compensation as a primary motivation.<sup>195</sup> Rather, their driving principles were "dignity and respect after the injury, inability to be heard, refusal to listen, dismissal and victim blaming."<sup>196</sup> In a similar empirical study comparing the choice between compensation fund and litigation for torts involving mass violence, "the most commonly cited reason for [pursuing litigation] was to ensure that culpability was properly assigned to responsible parties and/or these parties were appropriately penalized."<sup>197</sup> For survivors of sexual abuse, litigation may be a long-awaited opportunity to bring those who are responsible to justice, and to require them to face the truth about the abuse.

The greatest way to promote healing is to allow victims to choose how they want to pursue justice. Other states should follow the models of New York and New Jersey, by passing windows legislation to allow survivors to bring their otherwise expired claims. There are a variety of factors that contribute to a survivor's decision between tort litigation and the compensation fund. Giving survivors the opportunity to choose their ultimate goal in justice is the best way to promote healing. Dioceses in other states should create compensation funds as an option for survivors to pursue their claims through alternative dispute resolution. Survivors deserve the opportunity to choose how they want to heal from their experiences.

## VI. Conclusion

Cardinal Tobin of Newark, in a videotaped message, told Newark Catholics that the church "can never return 'to business as usual.'"<sup>198</sup>

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<sup>193</sup> See Tamara Relis, *"It's Not About the Money!": A Theory on Misconceptions of Plaintiffs' Litigation Aims*, 68 U. PITT. L. REV. 701, 701-02 (2007) (discussing the "degree to which disparate perceptions of plaintiffs' litigation aims exist as between plaintiffs and attorneys. . .").

<sup>194</sup> *Id.*

<sup>195</sup> *Id.* at 721.

<sup>196</sup> *Id.*

<sup>197</sup> Heaton, Waggoner & Morikawa, *supra* note 161, at 1295.

<sup>198</sup> *A Special Video Message from Cardinal Joseph W. Tobin to the People of the Archdiocese of Newark*, ARCHDIOCESE OF NEWARK (Sep. 7, 2018),

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Both the survivors of clergy abuse and the Catholic Church will never be able to return to the status quo following many years of clergy sex abuse. Filing a lawsuit or submitting a claim through the IVCP cannot remove the pain and suffering caused by childhood sexual abuse. This comment does not take the position that the remedies available to survivors will heal the individuals, families, and communities impacted by this institutional failure. The recent legal developments in New Jersey have shown how far the survivors and institution have come over the past several decades since the abuse was uncovered. At best, the opportunity for survivors to decide how they choose to proceed in seeking justice creates a survivor-oriented approach. Both remedies have strengths and flaws, but the mere existence of both separate reforms allows the victim to decide how they will hold the perpetrators and institution accountable.