

TREATMENT OF CANONICAL PENALTIES

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I. Background¹

An important change in the 1983 *Code of Canon Law (CIC)* from the 1917 *Code* is the disappearance of “reserved sins.” The 1917 Code allowed for the Holy See as well as a diocesan bishop in his own See to “reserve” absolution of certain sins. In the 1983 *Code*, however, there are no longer any such reserved “sins” but a number of reserved cases which carry certain canonical penalties (i.e. “censures”) still remain. In most cases, the sacrament of reconciliation will involve only the absolution of a penitent of sin. However in some cases, the sin being confessed also carries with it an automatic, legal penalty (*latae sententiae*). Thus, the confessor should keep in mind that the commission of some sins may also involve actions which carry certain penalties. Of these penalties, some the confessor can remit definitively, some he can remit “temporarily,” until the penitent has recourse to the proper authority, and some for which recourse to the proper authority must be made prior to remission. However, even in these cases in which recourse must be made for remission of the particular penalty, the confessor can absolve the sin within the sacramental forum. In the case of danger of death the confessor can remit validly and licitly virtually all penalties (cf. *CIC* 976, 977).

It is also important to keep in mind that while the remission of the penalty may also occur within the context of the celebration of the sacrament of reconciliation, this juridical action of remission is distinct from the sacramental absolution of the penitent’s sins, even when the single prayer of absolution serves both purposes of sacramental absolution from sin as well as the remission of a canonical penalty.

In speaking of canonical penalties, it is important to keep in mind that not all of these penalties are automatically applied (i.e., *latae sententiae*). Some censures, such as *ferendae sententiae* penalties would be applied *only* as the result of some sort of a juridical process, and the facts of this juridical process would be known to the penitent him/herself. For example, the sin of solicitation in the confession by the confessor (cf. *CIC* 1387) carries with it a range of possible penalties, all of which are *ferendae sententiae*. If a priest-penitent confesses this to the confessor, then the confessor should ask if such a penalty has been applied. If yes, then the

¹Mark Ravizza, S.J. composed the first draft of this document on canonical penalties while a student at the then Jesuit School of Theology-at-Berkeley, and it was subsequently edited and re-drafted by his professor, James T. Bretzke, S.J. The principal documents consulted were *The Code of Canon Law: A Text and Commentary*, commissioned by the Canon Law Society of America, ed. James A. Coriden, Thomas J. Green, and Donald E. Heintschel (New York: Paulist Press, 1985), and John M. Huels, , O.S.M., *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, (Quincy IL: Franciscan Press, 1995). These pages are essentially a distillation of the relevant portions of these two documents, with some additional pastoral commentary.

priest-penitent must go through the proper channels to have it remitted. If no, then the confessor would simply handle the sin as he would any other serious sin, i.e., with counsel, assignment of a suitable penance, and sacramental absolution. What follows below will treat the so-called automatic non-declared penalties (i.e., *latae sententiae*).²

II. Crimes whose commission carry with them automatic (*latae sententiae*) penalties

There are three kinds of censures: **excommunication**, **interdict**, and **suspension**. An interdict is similar to an excommunication, only it is a bit less severe and it is inflicted for less serious offenses. For example, if one were to attack the pope, she or he would get excommunicated; however, if one attacks a bishop, the penalty incurred is an interdict. A suspension can be applied only to clerics. If the priest hears any of the sins listed here below confessed, he needs to be aware that these sins automatically carry with them legal censures. Thus he needs to consider what must be done to remit the censure. The following crimes carry with them automatic censures:

A. *Latae Sententiae* (i.e., automatic) **excommunications**:

1. Apostasy, heresy, schism (*CIC* 1364)
2. Violation of the sacred species (*CIC* 1367; reserved to Holy See)
3. Physical attack on the pope (*CIC* 1370; reserved to Holy See)
4. Absolution of an accomplice in a sin against 6th commandment (*CIC* 1378; reserved to Holy See, *except* in danger of death: cf. *CIC* 977)
5. Unauthorized ordination of a bishop; this penalty is incurred by both the ordaining bishop and the bishop who is ordained (*CIC* 1382; reserved to Holy See)
6. Direct violation by a confessor of the seal of confession (*CIC* 1388; reserved to Holy See)
7. Procuring an abortion (*CIC* 1398)
8. Mechanically recording or divulging by a technical instrument in the communications media what was said by either a confessor or a penitent in a sacramental confession, whether performed by oneself or by another (Congregation for the Doctrine of the Faith, *Urbis et Orbis*, 23 September AAS 80 (1988): 1367).

N.B. *Remission of the penalty of excommunication in nn. 2-6 is reserved to the Holy See.*

²In order for an automatic censure to be applied, however, several conditions need to be satisfied. For example, the penitent must have *known prior to the action itself* that the sin carried with it the automatic penalty, the sin cannot have been performed as the result of fear or force, the penitent must have been over age 16, and so on. For a complete list of these conditions see *CIC* 1324 and the commentary in Huels, *The Pastoral Companion*, pp. 143-147.

B. *Latae Sententiae* interdicts:

1. Physical attack on a bishop (*CIC* 1370)
2. Pretended celebration of the Eucharist by a non-priest (*CIC* 1378)
3. Attempt to impart sacramental absolution or hear confession by one who cannot do so validly (*CIC* 1378)
4. False accusation (denunciation) of a priest of having committed the crime of solicitation in the confessional (*CIC* 1390)
5. Attempted marriage, even civil, by a religious in perpetual vows (*CIC* 1394)

N.B. If the offender is a cleric, then:

the crimes in nn. 1 and 4 result in both automatic interdict and suspension.

the crimes in nn. 2 and 3 result in automatic suspension rather than interdict

C. *Latae Sententiae* suspensions:

1. Cleric who attempts marriage, even merely a civil marriage (*CIC* 1394)
2. Cleric who is ordained by a bishop who does not have legitimate dimissorial letters (*CIC* 1383)

N.B. Only excommunications and interdicts can be remitted through the sacrament of reconciliation. Suspensions must be removed through the canonical channels (i.e., through one's Ordinary or the Apostolic See).

III. How to remit these penalties if the case is heard in the confessional

For fuller details of how to do this see *CIC*. 1357 itself. The details of this canon are summarized as follows: “. . . any confessor can remit in the internal sacramental forum an automatic (*latae sententiae*) censure of excommunication or interdict which has not been declared if it would be hard on the penitent to remain in a state of serious sin during the time necessary for the competent superior to provide [remission].” This faculty applies only to “undeclared” automatic excommunications and interdicts (i.e., not formally pronounced by the competent ecclesiastical authority as having been incurred). Neither does this apply to suspensions. In accordance with the traditional manualist treatment of what constitutes “hardship” for a penitent to remain in the state of serious sin the usual opinion was that a single day sufficed. Hence, the confessor may presume that it would be “hard” for virtually any penitent to remain in a state of serious sin, and thus the confessor could remit the given censure conditionally. However, *CIC* 1357 §2 notes: “In granting the remission the confessor should enjoin the penitent with the burden of having recourse within one month to a superior or a priest endowed with the faculties and obeying his mandates under the pain of reincidence of the penalty.” *CIC* 1357 §2 also allows that this recourse can be made by the confessor himself on behalf of the penitent, always without revealing the penitent’s identity (in order protect the seal of the confessional). *CIC* 1357 §2 also goes on to indicate that in this sort of case the confessor should give an appropriate penance and discuss with the penitent concrete ways to try and repair the scandal and harm caused by the action.

It may be helpful to keep the following key points to keep in mind:

1. The confessor may usually assume that he may conditionally remit an automatic censure (because it would be a hardship for the penitent to remain in the state of serious sin).
2. The remission is conditional because the penitent needs to go see the proper authority within one month in order to obtain a definitive remission. If the penitent fails to do this, the censure automatically is reapplied. (For censures reserved to the Holy See, the penitent must contact Rome; for non-reserved censures, the penitent must contact his or her bishop, any bishop in the context of confession, or the canonical penitentiary.)
3. The confessor may take care of step #2 for the penitent by requesting the definitive remission from the proper authority (without mentioning the penitent's name). In this case, the confessor should instruct the person to return in a month to be informed of the remission.
4. To conditionally remit a censure (as in #1), the confessor simply uses the ordinary formula of absolution, while intending both to absolve the sin and remit the censure.

IV. Some Notes on Abortion

Abortion is probably the most common type of *latae sententiae* case the priest is likely to hear in confession. If the sin of abortion is confessed, the priest should first consider whether the automatic censure actually applies. For example, if *any* one of the following conditions apply then the penitent has *not* incurred the *latae sententiae* penalty. See *CIC* 1323& 1324, which lists several factors removing imputability for a *latae sententiae* penalty. The presence of any one (or more) of these factors *removes* canonical imputability, not merely diminishes it. From these excusing factors the most likely instances in an abortion case are given here below:

1. Did the penitent know that the sin carried with it a penalty of automatic excommunication?
2. Was the penitent under the age of 17 at the time of the offense?
3. Did the penitent act out of force or fear?
4. Did the penitent have an imperfect use of reason? (E.g. mental retardation, psychological impairment, etc.)

Additionally *CIC* 1324 gives further mitigating factors and notes that while the violator may not necessarily be exempt from a penalty, s/he is *not* liable to the penalty established in law,

and that instead the penalty “must be tempered or a penance employed in its place if the delict was committed.”

It seems that in many cases, in light of these sorts of considerations we could reasonably conclude that the penitent probably did *not* incur an automatic excommunication. Hence, there will not be any censure that needs to be remitted, and the abortion may be absolved as would any other serious sin.³

In the rare case, that all the conditions for an automatic censure are satisfied, then the confessor could remit the excommunication as he would any other *latae sententiae* censure. That is:

1. Assuming it would be “hard” for the penitent to remain in the state of serious sin, remit the censure conditionally.
2. Arrange for the penitent to return to the confessor at some mutually agreed upon date or time, e.g., say after one month. The confessor should definitely tell the penitent the reason for this delay, i.e., that the confessor needs to have recourse to someone who has the power for definitive remission, but emphasizing that the secrecy of the confession remains absolute, and that therefore the penitent’s anonymity is assured.
3. Before the penitent returns upon the mutually agreed upon date or time the confessor should request and obtain the remission from the proper authority (e.g., the local Ordinary), but always maintaining the necessary secrecy so as not to disclose the identity of the penitent.
4. When the penitent returns after the agreed upon time the confessor should inform him or her of the fact of the remission of the canonical penalty. This may be done either within the confessional forum, or outside of it. However, if the penitent confesses to the priest in the anonymous fashion (i.e., behind a grill or in the confessional box), then the confessor should presume the penitent desires to maintain this anonymity, and the announcement of the remission of the canonical penalty should be given within the same anonymous confessional forum.

V. Summary

It is good to follow the manualist traditional rule of thumb and to always give absolution to a penitent who makes a sincere confession. In those rare cases in which an automatic censure also has been applied because of the sin, the confessor may conditionally remit the censure, but then the penitent (or the confessor acting for the penitent) must have recourse within

³For a good commentary Canon 1324 in reference to a procured abortion see Huels, *The Pastoral Companion*, pp.148-150.

a month to someone who has the power for definitive remission of the censure.

Once again, the automatic penalties of which a confessor needs to be aware include:

1. apostasy, heresy, schism
2. violation of consecrated species
3. physical attack on the pope or bishop
4. absolution of an accomplice
5. unauthorized ordination of a bishop
6. direct violation by a confessor of the seal of confession
7. procuring an abortion
8. by means of technical instrument divulging to communications media what was said in a confession
9. pretended celebration of the Eucharist by a non-priest
10. attempt to hear confession by one who cannot validly do so
11. false accusation of the crime of solicitation in the confessional
12. attempted marriage by a religious or cleric

Finally, it can be assumed that in most dioceses in the United States all confessors who have normal priestly faculties also have the delegated faculty to remit the censure of abortion without further recourse to the diocesan bishop.

While the single prayer of sacramental absolution also carries the effect of remission of censure(s) in those cases in which the confessor can remit these, if desired for pastoral reasons the following additional formula for remission, found as *Appendix I* in the *Rite of Penance*, may be used:

By the power granted to me, I absolve you from the bond of excommunication (or suspension or interdict). In the name of the Father, and of the Son, and of the Holy Spirit.