



Clergy Privacy FAQs

Alabama



Chaplains and campus ministers can often provide confidential support for people in campus communities who have experienced sexual and domestic violence. Because of mandatory reporting laws and Title IX reporting requirements on campus, privileged communications may provide the most privacy protection for these survivors. Privileged communications may be possible with victim advocates and medical staff on campuses in certain jurisdictions, but sometimes chaplains and campus ministers are the only privileged professionals on campus who are not required to report a disclosed sexual assault.¹ Office on Violence Against Women (OVW)-funded victim service providers (VSPs) who work on campuses need to be able to explain to the people they serve how private any communication with chaplains or campus ministers will be and when these clergy may be required to report abuse, neglect, or sexual assault. These FAQs are meant to help VSPs understand the legal parameters for these communications.

These FAQs describe the clergy-penitent privilege and the mandatory reporting laws in the identified jurisdiction. We include legal citations so that you can read more about the laws and make sure they are current. None of the information in these FAQs is legal advice and you should always check with an attorney about how these laws work in your jurisdiction. The FAQs are a part of our Campus Privacy Toolkit. To receive an electronic copy of the Toolkit, or to ask privacy questions related to your OVW-funded work, please email us at TA@victimrights.org.

1 **What is the clergy-penitent privilege in Alabama?** “If any person shall communicate with a clergyman in the clergyman’s professional capacity and in a confidential manner, then that person or the clergyman shall have a privilege to refuse to disclose, and to prevent another from disclosing, that confidential communication.” Ala. R. Evid. 505(b). See also Ala. Code § 12-21-166(b) (“If any person shall communicate with a clergyman in his professional capacity and in a confidential manner (1) to make a confession, (2) to seek spiritual counsel or comfort, or (3) to enlist help or advice in connection with a marital problem, either such person or the clergyman shall have the privilege, in any legal or quasi-legal proceeding, to refuse to disclose and to prevent the other from disclosing anything said by either party during such communication.”).

2 **Who is “clergy”?** Alabama Rule of Evidence 501(a) and Ala. Code § 12-21-166(a)(1) both define “clergyman” as “any duly ordained, licensed, or commissioned minister, pastor, priest, rabbi, or practitioner of any bona fide established church or religious organization; the term ‘clergyman’ includes, and is limited to, any person who regularly, as a vocation, devotes a substantial portion of his or her time and abilities to the service of his or her church or religious organization.”

3 **What is a “confidential communication”?** Pursuant to Alabama Rule of Evidence 505(a)(2), a communication is “confidential” “if it is made privately and is not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.” “Confidential” is not defined in the corresponding section of the Alabama Code.

¹ Even if a communication is protected from campus reporting by clergy privilege, jurisdictions may require clergy to report abuse of minors, elders, and persons with disabilities.

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Who is the privileged communicator? Pursuant to Alabama Rule of Evidence 505(b), “any person” who communicates with clergy in the clergy’s professional capacity and in a confidential manner can claim the privilege. Alabama Code §12-21-166 is slightly narrower, providing that “any person [who] shall communicate with a clergyman in his professional capacity and in a confidential manner (1) to make a confession, (2) to seek spiritual counsel or comfort, or (3) to enlist help or advice in connection with a marital problem” can claim the privilege.

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Who can claim the privilege? The privilege may be claimed by the communicating person, by that person’s guardian or conservator, or by that person’s personal representative if that person has died, or by the clergyperson. Ala. R. Evid. 505(c).

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How are clergy exempted from, or included in, Alabama’s mandatory reporting laws? (This is not necessarily an exhaustive list of the abuse, neglect, or injuries that must be reported in this jurisdiction.)

Type of abuse or neglect	Rule and exceptions
Child abuse	<p>“All . . . members of the clergy as defined in Rule 505 of the Alabama Rules of Evidence, or any other person called upon to render aid or medical assistance to any child, when the child is known or suspected to be a victim of child abuse or neglect, shall be required to report, or cause a report to be made of the same, orally, either by telephone or direct communication immediately, followed by a written report, to a duly constituted authority.” Ala. Code § 26-14-3(a).</p> <p>However, “[s]ubsection (a) to the contrary notwithstanding, a member of the clergy shall not be required to report information gained solely in a confidential communication privileged pursuant to Rule 505 of the Alabama Rules of Evidence which communication shall continue to be privileged as provided by law.” Ala. Code § 26-14-3(f).</p>
Elder abuse	Clergy are not mandatory reporters of elder abuse unless also a practitioner of the healing arts, a physician, or a caregiver. See Ala. Code § 38-9-8.
Protected person abuse	Clergy are not mandatory reporters of protected person abuse unless also a practitioner of the healing arts, a physician, or a caregiver. See Ala. Code § 38-9-8. A protected person is “[a]ny person over eighteen years of age subject to protection under this chapter or any person, including, but not limited to, persons with neurodegenerative disease, persons with intellectual disabilities and developmental disabilities, or any person over eighteen years of age that is mentally or physically incapable of adequately caring for himself or herself and his or her interests without serious consequences to himself or herself or others.” Ala. Code § 38-9-2(18).

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What other clergy-related privilege or reporting issues are addressed in Alabama law? Threats of violence toward third parties that are revealed to clergy are not covered by the “communications to clergyman” privilege, and the clergy may testify to those threats in subsequent proceedings. Tankersely v. State, 724 So.2d 557 (Ala. 1998).

