



## Clergy Privacy FAQs

# Arkansas



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.<sup>1</sup> 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](mailto:TA@victimrights.org).

**1** **What is the clergy-penitent privilege in Arkansas?** “A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual advisor.” Ark. R. Evid. 505(b).

**2** **Who is “clergy”?** “A ‘clergyman’ is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.” Ark. R. Evid. 505(a)(1).

**3** **What is a “confidential communication”?** “A communication is ‘confidential’ if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication. Ark. R. Evid. 505(a)(2).

**4** **Who may claim the privilege?** “The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.” Ark. R. Evid. 505(c).

<sup>1</sup> 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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**How are clergy excepted from, or included in, Arkansas’ 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
<p><b>Child abuse</b></p>	<p>If they have “reasonable cause to suspect that a child has been subjected to child maltreatment or died as a result of child maltreatment,” or if they observe a child “being subjected to conditions or circumstances that would reasonably result in child maltreatment,” a clergy member is mandated to report it. Ark. Code. Ann. § 12-18-402.</p> <p>“A clergy member” includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent the clergy member: (A) Has acquired knowledge of suspected child maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or (B) Received the knowledge of the suspected child maltreatment from the alleged offender in the context of a statement of admission.” Ark. Code. Ann. § 12-18-402(a)(1)(29).</p> <p>The privilege between a minister, including a Christian Science practitioner, and a person confessing to or being counseled by the minister, shall prevent anyone from testifying concerning child maltreatment. Ark. Code. Ann. § 12-18-803(b).</p> <p>While a clergyperson, Christian Science practitioner, or priest may have a duty to report suspected neglect or abuse, the clergyperson, practitioner, or priest will not be compelled to testify in any civil or criminal litigation about any confession made to them “in the course of the discipline enjoined by the church to which he belongs.” Ariz. Rev. Stat. § 13-3620(L).</p>
<p><b>Abuse of an endangered or impaired person</b></p>	<p>The following must report adult or long-term care facility resident maltreatment when they observe or have reasonable cause to suspect that an “endangered person or impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term facility resident maltreatment:” “Any clergy member, including without limitation, a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a religious organization, or an individual reasonably believed to be a minister, a priest, a rabbi, an accredited Christian Science practitioner, or any other similar functionary of a religious organization by the person consulting him or her, except to the extent he or she: (i) Has acquired knowledge of suspected maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or (ii) Received the knowledge of the suspected maltreatment from the offender in the context of a statement of admission. Ark. Code. Ann. § 12-12-1708(a)(1)(Z).</p> <p>Any privilege between a clergy member and a penitent shall not constitute grounds for excluding evidence at any proceeding regarding abuse of the elderly or disabled. Ark. Code. Ann. § 12-12-1705.</p>

