



Clergy Privacy FAQs

California



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 California? A penitent or a member of clergy, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if they claim the privilege. However, the right to claim the privilege is waived if the holder of the privilege, without coercion, has disclosed a significant part of the otherwise privileged communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has legal standing and the opportunity to claim the privilege. Cal Evid. Code §§ 912, 1033-1034.

2

Who is “clergy”? A “member of the clergy” means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization. Cal Evid. Code §1030.

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.

3

What is a “confidential communication”? A confidential communication, or a “penitential communication,” is a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member’s church, denomination, or organization, is authorized or accustomed to hear those communications and, under the practices of their church, denomination, or organization, has a duty to keep those communications secret. Cal Evid. Code § 1032. See also Cal Penal Code § 11166(d) (“For purposes of this subdivision [relating to mandatory reporting], ‘penitential communication’ means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of the clergy member’s church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of the clergy member’s church, denomination, or organization, has a duty to keep those communications secret.”).

4

Who is the privileged communicator? The privileged communicator, or a “penitent,” is a person who has made a penitential communication to a member of the clergy. Cal Evid. Code § 1031.

5

Who can claim the privilege? “Subject to Section 912 [relating to privilege generally], a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent others from disclosing, a penitential communication if he or she claims the privilege.” Cal Evid. Code § 1033. A member of the clergy also has the right to refuse disclosure. Cal Evid. Code § 1033.

6

How are clergy excepted from, or included in, California’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>“Reports of suspected child abuse or neglect shall be made by mandated reporters . . .” Cal Penal Code § 11165.9.</p> <p>A mandated reporter includes “[a] clergy member, as specified in subdivision (d) of Section 11166. As used in this article, “clergy member” means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization. Cal Penal Code § 11165.7(a)(32).</p> <p>Cal Penal Code § 11166(d) provides:</p> <p>“(1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential communication is not subject to subdivision(a) [which provides that a mandated reporter “shall” make a report to the specified agency whenever the mandated reporter, in the mandated reporter’s professional capacity or within the scope of the mandated reporter’s employment, has knowledge of or observes a child who the reporter knows or reasonably suspects has been the victim of child abuse or neglect].</p> <p>(2) Nothing in this subdivision shall be construed to modify or limit a clergy member’s duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.”</p>

Type of abuse or neglect	Rule and exceptions
Elder or dependent adult abuse	<p>“Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter [of elder abuse].” Cal. Welf. & Inst. Code § 15630(a).</p> <p>“Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse” Cal. Welf. & Inst. Code § 15630(b)(1):</p> <p>However, a “mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, “penitential communication” means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.” Cal. Welf. & Inst. Code § 15630(b)(F)(2)(A).</p> <p>“This subdivision shall not be construed to modify or limit a clergy member’s duty to report known or suspected elder and dependent adult abuse if he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.” Cal. Welf. & Inst. Code §15630(b)(F)(2)(B).</p> <p>“Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.” Cal. Welf. & Inst. Code § 15630(b)(F)(2)(C).</p>

