



Clergy Privacy FAQs

Colorado



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 Colorado?** “There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases: . . . A clergy member, minister, priest, or rabbi shall not be examined without both his or her consent and also the consent of the person making the confidential communication as to any confidential communication made to him or her in his or her professional capacity in the course of discipline expected by the religious body to which he or she belongs.” Colo. Rev. Stat. § 13-90-107(1)(c).

2 **Who is “clergy”?** “Clergy” is not directly defined in Colo. Rev. Stat. § 13-90-107(1)(c). However, under Colo. Rev. Stat. § 19-3-304(2)(aa)(III) (persons required to report child abuse), “clergy member” means a “priest, rabbi, duly ordained, commissioned, or licensed minister of a church, member of a religious order, or recognized leader of any religious body.”

3 **What is a “confidential communication”?** The statute provides no guidance as to the meaning of the phrase “confidential communication.” Case law analyzing the clergy privilege analyzes the phrase “confidential communication” in the context of the attorney-client privilege, in which a communication is confidential under the attorney-client privilege if it is “made in circumstances giving rise to a reasonable expectation that the [communication] will be treated as confidential.” *People v. Tucker*, 232 P.3d 194, 198 (Colo. App. 2009) (quoting *Wesp v. Everson*, 33 P.3d 191, 197 (Colo. 2001)). To be privileged, the circumstances must indicate the intention of secrecy, *D.A.S. v. People*, 863 P.2d 291, 295 (Colo. 1993), and the communication must be private or secret, *People v. Tippett*, 733 P.2d 1183, 1192 (Colo. 1987).

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 may claim the privilege? Both the clergy member and the penitent retain the privilege. The clergy member cannot disclose confidential communications without the consent of the penitent. Colo. Rev. Stat. § 13-90-107(1)(c).

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How are clergy excepted from, or included in, Colorado’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>Generally, “any person specified in subsection (2) of this section who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately upon receiving such information report or cause a report to be made of such fact . . .” Colo. Rev. Stat. § 19-3-304(1).</p> <p>Persons required to report such abuse, neglect, circumstances, or conditions include any Christian science practitioner or clergy member. Colo. Rev. Stat. §§ 19-3-304(2)(k)(aa)(I).</p> <p>As to a clergy member, the duty “shall not apply to a person who acquires reasonable cause to know or suspect that a child has been subjected to abuse or neglect during a communications about which the person may not be examined as a witness pursuant to section 13-90-107(1)(c) unless the person also acquires such reasonable cause from a source other than such a communication.” Colo. Rev. Stat. § 19-3-304(2)(aa)(II).</p> <p>In this context, “clergy member” means “a priest, rabbi, duly ordained, commissioned, or licensed minister of a church, member of a religious order, or recognized leader of any religious body.” Colo. Rev. Stat. § 19-3-304(2)(aa)(III).</p>
At-risk elder or adult with I/DD abuse	<p>“[A] person specified in paragraph (b) of this subsection (1) who observes the mistreatment of an at-risk elder or an at-risk adult with IDD, or who has reasonable cause to believe that an at-risk elder or an at-risk adult with IDD has been mistreated or is at imminent risk of mistreatment, shall report such fact to a law enforcement agency not more than twenty-four hours after making the observation or discovery.” Colo. Rev. Stat. § 18-6.5-108(1)(a).</p> <p>The specified reporters include clergy members “except that the reporting requirement described in paragraph (a) of this subsection (1) does not apply to a person who acquires reasonable cause to believe that an at-risk elder or an at-risk adult with IDD has been mistreated or has been exploited or is at imminent risk of mistreatment or exploitation during a communication about which the person may not be examined as a witness pursuant to section 13-90-107(1)(c), unless the person also acquires such reasonable cause from a source other than such a communication.” Colo. Rev. Stat. § 18-6.5-108(1)(b)(XXI).</p>

