



## Clergy Privacy FAQs

# Hawaii



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 Hawaii?** “A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the latter’s professional character as spiritual advisor.” Haw. R. Evid. 506(b).

**2** **Who is a “member of the clergy”?** A “member of the clergy” is “a minister, priest, rabbi, Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the communicant.” Haw. R. Evid. 506(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.” Hawaii Rules of Evidence, Rule 506(a)(2).

**4** **Who may claim the privilege?** “The privilege may be claimed by the communicant or by the communicant’s guardian, conservator, or personal representative. The member of the clergy may claim the privilege on behalf of the communicant. Authority so to do is presumed in the absence of evidence to the contrary.” Haw. R. Evid. 506(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.

**How are members of the clergy excepted from, or included in, Hawaii’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
<b>Child abuse or neglect</b>	<p>Members of the clergy are not specified mandated reporters of child abuse or neglect in Hawaii. Haw. Rev. Stat. § 350-1.1(a). However, under Haw. Rev. Stat. § 350-1.3, “any person may report” if that person “becomes aware of facts or circumstances which cause that person to have reason to believe that the child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future . . .”</p> <p>“The physician-patient privilege, the psychologist-client privilege, the spousal privilege, and the victim-counselor privilege shall not be grounds for excluding evidence in any judicial proceeding resulting from a report of child abuse or neglect . . .” The clergy-penitent privilege is not enumerated. Haw. Rev. Stat. § 350-5.</p>
<b>Vulnerable adult abuse</b>	<p>Certain professionals who “know or have reason to believe that a vulnerable adult has incurred abuse or is in danger of abuse if immediate action is not taken shall promptly report the matter orally. . .” Haw. Rev. Stat. § 346-224(a). The statute does not specifically identify members of the clergy for the required reporting. All others are allowed to report. Id. at § 346-224(d).</p> <p>Note the law’s omission of the clergy-penitent privilege from the provision that the “physician-patient privilege, the psychologist-client privilege, the spousal privilege, and the victim-counselor privilege shall not be grounds for excluding evidence in any judicial proceeding resulting from a report pursuant to this part.” Haw. Rev. Stat. § 346-244.</p> <p>“Vulnerable adult” means “a person eighteen years of age or older who, because of mental, developmental, or physical impairment, is unable to: (1) Communicate or make responsible decisions to manage the person’s own care or resources; (2) Carry out or arrange for essential activities of daily living; or (3) Protect oneself from abuse,” as defined in statute. Haw. Rev. Stat. §346-222.</p>

