



Clergy Privacy FAQs

Idaho



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 Idaho?** “A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.” Idaho Code § 9-203.

“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 the clergyman’s professional character as spiritual adviser.” Idaho 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 to be a clergyman by the person consulting.” Idaho 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.” Idaho R. Evid. 505(a)(2).

4 **Who may claim the privilege?** “The privilege may be claimed by the person, or for the person by the person’s lawyer, the guardian or conservator, or by the personal representative if that person is deceased. The clergyman at the time of the communication may claim the privilege but only on behalf of the person. The authority of the clergyman to do so is presumed in the absence of evidence to the contrary.” Idaho R. Evid. 505(c).

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.

5

How are clergy excepted from, or included in, Idaho’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
<p>Child abuse or neglect</p>	<p>Clergy are not included on the list of people who are required to report if they have a reason to believe that child abuse, abandonment, or neglect has occurred. Idaho Code § 16-1605(1).</p> <p>Furthermore, the reporting requirements do not apply to “a duly ordained minister of religion, with regard to any confession or confidential communication made to him in his ecclesiastical capacity in the course of discipline enjoined by the church to which if he belongs if:</p> <ul style="list-style-type: none"> • The church qualifies as tax-exempt under Federal law; • The confession or confidential communication was made directly to the duly ordained minister of religion; and • The confession or confidential communication was made in the manner and context that places the duly ordained minister specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine. A confession or confidential communication made under any other circumstances does not fall under this exemption.” Idaho Code § 16-1605(3). <p>A “duly ordained minister of religion” is defined as “a person who has been ordained or set apart, in accordance with the ceremonial, ritual or discipline of a church or religious organization which has been established on the basis of a community of religious faith, belief doctrines and practices, to hear confessions and confidential communications in accordance with the bona fide doctrines or disciplines of that church or religious organization.” Idaho Code § 16-1605(2).</p>
<p>Vulnerable adult abuse</p>	<p>Certain listed professions are required to report the abuse, neglect, or exploitation of vulnerable adults. Clergy are not included on the list. Idaho Code § 39-5303(1). However, “[a]ny person . . . who has reasonable cause to believe that a vulnerable adult is being abused, neglected or exploited may report such information to the commission or its providers.” Id. at § 39-5303(3).</p> <p>“Vulnerable adult” is a person eighteen or older who “due to physical or mental impairment that affects the person’s judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person.” Idaho Code § 39-5032(10).</p>

