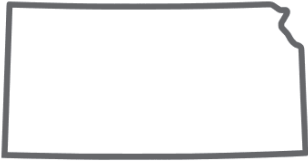


# Clergy Privacy FAQs



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## Kansas

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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 Kansas?** “A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he or she claims the privilege and the judge finds that (1) the communication was a penitential communication, and (2) the witness is the penitent or the minister, and (3) the claimant is the penitent, or the minister making the claim on behalf of an absent penitent.” Kan. Stat. Ann. § 60-429(b).

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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.

## 2

**Who is “clergy”?** The Kansas statute does not use the term “clergy,” but rather uses the following terms in defining the parameters of the privilege:

A “duly ordained minister of religion’ means a person who has been ordained, in accordance with the ceremonial ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his or her regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.” Kan. Stat. Ann. § 60-429(a)(1).

The “term ‘regular minister of religion’ means one who as his or her customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he or she is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.” Kan. Stat. Ann. § 60-429(a)(2).

The “term ‘regular or duly ordained minister of religion’ does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his or her church, sect, or organization.” Kan. Stat. Ann. § 60-429(a)(3).

## 3

**What is a “confidential communication”?** The Kansas statute uses the term “penitential communication” rather than “confidential communication.” A “penitential communication” means “any communication between a penitent and a regular or duly ordained minister of religion which the penitent intends shall be kept secret and confidential and which pertains to advice or assistance in determining or discharging the penitent’s moral obligations, or to obtaining God’s mercy or forgiveness for past culpable conduct.” Kan. Stat. Ann. § 60-429(a)(5).

## 4

**Who is the privileged communicator?** “Penitent” means “a person who recognizes the existence and the authority of God and who seeks or receives from a regular or duly ordained minister of religion advice or assistance in determining or discharging his or her moral obligations, or in obtaining God’s mercy or forgiveness for past culpable conduct.” Kan. Stat. Ann. § 60-429(a)(4).

**How are clergy excepted from, or included in, Kansas’ mandatory reporting laws?** (This is not necessarily an exhaustive list of the abuse or neglect that must be reported in this jurisdiction.)

Type of abuse or neglect	Rule and exceptions
Child abuse	<p>Members of the clergy are not included on the list of mandatory reporters of child abuse or neglect. However, “any person who has reason to suspect that a child may be a child in need of care” may report. Kan. Stat. Ann. § 38-2223(1), (2).</p>
	<p>Members of the clergy are not included on the list of mandatory reporters of abuse of certain adults. Kan. Stat. Ann. § 39-1431(a). However, “[a]ny other person, not listed in subsection (a), having reasonable cause to suspect or believe that an adult is being or has been abused, neglected, or exploited or is in need of protective services may report such information . . .” Kan. Stat. Ann. § 39-1431(c).</p> <p>“Adult” is defined as “individual 18 years of age or older alleged to be unable to protect their own interest and who is harmed or threatened with harm, whether financial, mental or physical in nature, through action or inaction by either another individual or through their own action or inaction when: (1) Such person is residing in such person’s own home, the home of a family member or the home of a friend; (2) such person resides in an adult family home as defined in K.S.A. 39-1501, and amendments thereto; or (3) such person is receiving services through a provider of community services and affiliates thereof operated or funded by the Kansas department for children and families or the Kansas department for aging and disability services or a residential facility licensed pursuant to K.S.A. 2019 Supp. 39-2001 et seq., and amendments thereto.” Kan. Stat. Ann. § 39-1430(a).</p> <p>Members of the clergy are not listed as mandatory reporters of abuse of residents of nursing homes, assisted living facilities, and certain other residential facilities. Kan. Stat. Ann. § 39-1402(a). However, “[a]ny other person, not listed in subsection (a), having reasonable cause to suspect or believe that a resident is being or has been abused, neglected or exploited or is in a condition that is the result of such abuse, neglect or exploitation or is in need of protective services may report such information . . .” Id. at § 39-1402(c).</p>

