



Clergy Privacy FAQs

Maine



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 Maine?** “A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made to a member of the clergy who was acting as a spiritual adviser at the time of the communication.” Me. R. Evid. 505(b).

2 **Who is “clergy”?** A “member of the clergy” is “an individual who has been ordained or accredited as a spiritual advisor, counselor, or leader by any religious organization established on the basis of a community of faith and belief, doctrines, and practices of a religious character, or an individual reasonably believed so to be by the person consulting that individual.” Me. R. Evid. 505(a)(1).

3 **What is a “confidential communication”?** A communication is confidential if it is made privately and not intended for disclosure other than to other persons present in furtherance of the purpose of the communication. Me. R. Evid. 505(a)(2).

4 **Who may claim the privilege?** The clergy-penitent privilege can be claimed by:

- (1) The person who made the communication;
- (2) The person’s guardian or conservator; or
- (3) The person’s personal representative if the person is deceased.

The person who was a clergy member at the time of the communication also has presumptive authority to claim the privilege on behalf of the person who made the communication. Me. 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.

How are clergy excepted from, or included in, Maine’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>“The following adult persons shall immediately report or cause a report to be made to the department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred . . . A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications.” Me. Rev. Stat. Ann. tit. 22, § 4011-A(1)(A)(27).</p> <p>In addition, “any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation” is required to report. Me. Rev. Stat. Ann. tit. 22, § 4011-A(1)(C).</p> |
| Incapacitated or dependent adult abuse | <p>“The following persons immediately shall report to the department when the person knows or has reasonable cause to suspect that an incapacitated or dependent adult has been or is likely to be abused, neglected or exploited: . . . A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications.” Me. Rev. Stat. Ann. tit. 22, § 3477(1)(A)(23).</p> <p>In addition, “[a]ny person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation” is required to report. Me. Rev. Stat. Ann. tit. 22, § 3472(6).</p> <p>A “dependent adult” means “an adult who has a physical or mental condition that substantially impairs the adult’s ability to adequately provide for that adult’s daily needs.” 22 Me. Rev. Stat. Ann. § 3472(6).</p> <p>An “incapacitated adult” means “an adult who is unable to receive and evaluate information or make or communicate informed decisions to such an extent that the adult lacks the ability to meet essential requirements for physical health, safety or self-care, even with reasonably available appropriate technological assistance.” Me. Rev. Stat. Ann. tit. 22, § 3472(10).</p> |

