



## Clergy Privacy FAQs

# Massachusetts



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 Massachusetts?** A clergyperson “shall not, without the consent of the person making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs.” Mass. Gen. Laws ch. 233, § 20A. Nor shall a clergyperson “testify as to any communication made to him by any person in seeking religious or spiritual advice or comfort, or as to his advice given thereon in the course of his professional duties or in his professional character, without the consent of such person.” Id.

The “religious privilege” is also codified in the Massachusetts Rules of Evidence. Here, “[a] clergyman shall not disclose a confession made to him in his professional character without the consent of the person making the confession. Nor shall a clergyman testify as to any communication made to him by any person seeking religious or spiritual advice or comfort, or as to his advice given thereon, in the course of his professional duties or in his professional character, without the consent of such person.” Mass. R. Evid. 510(b).

2

**Who is “clergy”?** “Member of the clergy” means a priest, rabbi, ordained or licensed minister of any church, or an accredited Christian Science practitioner. Mass. Gen. Laws ch. 233, § 20A; Mass. R. Evid. 510(a)(1).

<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.

3

**What is a “confidential communication”?** Massachusetts’ clergy-penitent privilege does not specifically require that the communication be confidential. Mass. Gen. Laws ch. 233, § 20A. However, the nature of a “confession” is confidential. See generally Mass. R. Evid. 510(c) (discussion the confidential nature of a confession or “similarly confidential communication”).

“A ‘communication’ is not limited to conversations, and includes other acts by which ideas may be transmitted from one person to another.” Mass. R. Evid. 510(a)(2).

4

**Who is the privileged communicator?** The person who communicated in a confession or sought religious or spiritual advice or comfort from the clergy member in the course of the clergy member’s professional duties or in his professional character. Mass. Gen. Laws ch. 233, § 20A.

“In his professional character” means “in the course of discipline enjoined by the rules or practice of the religious body to which the clergyman belongs.” Mass. R. Evid. 510(a)(3).

5

**Who can claim the privilege?** The penitent holds the privilege. Mass. Gen. Laws ch. 233, § 20A.

6

**How are clergy excepted from, or included in, Massachusetts’ 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</b>	<p>Priests, rabbis, clergy members, ordained or licensed ministers, leaders of any church or religious body, accredited Christian Science practitioners, and persons performing official duties on behalf of a church or religious body that are recognized as the duties of these roles are on the list of mandatory reporters of child abuse. Mass. Gen. Laws ch. 119, § 21. However, a member of the clergy “need not report information on child abuse solely gained in a confession or similarly confidential communication in other religious faiths.” Mass. Gen. Laws ch. 119, § 51A. However, a member of the clergy who is acting in some other capacity that would otherwise make him a mandated reporter must report the suspected child abuse or neglect. <i>Id.</i></p> <p>See also Massachusetts’ Rule of Evidence 510(c) (“Any clergyman shall report all cases of child abuse but need not report information solely gained in a confession or similarly confidential communication in other religious faiths. Nothing shall modify or limit the duty of a clergyman to report a reasonable cause that a child is being injured when the clergyman is acting in some other capacity that would make him a reporter.”).</p>

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<b>Type of abuse or neglect</b>	<b>Rule and exceptions</b>
<b>Elder abuse</b>	<p>Elder abuse reporting is governed by Mass. Gen. Laws ch. 19A, § 15. A clergyperson is not a mandated reporter under this statute. However, “In addition to a person required to report under the provisions of subsection (a) of this section, any other person may make such a report . . . if any such person has reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse.” Mass. Gen. Laws ch. 19A, § 15(c).</p> <p>The statute provides that the psychologist, psychotherapist, and social worker privileges “shall not prohibit the filing of a report” but is silent as to clergy. Mass. Gen. Laws ch. 19A, § 15(f).</p> <p>An elderly person is defined as an individual age 60 or older. Mass. Gen. Laws ch. 19A, § 14.</p>
<b>Abuse of disabled persons</b>	<p>Information protected by the clergy-penitent privilege shall not be disclosed in cases of abuse of a disabled person unless there is written consent of the disabled person. Mass. Gen. Laws ch. 19C, § 5(1).</p> <p>A “disabled person” is “a person between the ages of eighteen to fifty-nine, inclusive, who is a person with an intellectual disability . . . or who is otherwise mentally or physically disabled and as a result of such mental or physical disability is wholly or partially dependent on others to meet his daily living needs.” Mass. Gen. Laws ch. 19C, § 1.</p>

