



Clergy Privacy FAQs

Michigan



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 Michigan? “No minister of the gospel, or priest of any denomination whatsoever, or duly accredited Christian Science practitioner, shall be allowed to disclose any confessions made to him in his professional character, in the course of discipline enjoined by the rules or practice of such denomination.” Mich. Comp. Laws § 600.2156.

See also Mich. Comp. Laws § 767.5a(2) (“Any communications . . . between members of the clergy and the members of their respective churches . . . are hereby declared to be privileged and confidential when those communications were necessary to enable the . . . members of the clergy . . . to serve as . . . member of the clergy . . .”).

2

What is a “confidential communication”? Any communications between members of the clergy and the members of their respective churches are privileged and confidential when those communications were necessary to enable the members of the clergy to serve as such member of the clergy. Mich. Comp. Laws § 767.5a(2).

What is “necessary to enable” the cleric to serve as a cleric is discussed in *People v. Bragg*, 296 Mich. App. 433 (Mich. Ct. App. 2012). The court found that the communication must serve “a religious function such as providing guidance, counseling, forgiveness, or discipline,” be made in the cleric’s professional capacity, and be made in the course of discipline enjoined by the church.

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.

3

Who may claim the privilege? Who may claim the privilege is not clear from statute, but it appears that the person making the statement holds the privilege. See Mich. Comp. Laws § 600.2156 (stating the clergy person “shall [not] be allowed to” disclose the communication).

4

How are clergy excepted from, or included, in Michigan’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>Members of the clergy are required to report child abuse or neglect. Mich. Comp. Laws § 722.623(1). However, legally recognized privileged communication made to a member of the clergy in a confession or similarly confidential communication is not abrogated and shall constitute grounds for excusing a report otherwise required to be made or for excluding evidence in a civil child protective proceeding. Id. This section does not relieve a member of the clergy from reporting suspected child abuse or child neglect if information is received while a member of the clergy is acting in any other capacity. Id.</p>
<p>Abuse of certain adults</p>	<p>Clergy are not mandatory reporters of abuse of certain adults over eighteen years of age under Mich. Comp. Laws § 400.11a. However, “[i]n addition to those persons required to make an oral report under subsection (1), any person who suspects that an adult has been abused, neglected, or exploited may make a report . . .” Mich. Comp. Laws § 400.11a(3).</p> <p>“Any legally recognized privileged communication, except that between attorney and client and except as specified in section 11a(2) [regarding physicians], is abrogated and does not constitute grounds for excusing a report otherwise required to be made under this act.” Mich. Comp. Laws § 400.11c (emphasis added) (note that clergy are not “required” to make a report under this act).</p> <p>“Adult in need of protective services” or “adult” means “a vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.” Mich. Comp. Laws § 400.11(b).</p>

