



## Clergy Privacy FAQs

# Montana



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 Montana?** “A member of the clergy or priest may not, without the consent of the person making the confession, be examined as to any confession made to the individual in the individual’s professional character in the course of discipline enjoined by the church to which the individual belongs.” Mont. Code Ann. § 26-1-804.

### 2

**Who is “clergy”?** “Clergy” is not defined in this section, but is defined with regard to governmental, charitable, and educational categories as:

- “(i) an ordained minister, priest, or rabbi;
- (ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;
- (iii) a member of a religious order who has taken a vow of poverty; or
- (iv) a Christian Science practitioner.”

Mont. Code Ann. § 15-6-201(2)(b).

### 3

**What is a “confidential communication”?** “Confidential communication” is not specified by statute; however case law provides that the “clergy-penitent privilege” will apply to nonpenitential communications between lay persons and clergy if communications were made in confidence and for purpose of seeking or receiving religious guidance, admonishment, or advice and that cleric was acting in their religious role pursuant to practice and discipline of church. Mont. Code Ann. § 26-1-804; *State v. MacKinnon*, 288 Mont. 329, 957 P.2d 23 (1998).

<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.

# 4

**How are clergy excepted from, or included in, Montana’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><b>Child abuse</b></p>	<p>A clergy member is considered a mandatory reporter pursuant to Mont. Code Ann. § 41-3-201(h). If, in their professional or occupational capacity, members of the clergy “know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child’s welfare, they shall report the matter promptly to the department of public health and human services.” Mont. Code Ann. § 41-3-201.</p> <p>However, a “member of the clergy or a priest is not required to make a report under this section if: (i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person’s capacity as a member of the clergy or as a priest; (ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and (iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.” Mont. Code Ann. § 41-3-201(6)(b).</p>
<p><b>Abuse of older persons and persons with developmental disabilities</b></p>	<p>Clergy members are not included in the list of specified mandatory reporters of abuse of older persons and persons with developmental disabilities under Mont. Code Ann. § 52-3-811(1), (3).</p> <p>“Any other persons or entities may, but are not required to, submit a report in accordance with subsection (1).” Mont. Code Ann. § 52-3-811(4).</p> <p>“Older person” means a person who is at least 60 years old. Mont. Code Ann. § 52-3-803(8).</p> <p>“Persons with a developmental disability” means a person 18 years of age or older who has a developmental disability as defined in Mont. Code § 53-20-102.” Mont. Code Ann. § 52-3-803(9).</p>

