



# Clergy Privacy FAQs

## New Mexico



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 New Mexico?** “A person has a privilege to refuse to disclose, or to prevent another from disclosing, a confidential communication made for the purpose of seeking spiritual advice by the person to a member of the clergy.” N.M. Evid. Rule 11-506(B).

**2** **Who is “clergy”?** A “member of the clergy” is “a minister, priest, rabbi, or similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting that person.” N.M. Evid. Rule 11-506(A)(1).

**3** **What is a “confidential communication”?** A communication is “confidential” “if made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.” N.M. Evid. Rule 11-506(A)(2).

**4** **Who may claim the privilege?** “The privilege may be claimed by: (1) the person who consults with a member of the clergy; or (2) the person’s guardian or conservator; or (3) the person’s personal representative if the person is deceased. The privilege may be asserted on the person’s behalf by the member of the clergy. Authority to claim the privilege is presumed absent evidence to the contrary.” N.M. Evid. Rule 11-506(C).

<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.

**How are clergy excepted from, or included in, New Mexico’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
<b>Child abuse or neglect</b>	<p>“Members of the clergy who have information that is not privileged as a matter of law, who know or have a reasonable suspicion that a child is an abused or neglected child, must report the matter immediately to: (1) a local law enforcement agency; or (2) the Department of Children, Youth and Families; or (3) a tribal law enforcement or social services agency for any Indian child residing in Indian country.” N.M. Stat. Ann. § 32A-4-3(A).</p>
<b>Abuse of incapacitated adults</b>	<p>“[A]ny person” “having reasonable cause to believe that an incapacitated adult is being abused, neglected or exploited shall immediately report that information to the Aging &amp; Long-Term Services Department.” N.M. Stat. Ann. § 27-7-30 (A).</p> <p>“Incapacitated adult” means any adult with a mental, physical, or developmental condition that substantially impairs the adult’s ability to provide adequately for their own care or protection. N.M. Stat. Ann. § 27-7-16.</p>

