



Clergy Privacy FAQs

Ohio



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 cleric-penitent privilege in Ohio? “The following persons shall not testify in certain respects: . . . A cleric, when the cleric remains accountable to the authority of that cleric’s church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the cleric for a religious counseling purpose in the cleric’s professional character. The cleric may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of a sacred trust and except that, if the person voluntarily testifies or is deemed by division (A)(4)(c) of section 2151.421 of the Revised Code to have waived any testimonial privilege under this division, the cleric may be compelled to testify on the same subject except when disclosure of the information is in violation of a sacred trust.” Ohio Rev. Code § 2317.02(C)(1).

2

Who is a “cleric”? “Cleric” means “a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination or sect.” Ohio Rev. Code Ann. § 2317.02(C)(2)(a).

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

What is a “confidential communication”? A “confidential communication” is described as a “sacred trust” in the statute.

The term “sacred trust” means “a confidential communication (including a confession) made to a cleric in the cleric’s ecclesiastical capacity if: (i) the confidential communication was made directly to the cleric; and (ii) the confidential communication was made in the manner and context that places the cleric under a level of confidentiality considered inviolate by canon law or church doctrine.” Ohio Rev. Code Ann. § 2317.02(C)(2)(b).

4

How are clergy exempted from, or included in, Ohio’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>“No person” described specifically in the statute “shall fail to immediately report” suspected child abuse or neglect. Ohio Rev. Code Ann. § 2151.421(A)(1)(a).</p> <p>Mandated reporters include a “person, other than a cleric, rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion.” Ohio Rev. Code Ann. § 2151.421(A)(1)(b).</p> <p>As to clerics:</p> <p>“(a) No cleric and no person, other than a volunteer, designated by any church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith who is acting in an official or professional capacity, who knows, or has reasonable cause to believe ... that a child ... has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, and who knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, that another cleric or another person, other than a volunteer, designated by a church, religious society, or faith acting as a leader, official, or delegate on behalf of the church, religious society, or faith caused, or poses the threat of causing, the wound, injury, disability, or condition that reasonably indicates abuse or neglect shall fail to immediately report that knowledge or reasonable cause to believe to the entity or persons specified in this division....</p> <p>(b) Except as provided in division (A)(4)(c) of this section, a cleric is not required to make a report pursuant to division (A)(4)(a) of this section concerning any communication the cleric receives from a penitent in a cleric-penitent relationship, if, in accordance with division (C) of section 2317.02 of the Revised Code, the cleric could not testify with respect to that communication in a civil or criminal proceeding.</p>

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Type of abuse or neglect	Rule and exceptions
<p>Child abuse (cont.)</p>	<p>(c) The penitent in a cleric-penitent relationship described in division (A)(4)(b) of this section is deemed to have waived any testimonial privilege under division (C) of section 2317.02 of the Revised Code with respect to any communication the cleric receives from the penitent in that cleric-penitent relationship, and the cleric shall make a report pursuant to division (A)(4)(a) of this section with respect to that communication, if all of the following apply:</p> <ul style="list-style-type: none"> (i) The penitent, at the time of the communication, is a child under eighteen years of age or is a person under twenty-one years of age with a developmental disability or physical impairment. (ii) The cleric knows, or has reasonable cause to believe based on facts that would cause a reasonable person in a similar position to believe, as a result of the communication or any observations made during that communication, the penitent has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the penitent. (iii) The abuse or neglect does not arise out of the penitent’s attempt to have an abortion performed upon a child under eighteen years of age or upon a person under twenty-one years of age with a developmental disability or physical impairment without the notification of her parents, guardian, or custodian in accordance with section 2151.85 of the Revised Code. <p>(d) Divisions (A)(4)(a) and (c) of this section do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the sacred trust.</p> <p>(e) As used in divisions (A)(1) and (4) of this section, ‘cleric’ and ‘sacred trust’ have the same meanings as in section 2317.02 of the Revised Code.”</p> <p>Ohio Rev. Code Ann. § 2151.421(A)(4).</p>
<p>Abuse, neglect, or exploitation of certain adults</p>	<p>Clerics must report if they have “reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is a result of abuse, neglect or exploitation.” Ohio Rev. Code Ann. § 5101.63(A)(2)(y).</p> <p>An “adult” is defined as “Any person sixty years of age or older within this state who is handicapped by the infirmities of aging or who has a physical or mental impairment which prevents the person from providing for the person’s own care or protection, and who resides in an independent living arrangement.” Ohio Rev. Code Ann. § 5101.60(B).</p>

