



Clergy Privacy FAQs

Pennsylvania



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 Pennsylvania?** “No clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization, except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers, who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.” 42 Pa. Const. Stat. § 5943.

2 **What is a “confidential communication”?** “Confidential communication” is not defined in statute. Note, though, the privilege does not apply if the communication is “not religious, in that nothing spiritual or in the nature of forgiveness ever was discussed.” *Com. v. Patterson*, 392 Pa. Super. 331, 343, 572 A.2d 1258, 1265 (1990) (statements made for counseling purposes excluded as not confessional).

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 is the privileged communicator? The statute applies broadly to “any person” who gives the communication “secretly and in confidence” but case law appears more restrictive. The Patterson court, for example, held it to be one relevant factor in refusing to recognize the privilege that the communicator was “never a practicing member” of the clergyman’s church even though he occasionally “had attended services there.” *Id.* at 1264.

4

How are clergy exempted from or included in Pennsylvania’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 |
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| Child abuse | “The following adults shall make a report of suspected child abuse, subject to subsection (b), if the person has reasonable cause to suspect that a child is a victim of child abuse A clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization.” 23 Pa. Const. Stat. § 6311(a)(6). However, to the extent the information is learned through a privileged communication, clergy need not report. 23 Pa. Const. Stat. §§ 6311.1(a), (b)(1). |
| Abuse of older adults | The Older Adults Protective Services Act requires mandatory reporting for employees of long-term care organizations (including home health care services) with respect to persons older than 60 years of age. 35 Pa. Const. Stat. §§ 10225.103 (definitions) and 10225.701 (mandatory reporting provisions). Clergy are not included in this definition <i>per se</i> . |
| Abuse of adults with physical or mental impairments | <p>An employee or administrator of a facility who has reason to suspect that an adult who receives care, services, or treatment in or from a facility is a victim of abuse or neglect shall make a report. Clergy are not included in this definition <i>per se</i>. 35 Pa. Const. Stat. § 10225.701.</p> <p>An “adult” for purposes of this section is a “resident of this Commonwealth between 18 and 59 years of age who has a physical or mental impairment that substantially limits one or more major life activities.” 35 Pa. Const. Stat. § 10210.103.</p> |

