

Clergy Privacy FAQs



Puerto Rico



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 Puerto Rico?** In Puerto Rico, a clergyperson or a penitent, “whether or not a party to the action, has a privilege to refuse to disclose and to prevent another from disclosing a penitential communication.” 32 L.P.R.A. Rule 28(B).

2 **Who is “clergy”?** A “clergyman” is a “[p]riest, minister, religious practitioner or similar functionary of a church or of a religious cult or denomination or religious organization.” 32 L.P.R.A. Rule 28(A)(1). Furthermore, “[t]o be considered religious under Rule 511 of Evidence . . . it is necessary that the person be an official affiliated with an organized and recognized sect. Self-styled ministers are not included.” *Diocesis De Arecibo v. Srio. Justicia*, 2014 TSPR 86 (P.R. July 14, 2014).

3 **What is a “penitential communication”?** A “penitential communication” is a “communication made in confidence, in the presence of no third person, to a clergy man who, in the course of the discipline or practice of his church or organization, is authorized or accustomed to hear such communications and, under the discipline of his church, has a duty to keep such communications secret.” 32 L.P.R.A. Rule 28(A)(3).

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.

4

Who is the privileged communicator? A penitent is a “person who has made a penitential communication to a clergyman.” 32 L.P.R.A. Rule 28 (A)(2).

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How are clergy excepted from, or included in, Puerto Rico’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>“All persons shall be required to immediately report cases of actual or suspected child abuse, institutional abuse, neglect, and/or institutional neglect, or if a child is at risk of being a victim thereof. Any person who, in the performance of his/her professional responsibilities or employment, has knowledge of or watches any film, photograph, videotape, negative, or slide that depicts a minor involved in a sexual activity shall report that fact immediately . . .” 8 L.P.R.A. § 1131.</p> <p>And there are “no privileged communications, except between attorney and client . . . in proceedings for abuse, institutional abuse, neglect, and/or institutional neglect of a minor. . . Privileged communications, excluding privileged attorney-client communications, shall not constitute grounds for failing to provide reports such as those required or allowed by this chapter, or to cooperate with protective service for the minors in the activities contemplated in this chapter, or to accept or introduce evidence related to the abuse, institutional abuse, neglect, and/or institutional neglect of a minor in any judicial proceeding.” 8 L.P.R.A. § 447c.</p>
<p>Elderly person abuse</p>	<p>“Professionals or public officials, public or private and privatized entities that in their professional capacity and in the discharge of their functions learn or suspect that an elderly person is, has been, or is at risk of being a victim of abuse, institutional abuse, abuse by negligence and/or abuse by institutional negligence, are hereby placed under the obligation to report those cases in which there is or there is the suspicion that there is a situation of abuse, institutional abuse, abuse by negligence and/or abuse by institutional negligence against an elderly person; as well as health, education, social work and law enforcement professionals, and person engaged indirectly or working in care institutions or establishments that offer service during a twenty-four (24)-hour day or part thereof. They shall report such a fact through the ‘Golden Hotline’ and the Puerto Rico Police and/or the Office of Elderly Affairs, attached to the Office of the Governor.” 8 L.P.R.A. § 346j.</p>

