



Clergy Privacy FAQs

South Dakota



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 South Dakota?** “A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.” S.D. Codified Laws § 19-19-505(b).

2 **Who is “clergy”?** A “clergyman” is “a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.” S.D. Codified Laws § 19-19-505(1).

3 **What is a “confidential communication”?** A communication is “confidential” “if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.” S.D. Codified Laws § 19-19-505(2).

4 **Who may claim the privilege?** “The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.” S.D. Codified Laws § 19-19-505(c).

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.

How are clergy excepted from or, included in, South Dakota’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>Clergy are not included on the list of mandatory reporters of child abuse or neglect (such as counselor, teacher, or school official). S.D. Codified Laws 26-8A-3. However, “[a]ny person who knows or has reason to suspect that a child has been abused or neglected . . . may report that information . . .” Id.</p> <p>Any person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect must report that information to the medical examiner or coroner. S.D. Codified Laws § 26-8A-4.</p> <p>The clergy-penitent privilege may be claimed in any judicial proceeding involving an alleged abused or neglected child or resulting from reporting child abuse or neglect. S.D. Codified Laws § 26-8A-15.</p>
<p>Abuse of elders and adults with disabilities</p>	<p>Clergy are not enumerated mandatory reporters of abuse of elders and adults with disabilities. S.D. Codified Laws §§ 22-46-9, 10. However, “[a]ny person who knows or has reason to suspect that an elder or adult with a disability has been abused, neglected, or exploited may report that information, regardless of whether that person” is a mandated reporter. S.D. Codified Laws § 22-46-11.</p> <p>“Elder” is defined as a person 65 years of age or older. S.D. Codified Laws § 22-46-1(3).</p> <p>“Adult with a disability” is defined as “a person eighteen years of age or older who has a condition of intellectual disability, infirmities of aging as manifested by organic brain damage, advanced age, or other physical dysfunctioning to the extent that the person is unable to protect himself or herself or provide for his or her own care.” S.D. Codified Laws § 22-46-1(1).</p>

