



Clergy Privacy FAQs

Texas



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-communicant privilege in Texas?** “A communicant has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication by the communicant to a clergy member in the clergy member’s professional capacity as spiritual advisor.” Tex. R. Evid. 505(b).

2 **Who is “clergy”?** A “clergy member” is “a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or someone whom a communicant reasonably believes is a clergy member.” Tex. R. Evid. 505(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 present to further the purpose of the communication.” Tex. R. Evid. 505(a)(3).

4 **Who is the privileged communicator?** A “communicant” is “a person who consults a clergy member in the clergy member’s professional capacity as a spiritual adviser.” Tex. R. Evid. 505(a)(2).

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.

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Who may claim the privilege? “The privilege may be claimed by: (1) the communicant; (2) the communicant’s guardian or conservator; or (3) a deceased communicant’s personal representative. The clergy member to whom the communication was made may claim the privilege on the communicant’s behalf – and is presumed to have authority to do so.” Tex. R. Evid. 505(c).

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How are clergy excepted from, or included in, Texas’ 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 or neglect | <p>“A person having cause to believe that a child’s physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report . . .” Tex. Fam. Code Ann. § 261.101(a). “The requirement to report . . . applies without exception to an individual whose personal communications may otherwise be privileged, including . . . a member of the clergy.” Tex. Fam. Code Ann. § 261.101(c).</p> |
| Abuse, neglect, or exploitation of elderly persons, persons with disabilities, or individual receiving certain services | <p>“[A] person having cause to believe that an elderly person, a person with a disability, or an individual receiving services from a provider [of certain health services] is in the state of abuse, neglect or exploitation shall report . . . immediately to [the Department of Family and Protective Services].” Tex. Hum. Res. Code Ann. § 48.051(a). “The duty imposed . . . applies without exception to a person . . . whose professional communications are generally confidential, including . . . a clergy member.” Tex. Hum. Res. Code Ann. § 48.051(c).</p> <p>“Elderly person” means a person 65 years of age or older. Tex. Hum. Res. Code Ann. § 48.002(a)(1).</p> <p>A “person with a disability” means “a person with a mental, physical, intellectual or developmental disability that substantially impairs the person’s ability to provide adequately for the person’s care or protection and who is: (A) 18 years of age or older; or (B) under 18 years of age and who has had the disability of minority removed.” Tex. Hum. Res. Code Ann. § 48.002(a)(8).</p> |

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