



Clergy Privacy FAQs

Virginia



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 Virginia? Virginia has two separate clergy-penitent privilege statutes, one for civil cases and one for criminal cases.

Civil law privilege: “No regular minister, priest, rabbi, or accredited practitioner over the age of eighteen years, of any religious organization or denomination usually referred to as a church, shall be required to give testimony as a witness or to relinquish notes, records or any written documentation made by such person, or disclose the contents of any such notes, records or written documentation, in discovery proceedings in any civil action which would disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.” Va. Code Ann. § 8.01-400.

Criminal law privilege: “No regular minister, priest, rabbi or accredited practitioner over the age of eighteen years, of any religious organization or denomination usually referred to as a church, shall be required in giving testimony as a witness in any criminal action to disclose any information communicated to him by the accused in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, where such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.” Va. Code Ann. § 19.2-271.3.

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.

2

Who may claim the privilege? “[U]nder Virginia law, the priest-penitent privilege belongs to the clergyman, not the layman.” *Nestle v. Commonwealth*, 22 Va. App. 336, 343 (1996) (error to allow a criminal defendant to refuse to divulge contents of confessional statement). See also *Seidman v. Fishburne-Hudgins Educ. Found., Inc.*, 724 F.2d 413, 416 (4th Cir. 1984) (in civil case, defendant had no standing to object to priest’s testimony about confession).

3

How are clergy excepted from, or included in, Virginia’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 or neglect	“The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately . . . : Any minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church, unless the information supporting the suspicion of child abuse or neglect (i) is required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) would be subject to [the clergy privilege statutes] if offered as evidence in court.” Va. Code Ann. § 63.2-1509(19).
Abuse, neglect, or exploitation of elders or incapacitated adults	Although clergy are not listed as mandated reporters, “[a]ny person other than those specified . . . who suspects that an adult is an abused, neglected or exploited adult may report the matter . . .” Va. Code Ann. § 63.2-1606(D). “Adults” are defined as “any person 60 years of age or older, or any person 18 years of age or older who is incapacitated and who resides in the Commonwealth; provided, however, “adult” may include qualifying nonresidents who are temporarily in the Commonwealth and who are in need of temporary or emergency protective services.” Va. Code Ann.

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