



## Clergy Privacy FAQs

# Washington



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.<sup>1</sup> 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](mailto:TA@victimrights.org).

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**What is the clergy-penitent privilege in Washington?** “A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.” Wash. Rev. Code § 5.60.060(3).

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**Who is “clergy”?** In *State v. Martin*, the court defined “clergy” as any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution. Such person must be ordained in order to be considered a member of the clergy. See *State v. Martin*, 137 Wn.2d 774, 783-84, 975 P. 2d 1020 (1999); Wash. Rev. Code § 26.44.020(7).

Note: The *Martin* case addresses Wash. Rev. Code § 5.60.060(3), but refers to the definition of “clergy” in Wash. Rev. Code § 26.44.020(7) (relating to abuse of children).

3

**What is a confidential communication?** The determination of what constitutes a “confession” for the purposes of Wash. Rev. Code § 5.60.060(3) is to be made by the church of the particular clergy member, not the court. See *State v. Martin*, 137 Wn.2d at 787.

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**Who may claim the privilege?** The privilege is held by the penitent and only the penitent can waive it. For the privilege to attach, statements must be (1) confidential communications, (2) made to a member of the clergy, (3) as a confession. See *State v. Glenn*, 115 Wn. App. 540, 546, 62 P.3d 921 (2003).

<sup>1</sup> 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, Washington’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><b>Child abuse or neglect</b></p>	<p>Clergy members are not specified mandatory reporters of child abuse. Wash. Rev. Code § 26.44.030.1(a). However, Christian Science practitioners are required to report child abuse. Id. See also Wash. Rev. Code § 26.44.020(20).</p> <p>“Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident . . .” See Wash. Rev. Code § 26.44.030(3).</p> <p>“Conduct conforming with the reporting requirements of Wash. Rev. Code § 26.44, relating to child abuse, shall not be deemed a violation of the confidential communication privilege of Wash. Rev. Code § 5.60.060(3) relating to the clergy privilege.” Wash. Rev. Code § 26.44.060(3).</p> <p>“Information considered privileged by statute and not directly related to reports required by [Wash. Rev. Code § 26.44.030, relating to child abuse] must not be divulged without a valid written waiver of the privilege.” See Wash. Rev. Code § 26.44.030(7)</p>
<p><b>Abuse of vulnerable adults</b></p>	<p>In general, members of the clergy are not subject to mandatory reporting rules relating to “vulnerable adult” abuse; however, Christian Science practitioners are required to report vulnerable adult abuse. See Wash. Rev. Code § 74.34.020(14); Wash. Rev. Code § 74.34.030.</p> <p>“[P]ermissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.” Wash. Rev. Code § 74.34.030(6).</p> <p>“Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. . .” Wash. Rev. Code § 74.34.050(2).</p> <p>A “vulnerable adult” includes “a person: (a) sixty years of age or older who has the functional, mental, or physical inability to care for themselves; (b) found incapacitated; (c) who had a developmental disability; (d) admitted to any facility; (e) receiving services from licensed home health, hospice, or home care agencies; (f) receiving services from an individual provider; or (g) who self-directs their own care and receives services from a personal aid.” Wash. Rev. Code § 74.34.020(22).</p>

