



# Clergy Privacy FAQs

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## West Virginia

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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 West Virginia?** “No priest, nun, rabbi, duly accredited Christian Science practitioner or member of the clergy authorized to celebrate the rites of marriage in this State . . . shall be compelled to testify in any criminal or grand jury proceedings or in any domestic relations action in any court of this State: (1) With respect to any confession or communication, made to such person, in his or her professional capacity in the course of discipline enjoined by the church or other religious body to which he or she belongs, without the consent of the person making such confession or communication; or (2) With respect to any communication made to such person, in his or her professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication. This subsection is in addition to the protection and privilege afforded pursuant to section three hundred one [§ 48-1-301], article one, chapter forty-eight of this code.” W. Va. Code § 57-3-9.

W. Va. Code § 48-1-301 provides: “(a) A party to a domestic relations action cannot compel a member of the clergy to testify regarding any communications or statements made to the member of the clergy in his or her capacity as spiritual counselor or spiritual adviser by a party to the action, if the following conditions exist: (1) Both the clergy and the party making such communications or statements claim that the communications or statements were made to the clergy in his capacity as a clergy and spiritual counselor or spiritual adviser to such party; (2) No person, other than a member of the clergy, a party and the spouse of the party, was present when such communications or statements were made; and (3) The party making such communications or statements does not either consent to their disclosure or otherwise waive the privilege granted by this section. (b) The privilege granted by this section shall be in addition to and not in derogation of any other privileges recognized by law.”

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<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, West 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   |
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| <b>Child abuse or neglect</b>  | <p>“Any . . . Christian Science practitioner, religious healer, . . . [or] member of the clergy . . . who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances . . .” W. Va. Code § 49-2-803 (a).</p> <p>“The privileged quality of communications between husband and wife and between any professional person and his or her patient or client, except that between attorney and client, is hereby abrogated in situations involving suspected or known child abuse or neglect.” W. Va. Code § 49-2-811.</p>   |
| <b>Abuse, neglect, or placement in an emergency situation of an incapacitated adult or facility resident</b> | <p>“If any . . . Christian Science practitioner, [or] religious healer . . . has reasonable cause to believe that an incapacitated adult or facility resident is or has been neglected, abused or placed in an emergency situation, or if such person observes an incapacitated adult or facility resident being subjected to conditions that are likely to result in abuse, neglect or an emergency situation, the person shall immediately report the circumstances . . .” 34 W. Va. Code § 9-6-9(a).</p> <p>“In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation, any other person may make such a report.” 34 W. Va. Code § 9-6-9(b).</p> <p>“The privileged status of communications between husband and wife, and with any person required to make reports under sections nine or ten of this article, except communications between an attorney and his client, is hereby abrogated in circumstances involving suspected or known abuse or neglect of an incapacitated adult or where the incapacitated adult is in a known or suspected emergency situation.” 34 W. Va. Code § 9-6-13.</p> <p>An “incapacitated adult” is defined as “any person who by reason of physical, mental or other infirmity is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health.” 34 W. Va. Code § 9-6-1(4).</p> |

