

## Partial Summary of Priest-Penitent Statutes

### Ariz. Rev. Stat. § 12-2233 (1994).

In a civil action a clergyman or priest shall not, without the consent of the person making a confession, be examined as to any confession made to him in his character as clergyman or priest in the course of discipline enjoined by the church to which he belongs.

### \*73 Cal. Evid. Code §§ 1030-10;14 (West 1995).

#### S 1030. Clergyman

As used in this article, “clergyman” means a priest, minister, religious practitioner, or similar functionary of a church or of a religious denomination or religious organization.

#### s 1031. Penitent

As used in this article, “penitent” means a person who has made a penitential communication to a clergyman.

#### S 1032. Penitential communication

As used in this article, “penitential communication” means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a clergyman who, in the course of the discipline or practice of his church, denomination, or organization, is authorized or accustomed to hear such communications and, under the discipline or tenets of his church, denomination, or organization, has a duty to keep such communications secret.

#### s 1033. Privilege of penitent

Subject to Section 912, a penitent, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication if he claims the privilege.

#### s 1034. Privilege of clergy

Subject to Section 912, a clergyman, whether or not a party, has a privilege to refuse to disclose a penitential communication if he claims the privilege.

### Colo. Rev. Stat. Ann. § 13-90-107 (West 1997).

(1) There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person shall not be examined as a witness in the following cases:

(c) A clergyman, minister, priest, or rabbi shall not be examined without both his consent and also the consent of the person making \*74 the confidential communication as to any confidential communication made to him in his professional capacity in the course of discipline expected by

the religious body to which he belongs.

**Conn. Gen. Stat. § 52-146b (1991).**

A clergyman, priest, minister, rabbi or practitioner of any religious denomination accredited by the religious body to which he belongs who is settled in the work of the ministry shall not disclose confidential communications made to him in his professional capacity in any civil or criminal case or proceedings preliminary thereto, or in any legislative or administrative proceeding, unless the person making the confidential communication waives such privilege herein provided.

**Del. R. Evid. 505.**

(a) Definitions. As used in this rule:

(1) 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.

(2) 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.

(b) General Rule of Privilege. 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 a spiritual adviser.

(c) 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 clergyman may claim the privilege on behalf of the person. His authority so to do is presumed in the absence of evidence to the contrary.

**D.C. Code Ann. § 14-309 (1981).**

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage \*75 ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the Federal courts in the District of Columbia and District of Columbia courts with respect to any—

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3) communication made to him, in his professional capacity, by either spouse, in connection with an effort to reconcile estranged spouses, without the consent of the spouse making the communication.

**Fla. Stat. Ann. § 90.505 (West 1998).**

(1) For the purposes of this section:

(a) A “member of the clergy” is a priest, rabbi, practitioner of Christian Science, or minister of any religious organization or denomination usually referred to as a church, or an individual reasonably believed so to be by the person consulting him or her.

(b) A communication between a member of the clergy and a person is “confidential” if made privately for the purpose of seeking spiritual counsel and advice from the member of the clergy in the usual course of his or her practice or discipline and not intended for further disclosure except to other persons present in furtherance of the communication.

(2) A person has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication by the person to a member of the clergy in his or her capacity as spiritual adviser.

(3) The privilege may be claimed by:

(a) The person.

(b) The guardian or conservator of a person.

(c) The personal representative of a deceased person.

(d) The member of the clergy, on behalf of the person. The member of the clergy’s authority to do so is presumed in the absence of evidence to the contrary.

**\*76 Ga. Code Ann. § 24-9-22 (1982).**

Every communication made by any person professing religious faith, seeking spiritual comfort, or seeking counseling to any Protestant minister of the Gospel, any priest of the Roman Catholic faith, any priest of the Greek Orthodox Catholic faith, any Jewish rabbi, or to any Christian or Jewish minister, by whatever name called, shall be deemed privileged. No such minister, priest, or rabbi shall disclose any communications made to him by any such person professing religious faith, seeking spiritual guidance, or seeking counseling, nor shall such minister, priest, or rabbi be competent or compellable to testify with reference to any such communication in any court.

**Idaho Code § 9-203 (Michie 1948).**

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

\*773. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

**Iowa Code Ann. § 622.10 (West 1998).**

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the \*78 person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

**Kan. Stat. Ann. § 60-429 (1994).**

(a) Definitions. As used in this section,

(1) the term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his or her regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization;

(2) the term "regular minister of religion" means one who as his or her customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he or she is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister;

(3) the term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and \*79 teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his or her church, sect, or organization;

(4) "penitent" means a person who recognizes the existence and the authority of God and who seeks or receives from a regular or duly ordained minister of religion advice or assistance in determining or discharging his or her moral obligations, or in obtaining God's mercy or forgiveness for past culpable conduct;

(5) “penitential communication” means any communication between a penitent and a regular or duly ordained minister of religion which the penitent intends shall be kept secret and confidential and which pertains to advice or assistance in determining or discharging the penitent’s moral obligations, or to obtaining God’s mercy or forgiveness for past culpable conduct.

(b) Privilege. A person, whether or not a party, has a privilege to refuse to disclose, and to prevent a witness from disclosing a communication if he or she claims the privilege and the judge finds that (1) the communication was a penitential communication and (2) the witness is the penitent or the minister, and

(3) the claimant is the penitent, or the minister making the claim on behalf of an absent penitent.

**La. Code Evid. Ann. art. 511 (West 1995).**

A. Definitions. As used in this Article:

(1) A “clergyman” is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is “confidential” if it is made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

B. General rule of privilege. A person has a privilege to refuse to disclose and to prevent another person from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

C. Who may claim the privilege. The privilege may be claimed by the person or by his legal representative. The clergyman is presumed to have authority to claim the privilege on behalf of the person or deceased person.

**Me. R. Evid. 505.**

(a) Definitions. As used in this rule:

(1) 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.

(2) 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.

\*81 (b) General Rule of Privilege. 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.

(c) 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.

**Md. Code Ann.. Cts. & Jud. Proc. § 9-111 (1978).**

A minister of the gospel, clergyman, or priest of an established church of any denomination may not be compelled to testify on any matter in relation to any confession or communication made to him in confidence by a person seeking his spiritual advice or consolation.

**Mass. Gen. Laws Ann. ch. 233. § 20A (West 1986).**

A priest, rabbi or ordained or licensed minister of any church or an accredited Christian Science practitioner shall not, without the consent of the person making the confession, be allowed to disclose a confession made to him in his professional character, in the course of discipline enjoined by the rules or practice of the religious body to which he belongs; nor shall a priest, rabbi or ordained or licensed minister of any church or an accredited Christian Science practitioner testify as to any communication made to him by any person in seeking religious or spiritual advice or comfort, or as to his advice given thereon in the course of his professional duties or in his professional character, without the consent of such person.

**\*82 Minn. Stat. Ann. § 595.02 (West 1988).**

Every person of sufficient understanding, including a party, may testify in any action or proceeding, civil or criminal, in court or before any person who has authority to receive evidence, except as provided in this subdivision:

(c) A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character, in the course of discipline enjoined by the rules or practice of the religious body to which the member of the clergy or other minister belongs; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice, aid, or comfort or advice given thereon in the course of the member of the clergy's or other minister's professional character, without the consent of the person.

**Mont. Code Ann. § 26-1-804 (1997).**

A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

**Neb. Rev. Stat. § 27-506 (1975).**

(1) As used in this rule:

(a) A clergyman is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him; and

(b) 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.

(2) 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 advisor.

(3) The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The clergyman may claim the privilege on behalf of the person. His authority so to do is presumed in the absence of evidence to the contrary.

**\*84 N.H. Rev. Stat. Ann. & 516:35 (1979).**

A priest, rabbi or ordained or licensed minister of any church or a duly accredited Christian Science practitioner shall not be required to disclose a confession or confidence made to him in his professional character as spiritual adviser, unless the person confessing or confiding waives the privilege

**N.J. Stat. Ann. ¶ 2A:84A-23 (West 1994);N.J. R. Evid. 511.**

Any communication made in confidence to a cleric in the cleric's professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which the cleric belongs or of the religion which the cleric professes, shall be privileged. Privileged communications shall include confessions and other communications made in confidence between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counseling role.

As used in this section, "cleric" means a priest, rabbi, minister or other person or practitioner authorized to perform similar functions of any religion.

The privilege accorded to communications under this rule shall belong to both the cleric and the person or persons making the communication and shall be subject to waiver only under the following circumstances:

(1) both the person or persons making the communication and the cleric consent to the waiver of the privilege;  
or

(2) the privileged communication pertains to a future criminal act, in which case, the cleric alone may, but is not required to, waive the privilege.

**N.Y. C.P.L.R. 4505 (McKinney: 1992).**

Unless the person confessing or confiding waives the privilege, a clergyman, or other minister of any religion

or duly accredited Christian Science practitioner, shall not be allowed (to) disclose a confession or confidence made to him in his professional character as spiritual advisor.

**N.C. Gen. Stat. § 8-53.2 (Michie 1944).**

No priest, rabbi, accredited Christian Science practitioner, or a clergyman or ordained minister of an established church shall be competent to testify in any action, suit or proceeding concerning any information which was communicated to him and 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, provided, however, that this section shall not apply where communicant in open court waives the privilege conferred.

**Ohio Rev. Code Ann. § 2317.02 (Banks-Baldwin 1996).**

The following persons shall not testify in certain respects:

(C) A clergyman, rabbi, priest, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect, when the clergyman, rabbi, priest, or minister remains accountable to the authority of that church, denomination, or sect, concerning a confession made, or any information confidentially communicated, to the clergyman, rabbi, priest, or minister for a religious counseling purpose in the clergyman's, rabbi's, priest's, or minister's professional character; however, the clergyman, rabbi, priest, or minister may testify by express consent of the person making the communication, except when the disclosure of the information is in violation of the clergyman's, rabbi's, priest's, or minister's sacred trust.

**Or. Rev. Stat. § 40.260 (1981).**

(1) As used in this section, unless the context requires otherwise:

(a) "Confidential communication" means a communication made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) "Member of the clergy" means a minister of any church, religious denomination or organization or accredited Christian Science practitioner who in the course of the discipline or practice of that church, denomination or organization is authorized or accustomed to hearing confidential communications and, under the discipline or tenets of that church, denomination or organization, has a duty to keep such communications secret.

(2) A member of the clergy shall not, without the consent of the person making the communication, be examined as to any confidential communication made to the member of the clergy in the member's professional character.

**Pa. Stat. Ann. tit. 42, § 5943 (1982).**

No clergyman, priest, rabbi or minister of the gospel of any regularly established church or religious organization, except clergymen or ministers, who are self-ordained or who are members of religious organizations in which members other than the leader thereof are deemed clergymen or ministers, who while in the course of his duties has acquired information from any person secretly and in confidence shall be compelled, \*88 or allowed without consent of such person, to disclose that information in any legal proceeding, trial or investigation before any government unit.

**R.I. Gen. Laws §9-17-23 (1997).**

In the trial of every cause, both civil and criminal, no member of the clergy or priest shall be competent to testify concerning any confession 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, without the consent of the person making the confession. No duly ordained minister of the gospel, priest, or rabbi of any denomination shall be allowed in giving testimony to disclose any confidential communication, properly entrusted to him or her in his or her professional capacity, and necessary and proper to enable him or her to discharge the functions of his or her office in the usual course of practice or discipline, without the consent of the person making the communication.

**S.C. Code Ann. § 19-11-90 (Law. Co-op. 1976).**

In many legal or quasi-legal trial, hearing or proceeding before any court, commission or committee no regular or duly ordained minister, priest or rabbi shall be required, in giving testimony, to disclose any confidential communication properly entrusted to him in his professional capacity and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline of his church or religious body. This prohibition shall not apply to cases where the party in whose favor it is made waives the rights conferred.

**Tenn. Code Ann. § 24-1-206 (1989).**

(a) (1) No minister of the gospel, no priest of the Catholic Church, no rector of the Episcopal Church, no ordained rabbi, and no regular minister of religion of any religious organization or denomination usually referred to as a church, over eighteen (18) years of age, shall be allowed or required in giving testimony as a witness in any litigation, to disclose any information communicated to that person in a confidential manner, properly entrusted to that person in that person's professional capacity, and necessary to enable that person to discharge the functions of such office according to the usual course of that person's practice or discipline, wherein such person so communicating such information about such person or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.

(2) It shall be the duty of the judge of the court wherein such litigation is pending, when such testimony as prohibited in this section is offered, to determine whether or not that person possesses the qualifications which prohibit that person from testifying to the communications sought to be proven by that person.

(b) The prohibition of this section shall not apply to cases where the communicating party, or parties, waives the right so conferred by personal appearance in open court so declaring, or by an affidavit \*90 properly sworn to by such a one or ones, before some person authorized to administer oaths, and filed with the court wherein litigation is pending.

(c) Nothing in this section shall modify or in any wise change the law relative to “hearsay testimony.”

(d) Any minister of the gospel, priest of the Catholic Church, rector of the Episcopal Church, ordained rabbi, and any regular minister of religion of any religious organization or denomination usually referred to as a church, who violates the provisions of this section, commits a Class C misdemeanor.

**Tex. R. Evid. 505.**

(a) Definitions. As used in this rule:

(1) A “member of the clergy” 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 with such individual.

(2) 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.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member’s professional character as spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the person’s guardian or conservator, or by the personal representative of the person if the person is deceased. The member of the clergy to whom the communication was made is presumed to have authority to claim the privilege but only on behalf of the communicant.

**Vt. Stat. Ann. tit. 12. § 1607 (1947).**

A priest or minister of the gospel shall not be permitted to testify in court to statements made to him by a person under the sanctity of a religious confessional.

**Va. Code Ann. § 8.01-400 (Michie 1994).**

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.

**Wash. Rev. Code Ann. § 5.60.060 (West 1995).**

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession 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.