



IN BRIEF

SB XXX requires clergy to report suspected child abuse or neglect, even if they acquired the knowledge or suspicion during a penitential communication. Clergy are already mandated child abuse and neglect reporters in California, **except** if they learn of suspected abuse during a penitential communication. This bill would level the playing field by holding them to the same standard as every other mandated reporter.

BACKGROUND

The Child Abuse and Neglect Reporting Act (1980) identified professionals who regularly come into contact with children and mandated they report any suspected abuse or neglect to law enforcement. There are currently 46 categories of mandated reporters listed in [statute](#), including teachers, day care employees, social workers, peace officers, physicians, therapists, and athletic coaches.

In 1997, the Act was amended to include clergy members as mandated reporters, but with an exemption: “A clergy member who acquires knowledge or reasonable suspicion of child abuse during a penitential communication is not required to make a report.”

The California 2nd District Court of Appeal has found that for a communication to be penitential, three requirements must be satisfied:

1. It must be intended to be in confidence.
2. It must be made to a member of the clergy who in the course of his or her religious discipline or practice is authorized or accustomed to hear such communications.
3. Such member of the clergy has a duty under the discipline or tenets of the church, religious denomination, or organization to keep such communications secret.

While many associate penitential communication with confessing, the actual statute does not require penitence for a communication to be deemed penitential.

THE PROBLEM

California gives clergy – priests, rabbis, ministers, religious practitioners, or similar functionaries of a church, temple, or recognized denomination or organization – **an exemption not granted to any of the other 45 mandated reporters listed in statute. Even spousal privilege and doctor-patient privilege are nullified in cases of child abuse or neglect.**

Additionally, recent investigations by 14 attorneys general, the federal government, and other countries have revealed that the clergy-penitent privilege has been abused on a large scale, resulting in the unreported and systemic abuse of thousands of children across multiple denominations and faiths.¹²

In 1973, the U.S. Congress rejected a proposal to codify the clergy-penitent privilege in the Federal Evidence Code, choosing instead to leave the decision up to individual states. Connecticut, Indiana, Mississippi, Nebraska, New Hampshire, New Jersey, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, and West Virginia already have statutes similar to this bill proposal.

THE SOLUTION

This bill removes the penitential communication exemption for clergy members, holding them to the same standard as every other mandated reporter in California.

California Superior Court and the U.S. Supreme Court have ruled that there are limits to the First Amendment’s protection of “free exercise” of religion. In his majority opinion for *Employment Division, Oregon Department of Human Resources v. Smith*, Justice Antonin Scalia found that freedom to practice religion does not exempt one from abiding by generally applied laws.³

A church can’t refuse to pay taxes because it’s against their beliefs; everyone is required to pay taxes, and churches are not exempt. Similarly, all mandated reporters in California are required to report suspected or observed child abuse or neglect, period. Faith institutions should not be exempt.³

FOR MORE INFORMATION

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¹ Cooney, D. & Norris, C. (2018, October 19). How a Catholic sex abuse report in Pennsylvania echoed around the U.S. *PBS*, Retrieved from <https://www.pbs.org>

² McClellan, P., Coate, J., Atkinson, B., Fitzgerald, R., Milroy, H., Murray, A., & Furness, G. (2017, December 15). Royal Commission into Institutional Responses to Child Sexual Abuse. Retrieved from <https://www.childabuseroyalcommission.gov.au/final-report>

³ *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. (1990)