

FORGIVE ME FATHER, FOR I HAVE SINNED:
EXPLICITLY ENUMERATING CLERGY
MEMBERS AS MANDATORY REPORTERS TO
COMBAT CHILD SEXUAL ABUSE IN NEW
YORK

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*“This too is something that we have always known, but today we are seeing it in a really terrifying way: that the greatest persecution of the Church comes not from her enemies without, but arises from sin within the Church, and that the Church thus has a deep need to relearn penance, to accept purification, to learn forgiveness on the one hand, but also the need for justice. Forgiveness does not replace justice.”*¹

I. INTRODUCTION

After a priest admitted to sexually assaulting at least 12 boys, the parish bishop wrote a letter to him thanking him for “all that you have done for God’s people. . . The Lord, who sees in private, will reward.”² After another priest confessed to molesting a young boy and sought spiritual guidance, his ministry allowed him to continue his ministerial duties and did not take action because of “the horrendous trauma for the victim,” explaining that “the family should just be given an opportunity to ventilate.”³ After a priest “impregnated a 17-year-old, forged the head pastor’s signature on a marriage certificate, and divorced the girl months later,” he was permitted to perform his regular ministerial duties.⁴ This Note proposes that New York explicitly enumerate clergy members as mandatory reporters of child abuse and provide an exception to the clergy-penitent privilege in cases of child abuse or neglect, effectively mandating clergy members to report whenever there is reasonable cause to expect child abuse. These changes will prevent future abuse from occurring and hold abusers accountable.

In 2018, the Pennsylvania Attorney General released a report detailing the findings of a two year grand jury investigation into child sexual abuse in six dioceses in Pennsylvania. The abuse uncovered by the grand jury investigation covered a range of victims and forms of sexual contact, and each instance was systematically covered up by church officials. The grand jury found that the Church implemented a strategy to cover up allegations, fueled by its primary goal to prevent scandal, not to secure justice for victims.⁵ Evidence of all allegations of abuse were kept in a “secret archive”

¹ The Vatican, *Interview Of The Holy Father Benedict XVI With The Journalists During The Flight To Portugal* (May 11, 2010), http://w2.vatican.va/content/benedict-xvi/en/speeches/2010/may/documents/hf_ben-xvi_spe_20100511_portogallo-interview.html.

² *Pennsylvania Diocese Victim Report*, OFFICE OF THE PENNSYLVANIA ATTORNEY GENERAL, https://www.attorneygeneral.gov/wp-content/uploads/2018/08/A-Report-of-the-Fortieth-Statewide-Investigating-Grand-Jury_Cleland-Redactions-8-12-08_Redacted.pdf (July 27, 2018).

³ *Id.*

⁴ *Id.*

⁵ *Pennsylvania Diocese Victim Report*, OFFICE OF THE PENNSYLVANIA ATTORNEY GENERAL, https://www.attorneygeneral.gov/wp-content/uploads/2018/08/A-Report-of-the-Fortieth-Statewide-Investigating-Grand-Jury_Cleland-Redactions-8-12-08_Redacted.pdf, 4 (July 27, 2018).

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that only the Bishop had access to.⁶ The report contains profiles of over 300 clergy members and over one thousand identifiable victims, all of which records were ascertained from the Church itself. However, most crimes were unable to be prosecuted due to the amount of time that had passed since the incidents of abuse.⁷

In the three weeks following the report's release, Attorney Generals of Illinois, Missouri, Nebraska, New York and New Mexico reached out to local dioceses to run similar investigations.⁸ The fact that Pennsylvania has taken action to combat systemic issues within religious institutions that are parallel to issues occurring within New York State should serve as both a driving force for New York to do the same, and as an example of a plan of action certain actors in the state may take to do so. It is the hope that such a policy change in New York will prevent the frightening and stomach-turning scenarios contained in Attorney General's report from occurring in New York.⁹ Although this Note will be focusing, in part, on the Catholic community in New York, it is worth discussing a grand jury report investigation into the Catholic Church in a different jurisdiction,¹⁰ as the Catholic Church is a widespread institution and it may help readers get a sense of the scope of the problem in the same institution in a different area of the country.

Further, is important to note that the definition of "abuser" is not limited to a clergy member accused of sexual abuse. This Note discusses a variety of avenues by which a clergy member may become acquainted with an instance of child abuse. This Note is concerned with analyzing the various relationships clergy members have that may make them more likely to become aware that a child is being abused. It is true that a priest or rabbi may in fact be a perpetrator of sexual violence against a child, but "abuser" in the context of this Note also includes those that divulge the abuse to a member of the clergy.

Part II of this Note discusses the dynamics of child victimization that make it necessary that members of the clergy be mandatory reporters. Part III discusses the clergy penitent privilege in religious contexts, specifically examining Catholicism and Judaism as case studies. Part IV discusses the clergy penitent privilege in secular contexts, providing a brief survey of

⁶ *Id.*

⁷ *Id.* at 1.

⁸ Laurie Goodstein, Sharon Otterman, *Stirred by Sexual Abuse Report, States Take On Catholic Church*, N.Y. TIMES (Sept. 6, 2018), <https://www.nytimes.com/2018/09/06/nyregion/catholic-sex-abuse.html>.

⁹ *Pennsylvania Diocese Victim Report*, OFFICE OF THE PENNSYLVANIA ATTORNEY GENERAL, https://www.attorneygeneral.gov/wp-content/uploads/2018/08/A-Report-of-the-Fortieth-Statewide-Investigating-Grand-Jury_Cleland-Redactions-8-12-08_Redacted.pdf, (July 27, 2018).

¹⁰ *See supra* notes 5-8.

various state approaches to the privilege. Part V discusses the pertinence of the issue in New York; it details several instances of sexual abuse in the state's archdioceses and Jewish communities. Part VI provides a discussion of mandatory reporting statutes and a survey of the existing statutes in each state.¹¹ Part VII analyzes three different jurisdictions' approaches to designated mandatory reporters: New York, Maryland, and New Hampshire. It establishes the insufficient nature of New York's mandatory reporting statutes, describes Maryland's "any person" approach, and discusses New Hampshire's current statutory scheme, which explicitly enumerates clergy members as mandatory reporters and abrogates the clergy-penitent privilege.

This Note proposes that New York should implement a statutory scheme similar to New Hampshire's. Part VIII discusses the various ways clergy members may become aware of child abuse, and the various implications reporting these instances might have. This section also analyzes the strengths, weaknesses, potential outcomes and efficiency of the various jurisdictional statutory schemes concerning designated mandatory reporters and the clergy-penitent privilege in the context of the specific role that the clergy member is acting within. Part IX will conclude with an analysis of the issues and concerns raised throughout the Note.

II. DYNAMICS OF CHILD VICTIMIZATION

Child Abuse Accommodation Syndrome is the leading model for analyzing children's reactions to sexual abuse.¹² Although every child's reaction to the trauma following being abused is different, the syndrome is comprised of five categories that are regularly found amongst child victims, including: (1) secrecy, (2) helplessness, (3) entrapment and accommodation, (4) delayed, unconvincing disclosure, and (5) retraction.¹³ Many children keep the abuse a secret, in fear of threats by the perpetrator or what others may think if they come forward with the abuse.¹⁴ As a result, children adapt

¹¹ Although the clergy-penitent privilege is discussed throughout the Note, it is only done so briefly and in contexts which it will affect a clergy member's hypothetical duty to report. This testimonial evidentiary privilege is too broad of an issue to fully discuss within this note. The privilege is briefly described in order to provide readers with the appropriate background to understand whether the intent behind a statutory duty to report will actually be effectuated. As explained in subsequent sections of this note, the clergy-penitent privilege is likely to take precedence over the mandatory reporting statutes and effectively prevent a clergy member from coming forward with a report on an incidence of child-abuse. This is the sole purpose for which the clergy-penitent privilege will be addressed in this note.

¹² Roland C. Summit, *The child sexual abuse accommodation syndrome*, 7 CHILD ABUSE & NEGLECT, 177 (1983).

¹³ *Id.*

¹⁴ *Id.*

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to and normalize the abuse.¹⁵ If a child victim discloses, they do not do so immediately after the abuse.¹⁶

An overwhelming amount of child victims do not disclose until a significant amount of time after the abuse occurs.¹⁷ In cases where individuals come forward promptly, instances of child sexual abuse “rarely have specific photographic or physical evidence that can be timed definitively,”¹⁸ so reports of abuse that are delayed face even more difficulty in this aspect. It has been found that between sixty and eighty percent of survivors of child sexual abuse withhold disclosure, with the average time in delay of reporting being from one year to eighteen years¹⁹ and that two-thirds of adults that disclosed child sexual abuse in adulthood claimed to have not disclosed during childhood.²⁰ In addition, at least thirty percent of adult survivors of child abuse have had “partial or total amnesia for the event(s) at some point in their lives, “ in which they may forget the abuse until recalling at a later time.²¹ When survivors do disclose, it is usually a process in which disclosure is gradual.²² This byproduct of abuse leads to child victims not accessing the resources they need to address the trauma that results from the abuse, and affords perpetrators the ability to abuse again.

III. CLERGY PENITENT PRIVILEGE IN A RELIGIOUS CONTEXT

Western religious institutions put great faith in the confidential nature of discussions between clergy members and members of the institution. The next sections will analyze the clergy-penitent privilege in both Catholicism and Judaism, which will be used as points of reference throughout the Note, due to those specific communities’ involvement in the child sexual abuse crisis in New York.

¹⁵ *Id.*

¹⁶ *Id.* at 188.

¹⁷ Summit *supra* note 13, at 188.

¹⁸ James T. O’Reilly & Margaret S.P. Chalmers, THE CLERGY SEX ABUSE CRISIS AND THE LEGAL RESPONSES, 64 (Oxford Univ. Press, 2014).

¹⁹ Ramona Alaggia, *An Ecological Analysis of Child Sexual Abuse Disclosure: Considerations for Child and Adolescent Mental Health*, 19 JOURNAL OF CAN. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, 32 (Feb 2010).

²⁰ Maggie Bruck et al., *Disclosure of Child Sexual Abuse: What Does the Research Tell Us About the Ways That Children Tell?*, 11 PSYCHOL., PUB. POL’Y, & LAW 194, 198 (2005).

²¹ NDAA, *Dynamics of Victimization*, NDAA MANUAL ON INVESTIGATION & PROSECUTION OF CHILD ABUSE.

²² Maggie Bruck et al. *supra* note 21 at 195.

A. In The Catholic Church

In the Catholic Church, the Seal of the Confessional absolutely forbids a priest from revealing anything that a penitent discloses to him during the sacrament of penance.²³ A priest who reveals such information may be excommunicated from the church.²⁴ The Seal of the Confessional is so inviolable because of the fundamental beliefs surrounding the sacrament of penance. The Catechism of the Catholic Church explains that only God may forgive individuals for their sins, but a priest is given power in God's name to exercise this forgiveness.²⁵ Catholics believe that in committing a sin an individual is turning away from God and when he confesses these sins, "man looks squarely at the sins he is guilty of, takes responsibility for them, and thereby opens himself again to God and to the communion of the Church in order to make a new future possible."²⁶ If a Catholic does not repent their sins, especially those grave ones, it is believed that they will not be allowed to enter the Kingdom of Heaven on Judgment Day, and will thus spend eternity in Hell.²⁷ It is, thus, not surprising why the communications between a priest and a penitent are sacrosanct.

B. Jewish Law

The Jewish law restriction on repeating harmful information about another Jew is also more strict than United States secular law.²⁸ Mesira is a fundamental tenet of Jewish law in which Jews are prohibited from informing the government of other Jews' transgressions²⁹ or "from speaking derogatorily about people without just cause, even if the derogatory information is true."³⁰ Jewish law stretches this tenet so far as to allow a serial informant to "be killed to prevent him from informing," but contemporary rabbis take a variety of different views on the seriousness of the tenet in a modern society.³¹ Rabbis are explicitly forbidden to repeat any information in confidence absent proper cause. A rabbi may repeat truthful,

²³ CATHOLIC CODE OF CANON LAW § 983 (1).

²⁴ CATHOLIC CODE OF CANON LAW § 1388 (1).

²⁵ CATECHISM OF THE CATHOLIC CHURCH § 1441.

²⁶ CATECHISM OF THE CATHOLIC CHURCH § 1455.

²⁷ CATECHISM OF THE CATHOLIC CHURCH § 1470.

²⁸ Rabbi Michael J. Broyde, et. al, *Confidentiality and Rabbinic Counseling- An Overview of Halakhic and Legal Issues*, Jewish Law, <https://www.jlaw.com/Articles/RabbinicCounseling1.html>.

²⁹ Rabbi Michael J. Broyde, *Informing on Others for Violating American Law: A Jewish Law View*, Jewish Law, <http://www.jlaw.com/Articles/mesiralaw2.html>.

³⁰ Broyde, *supra* note 29.

³¹ Broyde, *supra* note 30.

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yet harmful, information if a six prong test of “halakhically significant factors” is satisfied.³² This six prong test is as follows:

1. First and foremost, the information must be “Le’Toelet”- for the purpose of preventing a real harm to another person;
2. The person must not exaggerate the truth;
3. The person must be motivated by a desire to help another, and not by personal animosity;
4. The least damaging means must be employed when revealing the information (indeed, if the information can be conveyed without speaking evil of the other person, it should be conveyed in such manner);
5. The revealer of the information must instruct the recipient not to repeat this information to others;
6. The person must only recount information that truly needs to be repeated.³³

Unlike the Catholic Church, however, Halakha also requires “one to inform a Jew of harm that might befall him and which could be avoided.”³⁴

IV. CLERGY PENITENT PRIVILEGE IN A SECULAR CONTEXT

Rule 501 of the Federal Rules of Evidence provide that common law “governs a claim of privilege unless the United States Constitution, a federal statute, or rules prescribed by the Supreme Court” provide otherwise.³⁵ A survey of the existing statutory schemes show that each of the fifty states and the District of Columbia have implemented the clergy-penitent privilege, but the information considered privileged and confidential differs based on jurisdiction.³⁶ Twenty states currently define the privilege as protecting communications with a clergy member in their capacity as a spiritual advisor,³⁷ twelve states define the privilege as protecting communications relating to confession and in communications with clergy members in their capacity as spiritual advisors,³⁸ eight states define the privilege as covering

³² Broyde, *supra* note 29.

³³ *Id.*

³⁴ *Id.*

³⁵ FED. R. EVID. 501

³⁶ *See infra* note 70.

³⁷ ALASKA R. EVID. 506; ARK. R. EVID. 505; D.R.E. 505; FLA. STAT. ANN. § 90.505; GA. CODE ANN. § 24-5-502; HAW. REV. STAT. ANN. § 626-1; Rule 506, KRE 505; LA. CODE EVID. ANN. art. 511; MASS. GEN. LAWS ANN. ch. 233, § 20A; ME. R. EVID. 505; MISS. CODE. ANN. § 13-1-22; NEB. REV. STAT. ANN. § 27-506; N.M. R. EVID. RULE 11-506; N.C. GEN. STAT. ANN. § 8-53.2; N.D. R. EV. 505; S.D. CODIFIED LAWS § 19-19-505; TENN. CODE ANN. § 24-1-206; VA. CODE ANN. § 8.01-400; W. VA. CODE ANN. § 48-1-301; WIS. STAT. ANN. § 905.06.

³⁸ ALA. CODE § 12-21-166; 735 ILL. COMP. STAT. ANN. 5/8-803; IND. CODE ANN. § 34-46-3-1; MD. CODE ANN., CTS. & JUD. PROC. § 9-111; MINN. STAT. ANN. § 595.02; MO. ANN. STAT. § 491.060; N.H. R. EVID. 505; N.J. STAT. ANN. § 2A:84A-23; N.Y. C.P.L.R. 4505; OHIO REV. CODE ANN. § 2317.02; 9 R.I. GEN. LAWS ANN. § 9-17-23; TX R. EVID. RULE 505.

any confidential communication with a clergy member,³⁹ and ten states and the District of Columbia define the privilege as covering “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”⁴⁰ or other similarly worded legislation.⁴¹ A majority of states clearly tend to implement a legislative that broadly interprets what information should be deemed privileged and, thus, confidential.⁴²

V. PERTINENCE OF THE ISSUE IN NEW YORK: INSTANCES OF SEXUAL ABUSE OF CHILDREN IN RELIGIOUS INSTITUTIONS

It is no secret that child sexual abuse occurs in New York State. After the release of the Pennsylvania Grand Jury Report, New York Attorney General Barbara Underwood announced the launch of a civil investigation by the Attorney General’s Charities Bureau into dioceses of the Catholic Church in New York, concerned with the review process and potential cover-ups of widespread child sexual abuse.⁴³ The Attorney General set up a telephone hotline for reports of clergy abuse and announced that its criminal division would work with District Attorney’s Offices around the state in order to convene grand juries to prosecute those individuals whose conduct falls within the statute of limitations.⁴⁴ Thus far, the Office has issued subpoenas to all eight Catholic Dioceses in the state.⁴⁵

In addition to the Attorney General’s action, The Archdiocese of New York has internally addressed the problem of child sex abuse within the church and implemented the Safe Environment Program and the Independent Reconciliation and Compensation Program (“IRCP”).⁴⁶ The Safe

³⁹ COLO. REV. STAT. ANN. § 13-90-107; CONN. GEN. STAT. ANN. § 52-146b; IOWA CODE ANN. § 622.10; KAN. STAT. ANN. § 60-429; OKLA. STAT. ANN. tit. 12, § 2505; OR. REV. STAT. ANN. § 40.260; 42 PA. STAT. AND CONS. STAT. ANN. § 5943; S.C. CODE ANN. § 19-11-90.

⁴⁰ ARIZ. REV. STAT. ANN. § 12-2233

⁴¹ CAL. EVID. CODE § 1032, 1033; D.C. CODE ANN. § 14-309; IDAHO CODE ANN. § 9-203; MICH. COMP. LAWS ANN. § 600.2156; MONT. CODE ANN. § 26-1-804; NEV. REV. STAT. ANN. § 49.255; UTAH CODE ANN. § 78B-1-137; VT. STAT. ANN. tit. 12, § 1607; WASH. REV. CODE ANN. § 5.60.060; WYO. STAT. ANN. § 1-12-101.

⁴² See *supra* notes 38-42.

⁴³ *A.G. Underwood Announces Clergy Abuse Hotline – Part Of Investigation Into Sexual Abuse Of Children Within NY Dioceses Of Catholic Church*, N.Y. ATT’Y GEN. OFF. (Sept. 6, 2018), <https://ag.ny.gov/press-release/ag-underwood-announces-clergy-abuse-hotline-part-investigation-sexual-abuse-children>.

⁴⁴ *Id.*

⁴⁵ Michelle Boorstein, Julie Zauzmer, *New York attorney general’s office has issued subpoenas to every Catholic diocese in the state*, WASH. POST. (Sept. 6, 2018).

⁴⁶ To note, the Catholic Church has never condoned child sexual abuse. It specifies that a cleric who has committed an offense with a minor under the age of sixteen “is to be punished with just penalties, not

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Environment Program consists of officials conducting background checks on seminarians, deacons, priests, employees and volunteers and providing safe environment training to these individuals and children in religious education programs.⁴⁷ Additionally under this program, the Church works in conjunction with law enforcement officials, including having members of law enforcement conduct checks on dioceses, parishes and schools to make sure each organization is in compliance with the Charter for the Protection of Children and Young People.⁴⁸ The Church also works with district attorneys to investigate and prosecute allegations of sexual abuse.⁴⁹ The IRCP is a compensation fund administered by mediators to “help bring closure to victims of sexual abuse by members of the clergy of the archdiocese.”⁵⁰ If a victim receives compensation from the fund, they waive their right to any legal action.⁵¹ In the first year of the program, from October 2016-November 2017, over 200 individuals applied to the program, with 189 of those individuals being compensated a combined total of \$40,050,000.⁵²

The Hasidic Orthodox Jewish Community in Brooklyn is also plagued by child sex abuse. There are multiple accounts of prominent male authority figures abusing young children within the communities, from the conviction of an unlicensed therapist, Nechemya Weberman, for his abuse of a 12 year old girl,⁵³ to the highly publicized and contested trial of Rabbi Lebovitz, who was accused of molesting three young boys.⁵⁴ However, there are also the stories of Joe Diangelo, who left the community after being raped in a mikvah at 7 years old, and Joel Engelman, who was abused by the Rabbi principal at his Yeshiva,⁵⁵ both of whom were not provided a legal respite for their suffering. Just as abuse runs rampant in the community, so do cover-ups and intense intimidation tactics aimed at victims and their families to prevent

excluding dismissal from the clerical state if the case so warrants.” CATHOLIC CODE OF CANON LAW § 1395 (2). This is just to demonstrate recent increased efforts to combat the problem within the Church.

⁴⁷ *Report on Independent Reconciliation and Compensation Program*, Archdiocese of New York (Dec. 5, 2017). <https://archny.org/ircp-wp-english>.

⁴⁸ *Id.*

⁴⁹ *Frequently Asked Questions*, Archdiocese of New York, <https://archny.org/faq> (Jan. 22, 2020).

⁵⁰ *Frequently Asked Questions*, Archdiocese of New York, <https://archny.org/faq> (Jan. 22, 2020).

⁵¹ *Id.*

⁵² Joseph Zwilling and Mercedes Lopez Blanco, *Update On The Independent Reconciliation And Compensation Program*, Archdiocese of New York (Dec. 7, 2017), <https://archny.org/news/ircp-update>. It is important to note that these statistics are only in reference to claims made prior to the November 1 deadline. There are additional ones that were still to be processed after that time. Further, there have been no subsequent updates to by the Archdiocese concerning the program since this update on Dec 7, 2017.

⁵³ Sharon Otterman, *Abuse Verdict Topples a Hasidic Wall of Secrecy*, N.Y. TIMES (Dec. 10, 2012).

⁵⁴ Rachel Aviv, *The Shame of Borough Park*, THE NEW YORKER (Nov. 10, 2014).

⁵⁵ Barbara Bradley Hagerty, *Abuse Scandal Plagues Hasidic Jews in Brooklyn*, NPR (2009), <https://www.npr.org/templates/story/story.php?storyId=99913807>

them from bringing criminal or civil charges outside of rabbinical courts.⁵⁶ In addition, those within the Hasidic Orthodox Jewish communities who attempt to advocate for the victims and ensure they receive legal and emotional support are similarly shunned.⁵⁷ The fact that three prevalent institutions within New York are taking independent action to combat childhood sexual abuse is indicative of the pervasiveness of the problem.

VI. MANDATORY REPORTING

Mandatory reporters are specific individuals who are legally required to report child abuse or maltreatment.⁵⁸ Mandatory reporting laws first came to fruition after Dr. Henry Kempe's article "Battered Child Syndrome" was published, contending that law enforcement officers are unaware of child abuse because young victims do not report such abuse.⁵⁹ After the article was published, the Federal Department of Health, Education, and Welfare proffered a model statute that could be implemented in order to combat this, and many states subsequently enacted similar mandatory reporting statutes.⁶⁰ Since the passage of the Federal Child Abuse Prevention and Treatment Act of 1974, all states have adopted mandatory reporting laws.⁶¹

However, each state differs in those individuals it designates as mandatory reporters. Overall there are two main approaches that a state may take when deciding groups of individuals will be designated mandatory reporters: (1) explicitly designating certain classes of professionals; and (2) designating "any person" as a mandatory reporter.⁶² The rationale behind explicitly designating professionals is that such professionals are so closely involved in overseeing the welfare of children and it is their duty to report any instances of suspected abuse, as they play a central role in the health and welfare of children in the community. In "any person" designation jurisdictions, any person with reasonable suspicion that a child is being abused report that instance of abuse. Clergy members may be included in this "cover-all" statute in such a jurisdiction. A survey of the jurisdictional approaches of states in regard to mandatory reporting and the clergy-penitent

⁵⁶ Sharon Otterman, Ray Riviera, *Ultra-Orthodox Shun Their Own for Reporting Child Sexual Abuse*, N.Y. Times (May 9, 2012); Zoë Blackler, *Silence and Self-rule: Brooklyn's Orthodox Child Abuse Cover-up*, THE GUARDIAN (March 29, 2012).

⁵⁷ Christopher Ketcham, *The Child Rape Assembly Line*, VICE (Nov 12, 2013) https://www.vice.com/en_us/article/qbe8bp/the-child-rape-assembly-line-0000141-v20n11.

⁵⁸ *Mandatory Reporters of Child Abuse and Neglect*, Child Welfare Information Gateway (2015), <https://www.childwelfare.gov/pubPDFs/manda.pdf>.

⁵⁹ O'Reilly & Chalmers, *supra* note 19, at 113 -114.

⁶⁰ *Id.* at 114.

⁶¹ *Id.* at 115.

⁶² Child Welfare Information Gateway *supra* note 59.

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privilege are included in Table 1.⁶³ As of 2015, only two states have both explicitly declared clergy members as mandatory reporters and denied the clergy-penitent privilege in cases of child abuse or neglect.⁶⁴ Such a statutory scheme effectively mandates clergy members to come forward when there is reasonable cause to expect child abuse.⁶⁵ New York should become the third state to explicitly enumerate clergy members as mandatory reporters and deny the clergy-penitent privilege in cases of child abuse or neglect, so that these individuals are legally required to come forward with suspicions of abuse.

⁶³ Child Welfare Information Gateway *supra* note 59; The jurisdictional approaches are as follows: twenty-four states enumerate clergy as mandatory reporters with privilege granted but limited to pastoral communications; seven states do not enumerate clergy as mandated reporters but may be included clergy members in the “any person” designation, with privilege granted but limited to pastoral communications; two states do not enumerate either clergy or “any person” as mandated reporters and the privilege is granted but limited to pastoral communications; two states enumerate clergy as mandatory reporters but deny the privilege in cases of suspected child abuse or neglect, four states do not enumerate clergy as mandated reporters but may be included clergy members in the “any person” designation, with the privileged denied in cases of suspected child abuse or neglect; two states enumerate clergy as mandated reporters, but do not address the privilege in reporting laws; and four states do not enumerate clergy as mandated reporters but may include clergy members in “any person” designation and do not address the privilege in reporting laws; and five states and the District of Columbia neither enumerate clergy or “any person” as mandated reporters and do not address the privilege in reporting laws. An issue in reporting abuse arises due to the existence of a clergy-penitent privilege in which communications between a religious official and an individual consulting that official are deemed confidential. As of 2015, only two states have both explicitly declared clergy members as mandatory reporters and denied the clergy-penitent privilege in cases of child abuse or neglect, effectively mandating clergy members to come forward when there is reasonable cause to expect child abuse.

⁶⁴ Child Welfare Information Gateway *supra* note 59.

⁶⁵ *Id.*

	Privilege granted but limited to pastoral communications	Privilege denied in cases of suspected child abuse or neglect	Privilege not addressed in the reporting laws
Clergy members explicitly enumerated as mandatory reporters	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Illinois, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Vermont, Wisconsin	New Hampshire, West Virginia	Connecticut, Mississippi
Clergy members not enumerated as mandated reporters but may be included in statutory “any person” designation	Delaware, Florida, Idaho, Kentucky, Maryland, Utah, Wyoming	North Carolina, Oklahoma, Rhode Island, Texas	Indiana, Nebraska, New Jersey, Tennessee
Neither clergy members nor “any person” are enumerated as mandated reporters	Virginia, Washington		District of Columbia, Hawaii, Iowa, Kansas, New York, South Dakota

Table 1⁶⁶

⁶⁶ Child Welfare Information Gateway *supra* note 59.

VII. JURISDICTIONAL APPROACHES TO CLERGY MEMBERS AS DESIGNATED MANDATORY REPORTERS

A. Inadequacy Of the New York Statutory Scheme

The New York State legislature recognizes an extensive list of professionals that are required to report instances in which they have reason to suspect child abuse or maltreatment. Any mandatory reporter who does not report such an instance of child abuse may be held civilly liable or be criminally charged for committing a Class A misdemeanor.⁶⁷ These professionals include:

any physician...registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; social worker; emergency medical technician; licensed creative arts therapist; licensed marriage and family therapist; licensed mental health counselor; licensed psychoanalyst; licensed behavior analyst; certified behavior analyst assistant; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner; school official... school teacher, school guidance counselor, school psychologist, school social worker, school nurse, school administrator or other school personnel required to hold a teaching or administrative license or certificate; full or part-time compensated school employee required to hold a temporary coaching license or professional coaching certificate; social services worker; employee of a publicly-funded emergency shelter for families with children; director of a children's overnight camp, summer day camp or traveling summer day camp, as such camps are defined in section thirteen hundred ninety-two of the public health law; day care center worker; school-age child care worker; provider of family or group family day care; employee or volunteer in a residential care facility for children that is licensed, certified or operated by the office of children and family services; or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; all persons credentialed by the office of alcoholism and substance abuse services; employees, who are expected to have regular and substantial contact with children, of a health home or health home care management agency contracting with a health home... employees who provide home and community based services under a demonstration program... who are expected to have regular and substantial contact with children; peace officer; police officer; district attorney or assistant district

⁶⁷ N.Y. SOC SERV. § 420 (1973)

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attorney; investigator employed in the office of a district attorney; or other law enforcement official.⁶⁸

Clergy members are, notably, not included in this extensive list.⁶⁹ Clergy members are just as, if not more, in tune with the welfare of children in their faith communities than a large number of those explicitly declared in the list, yet they are neither specifically enumerated nor mandated in the “any person” designation. In New York State, New York Social Services Law section 414 also provides that “any person may make such a report if such person has reasonable cause to suspect that a child is an abused or maltreated child.”⁷⁰ It is important to note that New York Social Services Law section 414 states that such a person may make a report, not that they are required to.⁷¹

In New York, the clergy penitent privilege extends to communications with “a clergyman, or other minister of any religion or duly accredited Christian Science practitioner” made within the confines of his professional character as a spiritual advisor.⁷² Mere statements made to a member of the clergy do not invoke the privilege; there must be reason to believe that the information was made “under the cloak of a confessional” because the only law protects “confidential communications made to clergyman in his spiritual capacity.”⁷³ In order for a communication to be protected by the privilege, the communication must be: “(1) confidential; (2) made to the clergyman acting in a professional character as spiritual adviser; and (3) made for the purpose of seeking religious counsel, advice, solace, absolution, or ministrations.”⁷⁴ The holder of the privilege is the penitent, meaning that confession may only be disclosed if the person confessing or confiding in the clergy member waives the privilege.⁷⁵ This statutory scheme essentially allows any clergy member in New York to simply not report any instance of child abuse that they comes across.

In New York, the terms “clergyman” and “minister” include

a duly authorized pastor, rector, priest, rabbi, pandit, swami, guru, granthi, imam, moulvi, maulana and a person having authority from, or in accordance with, the rules and regulations of the governing ecclesiastical body of the denomination or order, if any, to which the church belongs, or otherwise

⁶⁸ N.Y. SOC SERV. § 413 (2018).

⁶⁹ N.Y. SOC SERV. § 413 (2018); See also *Summary Guide for Mandatory Reporters in New York State*, New York State Office of Children and Family Services (2018).

⁷⁰ N.Y. SOC SERV. § 414 (1973).

⁷¹ *Id.*

⁷² N.Y. C.P.L.R. § 4505 (1965)

⁷³ *Keenan v. Gigante*, 47 N.Y.2d 160 (1979).

⁷⁴ 58A N.Y. Jur. 2d Evidence and Witnesses § 914.

⁷⁵ N.Y. C.P.L.R. § 4505 (1965).

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from the church or synagogue to preside over and direct the spiritual affairs of the church or synagogue.”⁷⁶

This term includes a vast majority of individuals, most of whom have a particularly strong influence over their religious communities.⁷⁷ If these people, who are so intimately in tune with the lives of their community members, were required to report instances of child abuse, many more abusers may be held accountable, particularly in the Catholic and Jewish communities throughout New York.

B. Maryland as a Model of the “Any Person” Approach

Maryland is a state that employs an umbrella “any person” designation. In addition to explicitly enumerating certain professions as mandatory reporters of child abuse,⁷⁸ Maryland Family Law section 5-705 (a)(1) states that “a person in this State... who has reason to believe that a child has been subjected to abuse or neglect shall notify the local department or the appropriate law enforcement agency,”⁷⁹ as long as it does not violate attorney-client privilege or violate the right to assistance of counsel.⁸⁰ However, Maryland Family Law section 5-705 (a)(3) states that

A minister of the gospel, clergyman, or priest of an established church of any denomination is not required to provide notice under paragraph (1) of this subsection if the notice would disclose matter in relation to any [confession or communication made to him in confidence by a person seeking his spiritual advice or consolation] and; (i) the communication was made to the minister, clergyman, or priest in a professional character in the course of discipline enjoined by the church to which the minister, clergyman, or priest belongs; and (ii) the minister, clergyman, or priest is bound to maintain the confidentiality of that communication under canon law, church doctrine, or practice.⁸¹

In Maryland, clergymen are mandated to report an instance of child abuse because they fall under the “any person” mandate, except in the event that they learn of the abuse through a privileged confidential communication. This effectively absolves clergy members of their duty to report suspected child abuse mandated by “any person” language of the statute in this specific instance.

⁷⁶ N.Y. Relig. Corp. Law § 2 (2015).

⁷⁷ *Id.*

⁷⁸ MD. CODE ANN., FAM. LAW § 5-704. This statute mandates that “each health practitioner, police officer, educator, or human service worker acting in a professional capacity in this State” is mandated to report any suspected incidences of child abuse.

⁷⁹ MD. CODE ANN., FAM. LAW § 5-705 (a)(1).

⁸⁰ MD. CODE ANN., FAM. LAW § 5-705 (a)(2).

⁸¹ MD. CODE ANN., FAM. LAW § 5-705 (a)(3).

C. New Hampshire as a Model For Explicitly Designating Clergy Members As Mandatory Reporters Of Child Abuse

New Hampshire's approach to enumerating clergy members as mandated reporters is utilized as a theoretical model that diametrically opposes New York's approach on the spectrum of relationships between mandatory reporting and clergy-penitent privilege laws. New Hampshire law recognizes an extensive list of professionals that are required to report instances in which they have reason to suspect child abuse or maltreatment, including priests, ministers, and rabbis.⁸² New Hampshire also provides an "any person" designation within that statute.⁸³ In addition, New Hampshire abrogates privileged communications in the context of child abuse and neglect⁸⁴ and any reporter who does not report such an instance of child abuse may be charged with a misdemeanor.⁸⁵ The scope of New Hampshire's clergy-penitent privilege is significantly different than that of New York.⁸⁶

In New Hampshire, the privilege extends to communications with a clergy member within the confines of his professional character as spiritual advisor,⁸⁷ where a clergy member is defined as "any minister, priest, rabbi, Christian Science practitioner, or any other similar religious counselor."⁸⁸ The holder of the privilege is the penitent, meaning that confession made may only be disclosed if the person confessing or confiding in the clergy member waives the privilege.⁸⁹ It is important to reiterate that, in cases of child abuse and neglect, New Hampshire abrogates the clergy-penitent privilege.⁹⁰

⁸² N.H. REV. STAT. ANN. § 169-C:29; These enumerated individuals include: "any physician, surgeon, county medical examiner, psychiatrist, resident, intern, dentist, osteopath, optometrist, chiropractor, psychologist, therapist, registered nurse, hospital personnel (engaged in admission, examination, care and treatment of persons), Christian Science practitioner, teacher, school official, school nurse, school counselor, social worker, day care worker, any other child or foster care worker, law enforcement official, priest, minister, or rabbi."

⁸³ *Id.*

⁸⁴ N.H. REV. STAT. ANN. § 169-C:32 (1979).

⁸⁵ N.H. REV. STAT. ANN. § 169-C:39 (1979).

⁸⁶ *See* N.H. REV. STAT. ANN. § 516:35; N.Y. C.P.L.R. § 4505 (1965).

⁸⁷ N.H. REV. STAT. ANN. § 516:35 (1979).

⁸⁸ N.H. REV. STAT. § 330-C:2 (2008).

⁸⁹ N.H. REV. STAT. ANN. § 516:35 (1979).

⁹⁰ N.H. REV. STAT. ANN. § 169-C:32 (1979).

VIII. AN ANALYSIS OF THE JURISDICTIONAL APPROACHES THROUGH THE LENS OF DIFFERENT ROLES OF THE CLERGY

A. Observers

Clergy members are individuals with multiple roles in their religious communities. Clergy members should be mandated reporters in instances in which they personally observe behavior that is indicative of child sexual abuse. In this role, the New York and Maryland approaches have the same result: neither approach requires a clergy member to report such abuse.⁹¹ New Hampshire, however, specifically requires clergy members to report in this scenario.⁹²

If they personally observed or suspected child abuse, a member of the clergy would have the same duties as an individual currently mandated by New York or Maryland law to report. As community leaders and religious teachers, members of the clergy are in frequent contact with children in their professional capacity; this special relationship and proximity to children would make them particularly aware of signs of abuse. This special relationship is no different than those relationships of professionals already classified as mandated reporters,⁹³ thus, if any member of the clergy has reasonable suspicion to believe a child is in being harmed, they should be required to report it. Since this would pertain to observations outside of the seal of the confessional and spiritual guidance, the clergy-penitent privilege would not be applicable here.⁹⁴ The clergy members would merely be relaying their observations of signs of abuse; it cannot be said that this may be considered communication, let alone a confidential one.

There are multiple instances in which members of the clergy may personally observe behavior that is indicative of child sexual abuse. For example, in an interview with VICE, Rabbi Nuchem Rosenberg recounts a time in which he observed, and unsuccessfully confronted, a Rabbi openly sodomizing a boy around seven years old in a mikvah.⁹⁵ At first glance, one might think that this is an extreme case, but it is not. Joe Diangelo, a former Hasidic Jew, left the community after being raped in a mikvah by an unknown man at 7 years old.⁹⁶ Rabbis in the Hasidic community are in an

⁹¹ See N.Y. SOC. SERV. § 413 (2018); MD. CODE ANN., FAM. LAW § 5-704.

⁹² N.H. REV. STAT. § 330-C:2 (2008).

⁹³ Child Welfare Information Gateway *supra* note 59.

⁹⁴ *People v. Carmona*, 82 N.Y.2d 603, 609 (1993).

⁹⁵ Christopher Ketcham, *The Child Rape Assembly Line*, VICE (Nov 12, 2013) https://www.vice.com/en_us/article/qbe8bp/the-child-rape-assembly-line-0000141-v20n11.

⁹⁶ Barbara Bradley Hagerty, *Abuse Scandal Plagues Hasidic Jews in Brooklyn*, NPR (2009).

especially unique position to be aware of abuse occurring in the community because it is happening within the religious institution itself. It is instances as such that demand that clergy members be mandated to report abuse.

Implementing New Hampshire's practice of explicitly classifying clergy members as mandated reporters would be without conflict in this scenario. It is hard to imagine any individuals protesting against a religious leader being required to report instances of suspected child abuse, especially when there is no threat to any existing religious duty of confidentiality. In fact, under Norm 11 in the Essential Norms of United States Catholic Bishops, a "diocese/eparchy will comply with all applicable civil reporting laws and will cooperate in any investigation."⁹⁷ If clergy members were statutorily obligated to report instances of suspected child abuse, priests would be obliged to comply with such a reporting law. Thus, there would be no conflict between the interests of the government in protecting children and the religious duties of the clergy member. In addition, it can be argued that requiring a person with a special relationship to legally report instances of abuse would transfer accountability from a child victim to an adult and insulates the child from being implicated in the process.

B. Confessions

Clergy members also serve as advisors to those in need of spiritual guidance. A clergy member may become aware of past, present or future occurrences of child abuse through this role as spiritual advisors in many different ways. These include confessions from individuals directly involved in past or present instances of abuse, either perpetrators or victims, and confessions from individuals that indicate an imminent risk to children, which include those from third party observers or individuals having explicit thoughts about children. Clergy members may be introduced to child abuse through confessions from individuals which indicate that there is an imminent risk to children. Instances as such might include confessions from third party observers who were witnesses to acts of child abuse or have reason to believe that a child is being abused. In addition, this particular class of confessions might include those who are having explicit thoughts about abusing children come forward and confess to these thoughts. It is in this capacity that the argument to classify clergy members as mandatory reporters comes into direct conflict with the clergy-penitent privilege.

Maryland Family Law section 5-705 (a)(3) specifically exempts clergy members from providing notice of child abuse in any of the following scenarios.⁹⁸ This exemption is given when three elements are satisfied, which

⁹⁷ O'Reilly & Chalmers, *supra* note 19, at 97.

⁹⁸ MD. CODE ANN., FAM. LAW § 5-705 (a)(3).

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include that the clergy member becomes aware of abuse in the context of a “confession or communication made... in confidence by a person seeking [the clergy member’s] spiritual advice or consolation,”⁹⁹ it was made in their professional character, and the clergy member is bound to maintain it confidential.¹⁰⁰ Each element is satisfied when analyzing a clergy member’s role in the context of the sort of confessions this Note discusses.¹⁰¹ For example, if a member of a Catholic priests’ parish confides that he was sexually abusing a child under the seal of the confessional, the priest would not be mandated to report the suspected abuse because it is privileged under Maryland law.¹⁰² The same scenario in New York would have a similar result. New York’s clergy-penitent privilege would effectively absolve clergy members of any responsibility in reporting such a scenario if they were designated mandatory reporters¹⁰³ because such statements made in a confessional are confidential communications made for the purpose of spiritual guidance.¹⁰⁴ Thus, if a clergy member becomes aware that a child is being abused through a confession, they are not mandated to report that abuse in jurisdictions with statutory schemes similar to Maryland and New York.

New Hampshire, however, abrogates the clergy-penitent privilege in cases of mandatory reporting.¹⁰⁵ This mandates clergy members to come forward and provide notice of instances of child abuse, regardless of the confidential nature of the means by which they became aware of the abuse. Thus, in the example where a member of a Catholic priests’ parish confides that he was sexually abusing a child under the seal of the confessional, the priest would be mandated to report the abuse. The rationale behind this legislative policy may be grounded by the fact that victims of child abuse are especially vulnerable and that clergy members are in an especially unique position to help protect them.

⁹⁹ *Id.*

¹⁰⁰ MD. CODE ANN., FAM. LAW § 5-705 (a)(3).

¹⁰¹ This note utilizes the word “confession” under the definition proffered by most privileges: one in which an individual of the clergy member’s faith turns to the member of the clergy for spiritual guidance under the presumption that it is in confidence. Instances in which these variables are changed (i.e. an atheist who spontaneously turns to a Catholic priest in a change of heart to confess his sins, an individual confiding in someone who he later comes to know is a priest, or an individual making the confession to a priest in an environment which they know is not confidential) are not considered.

¹⁰² MD. CODE ANN., FAM. LAW § 5-705 (a)(3).

¹⁰³ N.Y. C.P.L.R. § 4505 (1965).

¹⁰⁴ *People v. Carmona*, 82 N.Y.2d 603, 609 (1993).

¹⁰⁵ *Supra* note 88.

IX. NEW YORK MUST EXPLICITLY ENUMERATE
CLERGY MEMBERS AS MANDATORY REPORTERS
AND CARVE OUT AN EXCEPTION TO THE CLERGY-
PENITENT PRIVILEGE FOR CASES OF SUSPECTED
CHILD ABUSE

In conjunction with the dynamics of victimization previously discussed,¹⁰⁶ the current statute of limitations regarding sexual abuse in New York paint an abysmal picture for child victims seeking justice against their perpetrators. Although an action for first degree sexual conduct against a child may be commenced at any time,¹⁰⁷ actions for second degree sexual conduct against a child,¹⁰⁸ incest in the first degree,¹⁰⁹ incest in the second degree,¹¹⁰ incest in the third degree,¹¹¹ and the use of child in a sexual performance¹¹² may only be commenced five years from reporting or from age 18, when commenced under 18.¹¹³ This effectively renders a victim of any incident of child sexual abuse other than first degree sexual conduct against a child unable to bring an action against an abuser after the age of 23.¹¹⁴

Being that survivors of child sexual abuse tend to either disclose a significant period of time after the abuse or not disclose at all, and that the statute of limitations period for bringing a criminal action in New York is earlier than the average age most survivors come forward, it is the case that many abusers are not held liable for such abuse. As discussed before, child sexual abuse is pervasive within religious institutions in New York.¹¹⁵ It is imperative that clergy members who are aware of abuse disclose it to the proper authorities so that appropriate legal action may be taken against the abusers before the statute of limitations for the abuse is over. Clergy members are in a unique position to help victims who wish to pursue legal action do so and prevent perpetrators from committing any further abuse within their communities.

¹⁰⁶ *Supra* section II.

¹⁰⁷ NY PENAL LAW § 130.75 (2003); See also, *A.G. Underwood Announces Clergy Abuse Hotline – Part Of Investigation Into Sexual Abuse Of Children Within NY Dioceses Of Catholic Church*, N.Y. ATT'Y GEN. OFF. (Sept. 6, 2018), stating that there is no statute of limitations only for conduct taking place after 2001.

¹⁰⁸ N.Y. PENAL LAW § 130.80 (2003).

¹⁰⁹ N.Y. PENAL LAW § 255.27 (2007).

¹¹⁰ N.Y. PENAL LAW § 255.26 (2006).

¹¹¹ N.Y. PENAL LAW § 255.25 (2006).

¹¹² N.Y. PENAL LAW § 263.05 (2001).

¹¹³ N.Y. CRIM. PROC. LAW § 30.10 (2014)

¹¹⁴ See *supra* notes 60-65.

¹¹⁵ See *supra* notes 44-59.

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New York Social Services Law section 414 must be amended to include clergy members in the list of individuals explicitly enumerated as mandatory reporters in order to combat child sexual abuse in New York. The argument to specifically enumerate clergy members as mandated reporters in instances in which they observe behavior that is indicative of child sexual abuse is essentially met without opposition.¹¹⁶ However, it is in scenarios in which the clergy-penitent privilege arises that child victims need the most help. In order to make clergy members effective mandatory reporters, the New York clergy-penitent privilege must be abrogated in instances of child abuse. It is crucial to understand that this Note does not advocate for lifting the privilege entirely: it urges New York to make an exception to the privilege for the singular issue of child abuse in the context of mandatory reporting, as it protects a particularly vulnerable class of victims that the legislature has sworn to protect.

New York must enact a law similar to New Hampshire statute section 169-C:32, which abrogates the clergy-penitent privilege in order to do so. Adopting the Maryland “any person” approach will not change the way that the New York legislature handles instances in which clergy members become aware of child abuse through confessions. Although Maryland’s “any person” approach specifically mandates that any individual who becomes aware that a child is being abused report it,¹¹⁷ the law fully exempts clergy members from doing so.¹¹⁸ Thus, the problem New York must rectify will not be solved by implementing a similar approach. The New York legislature must enact a law similar to New Hampshire’s in order require any clergy member who becomes aware of child sexual abuse to report it.

However, abrogating the privilege will not be met without opposition. There are several concerns for both victims and perpetrators who come forward to confess. Victims may not necessarily want to pursue legal action or any other type of recourse. However, even in such instances, there are many other methods by which a victim may receive help. If a member of the clergy were to report instances of child abuse to authorities, the appropriate officials would determine the proper resources and action plans by which a victim may begin to heal and cope with trauma.

In addition, reporting to the authorities may deprive the victim of religious counseling and resources, and maybe even secular resources that the clergy member may refer the victim to. In regard to the perpetrator, doing so may very well take away their right to religious counsel. It is in this context that one must decide whether concerns regarding government interest

¹¹⁶ *Supra* notes 95- 101.

¹¹⁷ MD. CODE ANN., FAM. LAW § 5-704.

¹¹⁸ MD. CODE ANN., FAM. LAW § 5-705.

in victim protection and criminal deterrence outweigh religious privileges and freedoms.¹¹⁹ There is no question that those who are confessing a trespass to a member of the clergy are doing so “in confidence and for purpose of obtaining spiritual guidance.”¹²⁰

X. CONCLUSION

The Catholic and Jewish communities within New York are plagued with a crisis of child sexual abuse and the New York legislator must take action to combat the systemic issues within these religious institutions regarding the abuse. Due to their central role in their respective religious institutions, clergy members are in an especially unique position to be in tune with the health and welfare of children within these communities. However, clergy members are not listed among the extensive list of professionals mandated to report reasonable suspicions of child abuse. Although clergy members may report such abuse under New York’s “catch-all” provision that allows for any person to report child abuse, they simply have no legal duty to report. To make matters worse, when clergy members become aware of instances of abuse through sacrosanct confessions, the clergy-penitent privilege exempts them from reporting such abuse, due to the fact that it was under the presumption that an individual told them in hopes of receiving spiritual guidance.

Other jurisdictions, such as New Hampshire, have taken progressive steps to place a duty to report on clergy members and have subsequently carved out an exemption to the privilege in cases of child abuse. This Note stands for the proposition that enumerating clergy members as mandatory reporters of child sexual abuse and abrogating the clergy penitent privilege is the most effective means by which the New York legislator may achieve this goal. Although changing these laws may not produce results immediately, as the cultural forces are particularly strong in these communities, it is important to take a progressive step in the right direction. New York must not allow abusers to avoid accountability and continuously harm children because they are protected by the shroud of religious institutions.

¹¹⁹ Although this note advocates the New Hampshire approach (explicitly enumerating clergy members as mandatory reporters and simultaneously abrogating the clergy penitent privilege to ensure clergy members do so), it is important to note that this interplay between the statutes has not been constitutionally tested. There has been no issue thus far regarding any first amendment concerns. This being said, most of the discussion about its efficacy is theoretical.

¹²⁰ *People v. Carmona*, 82 N.Y.2d 603, 609 (1993).