



**THE WASHINGTON STATE CATHOLIC CONFERENCE
SUPPORTS CLERGY MANDATORY REPORTING THAT MAINTAINS THE CLERGY PENITENT PRIVILEGE**

March 2023

The bishops of Washington from the Archdiocese of Seattle and the Dioceses of Spokane and Yakima support SB 5280 making clergy mandated reporters but oppose any effort to eliminate the clergy penitent privilege currently in the bill. The bishops of Washington opposed companion bill SHB 1098 because it was amended to remove the clergy penitent privilege contained in the original bill. SHB 1098 has since failed to pass out of the House. Maintaining the clergy penitent privilege is of the utmost importance to our Catholic faith and it must be preserved. Please pass SB 5280 in its original form, preserving the clergy penitent privilege.

- **The U.S. Constitution protects the clergy penitent privilege.**
 - For over two hundred years, our judicial system has recognized that it would be unconstitutional for a state to intrude in a sacrament of the Catholic Church.
 - **The United States Supreme Court** has held that “suits *cannot be maintained* which would require a disclosure of the confidences of the confessional. . . .” *Totten v. United States*, 92 U.S. 105, 107 (1875). The Court has also found that the clergy penitent privilege and the attorney client privilege “are rooted *in the imperative need for confidence and trust.*” *Trammel v. United States*, 445 U.S. 40, 51 (1980).

The Ninth Circuit, which includes Washington state, recognizes that no state or federal court has ever approved government invasion of the sacrament of confession. *Mockaitis v. Harclerod*, 104 F.3d 1522, 1533 (9th Cir. 1997). The court also found that “the inviolability of religious confession to the clergy is the law of the land, the expectation of every repentant sinner, and the assured confidence of every minister of God's grace.” *Id.*

- **Eliminating the clergy penitent privilege would be an unconstitutional violation of civil liberties.**
 - Eliminating the clergy penitent privilege would violate the First Amendment’s Free Exercise clause because it would threaten priests with legal sanctions unless they violate their religious vows.
 - A bill that would seek to eliminate the clergy penitent privilege says that it is good for lawyers to keep confessions secret for secular reasons, but it is illegal for priests to keep confessions secret for religious reasons.

- **Eliminating the clergy penitent privilege would not succeed in coercing priests into violating their vows.**
 - Confession is a sacrament of the Catholic faith where a person reveals his conscience to God and receives God's mercy.
 - To protect this sacred encounter, Catholic priests vow that they will never break the seal of the confessional, for any reason. Priests who break this vow are excommunicated from the Church.

- **Eliminating the clergy penitent privilege, would not prevent the sexual abuse of minors.**
 - The State has presented no evidence that the seal of the confessional has caused or perpetuated child abuse.
 - The bill ignores that Catholic priests can and do encourage people in confession to talk to them outside of the sacrament so priests can help to support victims and report abuse.

- **Eliminating the clergy penitent privilege would endanger the civil liberties of all Washingtonians.**
 - Eliminating the clergy penitent privilege would affect not just Catholics, but a wide range of denominations and religions that likewise believe that their faith requires that clergy keep certain conversations confidential.
 - If an amendment sought to eliminate the clergy penitent privilege, the wealthy would still be able to trust their lawyers with their secrets, but the poor would no longer have a safe place where they could unburden their hearts.

- **Today, the Catholic Church is a leader in efforts to prevent the sexual abuse of minors.**
 - Over the past twenty years, the Catholic Church has undertaken important reforms and is now a leader in protecting minors from sexual abuse.
 - Third-party audits confirm that the policies and procedures adopted by the Washington state dioceses since 2002 have been effective in preventing child sexual abuse.

- **The bottom line:**
 - The Washington State Catholic Conference will oppose any affront to the clergy penitent privilege not because the Catholic Church has secrets it wants to keep, but because the Church has souls it is called to serve. All Catholics have the right to come to confession and unburden their hearts without fear.
 - When priests and bishops learn about child abuse, they must report it to the authorities. But when someone reveals their sins to God in confession, that is a sacred matter that priests must never disclose.
 - Washington state does not have to choose between protecting children and protecting religious liberty.