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MEMO

TO: Roger Bentley, Vice President of SCAARS
FROM: Matty Hyatt, Legislative Director for CCLA
CC:
RE: Clergy-Penitent Privilege Bill Draft

Below are the revisions of Penal Code § 11166(c), and Welfare and Institutions Code 15630(b)(2) for submission to Leg Counsel's office.

Pen. Code § 11166(c) is amended to read as follows:

(c) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during penitential communication is not subject to subdivision (a). For the purposes of this subdivision, "penitential communication" means a communication, intended to be in confidence, ~~including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.~~ that is initiated and made voluntarily by the penitent to only one authorized clergy member who has a duty to keep those communications secret, in accordance with the tenets, customs, or practices of his or her church, religious denomination, or organization. A clergy member who claims the penitential communication privilege shall take any reasonable action to prevent further abuse by the abuser, without breaking the tenets, customs, or practices of his or her church, denomination, or organization, including, but not limited to, the following:

(A) Requesting the abuser to seek professional counseling or to report his or her actions to a law enforcement agency;

(B) Refraining from advising or encouraging the victim of the alleged abuse to keep the matter a secret, against the victim's will or desire to inform others, including, but not limited, to a parent, legal guardian, teacher, counselor, social worker, a member of the press, or a law enforcement agency;

*"Indifference to personal liberty is but the precursor of the state's hostility to it."
— Justice Kennedy, U.S. Supreme Court*

(C) Encouraging the victim to seek support from a parent, legal guardian, teacher, counselor, social worker, or to report the matter to a law enforcement agency. Upon request, the clergy member shall provide the contact information of at least three qualified counselors or victim support organizations, and the contact information of local law enforcement agencies.

Welf. & Inst. Code § 15630(b)(2) is amended to read as follows:

(2) (A) A clergy member who acquires knowledge or a reasonable suspicion of elder or dependent adult abuse or neglect during penitential communication is not subject to paragraph (1). For the purposes of this subdivision, “penitential communication” means a communication, intended to be in confidence, ~~including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.~~ that is initiated and made voluntarily by the penitent to only one authorized clergy member who has a duty to keep those communications secret, in accordance with the tenets, customs, or practices of his or her church, religious denomination, or organization. A clergy member who claims the penitential communication privilege shall take any reasonable action to prevent further abuse by the abuser, without breaking the tenets, customs, or practices of his or her church, denomination, or organization, including, but not limited to, the following:

(A) Requesting the abuser to seek professional counseling or to report his or her actions to a law enforcement agency;

(B) Refraining from advising or encouraging the victim of the alleged abuse to keep the matter a secret, against the victim’s will or desire to inform others, including, but not limited, to a parent, legal guardian, teacher, counselor, social worker, a member of the press, or a law enforcement agency;

(C) Encouraging the victim to seek support from a parent, legal guardian, teacher, counselor, social worker, or to report the matter to a law enforcement agency. Upon request, the clergy member shall provide the contact information of at least three qualified counselors or victim support organizations, and the contact information of local law enforcement agencies.