



[FIFTH REPRINT]  
SENATE, No. 1164

STATE OF NEW JERSEY

INTRODUCED MAY 23, 1994

By Senators CARDINALE, GORMLEY, Assemblymen  
Kavanaugh, Cohen and Catania

1 AN ACT concerning confidential communications between  
2 <sup>1</sup>[priests] clerics<sup>1</sup> and penitents and amending P.L.1960, c.52.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. Section 23 of P.L.1960, c.52 (C.2A:84A-23) is amended to  
7 read as follows:

8 23. Rule [29] 511. <sup>1</sup>[Priest-penitent] Cleric-penitent<sup>1</sup> privilege.  
9 [Subject to Rule 37 (Rule 530).] <sup>5</sup>[Any confession or other  
10 communication made to a] <sup>5</sup> <sup>1</sup>[clergyman, minister or other person  
11 or practitioner authorized to perform similar functions, of any  
12 religion] <sup>1</sup> [shall not be allowed or compelled to disclose a  
13 confession or other confidential communication made to him] <sup>1</sup> [,  
14 in his] <sup>5</sup>Any communication made in confidence to a <sup>5</sup> cleric in  
15 the cleric's<sup>1</sup> professional character, or as a spiritual advisor in  
16 the course of the discipline or practice of the religious body to  
17 which <sup>5</sup>[he] the cleric<sup>5</sup> belongs or of the religion which <sup>1</sup>[he] <sup>1</sup> the  
18 cleric professes, [nor shall he be compelled to disclose the  
19 confidential relations and communications between and among  
20 him and individuals, couples, families or groups with respect to  
21 the exercise of his professional counselling role.] shall be  
22 <sup>5</sup>[confidential and its secrecy preserved] privileged<sup>5</sup>. <sup>1</sup>[This  
23 privilege shall not be subject to waiver.] <sup>5</sup>[Confidential]  
24 Privileged<sup>5</sup> communications shall include <sup>5</sup>confessions and other<sup>5</sup>  
25 communications <sup>5</sup>made in confidence<sup>5</sup> between and among the  
26 cleric and individuals, couples, families or groups in the exercise  
27 of the cleric's professional or spiritual <sup>5</sup>[counselling] counseling<sup>5</sup>  
28 role.

29 <sup>5</sup>As used in this section, "cleric" means a priest, rabbi,  
30 minister or other person or practitioner authorized to perform  
31 similar functions of any religion.<sup>5</sup>

32 The privilege accorded to communications under this rule shall  
33 <sup>3</sup>[<sup>2</sup>pertain to past acts and shall<sup>2</sup>] <sup>3</sup> belong to both the cleric and  
34 the person or persons making the communication and shall <sup>5</sup>[not]<sup>5</sup>  
35 be subject to waiver <sup>5</sup>only under the following circumstances:

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

38 (2) the privileged communication pertains to a future criminal  
39 act, in which case, the cleric alone may, but is not required to,  
40 waive the privilege<sup>5</sup>. <sup>4</sup>[<sup>3</sup>However, in the event a privileged  
41 communication pertains to a future planned criminal act, the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SJU committee amendments adopted June 2, 1994.

<sup>2</sup> Senate floor amendments adopted June 13, 1994.

<sup>3</sup> Senate floor amendments adopted June 20, 1994.

<sup>4</sup> Assembly floor amendments adopted June 29, 1994.

<sup>5</sup> Senate amendments adopted in accordance with Governor's  
recommendations September 19, 1994.

1 privilege shall belong only to the cleric who may choose to waive  
2 the privilege for the limited purpose of informing a law  
3 enforcement official of the future planned criminal act.<sup>3</sup><sup>4</sup>

4 <sup>5</sup>[As used in this section, "cleric" means a priest, rabbi,  
5 clergyman, minister or other person or practitioner authorized to  
6 perform similar functions of any religion.]<sup>5</sup>

7 (cf: P.L.1981, c.303, s.2)

8 2. This act shall take effect immediately <sup>5</sup>and have  
9 prospective effect only<sup>5</sup>.

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14 Provides that a confidential communication made to a cleric  
15 cannot be disclosed.

SENATE, No. 1164

STATE OF NEW JERSEY

INTRODUCED MAY 23, 1994

By Senators CARDINALE and GORMLEY

1 AN ACT concerning confidential communications between priests  
2 and penitents and amending P.L.1960, c.52.

3

4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 1. Section 23 of P.L.1960, c.52 (C.2A:84A-23) is amended to  
7 read as follows:

8 23. Rule [29] 511. Priest-penitent privilege.

9 [Subject to Rule 37 (Rule 530),] Any confession or other  
10 communication made to a clergyman, minister or other person or  
11 practitioner authorized to perform similar functions, of any  
12 religion [shall not be allowed or compelled to disclose a  
13 confession or other confidential communication made to him], in  
14 his professional character, or as a spiritual advisor in the course  
15 of the discipline or practice of the religious body to which he  
16 belongs or of the religion which he professes, [nor shall he be  
17 compelled to disclose the confidential relations and  
18 communications between and among him and individuals, couples,  
19 families or groups with respect to the exercise of his professional  
20 counselling role] shall be confidential and its secrecy preserved.  
21 This privilege shall not be subject to waiver.

22 (cf: P.L.1981, c.303, s.2)

23 2. This act shall take effect immediately.

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STATEMENT

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28 This bill would help protect the sanctity of the priest-penitent  
29 relationship by overcoming the recent decision in State v.  
30 Szemple, \_\_\_ N.J. \_\_\_ (1994), No. A-25, decided May 12, 1994.

31 In this case, the New Jersey Supreme Court ruled that the  
32 determination whether to reveal a confidential communication  
33 made to a clergyman rests with the clergyman alone. In a 4-3  
34 decision, the Court held that the language of N.J.S.A.2A:84A-23  
35 (Rule 511 of the Rules of Evidence), which provides a  
36 "priest-penitent privilege," does not allow the person who made  
37 the confession or the confidential communication to stop the  
38 clergyman from disclosing the communication.

39 Writing for the three dissenting justices in Szemple, Justice  
40 O'Hern argued:

41 "To conclude that the penitent has no privilege, one must infer  
42 that the Legislature intended that the most privileged of all  
43 communications be converted into the least. The majority's  
44 conclusion that the privilege belongs only to the cleric creates an  
45 exception so startling that it could not possibly be what

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 the Legislature intended The lawyer-client privilege, the  
2 physician-patient privilege, the psychologist-patient privilege,  
3 the marriage counselor privilege, and the victim-counselor  
4 privilege all belong, at least in part, to the confider. I cannot  
5 believe that our Legislature, which has codified all those  
6 privileges by concurrent resolution, would have intended that of  
7 all the privileges it has recognized, the confider would hold the  
8 privilege except in the case of a communication to clergy. Could  
9 the Legislature have deemed spiritual counseling a second-hand  
10 ministry, of less importance to society than lawyer or marriage  
11 counseling or victim counseling? I do not believe that the  
12 Legislature intended such an anomaly."

13 In accordance with Justice O'Hern's dissent, this bill amends  
14 N.J.S.A.2A:84A-23 to specifically provide that any confession or  
15 other communication made to a clergyman shall be confidential  
16 and its secrecy preserved.

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21 Provides that a confidential communication made to a clergyman  
22 cannot be disclosed without the consent of the person who made  
23 the communication.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 1164**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 2, 1994

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1164.

This bill is intended to reverse the recent decision by the New Jersey Supreme Court in State v. Szemple \_\_ N.J. \_\_ (1994), No. 25, decided May 12, 1994. In that case, the Court held in a 4-3 decision that the language of N.J.S. 2A:84A-23 (Rule 511 of the Rules of Evidence), which provides a "priest-penitent" privilege, does not allow the person who made the confession or the confidential communication to claim the privilege and prevent the cleric from disclosing the communication.

This bill amends N.J.S.A. 2A:84A-23 to specifically provide that any confession or other communication made to a clergyman shall be confidential and that both the clergyman and the person making the communication may claim the privilege and prevent disclosure.

The committee adopted amendments changing the wording of the bill to specify that confessions and other communications made to a cleric are confidential. The amendments also specifically indicate that the privilege against disclosure belongs to both the cleric and to the person or persons making the communication. In addition, the amendments define the term "cleric" to mean a priest, rabbi, clergyman, minister or other person or practitioner authorized to perform similar functions of any religion.

*These amendments make  
the bill clearer*

SENATE SJU COMMITTEE

ADOPTED  
JUN 2 1994

AMENDMENTS

to

Senate, No. 1164  
(Sponsored by Senator Cardinale)

TITLE  
REPLACE HEADER TO READ:

AN ACT concerning confidential communications between  
[priests] clerics<sup>1</sup> and penitents and amending P.L.1960, c.52.

REPLACE SECTION 1 TO READ:

1. Section 23 of P.L.1960, c.52 (C.2A:84A-23) is amended to  
read as follows:

23. Rule [29] 511. [Priest-penitent] privilege.

*Cleric-penitent*

[Subject to Rule 37 (Rule 530).] Any confession or other  
communication made to a [clergyman, minister or other person  
or practitioner authorized to perform similar functions, of any  
religion]<sup>1</sup> [shall not be allowed or compelled to disclose a  
confession or other confidential communication made to him] <sup>1</sup> [,  
in his] cleric in the cleric's<sup>1</sup> professional character, or as a  
spiritual advisor in the course of the discipline or practice of the  
religious body to which he belongs or of the religion which <sup>1</sup> [he]<sup>1</sup>  
the cleric professes, [nor shall he be compelled to disclose the  
confidential relations and communications between and among  
him and individuals, couples, families or groups with respect to  
the exercise of his professional counselling role] shall be  
confidential and its secrecy preserved. <sup>1</sup> [This privilege shall not  
be subject to waiver.]

The privilege accorded to communications under this rule shall  
belong to both the cleric and the person or persons making the  
communication and shall not be subject to waiver.

As used in this section, "cleric" means a priest, rabbi,  
clergyman, minister or other person or practitioner authorized to  
perform similar functions of any religion.  
1cf: P.L.1981, c.300, s.21

REPLACE SYNOPSIS TO READ:

Provides that a confidential communication made to a cleric  
cannot be disclosed

*cleric*

Confidential communications shall include communications  
between and among the cleric and individuals, couples,  
families or groups in the exercise of the cleric's  
professional or spiritual counselling role.

Senate Amendments  
(Proposed by Senator Cardinale)

to

Senate, No.1164(1R)

(Sponsored by Senators Cardinale and Gormley)

ADOPTED  
JUN 13 1994

REPLACE SECTION 1 TO READ:

1. Section 23 of P.L.1960, c.52 (C.2A:84A-23) is amended to read as follows:

23. Rule [29] 511. <sup>1</sup>[Priest-penitent] Cleric-penitent<sup>1</sup> privilege. [Subject to Rule 37 (Rule 530),] Any confession or other communication made to a <sup>1</sup>[clergyman, minister or other person or practitioner authorized to perform similar functions, of any religion]<sup>1</sup> [shall not be allowed or compelled to disclose a confession or other confidential communication made to him] <sup>1</sup>[, in his] cleric in the cleric's<sup>1</sup> professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which he belongs or of the religion which <sup>1</sup>[he]<sup>1</sup> the cleric professes, [nor shall he be compelled to disclose the confidential relations and communications between and among him and individuals, couples, families or groups with respect to the exercise of his professional counselling role.] shall be confidential and its secrecy preserved. <sup>1</sup>[This privilege shall not be subject to waiver.] Confidential communications shall include communications between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counselling role.

The privilege accorded to communications under this rule shall <sup>2</sup>pertain to past acts and shall<sup>2</sup> belong to both the cleric and the person or persons making the communication and shall not be subject to waiver.

As used in this section, "cleric" means a priest, rabbi, clergyman, minister or other person or practitioner authorized to perform similar functions of any religion.<sup>1</sup>

(cf: P.L.1981, c.303, s.2)

STATEMENT

This bill amends N.J.S.A. 2A:84A-23 to specifically provide that any confession or other communication made to a clergyman shall be confidential and that both the clergyman and the person making the communication may claim the privilege and prevent disclosure. These amendments clarify that this privilege is only applicable to communications about past acts.



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~~TR XXXXX~~ JU-077  
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Senate Amendments  
(Proposed by Senator Cardinale)

ADOPTED  
JUN 20 1994

to  
Senate, No.1164(TR)

(Sponsored by Senators Cardinale and Cormley)

REPLACE SECTION 1 TO READ:

1. Section 23 of P.L.1960, c.52 (C.2A:84A-23) is amended to read as follows:

23. Rule [29] ~~511~~. <sup>1</sup>[Priest-penitent] Cleric-penitent<sup>1</sup> privilege. [Subject to Rule 37 (Rule 530),] Any confession or other communication made to a <sup>1</sup>[clergyman, minister or other person or practitioner authorized to perform similar functions, of any religion]<sup>1</sup> [shall not be allowed or compelled to disclose a confession or other confidential communication made to him] <sup>1</sup>[, in his] cleric in the cleric's<sup>1</sup> professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which he belongs or of the religion which <sup>1</sup>[he]<sup>1</sup> the cleric professes, [nor shall he be compelled to disclose the confidential relations and communications between and among him and individuals, couples, families or groups with respect to the exercise of his professional counselling role.] shall be confidential and its secrecy preserved. <sup>1</sup>[This privilege shall not be subject to waiver.] Confidential communications shall include communications between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counselling role.

The privilege accorded to communications under this rule shall <sup>3</sup>[<sup>2</sup>pertain to past acts and shall<sup>2</sup>]<sup>3</sup> belong to both the cleric and the person or persons making the communication and shall not be subject to waiver. <sup>3</sup>However, in the event a privileged communication pertains to a future planned criminal act, the privilege shall belong only to the cleric who may choose to waive the privilege for the limited purpose of informing a law enforcement official of the future planned criminal act.<sup>3</sup>

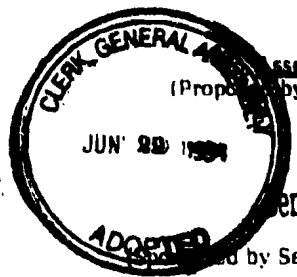
As used in this section, "cleric" means a priest, rabbi, clergyman, minister or other person or practitioner authorized to perform similar functions of any religion.<sup>1</sup> (cf: P.L.1981, c.303, s.2)

STATEMENT

This bill amends N.J.S.A. 2A:84A-23 to specifically provide that any confession or other communication made to a <sup>cleric</sup> ~~clergyman~~ shall be confidential and that both the <sup>cleric</sup> ~~clergyman~~ and the person making the communication may claim the privilege and prevent disclosure. These amendments provide that if the privileged communication pertains to a future planned criminal act, the privilege belongs only to the cleric who may choose to waive the privilege for the limited purpose of informing a law enforcement official of that planned criminal act.

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002889

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JU 0124  
SR 0000  
TR 0000 127



Assembly Amendments  
(Proposed by Assemblyman Kavanaugh)

Senate, No. 1164 (3R)

Introduced by Senators Cardinale and Gormley)

- Speaker
- Clerk (3)
- Majority Leader
- Minority Leader
- Sponsor of Aa
- Sponsor of Bill

**REPLACE SECTION 1 TO READ:**

1. Section 23 of P.L.1960, c.52 (C.2A:84A-23) is amended to read as follows:

23. Rule [29] 511. <sup>1</sup>[Priest-penitent] Cleric-penitent<sup>1</sup> privilege. [Subject to Rule 37 (Rule 530).] Any confession or other communication made to a <sup>1</sup>[clergyman, minister or other person or practitioner authorized to perform similar functions, of any religion]<sup>1</sup> [shall not be allowed or compelled to disclose a confession or other confidential communication made to him] <sup>1</sup>[, in his] cleric in the cleric's<sup>1</sup> professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which he belongs or of the religion which <sup>1</sup>[he]<sup>1</sup> the cleric professes. [nor shall he be compelled to disclose the confidential relations and communications between and among him and individuals, couples, families or groups with respect to the exercise of his professional counselling role.] shall be confidential and its secrecy preserved. <sup>1</sup>[This privilege shall not be subject to waiver.] Confidential communications shall include communications between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counselling role.

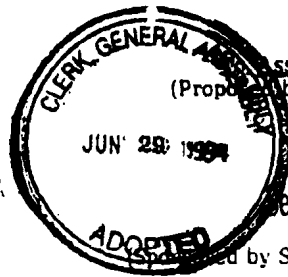
The privilege accorded to communications under this rule shall <sup>3</sup>[<sup>2</sup>pertain to past acts and shall<sup>2</sup>]<sup>3</sup> belong to both the cleric and the person or persons making the communication and shall not be subject to waiver. <sup>4</sup>[<sup>3</sup>However, in the event a privileged communication pertains to a future planned criminal act, the privilege shall belong only to the cleric who may choose to waive the privilege for the limited purpose of informing a law enforcement official of the future planned criminal act.]<sup>3</sup><sup>4</sup>

As used in this section, "cleric" means a priest, rabbi, clergyman, minister or other person or practitioner authorized to perform similar functions of any religion.<sup>1</sup>

(cf: P.L.1981, c.303, s.2)

**STATEMENT**

This bill amends N.J.S.A. 2A:84A-23 to specifically provide that any confession or other communication made to a cleric shall be confidential and that both the cleric and the person making the communication may claim the privilege and prevent disclosure. These floor amendments delete the language which would have provided that if the privileged communication pertained to a future planned criminal act, the privilege belonged only to the cleric who may have chosen to waive the privilege for the limited purpose of informing a law enforcement official of that planned criminal act. These floor amendments make this bill identical to Assembly Bill No. 1865.



Assembly Amendments  
(Proposed by Assemblyman Kavanaugh)

Senate, No. 1164 (3R)

Proposed by Senators Cardinale and Gormley)

- \_\_\_\_\_ Author
- \_\_\_\_\_ Clerk (3)
- \_\_\_\_\_ Majority Leader
- \_\_\_\_\_ Minority Leader
- \_\_\_\_\_ Sponsor of Aa
- \_\_\_\_\_ Sponsor of Bill

REPLACE SECTION 1 TO READ:

1. Section 23 of P.L.1960, c.52 (C.2A:84A-23) is amended to read as follows:

23. Rule (29) §11. <sup>1</sup>[Priest-penitent] Cleric-penitent<sup>1</sup> privilege. [Subject to Rule 37 (Rule 530).] Any confession or other communication made to a <sup>1</sup>[clergyman, minister or other person or practitioner authorized to perform similar functions, of any religion]<sup>1</sup> [shall not be allowed or compelled to disclose a confession or other confidential communication made to him] <sup>1</sup>[, in his] cleric in the cleric's<sup>1</sup> professional character, or as a spiritual advisor in the course of the discipline or practice of the religious body to which he belongs or of the religion which <sup>1</sup>[he]<sup>1</sup> the cleric professes. [nor shall he be compelled to disclose the confidential relations and communications between and among him and individuals, couples, families or groups with respect to the exercise of his professional counselling role.] shall be confidential and its secrecy preserved. <sup>1</sup>[This privilege shall not be subject to waiver.] Confidential communications shall include communications between and among the cleric and individuals, couples, families or groups in the exercise of the cleric's professional or spiritual counselling role.

The privilege accorded to communications under this rule shall <sup>3</sup>[<sup>2</sup>pertain to past acts and shall<sup>2</sup>]<sup>3</sup> belong to both the cleric and the person or persons making the communication and shall not be subject to waiver. <sup>4</sup>[<sup>3</sup>However, in the event a privileged communication pertains to a future planned criminal act, the privilege shall belong only to the cleric who may choose to waive the privilege for the limited purpose of informing a law enforcement official of the future planned criminal act.]<sup>3</sup><sup>4</sup>

As used in this section, "cleric" means a priest, rabbi, clergyman, minister or other person or practitioner authorized to perform similar functions of any religion.<sup>1</sup>  
(cf: P.L.1981, c.303, s.2)

STATEMENT

This bill amends N.J.S.A. 2A:84A-23 to specifically provide that any confession or other communication made to a cleric shall be confidential and that both the cleric and the person making the communication may claim the privilege and prevent disclosure. These floor amendments delete the language which would have provided that if the privileged communication pertained to a future planned criminal act, the privilege belonged only to the cleric who may have chosen to waive the privilege for the limited purpose of informing a law enforcement official of that planned criminal act. These floor amendments make this bill identical to Assembly Bill No. 1865.

*N/C*

SENATE BILL NO. 1164  
(FOURTH REPRINT)

**ADOPTED**

SEP 19 1994

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1164 (Fourth Reprint) with my recommendations for reconsideration.

A. Summary of Bill

Senate Bill No. 1164 (Fourth Reprint) amends Evidence Rule 29, codified as N.J.S.A. 2A:84A-23 and entitled the "priest-penitent privilege." This bill was enacted following a recent New Jersey Supreme Court decision, State v. Szemle, 135 N.J. 406 (1994), which held that Evidence Rule 29 "confers a testimonial privilege only on clergypersons." 135 N.J. at 423. Under the Court's decision in Szemle, the penitent "need not consent to the disclosure of a confession, confidential communication or confidential relation in order for the clergyperson to waive the privilege." 135 N.J. at 423.

This bill provides that any communication made by a penitent to a cleric in the cleric's professional character shall be confidential. The bill prohibits a cleric and a penitent from waiving the privilege.

B. Recommended Action

The Supreme Court based its decision in State v. Szemle on the ambiguous wording of the rule and what the Court believed was the Legislature's intent at the time it adopted the existing statute. With the adoption of this bill, the Legislature has reconsidered the

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question of whether a cleric may waive the confidentiality of certain communications or conversations with penitents. As noted, the bill provides that neither the cleric nor the penitent may waive that confidentiality.

I agree with the Legislature as a matter of public policy that the power to assert the privilege should be reposed in both the cleric and penitent. A penitent should be able to speak in confidence with his or her cleric. No less than the client in an attorney-client relationship or the patient in a physician-patient relationship, the penitent in a cleric-penitent relationship is entitled to expect that his or her confidences will be maintained. Therefore, I recommend that, for all cases except those noted below, the privilege accorded to communications under this rule be subject to waiver only if both the person or persons making the communication and the cleric consent to the waiver.

Consistent with other privileges such as the attorney-client privilege, the cleric should be permitted to waive the privilege with respect to communications concerning future criminal acts. Accordingly, I recommend that in cases in which the privileged communication pertains to a future criminal act, the cleric alone may, in his or her discretion, waive the privilege.

My other recommended changes are intended to remove all ambiguity from the statute.

For these reasons, I herewith return Senate Bill No. 1164 (Fourth Reprint) and recommend that it be amended as follows:

Page 1, Section 1, Lines 9-37:

Delete in its entirety and insert "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

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EXECUTIVE DEPARTMENT

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."

Page 1, Section 2, Line 38:

After "immediately" insert  
"and have prospective effect  
only"

Respectfully,

/s/ Christine Todd Whitman

GOVERNOR

[seal]

Attest:

/s/ Peter Verniero

Chief Counsel to the Governor