



FAQs: Privacy Laws Impacting Survivors

Alabama

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Alabama law defines certain categories of individuals who *must* report abuse or injury to the Department of Human Resources or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Social Worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	Ala. Code § 26-14-1 <i>et seq.</i>
Vulnerable adult abuse			✓	Ala. Code § 38-9-2 <i>et seq.</i>
Client is danger to self or others		✓		Ala. Code §§ 34-8A-24, 34-17A-23

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney or mental health professional without waiving the victim’s right to keep those communications confidential? Alabama law does not directly address this question. The state recognizes several categories of privileged communications, including attorney–client,⁶ psychotherapist–patient,⁷ licensed counselor–client,⁸ and domestic violence advocate and victim.⁹ However, the law does not indicate whether these privileges are waived where a third party is present during a privileged conversation to further a patient or client’s interests in legal or therapeutic services.¹⁰

4

May an interpreter be present during a victim’s privileged communications with an attorney or mental health professional without waiving the victim’s right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Alabama, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.¹¹ Additionally, where a Deaf person is a party or witness in a case, Alabama requires courts to appoint qualified interpreters to interpret proceedings and assist counsel in preparation.¹² Information that a qualified interpreter gathers from the Deaf person related to the proceeding is privileged.

5

Are a victim’s privileged communications with an advocate, attorney, or mental health professional protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney or mental health professional will remain privileged because Alabama law indicates that these privileges survive the death of the client or patient.¹³ In contrast, Alabama law states that the advocate privilege does not survive death.¹⁴ For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁶

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and outrage (which is also referred to as intentional infliction of emotional distress). If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this question for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Ala. R. Evid. 502.

⁷ Ala. R. Evid. 503.

⁸ Ala. R. Evid. 503A.

⁹ Ala. Code § 30-6-8.

¹⁰ This question does not address physician-patient privilege because Alabama does not recognize this privilege. However, other laws, such as health information privacy laws and ethical duties of confidentiality, may protect the privacy of communications between patients and health care providers.

¹¹ Ala. R. Evid. 502, 503, 503A.

¹² Ala. Code §12-21-131.

¹³ Ala. R. Evid. 502, 503, 503A (attorney-client, psychotherapist-patient, and counselor-client privileges can be claimed by a personal representative of a deceased client.).

¹⁴ Ala. Code § 30-6-8.

¹⁵ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁶ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.



FAQs: Privacy Laws Impacting Survivors

Alaska

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Alaska law defines certain categories of individuals who *must* report abuse or injury to the Department of Health and Social Services or local law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Employee of DV or SA program	Social Worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	✓	Alaska Stat. § 47.17.020 <i>et seq.</i>
Vulnerable adult abuse	✓	✓	✓	✓	Alaska Stat. § 47.24.010
Injury from firearm or knife				✓	Alaska Stat. § 08.64.369

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim's privileged communications with an attorney, therapist, or physician without waiving the victim's right to keep those communications confidential? Yes, if the victim counselor is present to further the victim's interests in medical, legal, or therapeutic services. Under Alaska law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder's consent. These privilege laws apply to confidential communications only. The attorney-client,⁶ physician-patient,⁷ and psychotherapist-patient⁸ privileges all recognize that a communication is still considered confidential if a third party (such as a victim counselor) is present to further the interest of the client or patient in the consultation.

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, therapist, or physician without waiving the victim's right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Alaska, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party's presence is reasonably necessary for transmission of the communications.⁹

5

Are a victim's privileged communications with a victim counselor, attorney, therapist, or physician protected from disclosure after the victim's death? It depends. A victim's communications with an attorney, therapist, or physician will remain privileged, because Alaska law indicates that these privileges survive the death of the patient or client.¹⁰ There is an exception for the physician-patient privilege. At death, evidence relating to the patient's condition is not confidential if the defendant needs this information for their defense.¹¹ Regarding the victim-counselor privilege, Alaska law provides that a victim counselor may be compelled to testify in a proceeding that occurs after the victim's death.¹² However, programs still may have confidentiality obligations as part of their state or federal funding. Contact the Victim Rights Law Center or your state coalition for more information.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹³ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁴ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Alaska has a criminal nonconsensual pornography (aka “revenge porn”)¹⁵ statute. A person commits a misdemeanor if, with intent to harass or annoy another person, that person publishes or distributes photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show the person engaging in a sexual act.

¹ We have included this question for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Alaska R. Evid. 503.

⁷ Alaska R. Evid. 504.

⁸ *Id.*

⁹ Alaska Stat. § 18.66.250; Alaska R. Evid. 503, 504.

¹⁰ See Commentary to Alaska Rules of Evid. Rule 503 (comments (c) and (d)) (attorney-client privilege generally survives the client’s death) and Rule 504 (comment (a)(4) (physician-patient and psychotherapist-patient privileges are analogous to the attorney-client privilege).

¹¹ See Commentary to Alaska Rules of Evid. Rule 504, comment (d); Arctic Motor Freight Inc. v. Stover, 571 P2d 1006 (Alaska 1977).

¹² Alaska Stat. § 18.66.210.

¹³ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁴ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁵ Alaska Stat. § 11.61.120.



FAQs: Privacy Laws Impacting Survivors

American Samoa

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1 **What mandatory reporting laws should I be aware of in my jurisdiction?** American Samoa law requires several categories of professionals to report child abuse to the Child Protection Agency, including social workers, mental health professionals, and health care providers.¹ Read the statute for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and exceptions to mandatory reporting obligations.

2 **If I am working on federal property or in a federal facility, what authorities should I consult to determine my mandatory reporting obligations?**¹ In addition to the mandatory reporting laws discussed in Question 1, individuals working on federal lands or in federal facilities should consult the federal Victims of Child Abuse Act.² This Act applies to several categories of professionals, including health care providers, mental health professionals, social workers, and counselors. It requires these individuals to report child abuse that they learned of while working in their professional capacity on federal land or in a federally operated facility.

3 **What types of communications are privileged in my jurisdiction?** American Samoa law states that the territory's privileges are governed by common law.³ As a result, the attorney-client and psychotherapist-patient communications are privileged.⁴

4 **Are a victim's privileged communications with an attorney or therapist protected from disclosure after the victim's death?** American Samoa's laws regarding privileged communications do not explicitly address this issue. Service providers should consult any confidentiality duties they may have under funding contracts, licensing requirements, and ethical obligations in responding to requests for information regarding a deceased victim. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your territory's coalition.

5

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? It depends on the employee’s role. The U.S. Department of Education has issued guidance⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a jurisdiction’s privilege laws (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a legal privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact the Victim Rights Law Center for more information on how to approach this question.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.⁶

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? Potentially yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include negligent or intentional infliction of emotional distress. Additionally, if the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal.

¹Am. Samoa Code Ann. 45.2002.

²42 U.S.C. § 13031.

³Am. Samoa R. Evid. 501.

⁴See *Upjohn Co. v. United States*, 449 US 383 (1981); *Jaffee v. Redmond*, 518 US 1 (1996).

⁵Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁶45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

© 2015 Victim Rights Law Center. All rights reserved. Preparation of this material was supported by grant number 2013-TA-AX-KO18 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, and conclusions expressed are those of the author(s) and do not necessarily represent the views of the U.S. Department of Justice.



FAQs: Privacy Laws Impacting Survivors

Arizona

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Arizona law defines certain categories of individuals who *must* report abuse or injury to law enforcement, Department of Child Safety, or Adult Protective Services. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations.¹ The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?				Citation
	DV advocate	Social worker	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	✓	Ariz. Rev. Stat. § 13-3620
Vulnerable adult abuse		✓	✓	✓	Ariz. Rev. Stat. §§ 46-451, 46-454
Injury from illegal act				✓	Ariz. Rev. Stat. § 13-3806
Client is danger to others			✓		Ariz. Rev. Stat. § 36-517.02

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?² Several laws govern mandatory reporting obligations in Indian Country³ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁴ or who suspect that child abuse has occurred or will occur in Indian Country.⁵ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁶

3

May an advocate be present during a victim's privileged communications with an attorney, therapist, or physician without waiving the victim's right to keep those communications confidential? It depends upon a variety of factors, including whether the conversation is intended to be confidential and whether the advocate's presence is needed to further the provision of legal, therapeutic, or medical services. Arizona recognizes several categories of privileged communications, including crime victim advocate and victim,⁷ domestic violence advocate and victim,⁸ attorney and client,⁹ doctor and patient,¹⁰ and psychologist and patient.¹¹ Although the presence of a third person will usually destroy privilege, this general rule may not apply where the third party's presence does not indicate a lack of intent to keep the communication confidential, such as where the third party is necessary to further the provision of services.¹²

4

May an interpreter be present during a victim's privileged communications with an advocate, attorney, therapist, or physician without waiving the victim's right to keep those communications confidential? Arizona law does not directly address this question, except where a court has appointed a qualified interpreter for a Deaf party or witness. Arizona requires courts to appoint qualified interpreters to interpret proceedings and preparations with the Deaf person's attorney.¹³ If a qualified interpreter interprets privileged communications (such as those discussed in Question 3) for the Deaf person, the privilege extends to the interpreter.

5

Are a victim's privileged communications with an advocate, attorney, therapist, or physician protected from disclosure after the victim's death? It depends. A victim's communications with an attorney,¹⁴ physician,¹⁵ or psychologist¹⁶ will remain privileged, because Arizona law indicates that these privileges survive the death of the client or patient. The crime victim advocate and domestic violence advocate privileges are silent as to this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an employee of a prosecutor's office, law enforcement agency, or other government agency. Although Arizona law provides that a victim's communications with a crime victim advocate (including systems-based advocates) are privileged, the privilege does not apply where the communication contains exculpatory evidence, or the advocate knows that the victim will give or has given perjured testimony.¹⁷

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁸ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁹ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims in your jurisdiction. Civil causes of action against the person who posted the content may include invasion of privacy or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ For detailed information regarding child abuse reporting requirements, see Ariz. Att’y Gen. Op. No. 107-006 (Apr. 9, 2007).

² We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

³ Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁴ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁵ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁶ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁷ Ariz. Rev. Stat. § 13-4430.

⁸ Ariz. Rev. Stat. § 12-2239, limited to civil cases.

⁹ Ariz. Rev. Stat. § 12-2234.

¹⁰ Ariz. Rev. Stat. § 12-2235, limited to civil cases.

¹¹ Ariz. Rev. Stat. § 32-2085.

¹² See *State v. Sucharew*, 66 P.3d 59 (Ariz. Ct. App. 2003) (no waiver of attorney-client privilege when client’s parents present during consultation).

¹³ Ariz. Rev. Stat. § 12-242.

¹⁴ *State v. Macumber*, 544 P.2d 1084, 1086 (Ariz. 1976).

¹⁵ *Sun Health Corp. v. Meyers*, 70 P.3d 444, 448 (Ariz. Ct. App. 2003).

¹⁶ Ariz. Rev. Stat. § 32-2085 (confidentiality between clients and therapists is placed on the same basis as attorney-client privilege).

¹⁷ Ariz. Rev. Stat. § 13-4430.

¹⁸ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁹ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.



FAQs: Privacy Laws Impacting Survivors

Arkansas

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Arkansas law defines certain categories of individuals who *must* report abuse or injury to law enforcement, the Child Abuse Hotline, or the Department of Human Services. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?					Citation
	SA/DV advocate	Nonprofit employee	Social worker	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	✓	✓	Ark. Code § 12-18-402
Vulnerable adult abuse			✓	✓	✓	Ark. Code § 12-12-1701 <i>et seq.</i>
Gunshot or knife wound					✓	Ark. Code § 12-12-602
Client is danger to self or others			✓	✓		Ark. Code § 20-45-202

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, therapist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the victim’s interests in medical, legal, or therapeutic services. Under Arkansas law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws only apply to confidential communications. The physician–patient privilege⁶ and psychotherapist–patient privilege⁷ state that a communication is still confidential if a third party is present “to further the interest of the patient in the consultation, examination, or interview.” Similarly, a communication is still confidential under the attorney–client privilege if information is disclosed to a third party to further the rendition of legal services to the client.⁸

4

May an interpreter be present during a victim’s privileged communications with an attorney, therapist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Arkansas, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.⁹ Additionally, where a person who is Deaf or limited English proficient is a party in a case, Arkansas requires courts to appoint qualified interpreters to interpret for the person throughout the court proceeding.¹⁰ The qualified interpreter cannot be compelled to testify regarding privileged communications that he or she interpreted for the person.¹¹

5

Are a victim’s privileged communications with an attorney, therapist, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹²

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹³ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁴ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the factors of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy, intentional infliction of emotional distress, or civil stalking.¹⁵ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Arkansas has a criminal nonconsensual pornography (aka “revenge porn”) statute. An individual commits a misdemeanor if, with the intent to harass or intimidate another person, the individual distributes an image or recording that is of a sexual nature or depicts the other person in a state of nudity, and the other person and the individual are in a current or former dating relationship.¹⁶

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Ark. R. Evid. 503.

⁷ *Id.*

⁸ Ark. R. Evid. 502.

⁹ Ark. R. Evid. 502, 503.

¹⁰ Ark. Code § 16-10-1103.

¹¹ Ark. Code § 16-10-1107.

¹² Ark. R. Evid. 502, 503.

¹³ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

¹⁴ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁵ Ark. Code § 16-127-102.

¹⁶ Ark. Code § 5-26-314.



FAQs: Privacy Laws Impacting Survivors

California

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? California law defines certain categories of individuals who *must* report abuse or injury to law enforcement or the county welfare department. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?			Citation
	Social worker	Mental health professional	Health practitioner	
Child abuse	✓	✓	✓	Cal. Penal Code § 11164 <i>et seq.</i>
Elder or dependent adult abuse	✓	✓	✓	Cal. Welf. & Inst. Code § 15600 <i>et seq.</i>
Any injury from assaultive or abusive conduct			✓	Cal. Penal Code § 11160 <i>et seq.</i>
Client is danger to others	✓	✓		Cal. Civil Code § 43.92

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3**May a victim counselor be present during a victim's privileged communications with an attorney, psychotherapist, or physician without waiving the victim's right to keep those communications confidential?**

Yes, if the counselor is covered by California's domestic violence counselor,⁶ sexual assault counselor,⁷ or human trafficking caseworker⁸ privilege, and the other provider's communications with the victim are also privileged. Under California law, privilege is not waived where an individual's confidential information is shared between parties who have a privileged relationship with the individual.⁹ The presence of a sexual assault counselor, domestic violence counselor, or human trafficking caseworker during a victim's communications with an attorney,¹⁰ psychotherapist,¹¹ or physician¹² will not waive the victim's rights to confidentiality because all parties have privilege. Additionally, the attorney-client, physician-patient, and psychotherapist-patient privilege all recognize that a communication is still considered confidential if a third party (such as a counselor) is present to further the interest of the client or patient in the consultation.

4**May an interpreter be present during a victim's privileged communications with a counselor, attorney, therapist, or physician without waiving the victim's right to keep those communications confidential?**

Yes, if the interpreter is needed to relay the communications. In California, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party's presence is reasonably necessary for transmission of the information.¹³ Additionally, state law provides that whenever privilege exists between an individual who is Deaf and another person, that privilege is not waived merely because an interpreter was used to facilitate their communication.¹⁴

5**Are a victim's privileged communications with a counselor, attorney, therapist, or physician protected from disclosure after the victim's death?**

It depends. A victim's communications with an attorney, therapist, physician, or sexual assault counselor will remain privileged, because California law indicates that these privileges survive the death of the client or patient.¹⁵ In contrast, the domestic violence counselor and human trafficking caseworker privileges state that a court may compel disclosure if the victim is dead.¹⁶ For guidance on whether VAWA or other provisions may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state's coalition.

6**Are communications between a victim and a prosecutor's office or law enforcement agency confidential?**

No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7**When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator?**

It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Warrants for documents protected by California's physician-patient privilege must comply with several procedural requirements ¹⁹
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. This is a rapidly changing area of law. Consult an attorney familiar with these issues before advising victims. California provides a civil cause of action for the intentional distribution of nude or sexually explicit images that were reasonably expected to remain private.²⁰ A plaintiff may use a pseudonym when filing the action. Additional civil causes of action may include intentional infliction of emotion distress, civil stalking, intentional interference with prospective economic advantage, and invasion of privacy.

In addition, California has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is unlawful to intentionally distribute nude or sexually explicit images that were intended to be private where the distributor intends to cause—and does cause—serious emotional distress.²¹ Images obtained or distributed in violation of this law are subject to forfeiture.²²

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Cal. Evid. Code § 1037.5.

⁷ Cal. Evid. Code § 1035.8.

⁸ Cal. Evid. Code § 1038.

⁹ Cal. Evid. Code § 912 (“A disclosure in confidence of a communication that is protected by a privilege . . . when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, psychotherapist, domestic violence counselor, [or] sexual assault counselor . . . was consulted, is not a waiver of the privilege.”).

¹⁰ Cal. Evid. Code § 954.

¹¹ Cal. Evid. Code § 1014.

¹² Cal. Evid. Code § 994.

¹³ Cal. Evid. Code §§ 952, 992, 1012, 1035.4, 1037.2, 1038.2.

¹⁴ Cal. Evid. Code § 754.5.

¹⁵ Cal. Evid. Code §§ 953, 993, 1013, 1035.6.

¹⁶ Cal. Evid. Code §§ 1037.5, 1038.

¹⁷ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁹ Cal. Penal Code § 1524.

²⁰ Cal. Civ. Code § 1708.85.

²¹ Cal. Penal Code § 647(j)(4).

²² Cal. Penal Code § 647.8.



FAQs: Privacy Laws Impacting Survivors

Colorado

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Colorado law defines certain categories of individuals who *must* report abuse or injury to social services or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?				Citation
	SA/DV advocate	Social worker	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	✓	Colo. Rev. Stat. § 19-3-301 <i>et seq.</i>
Elder abuse		✓	✓	✓	Colo. Rev. Stat. § 18-6.5-101 <i>et seq.</i>
Injury involving criminal act				✓	Colo. Rev. Stat. § 12-36-135
Client is danger to others		✓	✓	✓	Colo. Rev. Stat. § 13-21-117

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim's privileged communications with an attorney, mental health professional, physician, or nurse without waiving the victim's right to keep those communications confidential? Colorado law does not directly address this question. The state recognizes several categories of privileged communications, including victim advocate and victim, attorney and client, physician and patient, nurse and patient, and mental health professional and client.⁶ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client's interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim's privileged communications with an advocate, attorney, mental health professional, physician, or nurse without waiving the victim's right to keep those communications confidential? The Colorado Supreme Court has indicated that the presence of an interpreter during privileged communications will not destroy privilege where the interpreter is necessary to enable the communications to occur.⁷ Additionally, where a qualified interpreter is provided to a Deaf person in civil or criminal proceedings or investigations, the interpreter cannot testify regarding any privileged communications that the interpreter interpreted, unless the Deaf person consents.⁸

5

Are a victim's privileged communications with an advocate, attorney, mental health professional, or health care provider protected from disclosure after the victim's death? It depends. A victim's communications with an attorney will remain privileged, because Colorado law indicates that this privilege survives the death of the client.⁹ The advocate, health care provider, and mental health professional privileges are silent as to this issue. Service providers should consult any confidentiality duties they may have under funding contracts, licensing requirements, and ethical obligations in responding to requests for information regarding a deceased victim. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state's coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁰ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹¹ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Colorado's physician-patient privilege statute ¹²
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intrusion upon seclusion,¹³ appropriation of name or likeness,¹⁴ breach of confidentiality, or public disclosure of private facts. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.¹⁵

In addition, Colorado has two criminal nonconsensual pornography (aka “revenge porn”) statutes. It is unlawful for an individual to disseminate nude images of a person with the intent to harass the depicted person where the depicted person did not consent to the dissemination or expected that the images would remain private.¹⁶ A separate statute prohibits an individual from disseminating nude images for financial gain without the depicted person’s consent.¹⁷ Both statutes provide a civil cause of action for the harmed individual, who may pursue damages and injunctive relief.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVV technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Colo. Rev. Stat. § 13-90-107.

⁷ D.A.S. v. People, 863 P.2d 291, 295 (Colo. 1993).

⁸ Colo. Rev. Stat. §§ 13-90-107, 13-90-209.

⁹ See *Wesp v. Everson*, 33 P.3d 191 (Colo. 2001).

¹⁰ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹¹ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an

officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹² See Colo. Rev. Stat. § 13-90-107(1)(d); *People v. Sisneros*, 55 P.3d 797, 800 (Colo. 2002) (subpoena for psychologist records of sexual assault victim should have been quashed because psychologist-patient privilege applied).

¹³ See *Quigley v. Rosenthal*, 327 F.3d 1044 (2003); see also *Doe v. High-Tech Institute, Inc.*, 972 P.2d 1060 (1998).

¹⁴ See *Quigley*, 327 F.3d at 1073.

¹⁵ Additionally, Colo. Rev. Stat. §§ 18-7-107(4)(b) and 18-7-108(4)(b) provide that the individual whose “private intimate parts have been posted” shall retain a protectable right of authorship regarding the commercial use of the private image.

¹⁶ Colo. Rev. Stat. § 18-7-107.

¹⁷ Colo. Rev. Stat. § 18-7-108.



FAQs: Privacy Laws Impacting Survivors

Connecticut

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Connecticut law defines certain categories of individuals who *must* report abuse or injury to the Commissioner of Children and Families, the Commissioner of Social Services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?				Citation
	SA/DV counselor	Social worker	Psychologist	Health care provider	
Child abuse	✓	✓	✓	✓	Conn. Gen. Stat. § 17a-101
Vulnerable adult abuse		✓	✓	✓	Conn. Gen. Stat. § 17b-451
Injury from firearm				✓	Conn. Gen Stat. § 19a-490f

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim’s privileged communications with an attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential?

It depends on the reason for the victim counselor’s presence and whether the victim had a reasonable expectation of privacy in the communications. Connecticut recognizes several categories of privileged communications, including sexual assault counselor/domestic violence counselor and victim,⁶ attorney and client,⁷ psychologist and patient,⁸ health care provider and patient,⁹ marital and family therapist and client,¹⁰ social worker and client,¹¹ and professional counselor and client.¹² The Connecticut Supreme Court has stated that the presence of third parties generally destroys the confidentiality of a communication, precluding a claim of privilege, unless the presence of the third parties is required to achieve the purpose of the communication.¹³ Further, the privilege holder must have a reasonable expectation that the communications will remain confidential in order for privilege to apply.¹⁴

4

May an interpreter be present during a victim’s privileged communications with a domestic violence or sexual assault counselor, attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential?

Yes. In Connecticut, a privileged communication (such as those discussed in Question 3) made by a person with the assistance of an interpreter may not be disclosed by the interpreter in any civil, criminal, legislative, or administrative proceeding.¹⁵ Additionally, any communication made by a Deaf person with the assistance of a person operating special telecommunications equipment is deemed privileged.¹⁶

5

Are a victim’s privileged communications with a domestic violence or sexual assault counselor, attorney, mental health professional, or health care provider protected from disclosure after the victim’s death?

Yes, because state law indicates that these privileges survive the death of the client or patient.¹⁷

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential?

No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator?

It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁸ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁹ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and negligent or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Conn. Gen. Stat. § 52-146k.

⁷ *Rienzo v. Santangelo*, 160 Conn. 391 (1971).

⁸ Conn. Gen. Stat. § 52-146c.

⁹ Conn. Gen. Stat. § 52-146o.

¹⁰ Conn. Gen. Stat. § 52-146p.

¹¹ Conn. Gen. Stat. § 52-146q.

¹² Conn. Gen. Stat. § 52-146s.

¹³ *State of Connecticut v. Mark R.*, 17 A.3d 1 (Conn. 2011).

¹⁴ *Id.*

¹⁵ Conn. Gen. Stat. § 52-146l.

¹⁶ Conn. Gen. Stat. § 52-146m.

¹⁷ See Conn. Gen. Stat. §§ 52-146c, 52-146k, 52-146o, 52-146q, 52-146s; *Peyton v. Werhane*, 126 Conn. 382 (1940); OLR Research Report, Disclosure of Deceased Person’s Medical Records, <http://www.cga.ct.gov/2013/rpt/2013-R-0124.htm>.

¹⁸ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁹ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.



FAQs: Privacy Laws Impacting Survivors

Delaware

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1 **What mandatory reporting laws should I be aware of in my jurisdiction?** Delaware law requires any person to report child abuse or vulnerable adult abuse to the Department of Services for Children, Youth and Their Families or the Department of Health and Social Services. Read the statutes for definitions of abuse, reporting procedures, and any exceptions to mandatory reporting obligations. Additionally, mental health service providers must report certain threats made by their patients against clearly identified victims. Finally, health care providers must report stab wounds, non-accidental poisonings, and gunshot wounds.

What must be reported?	Who is REQUIRED to report?				Citation
	Any person	Social worker	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	✓	Del. Code tit. 16 § 901 <i>et seq.</i>
Vulnerable adult abuse	✓	✓	✓	✓	Del. Code tit. 31 § 3910
Stabbings, poisonings, and gunshot wounds				✓	Del. Code tit. 24 § 1762
Patient is danger to others		✓	✓	✓	Del. Code tit. 16 § 5402

2 **If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?**¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with a lawyer, mental health provider, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the victim’s interests in medical, legal, or therapeutic services. Under Delaware law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The lawyer–client,⁶ physician–patient,⁷ and mental health provider–patient privileges⁸ provide that a communication is still considered confidential if a third party is present to further the rendition of services to the patient or client.

4

May an interpreter be present during a victim’s privileged communications with an attorney, mental health provider, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Delaware, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.⁹

5

Are a victim’s privileged communications with an attorney, mental health provider, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹⁰

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹¹ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹² Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy or possibly negligent or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Delaware has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is unlawful for an individual to disseminate a visual depiction of a person who is nude, or who is engaging in sexual conduct, when the dissemination is without the consent of the person depicted, and the visual depiction was provided under circumstances in which the person depicted had a reasonable expectation of privacy.¹³

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Del. R. Evid. 502.

⁷ Del. R. Evid. 503.

⁸ *Id.*

⁹ Del. R. Evid. 502, 503.

¹⁰ *Id.*

¹¹ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹² 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹³ Del. Code tit. 11, § 1335(a)(9).



FAQs: Privacy Laws Impacting Survivors

District of Columbia

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims’ privacy rights. Depending on the facts of a specific case, such as a victim’s age or occupation, there may be additional laws that expand or limit a victim’s privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA’s Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? The District of Columbia defines certain categories of individuals who must report abuse or injury to law enforcement, Child and Family Services, or Department of Human Services. The chart below summarizes certain providers’ mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only **mandatory** (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim’s personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	DV or human trafficking counselor	Social Worker	Mental health professional ¹	Health care provider	Citation
Child abuse or neglect ²	✓	✓	✓	✓	D.C. Code 4-1321.01 <i>et seq.</i>
Vulnerable adult abuse		✓	✓	✓	D.C. Code 7-1903
Injury caused by weapon during a crime				✓	D.C. Code 7-2601

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?³ Several laws govern mandatory reporting obligations in Indian Country⁴ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁵ or who suspect that child abuse has occurred or will occur in Indian Country.⁶ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁷

3

May a victim counselor be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? The District of Columbia Code does not directly address this question. The District recognizes several categories of privileged communications, including domestic violence counselor and victim,⁸ human trafficking counselor and victim,⁹ sexual assault victim advocate and victim,¹⁰ physician and patient,¹¹ mental health professional and client,¹² and attorney and client.¹³ However, the laws do not indicate whether privilege is waived where a patient or client’s confidential information is shared between these professionals.

4

May an interpreter be present during a victim’s privileged communications with a victim counselor, attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Yes, for communications with a domestic violence counselor, human trafficking counselor, or sexual assault victim advocate. The District of Columbia Code states that these privileges are not waived by the presence of a sign language or foreign language interpreter.¹⁴ Additionally, where a qualified interpreter is appointed to a “communication-impaired person” in court proceedings, and a communication made by the person through the interpreter is privileged, privilege extends to the interpreter.¹⁵

5

Are a victim’s privileged communications with a victim counselor, attorney, mental health professional, or physician protected from disclosure after the victim’s death? Communications with domestic violence counselors, human trafficking counselors, and sexual assault victim advocates are protected even after a victim dies. In each of these cases, the deceased victim’s personal representative may assert or waive the privilege provided they hold no adverse interest to the victim.¹⁶ Client communications with an attorney also remain privileged after death.¹⁷ The physician and mental health professional privileges are silent as to this issue.¹⁸

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁹ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information without patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.²⁰ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact the DC Coalition Against Domestic Violence or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include civil stalking/harassment,²¹ publication of private facts,²² intentional infliction of emotional distress, and negligent infliction of emotional distress.²³ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, the District of Columbia has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is unlawful to knowingly disclose sexual images of another person when: (1) the person depicted did not consent to the disclosure; (2) there was an agreement or understanding that the image would not be disclosed; and (3) the image was disclosed with intent to harm the person depicted or to receive financial gain.²⁴

¹The District of Columbia Code defines “mental health professional” to include “A rape crisis or sexual abuse counselor who has undergone at least 40 hours of training and is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist.” D.C. Code § 7-1201.01. Sexual assault victim advocates who do not meet this definition and who do not fall under any other mandated reporting category are not mandated reporters of child abuse or neglect.

²In addition to child abuse or neglect caused by a parent or guardian, mandatory reporters must report the following situations, regardless of any relationship between the child and offender: child sexual abuse, child prostitution, or injury to a child caused by a bullet or intentionally caused by a knife. D.C. Code § 4-1321.02(e).

³We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

⁴A complete list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁵D.C. Code § 14-310.

⁶D.C. Code § 14-311.

⁷D.C. Code § 14-312.

⁸D.C. Code § 14-307.

⁹*Id.*

¹⁰*In re Pub. Defender Serv.*, 831 A.2d 890 (D.C. 2003).

¹¹D.C. Code §§ 14-310, 14-311, 14-312.

¹²D.C. Code § 2-1908.

¹³D.C. Code §§ 14.310(c), 14.311(c), 14.312(c).

¹⁴The D.C. courts have not directly addressed the issue of whether the attorney-client privilege survives the death of the client. However, the U.S. Supreme Court held in *Swidler & Berlin v. United States*, 524 U.S. 399 (1998) that the attorney-client privilege survives the death of the client (except in very limited circumstances). It is, thus, very likely that D.C. courts would come to the same conclusion.

¹⁵D.C. Code § 14.307.

¹⁶Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁷45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁸D.C. Code § 22-3133.

¹⁹D.C. Code § 12-301.

²⁰D.C. common law claims.

²¹D.C. Law 20-275 (effective May 7, 2015).



FAQs: Privacy Laws Impacting Survivors

Florida

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Florida requires any person to report child abuse or vulnerable adult abuse to the Florida Abuse Hotline. Read the statutes below for definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. Additionally, health care providers must report gunshot wounds and life-threatening injuries indicating acts of violence.

What must be reported?

Who is REQUIRED to report?

	Any Person	Health care provider	Citation
Child abuse	✓	✓	Fla. Stat. § 39.201 <i>et seq.</i>
Vulnerable adult abuse	✓	✓	Fla. Stat. § 415.1034
Gunshot wound or life-threatening violent injury		✓	Fla. Stat. § 790.24

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, therapist, or physician without waiving the victim’s right to keep those communications confidential? It depends on with whom the victim is communicating and whether the advocate is present to further the victim’s interests in receiving services. Under Florida law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The attorney–client⁶ and psychotherapist–patient⁷ privileges recognize that a communication is still considered confidential if a third party (such as an advocate) is present to further the interest of the client or patient in the rendition of legal or therapeutic services.⁸ The physician–patient privilege⁹ does not directly address this issue.

4

May an interpreter be present during a victim’s privileged communications with an advocate, attorney, or therapist without waiving the victim’s right to keep those communications confidential? Probably yes, if the interpreter is needed to relay the communications. In Florida, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.¹⁰ Additionally, where an interpreter is appointed to a non-English-speaking person in court proceedings, and a privileged communication is made through the interpreter, privilege extends to the interpreter.¹¹

5

Are a victim’s privileged communications with an advocate, attorney, therapist, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹²

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹³ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct

that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁴ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Florida's medical privacy laws ¹⁵
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy, intentional infliction of emotional distress, negligence, and public disclosure of private facts. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal of the content. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Florida has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is unlawful to publish online a sexually explicit image of a person without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.¹⁶ The statute also provides a civil cause of action for the harmed individual, who may pursue damages and injunctive relief.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 et seq. & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 et seq. & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Fla. Stat. § 90.502.

⁷Fla. Stat. § 90.503.

⁸State v. Topps, 142 So. 3d 978 (Fla. Dist. Ct. App. 2014).

⁹Fla. Stat. § 456.057; Acosta v. Richter, 671 So. 2d 149 (Fla. 1996).

¹⁰Fla. Stat. §§ 90.502, 90.503, 90.5035, 90.5036.

¹¹Fla. R. Jud. Admin. 2.560.

¹²Fla. Stat. §§ 90.502, 90.503, 90.5035, 90.5036.

¹³Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁴45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁵See Fla. Stat. §§ 395.3025, 456.057; State v. Sun, 82 So. 3d 866 (Fla. Dist. Ct. App. 2011).

¹⁶Fla. Stat. § 784.049.



FAQs: Privacy Laws Impacting Survivors

Georgia

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Georgia law defines certain categories of individuals who *must* report abuse or injury to a child welfare agency, adult protection agency, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Child service organization personnel	Social Worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	✓	Ga. Code Ann. § 19-7-5
Elder/disabled adult abuse	✓	✓	✓	✓	Ga. Code Ann. § 30-5-1 <i>et seq.</i>
Any non-accidental injury				✓	Ga. Code Ann. § 31-7-9

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim's privileged communications with an attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Georgia law does not directly address this question. Georgia recognizes several categories of privileged communications, including communications between a domestic violence/sexual assault advocate and victim,⁶ attorney and client,⁷ and mental health professional and patient.⁸ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a client's interests in legal or therapeutic services.⁹

4

May an interpreter be present during a victim's privileged communications with an advocate, attorney, or mental health professional without waiving the victim's right to keep those communications confidential? Yes, for communications with a domestic violence or sexual assault advocate. Georgia law states that these privileges are not waived by the presence of a third party, as long as the victim had a reasonable expectation of privacy.¹⁰ Additionally, where a qualified interpreter is appointed to a Deaf person or non-English speaker in court proceedings, the presence of an interpreter does not affect the privileged nature of any discussion.¹¹

5

Are a victim's privileged communications with an advocate, attorney, or mental health professional protected from disclosure after the victim's death? It depends. A victim's communications with an attorney or mental health professional will remain privileged, because Georgia law indicates that these privileges survive the death of the client or patient.¹² By contrast, Georgia law explicitly states that the advocate privilege does not survive death.¹³

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁴ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator.

Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁵ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Georgia has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is unlawful to electronically transmit or post a sexually explicit photograph or video of a person without the depicted person’s consent if the post is intended to cause substantial emotional harm or financial loss.¹⁶

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 et seq. & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 et seq. & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Ga. Code Ann. § 24-5-509.

⁷Ga. Code Ann. § 24-5-501.

⁸*Id.*

⁹This question does not address physician-patient privilege because Georgia does not recognize this privilege. However, other laws, such as health information privacy laws and ethical duties of confidentiality, may protect the privacy of communications between patients and health care providers.

¹⁰Ga. Code Ann. § 24-6-657 (interpreters for the deaf); Ga. Supreme Court Rules, Use of Interpreters for Non-English Speaking and Hearing Impaired Persons, http://www.gasupreme.us/wp-content/uploads/2015/06/INTERPRETERS-RULES_FINAL_07_03_12.pdf.

¹¹Ga. Code Ann. § 37-7-166 (a)(1.1); *Spence v. Hamm*, 487 S.E.2d 9 (Ga. Ct. App. 1997) (attorney privilege); *Cooksey v. Landry*, 295 Ga. 430 (2014) (psychiatrist privilege).

¹²Ga. Code Ann. § 24-5-509.

¹³Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁴45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁵Ga. Code Ann. § 16-11-90.



FAQs: Privacy Laws Impacting Survivors

Guam

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Guam law defines certain categories of individuals who *must* report abuse or injury to Child Protective Services or Adult Protective Services. The chart below summarizes certain employees' mandatory reporting obligations for specific populations. Read the statutes for definitions of abuse and injury, procedures for reporting abuse, and any exceptions to *mandatory* reporting obligations. The chart below includes only mandatory (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Anyone who comes into contact with children during employment	Anyone who comes into contact with elderly or disabled adults during employment	Citation
Child abuse	✓		19 GCA § 13201
Elderly/disabled adult abuse		✓	10 GCA § 21003

2

If I am working on federal property or in a federal facility, what authorities should I consult to determine my mandatory reporting obligations? In addition to the mandatory reporting laws discussed in question 1, individuals working on federal lands or in federal facilities should consult the federal Victims of Child Abuse Act.¹ This Act applies to several categories of professionals, including health care providers, mental health professionals, social workers, and counselors. It requires these individuals to report child abuse that they learned of while working in their professional capacity on federal land or in a federally operated facility.

3

May an advocate be present during a victim’s privileged communications with an attorney, therapist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is reasonably necessary for accomplishing the victim’s purpose in seeking medical, legal, or therapeutic services. Under Guam law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. Guam law provides that the attorney–client, physician–patient, and psychotherapist–patient privileges² remain intact if disclosure of a confidential communication (such as to an advocate) is necessary to accomplish the purpose for which the lawyer, physician, or psychotherapist was consulted.³

4

May an interpreter be present during a victim’s privileged communications with an attorney, therapist, or physician without waiving the victim’s right to keep those communications confidential? Yes. Guam’s rules of evidence state that privilege is not waived where disclosure of a privileged communication is reasonably necessary to accomplish the purpose for which an attorney, physician, or therapist was consulted.⁴

5

Are a victim’s privileged communications with an attorney, therapist, or physician protected from disclosure after the victim’s death? Guam’s laws regarding privileged communications do not explicitly address this issue. Service providers should consult any confidentiality duties they may have under funding contracts, licensing requirements, and ethical obligations in responding to requests for information regarding a deceased victim. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your territory’s coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct

that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a jurisdiction’s privilege laws (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a legal privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.⁶

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact the Guam Coalition Against Sexual Assault & Family Violence or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Potentially yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include negligent or intentional infliction of emotional distress. Additionally, if the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal.

¹42 U.S.C. § 13031.

²Guam R. Evid. 504.

³Guam R. Evid. 503.

⁴Guam R. Evid. 503.

⁵Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁶45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.



FAQs: Privacy Laws Impacting Survivors

Hawaii

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Hawaii law defines certain categories of individuals who *must* report abuse or injury to the Department of Human Services or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?			Citation
	Employee of agency providing social or mental health services	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	Haw. Rev. Stat. § 350-1 <i>et seq.</i>
Vulnerable adult abuse	✓	✓	✓	Haw. Rev. Stat. § 346-222 <i>et seq.</i>
Serious injury caused by violence			✓	Haw. Rev. Stat. § 453-14

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim’s privileged communications with a lawyer, psychologist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the victim counselor is present to further the victim’s interests in medical, legal, or therapeutic services. Under Hawaii law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The lawyer-client privilege⁶ recognizes that a communication is still confidential if a third party is present to further the rendition of professional legal services to the client. Similarly, the physician-patient,⁷ psychotherapist-patient,⁸ and victim counselor-victim⁹ privileges provide that a communication is still confidential if a third party is present to further the interest of the patient or client in the consultation, examination, or interview.

4

May an interpreter be present during a victim’s privileged communications with a victim counselor, lawyer, psychologist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Hawaii, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.¹⁰

5

Are a victim’s privileged communications with a victim counselor, lawyer, psychologist, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹¹

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹² identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹³ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include negligent infliction of emotional distress,¹⁴ intentional infliction of emotional distress,¹⁵ invasion of privacy,¹⁶ and defamation.¹⁷ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Hawaii has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is unlawful to disclose without consent an image or video of another person in the nude or engaging in sexual conduct, with intent to harm the person’s health, safety, business, calling, career, financial condition, reputation, or personal relationships.¹⁸

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OYW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Haw. R. Evid. 503.

⁷ Haw. R. Evid. 504.

⁸ Haw. R. Evid. 504.1.

⁹ Haw. R. Evid. 505.5.

¹⁰ Haw. R. Evid. 503, 504, 504.1, 505.5.

¹¹ Haw. Rev. Stat. § 626-1, Rule 505.5(c); Haw. Rev. Stat. § 626-1, Rule 503(c); Haw. Rev. Stat. § 626-1, Rule 504 (c); Haw. Rev. Stat. § 626-1, Rule 504.1(c).

¹² Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹³ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁴ See *Tran v. State Farm Mut. Auto. Ins. Co.*, 999 F. Supp. 1369 (D. Haw. 1998).

¹⁵ See *Uema v. Nippon Express Hawaii, Inc.*, 26 F. Supp. 2d 1241 (D. Haw. 1998).

¹⁶ See *Fergerstrom v. Hawaiian Ocean View Estates*, 50 Haw. 374 (1968).

¹⁷ See *Gonsalves v. Nissan Motor Corp. in Hawaii*, 100 Haw. 149 (2002).

¹⁸ Haw. Rev. Stat. § 711-1110.9.



FAQs: Privacy Laws Impacting Survivors

Idaho

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Idaho law defines certain categories of individuals who *must* report abuse or injury to the department of health and welfare or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?				Citation
	Any person	Social worker	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	✓	Idaho Code § 16-1602 <i>et seq.</i>
Vulnerable adult abuse		✓		✓	Idaho Code § 39-5302 <i>et seq.</i>
Injury from firearm or criminal offense				✓	Idaho Code § 39-1390
Client is danger to others		✓	✓	✓	Idaho Code § 6-1901 <i>et seq.</i>

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with a lawyer, therapist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the victim’s interests in medical, legal, or therapeutic services. Under Idaho law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws only apply to confidential communications. The physician–patient privilege⁶ and psychotherapist–patient privilege⁷ state that a communication is still confidential if a third party is present to further the interest of the patient in the consultation, examination, or interview. Similarly, a communication is still confidential under the lawyer–client privilege if information is disclosed to a third party to further the rendition of legal services to the client.⁸

4

May an interpreter be present during a victim’s privileged communications with a lawyer, therapist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Idaho, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.⁹

5

Are a victim’s privileged communications with a lawyer, therapist, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹⁰

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹¹ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹² Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy¹³ and intentional infliction of emotional distress.¹⁴ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Idaho has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is a felony to disseminate, publish, or sell images of the intimate areas of another person without that person’s consent if one or both parties agreed or understood that the images should remain private.¹⁵

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Idaho R. Evid. 503.

⁷ Idaho R. Evid. 503.

⁸ Idaho R. Evid. 502.

⁹ Idaho Rule Evid. 502, 503.

¹⁰ Idaho R. Evid. 502, 503, 517.

¹¹ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹² 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹³ See *Uranga v. Federated Publ’ns, Inc.*, 67 P.3d 29 (Idaho 2003) (recognizing (1) intrusion upon the plaintiff’s seclusion and (2) public disclosure of embarrassing private facts about the plaintiff as categories of the tort of invasion of privacy).

¹⁴ See *Edmondson v. Shearer Lumber Prods.*, 75 P.3d 733 (Idaho 2003) (setting forth elements for a claim of intentional infliction of emotional distress).

¹⁵ Idaho Code Ann. § 18-6609.



FAQs: Privacy Laws Impacting Survivors

Illinois

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1 **What mandatory reporting laws should I be aware of in my jurisdiction?** Illinois law defines certain categories of individuals who *must* report abuse or injury to the Department of Children and Family Services, the Department on Aging, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	DV/SA advocate	Social worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	✓	325 ILCS 5/4
Abuse of elders/adults with disabilities	✓	✓	✓	✓	320 ILCS 20/2
Any injury from criminal offense				✓	20 ILCS 2630/3.2
Patient made serious threat of violence		✓	✓	✓	405 ILCS 5/6-103

2 **If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?**¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in

Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim's privileged communications with an attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Illinois courts have not directly addressed this question. The state recognizes several categories of privileged communications, including rape crisis counselor and victim,⁶ domestic violence counselor and victim,⁷ violent-crime victim counselor and victim,⁸ confidential advisor and student,⁹ physician and patient,¹⁰ therapist and patient,¹¹ and attorney and client.¹² Contact the Victim Rights Law Center or your state coalition for more information regarding procedures for protecting privileged communications.

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Yes. In Illinois, if communications are otherwise privileged (such as the communications discussed in Question 3), the underlying privilege is not waived because of the presence of an interpreter.¹³

5

Are a victim's privileged communications with a victim counselor, attorney, mental health professional, or physician protected from disclosure after the victim's death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹⁴ There is an exception for physicians, who may disclose privileged communications in homicide trials where the disclosure relates directly to the circumstances of the homicide.¹⁵

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁶ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁷ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Illinois' physician-patient privilege statute ¹⁸
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact your state coalition¹⁹ or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include false light,²⁰ public disclosure of private facts,²¹ misappropriation,²² and intentional infliction of emotional distress.²³ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Illinois has a criminal nonconsensual pornography (aka "revenge porn") statute.²⁴ It is unlawful for a person to intentionally disseminate an image of another person who is engaged in a sexual act or whose intimate parts are exposed if a reasonable person would know that the image was to remain private and that the person in the image has not consented to the dissemination.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶735 ILCS 5/8-802.1.

⁷750 ILCS 60/227.

⁸735 ILCS 5/8-802.2.

⁹735 ILCS 5/8-804.

¹⁰735 ILCS 5/8-802.

¹¹740 ILCS 110/10.

¹²*Fischel & Kahn, Ltd. v. Van Straaten Gallery, Inc.*, 727 NE 2d 240 (Ill. 2000).

¹³735 ILCS 5/8-911; 735 ILCS 5/8-912.

¹⁴735 ILCS 5/8-802; 735 ILCS 5/8-802.1; 750 ILCS 60/227; *Awalt v. Marketti*, 287 F.R.D. 409 (N.D. Ill. 2012); *Hitt v. Stephens*, 675 N.E.2d 275 (Ill. App. Ct. 1997).

¹⁵735 ILCS 5/8-802.

¹⁶Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁷45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹⁸735 ILCS 5/8-802.

¹⁹For a summary of Illinois laws regarding minors' rights, see Illinois Coalition Against Sexual Assault, *Minors, Consent, and Sexual Assault* (Aug. 2015), <http://icasa.org/docs/legal%20forms/minors%20rights%20chart%202015%20-%20distributed%20version.pdf>.

²⁰See, e.g., *Douglass v. Hustler Magazine, Inc.*, 769 F.2d 1128 (7th Cir. 1985).

²¹See *Green v. Chi. Trib. Co.*, 675 N.E.2d 249 (Ill. App. Ct. 1996).

²²765 ILCS 1075/1-60.

²³See *Pub. Fin. Corp. v. Davis*, 360 N.E.2d 765 (Ill. 1976).

²⁴720 ILCS 5/11-23.5.



FAQs: Privacy Laws Impacting Survivors

Indiana

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Indiana law requires any person to report child abuse or endangered adult abuse to the Department of Child Services or adult protective services. Read the statutes below for definitions of abuse, reporting procedures, and any exceptions to mandatory reporting obligations. Additionally, physicians must report firearm injuries and life-threatening stab wounds. Finally, mental health service providers must report certain violent threats made by their patients.

What must be reported?	Who is REQUIRED to report?			Citation
	Any person	Physician	Mental health service provider	
Child abuse	✓	✓	✓	Ind. Code § 31-33-5 <i>et seq.</i>
Endangered adult abuse	✓	✓	✓	Ind. Code § 12-10-3-2 <i>et seq.</i>
Firearm injury or life-threatening stab wound		✓		Ind. Code § 35-47-7-1
Patient is danger to others			✓	Ind. Code § 34-30-16-2

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim's privileged communications with an attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Indiana law does not directly address this question. The state recognizes several categories of privileged communications, including advocate and victim,⁶ attorney and client,⁷ physician and patient,⁸ psychologist and client,⁹ and social worker and client.¹⁰ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client's interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim's privileged communications with a victim advocate, attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Yes, for privileged communications with a victim advocate. In Indiana, information exchanged in the presence of a third person who facilitates communications between a victim and victim advocate is still considered privileged.¹¹ Additionally, the state's code of conduct for certified court interpreters provides that disclosures made out of court through certified interpreters are privileged, so long as the party or witness reasonably expected that the communication would not be disclosed.¹²

5

Are a victim's privileged communications with a victim advocate, attorney, physician, or mental health professional protected from disclosure after the victim's death? It depends. A victim's communications with an attorney,¹³ physician,¹⁴ psychologist,¹⁵ or social worker¹⁶ will remain privileged, because Indiana law suggests that these privileges survive the death of a patient. There is an exception for the psychologist and social worker privileges in homicide trials when the disclosure relates directly to the circumstances of the homicide. The victim advocate privilege is silent as to this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state's coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress¹⁹ and invasion of privacy.²⁰ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVV technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Ind. Code § 35-37-6-9.

⁷ Ind. Code § 34-46-3-1.

⁸ Ind. Code § 34-46-3-1.

⁹ Ind. Code § 25-33-1-17.

¹⁰ Ind. Code § 25-23.6-6-1.

¹¹ Ind. Code § 35-37-6-1.

¹² Ind. Interpret. Code of Cond. & Pro III, <http://www.in.gov/judiciary/rules/interpreter/>

¹³ *Mayberry v. Indiana*, 670 N.E.2d 1262, 1267 n.5 (Ind. 1996).

¹⁴ *Haverstick v. Banet*, 370 N.E.2d 341 (Ind. 1977).

¹⁵ Ind. Code § 25-33-1-17.

¹⁶ Ind. Code § 25-23.6-6-1

¹⁷ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁹ See *Cullison v. Medley*, 570 N.E.2d 27, 31 (Ind. 1991).

²⁰ See *Ledbetter v. Ross*, 725 N.E.2d 120, 123 (Ind. Ct. App. 2000).



FAQs: Privacy Laws Impacting Survivors

Iowa

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims’ privacy rights. Depending on the facts of a specific case, such as a victim’s age or occupation, there may be additional laws that expand or limit a victim’s privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA’s Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Iowa law defines certain categories of individuals who *must* report abuse or injury to the department of human services or law enforcement. The chart below summarizes certain providers’ mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim’s personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	DV/SA advocate	Social worker	Mental health professional	Health care provider	Citation
Child abuse		✓	✓	✓	Iowa Code § 232.68 <i>et seq.</i>
Dependent adult abuse		✓	✓	✓	Iowa Code § 235B.3
Serious injury resulting from a crime				✓	Iowa Code § 147.111

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim’s privileged communications with an attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? Iowa law does not directly address this question. The state recognizes several categories of privileged communications, including victim counselor and victim;⁶ attorney and client;⁷ health care provider and patient;⁸ and mental health professional and patient.⁹ However, the law does not indicate whether privilege is waived where a patient or client’s confidential information is shared between these professionals. In a case involving the mental health professional–patient privilege, the Iowa Supreme Court held that the presence of third parties does not destroy privilege “if they are present to assist the mental health professional in some way, or their presence is otherwise necessary to enable treatment.”¹⁰ It is possible that a court would use similar reasoning to uphold privilege where an advocate is present during a victim’s confidential communications with an attorney, health care provider, or mental health professional, and the advocate is needed to enable services or treatment.

4

May an interpreter be present during a victim’s privileged communications with a victim counselor, attorney, mental health professional, or healthcare provider without waiving the victim’s right to keep those communications confidential? Iowa law does not directly address this question, except where a Deaf person is appointed a qualified interpreter in a proceeding before a grand jury, court, or administrative agency. If a qualified interpreter interprets privileged communications (such as those discussed in Question 3) for the Deaf person, the privilege extends to the interpreter.¹¹ The advocate privilege statute provides that the victim–advocate privilege is not waived by the presence of a “person present in the consultation for the purpose of furthering the interest of the victim.”¹²

5

Are a victim’s privileged communications with a victim counselor, attorney, mental health professional, or health care provider protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹³

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁴ identifying three categories of employees and their respective duties to report gender–based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁵ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Iowa's physician-patient privilege statute ¹⁶
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this question for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Iowa Code § 915.20A.

⁷ Iowa Code § 622.10 .

⁸ *Id.*

⁹ *Id.*

¹⁰ *City of Cedar Falls v. Cedar Falls Cmty. Sch. Dist.*, 617 N.W.2d 11 (Iowa 2000).

¹¹ Iowa Code § 915.20A.

¹² Iowa Code § 622B.6.

¹³ Iowa Code §§ 622.10, 915.20A; *Baily v. Chi., Burlington & Quincy R.R.*, 179 N.W.2d 560, 564 (Iowa 1970).

¹⁴ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁵ 45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹⁶ See Iowa Code § 622.10.



FAQs: Privacy Laws Impacting Survivors

Kansas

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Kansas law defines certain categories of individuals who *must* report abuse or injury to the Department for Children and Families or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?			Citation
	Licensed social worker	Licensed mental health professional	Health care provider	
Child abuse	✓	✓	✓	Kan. Stat. Ann. § 38-2223
Vulnerable adult abuse ¹	✓	✓	✓	Kan. Stat. Ann. § 39-1431
Gunshot wound or serious knife wound ²			✓	Kan. Stat. Ann. § 21-6319

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?³ Several laws govern mandatory reporting obligations in Indian Country⁴ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁵ or who suspect that child abuse has occurred or will occur in Indian Country.⁶ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact the Kansas Coalition Against Sexual and Domestic Violence, attorneys, or technical assistance providers for more information.⁷

3

May an advocate be present during a victim's privileged communications with an attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Kansas recognizes several categories of privileged communications, including attorney and client;⁸ licensed professional counselor and patient;⁹ licensed psychologist and patient;¹⁰ and physician and patient.¹¹ Disclosing confidential information otherwise subject to a privilege to a third party could waive the privilege.¹²

4

May an interpreter be present during a victim's privileged communications with an attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Kansas law does not directly address this question, except where a court has appointed a qualified interpreter to interpret communications for a Deaf person or a non-English speaker as part of administrative or court proceedings. An interpreter who is employed to interpret communications for a Deaf person or a non-English speaker may not be compelled to disclose, through reporting, testimony, or by subpoena, the contents of the communication.¹³

5

Are a victim's privileged communications with an attorney, mental health professional, or health care provider protected from disclosure after the victim's death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹⁴

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁶ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Kansas case law regarding constitutional privacy protections for certain health care information ¹⁷
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and intentional infliction of emotional distress.¹⁸ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ A Kansas Attorney General opinion clarifies that state law does not mandate the reporting of domestic violence incidents unless an adult victim of abuse is incapable of caring for himself or herself and is dependent on others to provide services that are necessary to maintain physical and mental health. Kan. Att'y Gen. Op. No. 2002-5 (Jan. 8, 2002).

² The statute specifically requires health care providers to report treatment of "(1) any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or (2) any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick or other sharp or pointed instrument." Kan. Stat. Ann. § 21-6319

³ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

⁴ Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁵ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁶ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁷ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁸ Kan. Stat. Ann. § 60-426.

⁹ Kan. Stat. Ann. § 65-5810.

¹⁰ Kan. Stat. Ann. § 74-5323.

¹¹ Kan. Stat. Ann. § 60-427.

¹² See *Cherryvale Grain Co. v. First State Bank of Edna*, 971 P.2d 1204 (Kan. Ct. App. 1999).

¹³ Kan. Stat. Ann. §§ 75-4354, 75-4355c.

¹⁴ Kan. Stat. Ann. § 60-426(a) (attorneys); Kan. Stat. Ann. § 60-427(a)(3) (health care providers), Kan. Stat. Ann. § 74-5323(a) (licensed psychologists), § 65-5810 (a) (licensed professional counselors) and § 65-5810 (b) (licensed clinical professional counselors) (all treated in the same manner as the attorney-client privilege).

¹⁵ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁶ 45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹⁷ *Alpha Med. Clinic v. Anderson*, 128 P.3d 364 (Kan. 2006).

¹⁸ *Kunz v. Allen*, 172 P. 532 (Kan. 1918) (invasion of privacy); *Roberts v. Saylor*, 637 P.2d 1175 (Kan. 1981) (intentional infliction of emotional distress).



FAQs: Privacy Laws Impacting Survivors

Kentucky

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Kentucky law requires any person to report child abuse, vulnerable adult abuse, or abuse or neglect by a spouse. Read the statutes for definitions of abuse, reporting procedures, and exceptions to mandatory reporting obligations. Additionally, mental health professionals have a duty to warn an individual when a patient has threatened a specific violent act against that individual.

What must be reported?	Who is REQUIRED to report?			Citation
	Any person ¹	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	Ky. Rev. Stat. Ann. § 620.030
Vulnerable adult abuse	✓	✓	✓	Ky. Rev. Stat. Ann. § 209.030
Abuse or neglect by a spouse	✓	✓	✓	Ky. Rev. Stat. Ann. § 209A.030
Patient has threatened a specific violent act		✓		Ky. Rev. Stat. Ann. §§ 202A.400, 645.270

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?² Several laws govern mandatory reporting obligations in Indian Country³ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁴ or who suspect that child abuse has occurred or will occur in Indian Country.⁵ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁶

3

May a victim counselor be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the client’s interests in legal or therapeutic services. Under Kentucky law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The attorney–client ⁷ and psychotherapist–patient⁸ privileges recognize that a communication may still be considered confidential if a third party (such as an advocate) is present to further the interest of the client or patient in the consultation.⁹

4

May an interpreter be present during a victim’s privileged communications with a victim counselor, attorney, or mental health professional without waiving the victim’s right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Kentucky, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.¹⁰ Additionally, where an interpreter is appointed to a person in court proceedings, and a communication made by the person through the interpreter is privileged, the interpreter cannot be required to testify regarding the privileged communications.¹¹

5

Are a victim’s privileged communications with a victim counselor, attorney, or mental health professional protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹²

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹³ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁴ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy, intentional infliction of emotional distress, and civil stalking. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ There is an attorney-client privilege exception to the child abuse reporting requirements. Ky. Rev. Stat. § 620.030(4).

² We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

³ Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁴ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁵ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁶ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁷ Ky. R. Evid. 503.

⁸ Ky. R. Evid. 507.

⁹ This question does not address physician-patient privilege because Kentucky does not recognize this privilege. However, other laws, such as health information privacy laws and ethical duties of confidentiality, may protect the privacy of communications between patients and health care providers.

¹⁰ Ky. R. Evid. 503, 506, 507.

¹¹ Ky. Rev. Stat. § 30A.430.

¹² Ky. R. Evid. 503(c), 506(c); Ky. Att’y Gen. Op. No. 92-24 (Feb. 19, 1992).

¹³ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁴ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.



FAQs: Privacy Laws Impacting Survivors

Louisiana

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Louisiana law defines certain categories of individuals who *must* report abuse or injury to the Department of Children and Family Services, an adult protection agency, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Any person	Social service practitioner	Social worker	Mental health practitioner	Health practitioner	Citation
Child abuse		✓	✓	✓	✓	La. Child. Code Ann. art. 603
Child sexual abuse	✓	✓	✓	✓	✓	La. Rev. Stat. Ann. § 14:403
Vulnerable adult abuse	✓	✓	✓	✓	✓	La. Rev. Stat. Ann. § 15:1504
Gunshot wound					✓	La. Rev. Stat. Ann. § 14:403.5
Patient is danger to others			✓	✓		La. Rev. Stat. Ann. § 9:2800.2

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?² Several laws govern mandatory reporting obligations in Indian Country and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim's privileged communications with a lawyer, therapist, or health care provider without waiving the victim's right to keep those communications confidential? Yes, if the advocate is reasonably necessary to facilitate the communication between the victim and the lawyer, therapist, or health care provider. Under Louisiana law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder's consent. These privilege laws apply to confidential communications only. The lawyer-client,⁶ health care provider-patient,⁷ and psychotherapist-patient⁸ privileges all recognize that a communication is still considered confidential if a third party (such as an advocate) is reasonably necessary to facilitate the communication.

4

May an interpreter be present during a victim's privileged communications with a lawyer, therapist, or health care provider without waiving the victim's right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Louisiana, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party's presence is reasonably necessary for transmission of the communications.⁹ Additionally, where a qualified interpreter is appointed to interpret communications for a Deaf person in administrative or court proceedings, the interpreter is not permitted to disclose the content of those communications unless the Deaf person consents.¹⁰

5

Are a victim's privileged communications with an advocate, lawyer, therapist, or health care provider protected from disclosure after the victim's death? It depends. A victim's communications with a lawyer, therapist, or health care provider will remain privileged, because Louisiana law indicates that these privileges, with limited exceptions, survive the death of the client or patient.¹¹ Louisiana's domestic violence shelter employee¹² and sexual assault center employee¹³ privileges are silent as to this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁴ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁵ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Louisiana's physician-patient privilege ¹⁶
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress and invasion of privacy.¹⁷ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Louisiana has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁸ The law criminalizes disclosing an image where: (1) a person’s intimate parts are exposed, (2) a reasonable person would know that the image was to remain private, (3) the person in the image did not consent to the disclosure, and (4) the person who discloses the image intends to harass or cause emotional distress.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ La. Code Evid. Ann. art. 506.

⁷ La. Code Evid. Ann. art. 510.

⁸ *Id.*

⁹ La. Code Evid. Ann. art. 506, 510.

¹⁰ La. Rev. Stat. Ann. § 46:2371.

¹¹ La. Code Evid. Ann. art. 506, 510.

¹² La. Rev. Stat. Ann. § 46:2124.1.

¹³ La. Rev. Stat. Ann. § 46:2187.

¹⁴ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁵ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁶ See *Bihm v. Bihm*, 932 So. 2d 732, 735 (La. Ct. App. 2006) (specifying, in dicta, that the health care provider-patient privilege of Louisiana Rule of Evidence 510 limits the HIPAA subpoena exception).

¹⁷ See *White v. Monsanto Co.*, 585 So. 2d 1205, 1209 (La. 1991) (intentional infliction of emotional distress); see also *Moresi v. State Through Dep’t of Wildlife & Fisheries*, 567 So. 2d 1081, 1095 (La. 1990) (describing intentional infliction of mental distress with the underlying tort of invasion of privacy); *Jaubert v. Crowley Post-Signal, Inc.*, 375 So. 2d 1386 (La. 1979) (invasion of privacy).

¹⁸ La. Rev. Stat. Ann. § 14:283.2.



FAQs: Privacy Laws Impacting Survivors

Maine

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Maine law defines certain categories of individuals who *must* report abuse or injury to the Department of Health and Human Services or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?				Citation
	DV/SA advocate	Social worker	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	✓	22 M.R.S. § 4011-A <i>et seq.</i>
Vulnerable adult abuse	✓	✓	✓	✓	22 M.R.S. § 3477 <i>et seq.</i>
Gunshot wound				✓	17-A M.R.S. § 512

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or health care professional without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the victim’s interests in medical, legal, or therapeutic services. Under Maine law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The attorney–client,⁶ health care professional–patient,⁷ and mental health professional–patient⁸ privileges all recognize that a communication is still considered confidential if a third party (such as an advocate) is present to further the interest of the client or patient in the consultation.

4

May an interpreter be present during a victim’s privileged communications with an advocate, attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Maine, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party is necessary to make the communications or to facilitate the process of obtaining professional legal services.⁹ Additionally, Maine law provides that except when a court determines that disclosure is necessary to the proper administration of justice, an interpreter for a Deaf person may not disclose any aspect of a confidential communication facilitated by that interpreter unless the Deaf person consents.¹⁰

5

Are a victim’s privileged communications with an advocate, attorney, mental health professional, or health care provider protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney, mental health professional, or health care provider will remain privileged, because Maine law indicates that these privileges survive the death of the client or patient.¹¹ The domestic violence advocate privilege states that privileged communications may be disclosed when required for a law enforcement investigation or criminal proceeding regarding the cause of the victim’s death.¹² The sexual assault counselor privilege is silent as to this issue.¹³ For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state’s coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁴ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁵ Maine's health information privacy law also addresses instances in which health care information may be disclosed to law enforcement without patient consent.¹⁶ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosures may be limited by Maine's health information privacy law ¹⁷
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and negligent or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Maine has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is a Class D crime if, with intent to harass, torment, or threaten, a person publishes an image of another person, without that person’s consent, in a state of nudity or engaged in sexual contact.¹⁸

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Me. R. Evid. 502.

⁷ Me. R. Evid. 503.

⁸ *Id.*

⁹ Me. R. Evid. 502, 503.

¹⁰ 5 M.R.S. § 48-A.

¹¹ Me. R. Evid. 502, 503.

¹² 16 M.R.S. § 53-B.

¹³ 16 M.R.S. § 53-A.

¹⁴ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁵ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁶ 22 M.R.S. § 1711-C.

¹⁷ 22 M.R.S. § 1711-C.

¹⁸ 17-A M.R.S. § 511-A.



FAQs: Privacy Laws Impacting Survivors

Maryland

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Maryland law defines certain categories of individuals who *must* report abuse or injury to law enforcement, department of social services, or adult protective services. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Any Person	Social Worker	Mental health professional	Health Practitioner	Citation
Child abuse	✓	✓	✓	✓	Md. Code Ann., Fam. Law § 5-701 <i>et seq.</i>
Vulnerable adult abuse		✓	✓	✓	Md. Code Ann., Fam. Law §§ 14-101, 14-302
Gunshot wound				✓	Md. Code Ann., Health-Gen. § 20-703
Client is danger to others			✓		Md. Code Ann., Cts. & Jud. Proc. § 5-609

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁴ or who suspect that child abuse has occurred or will occur in Indian Country. Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney or mental health professional without waiving the victim’s right to keep those communications confidential? Maryland law does not directly address this question. The state recognizes several categories of privileged communications, including attorney and client,⁶ psychiatrist/psychologist and patient,⁷ professional counselor and client,⁸ psychiatric-mental health nursing specialist and client,⁹ and licensed social worker and client.¹⁰ However, the law does not indicate whether privilege is waived where a patient or client’s confidential information is shared between these professionals. In a case involving the attorney-client privilege, the Court of Appeals of Maryland held that privilege was not waived where an attorney invited a distraught client’s close friend to help facilitate his meetings with the client.¹¹ The court upheld the privilege because the friend was acting upon the attorney’s suggestion, and the client reasonably understood the communications to be confidential. It is possible, but by no means certain, that a court would use similar reasoning in cases where an advocate is invited to participate in a client’s meeting with an attorney or mental health professional.¹²

4

May an interpreter be present during a victim’s privileged communications with an attorney or mental health professional without waiving the victim’s privilege to keep those communications confidential? Maryland law does not explicitly address this question. The Court of Appeals of Maryland has held that the attorney-client privilege is not waived if a third party is present at the attorney’s direction, and the client intended for the communications to be confidential.¹³

5

Are a victim’s privileged communications with an attorney or mental health professional protected from disclosure after the victim’s death? A victim’s communications with an attorney will remain privileged, because Maryland law indicates that the attorney-client privilege survives the client’s death.¹⁴ Maryland law does not specifically address whether the psychiatrist/psychologist, professional counselor, psychiatric-mental health nursing specialist, or licensed social worker privileges survive the client or patient’s death.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁶ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Subpoenas must comply with Maryland's Confidentiality of Medical Records Act ¹⁷
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress and invasion of privacy. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Maryland has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁸ The law prohibits an individual from intentionally causing serious emotional distress by posting online an image of a person whose intimate parts are exposed or who is engaged in a sexual act while knowing that the person did not consent to disclosing the image and expected that the image would be kept private.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Md. Code Ann., Cts. & Jud. Proc. § 9-108.

⁷Md. Code Ann., Cts. & Jud. Proc. § 9-109.

⁸Md. Code Ann., Cts. & Jud. Proc. § 9-109.1.

⁹*Id.*

¹⁰Md. Code Ann., Cts. & Jud. Proc. § 9-121.

¹¹*Newman v. State*, 863 A. 2d 321 (Md. 2004).

¹²This question does not address physician-patient privilege because Maryland does not recognize this privilege. However, other laws, such as health information privacy laws and ethical duties of confidentiality, may protect the privacy of communications between patients and health care providers.

¹³*Id.*

¹⁴*Zook v. Pesce*, 91 A.3d 1114 (Md. 2014).

¹⁵Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁶45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁷See Md. Code Ann., Health-Gen. § 4-301 *et seq.*

¹⁸Md. Code Ann., Crim. Law § 3-809.



FAQs: Privacy Laws Impacting Survivors

Massachusetts

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims’ privacy rights. Depending on the facts of a specific case, such as a victim’s age or occupation, there may be additional laws that expand or limit a victim’s privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA’s Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Massachusetts law defines certain categories of individuals who *must* report abuse or injury to the department of children and families, department of elder affairs, disabled persons protection commission, or law enforcement. The chart below summarizes certain providers’ mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim’s personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Social Worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	Mass. Gen. Laws ch. 119, §§ 21, 51A
Elder abuse	✓	✓	✓	Mass. Gen. Laws ch. 19A, § 15
Disabled person abuse	✓	✓	✓	Mass. Gen. Laws. ch. 19C, §§ 1, 10
Firearm injury			✓	Mass. Gen. Laws ch. 112, § 12A
Sexual assault (non-identifying info only) ¹			✓	Mass. Gen. Laws ch. 112, § 12A1/2
Client is danger to others	✓	✓		Mass. Gen Laws ch. 123, § 36B

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?² Several laws govern mandatory reporting obligations in Indian Country³ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁴ or who suspect that child abuse has occurred or will occur in Indian Country.⁵ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁶

3

May a victim counselor be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Massachusetts law does not directly address this question. The state recognizes several categories of privileged communications, including sexual assault counselor and victim,⁷ domestic violence counselor and victim,⁸ human trafficking victim caseworker and victim,⁹ attorney and client,¹⁰ psychotherapist and patient,¹¹ social worker and client,¹² and allied mental health or human services professional and client.¹³ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a victim’s interests in legal or therapeutic services.¹⁴

4

May an interpreter be present during a victim’s privileged communications with a victim counselor, attorney, or mental health professional without waiving the victim’s right to keep those communications confidential? Yes, for communications with an attorney or victim counselor. Massachusetts law states that these privileges are not waived by the presence of a third party who is reasonably necessary to providing the services.¹⁵ Additionally, where a qualified interpreter is appointed to a person in court proceedings, the person has a privilege to prevent the qualified interpreter from disclosing confidential communications that were facilitated by the interpreter.¹⁶

5

Are a victim’s privileged communications with a victim counselor, attorney, or mental health professional protected from disclosure after the victim’s death? Yes, for a victim’s communications with an attorney, because Massachusetts law indicates that this privilege survives the client’s death.¹⁷ Massachusetts law does not directly address whether the victim counselor privilege or mental health professional privilege survives the patient’s death. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or Jane Doe Inc.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to a victim-witness assistant employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁸ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁹ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Massachusetts' health records privacy laws ²⁰
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress and invasion of privacy.²¹ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹Massachusetts law explicitly states that the health care provider’s report of sexual assault shall not include the victim’s name, address, or any other identifying information. Mass. Gen. Laws ch. 112, § 12A1/2.

²We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

³Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁴Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁵Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁶A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁷Mass. Gen. Laws ch. 233, § 20J.

⁸Mass. Gen. Laws ch. 233, § 20K.

⁹Mass. Gen. Laws ch. 233, § 20M.

¹⁰Mass. G. Evid. § 502. See, e.g., *Comm’r of Revenue v. Comcast Corp.*, 901 N.E.2d 1185 (Mass. 2009); *Matter of the Reorg. of Elec. Mut. Liab. Ins. Co. (Bermuda)*, 681 N.E.2d 838 (Mass. 1997).

¹¹Mass. Gen. Laws ch. 233, § 20B.

¹²Mass. G. Evid. § 507. See *Commonwealth v. Pelosi*, 805 N.E.2d 1, 5 n.6 (Mass. 2004).

¹³Mass. G. Evid. § 508. See *Commonwealth v. Vega*, 866 N.E.2d 892, 895 (Mass. 2007).

¹⁴This question does not address physician-patient privilege because Massachusetts does not recognize this privilege. However, other laws, such as health information privacy laws and ethical duties of confidentiality, may protect the privacy of communications between patients and health care providers.

¹⁵Mass. Gen. Laws ch. 233, §§ 20J, 20K, 20M; *Hanover Ins. Co. v. Rapo & Jepsen Ins. Servs., Inc.*, 870 N.E.2d 1105 (Mass. 2007).

¹⁶Mass. Gen. Laws ch. 221, § 92A; Mass. Gen. Laws ch. 221C, § 4.

¹⁷Mass. G. Evid. § 502(c); *In re John Doe Grand Jury Investigation*, 562 N.E.2d 69 (Mass. 1990).

¹⁸Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁹45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

²⁰See Mass. Gen. Laws ch. 111, §§ 70, 70E.

²¹Mass. Gen. Laws ch. 214, § 1B.



FAQs: Privacy Laws Impacting Survivors

Michigan

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Michigan law defines certain categories of individuals who *must* report abuse or injury to the department of human services, county department of social services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Social Worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	Mich. Comp. Laws § 722.623
Vulnerable adult abuse	✓	✓	✓	Mich. Comp. Laws § 400.11a
Violence-inflicted injury			✓	Mich. Comp. Laws § 750.411
Client is danger to others	✓	✓		Mich. Comp. Laws § 330.1946

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim's privileged communications with an attorney, psychologist, or physician without waiving the victim's right to keep those communications confidential? Michigan law does not directly address this question. The state recognizes several categories of privileged communications, including sexual assault/domestic violence counselor and victim,⁶ attorney and client,⁷ psychologist and patient,⁸ and physician and patient.⁹ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client's interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, psychologist, or physician without waiving the victim's right to keep those communications confidential? Yes, for communications with a victim counselor. Michigan law states that a communication is still considered confidential if disclosure to a third party is reasonably necessary to further the interests of the victim.¹⁰ Additionally, where a qualified interpreter is appointed to a Deaf person in court proceedings, the information that the qualified interpreter gathers from the Deaf person pertaining to any action or pending proceeding shall remain privileged.¹¹

5

Are a victim's privileged communications with a victim advocate, attorney, psychologist, or physician protected from disclosure after the victim's death? It depends. A victim's communications with an attorney¹² or physician¹³ will remain privileged, because Michigan law indicates that these privileges survive the death of the client or patient. The advocate¹⁴ and mental health professional¹⁵ privileges do not directly address this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state's coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁶ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have

no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁷ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Michigan's physician-patient privilege ¹⁸
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy, intrusion on the right to seclusion, public disclosure of private facts, wrongful appropriation of names or likenesses, false light, intentional infliction of emotional distress, and civil stalking. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 et seq. & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 et seq. & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Mich. Comp. Laws § 600.2157a.

⁷Mich. Comp. Laws § 767.5a(2).

⁸Mich. Comp. Laws § 333.18237.

⁹Mich. Comp. Laws § 600.2157.

¹⁰Mich. Comp. Laws § 600.2157a.

¹¹Mich. Comp. Laws § 393.506.

¹²Lorimer v. Lorimer, 83 N.W. 609, 611 (Mich. 1900).

¹³Drouillard v. Metro. Life Ins. Co., 310 N.W.2d 15, 19 (Mich. Ct. App. 1981).

¹⁴Mich. Comp. Laws § 600.2157a.

¹⁵Mich. Comp. Laws § 330.1750.

¹⁶Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁷45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁸Isidore Steiner, DPM, PC v. Bonanni, 807 N.W.2d 902, 904, 909 (Mich. Ct. App. 2011) (concluding that because Michigan law was more protective of non-party patients’ privacy rights, HIPAA did not preempt the physician-patient privilege, which prohibits disclosure).



FAQs: Privacy Laws Impacting Survivors

Minnesota

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Minnesota law defines certain categories of individuals who *must* report abuse or injury to a county or tribal social service agency or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. Programs funded by the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA) may not disclose a victim's personally identifying information without consent unless disclosure of the information is mandated by a statute or court order.

What must be reported?

Who is REQUIRED to report?

	Social services professional	Social worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	✓	Minn. Stat. § 626.556
Vulnerable adult abuse	✓	✓	✓	✓	Minn. Stat. § 626.5572
Firearm injury				✓	Minn. Stat. § 626.52
Patient is danger to others		✓	✓		Minn. Stat. §§ 148.975, 148B.1751; Minn. R. 8740.0330

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁵ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim's privileged communications with an attorney, mental health professional, or health care provider without waiving the victim's right to keep those communications confidential? It depends upon a variety of factors, including whether the conversation is intended to be confidential and whether the advocate's presence is necessary for the provision of legal, therapeutic, or medical services.⁶ Under Minnesota law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder's consent. These privileged communications include sexual assault counselor and victim, domestic abuse advocate and victim, attorney and client, physician and patient, registered nurse and patient, psychologist and patient, and licensed social worker and patient.⁷ These privilege laws apply to confidential communications only. Contact the Minnesota Coalition Against Sexual Assault or the Minnesota Coalition for Battered Women for more information regarding procedures for protecting privileged communications.

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, mental health professional, or health care provider without waiving the victim's right to keep those communications confidential? Yes. Minnesota law states that the presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.⁸

5

Are a victim's privileged communications with a victim advocate, attorney, mental health professional, or health care provider protected from disclosure after the victim's death? It depends. A victim's communications with an attorney,⁹ health care provider,¹⁰ or mental health professional¹¹ will remain privileged, because Minnesota law indicates that these privileges survive the death of the client or patient. The advocate privilege is silent as to this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹² identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have

no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹³ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by the Minnesota Health Records Act ¹⁴
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy,¹⁵ intentional infliction of emotional distress,¹⁶ and harassment.¹⁷ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶See *State v. Andring*, 342 N.W.2d 128 (Minn. 1984); *Schwartz v. Wenger*, 124 N.W.2d 489 (Minn. 1963).

⁷Minn. Stat. § 595.02.

⁸*Id.*

⁹11 Minn. Prac., Evidence § 501.04 (4th ed.).

¹⁰*In re Koenig's Estate*, 78 N.W.2d 364, 369 (Minn. 1956).

¹¹Minn Stat. § 595.02.

¹²Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹³45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹⁴Minn. Stat. §§ 144.291-144.298.

¹⁵See *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998).

¹⁶See *Hubbard v. United Press Int'l Inc.*, 330 N.W.2d 428 (Minn. 1983).

¹⁷Minn. Stat. § 609.748.



FAQs: Privacy Laws Impacting Survivors

Mississippi

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Mississippi law requires any person to report child abuse, vulnerable adult abuse, and trafficking of minors to the department of human services. Further, health care practitioners, clergy members, teaching or child care providers, law enforcement officers, and commercial image processors must report sex crimes committed by an adult against a minor who is under age 16. Additionally, health care providers must report gunshot and knife wounds to law enforcement.

What must be reported?

Who is REQUIRED to report?

	Who is REQUIRED to report?		Citation
	Any person	Health care practitioner	
Child abuse	✓	✓	Miss. Code Ann. § 43-21-353
Sex crimes against minors		✓	Miss. Code Ann. § 97-5-51
Trafficking of minors	✓	✓	Miss. Code Ann. § 97-3-54.1
Vulnerable adult abuse	✓	✓	Miss. Code Ann. § 43-47-7
Gunshot or knife wound		✓	Miss. Code Ann. § 45-9-31

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, therapist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the client’s interests in medical, legal, or therapeutic services, and the communications were intended to be confidential. Under Mississippi law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws only apply to confidential communications. The physician and psychotherapist–patient privileges⁶ state that a communication is still confidential if a third party is present “to further the interest of the patient in the consultation, examination, or interview.” Similarly, a communication is still confidential under the attorney–client privilege if information is disclosed to a third party to further the rendition of legal services to the client.⁷

4

May an interpreter be present during a victim’s privileged communications with an attorney, therapist, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Mississippi, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.⁸ Additionally, where an interpreter is appointed to a person as part of court proceedings, the presence of an interpreter does not affect the privileged nature of any communication.⁹

5

Are a victim’s privileged communications with an attorney, therapist, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹⁰

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹¹ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct

that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹² Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Mississippi's physician-patient privilege ¹³
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks a about patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy or negligent or intentional infliction of emotional distress.¹⁴ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Miss. R. Evid. 503.

⁷Miss. R. Evid. 502.

⁸Miss. R. Evid. 502, 503.

⁹Miss. Code Ann. § 9-21-77.

¹⁰Miss. R. Evid. 502, 503; Miss. Code Ann. § 73-30-17.

¹¹Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹²45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹³See Miss. R. Evid. 503.

¹⁴See *Prescott v. Bay St. Louis Newspapers, Inc.*, 497 So. 2d 77, 79 (Miss. 1986) (invasion of privacy); *Leaf River Forest Products, Inc. v. Ferguson*, 662 So. 2d 648, 659 (Miss. 1995) (negligent and intentional infliction of emotional distress).



FAQs: Privacy Laws Impacting Survivors

Missouri

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Missouri law defines certain categories of individuals who *must* report abuse or injury to the Children's Division, the Department of Health and Senior Services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Any person	Social worker	Mental health professional	Health care provider	Citation
Child abuse		✓	✓	✓	Mo. Rev. Stat. § 210.115
Vulnerable adult abuse	✓	✓	✓	✓	Mo. Rev. Stat. § 192.2405
Gunshot wound				✓	Mo. Rev. Stat. § 578.350
Patient is danger to self or others		✓	✓	✓	Mo. Rev. Stat. § 632.300; Bradley v. Ray, 904 S.W.2d 302 (Mo. Ct. App. 1995)

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Missouri recognizes several categories of privileged communications, including attorney and client,⁶ physician and patient,⁷ licensed psychologist and patient,⁸ licensed professional counselor and client,⁹ licensed social worker and client,¹⁰ and licensed marital and family therapist and client.¹¹ The presence of third persons who are not essential to the transmission of information or whose presence is not reasonably necessary for the protection of the patient or client’s interests could waive these privileges.¹²

4

May an interpreter be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s privilege to keep those communications confidential? Yes, if the interpreter is reasonably necessary for the transmission of the privileged communication.¹³ Additionally, Missouri law states that privileged communications continue to be protected as privileged communications when an interpreter for the Deaf is used.¹⁴ Similarly, interpreters for non-English speakers cannot be compelled to testify as to information that is protected by attorney-client privilege.¹⁵

5

Are a victim’s privileged communications with an attorney, mental health professional, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹⁶

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator.

Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy or negligent or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Mo. Rev. Stat. § 491.060.

⁷*Id.*

⁸*Id.*; Mo. Rev. Stat. § 337.055.

⁹Mo. Rev. Stat. § 337.540.

¹⁰Mo. Rev. Stat. § 337.636.

¹¹Mo. Rev. Stat. § 337.736.

¹²See *State v. Fingers*, 564 S.W.2d 579 (Mo. Ct. App. 1978) (presence of client's father waived attorney-client privilege).

¹³See *State v. Longo*, 789 S.W.2d 812 (Mo. Ct. App. 1990).

¹⁴Mo. Rev. Stat. § 209.339.

¹⁵Mo. Rev. Stat. § 476.803.

¹⁶Mo. Rev. Stat. §§ 337.636 (social worker-client privilege), 337.736 (marital and family therapist-client privilege); *Estate of Hebbeler*, 875 SW 2d 163 (Mo. Ct. App. 1994) (attorney-client privilege); *Leritz v. Koehr*, 844 S.W.2d 583 (Mo. Ct. App. 1993) (physician-patient privilege).

¹⁷Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.



FAQs: Privacy Laws Impacting Survivors

Montana

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Montana law defines certain categories of individuals who *must* report abuse or injury to the department of public health and human services, county attorney, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Attorney ¹	Social Worker	Mental health professional	Health care provider	Citation
Child abuse		✓	✓	✓	Mont. Code Ann. § 41-3-201
Elder abuse	✓	✓	✓	✓	Mont. Code Ann. § 52-3-811
Abuse of person w/ developmental disability	✓	✓	✓	✓	Mont. Code Ann. § 52-3-811
Gunshot or stab wound				✓	Mont. Code Ann. § 37-2-302
Client is danger to others		✓	✓	✓	Mont. Code Ann. § 27-1-1102

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?² Several laws govern mandatory reporting obligations in Indian Country³ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁴ or who suspect that child abuse has occurred or will occur in Indian Country.⁵ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁶

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Montana law does not directly address this question. The state recognizes several categories of privileged communications, including advocate and victim,⁷ attorney and client,⁸ mental health professional and client,⁹ and physician and patient.¹⁰ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client’s interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim’s privileged communications with an advocate, attorney, psychologist, or physician without waiving the victim’s privilege to keep those communications confidential? Montana law does not directly address this question, except where a court has appointed a qualified interpreter for a Deaf party or witness. Montana requires courts to appoint qualified interpreters to interpret proceedings and preparations with the Deaf person’s attorney.¹¹ If a qualified interpreter interprets privileged communications (such as those discussed in Question 3) for the Deaf person, the privilege extends to the interpreter.¹²

5

Are a victim’s privileged communications with an attorney, therapist, or physician protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney,¹³ mental health professional,¹⁴ or physician¹⁵ will remain privileged, because Montana law indicates that these privileges survive the death of the client or patient. In contrast, Montana law provides that the advocate privilege terminates upon the victim’s death.¹⁶

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have

no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

Are a victim's privileged communications with an advocate, attorney, mental health professional, or physician protected from disclosure after the victim's death? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Montana's medical privacy laws ¹⁹ and constitutional privacy protections for certain health care information ²⁰
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and intentional or negligent infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹There is an exemption from mandatory reporting for attorneys where the attorney acquired knowledge of the facts required to be reported from a client, and the attorney-client privilege applies. MCA § 52-3-811(3)(f).

²We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

³Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁴Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁵Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁶A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁷Mont. Code Ann. § 26-1-812.

⁸Mont. Code Ann. § 26-1-803.

⁹Mont. Code Ann. § 26-1-807.

¹⁰Mont. Code Ann. § 26-1-805.

¹¹Mont. Code Ann. § 49-4-503.

¹²Mont. Code Ann. § 49-4-511.

¹³In re Estate of Mattila, 718 P.2d 343, 344 (Mont. 1986).

¹⁴See Mont. Code Ann. § 26-1-807 (privileged communications between a mental health professional and a client are placed on the same basis as those between an attorney and a client).

¹⁵Mont. Code Ann. § 50-16-522.

¹⁶Mont. Code Ann. § 26-1-812.

¹⁷Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁹Mont. Code Ann. §§ 50-16-535, 50-16-801 *et seq.*

²⁰State v. Nelson, 941 P.2d 441, 448 (Mont. 1997); Malcomson v. Liberty Nw., 339 P.3d 1235, 1240-41 (Mont. 2014).



FAQs: Privacy Laws Impacting Survivors

Nebraska

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Nebraska law defines certain categories of individuals who *must* report abuse or injury to the Department of Health and Human Services or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?			Citation
	Any person	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	Neb. Rev. Stat. § 28-711
Vulnerable adult abuse		✓	✓	Neb. Rev. Stat. § 28-372
Injury from violence			✓	Neb. Rev. Stat. § 28-902
Client is danger to self or others		✓		Neb. Rev. Stat. § 38-2137

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim's privileged communications with an attorney, professional counselor, or physician without waiving the victim's right to keep those communications confidential? Nebraska courts have not directly addressed this issue. The state recognizes several categories of privileged communications, including victim advocate and victim,⁶ attorney and client,⁷ physician and patient,⁸ and professional counselor and client.⁹ Contact your state coalition for more information regarding procedures for protecting privileged communications.

4

May an interpreter be present during a victim's privileged communications with an advocate, attorney, professional counselor, or physician without waiving the victim's privilege to keep those communications confidential? Probably yes, if the interpreter is needed to relay the communications. In Nebraska, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party's presence is reasonably necessary for transmission of the communications.¹⁰ Additionally, Nebraska law provides that when a Deaf person communicates through an interpreter under circumstances in which the communication would otherwise be privileged, the privilege applies to the interpreter as well.¹¹

5

Are a victim's privileged communications with an advocate, attorney, professional counselor, or physician protected from disclosure after the victim's death? It depends. A victim's communications with an attorney, professional counselor, or physician will remain privileged, because Nebraska law indicates that these privileges survive the death of the client or patient.¹² The advocate privilege is silent as to this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state's coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹³ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁴ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include appropriation of name or likeness, intrusion upon seclusion, or false light.¹⁵ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OYW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Neb. Rev. Stat. § 29-4303.

⁷ Neb. Rev. Stat. § 27-503.

⁸ Neb. Rev. Stat. § 27-504.

⁹ *Id.*

¹⁰ Neb. Rev. Stat. §§ 27-503, 27-504, 29-4302.

¹¹ Neb. Rev. Stat. § 20-158.

¹² Neb. Rev. Stat. §§ 27-503, 27-504.

¹³ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁴ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁵ See Neb. Rev. Stat. §§ 20-202, 20-203, and 20-204, respectively.



FAQs: Privacy Laws Impacting Survivors

Nevada

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Nevada law defines certain categories of individuals who *must* report abuse or injury to Child Protective Services, Department of Health and Human Services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?				Citation
	Attorney	Social worker	Mental health professional	Health care provider	
Child abuse	✓	✓	✓	✓	Nev. Rev. Stat. § 432B.220
Elder abuse		✓	✓	✓	Nev. Rev. Stat. § 200.5093
Vulnerable adult abuse		✓	✓	✓	Nev. Rev. Stat. § 200.50935
Firearm or knife injury				✓	Nev. Rev. Stat. § 629.041

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim advocate be present during a victim's privileged communications with an attorney, mental health professional, or doctor without waiving the victim's right to keep those communications confidential? Yes, but only if the victim advocate is present to further the victim's interests in medical, legal, or therapeutic services, or the advocate is needed to relay the communications. Under Nevada law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder's consent. These privilege laws apply to confidential communications only. The victim advocate,⁶ attorney,⁷ psychologist,⁸ marriage and family therapist,⁹ clinical professional counselor,¹⁰ social worker,¹¹ and doctor¹² privileges all recognize that a communication is still considered confidential if a third party is present to further the interest of the client or patient in the consultation, or if the third party is reasonably necessary for transmission of the communications.

4

May an interpreter be present during a victim's privileged communications with an advocate, attorney, mental health professional, or doctor without waiving the victim's privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Nevada, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party's presence is reasonably necessary for transmission of the communications.¹³ Further, although privilege is typically waived if the holder of the privilege voluntarily discloses any significant part of the matter, privilege is not waived if the disclosure is made to an interpreter employed to facilitate communications.¹⁴

5

Are a victim's privileged communications with an advocate, attorney, mental health professional, or doctor protected from disclosure after the victim's death? Yes, because Nevada law indicates that these privileges may be claimed by the personal representative of a deceased client or patient.¹⁵

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁶ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁷ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and intentional and/or negligent infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Nevada has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁸ It is unlawful to electronically disseminate an intimate image of another person with intent to harass, harm, or terrorize, if the other person did not consent to the dissemination and had a reasonable expectation that the image would be kept private.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVV technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Nev. Rev. Stat. §§ 49.2546, 2547.

⁷ Nev. Rev. Stat. §§ 49.055, 49.095.

⁸ Nev. Rev. Stat. §§ 49.207, 49.209.

⁹ Nev. Rev. Stat. §§ 49.246, 49.247.

¹⁰ Nev. Rev. Stat. §§ 49.2502, 49.2504.

¹¹ Nev. Rev. Stat. §§ 49.251, 49.252.

¹² Nev. Rev. Stat. §§ 49.215, 49.225.

¹³ Nev. Rev. Stat. §§ 49.055, 49.207, 49.215, 49.246, 49.251, 49.2502.

¹⁴ Nev. Rev. Stat. § 49.385.

¹⁵ Nev. Rev. Stat. §§ 49.095, 49.105 (attorney); Nev. Rev. Stat. §§ 49.209, 49.211 (psychologist); Nev. Rev. Stat. §§ 49.225, 49.235 (doctor); Nev. Rev. Stat. §§ 49.2547, 49.2548 (victim advocate).

¹⁶ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁷ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁸ Nevada Assembly Bill 49 (effective Oct. 1, 2015), <https://legiscan.com/NV/text/AB49/id/1241013/Nevada-2015-AB49-Enrolled.pdf>.



FAQs: Privacy Laws Impacting Survivors

New Hampshire

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? New Hampshire law requires any person to report child abuse or incapacitated adult abuse to the Department of Health and Human Services or law enforcement. Also, any person who knowingly treats or assists another for a gunshot wound, or for any other injury believed to be caused by a criminal act, has a duty to report the injury. Certain exceptions apply. Additionally, mental health professionals have a duty to report where their patients make certain violent threats. Read the statutes below for definitions of abuse, reporting procedures, and any exceptions to mandatory reporting obligations.

What must be reported?

Who is REQUIRED to report?

	Any person	Health care provider	Mental health professional	Citation
Child abuse	✓	✓	✓	N.H. Rev. Stat. Ann. § 169-C:29
Incapacitated adult abuse	✓	✓	✓	N.H. Rev. Stat. Ann. § 161-F:46.
Client is danger to others			✓	N.H. Rev. Stat. Ann. §§ 329-B:29, 330-A:35
Injury from firearm or criminal act (excluding sexual assault)	✓	✓	✓	N.H. Rev. Stat. Ann. § 631:6

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim's privileged communications with an attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Yes, if the counselor is covered by New Hampshire's victim counselor privilege,⁶ and the other provider's communications with the victim are also privileged. Under New Hampshire law, privilege is not waived where confidential information regarding an individual is shared between parties who have a privileged relationship with the individual.⁷ The presence of a victim counselor during a victim's communications with an attorney,⁸ psychologist,⁹ certified pastoral counselor,¹⁰ mental health professional,¹¹ or physician¹² will not waive the victim's rights to confidentiality because all parties have privilege.

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, mental health professional, or physician without waiving the victim's privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In New Hampshire, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party's presence is reasonably necessary for transmission of the communications.¹³ Additionally, whenever a Deaf person communicates through an interpreter to any person under such circumstances that the communication would be privileged, the privilege applies to the interpreter as well.¹⁴

5

Are a victim's privileged communications with a victim counselor, attorney, mental health professional, or physician protected from disclosure after the victim's death? It depends. A client's communications with an attorney will remain privileged, because New Hampshire law indicates that this privilege survives the client's death.¹⁵ By contrast, New Hampshire law explicitly states that the victim counselor privilege terminates upon the victim's death.¹⁶ The physician and mental health professional privileges are silent as to this issue.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty.

Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information from health care providers *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Warrants for documents protected by New Hampshire's physician-patient privilege must comply with several procedural requirements ¹⁹
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and negligent or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶N.H. Rev. Stat. Ann. § 173-C:2.

⁷N.H. R. Evid. 510.

⁸N.H. R. Evid. 502.

⁹N.H. R. Evid. 503.

¹⁰*Id.*

¹¹N.H. Rev. Stat. Ann. § 330-A:32.

¹²N.H. R. Evid. 503.

¹³N.H. Rev. Stat. Ann. § 173-C:2; N.H. R. Evid. 502; N.H. Rev. Stat. Ann. § 330-A:32 (stating that confidential communications between mental health professionals and their clients are placed on the same basis as those between attorney and client); N.H. R. Evid. 503 (stating that confidential communications of physicians and psychotherapists are placed on the same basis as those between attorney and client).

¹⁴N.H. Rev. Stat. Ann. § 521-A:11.

¹⁵N.H. R. Evid. 502.

¹⁶N.H. Rev. Stat. Ann. § 173-C:2.

¹⁷Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁹In re Search Warrant for Medical Records of C.T., 999 A.2d 210 (N.H. 2010).



FAQs: Privacy Laws Impacting Survivors

New Jersey

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? New Jersey law defines certain categories of individuals who *must* report abuse or injury to the Department of Health and Human Services or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?				Citation
	Any person	Social worker	Health care provider	Mental health professional	
Child abuse	✓	✓	✓	✓	N.J. Stat. Ann. § 9:6-8.10
Abuse of institutionalized elder		✓	✓	✓	N.J. Stat. Ann. § 52:27G-7.1
Vulnerable adult abuse		✓	✓	✓	N.J. Stat. Ann. § 52:27D-409
Client is danger to self or others		✓	✓	✓	N.J. Stat. Ann. § 2A:62A-16
Injury from firearm, explosive, or weapon			✓		N.J. Stat. Ann. § 2C:58-8

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim's privileged communications with an attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? It depends upon a variety of factors, including whether the conversation is intended to be confidential and whether the victim counselor's presence is necessary to advance the provision of legal, therapeutic, or medical services. New Jersey recognizes several categories of privileged communications, including victim counselor and victim,⁶ attorney and client,⁷ psychologist and client,⁸ marriage and family therapist and client,⁹ and physician and patient.¹⁰ Although the presence of a third party usually will destroy privilege, this general rule may not apply where the communication was intended to be confidential in spite of the third party's presence, such as where the third party is necessary to advance the provision of services.¹¹

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, mental health professional, or physician without waiving the victim's privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In New Jersey, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party's presence is reasonably necessary for transmission of the communications.¹² Additionally, where a Deaf person is a party or witness in a case, New Jersey requires courts to appoint qualified interpreters to interpret proceedings and assist counsel in preparation. Information that a qualified interpreter gathers from the Deaf person related to the proceeding is privileged.¹³

5

Are a victim's privileged communications with victim counselor, attorney, mental health professional, or physician protected from disclosure after the victim's death? It depends. A victim's communications with a victim counselor,¹⁴ attorney,¹⁵ or mental health professional¹⁶ will remain privileged, because New Jersey law indicates that these privileges survive the death of the client or patient. The physician privilege is silent as to this issue.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by New Jersey's physician-patient privilege ¹⁹
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy (such as intrusion or public disclosure of private facts) or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, New Jersey has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is unlawful for a person to disclose an image of another person whose intimate parts are exposed or who is engaged in a sexual act, without that person’s consent.²⁰

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ N.J. Stat. Ann. § 2A:84A-22.15.

⁷ N.J. Stat. Ann. § 2A:84A-20.

⁸ N.J. Stat. Ann. § 45:14B-28 (communications between a psychologist and client in the course of the practice of psychology are placed on the same basis as those provided between attorney and client).

⁹ N.J. Stat. Ann. § 45:8B-29.

¹⁰ N.J. Stat. Ann. § 2A:84A-22.2.

¹¹ See *O’Boyle v. Borough of Longport*, 94 A.3d 299 (N.J. 2014).

¹² N.J. Stat. Ann. §§ 2A:84A-22.2, 2A:84A-22.14; *State v. Davis*, 561 A.2d 1082

(N.J. 1989). Confidential communications between psychologists and clients are placed on the same basis as those provided between attorney and client. N.J. Stat. Ann. § 45:14B-28.

¹³ N.J. Stat. Ann. § 34:1-69.17.

¹⁴ N.J. Stat. Ann. § 2A:84A-22.15.

¹⁵ See *Rivard v. Am. Home Prods., Inc.*, 917 A.2d 286 (N.J. Super. Ct. App. Div. 2007) (“There is no time limit on the attorney-client privilege.”).

¹⁶ See *Correia v. Sherry*, 760 A.2d 1156 (N.J. Super. Ct. Law Div. 2000).

¹⁷ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁹ See N.J. Stat. Ann. § 2A:84A-22.2; *Crescenzo v. Crane*, 796 A.2d 283 (N.J. Super. Ct. App. Div. 2002).

²⁰ N.J. Stat. Ann. § 2C:14-9.



FAQs: Privacy Laws Impacting Survivors

New Mexico

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1 **What mandatory reporting laws should I be aware of in my jurisdiction?** New Mexico law requires any person to report child abuse or incapacitated adult abuse to the Children, Youth, and Families Department, the Aging and Long-term Services Department, local law enforcement, or tribal law enforcement. Read the statutes for definitions of abuse,¹ reporting procedures, and any exceptions to mandatory reporting obligations.

What must be reported?	Who is REQUIRED to report?	
	Any person	Citation
Child abuse	✓	N.M. Stat. Ann. § 32A-4-3
Incapacitated adult abuse	✓	N.M. Stat. Ann. § 27-7-30

2 **If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?**² Several laws govern mandatory reporting obligations in Indian Country³ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁴ or who suspect that child abuse has occurred or will occur in Indian Country.⁵ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁶

3

May a victim counselor be present during a victim's privileged communications with an attorney, psychotherapist, or physician without waiving the victim's right to keep those communications confidential? New Mexico courts have not directly addressed this issue. The state recognizes several categories of privileged communications, including victim counselor and victim,⁷ attorney and client,⁸ physician and patient,⁹ and psychotherapist and patient.¹⁰ Contact your state coalition for more information regarding procedures for protecting privileged communications.

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, psychotherapist, or physician without waiving the victim's privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In New Mexico, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party is present in furtherance of the purpose of the communications.¹¹ Additionally, New Mexico law provides that when a Deaf person communicates through an interpreter under such circumstances that the communication would be privileged, the privilege applies to the interpreter as well.¹²

5

Are a victim's privileged communications with a victim counselor, attorney, psychotherapist, or physician protected from disclosure after the victim's death? It depends. A victim's communications with an attorney, physician, or psychotherapist will remain privileged, because New Mexico law indicates that these privileges survive the death of the client or patient.¹³ The victim counselor privilege is silent as to this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁴ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁵

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by New Mexico's physician-patient privilege ¹⁶
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice request that the website remove it.

In addition, New Mexico has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁷ It is unlawful to distribute or publish sensitive images (defined as images of genitals, a woman’s breast, or sexual acts) of a person; without that person’s consent; with the intent to harass, humiliate, or intimidate; where the conduct is such that it would cause a reasonable person to suffer substantial emotional distress.

¹ See N.M. Stat. Ann. § 32A-4-2 for the state’s definitions of “abused child” and “neglected child.” The statute defines abuse and neglect in terms of action or inaction by the child’s parent, guardian, or custodian.

² We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

³ Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁴ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁵ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁶ A list of OVV technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁷ N.M. Stat. Ann. § 31-25-3.

⁸ N.M. R. Evid. § 11-503.

⁹ N.M. R. Evid. § 11-504.

¹⁰ *Id.*

¹¹ N.M. Stat. Ann. § 31-25-2; N.M. R. Evid. 503, 504.

¹² N.M. Stat. Ann. § 38-9-10.

¹³ N.M. R. Evid. §§ 11-503, 11-504.

¹⁴ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁵ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁶ See N.M. R. Evid. § 11-504; N.M. R. Civ. Pro. 1-045.

¹⁷ H.B. 142, 2015 Reg. Sess. (N.M. 2015), <http://www.nmlegis.gov/Sessions/15%20Regular/final/HB0142.pdf>.



FAQs: Privacy Laws Impacting Survivors

New York

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? New York law defines certain categories of individuals who *must* report abuse or injury to the Statewide Central Register of Child Abuse and Maltreatment, the Vulnerable Persons' Central Register, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?			Citation
	Social worker	Health care provider	Mental health professional	
Child abuse	✓	✓	✓	N.Y. Soc. Serv. Law § 413
Vulnerable adult abuse	✓	✓	✓	N.Y. Soc. Serv. Law §§ 488, 491
Abuse of persons in residential care facilities	✓	✓	✓	N.Y. Pub. Health Law § 2803-d
Client is danger to self or others	✓	✓	✓	N.Y. Mental Hyg. Law § 9.46
Firearm or serious knife injury		✓		N.Y. Penal Law § 265.25

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim’s privileged communications with an attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? It depends on whether the communication was intended to be confidential and whether the victim’s expectation of confidentiality was reasonable. New York recognizes several categories of privileged communications, including rape crisis counselor and client,⁶ attorney and client,⁷ physician and patient,⁸ nurse and patient,⁹ psychologist and client,¹⁰ and social worker and client.¹¹ Regarding the attorney–client privilege, the New York Court of Appeals has ruled that the scope of the privilege depends on whether the client had a reasonable expectation of confidentiality under the circumstances.¹² Similarly, the Court has ruled that the presence of a third person during a communication with a physician does not waive privilege if, in the light of all the surrounding circumstances, the communication was intended to be confidential.¹³

4

May an interpreter be present during a victim’s privileged communications with a rape crisis counselor, attorney, mental health professional, or health care provider without waiving the victim’s privilege to keep those communications confidential? New York law does not directly address this question. The New York Court of Appeals has held that communications made to an attorney through a hired interpreter, or one serving as an agent of either the attorney or client to facilitate communication, generally will be privileged.¹⁴

5

Are a victim’s privileged communications with a rape crisis counselor, attorney, mental health professional, or health care provider protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney,¹⁵ physician or nurse,¹⁶ psychologist,¹⁷ and rape crisis counselor¹⁸ will remain privileged, because New York law indicates that these privileges survive the death of the client or patient. The licensed social worker–client privilege¹⁹ is silent as to this issue.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance²⁰ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.²¹ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by New York’s physician-patient privilege ²²
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress and invasion of privacy.²³ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ N.Y. C.P.L.R. § 4510.

⁷ N.Y. C.P.L.R. § 4503.

⁸ N.Y. C.P.L.R. § 4504.

⁹ *Id.*

¹⁰ N.Y. C.P.L.R. § 4507.

¹¹ N.Y. C.P.L.R. § 4508.

¹² *People v. Osorio*, 549 N.E.2d 1183 (N.Y. 1989).

¹³ *People v. Decina*, 138 N.E.2d 799 (N.Y. 1956).

¹⁴ *People v. Osorio*, 549 N.E.2d 1183 (N.Y. 1989).

¹⁵ *In re Estate of Trotta*, 416 N.Y.S.2d 179 (Sur. Ct. 1979).

¹⁶ *Prink v. Rockefeller Ctr., Inc.*, 398 N.E.2d 517 (1979).

¹⁷ N.Y. C.P.L.R. § 4507 defines the psychologist-patient privilege as equivalent to the attorney-client privilege. Accordingly, the common law decisions holding that attorney-client privilege survives the client’s death apply to the psychologist-patient privilege.

¹⁸ See N.Y. C.P.L.R. § 4510 (privilege may be waived by the personal representative of a deceased client).

¹⁹ N.Y. C.P.L.R. § 4508.

²⁰ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

²¹ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

²² See N.Y. C.P.L.R. § 4504; *In re Grand Jury Investigation in N.Y. County*, 779 N.E.2d 173 (N.Y. 2002); *In re Antonia E.*, 838 N.Y.S.2d 872 (Fam. Ct. 2007).

²³ N.Y. Civ. Rights Law §§ 50, 51.



FAQs: Privacy Laws Impacting Survivors

North Carolina

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? North Carolina law requires any person to report child abuse¹ or disabled adult abuse² to the department of social services. Read the statutes for definitions of abuse, reporting procedures, and any exceptions to mandatory reporting obligations. Programs funded by the Violence Against Women Act (VAWA) should note that VAWA-funded entities may disclose a victim's personally identifying information without consent only if disclosure of the information is mandated by a statute or court order. In addition to North Carolina's mandatory reporting statutes, health care providers have a separate obligation to report certain injuries to law enforcement, including firearm injuries, poisonings, wounds caused by knives or other sharp instruments if a criminal act was involved, and grave bodily harm or grave illness if it appears that the injury resulted from a criminal act of violence.³

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?⁴ Several laws govern mandatory reporting obligations in Indian Country⁵ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁶ or who suspect that child abuse has occurred or will occur in Indian Country.⁷ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁸

3

May an advocate be present during a victim's privileged communications with an attorney, mental health professional, or health care provider without waiving the victim's right to keep those communications confidential? North Carolina law does not directly address this question. North Carolina recognizes several categories of privileged communications, including domestic violence or sexual assault advocate and victim,⁹ attorney and client,¹⁰ physician and patient,¹¹ nurse and patient,¹² psychologist and client,¹³ social worker and client,¹⁴ and counselor and client.¹⁵ However, the law does not indicate whether privilege is waived where a third party (such as an advocate) is present during a privileged conversation to further a patient or client's interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim’s privileged communications with an advocate, attorney, mental health professional, or health care provider without waiving the victim’s privilege to keep those communications confidential? Although North Carolina’s courts have not directly addressed this issue, the state’s standards for language access services in the courts indicate that the presence of an interpreter does not waive privilege.¹⁶ Additionally, North Carolina requires courts to appoint qualified interpreters for Deaf persons in certain civil, criminal, and administrative proceedings. If a qualified interpreter interprets privileged communications (such as those discussed in Question 3) for the Deaf person, the privilege extends to the interpreter.¹⁷

5

Are a victim’s privileged communications with an advocate, attorney, mental health professional, or health care provider protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney¹⁸ or physician¹⁹ will remain privileged, because North Carolina law indicates that these privileges survive the death of the client or patient. In contrast, North Carolina law states that privilege does not survive death with respect to communications between victims and agents of rape counseling centers and domestic violence programs.²⁰ North Carolina law is silent regarding whether the psychologist,²¹ social worker,²² counselor,²³ or nurse²⁴ privileges survive death. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance²⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.²⁶ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress²⁷ and invasion of privacy.²⁸ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, North Carolina has a criminal nonconsensual pornography (aka “revenge porn”) statute. A person is guilty of disclosure of private images if: (1) the person discloses an image of another person with intent to coerce, harass, intimidate, demean, humiliate, or cause financial loss; (2) the depicted person is identifiable; (3) the depicted person's intimate parts are exposed or the depicted person is engaged in sexual conduct; (4) the depicted person did not consent to the disclosure; and (5) the depicted person had a reasonable expectation of privacy in the image.²⁹ The statute also provides a civil cause of action for the harmed individual, who may pursue damages.

¹ N.C. Gen. Stat. § 7B-301.

² N.C. Gen. Stat. § 108A-102.

³ N.C. Gen. Stat. § 90-21.20.

⁴ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

⁵ Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁶ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁷ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁸ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁹ N.C. Gen. Stat. § 8-53.12.

¹⁰ *In re Investigation of the Death of Miller*, 584 S.E.2d 772, 776 (N.C. 2003).

¹¹ N.C. Gen. Stat. § 8-53.

¹² N.C. Gen. Stat. § 8-53.13.

¹³ N.C. Gen. Stat. § 8-53.3.

¹⁴ N.C. Gen. Stat. § 8-53.7.

¹⁵ N.C. Gen. Stat. § 8-53.8.

¹⁶ North Carolina Standards for Language Access Services in the North Carolina

Court System § 11.10 (Apr. 29, 2015), www.nccourts.org/LanguageAccess/Documents/NC_Standards_for_Language_Access.pdf.

¹⁷ N.C. Gen. Stat. § 8B-5.

¹⁸ *In re Miller*, 584 S.E.2d at 779.

¹⁹ N.C. Gen. Stat. § 8-53.

²⁰ N.C. Gen. Stat. § 8-53.12.

²¹ N.C. Gen. Stat. § 8-53.3.

²² N.C. Gen. Stat. § 8-53.7.

²³ N.C. Gen. Stat. § 8-53.8.

²⁴ N.C. Gen. Stat. § 8-53.13.

²⁵ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

²⁶ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

²⁷ See *Hall v. Salisbury Post*, 372 S.E.2d 711 (N.C. 1988).

²⁸ See *Miller v. Brooks*, 472 S.E.2d 350 (N.C. Ct. App. 1996).

²⁹ N.C. Gen. Stat. § 14-190.5A (effective Dec. 1, 2015).



FAQs: Privacy Laws Impacting Survivors

North Dakota

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? North Dakota law defines certain categories of individuals who *must* report abuse or injury to the department of human services or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Social Worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	N.D. Cent. Code § 50-25.1-03
Vulnerable adult abuse	✓	✓	✓	N.D. Cent. Code § 50-25.2-03
Injury from criminal act			✓	N.D. Cent. Code § 43-17-41

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the victim’s interests in medical, legal, or therapeutic services. Under North Dakota law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The attorney–client privilege recognizes that a communication is still considered confidential if a third party is present to further the rendition of legal services.⁶ Similarly, the physician–patient and mental health professional–patient privileges recognize that a communication is still considered confidential if a third party is present to further the interest of the patient in the consultation.⁷

4

May an interpreter be present during a victim’s privileged communications with an advocate, attorney, mental health professional, or physician without waiving the victim’s privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In North Dakota, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.⁸ Additionally, where a Deaf person is a party in a case, North Dakota requires courts to appoint qualified interpreters to interpret proceedings. Whenever a Deaf person communicates through an interpreter under such circumstances that the communication would be privileged, the privilege applies to the interpreter as well.⁹

5

Are a victim’s privileged communications with an advocate, attorney, mental health professional, or physician protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney, mental health professional, or physician will remain privileged, because North Dakota law indicates that these privileges survive the death of the client or patient.¹⁰ The advocate privilege is silent as to this issue.¹¹

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹² identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹³ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by North Dakota's physician-patient privilege ¹⁴
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims in your jurisdiction. Civil causes of action against the person who posted the content may include intentional and negligent infliction of emotional distress.¹⁵ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, North Dakota has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁶ It is unlawful to intentionally distribute an intimate image of an individual if the individual has not consented, the individual had a reasonable expectation of privacy in the image, and the individual suffered emotional distress or harm. The statute also provides a civil cause of action for the harmed individual, who may pursue damages and other remedies and seek a restraining order or injunction to cease distribution of the image.¹⁷

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶N.D. R. Evid. 502.

⁷N.D. R. Evid. 503.

⁸N.D. R. Evid. 502, 503.

⁹N.D. Cent. Code § 28-33-06.

¹⁰N.D. R. Evid. 502, 503.

¹¹N.D. Cent. Code § 14-07.1-18.

¹²Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹³45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁴See N.D. R. Evid. 503; N.D. R. Civ. Pro. 45.

¹⁵See *Muchow v. Lindblad*, 435 N.W.2d 918 (N.D. 1989) (recognizing cause of action for negligent and intentional infliction of emotional distress).

¹⁶N.D. Cent. Code § 12.1-17-07.2.

¹⁷N.D. Cent. Code § 32-03-58.



FAQs: Privacy Laws Impacting Survivors

Northern Mariana Islands

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Northern Mariana Islands law defines certain categories of individuals who *must* report abuse or injury to law enforcement or the Department of Public Safety. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Any person	Social Worker	Mental health professional	Health care provider	Citation
Child abuse		✓	✓	✓	6 CMC § 5313
Injury resulting from violence	✓	✓	✓	✓	6 CMC § 3105

2

If I am working on federal property or in a federal facility, what authorities should I consult to determine my mandatory reporting obligations? In addition to the mandatory reporting laws discussed in question 1, individuals working on federal lands or in federal facilities should consult the federal Victims of Child Abuse Act.¹ This Act applies to several categories of professionals, including health care providers, mental health professionals, social workers, and counselors. It requires these individuals to report child abuse that they learned of while working in their professional capacity on federal land or in a federally operated facility.

3

May an advocate be present during a victim's privileged communications with an attorney without waiving the victim's right to keep those communications confidential? Yes, if the advocate is necessary to facilitate the client's communications with the attorney. Under Commonwealth law, communications between attorneys and their clients are privileged, meaning that neither party may be forced to disclose what was said without the client's consent. The privilege only applies to confidential communications. However, the Commonwealth Superior Court has held that the presence of a third party during confidential attorney-client communications doesn't waive privilege if the third party (such as an advocate) is reasonably necessary to the communications.²

4

May an interpreter be present during a victim's privileged communications with a victim counselor or attorney without waiving the victim's privilege to keep those communications confidential? Yes. In the Commonwealth, privileged communications between a victim and victim counselor are still considered confidential if a third party's presence is necessary to facilitate the conversation.³ Regarding the attorney-client privilege, the Commonwealth Superior Court has held that the presence of an interpreter does not waive privilege where the interpreter's participation is reasonably necessary to facilitate the client's communication with the lawyer.⁴

5

Are a victim's privileged communications with a victim counselor or attorney protected from disclosure after the victim's death? It depends. With regard to victim counselors,⁵ Commonwealth law states that the privilege does not survive the victim's death.⁶ Commonwealth law is silent as to whether the attorney-client privilege survives the client's death.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or

duty. Second, employees who fall under a jurisdiction’s privilege laws (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a legal privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.⁸

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Potentially yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Victims in the Commonwealth may have access to a number of common law civil causes of action, including invasion of privacy, public disclosure of private facts, or intentional infliction of emotional distress. Additionally, if the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal.

¹42 U.S.C. § 13031.

²See *Saipan Achugao Resort Members' Ass'n v. Yoon*, Civ. No. 03-0187E, slip op. (N. Mar. I. Commw. Super Ct. Nov. 1, 2005), www.cnmilaw.org/pdf/superior/05-11-01-CV03-0187.pdf.

³7 CMC § 3313.

⁴*Saipan Achugao Resort Members' Ass'n v. Yoon*, Civ. No. 03-0187E, slip op. (N. Mar. I. Commw. Super Ct. Nov. 1, 2005), www.cnmilaw.org/pdf/superior/05-11-01-CV03-0187.pdf.

⁵7 CMC § 3309.

⁶7 CMC § 3310(3).

⁷Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁸45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.



FAQs: Privacy Laws Impacting Survivors

Ohio

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Ohio law defines certain categories of individuals who *must* report abuse or injury to child protective services, the department of job and family services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Any person (but see exceptions ¹)	Attorney	Health care provider	Social Worker	Mental health professional	Citation
Child abuse		✓	✓	✓	✓	O.R.C. § 2151.421
Elder abuse		✓	✓	✓	✓	O.R.C. § 5101.61
Any felony	✓	✓	✓	✓	✓	O.R.C. § 2921.22
Gunshot, stabbing, or serious injury caused by violence			✓			O.R.C. § 2921.22
Patient is danger to others				✓	✓	O.R.C. § 2305.51; Ohio Admin. Code 5122-3-12

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?² Several laws govern mandatory reporting obligations in Indian Country³ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁴ or who suspect that child abuse has occurred or will occur in Indian Country.⁵ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁶

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Ohio law does not directly address this question. Ohio recognizes several categories of privileged communications, including attorney and client,⁷ physician and patient,⁸ and mental health professional and client.⁹ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client’s interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s privilege to keep those communications confidential? Ohio law does not explicitly address this question. The Ohio Supreme Court has held that the presence of a confidential agent of an attorney or client at a conference between the attorney and client does not destroy privilege.¹⁰

5

Are a victim’s privileged communications with an attorney, mental health professional, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹¹

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹² identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹³ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Ohio’s physician-patient privilege ¹⁴
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹The felony reporting requirements of O.R.C. § 2921.22 do not apply where information is protected by the attorney-client, doctor-patient, mental health professional-patient, or clergy-penitent privilege. Further, disclosure is not required where it would reveal information acquired by a person in connection with a bona fide program providing counseling services to sexual assault victims. "Counseling services" include services provided in an informal setting by a person who, by education or experience, is competent to provide those services. O.R.C. § 2921.22; Ohio Department of Higher Education, Changing Campus Culture: Preventing and Responding to Sexual Violence, app. 1 (Oct. 2015), www.ohiohighered.org/sites/ohiohighered.org/files/uploads/ccc/Changing-Campus-Culture-Report_102015.pdf.

²We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

³Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁴Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁵Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁶A list of OVV technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁷O.R.C. § 2317.02.

⁸*Id.*

⁹*Id.*

¹⁰Foley v. Poschke, 31 N.E.2d 845 (Ohio 1941).

¹¹O.R.C. § 2317.02.

¹²Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹³45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹⁴See O.R.C. § 2317.02; Turk v. Oiler, 732 F. Supp. 2d 758 (N.D. Ohio 2010); *In re Banks*, No. 07CA3192, 2008-Ohio-2339.



FAQs: Privacy Laws Impacting Survivors

Oklahoma

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Oklahoma law requires any person to report child abuse or vulnerable adult abuse to the department of human services. Read the statutes below for definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. Additionally, psychologists have a duty to warn in cases where patients threaten to harm themselves or others. Finally, a health care provider treating a competent adult victim of domestic abuse or sexual assault must make a report to law enforcement if requested to do so by the victim.

What must be reported?	Who is REQUIRED to report?			Citation
	Any person	Health care provider	Psychologist	
Child abuse	✓	✓	✓	Okla. Stat. tit. 10A, § 1-2-101
Vulnerable adult abuse	✓	✓	✓	Okla. Stat. tit. 43A, § 10-104
Patient is danger to self or others			✓	Okla. Stat. tit. 59, § 1376
Domestic abuse, if report is requested by competent adult victim		✓		Okla. Stat. tit. 22, § 58
Sexual assault, if report is requested by competent adult victim		✓		Okla. Stat. tit. 22, § 40.3A

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, psychotherapist, or physician without waiving the victim’s right to keep those communications confidential? Oklahoma recognizes several categories of privileged communications, including attorney-client,⁶ physician-patient,⁷ and psychotherapist-patient.⁸ The presence of third persons who are not essential to the transmission of information or whose presence is not reasonably necessary for the protection of the patient or client’s interests could waive these privileges.⁹

4

May an interpreter be present during a victim’s privileged communications with an attorney, therapist, or physician without waiving the victim’s privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Oklahoma, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is necessary for transmission of the information.¹⁰ Additionally, state law provides that a Deaf person has a privilege to refuse to disclose and to prevent an interpreter from disclosing a confidential communication made while the interpreter was acting in the capacity as an interpreter.¹¹

5

Are a victim’s privileged communications with an attorney, therapist, or physician protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹²

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹³ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty.

Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁴ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Oklahoma's physician-patient privilege ¹⁵
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress¹⁶ and invasion of privacy.¹⁷ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Okla. Stat. tit. 12, § 2502.

⁷Okla. Stat. tit. 12, § 2503.

⁸*Id.*

⁹Chandler v. Denton, 741 P.2d 855 (Okla. 1987).

¹⁰Okla. Stat. tit. 12, §§ 2502, 2503.

¹¹Okla. Stat. tit. 12, § 2503.1.

¹²Okla. Stat. tit. 12, §§ 2502, 2503.

¹³Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁴45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁵See Okla. Stat. tit. 12, § 2503.

¹⁶See, e.g., *Ishmael v. Andrew*, 137 P.3d 1271 (Okla. Civ. App. 2006) (outlining elements of intentional infliction of emotional distress).

¹⁷See *McCormack v. Oklahoma Pub. Co.*, 613 P.2d 737 (Okla. 1980) (outlining causes of actions for invasion of privacy).



FAQs: Privacy Laws Impacting Survivors

Oregon

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Oregon law defines certain categories of individuals who *must* report abuse or injury to the Department of Human Services or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Attorney	Social worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	✓	ORS 419B.005 <i>et seq.</i>
Elder abuse	✓	✓	✓	✓	ORS 124.060 <i>et seq.</i>
Vulnerable adult abuse	✓	✓	✓	✓	ORS 430.735 <i>et seq.</i>
Any serious non-accidental injury				✓	ORS 146.710 <i>et seq.</i>

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, physician, or nurse without waiving the victim’s right to keep those communications confidential? It depends on with whom the victim is communicating, whether the advocate is present to further the victim’s interests in receiving services, and whether the advocate is covered by Oregon’s victim advocate privilege.⁶ Under Oregon law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The attorney-client,⁷ physician-patient,⁸ and psychotherapist-patient⁹ privileges all recognize that a communication is still considered confidential if a third party (such as an advocate) is present to further the interest of the client or patient in the rendition of legal, medical, or therapeutic services. Although the nurse-patient,¹⁰ counselor-client,¹¹ and social worker-client¹² privileges do not directly address this issue, Oregon law indicates that privilege is not waived where confidential information regarding an individual is shared between parties who each have a privileged relationship with the individual.¹³

4

May an interpreter be present during a victim’s privileged communications with an attorney, mental health professional, physician, or nurse without waiving the victim’s privilege to keep those communications confidential? Yes, for both sign language interpreters¹⁴ and non-English language interpreters.¹⁵ In Oregon, a person can prevent an interpreter from disclosing any privileged communications (such as those discussed in Question 3) that were made while the interpreter was providing interpretation services for that person.

5

Are a victim’s privileged communications with an advocate, attorney, mental health professional, physician, or nurse protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney, psychotherapist, or physician will remain privileged, because Oregon law indicates that these privileges survive the death of the client or patient.¹⁶ The advocate, nurse, regulated social worker, and professional counselor privileges are silent as to this issue. Service providers should consult any confidentiality duties they may have under funding contracts, licensing requirements, and ethical obligations in responding to requests for information regarding a deceased victim. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names

of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Subpoenas for health information must comply with the procedural requirements of Oregon Rule of Civil Procedure 55 H
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. In addition to any criminal charges, potential civil causes of action against the person who posted the content may include invasion of privacy, intentional infliction of emotional distress, and civil stalking. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Oregon has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁹ It is unlawful for an individual to disclose through a website an image of a person who is nude or engaged in sexual conduct if the individual intends to harass, humiliate, or injure the other person and the other person does not consent to the disclosure.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶H.B. 3476, 78th Leg., Reg. Sess. (Or. 2015).

⁷ORS 40.225.

⁸ORS 40.235.

⁹ORS 40.230.

¹⁰ORS 40.240.

¹¹ORS 40.262.

¹²ORS 40.250.

¹³ORS 40.280.

¹⁴ORS 40.272.

¹⁵ORS 40.273.

¹⁶ORS 40.225, 40.230, 40.235.

¹⁷Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁹S.B. 188, 78th Leg., Reg. Sess. (Or. 2015).



FAQs: Privacy Laws Impacting Survivors

Pennsylvania

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Pennsylvania law defines certain categories of individuals who *must* report abuse or injury to the Department of Human Services, area agency on aging, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	DV/SA advocate	Social worker	Mental health professional	Health care provider	Long-term care facility staff	Citation
Child abuse	✓	✓	✓	✓	✓	23 Pa. C.S. § 6311
Elder abuse					✓	35 P.S. § 10225.701
Injury from criminal act				✓		18 Pa. C.S. § 5106
Patient is danger to others			✓			<i>Emerich v. Phila. Ctr. for Human Dev.</i> , 720 A.2d 1032 (Pa. 1998)

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim's privileged communications with an attorney, mental health professional, or physician without waiving the victim's right to keep those communications confidential? Pennsylvania law does not directly address this question. Pennsylvania recognizes several categories of privileged communications, including domestic violence counselor and victim,⁶ sexual assault counselor and victim,⁷ human trafficking caseworker and victim,⁸ attorney and client,⁹ physician and patient,¹⁰ and psychiatrist/psychologist and client.¹¹ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client's interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, mental health professional, or physician without waiving the victim's privilege to keep those communications confidential? Yes, for communications with a domestic violence counselor, sexual assault counselor, or human trafficking caseworker. Pennsylvania law states that communications with victim counselors that are transmitted through interpreters are still considered confidential.¹² Additionally, where a qualified interpreter is appointed in court proceedings to a person who is Deaf or limited English proficient, the interpreter cannot be compelled to testify regarding statements made while the person was engaged in a confidential communication.¹³

5

Are a victim's privileged communications with a victim counselor, attorney, mental health professional, or physician protected from disclosure after the victim's death? It depends. A victim's communications with an attorney¹⁴ or mental health professional¹⁵ will remain privileged, because Pennsylvania law indicates that these privileges survive the death of the client or the patient. In contrast, Pennsylvania law states that the domestic violence counselor privilege terminates upon the victim's death.¹⁶ The sexual assault counselor, human trafficking caseworker, and physician privileges are silent as to this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Pennsylvania law regarding constitutional privacy protections for certain medical information ¹⁹
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy (such as intrusion upon seclusion or publicity given to private life) or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

Additionally, Pennsylvania has a nonconsensual pornography (aka “revenge porn”) statute. It is unlawful for a person to disseminate, with intent to harass, annoy, or alarm, a visual depiction of a current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.²⁰ Consent to dissemination of the image by the person depicted in it is a defense. The statute also contains civil remedies.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶23 Pa. C.S. § 6116.

⁷42 Pa. C.S. § 5945.1.

⁸42 Pa. C.S. § 5945.3.

⁹42 Pa. C.S. §§ 5916, 5928.

¹⁰42 Pa. C.S. § 5929.

¹¹42 Pa. C.S. § 5944.

¹²23 Pa. C.S. § 6102; 42 Pa. C.S. §§ 5945.1, 5945.3.

¹³42 Pa. C.S. §§ 4415, 4436.

¹⁴*Cohen v. Jenkintown Cab Co.*, 357 A.2d 689, 692 (Pa. Super. Ct. 1976).

¹⁵*Commw. v. Counterman*, 719 A.2d 284 (Pa. 1998). There is an exception to this general rule for murder investigations. In re Subpoena No. 22, 709 A.2d 385 (Pa. Super. Ct. 1998).

¹⁶23 Pa. C.S. § 6116.

¹⁷Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁹*Lykes v. Yates*, 77 A.3d 27 (Pa. Super. Ct. 2013).

²⁰18 Pa. C.S. § 3131.



FAQs: Privacy Laws Impacting Survivors

Puerto Rico

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Puerto Rico requires any person to report child abuse or elder abuse. Read the statutes for definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. Additionally, mental health professionals and health care providers have a duty to warn in cases where patients threaten to harm themselves or others. Finally, health care providers must report wounds caused by firearms.

What must be reported?

Who is REQUIRED to report?

	Any person	Social worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	✓	Act No. 246-2011, Dec. 16, 2011
Elder abuse	✓	✓	✓	✓	8 LPRA sec. 346
Firearm injury				✓	25 LPRA sec. 458m
Patient is danger to self or others		✓	✓	✓	24 LPRA sec. 6153q, 6153r

2

If I am working on federal property or in a federal facility, what authorities should I consult to determine my mandatory reporting obligations? In addition to the mandatory reporting laws discussed in Question 1, individuals working on federal lands or in federal facilities should consult the federal Victims of Child Abuse Act.¹ This Act applies to several categories of professionals, including health care providers, mental health professionals, social workers, and counselors. It requires these individuals to report child abuse that they learned of while working in their professional capacity on federal land or in a federally operated facility.

3

May a victim counselor be present during a victim's privileged communications with an attorney, psychotherapist, or physician without waiving the victim's right to keep those communications confidential? Yes, if the victim counselor is reasonably necessary for accomplishing the victim's purpose in seeking medical, legal, or therapeutic services. Under Puerto Rico law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder's consent. The victim counselor-victim,² attorney-client,³ physician-patient,⁴ and psychotherapist-patient⁵ privileges remain intact if disclosure of a confidential communication is necessary to accomplish the purpose for which the professional was consulted.

4

May an interpreter be present during a victim's privileged communications with a victim counselor, attorney, psychotherapist, or physician without waiving the victim's privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. Puerto Rico law provides that privileged communications (such as those discussed in Question 3) remain confidential if disclosure to a third party is necessary to accomplish the purpose for which the victim counselor, lawyer, physician, or psychotherapist was consulted.⁶

5

Are a victim's privileged communications with a victim counselor, attorney, psychotherapist, or physician protected from disclosure after the victim's death? Puerto Rico's laws regarding privileged communications do not explicitly address this issue. Service providers should consult any confidentiality duties they may have under funding contracts, licensing requirements, and ethical obligations in responding to requests for information regarding a deceased victim. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your jurisdiction's coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and

location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a jurisdiction’s privilege laws (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a legal privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact the Puerto Rico Coalition Against Domestic Violence and Sexual Assault or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include control over likeness,⁹ right of privacy,¹⁰ and invasion of privacy.¹¹ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal.

¹42 U.S.C. § 13031.

²32 L.P.R. Ap. IV R. 26A.

³32 L.P.R. Ap. IV R. 25.

⁴32 L.P.R. Ap. IV R. 26.

⁵*Id.*

⁶32 L.P.R. Ap. IV R. 25, 26, 26A.

⁷Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁸45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

⁹See *Colon v. Romero Barceló*, 112 D.P.R 573 (1982).

¹⁰See *Vigoreaux Lorenzana v. Quizno's Sub*, 173 D.P.R. 254 (2008).

¹¹See *Lopez Mulero v. Sánchez Rodríguez*, No. KLAN201300260, 2013 TA 2677, 2013 WL 4710483, at *10 (P.R. Cir. June 28, 2013).



FAQs: Privacy Laws Impacting Survivors

Rhode Island

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Rhode Island law requires any person to report child abuse or elder abuse to the Department of Children, Youth and Families or the Department of Elderly Affairs. Read the statutes below for definitions of abuse and injury, reporting procedures, and any exceptions to mandatory reporting obligations. Additionally, physicians must report to law enforcement injuries caused by firearms.

What must be reported?

Who is REQUIRED to report?

	Any person	Physician	Citation
Child abuse	✓	✓	R.I. Gen. Laws § 40-11-3
Elder abuse	✓	✓	R.I. Gen. Laws § 42-66-8
Firearm injury		✓	R.I. Gen. Laws § 11-47-48

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? Rhode Island law does not directly address this question. Rhode Island recognizes several categories of privileged communications, including attorney and client,⁶ health care provider and patient,⁷ mental health professional and patient,⁸ mental health counselor and client,⁹ and marriage and family therapist and client.¹⁰ However, the law does not indicate whether privilege is waived where a third party (such as an advocate) is present during a privileged conversation to further a patient or client’s interests in medical, legal, or therapeutic services. In a case involving the attorney–client privilege, the Rhode Island Supreme Court held that the privilege was not waived where parents were present during their son’s communications with his attorney, and the son reasonably intended that those communications would remain confidential.¹¹

4

May an interpreter be present during a victim’s privileged communications with attorney, mental health professional, or health care provider without waiving the victim’s privilege to keep those communications confidential? Yes, in certain circumstances. In Rhode Island, the presence of a sign language interpreter during privileged communications (such as those discussed in Question 3) does not destroy privilege.¹² Additionally, where an interpreter is appointed in court proceedings to a person who is limited English proficient, the interpreter cannot be compelled to testify as to statements made during a privileged communication.¹³

5

5. Are a victim’s privileged communications with an attorney, mental health professional, or health care provider protected from disclosure after the victim’s death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹⁴

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have

no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁶ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by the Rhode Island Confidentiality of Health Care Communications and Information Act ¹⁷
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy,¹⁸ intentional infliction of emotional distress, or civil stalking.¹⁹ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 et seq. & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 et seq. & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶State v. Grayhurst, 852 A.2d 491, 512 (R.I. 2004).

⁷R.I. Gen. Laws §§ 5-37.3-6, 9-17-24.

⁸R.I. Gen. Laws § 5-37.3-6.

⁹R.I. Gen. Laws § 5-63.2-18.

¹⁰Id.

¹¹Rosati v. Kuzman, 660 A.2d 263 (R.I. 1995).

¹²R.I. Gen. Laws § 9-17-25.

¹³R.I. Supreme Ct., Executive Order No. 2012-05, Language Services in the Courts, <https://www.courts.ri.gov/Courts/SupremeCourt/ExecutiveOrders/Executive%20Order%202012-05.pdf>.

¹⁴R.I. Gen. Laws §§ 5-37.3-3(1)(iii), 9-17-24 (health care providers); R.I. Gen. Laws § 5-63.2-18 (health care provider privilege applies to mental health counselors and marriage and family therapists); Curato v. Brain, 715 A.2d 631 (R.I. 1998) (attorney-client privilege).

¹⁵Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁶45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁷R.I. Gen. Laws §§ 5-37.3-1 et seq.

¹⁸R.I. Gen. Laws §§ 9-1-28, 9-1-28.1.

¹⁹R.I. Gen. Laws § 9-1-2.1.



FAQs: Privacy Laws Impacting Survivors

South Carolina

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? South Carolina law defines certain categories of individuals who *must* report abuse or injury to the Department of Social Services, Adult Protective Services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?			Citation
	Social or public assistance worker	Health care provider	Mental health professional	
Child abuse	✓	✓	✓	S.C. Code Ann. § 63-7-310
Vulnerable adult abuse	✓	✓	✓	S.C. Code Ann. § 43-35-25
Gunshot wound		✓		S.C. Code Ann. § 16-3-1072

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? South Carolina law does not directly address this question. The state recognizes several categories of privileged communications, including attorney and client⁶ and mental health professional and patient.⁷ However, the law does not indicate whether privilege is waived where a third party (such as an advocate) is present during a privileged conversation to further a patient or client’s interests in legal or therapeutic services.⁸

4

May an interpreter be present during a victim’s privileged communications with an attorney or mental health professional without waiving the victim’s privilege to keep those communications confidential? South Carolina law does not directly address this question, other than to state that court interpreters are required to protect the confidentiality of privileged information.⁹

5

Are a victim’s privileged communications with an attorney or mental health professional protected from disclosure after the victim’s death? South Carolina law indicates that attorney-client privilege survives the death of the client.¹⁰ The mental health professional-patient privilege is silent as to this issue.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹¹ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹² Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Civil causes of action against the person who posted the content may include invasion of privacy¹³ and intentional infliction of emotional distress.¹⁴ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ S.C. State Highway Dept. v. Booker, 195 S.E.2d 615 (S.C. 1973).

⁷ S.C. Code Ann. §§ 19-11-95, 44-22-90.

⁸ This question does not address physician-patient privilege because South Carolina does not recognize this privilege. However, other laws, such as health information privacy laws and ethical duties of confidentiality, may protect the privacy of communications between patients and health care providers. See S.C. State Bd. of Med. Exam’rs v. Hedgepath, 480 S.E.2d 724 (S.C. 1997).

⁹ S.C. Judicial Dep’t Rule 511, Rules of Professional Conduct for Court Interpreters, <http://www.sccourts.org/courtreg/displayRule.cfm?ruleID=511.0&subRuleID=RULE%205&ruleType=APP>

¹⁰ State v. Doster, 284 S.E.2d 218 (S.C. 1981).

¹¹ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹² 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹³ See Rycroft v. Gaddy, 314 S.E.2d 39 (S.C. Ct. App. 1984) (discussing causes of action that can arise under the tort of invasion of right to privacy).

¹⁴ See Hansson v. Scalise Builders of S.C., 650 S.E.2d 68 (S.C. 2007) (discussing elements of intentional infliction of emotional distress claim).



FAQs: Privacy Laws Impacting Survivors

South Dakota

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? South Dakota law defines certain categories of individuals who *must* report abuse or injury to the state's attorney, Department of Social Services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?					Citation
	DV shelter staff	Social worker	Health care provider	Mental health professional	Marriage and family therapist	
Child abuse	✓	✓	✓	✓	✓	S.D. Codified Laws 26-8A-3
Elder/disabled adult abuse		✓	✓	✓	✓	S.D. Codified Laws 22-46-9
Firearm injury			✓			S.D. Codified Laws 23-13-10
Client is danger to others					✓	S.D. Codified Laws 36-33-31

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim's privileged communications with an attorney, mental health professional, or health care provider without waiving the victim's right to keep those communications confidential? Yes, if the advocate is present to further the victim's interests in medical, legal, or therapeutic services. Under South Dakota law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder's consent. These privilege laws only apply to confidential communications. The attorney-client,⁶ physician-patient,⁷ and psychotherapist-patient⁸ privilege all recognize that a communication still can be considered confidential if a third party (such as an advocate) is present to further the interest of the client or patient in the consultation.

4

May an interpreter be present during a victim's privileged communications with an attorney, mental health professional, or health care provider without waiving the victim's privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In South Dakota, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party's presence is reasonably necessary for transmission of the communications.⁹ Additionally, sign language interpreters and relay service operators cannot be compelled to testify as to privileged communications received in their professional capacity.¹⁰

5

Are a victim's privileged communications with an attorney, mental health professional, or health care provider protected from disclosure after the victim's death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹¹

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹² identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹³ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy or negligent or intentional infliction of emotional distress.¹⁴ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ S.D. Codified Laws § 19-19-502.

⁷ S.D. Codified Laws § 19-19-503.

⁸ *Id.*

⁹ S.D. Codified Laws §§ 19-19-502, 19-19-503.

¹⁰ S.D. Codified Laws § 19-19-514.

¹¹ S.D. Codified Laws §§ 19-19-502, 19-19-503.

¹² Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹³ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁴ See *Montgomery Ward v. Shope*, 286 N.W.2d 806, 808 (S.D. 1979) (invasion of privacy); *Wright v. Coca Cola Bottling Co.*, 414 N.W.2d 608, 609 (S.D.1987) (negligent infliction of emotional distress); *Christians v. Christians*, 637 N.W.2d 377, 382 (S.D. 2001) (intentional infliction of emotional distress).



FAQs: Privacy Laws Impacting Survivors

Tennessee

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Tennessee law requires any person to report child abuse or vulnerable adult abuse to the Department of Children's Services or the Department of Human Services. Read the statutes below for definitions of abuse, reporting procedures, and exceptions to mandatory reporting obligations. Additionally, health care providers must report any injury inflicted by means of violence. Finally, mental health professionals must report instances where a patient has made an actual threat of serious bodily harm against a reasonably identifiable victim.

What must be reported?

Who is REQUIRED to report?

	Any person	Health care provider	Mental health professional	Citation
Child abuse	✓	✓	✓	Tenn. Code Ann. §§ 37-1-403, 37-1-605
Vulnerable adult abuse	✓	✓	✓	Tenn. Code Ann. § 71-6-103
Violence-inflicted injury		✓		Tenn. Code Ann. § 38-1-101
Patient is danger to others			✓	Tenn. Code Ann. § 33-3-210

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney or mental health professional without waiving the victim’s right to keep those communications confidential? Tennessee law does not directly address this question. Tennessee recognizes several categories of privileged communications, including attorney and client,⁶ psychiatrist and patient,⁷ marital and family therapist and client,⁸ and licensed professional counselor and client.⁹ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client’s interests in legal or therapeutic services.¹⁰

4

May an interpreter be present during a victim’s privileged communications with an attorney or mental health professional without waiving the victim’s privilege to keep those communications confidential? Yes, where a court has appointed a qualified interpreter for a Deaf party or witness. Tennessee requires courts to appoint qualified interpreters to interpret civil, criminal, and administrative proceedings and preparations with the Deaf person’s attorney.¹¹ Any information that the interpreter gathers from the Deaf person pertaining to a pending proceeding remains privileged.¹² Regarding foreign language interpreters, Tennessee’s rules of ethics for court interpreters provide that when an attorney is not present, there is no attorney–client privilege, and the interpreter may be held to divulge any information gained.¹³ The rules direct court interpreters to “avoid any such situation.” This rule also applies to other types of privileged communications.

5

Are a victim’s privileged communications with an attorney or mental health professional protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney will remain privileged, because Tennessee law indicates that this privilege survives the death of the client.¹⁴ The mental health professional privilege is silent as to this issue.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty.

Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁶ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy,¹⁷ the tort of outrageous conduct,¹⁸ and unauthorized commercial use of the victim's name, likeness, or photographs.¹⁹ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Tenn. Code Ann. § 23-3-105.

⁷Tenn. Code Ann. § 24-1-207.

⁸Tenn. Code Ann. § 63-22-114.

⁹*Id.*

¹⁰This question does not address physician-patient privilege because Tennessee does not recognize this privilege. However, other laws, such as health information privacy laws and ethical duties of confidentiality, may protect the privacy of communications between patients and health care providers.

¹¹Tenn. Code Ann. § 24-1-211(b).

¹²Tenn. Code Ann. § 24-1-211(f).

¹³Tenn. Supreme Ct. Rule 41, Canon 5 cmt., <http://tncourts.gov/rules/supreme-court/41>.

¹⁴*Estate of Queener v. Helton*, 119 S.W.3d 682, 685 (Tenn. Ct. App. 2003).

¹⁵Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁶45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹⁷See *Martin v. Senators, Inc.*, 418 S.W.2d 660, 662-63 (Tenn. 1967); *Langford v. Vanderbilt Univ.*, 287 S.W.2d 32, 38 (Tenn. 1956); *Beard v. Akzona, Inc.*, 517 F. Supp. 128, 131-32 (E.D. Tenn. 1981).

¹⁸See *Dunn v. Moto Photo, Inc.*, 828 S.W.2d 747 (Tenn. Ct. App. 1991).

¹⁹Tenn. Code Ann. § 47-25-1105. Unauthorized use also constitutes a Class A misdemeanor.



FAQs: Privacy Laws Impacting Survivors

Texas

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Texas law requires any person to report child abuse, elder abuse, or disabled person abuse to the Department of Family and Protective Services. Read the statutes below for definitions of abuse and reporting procedures. Additionally, physicians treating gunshot wounds must report to law enforcement.

What must be reported?

Who is REQUIRED to report?

	Any person	Physician	Citation
Child abuse	✓	✓	Tex. Fam. Code Ann. § 261.101
Elder or disabled person abuse	✓	✓	Tex. Hum. Res. Code Ann. § 48.051
Gunshot wound		✓	Tex. Health & Safety Code Ann. § 161.041

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with a lawyer, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the victim’s interests in medical, legal, or therapeutic services. Under Texas law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The lawyer–client,⁶ physician–patient,⁷ and mental health professional–patient⁸ privileges all recognize that a communication still can be considered confidential if a third party (such as an advocate) is present to further the interest of the client or patient in the consultation.

4

May an interpreter be present during a victim’s privileged communications with a lawyer, mental health professional, or physician without waiving the victim’s privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Texas, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.⁹ Additionally, where a Deaf person is a party or witness in a civil case, Texas requires courts to appoint qualified interpreters to interpret proceedings.¹⁰ If a Deaf person communicates through an interpreter to a person under circumstances in which the communication would be privileged, the privilege applies to the interpreter as well.¹¹

5

Are a victim’s privileged communications with a lawyer, mental health professional, or physician protected from disclosure after the victim’s death? Yes, because Texas law indicates that privileged communications with a lawyer,¹² physician,¹³ and mental health professional¹⁴ are protected from disclosure after the victim’s death.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁵ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct

that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁶ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Texas' Medical Records Privacy Act and physician-patient privilege ¹⁷
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy, intrusion on the right to seclusion, public disclosure of private facts, wrongful appropriation of name or likeness, intentional infliction of emotional distress, and civil stalking. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

Additionally, Texas has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁸ An individual commits a misdemeanor if: (1) without the depicted person’s consent, the individual intentionally discloses visual material depicting a person who is nude or engaged in sexual conduct; (2) the depicted person reasonably expected that the material would remain private; and (3) the disclosure of the material harms the depicted person. A separate statute allows victims to pursue civil remedies, including damages and injunctions to prevent further disclosure or promotion of the material.¹⁹

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Tex. R. Evid. 503.

⁷Tex. R. Evid. 509.

⁸Tex. R. Evid. 510.

⁹Tex. R. Evid. 503, 509, 510.

¹⁰Tex. Civ. Prac. & Rem. Code Ann. § 21.002.

¹¹Tex. Civ. Prac. & Rem. Code Ann. § 21.008.

¹²Tex. R. Evid. 503(c); see also *Pollard v. El Paso Nat. Bank*, 343 S.W.2d 909, 913 (Tex. Civ. App. 1961).

¹³Tex. R. Evid. 509(d), (f).

¹⁴Tex. R. Evid. 510(a), (c).

¹⁵Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

¹⁶45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁷Tex. Health & Safety Code Ann. §§ 181.001 *et seq.*; Tex. Occ. Code §§ 159.001 *et seq.*

¹⁸Tex. Penal Code Ann. § 21.16.

¹⁹Tex. Civ. Prac. & Rem. Code Ann. §§ 98B.001 *et seq.*



FAQs: Privacy Laws Impacting Survivors

Utah

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Utah law requires any person to report child abuse or vulnerable adult abuse to the Division of Child and Family Services or Adult Protective Services. Read the statutes below for definitions of abuse, reporting procedures, and any exceptions to mandatory reporting obligations. Additionally, health care providers must report injuries resulting from certain weapons or criminal acts. Finally, mental health professionals must report actual threats of physical violence made by their patients against identifiable victims.

What must be reported?	Who is REQUIRED to report?			Citation
	Any person	Health care provider	Mental health professional	
Child abuse	✓	✓	✓	Utah Code Ann. § 62A-4a-403
Vulnerable adult abuse	✓	✓	✓	Utah Code Ann. § 62A-3-305
Injury from knife, gun, or criminal act		✓		Utah Code Ann. § 26-23a-2
Patient is danger to others			✓	Utah Code Ann. § 78B-3-502

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim counselor be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the victim counselor’s presence during the victim’s communications with the attorney, mental health professional, or physician is reasonably necessary under the circumstances. Under Utah law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. Examples of these laws include the attorney–client,⁶ physician–patient,⁷ mental health professional–patient,⁸ and sexual assault counselor–victim⁹ privileges. The Utah Supreme Court has held that privilege is not waived where the communication was intended to be confidential, and the presence of a third party was reasonably necessary under all the circumstances.¹⁰

4

May an interpreter be present during a victim’s privileged communications with a victim counselor, attorney, mental health professional, or physician without waiving the victim’s privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Utah, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.¹¹ Additionally, where a Deaf person is a party or witness in a case, Utah requires courts to appoint qualified interpreters to interpret proceedings.¹² If a Deaf person communicates through an interpreter to a person under circumstances in which the communication would be privileged, the privilege applies to the interpreter as well.¹³

5

Are a victim’s privileged communications with a victim counselor, attorney, mental health professional, or physician protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney will remain privileged, because Utah law indicates that this privilege survives the death of the client.¹⁴ In contrast, Utah law states that the physician and mental health professional privileges only apply “during the patient’s life.”¹⁵ The sexual assault counselor privilege¹⁶ is silent as to this issue. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Utah law may require notice to parties of an attempt to subpoena privileged information ¹⁹
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional (or negligent) infliction of emotional distress, invasion of privacy, intrusion upon seclusion, and public disclosure of private facts. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Utah has a criminal nonconsensual pornography (aka “revenge porn”) statute.²⁰ The bill criminalizes the distribution of intimate images of an individual with the intent to cause emotional distress or harm if (1) the depicted individual has not consented to the distribution; (2) the individual had a reasonable expectation of privacy in the image; and (3) actual emotional distress or harm is caused to the individual as a result of the distribution.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Utah R. Evid. 504.

⁷ Utah R. Evid. 506.

⁸ *Id.*

⁹ Utah Code Ann. § 77-38-204.

¹⁰ Hofmann v. Conder, 712 P.2d 216 (Utah 1985).

¹¹ Utah R. Evid. 504, 506.

¹² Utah Code Ann. § 78B-1-202.

¹³ Utah Code Ann. § 78B-1-210.

¹⁴ Utah R. Evid. 504.

¹⁵ Utah R. Evid. 506.

¹⁶ Utah Code Ann. § 77-38-204.

¹⁷ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁸ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁹ State v. Gonzales, 2005 UT 72, 125 P.3d 878.

²⁰ Utah Code Ann. § 76-5b-203.



FAQs: Privacy Laws Impacting Survivors

Vermont

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Vermont law defines certain categories of individuals who *must* report abuse or injury to the Department for Children and Families, the Department of Disabilities, Aging, and Independent Living, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?			Citation
	Social worker	Health care provider	Mental health professional	
Child abuse	✓	✓	✓	Vt. Stat. Ann. tit. 33, § 4913
Vulnerable adult abuse	✓	✓	✓	Vt. Stat. Ann. tit. 33, § 6903
Firearm injury		✓		Vt. Stat. Ann. tit. 13, § 4012
Mental health patient who poses danger to others	✓	✓	✓	Peck v. Counseling Serv. of Addison County, Inc., 499 A.2d 422 (Vt. 1985)

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May a victim crisis worker be present during a victim’s privileged communications with a lawyer, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? Yes, if the crisis worker is present to further the victim’s interests in medical, legal, or therapeutic services. Under Vermont law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The attorney–client,⁶ physician–patient,⁷ nurse–patient,⁸ mental health professional–patient,⁹ and crisis worker–victim¹⁰ privileges all recognize that a communication is still considered confidential if a third party is present to further the interest of the client or patient in the consultation.

4

May an interpreter be present during a victim’s privileged communications with a crisis worker, lawyer, mental health professional, or health care provider without waiving the victim’s privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In Vermont, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.¹¹

5

Are a victim’s privileged communications with a crisis worker, lawyer, mental health professional, or health care provider protected from disclosure after the victim’s death? It depends. A victim’s communications with a lawyer, mental health professional, or health care provider will remain privileged, because Vermont law indicates that these privileges survive the death of the client or patient.¹² The crisis worker privilege¹³ is silent as to this issue. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state’s coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non–profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁴ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁵ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Vermont's physician-patient privilege ¹⁶
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional (or negligent) infliction of emotional distress and invasion of privacy. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Vermont has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁷ It is unlawful to disclose an image of a person who is nude or who is engaged in sexual conduct, without consent, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted. The statute also provides a civil cause of action for the victim, and a court may order the defendant to cease display or disclosure of the image.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OYW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Vt. R. Evid. 502.

⁷ Vt. R. Evid. 503.

⁸ *Id.*

⁹ *Id.*

¹⁰ Vt. Stat. Ann. tit. 12, § 1614.

¹¹ Vt. Stat. Ann. tit. 12, § 1614; Vt. R. Evid. 502, 503.

¹² Vt. Stat. Ann. tit. 12, § 1612; Vt. R. Evid. 502.

¹³ Vt. Stat. Ann. tit. 12, § 1614.

¹⁴ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁵ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁶ Vt. R. Evid. 503.

¹⁷ Vt. Stat. Ann. tit. 13, § 2606.



FAQs: Privacy Laws Impacting Survivors

Virgin Islands

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Virgin Islands law defines certain categories of individuals who *must* report abuse or injury to the Department of Social Welfare or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?			Citation
	Social worker	Health care provider	Mental health professional	
Child abuse	✓	✓	✓	V.I. Code Ann. tit. 5, § 2533
Elderly or disabled adult abuse	✓	✓	✓	V.I. Code Ann. tit. 34, § 452 <i>et seq.</i>
Firearm injury		✓		V.I. Code Ann. tit. 23, § 478

2

If I am working on federal property or in a federal facility, what authorities should I consult to determine my mandatory reporting obligations? In addition to the mandatory reporting laws discussed in Question 1, individuals working on federal lands or in federal facilities should consult the federal Victims of Child Abuse Act.¹ This Act applies to several categories of professionals, including health care providers, mental health professionals, social workers, and counselors. It requires these individuals to report child abuse that they learned of while working in their professional capacity on federal land or in a federally operated facility.

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Yes, if the advocate is present to further the victim’s interests in medical, legal, or therapeutic services. Under Virgin Islands law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder’s consent. These privilege laws apply to confidential communications only. The attorney–client,² physician–patient,³ and mental health professional–patient⁴ privileges all recognize that a communication is still considered confidential if a third party (such as an advocate) is present to further the interest of the client or patient in the consultation.

4

May an interpreter be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s privilege to keep those communications confidential? Yes, if the interpreter is needed to relay the communications. In the Virgin Islands, privileged communications (such as those discussed in Question 3) are still considered confidential if a third party’s presence is reasonably necessary for transmission of the communications.⁵

5

Are a victim’s privileged communications with an attorney, mental health professional, or physician protected from disclosure after the victim’s death? Yes, because Virgin Islands law indicates that these privileges survive the death of the client or patient.⁶

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance⁷ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.⁸ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal.

¹ 42 U.S.C. § 13031.

² V.I. Code Ann. tit. 5, § 852.

³ V.I. Code Ann. tit. 5, § 853.

⁴ *Id.*

⁵ V.I. Code Ann. tit. 5, §§ 852, 853.

⁶ *Id.*

⁷ Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

⁸ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.



FAQs: Privacy Laws Impacting Survivors

Virginia

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Virginia law defines certain categories of individuals who *must* report abuse or injury to the Department of Social Services, Adult Protective Services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	Social Worker	Health care provider	Mental health professional	Citation
Child abuse	✓	✓	✓	Va. Code Ann. § 63.2-1509
Elder/incapacitated adult abuse	✓	✓	✓	Va. Code Ann. § 63.2-1606
Injury inflicted by weapon		✓		Va. Code Ann. § 54.1-2967
Client is danger to others	✓	✓	✓	Va. Code Ann. § 54.1-2400.1

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s right to keep those communications confidential? Virginia law does not directly address this question. Virginia recognizes several categories of privileged communications, including attorney and client,⁶ mental health professional and client,⁷ and physician and patient.⁸ However, the law does not indicate whether privilege is waived where a third party (such as an advocate) is present during a privileged conversation to further a patient or client’s interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim’s privileged communications with an attorney, mental health professional, or physician without waiving the victim’s privilege to keep those communications confidential? Yes. In Virginia, when a Deaf or non-English-speaking person communicates through an interpreter to any person under such circumstances that the communication would be privileged, the privilege also applies to the interpreter.⁹

5

Are a victim’s privileged communications with an attorney, mental health professional, or physician protected from disclosure after the victim’s death? Virginia’s laws regarding privileged communications do not explicitly address this issue. Service providers should consult any confidentiality duties they may have under funding contracts, licensing requirements, and ethical obligations in responding to requests for information regarding a deceased victim. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁰ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have

no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹¹ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Virginia's Patient Health Records Privacy Statute ¹² and physician-patient privilege ¹³
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include intentional infliction of emotional distress, civil stalking,¹⁴ and unauthorized commercial use of the victim's name or picture.¹⁵ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Grant v. Harris, 82 S.E. 718 (Va. 1914); Va. Sup. Ct. R. 2:502.

⁷Va. Code Ann. § 8.01-400.2.

⁸Va. Code Ann. § 8.01-399.

⁹Va. Sup. Ct. R. 2:507.

¹⁰Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹¹45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹²See Va. Code Ann. § 32.1-127.1:03.

¹³See Va. Code Ann. § 8.01-399.

¹⁴See Va. Code Ann. § 8.01-42.3.

¹⁵See Va. Code Ann. § 8.01-40.

¹⁶Va. Code Ann. § 18.2-386.2.



FAQs: Privacy Laws Impacting Survivors

Washington

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Washington law defines certain categories of individuals who *must* report abuse or injury to law enforcement or the Department of Social and Health Services. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?

Who is REQUIRED to report?

	SA/DV advocate	Social worker	Mental health professional	Health care provider	Citation
Child abuse	✓	✓	✓	✓	Wash. Rev. Code §§ 26.44.020 <i>et seq.</i>
Vulnerable adult abuse	✓	✓	✓	✓	Wash. Rev. Code §§ 74.34.020 <i>et seq.</i>
Gunshot or stab wound				✓	Wash. Rev. Code § 70.41.440
Client is danger to others			✓		Wash. Rev. Code § 71.05.120

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with an attorney, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? Washington law does not directly address this question. Washington recognizes several categories of privileged communications, including domestic violence and sexual assault advocate and victim,⁶ attorney and client,⁷ physician and patient,⁸ mental health professional and client,⁹ and nurse and patient.¹⁰ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client’s interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim’s privileged communications with an attorney, mental health professional, or health care provider without waiving the victim’s privilege to keep those communications confidential? Yes. Washington’s Code of Conduct for language interpreters prohibits interpreters from disclosing any communication that is privileged by law without written consent of the parties or pursuant to court order.¹¹ Additionally, where a Deaf person is a party or witness in a case, Washington requires courts to appoint qualified interpreters to interpret proceedings. Absent written consent, a qualified interpreter may not be examined as to any privileged communication.¹²

5

Are a victim’s privileged communications with an advocate, attorney, mental health professional, or health care provider protected from disclosure after the victim’s death? It depends. A victim’s communications with an attorney,¹³ mental health professional,¹⁴ or nurse¹⁵ will remain privileged, because Washington law indicates that these privileges survive the death of the client. The advocate and physician privileges are silent as to this issue. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state’s coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹⁶ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and

location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information without patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁷ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Washington’s Health Care Information Act ¹⁸
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact the Victim Rights Law Center or the Washington Coalition of Sexual Assault Programs for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and negligent or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

Additionally, Washington has a criminal nonconsensual pornography (aka “revenge porn”) statute.¹⁹ It is unlawful to disclose an intimate image of another person if the person disclosing the image knows: (1) the image was to remain private; (2) the depicted person has not consented to the disclosure; and (3) disclosure would harm the depicted person. A separate statute creates a civil cause of action allowing victims to pursue damages and injunctive relief.²⁰

¹We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

²Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵A list of OVV technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶Wash. Rev. Code § 5.60.060.

⁷*Id.*

⁸*Id.*

⁹*Id.*

¹⁰Wash. Rev. Code § 5.62.020.

¹¹Wash. State Ct. General Rule 11.2; *State v. Aquino-Cervantes*, 945 P.2d 767 (Wash. Ct. App. 1997).

¹²Wash. Rev. Code § 2.42.160

¹³*State v. Aquino-Cervantes*, 945 P.2d 767 (Wash. Ct. App. 1997).

¹⁴Wash. Rev. Code § 5.60.060(9)(a).

¹⁵Wash. Rev. Code § 5.62.020(1).

¹⁶Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁷45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁸See Wash. Rev. Code § 70.02.060.

¹⁹H.B. 1272, 64th Legislature, 2015 2d Spec. Sess. (Wash. 2015).

²⁰H.B. 2160, 64th Legislature, 2015 2d Spec. Sess. (Wash. 2015).



FAQs: Privacy Laws Impacting Survivors

West Virginia

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? West Virginia law defines certain categories of individuals who *must* report abuse or injury to the Department of Health and Human Resources, Adult Protective Services, or law enforcement. The chart below summarizes certain providers' mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim's personally identifying information without consent only if disclosure is mandated by a statute or court order.)

What must be reported?	Who is REQUIRED to report?				Citation
	Any person over 18	Social worker	Health care provider	Mental health professional	
Abuse or neglect of a child		✓	✓	✓	W. Va. Code § 49-2-803
Sexual abuse of a child	✓	✓	✓	✓	W. Va. Code § 49-2-803
Abuse of an incapacitated adult		✓	✓	✓	W. Va. Code § 9-6-9
Gunshot or knife wound			✓		W. Va. Code § 61-2-27

2

2. If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim's privileged communications with an attorney or mental health professional without waiving the victim's right to keep those communications confidential? State law does not directly address this question. West Virginia recognizes several categories of privileged communications, including attorney and client,⁶ licensed professional counselor and patient,⁷ and domestic violence or sexual assault advocate and victim.⁸ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a client's interests in legal or therapeutic services.⁹

4

May an interpreter be present during a victim's privileged communications with an advocate, attorney, or mental health professional without waiving the victim's privilege to keep those communications confidential? West Virginia law does not directly address this question, except where a qualified interpreter must be appointed to a Deaf person in court proceedings. Any information that the interpreter gathers from the Deaf person pertaining to the proceedings remains privileged.¹⁰

5

Are a victim's privileged communications with an advocate, attorney, or mental health professional protected from disclosure after the victim's death? It depends. State law indicates that the attorney and mental health professional privileges survive the death of the client or patient.¹¹ The advocate privilege is silent as to this issue. For guidance on whether VAWA may help protect a victim's confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹² identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school's Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹³ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	West Virginia law requires a legal proceeding to be pending in order for a subpoena to issue ¹⁴
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor's right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction's laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor's right to consent to medical and mental health services, and a parent or guardian's right to access a child's medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Likely yes, but legal and practical success and the victim's options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy (such as publication of private facts or intrusion) or intentional infliction of emotional distress. Additionally, a civil cause of action is available under the West Virginia Computer Crime and Abuse Act for persons who have been injured by obscene, harassing, and threatening communications.¹⁵ If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines "Indian Country" as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ State ex rel. Med. Assur. of W. Va., Inc. v. Recht, 583 S.E.2d 80 (W. Va. 2003).

⁷ W. Va. Code § 30-31-16.

⁸ W. Va. Code § 48-26-701.

⁹ This question does not address physician-patient privilege because West Virginia does not recognize this privilege. However, other laws, such as health

information privacy laws and ethical duties of confidentiality, may protect the privacy of communications between patients and health care providers.

¹⁰ W. Va. Code § 5-14A-8.

¹¹ 1-5 Handbook on Evidence for West Virginia Lawyers § 501.02; W.V. Code § 30-31-16.

¹² Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹³ 45 C.F.R. § 164.512. The regulations define "law enforcement official" as "an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law." 45 C.F.R. § 164.103.

¹⁴ W. Va. Code § 57-5-4; State v. McGill, 741 SE 2d 127 (W. Va. 2013).

¹⁵ W. Va. Code §§ 61-3C-14a, 61-3C-16.



FAQs: Privacy Laws Impacting Survivors

Wisconsin

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims’ privacy rights. Depending on the facts of a specific case, such as a victim’s age or occupation, there may be additional laws that expand or limit a victim’s privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA’s Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Wisconsin law defines certain categories of individuals who *must* report abuse or injury to a child welfare agency, child protective services agency, or law enforcement. The chart below summarizes certain providers’ mandatory reporting obligations for specific populations. Read the statutes for additional categories of mandatory reporters, definitions of abuse and injury, procedures for reporting abuse, and any exceptions to mandatory reporting obligations. The chart below includes only *mandatory* (and not optional) reporters. (This is because the Violence Against Women Act (VAWA) allows VAWA-funded entities to disclose a victim’s personally identifying information without consent only if disclosure is mandated by a statute or court order.)

In addition, Wisconsin requires reporting of elder and vulnerable adult abuse in limited circumstances. Certain professionals (including, but not limited to, health care providers, social workers, professional counselors, and marriage and family therapists) must make a report where: (1) the elderly or vulnerable adult has requested the report; (2) there is reasonable cause to believe that the adult is at imminent risk of serious bodily harm, death, sexual assault, or significant property loss and is unable to make an informed judgment about whether to report; or (3) other elderly or vulnerable adults are at risk of serious bodily harm, death, sexual assault, or significant property loss inflicted by the suspected perpetrator.¹

What must be reported?

Who is REQUIRED to report?

	Social Worker	Health care provider	Mental health professional	Citation
Child abuse	✓	✓	✓	Wis. Stat. § 48.981
Injury from gun or criminal act		✓		Wis. Stat. § 255.40
Patient is danger to others			✓	Schuster v. Altenberg, 424 N.W.2d 159 (Wis. 1988)

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?² Several laws govern mandatory reporting obligations in Indian Country³ and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,⁴ or who suspect that child abuse has occurred or will occur in Indian Country.⁵ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁶

3

May a victim advocate be present during a victim's privileged communications with a lawyer, mental health professional, or health care provider without waiving the victim's right to keep those communications confidential? Yes, if the advocate is present to further the rendition of medical, legal, or therapeutic services. Under Wisconsin law, several types of communications are privileged, meaning that neither party may be forced to disclose what was said without the privilege holder's consent. These privilege laws apply to confidential communications only. The lawyer-client⁷ privilege recognizes that a communication is still considered confidential if a third party is present to further the rendition of professional legal services to a client. Similarly, the physician-patient,⁸ registered nurse-patient,⁹ mental health professional-patient,¹⁰ and advocate-victim¹¹ privileges all recognize that a communication is still considered confidential if a third party is present to further the interest of the client or patient in the consultation or treatment.

4

May an interpreter be present during a victim's privileged communications with an advocate, lawyer, mental health professional, or health care provider without waiving the victim's privilege to keep those communications confidential? Yes. If an interpreter for a person with a language difficulty, limited English proficiency, or hearing or speaking impairment interprets a communication that is privileged, the privilege holder may prevent the interpreter from disclosing the communication.¹²

5

Are a victim's privileged communications with an advocate, lawyer, mental health professional, or health care provider protected from disclosure after the victim's death? Yes, because state law indicates that these privileges survive the death of the client or patient.¹³

6

Are communications between a victim and a prosecutor's office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor's office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant's innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor's office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator? It depends on the employee's role. The U.S. Department of Education has issued guidance¹⁴ identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, "responsible employees" must report the names

of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school’s Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school’s policies may be unique. Programs should become familiar with schools’ confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim’s health information without the victim’s consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹⁵ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Provider must limit the disclosure to the scope of the court order, warrant, subpoena, or summons
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient’s location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient’s DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE’s need must be immediate; disclosure must be in the victim’s best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include invasion of privacy and negligent or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

In addition, Wisconsin has a criminal nonconsensual pornography (aka “revenge porn”) statute. It is unlawful to publish an image depicting a person who is nude or engaging in sexually explicit conduct if the actor knows that the person depicted does not consent to the publication.¹⁶ A separate statute creates a civil cause of action allowing victims to pursue civil remedies.¹⁷

¹Wis. Stat. § 46.90 (elder abuse); Wis. Stat. § 55.043 (vulnerable adult abuse).

²We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

³Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

⁴Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁵Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁶A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁷Wis. Stat. § 905.03.

⁸Wis. Stat. § 905.04.

⁹*Id.*

¹⁰*Id.*

¹¹Wis. Stat. § 905.045.

¹²Wis. Stat. § 905.015.

¹³Wis. Stat. §§ 905.03, 905.04, 905.045.

¹⁴Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹⁵45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁶Wis. Stat. § 942.09.

¹⁷Wis. Stat. § 995.50(2)(d).



FAQs: Privacy Laws Impacting Survivors

Wyoming

This FAQ card provides attorneys and advocates with a starting point for researching common privacy issues that impact victims of domestic violence, sexual assault, and stalking, and includes citations to laws that affect victims' privacy rights. Depending on the facts of a specific case, such as a victim's age or occupation, there may be additional laws that expand or limit a victim's privacy. This card is intended as a summary of relevant laws and is current through 2015. We do not guarantee that all relevant laws are included and the information provided does not constitute legal advice. If you are dealing with a privacy-related situation, we recommend that you contact a local attorney. If you need help finding an attorney, visit the ABA's Lawyer Referral Directory at <http://apps.americanbar.org/legalservices/lris/directory/> or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at privacyTA@victimrights.org or 503-274-5477.

1

What mandatory reporting laws should I be aware of in my jurisdiction? Wyoming law requires any person to report child abuse or vulnerable adult abuse. Read the statutes below for definitions of abuse and injury, reporting procedures, and any exceptions to mandatory reporting obligations.

What must be reported?	Who is REQUIRED to report?	
	Any person	Citation
Child abuse	✓	Wyo. Stat. Ann. § 14-3-205
Vulnerable adult abuse	✓	Wyo. Stat. Ann. § 35-20-103

2

If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?¹ Several laws govern mandatory reporting obligations in Indian Country² and on federal property. Tribal codes may require certain individuals to report child abuse and elder abuse to tribal officials, law enforcement, or tribal social services. Federal laws also address mandatory reporting. These laws apply to certain professionals who work in federal facilities or lands,³ or who suspect that child abuse has occurred or will occur in Indian Country.⁴ Additionally, state laws (discussed in Question 1), licensing regulations, and ethical obligations may require certain professionals to report abuse. Determining how these laws interact is complicated. Programs should contact attorneys and technical assistance providers for more information.⁵

3

May an advocate be present during a victim’s privileged communications with a lawyer, mental health professional, or health care provider without waiving the victim’s right to keep those communications confidential? Wyoming law does not directly address this question. Wyoming recognizes several categories of privileged communications, including family violence/sexual assault advocate and victim,⁶ attorney and client,⁷ physician and patient,⁸ and mental health professional and client.⁹ However, the law does not indicate whether privilege is waived where a third party is present during a privileged conversation to further a patient or client’s interests in medical, legal, or therapeutic services.

4

May an interpreter be present during a victim’s privileged communications with an advocate, lawyer, mental health professional, or health care provider without waiving the victim’s privilege to keep those communications confidential? A Wyoming law does not directly address this question, other than requiring court interpreters to keep confidential all matters interpreted and all conversations overheard between counsel and client.¹⁰

5

Are a victim’s privileged communications with an advocate, lawyer, mental health professional, or health care provider protected from disclosure after the victim’s death? It depends. Under Wyoming law, a court may compel an advocate to testify if the victim is unable to testify due to death or incompetence.¹¹ Wyoming’s laws regarding the lawyer, mental health professional, and health care provider privileges do not directly address this issue. Service providers should consult any confidentiality duties they may have under funding contracts, licensing requirements, and ethical obligations in responding to requests for information regarding a deceased victim. For guidance on whether VAWA may help protect a victim’s confidentiality after death, contact the Victim Rights Law Center or your state coalition.

6

Are communications between a victim and a prosecutor’s office or law enforcement agency confidential? No. Communications between a victim and employees of a law enforcement agency or prosecutor’s office are not confidential because the government has a duty to turn over exculpatory evidence to the defendant. Exculpatory evidence is information that tends to prove the defendant’s innocence and could include statements or personal records the victim gave to an advocate employed by a prosecutor’s office, law enforcement, or other government agency. By contrast, advocates with non-profit agencies typically are not subject to these rules, as they are not part of the prosecution team or a party to the criminal case.

7

When must school employees report gender-based violence against adult victims to the school’s Title IX Coordinator? It depends on the employee’s role. The U.S. Department of Education has issued guidance¹² identifying three categories of employees and their respective duties to report gender-based violence (e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking) under Title IX. First, “responsible employees” must report the names of the perpetrator (if known), the victim, and other students involved, as well as the date, time, and location of the incident, to the school’s Title IX coordinator. Responsible employees include anyone

who has authority to redress the gender-based violence; who has a duty to report other misconduct that violates school policy; or whom a student could reasonably believe has this authority or duty. Second, employees who fall under a state law privilege (such as those discussed in Question 3) have no duty to report gender-based violence involving an adult victim to a school's Title IX coordinator. Third, employees whom a student might ordinarily expect to keep information confidential, but who are *not* covered by a state law privilege, must provide general, non-identifying data to the Title IX coordinator and a designated Clery Compliance Officer. Every school's policies may be unique. Programs should become familiar with schools' confidentiality policies and identify which employees can offer confidentiality to survivors.

8

May law enforcement access an adult victim's health information without the victim's consent? It depends on the type of information that is requested. The chart below summarizes some of the common situations in which law enforcement (LE) may access health information *without* patient consent under Health Insurance Portability and Accountability Act (HIPAA) regulations.¹³ Additionally, health care providers may be required by law to report certain injuries to LE, as discussed in Question 1.

Scenario	What may be disclosed?	Limitations on what may be disclosed
Health care provider receives court order, court-ordered warrant, subpoena or summons issued by a judicial officer, or grand jury subpoena	Information authorized by the court order, court-ordered warrant, subpoena, or summons	Disclosure may be limited by Wyoming's health information privacy laws ¹⁴
Provider receives administrative subpoena, summons, investigative demand, or other non-judicial process authorized by law	Information authorized by the administrative demand	LE must certify that the information requested is relevant, material, specific, and limited in scope, and that de-identified information could not reasonably be used
LE asks about a patient by name	The patient's location in the health care facility and general medical condition	Information must not be released if the patient has opted out
LE requests information to identify or locate a suspect, fugitive, witness, or missing person	Name; address; birth date; SSN; blood type; injury; date and time of treatment; date and time of death; physical description	Provider cannot disclose information related to the patient's DNA; dental records; or typing, samples, or analysis of body fluids or tissue
LE requests information about a crime victim who cannot consent due to incapacity or emergency	Information that LE states is needed to determine whether a crime has occurred	Information cannot be intended to be used against the victim; LE's need must be immediate; disclosure must be in the victim's best interests

9

How can I determine the privacy rights of minors and whether minors may legally consent to domestic violence, dating violence, sexual assault, or stalking services? The laws that govern a minor’s right to privacy and right to consent to services are varied and complex. A program may need to consult several different laws, including the jurisdiction’s laws regarding mandatory reporting (discussed in Question 1), emancipation, a minor’s right to consent to medical and mental health services, and a parent or guardian’s right to access a child’s medical, counseling, or other personal records. Contact your state coalition or the Victim Rights Law Center for more information on how to approach this question.

10

Does a victim whose private information or photographs have been posted online without consent have any civil legal remedies? Potentially yes, but legal and practical success and the victim’s options will vary greatly depending on the facts of the case. Consult an attorney familiar with these issues before advising victims. Civil causes of action against the person who posted the content may include civil stalking and negligent or intentional infliction of emotional distress. If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal. Additionally, if the victim took the photo, video, or other content at issue, the victim may submit a Digital Millennium Copyright Act notice requesting that the website remove it.

¹ We have included this information for all jurisdictions because it may aid professionals who work across state lines or in federal lands or facilities.

² Federal law defines “Indian Country” as all land within the limits of an Indian reservation under the jurisdiction of the U.S. government; all dependent Indian communities; and all Indian allotments still in trust. 18 U.S.C. § 1151.

³ Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

⁴ Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

⁵ A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

⁶ Wyo. Stat. Ann. § 1-12-116.

⁷ Wyo. Stat. Ann. § 1-12-101.

⁸ *Id.*

⁹ Wyo. Stat. Ann. § 33-38-113.

¹⁰ Supreme Court of Wyoming, Language Interpreters Policy, Appendix B, Interpreter’s Code of Ethics, <http://www.courts.state.wy.us/Documents/Interpreter/PolicyCourtInterpreter.pdf>.

¹¹ Wyo. Stat. Ann. § 1-12-116.

¹² Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

¹³ 45 C.F.R. § 164.512. The regulations define “law enforcement official” as “an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.” 45 C.F.R. § 164.103.

¹⁴ Wyo. Stat. Ann. §§ 35-2-609, 35-2-610.