



# 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 was last revised in August 2018. 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 [https://www.americanbar.org/groups/legal\\_services/flh-home/flh-hire-a-lawyer/](https://www.americanbar.org/groups/legal_services/flh-home/flh-hire-a-lawyer/) or contact your state coalition. We encourage you to contact the VRLC with your privacy-related questions at [privacyTA@victimrights.org](mailto: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.<sup>1</sup> 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?**<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> As a result, the attorney-client and psychotherapist-patient communications are privileged.<sup>4</sup>

**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**

**When must school employees report gender-based violence against adult victims to the school's Title IX Coordinator?** An employee's role determines when a report of gender-based violence, e.g., sexual assault, domestic violence, dating violence, or sexually motivated stalking, must be made to a Title IX Coordinator. Under Title IX, a "responsible employee" has a duty to report such violence if they "knew, or in the exercise of reasonable care should have known, about the harassment." Responsible employees include anyone who has authority to address the 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. In 2017, the Office for Civil Rights retracted the 2011 Dear Colleague Letter and companion guidance. The federal requirements for what a responsible employee must disclose to a Title IX Coordinator are currently unclear. If an employee's communication with the survivor are privileged, e.g., communications discussed in Question 3, they have no duty to report the violence unless other mandatory reporting obligations are in effect, e.g. reporting abuse of a minor or of an adult with a disability.

**7**

**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.

## 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.<sup>5</sup>

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.

<sup>1</sup> Am. Samoa Code Ann. 45.2002.

<sup>2</sup> 42 U.S.C. § 13031.

<sup>3</sup> Am. Samoa R. Evid. 501.

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

<sup>5</sup> 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.