



# 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 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.

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**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.) See *Bradley v. Ray*, 904 S.W.2d 302 (Mo. Ct. App. 1995) regarding mental health providers' common law duty to warn.

### 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
Abuse of elder or adult with a disability	✓	✓	✓	✓	Mo. Rev. Stat. § 192.2405
Gunshot wound				✓	Mo. Rev. Stat. § 578.350

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**If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?**<sup>1</sup> Several laws govern mandatory reporting obligations in Indian Country<sup>2</sup> 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,<sup>3</sup> or who suspect that child abuse has occurred or will occur in Indian Country.<sup>4</sup> 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.<sup>5</sup>

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**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 rape crisis center employee and volunteer-victim privilege,<sup>6</sup> domestic violence shelter employee and volunteer-victim privilege,<sup>7</sup> attorney and client,<sup>8</sup> physician and patient,<sup>9</sup> licensed psychologist and patient,<sup>10</sup> licensed professional counselor and client,<sup>11</sup> licensed social worker and client,<sup>12</sup> and licensed marital and family therapist and client.<sup>13</sup> 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.<sup>14</sup>

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**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.<sup>15</sup> Additionally, Missouri law states that privileged communications continue to be protected as privileged communications when an interpreter for the Deaf is used.<sup>16</sup> Similarly, interpreters for non-English speakers cannot be compelled to testify as to information that is protected by attorney-client privilege.<sup>17</sup>

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**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.<sup>18</sup>

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**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.

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**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.

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**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>19</sup> 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

**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?** Missouri has a “qualified minor” statute, permitting minors the right to contract in various contexts, including “admission to a shelter for victims of domestic violence” and “receipt of services as a victim of domestic violence or sexual abuse, including but not limited to counseling, court advocacy, financial assistance, and other advocacy services.”<sup>20</sup> To fall within the parameters of this statute, the minor must be sixteen or seventeen years of age, be homeless or a victim of domestic abuse, be self-supporting, and have the express or implied consent of parents or guardians to live independently.<sup>21</sup>

Because this statute and other laws governing minors’ rights are complex, a program may need to consult several different sources to determine applicability in individual cases. Contact 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 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.

<sup>1</sup> Mo. Rev. Stat. § 445.220; Mo. Rev. Stat. § 455.003.

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

<sup>3</sup> 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.

<sup>4</sup> Mo. Rev. Stat. § 455.003(2).

<sup>5</sup> Mo. Rev. Stat. § 455.220(2), *State ex rel. Hope House, Inc. v. Merrigan*, 133 S.W.3d 44 (Mo. 2004).

<sup>6</sup> Victims of Child Abuse Act: 42 U.S.C. § 13031 *et seq.* & 18 U.S.C. § 2258.

<sup>7</sup> Indian Child Protection & Family Violence Prevention Act: 25 U.S.C. § 3201 *et seq.* & 18 U.S.C. § 1169.

<sup>8</sup> A list of OVW technical assistance (TA) providers, including tribal TA providers, is available at <https://ta2ta.org/directory.html>.

<sup>9</sup> Mo. Rev. Stat. § 491.060.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; Mo. Rev. Stat. § 337.055.

<sup>12</sup> Mo. Rev. Stat. § 337.540.

<sup>13</sup> Mo. Rev. Stat. § 337.636.

<sup>14</sup> Mo. Rev. Stat. § 337.736.

<sup>15</sup> *See State v. Fingers*, 564 S.W.2d 579 (Mo. Ct. App. 1978) (presence of client’s father waived attorney-client privilege).

<sup>16</sup> *See State v. Longo*, 789 S.W.2d 812 (Mo. Ct. App. 1990).

<sup>17</sup> Mo. Rev. Stat. § 209.339.

<sup>18</sup> Mo. Rev. Stat. § 476.803.

<sup>19</sup> Mo. 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).

<sup>20</sup> Questions and Answers on Title IX and Sexual Violence, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

<sup>21</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.

<sup>22</sup> Mo. Rev. Stat. § 431.056.

<sup>23</sup> *Id.*