



# 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 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?** North Carolina law requires any person or institution who suspects that any juvenile is abused, neglected, or dependent to report to the director of the county department of social services. Any person having reasonable cause to believe that a disabled adult is in need of protective services shall also report to the director of the county department of social services. Read the statutes below for definitions of abuse and reporting procedures. Additionally, physicians and facility administrators are required to report certain wounds and injuries.

What must be reported?	Who is REQUIRED to report?		Citation
	Any person	Health care provider	
Child abuse	✓	✓	N.C. Gen. Stat. § 7B-301
Disabled adult abuse	✓	✓	N.C. Gen. Stat. § 108A-102
Certain wounds and injuries		✓	N.C. Gen. Stat. § 90-21.20

2

**If I am working in Indian Country or on federal property, what authorities should I consult to determine my mandatory reporting obligations?**<sup>4</sup> Several laws govern mandatory reporting obligations in Indian Country<sup>5</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>6</sup> or who suspect that child abuse has occurred or will occur in Indian Country.<sup>7</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>8</sup>

**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,<sup>9</sup> attorney and client,<sup>10</sup> physician and patient,<sup>11</sup> nurse and patient,<sup>12</sup> psychologist and client,<sup>13</sup> social worker and client,<sup>14</sup> and counselor and client.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

**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<sup>18</sup> or physician<sup>19</sup> 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.<sup>20</sup> North Carolina law is silent regarding whether the psychologist,<sup>21</sup> social worker,<sup>22</sup> counselor,<sup>23</sup> or nurse<sup>24</sup> 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?** 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.

## 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>25</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?** 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 distress<sup>26</sup> and invasion of privacy.<sup>27</sup> 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.<sup>28</sup> The statute also provides a civil cause of action for the harmed individual, who may pursue damages.

<sup>1</sup> N.C. Gen. Stat. § 7B-301.

<sup>2</sup> N.C. Gen. Stat. § 108A-102.

<sup>3</sup> N.C. Gen. Stat. § 90-21.20.

<sup>4</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>5</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>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> N.C. Gen. Stat. § 8-53.12.

<sup>10</sup> *In re Investigation of the Death of Miller*, 584 S.E.2d 772, 776 (N.C. 2003).

<sup>11</sup> N.C. Gen. Stat. § 8-53.

<sup>12</sup> N.C. Gen. Stat. § 8-53.13.

<sup>13</sup> N.C. Gen. Stat. § 8-53.3.

<sup>14</sup> N.C. Gen. Stat. § 8-53.7.

<sup>15</sup> N.C. Gen. Stat. § 8-53.8.

<sup>16</sup> 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](http://www.nccourts.org/LanguageAccess/Documents/NC_Standards_for_Language_Access.pdf).

<sup>17</sup> N.C. Gen. Stat. § 8B-5.

<sup>18</sup> *In re Miller*, 584 S.E.2d at 779.

<sup>19</sup> N.C. Gen. Stat. § 8-53.

<sup>20</sup> N.C. Gen. Stat. § 8-53.12.

<sup>21</sup> N.C. Gen. Stat. § 8-53.3.

<sup>22</sup> N.C. Gen. Stat. § 8-53.7.

<sup>23</sup> N.C. Gen. Stat. § 8-53.8.

<sup>24</sup> N.C. Gen. Stat. § 8-53.13.

<sup>25</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>26</sup> *See Hall v. Salisbury Post*, 372 S.E.2d 711 (N.C. 1988).

<sup>27</sup> *See Miller v. Brooks*, 472 S.E.2d 350 (N.C. Ct. App. 1996).

<sup>28</sup> N.C. Gen. Stat. § 14-190.5A.