



# 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 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?** 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	✓	✓	✓	✓	8 L.P.R.A. § 1131
Elder abuse	✓	✓	✓	✓	8 L.P.R.A. § 346 <i>et seq.</i>
Firearm injury				✓	25 L.P.R.A. § 458m
Patient is danger to self or others		✓	✓	✓	24 L.P.R.A. §§ 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.<sup>1</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**

**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,<sup>2</sup> attorney-client,<sup>3</sup> physician-patient,<sup>4</sup> and psychotherapist-patient<sup>5</sup> 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.<sup>6</sup>

**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?** 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>8</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

# 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,<sup>9</sup> right of privacy,<sup>10</sup> and invasion of privacy.<sup>11</sup> If the website hosting the content has policies regarding harassment or sexually explicit content, the victim should use these policies to request removal.

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<sup>1</sup> 42 U.S.C. § 13031.

<sup>2</sup> 32A L.P.R.A. App. IV, Rule 26A.

<sup>3</sup> 32A L.P.R.A. App. IV, Rule 25..

<sup>4</sup> 32A L.P.R.A. App. IV, Rule 26.

<sup>5</sup> *Id.*

<sup>6</sup> 32A L.P.R.A. App. IV, Rule 25, 26, 26A.

<sup>7</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>9</sup> See *Colon v. Romero Barceló*, 112 D.P.R 573 (1982).

<sup>10</sup> See *Vigoreaux Lorenzana v. Quizno’s Sub*, 173 D.P.R. 254 (2008).

<sup>11</sup> See *Lopez Mulero v. Sánchez Rodríguez*, No. KLAN201300260, 2013 TA 2677, 2013 WL 4710483, at \*10 (P.R. Cir. June 28, 2013).