

## Alabama

Many privacy questions arise when Office on Violence Against Women (OVW)-funded victim service providers help children and teens who are survivors of sexual assault, dating and domestic violence, stalking, and sex trafficking. For example, when, if ever, may you serve minors without a parent or guardian's permission? Do you have to share records with parents or guardians if they ask for them? Can a minor sign their own release of information? How does mandatory reporting of child abuse affect minors' privacy? These FAQs provide jurisdiction-specific guidance for answering these sorts of privacy-related questions. We include legal citations so that you can read more about the laws and make sure they're current.<sup>1</sup> These FAQs are a companion piece to the Victim Rights Law Center's Minors' Privacy Toolkit, which is available in English and Spanish, with several components also available in Arabic, Hindi, Hmong, and Vietnamese. To receive an electronic copy of the Toolkit, or to ask privacy questions related to your work, email us at [TA@victimrights.org](mailto:TA@victimrights.org).

**1 Who is a "minor" in Alabama?** A minor is anyone under the age of nineteen. Ala. Code § 26-1-1.

**2 How does emancipation work in Alabama?** A minor must be at least eighteen years old for an Alabama court to enter a judgment of emancipation. Ala. Code § 26-13-1. When emancipated, a minor can sue and be sued; enter into a contract; buy, sell, and convey real estate; and "generally ... do and perform all acts which such minor could lawfully do if 19 years of age." Ala. Code § 26-13-5. Note: Alabama refers to emancipation as removing "disabilities of nonage."

**3 What laws in Alabama inform a minor's right to consent to services?**

<p><b>Reproductive health</b></p>	<p>General reproductive health, any age. Any minor may give effective consent for any legally authorized medical, health, or mental health services to determine the presence of, or to treat, pregnancy, venereal disease, drug dependency, alcohol toxicity, or any reportable disease. No other person's consent is necessary. Ala. Code § 22-8-6.</p> <p>Abortion, parental consent or judicial bypass required. Except as otherwise provided in the statute (including by judicial bypass), written consent of either parent or guardian is required before a physician can perform an abortion on an unemancipated minor. Ala. Code § 26-21-3.</p> <p>Note: All clinics or providers who participate in Title X grant programs are required to follow federal confidentiality regulations per 42 C.F.R. 59.11.</p>
<p><b>General medical</b></p>	<p><b>Age 14 and older.</b> Any minor who is 14 years of age or older, has graduated from high school, is married, or having been married is divorced, or is pregnant, may give effective consent to any legally authorized medical, dental, health, or mental health services, and the consent of no other person shall be necessary. Ala. Code § 22-8-4.</p>
<p><b>Mental health and chemical dependency</b></p>	<p><b>At any age.</b> Any minor may give effective consent for any legally authorized medical, health, or mental health services to determine the presence of, or to treat, pregnancy, venereal disease, drug dependency, alcohol toxicity, or any reportable disease, and the consent of no other person shall be deemed necessary. Ala. Code § 22-8-6.</p>

## 4

### **As an OVW-funded victim service provider, why do I need to know the child abuse mandatory reporting obligations in Alabama?**

The Violence Against Women Act (VAWA) confidentiality law allows OVW-funded grantees and subgrantees to disclose the personally identifying information of people who seek, receive, or are denied services only with a VAWA-compliant release of information, or in response to a statutory or court mandate. Therefore, without a release, a victim service provider who receives VAWA funding may only report child abuse or neglect if a statute or case law *requires* the report. Statutory or case law *permission* to file a report is not enough. Sexual violence disproportionately impacts children and youth, many of whom will not disclose their abuse to someone who is mandated to report it. Victim service providers should be careful not to over-report child abuse. The information below gives an overview of the requirements for making a report of child abuse or neglect in Alabama.

## 5

### **What are the child abuse mandatory reporting obligations in Alabama?**

**Who is a mandatory reporter of child abuse?** In Alabama, there is a long list of mandatory reporters. (See Ala. Code § 26-14-3 for a full list.) These reporters include: health care providers, school employees and teachers, social workers, mental health care professionals, persons called upon to render aid or medical assistance to any child.

**How is “child” defined for purposes of Alabama’s mandatory reporting law?**<sup>2</sup> A child is defined as “a person under the age of 18.” Ala. Code § 26-14-1(3).

**How is “abuse” defined?** Ala. Code § 26-14-1(1) defines “abuse” as: “Harm or threatened harm to a child’s health or welfare. Harm or threatened harm to a child’s health or welfare can occur through nonaccidental physical or mental injury, sexual abuse or attempted sexual abuse, or sexual exploitation or attempted sexual exploitation.”

“Sexual abuse” includes “the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct or any simulation of the conduct for the purpose of producing any visual depiction of the conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children as those acts are defined by Alabama law.” *Id.*

“Sexual exploitation” includes “allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes.” *Id.*

**When must a mandatory reporter make a report?** “[W]hen the child is known or suspected to be a victim of child abuse or neglect, [the reporter] shall be required to report orally, either by telephone or direct communication immediately, and shall be followed by a written report, to a duly constituted authority.” Ala. Code § 26-14-3(a).

**What must be reported if I am required to report child abuse?** Reports “shall state, if known, the name of the child, his or her whereabouts, the names and addresses of the parents, guardian, or caretaker, and the character and extent of his or her injuries. The written report shall also contain, if known, any evidence of previous injuries to the child and any other pertinent information which might establish the cause of such injury or injuries, and the identity of the person or persons responsible for the same.” Ala. Code § 26-14-5.

**To whom must I make a report when I’m required to do so?** Reports must be made to the “chief of police of a municipality or county; or the sheriff, if the observation of child abuse or neglect is made in an unincorporated territory; or the Department of Human Resources; or any person, organization, corporation, group, or agency authorized and designated by the Department of Human

Resources to receive reports of child abuse and neglect; provided, that a duly constituted authority shall not include an agency involved in the acts or omissions of the reported child abuse or neglect.” Ala. Code § 26-14-1(4).

**6** **Must I notify someone if a minor is suicidal or a danger to others?** Without a VAWA-compliant release of information, OVW-funded grantees and subgrantees may disclose the personally identifying information of someone who sought, received, or was denied services only when there is a statutory or court mandate to do so. “Court mandate” includes case law. Duties to protect a third party from harm or someone from self-harm can be found in both statutes and case law, and typically apply only to mental health practitioners. Since VAWA confidentiality provisions only allow for release of information in duty to protect situations if the statute or case law requires the release, permission to release the information is not enough.

Under Ala. Code § 34-17A-23, no monetary liability or cause of action arises against a licensed marriage and family therapist who fails to predict and warn of and protect from a patient’s violent behavior except where the patient communicated to the therapist a serious threat of physical violence against a reasonably identifiable victim(s). The duty to warn of or to take reasonable precautions to provide protection from violent behavior arises only under these limited circumstances. The duty is discharged by the therapist if reasonable efforts are made to communicate the threat to the victim(s) and to a law enforcement agency.

Under Ala. Code § 34-8A-24, no monetary liability or cause of action arises against a licensed professional counselor or associate licensed counselor who fails to warn of and protect from a client who has communicated to the counselor a serious threat of physical violence against a reasonably identifiable victim(s). If there is a duty to warn and protect under these limited circumstances, the duty is discharged by the counselor making reasonable efforts to communicate the threat to the victim(s) and to a law enforcement agency. Duties to warn or protect are complicated and can require analysis of case law. Please contact the VRLC privacy support team at [TA@victimrights.org](mailto:TA@victimrights.org) to discuss our survey of jurisdiction-specific case law that may affect your duties to warn or protect.

**7** **May domestic violence and sexual assault advocates have privileged communications with a minor survivor?** Oral communications between a domestic violence victim and a domestic violence advocate, and written reports and records about the victim, may not be disclosed without the victim’s written consent. Ala. Code §30-6-8. An advocate is defined by Ala. Code §30-6-1 as “an employee or volunteer of a program for victims of domestic violence ... who has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; who supervises the employees or volunteers of the program; or who administers the program.”

This privilege does not protect communications in proceedings related to child abuse. Ala. Code § 30-6-8 provides that a victim or advocate may not claim privilege when providing evidence in proceedings concerning child abuse, but may claim this privilege in all other proceedings, both criminal and civil.

Alabama also protects communications for a victim “who consults a victim counselor for assistance in overcoming adverse emotional or psychological effects of a sexual assault or family violence.” Ala. Code § 15-23-41(2). “A victim, a victim counselor without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party, cannot be compelled to give testimony or to produce records concerning confidential communications for any purpose in any criminal proceeding.” Ala. Code § 15-23-42(a).

**8** **Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Alabama?** This is not clear under the law. The domestic violence victim and advocate privilege statute (Ala. Code § 30-6-8) is silent about whether someone being present during a conversation impacts the privilege. The victim and victim counselor privilege statute allows privilege to be preserved for information exchanged “in the presence of a third party who is necessary to facilitate communication or further the counseling process.” Ala. Code § 15-23-41(1).

**9** **Does Alabama have a privilege that protects the privacy of communication between a parent and a child?** Alabama does not have a parent-child privilege.

**10** **Who must sign a release of a minor’s personal information at an OVW-funded victim service provider?** If the minor is permitted by law to receive services without a parent or guardian’s consent, the minor alone may consent to release their information. Releases generally must be signed by the victim unless the victim is a minor who doesn’t understand consent (because of age or other factors). In those cases, the parent or guardian should sign. If the victim understands consent, but lacks legal capacity to consent for services, the release must be signed by both the minor and a parent or guardian. Consent may not be given by the abuser of the minor or the abuser of the other parent of the minor. If a parent or guardian consents for a minor, the grantee or subgrantee should attempt to notify the minor as appropriate. 34 U.S.C. 12291(b)(2)(B) and 28 C.F.R. 90.4(3)(ii).

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## Endnotes

- 1 We do not guarantee that all relevant laws are included in the FAQs. The information provided is not legal advice and the Victim Rights Law Center is not establishing an attorney-client relationship with you through it. We recommend that you work with a local attorney to apply these laws to your circumstances. The American Bar Association Lawyer Referral Directory might help: [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 jurisdiction’s coalition or bar association.
- 2 Although a minor is anyone under the age of nineteen, in Alabama, anyone under eighteen is a “child” for the purposes of mandatory reporting.