



# Minors' Privacy Toolkit

## American Samoa

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 American Samoa?** A minor is a person under the age of eighteen years. Am. Samoa Code § 40.0401.

2

**How does emancipation work in American Samoa?** Minors can be emancipated under American Samoan law. *Schwenke v. Am. Samoa Gov.*, Case No. 23-97 (High Ct. of Am. Samoa, Jan. 12, 2000). Our research did not identify an emancipation statute, or any available case law setting forth requirements for emancipation.

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**What laws in American Samoa inform a minor's right to consent to services?** There appears to be little law addressing a minor's right to consent to services. Am. Samoa Code § 13.0241(a)(17) provides that “[n]o child shall be subjected to ... medical examination, vaccination, re-vaccination, or immunization, whose parent or guardian shall in writing object thereto on grounds that such requirements are not in accordance with the religious tenants of an established church of which he is a member or adherent, but no such objection shall be recognized when ... there is a danger of an epidemic or serious outbreak of any communicable disease.”

Note: All clinics or providers who participate in Title X grant programs are required to follow federal regulations regarding consent and confidentiality per 42 C.F.R. § 59.11.

4

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

## What are the child abuse mandatory reporting obligations in American Samoa?

**Who is a mandatory reporter of child abuse?** In American Samoa, the list of people required to report known or suspected “abuse or neglect” or observations of a child “being subject to circumstances or conditions which would reasonably result in abuse or neglect” include:

- physicians and other medical professionals
- Christian Science practitioner
- school official or employee
- social worker or worker in a family care home or child care center
- mental health professional

For a complete list, see Am. Samoa Code § 45.2002(a).

**How is “child” defined for purposes of American Samoa’s mandatory reporting law?** A child is a person under the age of eighteen “or a mentally retarded or developmentally disabled person regardless of age.” Am. Samoa Code § 45.0103.

**How is “abuse” defined?** “Abuse” or “child abuse or neglect” “means an act or omission in one of the following categories which seriously threatens the health or welfare of a child:

- (A) When a child exhibits evidence of serious bruising, bleeding, malnutrition, failure to thrive, mental injury, burns, fracture of a bone, subdural hematoma, soft tissue swelling, or death, and the condition or death is not justifiably explained, or where the history given concerning the condition or death is at variance with the degree or type of the condition or death, or circumstances indicate that the condition or death may not be the product of an accidental occurrence;
- (B) When a child is subject to the sexual offenses ... or is allowed, permitted, or encouraged by the child’s parents, legal guardian, custodian, or any other person responsible for the child’s health and welfare, to engage in prostitution or be the subject of obscene or pornographic photographing, filming, or depicting;
- (C) Any case in which the child’s parents, legal guardians, custodians or any other person responsible for the child’s health and welfare fail to take the action to provide adequate food, clothing, shelter, medical care, or supervision that a prudent parent would take.”

Am. Samoa Code § 45.2001.

**When must a mandatory reporter make a report?** A mandatory reporter must make a report “immediately” upon having reasonable cause to know of or suspect abuse or neglect. Am. Samoa Code § 45.2002.

**What must be reported if I am required to report child abuse?** “The reports, when possible, shall include the following information:

- (1) the name, address, age, sex, religion and race of the child;
- (2) the name and address of the responsible person;
- (3) the nature and extent of the child’s injuries, including any evidence of previous known or suspected abuse or neglect of the child or the child’s siblings;
- (4) the names and addresses of the persons responsible for the suspected abuse or neglect, if known;
- (5) the family composition;
- (6) the name, address, and occupation of the person making the report;
- (7) any action taken by the reporting source; and
- (8) any other information that the person making the report believes may be helpful in furthering the purposes of this chapter.”

Am. Samoa Code § 45.2010(b).

**To whom must I make a report when I'm required to do so?** Reports must be made to the Child Protection Agency of the Department of Human Resources. Am. Samoa Code §§ 45.2001; 45.2002.

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**Must I report 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.

There is no specific statute creating a duty to report a risk of suicide or threat of harm in this jurisdiction. 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

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**May domestic violence and sexual assault advocates have privileged communications with a minor survivor?** American Samoa's privileged communications are governed by the common law. Am. Samoa R. Evid. 501. Protected communications include attorney-client communications and psychotherapist-patient communications. *Upjohn Co. v. United States*, 449 US 383 (1981); *Jaffee v. Redmond*, 518 US 1 (1996). There is no specific statute addressing privilege with regard to domestic violence or sexual assault advocates.

8

**Does a parent or guardian's presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in American Samoa?** There is no statutory authority on point.

9

**Does American Samoa have a privilege that protects the privacy of communications between a parent and a child?** We found no statute or case law creating a parent-child privilege in American Samoa.

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**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).

## 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.