



Minors' Privacy Toolkit

Arkansas

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.¹ 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.

1

Who is a "minor" in Arkansas? Under Arkansas law, a minor is an individual under eighteen years old. Ark. Code Ann. § 20-16-803(7).

2

How does emancipation work in Arkansas? Under Arkansas law, minor must be at least seventeen years old for a court to enter a judgment of emancipation. Ark. Code Ann. § 9-27-362(d). The minor must be willing to live separate and apart from their parent, legal guardian, or legal custodian; have an appropriate place to live; be able to manage their own financial affairs; have a legal source of income; have health care coverage or a realistic plan to meet their health needs; agree to comply with compulsory school attendance laws; and emancipation is in their best interest. Ark. Code Ann. § 9-27-362(d).

Emancipation statute	Minor as adult for these purposes	Emancipation does not affect
Ark. Code Ann. § 9-27-362	Right to obtain medical care, including counseling; right to enter into contracts; right to enroll self in school, college, or other educational programs; right to obtain a driver's license without parental consent. Ark. Code Ann. § 9-27-362(e).	Cannot marry without parental permission; not relieved from compulsory school attendance; may not buy alcohol, tobacco, or other items prohibited for sale to a minor; may still be charged in juvenile court and prosecuted.

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/. Or contact your jurisdiction's coalition or bar association.

What laws in Arkansas inform a minor's right to consent to services?

<p>Reproductive health</p>	<p>Any age: Consent to STD-related medical or surgical care or services by a hospital or public clinic. Ark. Code Ann. § 20-16-508. Right to refuse to perform or participate in medical procedures which result in the termination of pregnancy. Ark. Code Ann. § 20-16-601.</p> <p>Any age: All medically acceptable contraceptive procedures, supplies, and information shall be available through legally recognized channels to each person desirous of the procedures, supplies, and information regardless of sex, race, age, income, number of children, marital status, citizenship, or motive. Ark. Code Ann. § 20-16-304.</p> <p>Note: All clinics or providers who participate in Title X grant programs are required to follow federal consent and confidentiality regulations per 42 C.F.R. § 59.11.</p>
<p>General medical</p>	<p>Emancipated minor, et al.: An emancipated minor, married person (regardless of age), female making certain reproductive decisions (not abortions), et al., can consent to any surgical or medical treatment or procedure not prohibited by law that is suggested, recommended, prescribed, or directed by a licensed physician. Ark. Code Ann. § 20-9-602.²</p> <p>Unemancipated minor: An unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures, for themselves can consent to any surgical or medical treatment or procedure not prohibited by law that is suggested, recommended, prescribed, or directed by a licensed physician. Ark. Code Ann. § 20-9-602.</p> <p>Incarcerated minor: Any minor who is incarcerated by the Department of Correction or the Department of Community Punishment may give consent for medical or surgical treatment. Ark. Code Ann. § 20-9-602.</p>
<p>Other</p>	<p>Minors seventeen or older may act as a blood donor to any nonprofit blood bank or any licensed hospital without consideration. Ark. Code Ann. § 20-27-301.</p>

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

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 Arkansas.

² Ark. Code Ann. § 20-9-602 contains a more extensive list of people who can give medical consent.

What are the child abuse mandatory reporting obligations in Arkansas?

Who is a mandatory reporter of child abuse? In Arkansas, there is a long list of mandatory reporters. (See Ark. Code Ann. § 12-18-402 for a full list of mandatory reporters.) Some of the most relevant reporters include:

- Attorneys (with exceptions)
- Social workers
- Mental health professionals (with exceptions)
- Health care providers
- School employees

Please note: Ark. Code Ann. § 12-18-402(b)(29)(A) identifies a clergy member, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting them, except to the extent the clergy member has acquired knowledge of suspected child maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or received the knowledge of the suspected child maltreatment from the alleged offender in the context of a statement of admission.

Also note: A privilege or contract shall not prevent a person from reporting child maltreatment when they are a mandated reporter and required to report. Ark. Code Ann. § 12-18-402(c)(1).

How is “child” defined for purposes of Arkansas’ mandatory reporting law? A child means an individual who is from birth to eighteen years of age. Ark. Code Ann. § 12-18-103(6).

How is “abuse” defined? “Abuse” means “any of a number of acts or omissions by a parent, guardian, custodian, foster parent, person eighteen years or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child’s care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, a significant other of the child’s parent, or any person legally responsible for the child’s welfare, but excluding the spouse of a minor. The acts include:

- Extreme, repeated cruelty
- Engaging in conduct that creates a serious threat of death
- Developmental injuries
- Nonaccidental injuries
- Exposing a child to chemicals or drugs
- Child labor or sex trafficking
- Female genital mutilation

For the complete list and details, reference Ark. Code Ann. § 12-18-103(3)(A).

When must a mandatory reporter make a report? A mandated reporter shall immediately notify the Child Abuse Hotline if they have reasonable cause to suspect that a child has been subjected to child maltreatment; died as a result of child maltreatment; or died suddenly and unexpectedly; or if they observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. Ark. Code Ann. § 12-18-402(a).

What must be reported if I am required to report child abuse? The minimum requirements for a report to be accepted are: (1) “an allegation of child maltreatment or suspected child maltreatment, that if found to be true, would constitute child maltreatment as defined under this chapter; the death of a child who died suddenly and unexpectedly; or the death of a child reported by a coroner or county sheriff under § 20-15-502;” (2) sufficient information “to identify and locate the child or the child’s family;” and (3) “the child or the child’s family is present in Arkansas or the incident occurred in Arkansas.” Ark. Code Ann. § 12-18-303(a).

To whom must I make a report when I’m required to do so? The Child Abuse Hotline is the unit within the Department of Human Services and the Department of Arkansas State Police which receives and records notifications and reports. Ark. Code Ann. § 12-18-301(b).

A mandated reporter may report child maltreatment or suspected child maltreatment by telephone call, facsimile transmission, or online reporting. Ark. Code Ann. § 12-18-302(a).

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 Arkansas law, several *permissive* duties for mental health professionals, et al., to report harm exist. Arkansas has established a *mandatory* duty for mental health service providers, hospitals, etc. to take precautions against threatened patient violence at Ark. Code Ann. § 20-45-202. And a principal or other person in charge of a public school must report to the school superintendent and local law enforcement when they know or have a reasonable belief that someone has committed or threatened to commit “an act of violence or any crime involving a deadly weapon on school property or while under school supervision.” Ark. Code Ann. § 6-17-113.

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 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? Arkansas has a victim-advocate privilege for communications between victims of domestic violence and their advocates. Ark. Code Ann. § 9-6-112. The definition of “domestic violence” includes “sexual abuse against a person by another person.” *Id.* at (4)(C). However, no privilege, except that between a lawyer and client or between a minister, including a Christian Science practitioner, and a person confessing to or being counseled by the minister shall prevent anyone from testifying concerning child maltreatment. Ark. Code Ann. § 12-18-803.

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Arkansas? The privilege established at Ark. Code Ann. § 9-6-112 may be claimed by the victim or by their “parent or guardian if the victim of domestic violence is less than eighteen (18) years of age.” Ark. Code Ann. § 9-6-112(d)(1).

9

Does Arkansas have a privilege that protects the privacy of communication between a parent and a child? Arkansas does not have an established 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).