



Minors' Privacy Toolkit

Colorado

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 Colorado? Under Colorado law, a minor is a person who is under the age of twenty-one years, except as otherwise provided in the express language of another statute. Colo. Rev. Stat. § 2-4-401(6).

2

How does emancipation work in Colorado? There is no statutory procedure or independent cause of action under Colorado law for the emancipation of minors. Issues relating to emancipation may be addressed as part of a separate legal action, such as a dissolution of marriage or child custody case. For child support purposes, the default age of emancipation is nineteen years old, at which time the child is no longer considered a minor and child support terminates, unless certain exceptions apply. Additionally, a child is considered emancipated if the child marries or enters active military duty. Colo. Rev. Stat. § 14-10-115(13). Note: A child may freely marry once eighteen years old. Minors at least sixteen years old, but under eighteen years old, may marry with parental or legal guardian consent, while minors under sixteen years old may marry with both parental or legal guardian consent and judicial approval.

A relevant jury instruction provides that a child is emancipated when the child has been “freed from parent care, custody, and control.” Colo. Jury Ins., Civil 7:2. As explained by the Colorado Court of Appeals, “[w]hat constitutes emancipation is a question of law, and the burden of proving emancipation is on the one asserting it.” *Napolitano v. Napolitano*, 732 P.2d 245, 246 (Colo. App. 1986) referencing *In re Marriage of Robinson*, 629 P.2d 1069 (Colo. 1981).

In determining whether emancipation has been established, the significant factors include (1) financial independence; (2) a residence away from the family domicile, especially with parental consent; and (3) new relationships incompatible with the notion that the child occupies a subordinate position in their parent's family. See *In re Marriage of Weisbart*, 39 Colo. App. 115, 564 P.2d 961 (1977). Two examples:

- A sixteen-year-old was determined not to be emancipated because they were dependent upon their mother for financial support, had not established a residence away from both their parents, was not married to the father of their child, and did not receive support from their child's father. *In re Marriage of Clay*, 670 P.2d 31 (Colo. App. 1983).

- A child is not emancipated if they are employed and living away from home on a strictly temporary basis with the intention of returning to parental support. *In re Marriage of Robinson*, 629 P.2d 1069 (Colo. 1981).

3

What laws in Colorado inform a minor’s right to consent to services?

<p>Reproductive health</p>	<p>Any age if pregnant, a parent, or referred: “Birth control procedures, supplies, and information may be furnished by physicians” to any minor who requests and is in need them. Colo. Rev. Stat. § 13-22-105.</p> <p>Any age: A “pregnant minor may authorize prenatal, delivery, and post-delivery medical care ... related to the intended live birth of a child.” Colo. Rev. Stat. § 13-22-103.5.</p> <p>Older than thirteen years old: A health care provider or facility shall perform, at the minor’s request, diagnostic examination for sexually transmitted infection, treatment, discussion of prevention measures, and provide appropriate therapies and prescriptions. Colo. Rev. Stat. § 25-4-409.</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>Age eighteen or older; age fifteen or older if living separate from parents or legal guardians and managing own financial affairs; or married: May consent to organ or tissue donation and hospital, medical, dental, emergency health, and surgical care. Colo. Rev. Stat. § 13-22-103(1). However, a minor who is at least sixteen years old but under eighteen years old must also have parental or legal guardian consent for blood donation. Colo. Rev. Stat. § 12-22-104. And a minor must be at least sixteen years old or emancipated to make an anatomical gift. Colo. Rev. Stat. § 15-19-204.</p>
<p>Mental health and substance use</p>	<p>Age fifteen or older: May consent to receive mental health services by a facility or professional person or mental health professionals (including psychologist, social workers, marriage and family therapists and psychotherapists). Colo. Rev. Stat. § 27-65-103(2).</p> <p>Any age: A licensed physician may examine, prescribe for, and treat the minor patient for use of drugs or a substance use disorder without the consent of or notification to the parents or legal guardians. Colo. Rev. Stat. § 13-22-102.</p>
<p>Abortion</p>	<p>Generally, a person under eighteen years old cannot have an abortion until at least forty-eight hours after written notice of the pending abortion to the parent or parents. Colo. Rev. Stat. § 12-37.5-104(1); Colo. Rev. Stat. § 12-37.5-103(1).</p> <p>Any age, with certain other requirements: “Parental notification is not required if the pregnant minor declares they are the victim of child abuse or neglect by the person who would be entitled to notice, and the attending physician has reported such child abuse or neglect under mandatory reporting laws Colo. Rev. Stat. § 12-37.5-105(1)(b), or if the attending physician certifies that a medical emergency exists and there is insufficient time to provide the otherwise required notice.” Colo. Rev. Stat. § 12-37.5.105(1)(c).</p>

<p>Abortion, cont.</p>	<p>“Medical emergency” is defined as a condition that, on the basis of the physician’s good-faith clinical judgement, so complicates the medical conditions of a pregnant minor as to require a medical procedure to prevent the minor’s death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function. Colo. Rev. Stat. § 12-37.5-103(5). Also see <i>Planned Parenthood of Rocky Mountains Servs., Corp. v. Owens</i>, 287 F.3d 910 (10th Cir. 2002) (affirming that the Parental Notification Act was unconstitutional because it failed to provide a health exception as required by the Constitution of the United States).</p> <p>Judicial bypass for minors seeking an abortion: Allowed if the judge determines that the giving of such notice will not be in the best interest of the minor or, if the court finds, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion. Colo. Rev. Stat. §§ 12-37.5-105(d); 12-37.5-107(2)(a).</p>
<p>Other</p>	<p>Age eighteen or older: May enter into legal contracts; manage their estate; sue and be sued; and make decisions in regard to their own body and the body of their issues. Colo. Rev. Stat. § 13-22-101. May also marry without parental or legal guardian consent. Colo. Rev. Stat. § 14-2-109.5(1)(a).</p> <p>A person has the right to consent to sexual conduct once they are eighteen years old. Colo. Rev. Stat. §§ 18-3-404(1.5); 18-3-405.3.</p>

4

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

5

What are the child abuse mandatory reporting obligations in Colorado?

Who is a mandatory reporter of child abuse? In Colorado, there is a long list of mandatory reporters. (See Colo. Rev. Stat. § 19-3-304(2) for a complete list.) Some of the most relevant reporters include:

- Physicians, surgeons, and emergency medical service providers
- Dentists, optometrists, chiropractors, and pharmacists
- Hospital personnel engaged in admission, care, or treatment of patients
- Public or private school officials and employees
- Social workers
- Mental health professionals
- Peace officers and firefighters
- Victims’ advocates

- Clergy members (except for privileged confidential communications)
- Director, coaches, assistance coaches, and athletic program personnel employed by a private sports organization or program

How is “child” defined for purposes of Colorado’s mandatory reporting law? A child is a person under eighteen years of age. Colo. Rev. Stat. § 19-1-103(18).

How is “abuse” defined? “Abuse” or “child abuse or neglect” means “an act or omission in one of the following categories that threatens the health or welfare of a child.” Colo. Rev. Stat. § 19-1-103(1):

- Skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and that is not justifiably explained; the account does not match the degree or type of condition or death; or the circumstances indicate it was not an accident
- Unlawful sexual behavior (see Colo. Rev. Stat. § 16-22-102 (9))
- Failure of the child’s parents, legal guardian, or custodian to provide adequate food, clothing, shelter, medical care, or supervision (with an exception for spiritual healing in lieu of medical treatment in certain circumstances, see Colo. Rev. Stat. § 19-3-103)
- Emotional abuse
- Abandonment, mistreatment, or abuse by a parent, guardian, or legal custodian
- Failure of child’s parent, guardian, or legal custodian to lawfully stop and prevent the mistreatment or abuse of the child by another
- Lack of parental care
- An environment injurious to the child’s welfare
- Controlled substances manufactured in the presence of a child, on premises where a child is found, or where a child resides
- A child tests positive at birth for a controlled substance (unless controlled substance was lawfully taken by the mother as prescribed)
- Human trafficking for sexual servitude (see Colo. Rev. Stat. § 18-3-504).

When must a mandatory reporter make a report? Any mandatory reporter “who has reasonable cause to know or suspect that a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions that would reasonably result in abuse or neglect shall immediately ... report or cause a report to be made.” Colo. Rev. Stat. § 19-3-304(1)(a).

What must be reported if I am required to report child abuse? The following must be included whenever possible:

- The name, address, age, sex, and race of the child
- The name(s) and address(es) of the person(s) responsible for the suspected abuse or neglect
- The nature and extent of the child’s injuries, including evidence of previous cases of known or suspected abuse or neglect of the child or siblings
- The family composition
- The source of the report and the name, address, and occupation of the person making it
- Any action taken by the reporting source

- Any other information that the reporter believes may help further the purposes of reporting
- The military affiliation of the individual who has custody or control of the child who is the subject of the investigation of child abuse or neglect

See Colo. Rev. Stat. § 19-3-307(2).

To whom must I make a report when I am required to do so? Reports must be made to the county or district department of human or social services, the local law enforcement agency, or through the child abuse reporting hotline system established by the department of human services. Colo. Rev. Stat. §§ 19-3-304(1)(a); 19-3-307(1); 19-1-103(32)(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.

“Mental health providers” in Colorado have a statutory duty to warn pursuant to Colo. Rev. Stat. §13-21-117. This duty is triggered when a patient communicates a serious threat of imminent physical violence against a specific person or persons to a mental health provider.

The duty is discharged by notifying the specific person or persons threatened. One Colorado court has added that in order to discharge their duty, mental health providers must notify an appropriate law enforcement agency or take other appropriate action. *People v. Kailey*, 2014 CO 50, ¶ 5, 333 P.3d 89, 92 (2014).

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? Generally, communications between a domestic violence or sexual assault victim and a victim’s advocate is privileged. Colo. Rev. Stat. § 13-90-107(1)(k). Communications of future or past misconduct of child abuse or neglect are not privileged communications. Colo. Rev. Stat. § 19-3-311(1).

8

Does a parent or guardian’s presence during an otherwise privileged communication waive a victim-advocate, or similar, privilege in Colorado? The law in Colorado does not address this waiver of the victim-advocate privilege. However, a parent may not be examined regarding any communication made in confidence by the parent’s minor child to the parent when in the presence of an attorney, physician, mental health professional or clergy member, minister, priest or rabbi who have a confidential relationship with the minor child. Colo. Rev. Stat. § 13-90-107(1)(l)(I).

9

Does Colorado have a privilege that protects the privacy of communication between a parent and a child? Colorado does not have an established parent-child privilege. See too the answer to Question 8 above.

10

Who must sign a release of a minors' 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/. Or contact your jurisdiction's coalition or bar association.