



Minors' Privacy Toolkit

Delaware

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 Delaware? Under Delaware law, a minor is a person under the age of eighteen years. Del. Code tit. 1, § 701.

2

How does emancipation work in Delaware? There is no emancipation statute in Delaware and courts lack jurisdiction to grant petitions for emancipation. *S.L. v. A.L.*, 735 A.2d 433 Del. Fam. Ct. 1999. Marriage of a minor releases the minor from the care, custody, and control of their parents. *Christenson v. Tanner*, 980 A.2d 1059 Del. Fam. Ct. 2009. If a minor is deprived the support of their parents because they refused to get an abortion or continue a pregnancy, the minor is emancipated for the purposes of eligibility to receive assistance benefits. Del. Code. tit. 24, § 1786.

3

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

Reproductive health	<p>Age twelve or older: Diagnostic or therapeutic procedures for care and treatment of pregnancy or communicable diseases, including sexually transmitted diseases, but excluding abortion. Del. Code tit. 13, § 710(a).</p> <p>Note: The provider may advise the parent or guardian about the treatment of the minor as they deem appropriate, having regard for the best interest of the minor. Del. Code tit. 13, § 710(c).</p> <p>Age twelve or older: HIV-related testing and counseling. Del. Code tit. 16, § 715(c).</p> <p>Any age: Examination and treatment for sexually transmitted diseases. Del. Code tit. 16, § 710; Del. Code tit. 13, § 707(b)(5).</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>
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General medical	Any age: Treatment for traumatic injury or health or life-threatening condition, but only if reasonable efforts have first been made to obtain consent of parent or guardian. Del. Code tit. 13, § 707(b)(5).
Mental health and chemical dependency	Age fourteen or older: Nonresidential treatment from a licensed facility for substance abuse, and outplacement treatment from a licensed facility or community provider for mental health. Del. Code tit. 16, § 2210; Del. Code tit. 16, § 5003.
Other	Age seventeen or older: Donate blood for no compensation. Del. Code tit. 13, § 709.

4

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

5

What are the child abuse mandatory reporting obligations in Delaware?

Who is a mandatory reporter of child abuse? In Delaware, any person who knows or in good faith suspects child abuse or neglect is a mandatory reporter. See Del. Code tit. 16, § 903. These reporters include, but are not limited to: law enforcement, social workers, mental health professionals, health care providers, and school employees.

How is “child” defined for purposes of Delaware’s mandatory reporting law? A child is a person who is under eighteen years of age. Del. Code tit. 16, § 902(3).

How is “abuse” defined? Abuse means

- Causing or inflicting sexual abuse on a child; or
- Having care, custody, or control of a child and inflicting
 - Physical injury through unjustified force
 - Emotional abuse
 - Torture
 - Exploitation
 - Maltreatment or mistreatment

Del. Code tit. 16, § 902, referencing Del. Code tit. 10, § 901.

When must a mandatory reporter make a report? Any person who knows or in good faith suspects child abuse or neglect must make an immediate oral report. Del. Code tit. 16, § 904.

What must be reported if I am required to report child abuse? Del. Code tit. 16, § 904 states that reports “and the contents thereof ... must be made in accordance with the rules and regulations of” or adopted by the Division. The Division of Child Protective Services’ reporting form requires the following information:

- Contact information for the person making a report
- A description of the incident including location information and information about the primary language of the adult/caretaker in the home
- Information about the child
- Information about the caretaker/adult

Del. Code tit. 16, § 904; Del. Dep’t of Services for Children, Youth and their Families, Information on Reporting Child Abuse and Neglect, available at https://kids.delaware.gov/fs/fs_iseethesigns.shtml.

To whom must I make a report when I am required to do so? An oral report must be made by telephone or otherwise by contacting the Child Abuse and Neglect Report Line for the Department of Services for Children, Youth and Their Families. Del. Code tit. 16, § 904.

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.

Psychiatrists in Delaware have a common law duty to warn when they know or should know that a patient’s dangerous propensities present an unreasonable risk of harm to others. *Naidu v. Laird*, 539 A.2d 1064 (1988). Other mental health professionals may disclose confidentiality communications in certain situations when a patient is dangerous to others or themselves.

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? Delaware does not have an established privilege for 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 Delaware? Under Delaware’s privilege for communications between a patient and a mental health provider, physician, or psychotherapist, the presence of a family member will not waive the privilege if reasonably necessary for the transmission of the communication, or if the family member was participating in the diagnosis and treatment. Del. R. Evid. 503.

9

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

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.